

(1999) 03 MP CK 0026
In the Madhya Pradesh High Court
Case No : L.P.A. No. 353 of 1998

National Council for Teachers Education and Another	APPELLANT
Vs	
Chouhan Education Society and Others	RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
National Council for Teacher Education Act, 1993 — Section 12, 14

Citation : AIR 1999 MP 206 : (2000) ILR (MP) 569 : (1999) 2 MPJR 425 :
(1999) 2 MPLJ 409

Hon'ble Judges : Dipak Misra, J; D.P.S. Chauhan, J

Bench : Division Bench

Advocate : R.K. Singh, for the Appellant; Ravindra Shrivastava and A.P. Singh,
for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Life without education is sans "clan vital", a body without a soul, eyes without sight, ear without power to hear and mind without sensibility.

In the case of Sitam Seshanka Vs. Principal, College Pharmaceutical Sciences and Another, the Court while dealing with the role of a "Guru" as a teacher, observed as under:--

"Shastras" put the "Guru" on a pedestal making him equivalent to God and treat him as one who enlightens, illumines, guides, paves the path of light, unfolds the bright horizon amidst the encircling gloom, expands his sura enigmatically reaching the true follower, and he is also the one who transfer his sense of originality, duty of accountability and progressive creativity to the duti bus disciple leaving his lively footprints on the sands of time. In turn, the disciple follows him with reverence, acts in veneration and obeys with obeisance."

We have delved into the role of a "Guni" because of what we are going to state

later on.

The moot question that arises for consideration in this appeal is whether Chouhan Education Society (the petitioner No. 1 in Writ Petition No. 5127/96) was justified in admitting more students than what was sanctioned by the National Council for Teachers Education (hereinafter referred to as "the NCTE") and whether the NCTE was justified in fixing the number of students to be admitted to the educational institution run by the said Society and whether it was correct on its part to curb the strength which was allowed to the said Society by the University viz. Barkatullah Vishwavidyaiaaya, Bhopal and State Council of Educational Research and Training (hereinafter referred to as "the SECRT) in the previous years.

The first question in its sweep engulfs the question whether the students who took admission in the aforesaid educational institution which imparts training to the students to build them as teachers and also to in service teachers to give them facility to have higher education, were justified in taking admission in such an institution which had no authority to impart training to them. To elaborate whether they were entitled either in fact or in law to avail such education from such an institution to become Gurus, to produce future citizens of this country by imparting education at the primary stage? Having this prefatory note, in view, we now proceed to state the facts.

The writ petitioner No. 1 (respondent No. 1 herein) is an educational society instituted under the Society Registrkaran Adhiniyam, 1973. It established a College known as "Rajeev Gandhi Mahavidyalaya". The respondent No. 2- Barkatullah Vishwavidyaiaaya (Respondent No. 4 herein) granted temporary affiliation to the aforesaid College in B.Ed, course for the academic session 1994-95. The college was granted permission to give admission to 120 students in general category privilege was conferred on it for 5% seats in the management quota and 15% for in service Teachers. Thus, in toto, the college was permitted to admit 141 students to the said course. The college was functioning with this capacity and the students were appearing through the aforesaid University because of the affiliation granted by it. The Parliament, with the object and purpose to enhance the educational standards in these categories of educational institutions, brought in "The National Council for Teacher Education Act, 1993" (hereinafter referred to as "the Act"). The aforesaid Act came into force with effect from 11-7-95. After the Act came into force, the NCTE started its function. As contemplated u/s 14 of the Act every institution prior to its running, is required to file an application for conferment of status of recognition. Accordingly, the respondent No. 1, the Society, filed an application for grant of recognition. The Council has a Regional Committee as defined u/s 2(j) of the Act. The Western Regional Committee after inspection, scrutiny and taking note of the facilities available in the institution, vide Annexure P-10 to the Writ Petition, dated 18-7-96, deferred the grant of recognition and directed for fulfilling certain conditions and simultaneously the Committee permitted the

