

(2008) 08 PAT CK 0121

In the Patna High Court

Case No : CWJC Nos. 5785 and 13416 of 2007

Najeeb Ahamad Khan and Others

APPELLANT

Vs

The L.N. Mithila University and Others
 S.M. Zaheer
Alam Teacher Training College Vs The State of Bihar and
Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Citation : (2008) 08 PAT CK 0121

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Since the subject matter of both the writ cases and the issues involved therein are same, both of them were heard together and are being disposed of by this common order.

2. C.W.J.C. No. 13416 of 2007 has been filed by three students of S.M. Zaheer Alam Teacher Training College (hereinafter referred to as "the College" for the sake of brevity) which is under the L.N. Mithila University, Darbhanga (hereinafter referred to as "the University" for the sake of brevity) for quashing order dated 17.12.2006 (Annexure-7) passed by the Vice-Chancellor of the University by which it was held that students of Bachelor of Education (B.Ed.) Course for the Sessions 2001-2002, 2002-03 and 2003-04 of the College did not fulfill conditions which were insisted upon by the University before allowing them to appear in the examination and for directing respondent- authorities to hold B.Ed. examination of the aforesaid sessions within a shortest period and publish their result and also for any other reliefs to which the petitioners are found entitled.

3. C.W.J.C. No. 5785 of 2007 has been filed by the above named S.M. Zaheer Alam Teachers" Training College, Bahera, Darbhanga for quashing orders dated 13.12.2006 and 17.12.2006 (Annexure-36) passed by the Vice Chancellor of the University refusing to allow the students of the college to appear in the B.Ed. examination of the above-mentioned sessions and also for quashing the

resolution of the Examination Board of the University dated 17.2.2005 (Annexure-18), resolving that no question of holding the aforesaid examination arises as the said Sessions fell within the period of derecognition of the college. Other reliefs were also sought for directing the authorities of the University to hold examinations of the College for the aforesaid Sessions within a shortest period and publish the result and for initiating a proceeding for contempt against the Vice-Chancellor and Registrar of the University for overreaching the order of this Court dated 17.8.2005 (Annexure-26) and also for filing a false affidavit in CWJC No. 12995 of 2005 before this Court.

4. The said College was constituted much earlier offering B.Ed. Course for fulfilling the teachers' education and it applied for recognition to the Eastern Regional Committee for Teacher Education (hereinafter referred to as "the Regional Committee" for the sake of brevity) which is under the statutory body of the Government of India, namely, the National Council for Teacher Education (hereinafter referred to as "the National Council" for the sake of brevity) and after completion of all due procedures recognition was granted to the College by the Regional Committee u/s 14 of the National Council for Teachers' Education Act, 1993 (hereinafter referred to as "the Act" for the sake of brevity) by order dated 22.6.1998 (Annexure-4 to the writ petition filed by the College). The said recognition continued year after year, but by order dated 9.5.2001 (Annexure-5 to the writ petition filed by the College) the Regional Committee withdrew/ refused the recognition to the College and confirmed its said order by another order dated 6.11.2003 (Annexure 10 to the writ petition filed by the College) withdrawing recognition to the College for conducting B.Ed. Course on various grounds.

5. Against the said orders the College filed an appeal before the National Council which considered the matter in detail and vide its order dated 28.7.2004 (Annexure-11 to the writ petition filed by the College) found that the audited statement of accounts were shown to the visiting team and also submitted to the Regional Committee; transparency in financial transactions was maintained; salaries will be paid by cheque if the staff desires or council instructs; endowment fund of Rs. 5 lacs was being maintained; reserve fund was also being maintained; in the matter of admission of students, the qualifications prescribed were followed; the candidates appeared at written examination and thereafter merit list was drawn up; teachers were selected through issue of advertisement followed by interview/test by Selection Committee inter-alia consisting of an expert from other institution/University. It was also found by the National Council that there were apparent contradictions in the grounds taken by the Regional Committee in its orders dated 9.5.2001 and 6.11.2003 and after careful consideration of all the matter, the National Council was of the opinion that the said orders of the Regional Committee were defective, unjust and violative of the Act and hence the impugned orders were reversed and status quo ante was restored.

