

(2011) 10 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 11899 of 2011

Nalanda Education Trust

APPELLANT

Vs

National Council for Teacher Education Western Regional and
Another

RESPONDENT

Date of Decision : 07-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 30, 32

National Council for Teacher Education Act, 1993 — Section 17(1), 17(3), 17(4)

Citation : (2011) 10 GUJ CK 0028

Hon'ble Judges : A.L. Dave, Acting C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : H.J. Nanavati, for the Appellant; A.J. Shastri, for Respondent 1, Amit M. Panchal and Shivani Rajpurohit for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This writ petition depicts an extremely sorry state of affairs of a college named Shri Dr. Ratilal Kanjibhai Patel and Shri Kantibhai Patel B. Ed College run and managed by Nalanda Education Trust, At and Post Hadad, Tal. Danta, Dist. Banaskantha, which is an un-recognized educational institution imparting teacher education i.e. B. Ed Course. Over a period of time, we have come across so many petitions preferred by such colleges whose recognition has been cancelled by National Council for Teachers Education (for short "NCTE") on grounds like non-appointment of Principal, inadequate teaching and non-teaching staff, lack of adequate infrastructure etc. We are sad to note that ultimately the students are the sufferers. We are reminded of an observation made by the Supreme Court almost two decades ago in the case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, , in which the apex Court observed as under:

2. This Court judicially noticed mushroom growth of ill equipped and understaffed unrecognised educational institutions in Andhra Pradesh, Bihar, Tamilnadu

and Maharashtra States and other states too are no exceptions. Obviously the field of education is found to be fertile, perennial and profitable business venture with least capital outlay. This case is one such from the State of Maharashtra.

3. It would appear that individuals or societies without complying with the statutory requirements, establish educational or training institutions ill equipped to impart education and have the students admitted, in some instances despite warnings by the State Govt. and in some instances without knowledge of the concerned State Govt, but with connivance at lower levels.

We can take judicial notice of the mushroom growth of ill-equipped, understaffed and unrecognized educational institutions coming up even in the State of Gujarat.

2. The present petition has been filed by the Petitioner Trust challenging the action of the Respondent University in not allotting/allocating students to the Petitioner college for the Academic Year 2012- 2013. They have also challenged the action of Respondent National Council for Teacher Education in passing the impugned order dated 28.07.2011, withdrawing recognition to the Petitioner college.

3. The facts relevant for the purpose of deciding the petition can be summarized as under:

3.1 Petitioner is a Public Charitable Trust, who was granted recognition to start B. Ed. College with an intake capacity of 100 students.

3.2 Petitioner college was served a show cause notice by National Council for Teacher Education vide letter No. APW03113/323350/149/2011/78206 dated 19.05.2011, wherein 8 deficiencies were pointed out to the Petitioner college. The Petitioner college was granted 30 days time to respond to the show cause notice before passing a withdrawal order.

3.3 It appears that Petitioner submitted a detailed reply on 12.6.2011. However, in the meantime respondent NCTE passed an order on 28.7.2011 withdrawing the recognition granted to the Petitioner. It also appears that Petitioner college has admitted about 43 students in the B. Ed Course and therefore, according to the Petitioner the withdrawal of recognition can take place only from the next Academic Year i.e. 2012-2013.

4. We have heard Learned Counsel Mr. H.J. Nanavati, appearing for the Petitioner as also Mr. Amit M. Panchal, Learned Counsel appearing for Respondent University and Mr. A.J. Shastri, Learned Counsel appearing for Respondent NCTE.

5. Learned advocates appearing for the Respondents jointly invited attention of this Court to the Judgment dated 14.05.2010, wherein while disposing of a group of petitions being Special Civil Application Nos. 3205 of 2009 and cognate matters the Division Bench of this Court issued the following directions:

27. Under the circumstances, these petitions as well as Civil Applications are

disposed of with following directions:

i) All the Petitioners shall remove all the defects and confirm to all the norms of NCTE as applicable to the concerned institution as interpreted and explained here-in-above for which the Petitioners shall have time upto 31.12.2010.

ii) Institutions after curing all the defects not later than by 7.1.2011, shall intimate to the NCTE that defects have been cured and invite the inspection team to carry out inspection.