Society to continue the existing B.Ed, course for the year 1996-97 with the intake of forty students only. Being dissatisfied with the aforesaid order, the Society had come up before this Court in W.P. No. 3328/96. However, as an appeal lay against the said order to the Council, the Society was asked to prefer an appeal. On appeal being preferred, the Council by order dated 4-12-96 as contained in Annexure P-18 to the writ petition confirmed the order passed by the Western Regional Committee. While confirming the aforesaid order, the Council observed, taking into consideration the factual matrix in entirety, the Committee had fixed the strength of the institution at 40 and as far as the other institutions were concerned, they being the older and the facilities being more, the strength was fixed, and hence there was no discrimination. It is worth noting here that the Council also did not appreciate the conduct of the Society as it had for the academic year 1996-97 examination, when the actual number of seats allotted was for 141 students, it had permitted 174 students to appear. We will advert to this aspect in detail at a later stage.

Feeling aggrieved by the aforesaid order, the Society approached this Court in W.P. No. 5127/96. It was contended by the Society that once the strength had been fixed by the University in consultation with the SCERT, the same was not liable to be changed by the NCTE. It was also put forth that there had been discrimination between the Petitioner Society and other societies which were equally placed. It was also high-, lighted in the writ petition that when 141 students had taken admission for the academic session-1996-97; they had prosecuted their studies and were also allowed to appear in all papers in the examination, there was no reason for the University for not allowing them an opportunity to complete their examination on the last day of the examination. The intervention of NCTE at the last stage of examination was criticized.

A counter affidavit was filed by the Council, justifying its stand that the institute did not have the amenities for grant of strength above 40 students. It was also put forth that the Society could not have admitted more students and the Council has the statutory right to control and curtail the strength.

The learned single Judge on scrutiny of the material brought on record, came to hold that there has been discrimination between the petitioner's college and other colleges, namely, Sofia College of Science and Technology, Bhopal, Jawaharlal Nehru College of Education, Ganj-Basoda and Ravindra College, Bhopal as these institution were allocated 100 seats each, despite having more deficiencies and shortcomings man the college of the writ petitioner. On the basis of these reasonings, the learned single Judge quashed the order contained in Annexure P-8 whereby the Western Regional Committee had fixed the strength and also the order dated 4-12-96 Annexure-P-18 whereby the Council had rejected the appeal. Learned single Judge also quashed the order contained in Annexure-P-9 issued by the University whereby the University had also fixed the strength at 40. The learned single Judge further directed that the respondents Nos. 3 to 5 should make fresh inspection of the college of the petitioner-society

and allow the college to have such number of seats in B.Ed, course, as it deserves. The learned single Judge also directed that the respondents should allow the students to complete their examination, whose examination in the last papers were withheld and publish their results.

Questioning the defensibility of the aforesaid Judgment, the Council has come up in this appeal.

Mr. R. K. Singh, learned counsel for the appellant, has contended that if the scheme of the Act is appreciated in proper perspective, it becomes perceptible that the recognition of any institute and fixation of strength is within the exclusive domain of the NCTE and the fixing of the strength was done as per the Act and the factors enjoined in the norms and standards for the education institutions as fixed in the Regulations of the Council. It is also put forth by Mr. Singh that the University and the State Council of Research and Training might have granted permission for admission of 120 students but their guidelines have no binding force on the Council as the NCTE after its formation has fixed its own norms. It is also argued by Mr. Singh that there has been no discrimination between the writ petitioner's college and other societies, inasmuch as, they are older institutions and have better amenities, and hence the direction contained in the impugned judgment is vulnerable. It is also vehemently urged by him that the students who appeared for the academic sessions 97-98 were not authorized to appear, as the strength for 141 students was never sanctioned by the Council. In fact, the institute in utter disregard of the mandate of the NCTE, admitted 141 students and, therefore, it has to suffer for its own fault.