6. The said order was passed by the highest authority in the Teachers' Training Education and it was never challenged by the respondents and hence admittedly it has attained finality.

7. It is also not in dispute that when the authorities concerned, even after passing of the aforesaid order of the National Council, did not take examination of the students of the College for the said Sessions, the College moved this Court vide C.W.J.C. No. 12995 of 2005. The said writ petition was contested by the University as well as by the Regional Committee of the National Council and after considering the entire matter in detail a Bench of this Court vide order dated 17.8.2006 (Annexure 26 to the writ petition filed by the College) found that while reversing the orders of the Regional Committee dated 9.5.2001 and 6.11.2003 the National Council by its order dated 28.7.2004 had restored the Status quo ante. It was also found that Section 16 of the Act only provides that when the institution is not recognized the students trained by the Institution during that period cannot be treated as students competent to offer themselves as candidates in the examination to be conducted by the University. But in the instant case recognition was granted on 22.6.1998 which was sought to be interfered with in an unjust manner as found by the National Council and accordingly all such attempts to interfere with such recognition was obliterated by the National Council by its order dated 28.07.2004 restoring the status quo ante. It was also held that the words used in order dated 22.06.1998 as well as in order dated 28.07.2004 were so clear that one and the only meaning of the same could be derived which suggests that recognition of the institution as given on 22.06.1998 remained unaffected, despite attempts made by the orders of the Regional Committee. It was also held that Section 16 of the aforesaid Act did not prevent taking of examination of those students whose education process was sought to be unjustly interfered with and which has been found by the appropriate appellate authority, constituted by the aforesaid Act itself to be unjust. Accordingly, the said writ petition was allowed directing the respondent-University to take examination of the students of the College for the aforesaid three sessions in the next forthcoming examination subject to such terms and conditions and provisions as are normally imposed and insisted upon by the University.

8. The said order of this Court was affirmed by a division bench of this Court vide order dated 19.02.2007 (Annexure-7 to the writ petition of the College) passed in L.P.A. No. 681 of 2006 filed by the University. However, when the aforesaid order of this Court dated 17.08.2006 was not complied, the College filed M.J.C. No. 2294 of 2006 for initiating a proceeding of contempt against the authorities of the University and for punishing them.

9. During the pendency of the M.J.C. case the Vice Chancellor of the University gave his opinion on 13.12.2006 that the petitioner had levelled all false charges without any legal basis and valid reasons/proof, only with a view to demoralize the authorities of the University with ulterior motives and to gain undue favour.

Thereafter the said Vice-chancellor passed his impugned order dated 17.12.2006 (Annexure 36 to the writ petition filed by the College) holding that from May, 2001 to July, 2004 no students were admitted to B.Ed. course in S.M. Zaheer Teachers" Training College, Bahera much less trained and only after order of derecognition was set aside by the National Council, the concerned College admitted students and wanted that those students should be allowed to sit in examination, although they did not fulfill the conditions which were insisted upon by the University before allowing them to appear in the examination.

10. In view of the aforesaid orders of the Vice-Chancellor the M.J.C. case was disposed of by a Bench of this Court on 19.12.2006 (Annexure-34 to the writ petition of the College) granting leave to the petitioner college as well as its students of the said sessions to take such recourse to law as they may be advised to redress their grievances against the said decision of the University. Accordingly, these two writ petitions have been filed for the reliefs mentioned above.

11. In the said circumstances the questions to be decided in these writ cases are as follows:

(i) Whether the said order of the Council dated 28.07.2004 will have prospective effect and will be operative from the year 2004 onwards as claimed by the authorities of the Regional Committee as well as the authorities of the University or the said order of the council dated 28.7.2004 will have retrospective effect and will be operative from the date of order of the Regional Committee i.e., 9.5.2001 which was challenged by the College before the National Council in the appeal decided by the National Council on 28.7.2004?

(ii) Whether in view of the final order of the National Council and the specific provisions of law, the College even though de-recognized for three years i.e. from 2001 to 2004 could continue functioning and admitting students and taking classes for the aforesaid three sessions i.e. 2001-02, 2002-03, and 2003-04?