For the above purpose, the concerned institution shall along with its communication to NCTE attach a draft of Rs. 10,000/- in favor of NCTE for one time cost of such inspection. If any institution fails to send such a communication within the time permitted, its recognition shall automatically stand withdrawn without requirement of passing any order. Though students already admitted shall not be affected by such withdrawal, the institution will not be permitted to admit any students in the next academic year.

iii) Upon receipt of such a communication, NCTE shall depute a team of qualified persons to visit the institutions, verify the infrastructure and other facilities available as also inspect the documents with respect to such facilities.

iv) Upon inspection, if NCTE finds that all defects are cured, certificate to that effect shall be given to the concerned institution and its recognition shall be continued.

v) If upon inspection however, NCTE finds any of the defects still remaining, it will be open for NCTE to pass appropriate orders in accordance with law after issuing show cause notice to the concerned institution/trust.

vi) In view of above directions, all the orders cancelling recognition of the institutions are set aside. It is clarified that quashing of orders passed by the NCTE is not on merits, but only to enable the institutions to fulfill all the requirements within the extended time.

6. Learned advocate Mr. Amit Panchal appearing for the University further contended that the aforementioned judgment had granted time to all the colleges to fulfill all the requirements as per NCTE norms on or before 7.1.2011. The learned advocates appearing for the University and NCTE jointly argued that the aforementioned order passed by this Court has not been modified or stayed or set aside by the Honourable Supreme Court of India and the directions issued therein would be binding on the Respondent college and therefore, it would not lie in the mouth of the college to not comply with the directions contained in the aforesaid judgment of this Court and yet challenge the action of the University and NCTE and claim reliefs from this Court.

7. Learned Counsel appearing for National Council for Teacher Education contended that as a response to the show cause notice issued by National Council for Teacher Education, the Petitioner made a representation to the

Respondent National Council for Teacher Education. The Learned Counsel further submitted that the said reply was considered by the National Council for Teacher Education in its 151st meeting held on 27-29th June, 2011, and as the reply tendered by the Petitioner was not found satisfactory withdrawal order came to be issued on 28.07.2011.

8. He further contended that the action taken by the Respondent University of not allotting/allocating students to the Petitioner was a consequential action and had been taken after order dated 25.07.2011, came to be passed by National Council for Teacher Education. He submitted that the order of withdrawal of recognition of Petitioner by Respondent National Council for Teacher Education dated 28.07.2011, was received in the office of the Respondent University on 03.08.2011, wherein the National Council for Teacher Education in its withdrawal order at paragraph 7 directed that u/s 17 of the N.C.T.E. Act, 1993, the Respondent University should not admit/allot any student to the Petitioner, as in accordance with Section 17(4) of the N.C.T.E. Act, 1993, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purpose of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

9. Mr. Panchal, learned advocate also contended that under the provisions of Section 17(3) of the NCTE Act, 1993, once the recognition of an institution is withdrawn under Sub-section (1), such institution is required to discontinue the course or training in teacher education, and the concerned University or examining body is required to cancel affiliation of the institution in accordance with the order passed under Sub-section (1), with effect from the end of the academic session next following the date of communication of the said order and therefore, it would not be permissible for the University to permit the college to admit students or allot students to the said college, in view of the recognition having been withdrawn.

10. Learned advocate further contended that immediately after receipt of the order withdrawing recognition of the Petitioner dated 28.07.2011, addressed by the Respondent No. 1, Respondent No. 2 addressed a letter dated 04.08.2011, to the Manager, Bank of India with which the Respondent University held its account, instructing the Bank that, in view of the de-recognition of 5 colleges, including the Petitioner college, the bank should not accept the fees from the students of the said five colleges.

11. Learned Counsel appearing for the University referring to documents on the record of the case contended that in order to protect the interest of the students and to bring the fact of recognition of the Petitioner having been cancelled to the knowledge of students, Respondent No. 3 issued a public advertisement No. 46/2011, in the Gujarat Samachar, a local newspaper, on 13.08.2011, and hence, respondent No. 2 University had given a fair chance to the students to opt out of

the unrecognized Petitioner college and seek transfer into another recognised college affiliated to the Respondent No. 2, in order to save the academic year of the students, who were earlier allotted to the Petitioner. The learned advocate also stated that on the very same day i.e. on 13.08.2011, same instructions were uploaded on the website of the Respondent University.