Controverting the aforesaid submissions of the learned counsel for the appellant, Mr. Ravindra Shrivastava, learned counsel for the writ petitioners (respondents Nos. 1 and 2 herein) has contended that once the strength had been fixed by the University and the State Council, it is not open to the NCTE to curtail or curb the same. It is his further submission that the statutory duty is cast on the NCTE either to grant recognition or refuse the same but there is no provision for fixing the strength and such fixation of the strength is beyond the competency of the Council. Learned counsel further submitted that the learned Single Judge has rightly held that the fixation of strength of the writ petitioner visa-vis the other institutions attracts the infringement of provisions enjoined under Article 14 of the Constitution and, therefore, there is no error in the same. Supporting the directions contained in the impugned Judgment, it is argued by Mr. Shrivastava that the judgment has already been worked out as the University has already conducted the examination in respect of the last paper and results have been published and, therefore, without hearing the students, who have already availed of the benefit of the judgment, the L.P.A. preferred by the Council should be rejected as not maintainable.

To appreciate the rival submissions raised at the Bar, we may refer to the order passed by the Western Regional Committee contained in Annexure-P-8. On a perusal of the said order, it appears that the petitioner-society was required to

fulfil certain conditions. The Committee also fixed the students intake up to 40 for the year 1995-96 and vide Annexure-P-9 dated 31-7-96, the University also communicated to the Principal about" the number of seats as fixed by the Council in respect of Rajeev Gandhi Mahavidyala. There is no dispute that the students who had taken admission for the academic session 1995-96 and had already appeared in the examination. The controversy does not relate to the aforesaid year. The dispute is in respect of academic session 1996-97. Submission of Mr. Shrivastava is that the Council could not have curtailed the strength which had already been fixed by the University, in respect of previous years without taking final decision in respect of recognition. It has also been submitted that the fixation of strength does not flow from any of the document supported by any provision of law. Both the aforesaid submissions are inter-linked and interconnected. Before we advert to the aforesaid submissions, we think it proper to deal with certain aspects of the matter as they are of vital importance, and important for disposal of the present appeal. Section 12 of the Act occurring in Chapter III of the Act deals with the functions of the Council. It reads as under :--

Functions of Council. It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may--

- (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
- (b) made recommendations to the Central and State Governments, Universities, University Grants Commission and recognized institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;
- (c) co-ordinate and monitor teacher education and its development in the country;
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions;
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;
- (f) lay down guidelines for compliance by recognized institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;
- (g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

- (h) lay down guidelines regarding tuition fees and other fees chargeable by recognized institutions;
- (i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;
- (j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognized institutions;
- (k) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognized institutions;
- (l) formulate schemes for various levels of teacher education and identify recognized institutions and set up new institutions for teacher development programmes;
- (m) take all necessary steps to prevent commercialisation of teacher education; and
- (n) perform such other functions as may be entrusted to it by the Central Government.

On a fair reading of the aforesaid section, it becomes quite clear that a duty is "cast on the NCTE to lay down norms for any specified category of courses or trainings in teacher education, to fix the minimum eligibility criteria for admission therein. It is also an obligation of the NCTE to evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognized institutions. It is also the bounden duty of the Council to take all necessary steps to prevent commercialization of teachers education. In this connection we may refer to the relevant Regulations. The said Regulations provide for the facilities which are to be made available to the society. On a fair reading of the aforesaid section and the relevant Regulations, it can be unhesitatingly concluded that if the council is not conferred with the power of fixation of strength, the purpose of legislation would be frustrated.

As far as the submission regarding curtailment of the strength is concerned, we may refer to Section 14 of the Act. It reads as "Recognition of Institutions offering course or training in teacher education.

(1) Every institution offering or intending to offer a course or training the 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.

(2) The fee to be paid along with the application under Sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the regional Committee from any institution concerned such other particulars as it may consider necessary, it shall:--

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-Clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing :

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under Sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) 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 session next following the date of receipt of the order refusing recognition passed under Clause (b) of Sub-section (3).

(6) Every examining body shall, on receipt of the order under Sub-section (4),--

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.

The statute requires the Council to grant recognition by taking note of adequate financial resources of the educational institution, accommodation library, qualified staff, laboratory and such other conditions. The object of the Act is to enhance the standard of the teachers who are to impart education at various levels. In view of this factual backdrop we are of the considered view that the Council has the authority and jurisdiction to fix the strength of the institution.

