

(2007) 07 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3355 of 2007

Rajeev Jan Vikas Parishad Samiti, Bhopal

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 15

Citation : (2007) 4 MPLJ 520

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Piyush Mathur, for the Appellant; Umesh Gajankush, Govt. Advocate for Respondents No. 1 and 2 and Vivek Sharan, for the Respondent

Judgement

Viney Mittal, J.

Shri Piyush Mathur, Advocate for the petitioner.

Shri Umesh Gajankush, Government Advocate for the respondents No. 1 and 2.

Shri Vivek Sharan, Advocate for respondent No. 3.

This writ petition shall dispose of four writ petitions being W.P. No. 3355/2007, W.P. No. 3327/2007, W.P. No. 3328/2007 and W.P. No. 3329/2007, as the facts in all these cases are identical and similar controversy has been raised by the parties in respect of their respective claims.

For the sake of convenience, facts are borrowed from W.P. No. 3355/2007.

The petitioner is a Society who is running various educational institutions. For the purposes of running the B.P.Ed. Course (Bachelor of Physical Education), the petitioner had applied for grant of requisite recognition from the National Council of Teachers Education (hereinafter referred to as "NCTE").

It appears from the record that the aforesaid recognition had been granted to the petitioner on April 4, 2007 (Annexure P-4). However, the only condition put,

while granting the said recognition, is that the recognition is subject to fulfilment of all requirement as may be prescribed by other regulatory bodies like UGC and State Government etc.

Consequently, after the aforesaid recognition was granted in favour of the petitioner by NCTE, the petitioner applied for issuance of a No Objection Certificate so that it could apply to the University for affiliation. No Objection Certificate was declined to the petitioner by the Additional Director, Higher Education, vide order dated May 18, 2007 (Annexure P-5). An appeal filed by the petitioner against the aforesaid order Annexure P-5, has also been dismissed by the Principal Secretary, Higher Education vide order dated June 20, 2007 Annexure P-10. It is in these circumstances, that the petitioner/Society is before this Court.

Shri Piyush Mathur, learned counsel appearing for the petitioner has relied upon the judgments of the Apex Court in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, and in the case of Jaya Gokul Educational Trust vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram and another, JT 2005(5) SC 118.

On the basis of the aforesaid law laid down by Supreme Court of India, it has been argued by the learned counsel of the petitioner that once a request for recognition had been granted by NCTE, then, neither the State Government nor the University had any further say in the matter and were bound to grant No Objection Certificate as well as affiliation to the Educational Institution run by the petitioner/society.

On the other hand, Shri Umesh Gajankush, learned Government Advocate appear for the respondent/State has brought to my notice that the recognition Annexure P-4 granted to the petitioner/society was merely a conditional recognition inasmuch as, the Clause 4(f) thereof specifically provided that the recognition granted by NCTE is subject to fulfilment of all other requirements, as may be prescribed by regulatory bodies UGC and State Government. Shri Gajankush further maintains that while passing the order Annexure P-7, it had specifically been observed by the Additional Director that the petitioner had failed to submit a Fixed Deposit Receipt of Rs. 5,00,000/- with a lien of the Commissioner, Higher Education Department and even the application was not accompanied by a Bank Draft of Rs. 3000/-. Consequently, Shri Gajankush defends the order Annexure P-7.

At this stage, Shri Piyush Mathur, learned counsel appearing for the petitioner contends that when an appeal was filed by the petitioner/society before the Principal Secretary, Higher Education, the aforesaid two requirements had been duly complied with and as such there was no further deficiency in the application filed by the petitioner/society, nor the application filed by the society was in any way wanting in any of the requirements of the guidelines issued by the State

Government. Shri Mathur further contends that rather than taking into consideration, the aforesaid completion of formalities by the petitioner/society, the appellate authority has taken a fresh ground to reject the appeal, inasmuch as, it been observed that the petitioner/society did not possess the requisite land.