(iii) Whether after final decision of this Court by order dated 17.8.2006 (Annexure-26 to the writ petition of the College) passed in C.W.J.C. No. 12995 of 2005 considering and deciding each and every issue involved, the Vice-chancellor of the University was justified in taking up the matter for decision again without complying the said specific order of this Court?

(iv) Whether the findings of the Vice-Chancellor in the impugned order dated 17.12.2006 (Annexure-36 to the writ petition of the College) are perverse, biased, baseless and against specific provisions of law?

12. Question No. (i) is with respect to the retrospectivity or otherwise of order of the National Council dated 28.07.2004 (Annexure-11). The said order was passed in an appeal filed u/s 18 of the Act by the College against orders of the Regional Committee dated 9.5.2001 and 6.11.2003 (Annexures 5 and 10) by which the recognition of the College with effect from the year 2001 was

withdrawn. The said matter was considered in detail by the statutory appellate authority, namely, the National Council, before whom the College had filed an appeal against the abovementioned orders of the Regional Committee, and after considering the specific claims of the parties and the materials produced by them, the National Council came to specific conclusions that the audited statements of accounts were shown to the visiting team and submitted before the Regional committee; transparency in financial transactions was maintained; salaries will be paid by cheque if the staff desires or council instructs; endowment fund of Rs. 5 lacs was being maintained; reserve fund was also being maintained; prescribed qualifications were followed in the matter of admission of students; merit list was drawn up after the candidates appeared at written examination and teachers are selected through advertisement followed by interview/test by Selection Committee, inter-alia, consisting of an expert from other institution/University. It was also found by the National Council that there were apparent contradictions in the six grounds taken by the Regional Committee in its order dated 9.5.2005 and the five grounds taken by it in its order dated 06.11.2003. After careful consideration of all the aspects of the matter the National Council specifically found that the said order of the Regional Committee was defective, unjust and violative of the provisions of the Act and hence reversed the orders of the Regional Committee and restored status quo ante.

13. The term "status quo ante" means the condition or situation existing before a particular change, hence in the instant case it clearly meant to bring the state of affairs in which the College was prior to the order passed by the Regional Committee which was under challenge in the appeal and was reversed by the National Council. Hence, the said order of the National Council was clearly retrospective in effect, as a result of which the College was not affected by the aforementioned orders of de-recognition passed by the Regional Committee and the recognition of the college continued from the year 1998 throughout without any break between the years 2001 and 2004. Furthermore this Court earlier also in its order dated 17.8.2006 (Annexure-26) passed in C.W.J.C. No. 12995 of 2005 had found that the recognition of the institution as given on 22.6.1998 remained unaffected despite attempts made by the orders of the Regional Committee. In the said circumstances, no reason is found to take a different view in this writ petition.

14. Question No. (ii) is with respect to issue whether the College, during the period of its de-recognition by the Regional Committee, i.e., between the years 2001 to 2004 and before the appellate order of the National Council was passed in 2004, could legally continue functioning, admitting students and taking classes or providing training for the said three sessions. Section 14 of the Act provides that every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations; provided that an institution offering a course or training in teacher education immediately before

the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

15. Although no specific provision is prescribed for a situation like the instant one, i.e., functioning of the College after de-recognition but the principle laid down by Section 14 of the Act clearly provides that an institution may continue for a period of six months and until the disposal of its application before the authority. Here in the instant case, the order of de-recognition was passed by the Regional Committee in the year 2001 and was confirmed by the Regional Committee in the year 2003 and against those orders the institution had filed an appeal as per the specific provision of Section 18 of the Act, as a matter of statutory right. Hence, according to the said principles laid down in the provision of the Act, the Institution was entitled to continue such course/training till the disposal of its appeal before the National Committee, i.e. the appellate authority.

16. Section 16 of the Act merely points out that no examining body shall, on or after the appointed day, hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution unless the institution concerned has obtained recognition from the Regional Committee concerned, u/s 14 of the Act. Hence in the instant case only holding of examination during the said period of de-recognition is prohibited by the said provision, but there is no prohibition, in any provision of the Act, for the institution to continue functioning, taking admissions and holding classes during the period when its statutory appeal against the order of de-recognition, passed by the Regional Committee, was pending before the appellate authority, namely, the National Council.

