
(2007) 12 MP CK 0010
In the Madhya Pradesh High Court

Pitambra Peeth Shiksha Prasarani Samiti	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 32

Citation : AIR 2008 MP 222 : (2008) ILR (MP) 1063

Hon'ble Judges : S.C. Sinho, J; Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.—Regard being had to the similitude of the grievance and the reliefs sought the present batch of the writ petitions was heard analogously and is disposed of by a singular order. For the sake of clarity and convenience the facts in writ petition No. 15457/2007 are adumbrated herein.

2. The petitioner college is established by the society, namely, Takshila Shiksha Samiti, Bhopal registered under the provisions of M.P. Societies Registrikaran Adhiniyam, 1973. The society was granted recognition from the National Council for Teacher Education (in Short "the NCTE") for the academic year 2003-04. It has also been extended the benefit of recognition for the academic session 2007-08. The recognition has been granted under the National Council for Teacher Education Act, 1993 (for brevity "the 1993 Act"). u/s 32 of the said act a set of Regulations called National Council for Teacher Education (Guidelines for Regulation of Tuition Fees and other Fees Chargeable by Unaided Teacher Education Institutions) Regulations, 2005 (for short "the Regulations") has been framed. The Department of Higher Education, State of MP has framed entrance Rules, namely, Pre-B.Ed. Examination Rules, 2007 (in short "2007 Rules") for admission in B.Ed. courses. A reference has been made to many facet of the Rules to highlight that the Rules have been framed with a specific objective to obtain optimum/maximum utilization of infrastructure available in the State for B.Ed. education and to ensure that in. no case any seat remains unfilled.

3. It is contended in the petition that the State Government changed the scheme

of selection and decided to hold a Common Entrance Examination and due to change in the centres many candidates could not appear in the entrance test. As per the provisions under the 2007 Rules a candidate who clears the entrance test is required to appear in the counselling. It is put forth that the State Government changed its decision and decided to hold the centralized counselling at Bhopal for all the colleges in the State of Madhya Pradesh as well as the students from outside the State." The third respondent, namely, Barkatullah University, Bhopal has been appointed as the sole nodal authority for conducting the centralized counselling. It is put forth that the State Government has unnecessarily interfered with the process of holding examination though neither the act nor the Regulations provide for holding of any entrance test. It is urged that the State Government did not grant "No Objection Certificate" to various colleges as a consequence of which they could not get affiliation and that led to filing of many writ petitions before this Court. In addition, the Union of India issued a letter dated 20-8-2007 suspending the functioning of Western regional committee of the National Council for Teacher Education (in short "the Committee"). This Court, as set forth, permitted various petitioners to take part in the counselling. It is averred that as a result of the said confusion as many as 19641 seats remained vacant in the whole State. A reference has been made to interim direction whereby the counselling was extended to 14-9-2007 and notification was issued by the NCTE on 13-9-2007 whereby only absent students were asked to appear in the counselling. As wide publicity was not given, extension of time did not yield any fruitful results. A copy of the order dated 13-9-2007 has been brought on record as Annexure P-5. It is highlighted that because of the aforesaid situation in the petitioner's college only 50% seats have been filled up which has put the college in immense difficulty to run the course. Under these circumstances Association of Education Colleges submitted a representation to the Commissioner, Higher Education on 5-9-2007 requesting him to extend the date of counselling at least 20 days. Despite the representation being submitted no decision has been taken.

4-5. It is contended that the State Government in addition to B.Ed. Course also deals with admissions in all other professional courses like MBBS, BE, MBA and MCA etc. and in those courses admission is given by entrance test followed by counselling and when large number of seats remain unfilled the institutions are permitted to hold college level counselling to fill up the seats so that the seat do not go waste but the same has not been followed in the B.Ed. courses. There is an assertion that the Apex Court in a SLP by order dated 12-10-2007 had directed the State Government to hold additional counselling and also allowed the college level counselling to fill up the vacant seats in the Engineering, Pharmacy, MBBS and MBA courses. Keeping in view the order passed by the Apex Court the petitioner preferred Writ Petition No. 13251/ 2007 wherein it was directed the State Government to consider the case of the petitioner for extension of the date of centralized counselling and college level counselling within a period of seven days. On the basis of the aforesaid order a joint

representation was submitted to the Principal Secretary on 18-10-2007. The said authority did not take any decision and, therefore, the petitioners were compelled to send a reminder on 25-10-2007 as per annexure P-10. It is further urged that B.Ed. course is not premium course and there is no provision in the regulations to hold a common entrance examination and counselling yet the State has framed the said Rules which tantamount to entrenchment in the functioning of the NCTE and running of B.Ed. Colleges. It is averred that the college level counselling should be allowed and seats should be permitted to be filled up. It is asseverated that certain colleges were allowed the seats but as there is no recognition or affiliation a state of chaos has ushered in and hence, this Court should interfere. In this backdrop a prayer has been made to issue a writ of mandamus commanding the respondents to allow the college level counselling by the petitioner college to fill up the vacant seats and further to fill up unfilled seats for academic session 2007-08 on the basis of guidelines by the NCTE and to extend the date of admission for academic session 2007-08.

