
(2006) 01 AHC CK 0257
In the Allahabad High Court
Case No : Writ Petition No. 193 (M/B) of 2006

R.N. College

APPELLANT

Vs

Chancellor, B.R. Ambedkar University and Others

RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 10, 14, 20, 31
University Grants Commission Act, 1956 — Section 2, 3
Uttar Pradesh State Universities Act, 1973 — Section 37(2)

Citation : (2006) 5 AWC 5381 : (2006) 2 UPLBEC 1358

Hon'ble Judges : O.P. Srivastava, J;Allah Raham, J

Bench : Division Bench

Advocate : Anadi K. Sinha and Prashant Chandra, for the Appellant; D.K. Arora and Vinay Bhushan, for the Respondent

Final Decision : Allowed

Judgement

O.P. Srivastava, J.—With the consent of the counsel for the parties the matter has been heard finally at the admission stage.

2. The Petitioner has challenged the order dated 15.9.2005 (Annexure-1 to the writ petition) passed by opposite party No. 1, whereby on the basis of the letter from University dated 28.7.2005, the Chancellor did not find it appropriate to grant affiliation for B. Ed. Course to the Petitioner-college for the session 2005-06.

3. The facts, relevant for the disposal of the writ petition in brief, are that the Petitioner-college was granted recognition by National Council for Teacher Education (in short N.C.T.E.) u/s 14 of the National Council for Teacher Education Act, 1993 (in short Act, 1993). Recognition was granted subject to fulfilment of certain conditions. After the said recognition the Petitioner applied for affiliation with the Chowdhary Charan Singh University, Meerut. The Chancellor granted affiliation by order dated 6.10.2004 for one term subject to fulfilment of certain conditions. Upon the academic session 2004-05 coming to an end, the Petitioner

pursued with Chancellor for continuation of affiliation for the session 2005-06 but as mentioned above, on the objection of the Vice-Chancellor of the concerned University, the Chancellor declined the prayer by means of impugned order.

4. The contention of learned Counsel for the Petitioner is two-fold Firstly ; he argued that after recognition has been granted by N.C.T.E., the affiliation should follow as a natural consequence in routine manner and Secondly ; that the affiliation for one year shall be deemed to be a permanent affiliation for all times to come.

5. Learned Counsel for the opposite party No. 1 submitted that the Chancellor declined to grant affiliation for the reasons stated in the letter of Vice Chancellor dated 28.7.2005 of the concerned University. He placed the said letter of Vice-Chancellor before the Court.

6. Thus, following two points are before us for determination in this writ petition:

(1) Whether the affiliation has to follow as a natural consequence after recognition of the institute by N.C.T.E.

(2) Whether affiliation granted for one term by Chancellor is to be deemed as a permanent affiliation not requiring any further extension of affiliation from the Chancellor.

Point No. 1. The Parliament has enacted Act 1993 with a view of achieving planned and coordinated development of the teacher education system throughout the country. In order to achieve the said objective there is provision for framing of the rules by Central Government u/s 31 and also Regulations by Council u/s 32 of the said Act. Besides several other functions, N.C.T.E. has been authorised to consider the granting of recognition to the institutions offering the course or the training in teacher education. Geographically established four regional committees u/s 20 have been authorised to deal with the matter of recognition of an institution for the said purpose. In the case of the Petitioner-institution the recognition was granted by N.C.T.E. vide order dated 4.8.2004 (Annexure-4 to the writ petition) subject to fulfilment of the conditions enumerated therein, amongst which two are extracted here below to facilitate the appreciation of the points raised before the Court :

3. The Recognition is subject to the condition that the affiliating University shall ensure that, among other things, the institution has appointed required number of faculty members (including Principal/Head of Department), as per the norms of the N.C.T.E./ U.G.C./Affiliating University.

4. Further, the recognition is subject to fulfilment of all such other requirements as may be prescribed by other regulatory bodies like U.G.C. and State Government, etc.

7. From the condition No. 3 above, it is apparent that recognition was granted subject to affiliating university ensuring the appointment of the teachers as per

norms of N.C.T.E./U.G.C./Affiliating University amongst other things. Thus, according to recognition order itself the matter for affiliation of the college with the university was to be examined by Chancellor/Vice-Chancellor before grant of affiliation.

8. The Act, 1993 defines the "examining body" in Section 2(d) as University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications. "Institution" is also defined u/s 2(e) as an institution, which offers courses or training in teacher education. Further, according to Section 2(n) "University" means a University defined under Clause (f) of Section 2 of the University Grants Commission Act, 1956, and includes an institution deemed to be a University u/s 3 of that Act. From these three definitions it is unambiguously made out that since the Petitioner-Institution offers courses or training in teaching education, it is to be affiliated with some examining body, which may be either University or agency or authority to which an institution is affiliated for examinations. Neither learned Counsel for the Petitioner nor we could lay our finger at any provision under Act, 1993, by means of which an inference could be drawn that once the recognition is granted, the affiliation has to follow automatically. As mentioned in the letter of N.C.T.E., itself the matter of affiliation was left to be considered by the examining body which in the matter of the Petitioner is the Chancellor of the concerned university.

9. Thus as per scheme of the Act, 1993 as also according to letter of N.C.T.E., the matter of affiliation was to be considered by the examining body, i.e., concerned university in the matter in hand. "Recognition" and "affiliation" are two different and independent things. The same is clear from the judgment of Supreme Court also in *The Principal and Others Vs. The Presiding Officer and Others*, The affiliation of a college is for the purpose of holding examination of the candidates while the recognition of an institution is for other purposes. When matter of affiliation has to be considered by University, it cannot be expected to act in mechanical manner without application of mind.

