
(2014) 09 AHC CK 0060

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 34130 of 2012

Rekha Ahirwar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
National Council for Teacher Education Act, 1993 — Section 14(4), 14(6), 14(6)(a),
15(3)(a)

Citation : (2014) 11 ADJ 620 : (2015) 1 ESC 443

Hon'ble Judges : Attau Rahman Masoodi, J

Bench : Single Bench

Advocate : Sushil Srivastava and Shailendra, Advocates for the Appellant;
Anurag Khanna, Advocates for the Respondent

Judgement

Attau Rahman Masoodi, J.—Heard Shri Shailendra, learned counsel for the petitioners and Shri Anurag Khanna, learned counsel for respondent Nos. 2, 3 and 4. Learned Standing Counsel appears for respondent No. 1. The impugned order dated 9.5.2012 contained in Annexure 14 to the writ petition has been passed by the University i.e. respondent No. 2, which is represented through counsel. Notice to respondent No. 5 i.e. Unique Institute of Management and Technology, Meerut not being issued since filing of the writ petition appears to be unwarranted at this stage.

2. At the outset it may be pointed out that the present writ petition is filed only by five students out of 100, who may be affected by the impugned order dated 9th May, 2012. A further direction in the nature of mandamus directing the respondent university to subject the petitioners and like students to B.Ed., degree examination admitted against the session 2008-09 having regard to the Government Order dated 30th September, 2011 is prayed for.

3. The writ petition filed by the petitioners proceeds on the premise that an additional intake of 100 seats was permitted by NCTE on 29.1.2008 and the

State Government having passed an order on 30th July, 2009 permitted the admissions of the students for the session 2008-09 against the additional seats, as such the University is under an obligation to subject the petitioners and like students to undergo B.Ed., examination in furtherance of 2008-09 session admissions. The issue has cropped up in the sequel of some previous litigation and correspondence between the University and the State Government as well as the NCTE.

4. The Unique Institute of Management and Technology came to be recognised by NCTE for B.Ed., course since the academic session 2000-01 with an intake of 60 students at the first instance and for the purposes of examination and grant of degree was affiliated to Chaudhary Charan Singh University, Meerut. Later on recognition for additional intake of 40 students was granted in the year 2002 and accordingly the affiliation of the university was also granted in the year 2003 and in this manner a strength of 100 students were admitted in the institution from the year 2003 onwards and examination was also held by the University as per the grant of affiliation issued in this regard. Imparting education to 100 B.Ed., course students upto academic year 2007-08 and holding examinations in respect thereof is not in dispute.

5. In the year 2008 it appears that the institution applied for grant of recognition to NCTE for an additional intake of 100 students and after undertaking necessary exercise, recognition was granted by NCTE vide letter dated 29th January, 2008. This recognition was granted while the academic session 2007-08 was in progress. The academic session 2008-09, which was to start w.e.f. 1st July, 2008 was to be regulated in the changed circumstance that is recognition being granted for additional intake of 100 students. According to petitioners some litigation was also resorted to by the college in the backdrop of some correspondence. The fact remains that recognition under Section 15(3)(a) of NCTE Act, 1993, having been granted on 29th January, 2008 was subject to fulfillment of some conditions prescribed therein. It is not clear in the writ petition as to whether the conditions prescribed in the recognition letter were fulfilled or not but there is also no dispute raised by the respondent-university that the conditions of recognition were not met with or the order was not published in terms of Section 14(4) of NCTE Act. As a consequence of grant of recognition, the process of affiliation commenced on an application being made by the college. In order to grant affiliation to the college, an inspection was carried out by the University as is evident from the letter dated 7th March, 2008. However, in the month of June, 2008 the University authorities appear to have forwarded a letter to the State Government on 2nd June, 2008, whereby the existing affiliation granted to the college was sought to be terminated. The college management feeling aggrieved against this action of the university approached this Court by means of Writ Petition No. 47812 of 2008, which was disposed of by order dated 15th September, 2008. This Court while disposing of the writ petition passed an order, the operative part of which is reproduced below:

"In view of the stand taken before this Court, no purpose would be served by keeping the writ petition pending inasmuch as interest of substantial justice would be served by providing as follows:

- a) The State Government shall take appropriate decision on the recommendation made by the Registrar of the University qua dis-affiliation of the institution as per the letter dated 2.6.2008 after affording opportunity of hearing to the petitioner strictly in accordance with the provision of the State Universities Act, by means of a reasoned speaking order, preferably within six weeks from the date a certified copy of this order is filed before the Secretary concerned.
- b) The University shall not place any hindrance/restrain on admission of 100 students to the B.Ed. Course for the Academic Session 2006-07 and 2007-08 in the petitioners institution.
- c) The refusal to permit affiliation in respect of the additional intake of 100 seats may be reconsidered by the State Government, in case the institution is not dis-affiliated as per the order to be passed on the letter of the University dated 2.6.2008.

With the aforesaid observations, the writ petition stands disposed of."

6. From the direction issued by this Court in the above writ petition it is clear that as regards dis-affiliation, this Court directed for an opportunity to be afforded to the college, whereas examination of B.Ed., course for academic session 2006-07 and 2007-08 was allowed to be held without any hindrance by the University. It appears that the college pursued the matter before the State Government and by order dated 4th June, 2009 the State Government refused to approve of the measure of dis-affiliation of the college. Until the decision was taken by the State Government on 4th June, 2009, the academic session 2008-09 had come to be affected, for the reason that neither any common entrance examination for filling up the seats was held before the month of July, 2008 nor there were any admissions made in any of the B.Ed., colleges on the basis of common entrance test. In the meantime, law as regards admissions to B.Ed., course through single window system i.e. on the basis of common entrance test came to be settled. A common entrance examination is said to have been held in the month of October, 2008 by Agra University and the result thereof was declared sometime in the month of June, 2009. The admissions against the seats of academic session 2008-09 could only be made on the basis of this entrance examination of which the result was declared in the month of June, 2009. According to the learned counsel for the petitioner, previous sanction for affiliation as is required under Section 37(2) of State Universities Act came to be accorded on 30th July, 2009, whereafter it was obligatory on the part of university authorities to have granted affiliation for the additional intake of 100 students.

7. In contradiction to this stand, the final affiliation by the university is said to have been granted on 19th July, 2010 as per the stand taken by the learned

counsel for the university according to whom three conditions were necessary to be fulfilled before admitting the students:

(a) recognition by NCTE under the NCTE Act, 1993 and fulfillment of the conditions of recognition notification;

(b) previous sanction by the State Government under Section 37(2);

(c) order of affiliation by the University under Section 37(2) of the U.P. State Universities Act, 1973 for the purposes of making valid admissions.

For this purpose reference to Section 14(6) of NCTE Act, 1993 and Section 37(2) of the State Universities Act, 1973 would be necessary. Section 14(6) of NCTE Act, 1993 for ready reference is reproduced below:

"14(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."

8. On the strength of Section 14(6)(a) it is argued by the counsel for the petitioners that once NCTE grants recognition, it is incumbent on the examination body to grant affiliation to the institution. The argument of learned counsel for the petitioner is unacceptable in as much as the recognition order itself requires certain conditions to be fulfilled and upon fulfillment of the condition envisaged in the recognition letter, the same would be effective. Therefore, the Act does not envisage an automatic process of affiliation unless the conditions of affiliation are independently met with as per the relevant statute. Section 37(2) of the State Universities Act, 1973 being also relevant is reproduced below:

"37(2). The Executive Council may, with the previous sanction of the [State Government] admit any college which fulfills such conditions of affiliation, as may be prescribed, to the privileges of affiliation or enlarge the privileges of any college already affiliated or subject to the provisions of sub-section (8), withdraw or curtail any such privilege:

[Provided that if in the opinion of the [State Government] a college substantially fulfills the conditions of affiliation, the [State Government] may sanction grant of affiliation to that college or enlarge the privileges thereof in specific subjects for one term of a course of study on such term and conditions as he may deem fit;

Provided further that unless all the prescribed conditions of affiliation are fulfilled by a college, it shall not admit any student in the first year of the course of study for which affiliation is granted under the foregoing proviso after one year from the date of commencement of such affiliation.]"