I have duly considered the aforesaid rival contentions of the learned counsel for the parties. In my considered view, the present petition deserves to be allowed.

I had an occasion to deal with an identical controversy while presiding over a Division Bench in the High Court of Punjab and Haryana, at Chandigarh while adjudicating C.W.P. No. 14105/2006 decided on September 12, 2006, Mange Ram Educational and Charitable Trust (Regd.) vs. State of Haryana and others. Certain observations made by the aforesaid judgment of Division Bench (authored by me) may be relevant to be noticed here as follows :--

We have also taken into consideration the objections raised by the State of Haryana for not issuing no objection certificate. We have also noticed the fact that the only reasons for not granting the affiliation by the University is the non issuance of no objection certificate by the State Government.

Under the provisions of sections 14 and 15 of the Act, 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/permission under the Act, make an application to the Regional Committee concerned in such manner as may be determined by Regulations. The aforesaid provisions also provide for certain requisites which are required to be fulfilled and the fee which is required to be paid along with the application forms.

Section 16 of the Act reads as under :

16. Affiliation body to grant affiliation after recognition or permission by the Council-Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day:--

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) 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 or permission for a course or training u/s 15.

It is not in dispute that in terms of sections 14 and 15 of the Act, the petitioner Trust duly applied for grant of recognition and permission for starting a new College for running B.Ed course. After the completion of due formalities and after being satisfied of infrastructure possessed by the petitioner Trust/College and on being satisfied of all other requirements, the conditional recognition was granted to the petitioner Trust vide recognition dated August 27, 2006. The only requirement subject to which the said recognition was granted was that the

petitioner College was to appoint the staff by a duly constituted committee with the requisite qualifications as per norms of NCTE and affiliating University and inform the Regional Committee by sending signed copy of minutes along with affidavit. It is not in dispute that in pursuance to the aforesaid stipulation, the petitioner trust made a request to the University and on nomination of two nominees of the University, the aforesaid Selection Committee duly selected and appointed the staff. This fact is not even in dispute by the University. Thus, the only condition subject to which the recognition was granted has been fulfilled. The said recognition granted to the petitioner by NCTE has become operative. A copy of the recognition letter (Annexure P-5) was addressed to the Registrar of the respondent University and also to the Education Secretary of the Government of Haryana requiring them to ensure the compliance by the affiliating body/ University before the commencement of the academic session 2006-07. In these circumstances, the only question which remains to be examined is as to whether on such recognition having been granted to a College under the provisions of the Act by NCTE, the State Government had any further role to play or could the State Government object to the opening of the College on the ground of having not issued NOC and as to whether the affiliating University could reject the request of such a recognized College merely on the ground that NOC, had not been issued by the concerned State Government. In our considered opinion, in view of the provisions of the Act, more specifically in the light of section 16 of the Act and in view of the law laid down by the Apex Court in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya's case (supra), the answers to the aforesaid questions have to be in favour of the petitioner trust. We have already taken note of section 16 of the Act, when it mandatorily requires the affiliating body to grant affiliation, after recognition or permission had been granted by the Council. As a matter of fact, no discretion is left with the affiliating body/University. The State Government under the provisions of the Act and Regulations is authorized to raise an objection to the grant of recognition/permission once the copy of an application filed by the applicant is forwarded to it. The aforesaid objection is required to be sent to NCTE. The NCTE shall take into consideration the aforesaid objection but may choose not to agree with the same. In case the aforesaid objection is not accepted by NCTE and a permission/recognition in terms of sections 14 and 16 of the Act is granted, then the State Government has no further role to play. While interpreting the provisions of All India Council of Technical Education Act, which are identical to the provisions of NCTE Act, the Apex Court in Jaya Gokul Educational Trust's case (supra) held that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. Only views of the State Government were required to be obtained before granting recognition. The same did not require to an approval of the State Government. Once the permission is granted by AICTE, the University was required to grant affiliation without waiting for any approval from the State Government.