On a fair reading of the said provision it is apparent that at the time of grant of recognition if authority for fixation of strength is not permitted and if the strength already fixed by the University or the State Council is held valid, we are afraid, the whole purpose of the Act would be frustrated as the Act was brought with the intention and object to constitute and control the educational institutions

meant for teachers. It cannot be denied that if the standards are not met with proper education cannot be imparted. The norms and standards specify the details related to "Conditions" required for recognition, permission, and additional intake of seats for any course or training in teachers education. Suitable and adequate institutional building having academic-wing, administrative wing, hostels, and staff quarters, contribute to qualitative teacher education programmes. If the strength of an institution is sought to be changed, the educational institution or the institute has to rise up to the mark to the standard as provided for by the NCTE. Hence, we do not find much substance in the submission made by Mr. Shrivastava on this score.

Now, we shall advert to deal with the reasonings ascribed by the learned Single Judge with regard to the discrimination. Mr. Singh has referred to the orders passed in appeal and the stand taken by the institution in the writ petition. We were taken through the documents, Annexures-P-9 to P-13 by the learned counsel for the parties. On a perusal of the same, we find that the Council had granted intake of 100 students each in the case of institution name at Sr.No. 2 to 7 and intake of 60 students in the case of Government Degree College, Bhopal while certain deficiencies were pointed out and were required to be removed. Submission of Mr. Shrivastava is that the deficiencies are almost the same in every institution, but while other institutions were granted intake of 100 students, the petitioner, as compared to other institutions, had been granted intake of only 40 students. Mr. Singh, learned counsel for the appellant, has really not questioned this part of the direction given by the learned Single Judge. Learned Single Judge has directed to make fresh inspection of the college of the writ petitioner and allow the college to have equal number of seats in B.Ed, course, as it deserves. The learned Single Judge has quashed Annexures-P-18, P-8 and P-9 and thereby as a necessary corollary the order passed in appeal also become inoperative and in view of the direction for fresh assessment, no strength has been fixed by the judgment. It is suggested by the learned counsel for the parties that the Council should make fresh assessment to determine the proper strength of the college. On a perusal of the documents we do not intend to deal with the propriety of the discriminatory part as it is pointed out by the learned Single Judge, for the simple reason there is only a direction for fresh assessment. Hence, we concur with the same direction. We would expect that the Council would make a fresh inspection as directed by the learned Single Judge and fix the strength as per the criteria laid down in the Act and the Regulations. We may hasten to add here that the Council must consider the complaint made by the writ petitioner and the observations made by the learned Single Judge that it is evident from Annexure-P- 30, P-11 and P-12 that Sofia College of Science and Technology, Bhopal, Jawaharlal Nehru College of Education, Ganj Basoda and Ravindra College, Bhopal were allocated 100 seats, despite having more deficiencies and shortcomings than the college of the writ petitioner. It is expected that the Council would conduct with utmost fairness and follow the principles of equality in the matter of determination of strength.