6. A counter affidavit has been filed by the State of Madhya Pradesh, respondent No. 1 herein, contending, inter alia, that in pursuance of the order passed in writ petition No. 13251/2007 the answering respondent has taken a decision not to extend the date of counselling and while passing such an order they have taken into consideration certain circumstances, namely, in Pre-B.Ed. Entrance Examination the University received 35,566 applications out of which 33,849 students appeared in the entrance test and all those students were informed to appear in the counselling and out of them 26,746 students appeared in the counselling, and 25425 students were allotted different colleges in the counselling. Out of total 454 colleges approximately 254 colleges have not obtained "No Objection Certificate" from the State Government. Many institutions do not have recognition but they had admitted students because of the order passed by the learned single Judge subject to final decision by this Court. According to academic calendar there are total 189 teaching days and a student must have 75% of the attendance and, therefore, it was improper to extend the period of counselling. The State Government had provided the names of 173 colleges to Barkatullah University who have all the necessary recognition and approval. It is put forth that because of the interim order passed by the learned single Judge 430 colleges participated in the counselling and hence, the number of seats increased to 43026 and Out of these seats 25331 have been filled up and 17691 remained unfilled. On 12-9-2007 this Court in Writ Petition No. 12536/2007 passed an interim order extending the date of counselling up to 14-9-2007 and on that basis the second round of counselling was held and 20 more colleges were permitted to take part in the counselling and 153 students were allotted seats, The State Government directed for third round of counselling which was held in 27th and 28th September, 2007, As certain complaints were received about demand of excess fees and the colleges allotted to the students were not available and further the State Government also received the request for transfer to other colleges, the third round of counselling was directed to be

held in which 28 students were admitted. In the return justification has been given for passing the order for not holding another round of counselling. It is also urged that if a student does not get requisite number of teaching days he could not get himself acquainted with the teaching for which he is prosecuting the studies. The prayer for college level counselling has been seriously opposed on the ground the same is contrary to 2007 rules as the said rules provide for conferral of benefit of admission to those students who have appeared in the Common Entrance Examination. Justification has been given for centralized counselling at Bhopal on the ground of transparency.

7. A return has been filed by the NCTE stating that the dispute is mainly between the petitioner and the State Government on one hand and between the petitioner and the University on the other hand. Reference has been made to the norms and standards provided in Appendix 7 of the 2007 Regulations.

8. We have heard Mr. A. K. Mishra, learned senior counsel along with Mrs. D. K. Bohre, Mr. Naman Nagrath, Mr. Manoj Chansoriya, Mr. J. K. Pillai for the petitioners, Mr. Deepak Awasthy, learned Government Advocate for the State, Mr. Ashok Chakraworty, learned Counsel for the NCTE, Mr. P.K. Kaurav, learned Counsel for the respondent No. 3.

9. The learned Counsel for the petitioners have raised the following submissions:

(a) Though the date of counselling was extended by this Court due publicity was not given as a result of which candidates could not appear in the said counselling.

(b) Though the State Government has taken a stand that the counselling was held up to 30th September, 2007 that was not counselling in the real sense as only certain rectificatory measures have been done by that date.

(c) There was no justification for centralizing counseling of the colleges/ Institutions in the State of Madhya Pradesh inasmuch as in a poor State like Madhya Pradesh such centralized counselling affects the students immensely,

(d) The holding of common entrance test has not been provided in the regulations but the State Government has introduced the same entrenching upon the activity of the NCTE which is impermissible.

(e) The students who are eligible can be admitted by the college level counselling without appearing in the entrance test. An entrance test is conducted for screening of the students because the seats are limited and the candidates are more but in the case of B.Ed. course seats are more and the candidates are less and hence, holding of an entrance test is an unwarranted exercise.

(f) No seat should remain vacant when there are eligible candidates and when there is no provision for counselling in the Regulations the State Government cannot, in a midway, change the rules of the game for process of selection to deprive the students to take admission.

(g) The students who have passed in the entrance test are entitled to be called

for counselling and allotted colleges.

(h) The regulations provide for 180 days of teaching course which include theory and practical and there would be no difficulty for completing the same in time.

(i) For no manifest reason the seats have remained vacant and, therefore, the counselling at the college level should be allowed to take place.

(j) The students who have been allotted the college which have no recognition and whose writ petitions have been dismissed should be allotted the colleges which have recognition and affiliation.