In a recent judgment in Sant Dnyaneshwar Shikshan Shastra Mahavidyalay's

case (supra), the Apex Court while dealing with the provisions of NCTE Act has held that the State Government could not have taken a policy decision nor the State Legislature had any power to enact a law repugnant to the Central Act requiring a no objection certificate from the State Government or authorizing it refuse permission. The following observations made by the Apex Court in the said judgment may be noticed with advantage :

48. In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List 1 of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said fact. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on "policy consideration".

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In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of No Objection Certificate by the State Government/Union Territory. Absence or non production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.

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It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. Colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to herein above, State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.

The Apex Court held that the guidelines and the regulations permitted the State Government to collect necessary data and materials and make the same

available to NCTE, so as to enable it to take an appropriate decision in accordance with the provisions of 1993 Act. Final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all the authorities in the light of the provisions of the Act. Once the applications have been made by the College to NCTE under 1993 Act and after complying with the provisions of the Act, permission was granted by NCTE, the State Government thereafter could not have interfered with the said decision.

The law laid down by the Apex Court in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya's case (supra) fully covers the controversy in question involved in the present case. Thus, it has to be held that once recommendation had been granted by NCTE to the petitioner Trust to run a B.Ed college, then no further NOC was required from the State Government and on grant of recognition, Maharshi Dayanand University is also bound to grant affiliation to the College by the petitioner Trust. In view of the aforesaid discussion, the respondent Maharshi Dayanand University, Rohtak is directed to grant an affiliation to the institution run by the petitioner Trust for B.Ed. Course for the academic session 2006-07. However, the aforesaid affiliation shall be wholly provisional and shall be subject to a permanent recognition being granted by the National Council of Teachers Education. The College run by the petitioner Trust shall also be entitled to commence the process of admission for the academic session 2006-07 for admitting the students to B.Ed. course. The State of Haryana is also directed to include the institution run by the petitioner in the list of institution qua which the counselling for admission to B.Ed. Course is to be held for the academic session 2006-07.

In these circumstances, in view of the law laid down by the Apex Court, in Dnyaneshwar Shikshan Shastra and Jaya Gokul Educational Trust (supra) and also the view taken by the Division Bench of Punjab and Haryana High Court in Mange Ram Educational and Charitable Trust (supra), I feel that objections raised by the State Government with regard to non-availability of the land by the petitioner is wholly unjustifiable, at this stage. All the aforesaid grounds were taken into consideration by the NCTE while granting the recognition to the petitioner/society. The aforesaid controversy cannot be allowed to be re-opened at this stage. However, the State Government is yet within its rights to insist upon the F.D.Rs of Rs. 5,00,000/- with a lien of the Commissioner, Education Department thereupon and the payment of application money of Rs. 3000/-.

Shri Piyush Mathur, learned counsel appearing for the petitioner contends that the aforesaid requirements have already been complied with and if the Additional Director even now points out any such deficiency, the same shall also be complied forthwith.

Consequently, the present petition is allowed and the orders Annexure P-7 and P-10 are quashed. The competent authority is directed to issue a No Objection Certificate to the petitioner/society for running the college in question within a period of seven days of presentation of certified copy of the order. On

presentation of the aforesaid No Objection Certificate, the University shall also grant requisite affiliation to the petitioner/society.

At this stage, Shri Vivek Sharan, learned counsel appearing for the University/ respondent No. 3 has also pointed out that as per Clause 6 of the recognition letter Annexure P-4, the recognition by the NCTE was to operate only from the current academic session 2006-2007, if there was a possibility of completing 180 teaching days, as per the calender of the University, otherwise, it was to operate with effect from the commencement of ensuing academic session. Shri Sharan maintains that the Session 2006-07, had already reached its fag end and now affiliation by University shall be granted from the commencement of academic session 2007-2008 onwards.

The aforesaid statement made by the learned counsel for the respondent No. 3/ University is duly accepted by Shri Piyush Mathur, learned counsel appearing for the petitioner.

The present petition is disposed of with the aforesaid directions.

C.C. as per rules.