Now, we shall proceed to deal with the other direction given by the learned Single Judge. We also deal with the contention whether the L.P.A. is not maintainable because the students who have been benefited by the judgment have not been arrayed as respondents. As has been stated above, the educational society was conscious and aware that the NCTE had fixed the intake of students at 40 and the University by Annexure-P-9, had communicated to it with regard to such fixation. It has been argued with vehemence that the fixation of strength was uncalled for because the Council had no authority to do so. We have already negated the said contention. We may add here that propriety demanded that the Society should have obeyed the directions given by the Council and the University and should not have, in violation thereof, admitted 141 students, as the law prohibited the same. The educational society has not only exceeded the strength but permitted them to appear in the examination though it had no authority to do so. Students also did not take care to know as to whether the institution had authority to impart education to them and whether the institution was authorized to impart education to so many students. It is well settled in law that if the students take admission in an unauthorized educational institution, then they themselves are to be blamed, as their admission in an unauthorised manner, cannot be legalized. In course of hearing is this appeal, a submission was made by Mr. A. P. Singh, learned counsel for the University that it had issued only 40 admission cards and only 40 students appeared and their results were initially published. He has submitted that after the judgment was delivered, the examination for the last paper was held and results have been published. Mr. Shrivastava has urged with vehemence that when the students have already appeared in examination and results have been declared, they are necessary parties. He has referred to the decision rendered in the case of S.L. Kapoor Vs. Jagmohan and Others, . It is well settled in law that if a benefit is conferred, it should not be taken away without affording an opportunity of hearing. But we may say without humility that the ratio laid down by Supreme Court in S. L. Kapoor's case is not attracted in the present case. The Society is before us. The Society was duty bound to see that the students should be admitted and prosecute their studies in a legal manner. If the Council had fixed the strength at 40 and 40 admission cards were issued, it is not conceivable how the society permitted more than 40 students to take admission and conduct an examination for them. The action of the society cannot be appreciated by any stretch of imagination. Pausing here, we may state that the society should not have accepted any admission fee while the students were seeking admission. We may profitably refer to the observations made by the appellate authority in Para (Hi) (at page 87):--"On checking the records it is found that even the University's orders made in regard to the fixing of seats in earlier years had not been taken seriously by the Appellant's institution. For instance though the University had allotted 141 students for the 1996 examination the actual number of examinees who appeared in the examination was 174. The President of the Society who appeared in person could not produce any written permission for exceeding the number. He has also admitted that though 40 seats have been

sanctioned for the current academic session 1996-97, the Appellant's institution has however, of its own, had already admitted many more students for the course."

When the University had granted permission for 141 students, the Society had allowed 174 students. No body should be allowed to play fraud on education. Imparting of education is not a commercial venture. It is neither a profession nor a trade nor a business. It is a noble act and one has to conduct with dignity and propriety. The submission is that the L.P.A. is misconceived is not sound. We cannot accept the contention in respect of the aforesaid submission of Mr. Shrivastava. In this context we may profitably refer to the decision rendered in the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., wherein the apex Court observed as under :

"20. Before we part with this judgment, we consider it necessary to strike a note of caution in respect of passing of interim orders by Courts directing the students of unrecognised institutions, to appear at the examinations concerned. In view of the series of judgments of this Court, the Courts should not issue fiat to allow the students of unrecognised institutions to appear at the different examinations pending the disposal of the writ applications. Such interim orders affect the careers of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with such directions of the Court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examinations are filed only when the dates for examinations are notified. Many of such institutions are not only "masked phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests on basis of considerations which cannot serve even the interest of the minority. There is no occasion for the Courts to be liberal or generous, while passing interim orders, when the main writ applications have been filed only when the dates for the examination have been announced. In this process, students without knowing the design of the organisers of such institutions, become victim of their manipulations.

Recently, in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , the apex Court has observed as under (at pp. 2237-38):--

"We are unable to apply the reasoning given in the aforesaid case, inasmuch as there is no iota of material placed before us to indicate that the Central Board of Secondary Education, the appellants herein, either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their studies have been affiliated or going to be affiliated at a near future. We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under order of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would

tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students."

In view of the aforesaid pronouncement of law, we have no hesitation in holding that the second direction given by the learned Single Judge in the latter part of the judgment i.e. to conduct and complete the examination and publish the result, is not in accordance with law and resultantly, the same has to be set aside. The holding of examination would not be a proper solution of the controversy involved. On a reappraisal of the said direction, we may say that the sympathy in all circumstances cannot take the place of law. We categorically reiterate that the students are not the necessary parties to this appeal. We are of the considered view that when the society is before us the students are not necessary parties, and hence the submission of Mr. Shrivastava is devoid of any substance.

Before we part with the case, we may hasten to add that we hope that the Council would take a proper decision in regard to fixation of strength and communicate such decision to the Society. It is hereby made clear that the Council, while taking decision, should not be influenced by any of the observation made by this Court in this order and it should proceed and take a decision with utmost fairness as expeditiously as possible.

Resultantly, the appeal is allowed in part. However, there shall be no order as to costs.