12. Learned advocate for the Respondent University stated that the University had therefore, taken utmost care to safeguard the interest of the students and to ensure that the students who had been allotted/allocated to the Petitioner college do not suffer due to the withdrawal of recognition of the Petitioner, the University had given adequate notice and opportunity to the affected students who were earlier allotted to the Petitioner to get transferred to recognized B. Ed. colleges. The said action of withdrawal of recognition and of transferring students to other recognized colleges within the jurisdiction of the University had been ratified in the meeting of the Executive Council held on 23.09.2011.

13. During the course of hearing learned advocate for the Petitioner moved a draft amendment seeking leave of the Court to place the following two documents on record of the case

(i) Certificate of the total land area and built-up area issued by one "P. Square Associates of Khedbhrahma";

(ii) A letter dated 09.09.2011, issued by National Council for Teacher Education clarifying that the withdrawal order would be effective for the Academic Year 2012-2013.

14. Learned Counsel Mr. A.J. Shastri appearing for National Council for Teacher Education filed a detailed affidavit sworn by one Shri Dr. H.S. Tripathi, Regional Director, National Council for Teacher Education, clearly stating that the Respondent National Council for Teacher Education had not issued and/or dispatched any clarification letter dated 9.9.2011, and that the said letter was false and fabricated. To substantiate the said contention, Respondent National Council for Teacher Education placed the relevant portion of the outward register indicating that the letter produced by the Petitioner dated 9.9.2011, had a false outward number on it. The learned advocate for National Council for Teacher Education made a statement that the clarification letter stating that the withdrawal order would come into effect from the Academic Year 2012-2013, was false and fabricated.

15. After such a clarification letter was placed on the record of the case, learned advocate for the Respondent University has also filed a detailed affidavit stating that the a false document had been placed on the record of the case with intent to claim benefit of recognition for conducting the B. Ed. Course in the Academic Year 2011-2012, and thereby the Petitioner had sought to play fraud on this Court by dishonestly producing a document before this Court, which was false and fabricated thereby, seeking to alter the earlier recognition order issued by the Respondents. The Learned Counsel further submitted that there were few

glaring disparities between the letter which was hand delivered in the office of the University and the letter produced along with the draft amendment as the letter which had been hand delivered at the office of the Respondent No. 2, which are as follows:

(i) The letter, hand delivered in the office of the University did not have an outward number, while the letter annexed by way of an amendment had an outward number 80861 mentioned on it,

(ii) Even the initial allotment letter No. mentioned in both the letters do not match i.e. the letter produced by amendment mentions order No. WRC/5-6/89/2006/11484-11512 and the letter tendered in the office of the Respondent No. 2 mentions order No. WRC/5-6/83/2506/11484-11512.

16. Learned Counsel for the University contended that - "Fraud vitiates all judicial acts", and submitted that in light of the below mentioned judgments the Petitioner college must not be given any relief as prayed for

(i) A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,

(ii) S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

17. Learned advocate for National Council for Teacher Education brought to the notice of this Court that a Criminal Complaint is likely to be filed by National Council for Teacher Education against the Petitioner for creating false and fabricated documents in the name and style of National Council for Teacher Education. Both the advocates appearing for respective Respondents have urged before this Court that as the letter dated 20.09.2011, casts serious aspersions on the conduct of the Petitioner this Court may in the circumstances take cognizance of the same and initiate appropriate action against the Petitioner for the alleged conduct as is evident from perusal of the aforesaid letter, including action under the provisions of the Indian Penal Code 1860, if found appropriate.