9. The above provision confers the authority upon the Executive Council. The Executive Council is to proceed with previous sanction of the State Government. The fulfillment of the conditions of recognition/affiliation as verified by the

University are subject to the previous sanction of the State Government. In the instant case even if the letter dated 30th July, 2009 is construed to be a letter of previous sanction by the State Government, yet there ought to be a decision on the previous sanction of the State Government by the Executive Council of the University. From the entire material placed on record there is not a single decision, which is established to have been taken by the Executive Council, in the matter of affiliation. As far as the letter dated 19th July, 2010 referred to by university counsel is concerned, the same for ready reference is reproduced below:

10. The contents of the aforesaid letter clearly show that the order issued on 19th July, 2010 was in anticipation of the decision to be taken by the Executive Council on the question of affiliation. The fact remains that the admissions of the petitioners being made in the month of January, 2010 were made without there being a formal order of affiliation issued on the basis of a resolution passed by the Executive Council.

11. The question that crops up in the present writ petition is as to whether the institution could admit additional 100 students on the basis of recognition having been granted by NCTE on 29th January, 2008 coupled with the previous sanction by the State Government on 30th July, 2009 against the academic session 2008-09 by admitting total (100+100) 200 students in the month of January, 2010 and before the grant of actual affiliation by the University to the additional strength of 100 students on that date i.e. January, 2010.

12. The petitioners in the writ petition have placed reliance upon an advertisement alleged to have been issued by the college on 28th January, 2010 on the basis of which it is averred that they approached to the college for the purposes of admission to B.Ed., course. It is not disputed that the petitioners had appeared in the common entrance test held by the Agra University in the month of October, 2008 and on the basis of result declared by the University they had secured the minimum eligibility marks for the purposes of admission to B.Ed., course. According to learned counsel for the petitioner the list was duly forwarded to the University so as to make up the entire strength of 200 seats out of which 58 candidates were accepted to redeem the original strength of 100 candidates, and they were allowed to participate in the B.Ed., examination, therefore, education was similarly imparted by the college to the petitioners, who were given admission against the additional strength. Allowing 58 candidates from the same very list to appear in the B.Ed., examination for the academic session 2008-09 is not disputed by the University. The contention of the University to disallow the additional 100 candidates from appearing in the final examination is based on the ground that affiliation order was issued by the university on 19th July, 2010 subject to the condition that the additional intake of students would be permissible for the academic session 2010-11 onwards.

13. The petitioners have also brought on record some documentary evidence to the effect that they had attended classes and evidence regarding deposit of

examination fee has also been brought on record. Whether the petitioners have undergone education alongwith other 100 candidates (originally sanctioned) or not is a disputed question of fact, which the university authorities can very well verify but whether the petitioners could be admitted to B.Ed. course on the basis of recognition granted on 29th January, 2008 coupled with the sanction granted by the State Government on 30th July, 2009 is an aspect of the matter, which requires consideration in the light of relevant statute.

14. Right to education can be canvassed to be a legal right but a candidate, who has passed the entrance examination for admission to a degree course has to be vigilant enough to pursue the degree course by exploring fully well whether the institution qualifies all the prescribed norms under law. A student has not to take undue risk in the matter of taking admission in such training/professional courses. As to whether the petitioners have actually studied or not remains yet to be a question of fact, which cannot be gone into by this Court in exercise of writ jurisdiction. The petitioners can also not be permitted to espouse the cause of other similarly situated persons, who have not come before this Court in respect of the same cause of action, which had accrued to them on the basis of being bona fide students of the college. Therefore, the benefit, if any, under Art. 226 of the Constitution of India on equitable principles cannot be enlarged to other similarly situated candidates.

