

(2006) 12 PAT CK 0097
In the Patna High Court
Case No : CWJC No. 12635 of 2006

Rajneesh Kumar and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 4(2), 4(3)

Citation : (2007) 2 PLJR 641

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Ganesh Prasad Singh, Krishna Kant Singh, Rekha Prasad, Umesh Kumar Mishra, Rajeev Kumar Singh, Jay Shankar, Sanjay Kumar and Manoj Kumar, S.N. Pathak, for the Appellant; Lalit Kishore, D.P. Chaudhary, Mani Kant Mishra and A.K. Jha for the State, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Petitioners in C.W.J.C. Nos. 13319 of 2006, 13314 of 2006, 13173 of 2006 and 13312 of 2006 passed their Matriculation, Intermediate, Graduate level examination from different institution recognized by the State and degree of Shiksha Visharad from Hindi Sahitya Sammellan, Prayag, Allahabad (hereinafter referred to as the Sahitya Sammellan) before 17.8.1995, the date on which the National Council for Teacher Education Act, 1993 (hereinafter referred to as the Act) came into force. Petitioners in C.W.J.C. nos. 12635 of 2006, 13547 of 2006 and 13939 of 2006 having passed their Matriculation, Intermediate and Graduate level examination from the institutions recognized by the State obtained Shiksha Visharad degree from Sahitya Sammellan after 17.8.1995, the date on which the Act came into force. The prayer of the petitioners in all the writ petitions is to quash the letter No. 1893 dated 5.10.2006, Annexure-4 to C.W.J.C. No. 12635 of 2006 issued under the signature of the Director, Secondary Education, Bihar, Patna, whereby and where under he has informed all the District Education Officer, District Superintendent of Education and the Sub-Divisional Officers that

Sahitya Sammellan has not been recognized by the Regional Committee of the National Council for the Teacher Education (hereinafter referred to as the NCTE) and the instructions to the contrary, bearing Letter No. 152 dated 29.3.2000, Annexure-3 to the C.W.J.C. No. 12635 of 2006 was issued by the Deputy Director, Secondary Education in an unauthorized manner has no legal sanctity and thereafter further prayer is to direct the authorities to recognize the degree of Siksha Visharad awarded by the Sahitya Sammellan as equivalent to a recognized training qualification for appointment on the post of Teachers.

2. In support of the aforesaid prayer, learned counsel for the petitioners have relied on the order dated 27.2.2001, passed by the NCTE, New Delhi, as contained in Annexure-5 to the C.W.J.C. No. 12635 of 2006 and with reference to the said order it is submitted that the Sahitya Sammellan does not require any recognition from the NCTE and appreciating the said legal position, the appeal of the Sahitya Sammellan against the order dated 3.10.2000, passed by the Eastern Regional Committee, Bhubneshwar refusing recognition for the course of Shiksha Visharad (B.Ed. through correspondence) conducted by the Sahitya Sammellan was disposed of by the NCTE holding that the Sahitya Sammellan is not required to seek recognition from NCTE for conducting examination for Shiksha Visharad Course. In this connection, they have also placed reliance on the instruction of the NCTE Northern Regional Committee, contained in letter dated 27.4.2006 addressed to the Director, Secondary & Higher Education, Government of Bihar, as contained in Annexure-A to the counter affidavit. In the light of the observations of the NCTE as contained in the order dated 27.2.2001, Annexure-5 as also instructions contained in letter dated 27.4.2006, Annexure-A to the counter affidavit, it is submitted that the Sahitya Sammellan does not require any recognition from the NCTE and the degree awarded by the Sahitya Sammellan should be considered as equivalent to a teaching qualification for appointment on the post of Teachers, as was directed by the Deputy Director, Secondary Education, Bihar, Patna under letter No. 152 dated 29.3.2000, Annexure-3 to C.W.J.C. No. 12635 of 2006 and the same should continue to hold the field and instructions to the contrary made in the impugned order dated 5.10.2006, Annexure-4 should be quashed. Further reliance has been placed over a Division Bench judgment of this Court dated 1.11.1996, passed in C.W.J.C. No. 6140 of 1990 (Bharat Prasad & Others vs. The State of Bihar & Others), where under order dated 31.8.1990, Annexure-1 to the said case terminating the services of the petitioners of the said case on the ground that they had acquired training qualification from the Sahitya Sammellan was set aside as violative of the Take Over notification dated 27.8.1983, Annexure-3 to the said case issued under sub-sections (2) and (3) of Section 4 of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (hereinafter referred to as the Take Over Act).