10. Mr. Deepak Awasthy, learned Government Advocate resisting the aforesaid submissions raised the following proponements:

(i) The norms of the NCTE permit for holding of entrance test and the State Government by framing a set of rules for conducting of entrance test has not committed any illegality.

(ii) The candidates who have not passed the entrance test cannot be called for counselling and the concept of college level counselling is not permissible.

(iii) The tall claim that the seats would remain vacant is totally inconsequential inasmuch as the students who had not appeared in the entrance examination cannot be admitted in the B.Ed. course solely on the criterion that he is eligible.

(iv) The counselling at the present stage is not permissible to defeat the purpose of course and total chaos would usher in and whole time schedule would be disturbed.

11. Mr. P.K. Kaurav, learned Counsel appearing for the respondent University has put forth the following contentions:

(1) As per the mode of selection the University being a central agency has performed its duty and criticism advanced against it is untenable.

(2) The challenge that there was no counselling till 30-9-2007 is unacceptable as the counselling continued and the students appeared.

(3) Though 33849 students qualified in the entrance examination only 26,746 students appeared in the counselling out of which candidature of 1231 were rejected because of certain deficiencies and those students have not approached this Court.

(4) 25,425 students have been allotted seats in different colleges/institutions in the whole Madhya Pradesh and, therefore, there can be no grievance.

(5) Approximately 7000 students could not appear in the counselling despite the due notice for which the central agency cannot be blamed.

(6) The claim put forth that college level counselling is permissible on the eligibility criteria is contrary to the regulations and rules and hence, unacceptable.

(7) As the counselling is over and period of teaching has been provided, at this stage it would be totally improper to hold counselling and therefore, this Court should refuse the prayer.

(8) In exercise of powers under Article 226 of the Constitution of India this Court should not extend the date of counselling as that will interfere with the schedule of the academic session.

12. At the very outset it is worthwhile to state that this Court on 29-11 -2007 had dismissed a batch of writ petitions holding as under:

36. Presently to the legitimate expectation and interest. It is submitted by the learned Counsel for the petitioners that the institutions have given admission and if eventually the institutions are granted recognition the students should be permitted to appear in the examination. Learned single Judge of this Court while passing the interim order had clearly stated that institutions may admit students provisionally at their own risk without accepting fees from them and if they accept fees from the students they would be ready to face the consequences if the petition is decided against them. In view of the aforesaid order no equity can ever flow in favour of the institutions. We would like to place it on record that an institution which is desirous of imparting B.Ed. and M.Ed. education or introducing a course meant for teachers is under obligation to be aware of the provisions contained under the 1993 Act. The said Act has been engrafted with a sacrosanct purpose. Grant of recognition is the condition precedent before any institution proceeds in any other matter like affiliation from the examining body. Whether the affiliation has to be granted automatically or not we have already refrained from dwelling upon the said issue, but, an onerous one, it is inconceivable how an institution without recognition can nurture the idea to admit students. A day-dreamer can build a castle in the air or for that matter castle in Spain, but it is absolutely inapposite on the part of aspirants registered bodies or institutions to admit students and pyramid the foundation relying on the bedrock of legitimate expectation that the students would be treated as students who have been admitted in such institutions in such courses which are valid in law. An educational institution has to conduct itself in an apple pie order. It has to maintain the sacredness of the concept behind imparting education. They are under obligation to keep in mind that commercialization of course under 1993 Act is impermissible. Quite apart from the above, it is totally imprudent and in a way quite audacious to build a superstructure without an infrastructure. If we allow ourselves to say so, perception has been blinded and in the ultimate eventuate a cataclysm has been unwarrantedly invited. We may say without any fear of contradiction that it is a perceptible deception and fraud on law. Ergo, the stance that they have to be given the benefit of legitimate expectation and their interest should be protected, is devoid of any substance and we unhesitatingly repel the same.

37. One of the submission of the learned Counsel for the petitioners deserves to be considered. It is submitted that the Central Government cannot take its own

time to review the scenario. As is perceptible, the Central Government has issued a letter dated 20-8-07. The grounds for issue of instructions are that there has been uneven and disproportionate growth in the number of recognitions granted to various courses and institutions in the States falling under the Western Regional committee of the NCTE and while granting recognition, the actual demand of teachers in particular States has been totally ignored and hence, a comprehensive review of the situation for taking necessary corrective measures were necessitous. Because of the said situation directive has been issued to the NCTE not to grant recognition to any teacher training institution intake falling within the jurisdiction of the Western Regional Committee of NCTE till a comprehensive review is made or till further orders whichever is earlier. The institutions which are before us may have filed applications and their applications may have been processed. The NCTE has a statutory role. As has been held by the Apex Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya AIR 2006 SC 2048 (supra) the object of the Act is that NCTE is required to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. u/s 12 of the Act the council is duty bound 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 from many a spectrum, undertaking surveys and studies relating to various aspects of teacher education and many a contour. As the Central Government is making a comprehensive review of the same we need not to dwell upon the same. However, we direct the Central Government to make final decision by end of January, 2008.