15. Having crystalised the claim as above, the Court proceeds to consider the legal aspect of the issue involved in the writ petition.

16. From the requirement of statute it is clear that an institution must have obtained recognition from NCTE under the provisions of NCTE Act, 1993 before applying for affiliation to the university/examination body, therefore, before grant of recognition no institution under NCTE Act, 1993 can be said to have come into existence. Mere existence of an institution does not suffice unless the conditions prescribed in the recognition order are complied with. The order of recognition is enforceable only on the fulfillment of the conditions prescribed therein, which include the grant of affiliation by the concerned university. So far as the grant of affiliation is concerned, it is further ridden by a formality of grant of prior sanction by the State Government in terms of Section 37(2) of the U.P. State Universities Act, 1973. The Executive Council of the university is under a mandatory duty to consider the application for affiliation of a college and on grant of affiliation by the Executive Council in terms of Section 37(2) of the Act of 1973, an institution comes into existence for the purposes of granting admissions. In the result, admissions cannot be made by a college before the grant of actual affiliation by the examination body in terms of the recognition order. The students, who are admitted in the manner above, are entitled to be subjected to examination by the concerned university/examination body as per the rules of examination for award of degree. In a large number of cases it was experienced that the process of grant of recognition followed by affiliation has resulted into numerous difficulties. The position of law is now well-settled in

terms of the Apex Court judgment in College Of Professional Education and Others Vs. State of U.P. and Others, , which holds the field.

17. In the instant case the Court has come across a peculiar difficulty as to whether the petitioners have actually undergone education or not. This is an important dimension of the very objects of NCTE Act, 1993 under which the colleges are granted recognition and are affiliated to the examination bodies as per the laws applicable in this behalf. The basic purpose of undergoing actual studies by the students cannot be lost sight of and for this purpose the recruitment of teachers apart from infrastructural facilities are indispensable. Once the infrastructure and the teaching staff is available in a college, the studies of students admitted to the course become a condition precedent for the purposes of holding examination, therefore, the accountability of the management of colleges towards the teachers and the students, who manages the college is of paramount consideration. The conditions of recognition/affiliation include actual payment of salary to the teachers as well as actual attendance of the students during education programme before appearing in the examinations. Therefore, keeping the objects of NCTE Act in view, this Court proposes to issue the following general direction to the State Government/NCTE for incorporating the following condition as one of the requirements of recognition/affiliation:

In order to maintain the standards of excellence and promote discipline, the college must install centrally monitored CCTV cameras in the class rooms to establish the attendance of students and teachers both during the education programme, which in the event of any dispute may be verified by the examination body/NCTE on the basis of electronic record maintained and submitted to the examination body.

18. For implementation of above direction, the State Government/NCTE is directed to evolve a time bound scheme in respect of existing colleges within which the above direction is implemented, whereas the recognition granted in future may incorporate such a condition as a part of the recognition order or affiliation.

19. In view of the settled position of law, the impugned order dated 9.5.2012 based on the previous sanction granted by the State Government on 30.7.2009 unless followed by a resolution of the Executive Council satisfying the same is not enforceable nor a writ petition can be maintained on the strength of such anticipatory orders under Art. 226 of the Constitution of India.

20. However, in the circumstances of this case, which may not be treated to be a precedent, the petitioners subject to the verification of their attendance by the University during the relevant session 2008-09, may be subjected to the forthcoming B.Ed., degree examination provided the Executive Council has taken a positive decision in terms of the order dated 19.7.2010 reproduced in the body of this judgment, which in the event of failure shall be taken within a period of three months from the date a certified copy of this order is produced before the

University. The writ petition is disposed of accordingly.