3. Learned counsel appearing for the petitioners in C.W.J.C. Nos. 13319 of 2006, 13314 of 2006, 13173 of 2006 and 13312 of 2006, who passed Shiksha Visharad examination prior to 17.8.1995, besides adopting aforementioned submissions

further submitted that prior to coming into force of the Act, the authorities of the State of Bihar have all along recognized the Shiksha Visharad degree as a degree equivalent to teachers training qualification and in this connection referred to the order, bearing Memo No. 3251 dated 20.10.2005 issued by the District Superintendent of Education, Nalanda, where under in recognition of the fact that Smt. Kumari Manorama had passed Shiksha Visharad examination, Matric trained scale was granted to her. With reference to the said order, it was submitted that all along the authorities of the State of Bihar prior to 17.8.1995 and even thereafter have been accepting the Shiksha Visharad degree as equivalent to teachers training qualification.

4. Learned counsel for the State, NCTE on the other hand, have opposed the prayer made in the writ petitions with reference to the provisions contained in Sections 14 and 16 of the Act and has submitted that the Sahitya Sammellan having not been recognized by the NCTE as a teaching institution for the Shiksha Visharad (B.Ed, course through correspondence), the degree awarded by it cannot be taken as qualification equivalent to teachers training qualification. With reference to the order of the Appellate Committee dated 27.2.2001, Annexure-5 of C.W.J.C. No. 12635 of 2006, it was submitted that bare perusal of the said order would itself indicate that the representative of the Sahitya Sammellan appearing before the Appellate Committee on 16.1.2001 had conceded the fact that the Sahitya Sammellan was not a teaching institution for Shiksha Visharad (B.Ed, course through correspondence) and was only an Examining Body and appreciating the said concession, appellate order dated 27.2.2001, Annexure-5 was passed observing that the provisions of the Act did not envisage grant of recognition to affiliating/examining body for conduct of examination for award of degrees/diplomas as the Act requires recognition by the NCTE for institution running teachers training courses. In view of the said factual/legal position, it was held in the appellate order that the Sahitya Sammeilan is not required to seek recognition for conducting examination for Shiksha Visharad course. The same view has been reiterated by the NCTE in the communication dated 27.4.2006, Annexure-A to the counter affidavit. In support of the aforesaid submission, learned counsel for the State has relied upon judgments in the case of L. Muthukumar and Another vs. State of T.N. and Others, reported in (2000)7 Supreme Court Cases 618, paragraphs 6, 7, 8 and 14, in the case of Magadh University Vs. Sarang Kumar Maghia and Others, and in the case of Arajkiya Khwaja Shahid Hussain Primary Teacher Training College Vs. State of Bihar and Others .

5. In rejoinder, besides reiterating the submissions made in paragraphs 2, 3 and 4 above, learned counsel for the petitioners submitted that none of the colleges in the State of Bihar, including the two affiliated to Patna University, namely, the Women's Training College, Patna and Patna Training College, Patna and Government Teacher's Training College, Turki, Muzaffarpur have been granted recognition by the NCTE.

6. As regards the case law relied upon by the State Counsel, learned counsel for the petitioners submitted that a close reading of the three case laws would indicate that the same was rendered in a factual situation, which was entirely different from the present case as the writ petitions in the reported cases were filed for a direction to hold the examination, publish the result of the student of such an institution, recognition whereof was cancelled and in those circumstances the case laws relied upon by the State Counsel have no application to the present case.

7. As regards the submission of the learned counsel for the petitioners that none of the two colleges either under the Patna University or the Government Teachers Training College, Turki, Muzaffarpur has been granted recognition by the NCTE, Eastern Regional Committee, learned counsel for the State submitted that after coming into force of the Act, the two colleges under the Patna University have been recognized by the NCTE with effect from 1997-98 and in this connection produced order dated 11.2.1997 of the Regional Director and the letter addressed to the Principal, Patna Training College dated 28.3.2000 along with the information placed on the website, wherefrom it appears that the two colleges under the Patna University have been recognized by the NCTE for the Academic Session 1997-98 for 90-80 intake. So far the Government Teacher's Training College, Turki, Muzaffarpur is concerned, from the order dated 4/5.1.2006 of the Regional Director, it appears that the said institution has been granted recognition for B.Ed, course for one year duration for the Academic Session 2006-07 for the annual intake of 100 students.