13. Be it noted in the said cases, the learned single Judge had passed the interim order permitting the petitioners therein to take part in the counselling on their own risk. As various matters were filed before the Principal Seat as well as Benches at Gwalior and Indore, by the order of the Hon'ble the Chief Justice the matters were transferred to Principal Seat at Jabalpur and directed to be heard by a Division Bench. The Division Bench dismissed the writ petitions holding that the institutions did not have the recognition and their applications were pending before the NCTE and, therefore, they could not have admitted the students. The students admitted to the said colleges, submits Mr. Mishra, can be allotted to the colleges who have recognition.

14. Mr. Deepak Awasthy, learned Government Advocate submitted that students had taken admission at their own risk and the institutions had done so and, therefore, the question of permitting them to take admission in other colleges does not arise. It is submitted by Mr. Kaurav that teaching period would be curtailed if they are permitted to take admission at this stage as they were not taught by proper institutions.

15. Keeping the aforesaid facet in view we would like to deal with the second

facet as the same would also require almost similar delineation. As has been stated earlier more than 7000 candidates could not appear in the counselling. They had passed the entrance test. In this context we may refer with profit to the NCTE Regulation. Appendix 7 of the norms has been notified under Norms and Standards for Secondary Teacher Education Programme leading to Bachelor of Education (B.Ed.) Degree. Clause 2.2 of the same deals with working days. It reads as under:

2.2 Working Days

There shall be at least 200 working days exclusive of period of examination and admission etc., out of which at least 40 days shall be for practice-teaching in about ten schools at upper primary/secondary/senior secondary level. A working day shall be of a minimum of 6 hours in a six-day week, during which physical presence in the institution of teachers and student-teachers is necessary to ensure their availability for individual advice, guidance, dialogues and consultation as and when needed.

16. It is submitted by Mr. A.K. Mishra, learned senior counsel that 200 working days can be made up or it may stretch up slightly further to the next year but the seats should not remain vacant. Regard being had to the peculiar facts and circumstances of the case and the nature of litigation which had cropped up and the time consumed we think it appropriate to direct the students who have taken admission in the non-recognised colleges/institutions, if so desired, can take admission in the recognised institutions/colleges. The State Government and the University shall not cause any impediment in the same and make an endeavour to facilitate the same by allotting them to colleges which have recognition, if the students approach the Central Agency, the respondent No. 3. The State Government is directed to publish the notification within a period of seven days fixing a date seven days thereafter so that they can be allotted colleges.

17. As far as the counselling of the candidates who have passed the entrance examination is concerned, a date should be notified within a period of seven days and counselling be done within a period of seven days thereafter and the candidates appearing in the counselling shall also be allotted recognised colleges/institutions.

18. The next facet that requires to be dealt with whether there should be permission for grant of college level counselling. Submission of the learned Counsel for the petitioners is that the seats should not lie vacant and college level counselling should be allowed. It is urged that the State Government has illegally introduced the centralized counselling. In this context we may refer to clause 3.2 of NCTE Norms which reads as under:

3.2 Eligibility

3.2.1 Candidates with at least 50% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible

for admission to the programme.

3.2.2 There shall be relaxation of marks/ reservation of seats for candidates belonging to SC/ST/OBC communities and other categories as per the Rules of the Central/ State Government/UT Administration concerned.

3.3 Admission Procedure,

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University.

19. As is demonstrable from clause 3.2 it deals with the eligibility of a candidate and clause 3.3. deals with the admission procedure. The State Government has taken mode of common entrance examination. This is a policy decision taken by the State Government. As is manifest, the NCTE has deliberately introduced norms and left it to the discretion of the State Government and hence, holding of the entrance test, cannot be found fault with. Once the said mode has been taken recourse to the college level counselling should not be allowed. Therefore, the aforesaid submission of the learned Counsel for the petitioners leaves us unimpressed and we repel the same.

20. Though we have stated our conclusions, yet we think it apposite to put them in seriatim:

(a) The candidates who have taken admission in the non-recognised institutions should be called by the Central Agency as well as the State Government by notifying a date within a period of seven days fixing a date after 7 days so that the candidates can be allotted to the recognised colleges/institutions as per norms.

(b) The students who have qualified in the entrance examination but could not appear in the counselling should be called for counselling by a date which would be notified within a period of seven days and the said date would be after seven days as a result of which the counselling would become convenient.

(c) The allotment of seats should be made strictly on the basis of norms keeping in view the concept of proportionality so that the grievance is put to rest.

(d) The college level counselling is not permissible as the State Government has taken recourse to the mode of common entrance examination.

21. With the aforesaid directions the writ petitions are disposed of. There shall be no order as to costs.