
(2012) 06 AHC CK 0020
In the Allahabad High Court
Case No : Writ Petition No. 2903 (M/S) of 2012

Sardar Patel Institute of Technology

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(3), 14(3)(a), 15(3), 15(3)(a)

Citation : (2012) 7 ADJ 191

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Advocate : Padmesh Jain, for the Appellant; Anurag Verma and W.U. Ahmad, for the Respondent

Judgement

Hon'ble S.S. Chauhan, J.—This petition has been filed with the prayer for quashing the order dated 9.5.2012 passed by the opposite party No. 3 and further with the prayer of mandamus commanding the State Government to direct the opposite party No. 2 to allow 48 students admitted by the petitioner-institution on vacant seats in B.Ed, session 2008-09 to appear in the University examination, which is going to be held in the month of June, 2012 in terms of the Government Order dated 30.9.2011. The facts in short are that the petitioner- Sardar Patel Institute of Technology (for short the petitioner-institution") is a self financed unaided private educational institution established by a registered charitable trust. The National Council for Teacher Education (for short the Council) a statutory body of the Government of India granted affiliation to the petitioner- institution u/s 14(3)(a) of the National Council for Teacher Education Act (for short the Act) for conducting B.Ed, course of one year duration for 100 seats from academic session 2002-03. In pursuance to the aforesaid permission granted by the Council, the Chaudhary Charan Singh University, Meerut (for short the Meerut University) granted affiliation to the petitioner-institution to run B.Ed, course with annual intake of 100 seats from academic session 2002-03. The petitioner- institution thereafter applied for 100 more seats

and the Council vide letter dated 13.8.2007 granted recognition for 100 additional seats to the petitioner-institution u/s 15(3) (a) of the Act and the Meerut University in pursuance thereof by means of letter dated 18.3.2008 granted permanent affiliation in respect of the additional 100 seats. The petitioner-institution thereafter applied for enhancement of 100 more seats on 29.2.2008, on which the Meerut University constituted an inspection committee for the purpose of conducting inspection for grant of affiliation for 100 additional seats though recommendation was made by the Council for grant of recognition for 100 additional seats (300 seats) w.e.f. 1.7.2006 vide letter dated 19.3.2008. After inspection of the petitioner-institution on 12.3.2008, the Meerut University vide letter dated 19.3.2008 recommended the case of the petitioner-institution for grant of affiliation for 100 additional seats w.e.f. 1.7.2006. The recommendation was forwarded by the Meerut University on Proforma "A" to the State Government. The Assistant Registrar of the University, who was given the charge of the Registrar for one day, proceeded to grant provisional affiliation to the petitioner- institution on 14.7.2009 along with three others in respect of 100 additional seats. It is stated that the Assistant Registrar has been proceeded departmentally and action has been taken against him and the affiliation granted by him in respect of four institutions has been cancelled as it was obtained in collusion with the said officer, who was having no authority under law to grant affiliation and the competent authority to grant affiliation is the Vice-Chancellor, which is evident from Annexure No. 1 dated 9.5.2012, which is under challenge. For the academic session 2008-09 counseling for B.Ed, course was conducted by the Dr. Bhim Rao Ambedkar University, Agra (for short the Agra University) and the petitioner-institution was allowed to participate in the counselling with the sanctioned strength of 300 (200+100) seats. Agra University held three rounds of counselling for the session 2008-09 to fill the seats in all B.Ed. Colleges in the State of U.P. and the petitioner-institution was allotted only 170 students in first and second rounds of counselling and 74 students in the third round of counselling thereby allotting total 244 students. When the Agra University did not allot the students as per the total sanctioned strength, petitioner-institution wrote letters to the opposite parties on 27.1.2010, 17.2.2010 and then admitted 48 more students on the basis of merit, who have qualified in the entrance examination of B.Ed. 2008-09 and secured 50% marks in Graduation and these students were admitted in pursuance to the advertisement published in the newspapers inviting applications from eligible students, who had qualified the entrance examinations of B.Ed. 2008-09. The petitioner-institution sent information to the Meerut University vide letters dated 12.3.2010 and 27.5.2010 about admission of 48 students in the B.Ed. Course and under assumption that approval has been accorded, it allowed the students to complete their studies and they had also attended the requisite number of classes as per the requirement. The State Government vide order dated 30.9.2011 took a decision that the examination of those students be held, who were given admission by the private institutions on their own as per the procedure prescribed in the Government Order dated 12.8.2008. When the Meerut University did not permit