8. Having heard counsel for the parties and having perused the contents of Sections 14 and 16 of the Act and the contents of the order dated 27.2.2001, Annexure-5 of C.W.J.C. No. 12635 of 2006 and the communication dated 27.4.2006, Annexure-A to the counter affidavit, I am of the view that the representative of the Sahitya Sammelan himself conceded before the Appellate Committee on 16.1.2001 that it was an Examining Body and it did not require any recognition from the NCTE under the provisions of the Act and appreciating the said concession the appeal filed against the order of the Eastern Regional Committee refusing grant of recognition/permission to the Sahitya Sammellan for conducting Shiksha Visharad (B.Ed, course through correspondence) was disposed of observing that the Sahitya Sammellan does not require any recognition. In my view, the appellate order proceeds on the basis of the concession and legal position as enumerated in Sections 14 and 16 of the Act and has rightly held that the Sahitya Sammellan being the Examining Body does not require recognition under the Act, but such observation cannot be a ground to issue directions to the State to recognize Shiksha Visharad degree granted by the Sahitya Sammellan as equivalent to a teachers training qualification. The submission of the learned counsel for the petitioners in C.W.J.C. Nos. 13319 of 2006, 13314 of 2006, 13173 of 2006 and 13312 of 2006 that before coming into force of the Act with effect from 17.8.1995, Shiksha Visharad degree granted by the Sahitya Sammellan was being allowed the status of a teaching qualification in

the State of Bihar has been noticed only for being rejected as no executive order allowing the Shiksha Visharad degree granted by the Sahitya Sammellan the status of a teachers training qualification has been produced before this Court, as such, this Court is not inclined to accept such submission and position that before coming into force of the Act the Shiksha Visharad degree had the equivalence of teachers training qualification on the basis of the order passed by the District Superintendent of Education, Nalanda, bearing Memo No. 3251 dated 20.10.2005. Without there being any executive order issued by the State Government granting the Shiksha Visharad degree the status of a teachers training qualification, this Court, in my opinion, cannot confer any such status to the said degree even for the period prior to 17.8.1995. Reliance placed over the order of the District Superintendent of Education, Nalanda, bearing Memo No. 3251 dated 20.10.2005 for accepting the submission that the Shiksha Visharad qualification is equivalent to a teachers training qualification is rejected as the order of the District Superintendent of Education, Nalanda cannot bind the State Government when there is no executive order to that effect.

9. Reliance placed on the Division Bench judgment of this Court dated 1.11.1996, passed in C.W.J.C. No. 6140 of 1990 has also no merit as regards the prayer made in these writ petitions as the services of the petitioners of the said writ case was taken over by the State Government under the provisions of sub-sections (2) and (3) of Section 4 of the Take Over Act, vide notification dated 27.8.1983, Annexure-3 to the said writ case appreciating their teachers training (Shiksha Visharad) qualification acquired in 1981 from a college affiliated to Sahitya Sammellan and in the light of the take over notification and the provisions of the Take Over Act, the impugned termination order dated 31.8.1990, Annexure-1 to the said case passed by the Director was set aside as violative of the notification taking over the services of the petitioners dated 27.8.1983, Annexure-3 and further on the ground that Director being subordinate to the Government could not have superseded the Govt. notification. In the background of the statutory provisions of the Take Over Act and the notification dated 27.8.1983, Annexure-3 taking over the services of the petitioners of the said case coupled with the fact that no executive order granting Shiksha Visharad the status of a equivalent teachers training qualification was ever issued, I am inclined to take the view that aforesaid Division Bench judgment of this Court has no application to the facts of the present case, which is rendered in an entirely different situation. In view of the discussions above, the points raised by the petitioners in support of the writ petitions have no merit and these writ petitions are, accordingly, dismissed. No cost.