17. The same view had been taken earlier by this Court in its order dated 17.8.2006 (Annexure-26) passed in C.W.J.C. No. 12995 of 2005, holding that Section 16 of the Act only says that when the institution is not recognized the students trained by the Institution during the period of de-recognition cannot be treated as students competent to offer themselves as candidates in the examination to be conducted during that period by the University, but in the instant case recognition was granted in the year 1998 which was sought to be interfered with in an unjust manner as found by the National Council for Teacher Education and, accordingly, all such attempts to interfere with such recognition was obliterated by the National Council by its order dated 28.7.2004 (Annexure-11), restoring the status quo ante. Hence, Section 16 of the Act does not prevent taking of examination of those students whose education process was sought to be unjustly interfered with and which has been found by the appropriate appellate authority, constituted under the aforesaid Act itself, to be unjust.

18. From the above discussions it is quite apparent that although the students of the aforesaid three sessions had taken admission, attended classes & Training and completed their respective courses, but they could not appear in the examinations held by the University during that period due to the unjust and

illegal order of de-recognition but subsequently when the order of de-recognition was obliterated by the National Council in the year 2004 the said students had clearly become eligible for appearing in the examinations for those courses.

19. Question No. (iii) is with respect to justification of the Vice-Chancellor in taking up the matter for decision after this Court, by order dated 17.8.2006 (Annexure-26) passed in C.W.J.C. No. 12995 of 2005, had already considered and decided each and every issue involved in the matter and had given certain directions to the University, after arriving at the following conclusion:

In the instant case, recognition was granted on 22nd of June 1998. This recognition was sought to be interfered with in an unjust manner as found by the National Council for Teacher Education and accordingly all such attempts to interfere with such recognition was obliterated by the N.C.T.E. by its order dated 28th July, 2004 restoring the status quo ante. The words used in the order dated 22nd June, 1998 and in the order dated 28th July, 2004 are so clear that one and the only meaning of the same would suggest that the recognition of the institute as made on 22nd of June, 1998 remained unaffected, despite attempts made by the orders as mentioned above. Section 16 of the aforesaid Act does not prevent taking of examination of those students whose education process was sought to be unjustly interfered with and which has been found by the appropriate appellate authority constituted by the aforesaid Act itself to be unjust.

Accordingly, this writ petition is allowed by directing the respondent University to take examination of the students of the aforesaid institute for the sessions 2001-2002, 2002-2003 and 2003-2004 in the next forthcoming examination subject to such terms and conditions and provisions as are normally imposed and insisted upon by the University.

This order was also affirmed by a Division Bench of this Court vide order dated 19.2.2007 (Annexure-35) passed in L.P.A. No. 681 of 2006 filed by the University itself.

20. In the said circumstances the eligibility of the students of the College of the aforesaid sessions to appear in the examination concerned, had already been decided by this Court and there was no occasion for the Vice-Chancellor to rake up the same issue afresh. The only matter left for the University was to get the formalities of the examination completed as per the terms and conditions and provisions as were normally imposed and insisted upon by the University for the examinations, such as fees, forms and other papers as required for the examination. However, the Vice Chancellor by his impugned order dated 17.12.2006 (Annexure 7) shockingly did rake up the same issue which had already been decided by this Court vide its order dated 17.8.2006 (Annexure-26) in C.W.J.C. No. 12995 of 2005 and hence it clearly amounted to bypassing the said order of this Court during the pendency of the contempt petition. However, from the facts and circumstances it appears that the Vice-Chancellor was unable to understand the import of the aforesaid order of this Court and misconstrued

the last few lines of the said order by which the University was directed to take examination of the students, subject to such terms and conditions and provisions as are normally imposed and insisted upon by the University. This mistake does not appear to be intentional rather it appears to be due to utter lack of knowledge and understanding of the Vice-Chancellor due to which this Court vide order dated 19.12.2006 (Annexure-34) dropped the proceeding of contempt bearing M.J.C. No. 2294 of 2006 and granted leave to the College and its students to challenge the said order of the Vice-Chancellor.