the students admitted by the petitioner institution, they filed Writ Petition bearing No. 7349 (MS) of 2011 before this Court, in which it was directed that in case the students admitted by the petitioner-institution are covered under the Government Orders dated 12.8.2008 and 30.9.2011, the opposite parties shall permit them to appear in the University examination for B.Ed. Course 2008-09 as and when the same is going to be held. The Meerut University conducted the examination for B. Ed. Course 2008-09 from 6.1.2012 and did not allow 48 students admitted by the petitioner-institution on its own after not adopting the procedure prescribed in the aforesaid Government Orders. The petitioner-institution again applied for permanent affiliation from session 2010-11 for 300 seats and when the State Government did not take any decision in the matter, the petitioner-institution filed Writ Petition No. 6057 (MS) of 2008, which was finally disposed of by this Court vide order dated 6.8.2010 with a direction to the State Government to consider the matter for grant of permanent affiliation within two weeks. In pursuance to the order of this Court dated 6.8.2010, the State Government vide order dated 29.11.2010 rejected the matter of the petitioner for grant of permanent affiliation for 300 seats from academic session 2010-11. In pursuance to the aforesaid order, the Vice-Chancellor of the Meerut University proceeded to pass the consequential order refusing to grant affiliation to the petitioner- institution vide order 9.5.2012. Hence this petition.

2. Submission of learned counsel for the petitioner is that in view of the promulgation of the Act, which is a Central Act, the requirement of affiliation is not contemplated under law and if any such condition has been laid down by the State Government, then the same is ultra vires and does not have any recognition and cannot prevail over the Central Act. He further submits that while granting recognition, all the requirements were complied with and so the State Government cannot impose any additional requirements for grant of affiliation. The rejection of the affiliation is wholly illegal and cannot be held to be a valid action under law on account of the fact that the recognition granted by the Council is final. It is also submitted that the affiliation was granted by the Assistant Registrar vide order dated 14.7.2009 and, therefore, the petitioner cannot be made to suffer as they acted bona fide on the basis of the said affiliation, which was granted provisionally and the students admitted by the petitioner, have been admitted on the basis of the Government Orders dated 12.8.2008 and 30.9.2011 on the basis of advertisement made in the newspapers as the Agra University failed to provide students to the petitioner-institution, which was the University conducting the counselling. It is further submitted that on the basis of the order of this Court at Allahabad in Writ Petition No. 59661 of 2008, wherein an order was passed to the effect that in case the students are available in the select list prepared by the Kanpur University, Kanpur itself, the counselling may be held so that the institutions, which are eligible either under the orders of this Court or otherwise may be given opportunity of counselling and students as per the sanctioned strength of the institution by the NCTE be allotted, to such institution, the students were to be allotted, but it is stated that

no such students were allotted. The said writ petition was got dismissed as having become infructuous on 9.12.2011. Submission, therefore, is that 48 students, who have been admitted by the petitioner-institution are entitled to appear in the University examinations, which are going to be held in the month of June, 2012. In support of his contention, he has placed reliance upon the following decisions :

(1) State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, ;

Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, ;

Chairman, Bhartia Education Society and another v. State of Himachal Pradesh and others, 2011(4) ESC 546 (SC);

Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, ;

State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, ;