18. Learned advocate for the University while contending that admission process has already been completed and it would not be permissible for the University to admit/allot students and reshuffle students in the B. Ed. Course for the Academic Year 2011-2012, has placed strong reliance on Judgment rendered by the Honourable Supreme Court of India in the case of Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others, and more particularly the principles enunciated in paragraphs 9, 11, 13, 15, 18, 19, 22 and 24 of the said judgment. The learned advocate also invited attention of this Court to the judgment rendered by the Honourable Apex Court in the case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, and stated that while taking judicial notice of mushroom growth of ill-equipped and under-staffed unrecognized educational institutions in Andhra Pradesh, Bihar, Tamil Nadu and Maharashtra States and other States too, has observed that the field of education is found to be fertile, perennial and profitable business venture with

least capital out-lay and without complying with the statutory requirements, establish educational or training institutions ill equipped to impart education and have the students admitted. In the said case in paragraph 6, while referring to the case of N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, has observed that if the Government is directed to permit the students admitted in those institutions to appear in the examinations, the Honourable Court would practically be encouraging and condoning the establishment of unauthorized institutions and has observed that it is not appropriate that the jurisdiction of the Honourable Court under Article 32 or Article 226 of the Constitution of India should be frittered away for such a purpose. So the request to permit the students who had training in unrecognized schools was deprecated by the Honourable Supreme Court of India. In the said case the Honourable Supreme Court of India made the following observations:

6. In N.M. Nageshwaramma v. State of A.P.¹ this Court held that the private institutions unauthorisedly established were invariably ill housed, ill staffed and ill equipped. If the Government is directed to permit the students admitted into those institutions, to appear in the examination, we will practically be encouraging and condoning the establishment of unauthorized institutions. It is not appropriate that the jurisdiction of the court either under Article 32 or Article 226 of the Constitution should be frittered away for such a purpose. So the request to permit the students who had training in unrecognized schools was deprecated by this Court.

7. In A.P. Christians Medical Educational Society v. Govt. of A.P. when fervent request with all persuasion by the senior counsel, Shri K.K. Venugopal, to permit the students admitted in unrecognized and unauthorized institution to pursue balance course was made, this Court noted thus: (SCC p. 678, para 10)

We do not think that we can possibly accede to the request made... on behalf of the students. Any direction of the nature sought for... would be in clear transgression of the provisions of the University Act and the Regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the Regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.

The request to permit the students to appear in the examination and to accommodate them elsewhere to enable them to prosecute further study was negative by this Court.

8. In All Bihar Christian Schools Association v. State of Bihar this Court, when the ill-equipped and mismanaged schools were taken over by an Act whose validity was challenged on the anvil of Article 30 of the Constitution, held that even the minority institutions are subject to statutory Regulations and establishment and maintenance of such an educational institution should be in conformity with the statute and the State is entitled to regulate the establishment of the educational

institutions and the admission of the students in those educational institutions. It was held that the educational institutions of the minorities have no right to maladministration. Any rule or direction issued by the Government to prevent maladministration would be valid.

9. In *State of T.N. v. St. Joseph Teachers Training Institute* the High Court of Madras while dismissing the writ petitions filed by unauthorized educational institutions, gave direction to admit the students for the examination. This Court held that the direction of admitting students of unauthorized educational institutions and thus seeking direction for permitting the students to appear at the examination has been looked with disfavour by this Court. It was held that since the students of unrecognized institutions were legally not entitled to appear at the examination conducted by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. Accordingly the appeal was allowed and the direction issued was set aside.

10. In *Students of Dattatraya Adhyapak Vidyalya v. State of Maharashtra* this Court held thus:

We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognized schools and are made to suffer. Some courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of Regulation.

11. In *Andhra Kesari Educational Society v. Director of School Education* relied upon by the counsel for the Respondents, no doubt this Court directed the Government to consider whether the students in the Appellant's college have undergone the necessary B. Ed. course and has permitted them to appear in the ensuing examination and publish their results. In that case there was a long drawn history of the recognition of the institute and that the direction was issued by this Court in the special circumstances therein. Therefore, it cannot be taken as a precedent, in particular, in the light of the law laid down by this Court as stated supra.

12. ...The ill-equipped and ill-housed institutions and sub-standard staff therein are counter-productive and detrimental to inculcating spirit of enquiry and excellence in the students. The disregard of statutory compliance would amount to letting loose of innocent and unwary children. The proceedings of the recent seminar held in Delhi, as published by the Times of India dated August 4, 1992, would demonstrate the admission by the teachers that they are not properly trained to cope up with the growing needs of the society and are unsuited to the duties they have to shoulder in imparting teaching to the children. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. Formal education needs proper equipping of the teachers to meet the challenges of the day to impart

lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities to the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of everchanging techniques, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the Appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the Appellants to permit the students to appear for the examination etc.