21. Question No. (iv) is with respect to the merits or otherwise of the findings of the Vice-chancellor in his impugned order dated 17.12.2006 (Annexure-36 to the writ petition of the College and Annexure-7 to the writ petition of the students). The said order was passed by the Vice-Chancellor on the basis of the following findings:

(a) The College, having been de-recognised on 9.5.2001 by the Regional Committee and remained unrecognized until 28.7.2004, could not have functioned and admitted any student to B.Ed. Course during period of de-recognition.

(b) The College never informed either the Regional Committee or the University regarding admission of students to B.Ed. Course in the aforesaid three sessions of 2001-2002, 2002-2003 and 2003-2004 nor took any step for registration of those students.

(c) The College did not produce any paper before the University authorities to convince them that entrance test for admission to B.Ed. course was at all taken during the said period.

(d) The headmaster of Milat High School, Rupaspur, Darbhanga as well as the Principal of Jayanand Uchcha Vidyalaya had informed the University that no certificate was issued by their schools to the effect that students of the College got practical training in their schools for the aforesaid Sessions.

On the basis of the said findings the Vice-chancellor assumed that no students were admitted to B.Ed. course in the College much less trained and only after appellate order of the National Council, the College had admitted students and wanted them to be allowed to sit in the examination and hence it was assumed that the said students did not fulfill the conditions which are insisted upon by the University before allowing them to appear in the examination.

22. The provision of Section 14(5) of the Act provides that every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic sessions next following for it. But the said provision of Sub-section (5) has to be read with the provision of Sub-section (1) of Section 14 of the Act, which specifically provided that an institution offering course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for

a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee. Here in the instant case the College had got recognition since 1998 and after the orders of derecognition passed by the Regional Committee the College had filed a statutory appeal u/s 18 of the Act before the National Council and hence it was clearly entitled as per the principles laid down in Section 14(1) of the Act to function until the disposal of the appeal. In such a situation the provision of Section 14(5) cannot operate as bar so far as the functioning of the College is concerned. Of course, during the said period of derecognition the students cannot be allowed to appear in the examination, but after the said period was over and the order of derecognition was reversed and status quo ante was granted by the appellate authority the students clearly became entitled to appear in the examination.

23. Since the Regional Committee had de-recognized the College in the year 2001, there was no occasion for the College to inform the Regional Committee or the University with respect to functioning of the College in view of the principle laid down in Section 14(1) of the Act and the pendency of its appeal before the National Council under the provision of Section 18 of the Act. The Vice-Chancellor completely ignored the letter of the Regional Committee of the National Council dated 5.11.2004 sent to the University with respect to the petitioner's college as regard to the clarification regarding "status quo ante granted and restored" holding that pursuant to the order of the Hon'ble Delhi High Court dated 13.10.2004 in W.P.(C) No. 6695 of 2003 and C.M. No. 11652 of 2003, the students who have been enrolled prior to de-recognition, i.e., 8.5.2001 may be taken for examination for B.Ed. course.

Furthermore in consideration of the prayer of the petitioner's counsel the Hon'ble Delhi High Court had also directed that other students who were enrolled even after 8.5.2001 will be taken to appear in examination of B.Ed. course as per the said order of the Hon'ble Delhi High Court, a copy of which was enclosed with the said letter of Regional Committee at the instance of the letter of the National Council dated 4.11.2004 (Annexure-16 to the writ petition of the College). It appears that the Vice-Chancellor ignored not only the letter of National Council but also ignored the order of the Hon'ble Delhi High Court sent to it by the Regional Committee of the National Council for the reasons best known to him while arriving at the said findings.

