

(2008) 08 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petitions 5257 and 5579 of 2008

Sarathy Teachers Training College managed by Premier Educational Trust and Dr. David Raja Teacher Training Institute managed by Dr. David Raja and Dr. Chandralekha Charitable Trust

APPELLANT

Vs

State of Karnataka, Director, Dept. of State Education Research and Training and Regional Director, Southern Regional Committee National Council for Teacher Education
 Diganth Teachers Training Institute managed by Indigenous People Education Trust, Mother Theresa D.Ed. College managed by Mother Theresa Vidya Sanstha, Gopal D.Ed. College by Gopal Education Trust and Hemanth D.Ed. College managed by Hemant Memorial Education Trust Vs State of Karnataka and Regional Director, Southern Regional Committee, National Council for Teacher Education

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

National Council for Teachers Education Act, 1993 — Section 14, 15, 16

Citation : (2008) 08 KAR CK 0023

Hon'ble Judges : Huvadi G. Ramesh, J

Bench : Single Bench

Advocate : Ramachandra Reddy, in WP 5257/08 and D.S. Ramachandra Reddy, in WP 5579/08, for the Appellant; B. Manohar, AGA for R1-2 in WP 5257/08 and for R1-3 in WP 5579/08 and Ashok Haranhalli, for R3 in WP 5257/08 and for R4 in WP 5579/08, for the Respondent

Final Decision : Allowed

Judgement

Huvadi G. Ramesh, J.—These two petitions have been filed by the respective institutions running D.Ed. colleges in Tamil Medium. Petitioners are questioning the legality and validity of the decision taken by the 1st respondent State that from the academic year 2006-07, the D.Ed., institutions shall not impart education in tamil medium though NCTE hat granted recognition as contained in

their decision dated 9.10.2007.

2. According to the petitioners, the State Government after considering all aspects, passed an order on 29.12.2005 granting NOC to establish D.Ed. colleges with tamil as medium of instruction. Since there was a necessity of recognition by the NCTE, on the application tiled by the petitioners, the NCTE, granted recognition for the academic year 2006-07 onwards by its order dated 12.5.2007. As such, petitioner institutions are running D.Ed. colleges in tamil medium and have also completed the course for the academic year 2006-07. However, mere was a decision taken by the State Government in the case of J.C. Education Trust, Kodagu wherein it is noted that since there was no sufficient practice training schools for Tamil medium, new permission will not be given for establishing tamil medium D.Ed. colleges.

3. According to the petitioners, the said letter was ironed without examining the practice of teaching else where other than in Kodagu District. Since the Government had taken a decision not to permit establishing Tamil medium D.Ed. colleges and also to run the courses in Tamil Medium afresh, it is the case of the petitioners that since they were already permitted to run the course by the NCTE in Tamil Medium, the State Government hat no power to take such a decision and the decision of the State Government will only apply for the future. It is also their contention that the State Government has issued NOC in the year 2005 itself and the petitioner Institutions have also got recognition from the NCTE. The decision of the State Government that despite permission by the NCTE, permission will not be given to any of the Tamil Medium D.Ed. colleges for the academic year 2006-07 and the imposing of certain conditions has been challenged in these writ petitions on various grounds.

4. Heard the Counsel for the petitioners, Government Advocate as also the Counsel representing the NCTE.

5. Learned Counsel for the petitioners has relied upon the decision of the Apex court in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. AIR 2007 SCW 2948 wherein the Apex Court has observed that the State Government is only a recommendatory body as to running of the institutions as per Entry 66 of list I and, it m for the NCTE to take a decision in the matter as higher education conies under List I of Schedule VII Unless me subject is covered in list III i.e., the Concurrent list to have regulations, any such decision taken by the State Government is ultra vires and therefore, it is not open to the State Legislature to encroach upon the field covered by the Central Government Enactment and the Parliament alone could exercise power by making appropriate law. Emphasising on mat, learned Counsel submitted that the decision taken by the State Government not to permit the running of the colleges from 2006-07 in Tamil medium is ultra vires the Constitution and against the recognition issued by NCTE and such order is honest Accordingly, it is contended that although the undertaking was given by diem by way of an affidavit not to turn schools in tamil medium from the year 2007-08

onwards but since the petitioner institutions intended to continue the course as they have got sufficient infra structure and since either the NOC issued by the State Government or the recognition by the NCTE cannot be defeated by the State Government by any such regulation, any such regulation passed is without authority of law and does not bind the petitioners.