19. The learned advocate for the University also placed reliance on the judgments passed by the Honourable Apex Court in the case of National Board of Examinations Vs. G. Anand Ramamurthy and Others, and in the case of Bihar Public Service Commission and Others Vs. Kamini and Others, in the case of The University of Mysore and Another Vs. C.D. Govinda Rao and Another, and in the case of All India Council for Technical Education v. Surinder Kumar Dhawan and others reported in AIR 2009 SCW 3124, wherein the Honourable Supreme Court in paragraph 13 has made observations in respect of rule of statutory expert bodies on education and role of Courts.

20. Considering the developments that have taken place during the pendency of the petition and also taking into consideration the relevant factors including the conduct of the Petitioner college, which is not in the interest of students and considering the judgments of the apex Court, we are of the view that no relief can be granted in favour of the Petitioner college. We have also taken notice of the fact that the students have already been transferred to other recognized colleges imparting education in the course of B. Ed. We have also taken notice of the fact that the admissions to B. Ed Course have already been completed by the University on 2nd of September, 2011 and any admissions after 10.9.2011 would not entitle a student to keep terms for reason of inadequate attendance.

21. However, we need to address one important question and that is with regard to Section 17(3) of the National Council for Teacher Education Act, 1993. It has been vociferously submitted, relying on Section 17(3) that if the recognition of

an institution is withdrawn under Sub-section (1) of Section 17 of the Act, then the same will be with effect from the end of academic session next following the date of communication of the said order. According to the Learned Counsel for the Petitioner, the order passed by NCTE withdrawing the recognition of the Petitioner college will come into effect from next academic session i.e. 2012-13 and not in the current year 2011-12. As per the submission of the learned counsel for the Petitioner's college, if that is the case then the college must be permitted to impart education to the students and the students may not be transferred to other recognized colleges.

We need to understand the true import of the words "with effect from the end of the academic session next following the date of communication of the said order". It is brought to our notice that the B. Ed. Course is of 1 year consisting of 2 Semesters. Further, the 1st Semester B. Ed. Examinations are scheduled to commence from 14.11.2011, and the last date for submission of Examination forms is 10.10.2011. Attention of this Court has been drawn to the Academic Calendar for the Academic Year 2011-2012 of the Respondent University and it has been categorically pointed out that the Academic Year for the B. Ed. Course of 1 year consists of two Semesters - Semester-I and Semester-II, which have two Academic Sessions in a year. The Deans of all Faculties of Hemchandracharya North Gujarat University prepare the Academic Calendar before the beginning of the Academic Year in the month of February/March and before the commencement of the Academic Session and the said Calendar is made known to all concerned.

22. From a perusal of the said Academic Calendar we found that the Academic Year commenced on 15.06.2011 and the Academic Session of Semester-I commenced on 24.06.2011. The Academic Session of the Semester-I would come to end on 23.10.2011 and the Diwali Vacation would commence from 24.10.2011 until 13.11.2011. The second term of Semester-II would commence on 14.11.2011 and the Academic Session would commence on 08.12.2011. The second term of the Academic Session would end on 26.04.2012 and the Summer Vacation would start from 27.04.2012 until 13.06.2012. The minimum requirement necessary for attendance by a student for keeping terms in the 1st term is 80 days and 2nd term is 80 days.

23. In light of what has been observed above, the contention that the order of withdrawal of recognition will take effect from the next academic session 2012-13 is devoid of any merit. The Petitioner college is admittedly not having recognition. In the present case in view of the admission process having been completed and necessary steps having been undertaken to protect the interest of the students by transferring/allotting the students to other colleges which are recognised and affiliated to the Respondent University, it would not be permissible at this stage to direct the University to allot and permit the Petitioner college to admit students as such students would not be able to keep the terms as required under the University Ordinance. Moreover, such a direction would be

opposed to the provisions of the University Act and the National Council for Teacher Education Act and would run contrary to the principles enunciated in judgments of the Apex Court in the cases of *Chairman, Bhartiya Education Society (supra)* and *State of Maharashtra (supra)*, wherein the Apex Court has frowned upon directions issued by courts to permit the students to study in unrecognized institutions and be allowed to appear in the examinations.

24. In the above view of the matter, the writ petition fails and is rejected accordingly with no order as to costs.