24. In the aforesaid circumstances there was no occasion for the College to take steps for registration of the admitted students during the sessions 2001 to 2004 while its statutory appeal was pending before the appellate authority and immediately after the decision in the appeal they sent all the requisite informations to the University. Furthermore, on the queries made by the University, the College sent all the requisite informations by letter dated 23.11.2006 (Annexure-12) along with the schedule of admission test published in the newspaper for 2001-2002, 2002-2003 and 2003-2004 as well as the

relevant registers and the published schedule with regard to the result which fully proved that admissions were taken and classes were held in accordance with the prescribed procedures. This aspect of the matter was also considered and decided in favour of the College by this Court in its earlier order dated 17.8.2006 (Annexure-26) passed in C.W.J.C. No. 12995 of 2005.

25. It may be stated in this regard that no one had ever raised any grievance that admission in those sessions were not taken on merits or that there was any illegality in the admissions. In the said circumstances it is quite apparent that there was transparency in the admission of the students in the aforesaid sessions for which merit was also adequately taken care of and on the basis of the said admissions classes were also held and training was imparted which had been duly approved by the authority concerned but the Vice-chancellor had completely ignored the same. Reference in this regard may be made to the decision of the Hon''ble Apex Court in case of P.A. Inamdar and Ors. v. State of Maharashtra and Ors. reported in 2005 (5) Supreme Today 544.

26. The Vice-chancellor appears to have wrongly relied upon the alleged letters of Headmaster of Millat High School, Rupaspur, Darbhanga and Principal of Jayanand Uchch Vidyalaya, Bahera, as the University had sent letters to several High Schools from where students of the petitioner's College for the concerned Sessions had obtained training, such as Kali Prasad Uchch Vidyalay, Rajkiyakrit Uchch Vidyalay and other several schools including Millat Uchch Vidyalaya, which sent their replies (Annexures 14, 15 and 16 series to C.W.J.C. No. 13416 of 2007) clearly showing that the said students of petitioners' college had obtained training from those schools and also showing that the letters relied upon by the Vice-Chancellor were forged and fabricated and were not even on the pad of the concerned Schools. Hence, it is apparent that the Vice-Chancellor has passed the impugned order on the basis of unreliable papers, ignoring the papers which were reliable and were on the pad and under the seal of the concerned schools.

27. It may further be stated in this connection that with respect to such institutions imparting teachers training the final authority as per the provisions of the Act lies with the National Council for teachers education and it cannot be deprived of its power for taking an appropriate decision according to the Act (N.C.T.E. Act, 1993) irrespective of the provisions of other Acts which cannot be applied to the institutions covered by the Act of 1993. As per the scheme of the Act once recognition has been granted by the National Council under the provisions of the Act, every University (examining body) is obliged to grant affiliation and take examination as per the decision of the National Council. This view also finds support from a decision of the Hon''ble Supreme Court in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, in which it was specifically held that neither the State Government nor the University can act contrary to the decision of the National Council which is the only authority to take decision in this regard. The University is bound to take action only on the basis of decision of the National Council and hence it is

not open to the University to take any decision on its own over looking the decision of the National Council.

28. In the instant case the National Council had taken a decision as far back as in the year 2004 which has been fully affirmed by judgment dated 17.08.2006 (Annexure-26) passed by this Court in C.W.J.C. No. 12995 of 2005 and hence there was no occasion for the Vice-Chancellor to take a different view, illegally assuming that he had any authority in such matters to override not only the order passed by the National Council but also the specific decision taken by this Court. The said whimsical order appears to have been passed by the Vice Chancellor clearly due to utter lack of knowledge and understanding, which, coming from the highest authority of a seat of learning, is shocking to say the least.

29. In the aforesaid facts and circumstances, it is hereby held that the impugned orders of the Vice-Chancellor dated 13.12.2006 and 17.12.2006 as well as the impugned resolution of the Examination Board of the University dated 17.02.2005 are not only illegal but are also baseless, arbitrary, perverse, without jurisdiction and against specific provisions of law and are thus quashed. Both the writ petitions are accordingly allowed with a direction to the Vice-Chancellor of the L.N. Mithila University to allow the students of S.M. Zaheer Alam Teacher Training College, Bahera as provided by the College for the Sessions 2001-2002, 2002-2003 and 2003-2004, to appear in the next forthcoming examinations of B.Ed. Course.

30. However, the said students will have to fulfill the formalities regarding forms and fees etc. as per the procedures made applicable by the University.