6. Per contra, Government Advocate submitted that since there were no practice teaching Schools in sufficient numbers in Tamil Medium, such a decision was taken by the State Government and the petitioners also filed an affidavit in this regard by giving an undertaking to the effect that they will not admit students for the year 2006-07 as such, estoppel operates on them and there is no irregularity in the decision taken by the State Government in imposing such conditions and accordingly submitted that the petitioners' prayer cannot be considered. Further it is also submitted that the State Government has taken a decision and also recommended to the NCTE not to run Tamil Medium D.Ed. colleges as there is no sufficient number of practice teaching schools in the State of Karnataka.

7. The National Council for Teachers Education Act enacted in the year 1993 came into effect from 1995. The Act provides for establishing NCTE and such other Council covering higher education. As noted by the Apex Court in the case cited supra, this Act is enacted by the Parliament exercising power under Entry 66 of List I in VII Schedule i.e., the exclusive jurisdiction of the Central Government to enact the law and make regulations therein. As per Section 16 of the Act, what is being contemplated is, the affiliating body to grant affiliation after recognition or permission by the Council. Section 16 of the Act reads:

16: 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 recognised 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.

The above provision permits the affiliating body either the State Government or the University regarding holding of examination and such other training to be imparted to the students.

8. So far as the exclusive domain of the NCTE is concerned in granting recognition, so far as regulations are concerned, NCTE alone under the chairmanship or the body constituted thereunder by the NCTE takes a decision either to recognise or de-recognize the institution. The power given to the State Government is only in the form of recommendation. In the course of conducting courses by the respective institution if some deficiencies or indiscipline is found, then only the State Government or the University would act as a

recommendatory body and in turn, the NCTE takes a decision either to allow the institution to run the course or de-recognize the institution or take any appropriate action.

9. In the instant case, the petitioner institutions have been directed by the State Government not to run Tamil Medium D.Ed. courses from 2007-08. This prohibition imposed by the State Government appears to be without authority of law. Of course, by an undertaking the institutions have tiled an affidavit not to run the schools, as is submitted by the Counsel representing the petitioners and rightly or wrongly, they did not run the course for the year 2007-08. It is the main contention of the petitioners that the order passed by the State Government not to run the course in tamil medium in future i.e., commencing from 2007-08, works out hardship to diem as they are established after obtaining recognition by the NCTE and are running the course and in the meanwhile, the State Government has taken a decision unilaterally and without authority of law.

10. In the decision noted above, the Apex Court in similar circumstances, with reference to the Act in question wherein a question arose as to re-recognition of D.Ed. courses conducted by the appellant institution therein, has held that the State Government has no power to reject the prayer of the institution or to over rule me decision of the NCTE as the field was fully occupied by Entry 66 in list 1 of VII Schedule to the Constitution and since the parliament has enacted the Act therein, it is not open to the State Legislature to exercise power by making an enactment It is also stated that it would be unthinkable that the State Government would encroach upon the field occupied by the Parliament and could still exercise power by executive fiat by refusing permission under policy consideration.

11. In the instant case, might be that as a matter of policy the State Government has come forward with a decision not to impart education in Tamil medium for D.Ed. course. This is intended to be an executive fiat which has been exercised by the State Government without the authority of law and contrary to the decision taken by the NCTE in according recognition to the petitioner institution. At the most, as provided under the Act, the University or the State Government as the case may be which are the affiliating bodies in conducting examination or running the course are enabled to take a decision to recommend the same to the NCTE after giving opportunity to the petitioners and express its views either as a matter of policy or as practical difficulty. Then, it is for the NCTE to take a decision in this regard regarding de-recognizing the course for which already affiliation is granted or else, to continue the course being satisfied with the inquiry being held by the NCTE in addition to the recommendation made by the State Government.

12. In the circumstances, the decision taken by the State Government in its order dated 9.10.2007 and the condition 2(2) imposed therein being honest and without authority of law in so far as the petitioners are concerned, is liable to be

quashed. Accordingly, it is quashed.

Petitions are allowed