10. From the judgments of Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, and *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, also it is clear that affiliation and recognition are different things but the only restriction is that while granting affiliation the university cannot impose any provision inconsistent to the provisions of the Central Act or Regulations and guidelines framed by the Council.

11. The relevant portions of the said judgments reported are reproduced herebelow :

The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such

affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act.

No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T. N. case it was held that the University could not impose any conditions inconsistent with the A.I.C.T.E. Act or its Regulation or the conditions imposed by A.I.C.T.E. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act.

12. In view of above discussions, we are unable to accept the contention of the Petitioner's counsel that the affiliation by university after recognition by N.C.T.E. is to follow as a natural consequence. Accordingly, we decide the point in negative against the Petitioner.

Point No. 2. The contention of the Petitioner's counsel that affiliation for one term granted by Chancellor shall be deemed to be permanent affiliation, is also not tenable because of the following first proviso to Section 37(2) of U. P. State Universities Act, 1973 (hereafter referred to as "Act, 1973"), which for the convenience sake is extracted below :

(2) The Executive Council may, with the previous sanction of the Chancellor admit any college which fulfils 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 (9), withdraw or curtail any such privilege :

Provided that if in the opinion of the Chancellor, a college substantially fulfils the conditions of affiliation, the Chancellor may sanction grant of affiliation to the college or enlarge the privileges thereof in specific subjects for one term of a course of study on such terms 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.

13. According to first proviso to Sub-section (2) of Section 37 of the Act, 1973, the Chancellor on fulfilment of conditions of affiliation substantially may grant affiliation to the college for one term. Thus, the power of the Chancellor for granting affiliation for one year is covered with the said proviso.

14. Wisdom for enacting the said proviso as it appears to us is that if the institution fulfils the conditions of the affiliation to the extent that without any other requirement the candidates can be examined, provisional affiliation may be granted for one term subject to fulfilment of such other conditions which may be necessary in the longer interest of the institution and the students. Therefore, if

conditional affiliation is granted for one term subject to the fulfilment of the condition in the affiliation order then such an affiliation would be perfectly in accordance with law.

15. Supreme Court in State of Tamil Nadu's case (supra) and Jaya Gokul Educational Trust case (supra) has also approved granting of affiliation subject to fulfilment of certain conditions with the only rider that the condition so imposed cannot be inconsistent with provisions of the Central Act and norms, guidelines or regulations prescribed by the Central body. The N.C.T.E. also granted recognition to the Petitioner subject to fulfilment of such other requirements as may be prescribed by other regulatory bodies like U.G.C. and State Government etc. (point No. 4 as extracted at page No. 3). Therefore, if the Chancellor is satisfied that the affiliation can be granted for one term because of fulfilment of the conditions substantially which may not stand in way in the Course for that limited period for holding examination, he is within powers to grant provisional affiliation subject to the conditions to be complied with during the said period leaving it open to the Chancellor to consider at the time of continuance of affiliation whether the conditions so imposed are fulfilled or not and to whether further affiliation is warranted or not. If the Chancellor is satisfied that the conditions have not been fulfilled it is always open to him to decline further extension. We may also point out that as referred in Point No. 1, after grant of extension for a limited period, the Petitioner-institution accepted the same and did not lodge any protest against the provisional affiliation, rather itself applied for affiliation for the next year. Therefore, the Petitioner now is estopped from saying that the affiliation was on permanent basis and not for one year.

16. Therefore, the second point is also decided in negative against the Petitioner.

17. Learned Counsel for the Petitioner questioned also the competency of the State to legislate in the matter of higher education but admittedly the vires of any provision which according to the Petitioner's counsel is ultra vires, has not been challenged in the writ petition.

18. Coming to the fact of the instant case, the Vice-Chancellor did not recommend the case of the Petitioner for grant of affiliation for 2005-06. The Chancellor on the basis of the said letter alone declined affiliation, without examining the matter in light of conditions imposed by the Chancellor while granting affiliation for one year and also without affording Petitioner any opportunity to have its say with regard to the objections raised by Vice-Chancellor. The matter of grant of extension for subsequent year ought to have confined to the conditions mentioned in the grant of affiliation for the first year. Furthermore, if Vice-Chancellor for certain reasons recommends that the affiliation may not be granted for the next year, then the Petitioner-institute ought to have been given an opportunity of hearing on the said objections. The reasons other than the conditions imposed in the order of affiliation for the previous year ought not to have been considered for rejection of the prayer for extension of affiliation unless the said condition is so essential in the opinion of

the Chancellor to be recorded that it deserves to be considered by Chancellor at the time of extension of the affiliation but reason for rejection of any affiliation either for one year or for extension should not be inconsistent to any of the provisions of Act, 1993. If any reason assigned by Vice Chancellor is inconsistent to the provisions of the Act, 1993 or is against the norms, guidelines or the Regulations of the Council, the same deserves to be overlooked. In taking this view we get support from judgment of Supreme Court in State of Tamil Nadu's case (supra) as also in Jaya Gokul Educational Trust case (supra) wherein it has been held that the conditions imposed cannot be inconsistent to any provision of the Central Act. As a matter of fact, comprehensive guidelines deserve to be laid down at the level of the university and the matter of affiliation be examined in the light of the same at the very first instance. Similarly, the institution getting affiliation for one year may although legitimately consider to admit the students for next term in the hope that they would get the extension of affiliation but it is also under an obligation to see that the conditions imposed at the time of grant of affiliation for one year are complied with during the period of affiliation for one year so that career of students admitted for next year may not be at stake.

19. In view of the above, petition deserves to be and is hereby allowed.

20. The order dated 15.9.2005 is hereby quashed. Request of Petitioner-institution for affiliation for 2005-06 shall be considered by Chancellor in the light of the observations made in the body of judgment.

21. Costs on parties.