3. Counsel for the opposite parties, on the other hand, has submitted that the petitioner has not approached this Court with clean hands and they have concealed certain material facts, which are necessary to be brought on record. He has further submitted that the Assistant Registrar was given the charge of Registrar for one day and he granted provisional recognition in respect of four institutions. He has been proceeded departmentally and action has been taken against him and I the four provisional affiliations, which were granted by him, were held to be invalid and were cancelled and they were not given effect under law. The inspection was made by the inspection team and various short comings were found, on account of which the inspection team recommended to the State Government and the State Government found that the petitioner-institution does not conform to the requirements as contemplated for affiliation and so it proceeded to reject the affiliation to the petitioner-institution vide order dated 29.11.2010. The Vice-Chancellor in consequence thereof passed the impugned order on 9.5.2012 refusing to grant affiliation u/s 37(2) of the U.P. State Universities Act. The petitioner was never granted affiliation for additional 100 seats and the recommendation made by the inspection team did not conform to the requirements, which were required under law. The position of appointment of teachers in respect of additional 100 seats was not clear and the inspection team also made a request that the inspection be made by the District Magistrate, Bulandshahr so as to assess the correct position of the infrastructure and other requirements. The students were never admitted on the basis of the merit as contemplated under the Government Orders dated 12.8.2008 and 30.9.2011 and an advertisement was made in the newspapers and on that basis the students were admitted. It is, therefore, submitted that since there was no recognition, the institution was not authorized under law to admit the students. When the

petitioners failed in their attempt, then 38 students of the petitioner-institution approached this Court at Allahabad by filing Writ Petition No. 39931 of 2011, Khushboo Rai and others v. State of U.P. and others, in which the parties were asked file counter-affidavit and no interim order was granted. In the said case on 17.10.2011 further order was passed and the Court also wanted to know as to whether the institution in question was granted affiliation or not by the State Government u/s 37(2) of the U.P. State Universities Act. Thereafter, another Writ Petition No. 2660 (MS) of 2011 was filed by the 45 students of the petitioner-institution before this Court at Lucknow and this Court vide order dated 10.5.2011 rejected the application for interim relief by a detailed order. The said writ petition was thereafter got dismissed as having become infructuous on 2.1.2012. The submission is that after having failed in all tactics, the petitioner has approached this Court as a last resort concealing material facts and made a prayer to allow its students to appear in the examination. Therefore, the said relief cannot be granted by this Court. In support of his contention, he has placed reliance upon the following decisions :

Chairman, Bhartiya Education Society and another v. State of Himachal Pradesh and others, 2011(4) ESC 546 (SC);

Shri Morvi Sarvajani Kelavni Mandal Sanchalit MSKM B.Ed. College v. National Council for Teachers Education and others, 2012(1) ESC 43 (SC); Rahul Dhaka Vikas Society and another v. Guru Gobind Singh Indraprastha University and others, AIR 2001 Del 154; State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, ;

State of A.P. Vs. K. Purushotham Reddy and Others, .

4. I have heard learned counsel for the parties and perused the record.

5. The petitioner initially applied for grant of recognition of 100 seats to the Council and the recognition was granted in respect of 100 seats by the Council on 5.12.2002 and the affiliation was granted to the petitioner on 27.3.2003. The petitioner thereafter applied for additional 100 seats and vide letter dated 13.8.2007 recognition was granted to the petitioner- institution for additional 100 seats by the Council and affiliation was granted by the Meerut University vide letter dated 18.3.2008. The petitioner thereafter applied for 100 additional seats after 200, on which the Meerut University vide letter dated 10.3.2008 constituted an inspection committee for conducting inspection for affiliation of 100 additional seats (200+100) and in pursuance thereof the inspection team conducted the inspection on 12.3.2008. The Meerut University also forwarded the recommendation on Form "A" on 26.4.2008. The main thrust of the argument of counsel for the petitioner is that the petitioner was granted provisional recognition vide order dated 14.7.2009 and, therefore, it was entitled to take admission for the 100 additional seats and these admissions were taken only when the Agra University failed to allocate the students to the petitioner-institution after 244 students in the first, second and third rounds of counselling.

The petitioner thereafter wrote letters to the Agra University for allocation of more students vide letters dated 27.1.2010 and 17.2.2010 and when the Agra University failed to allocate the students, then the petitioner made an advertisement in two newspapers and admitted 48 students on the basis of the Government Orders dated 12.8.2008 and 30.9.2011. It has to be seen as to whether the aforesaid admissions were made on the basis of merit or not. There is no pleading in the writ petition that admissions were made out of the select list prepared by the Agra University conducting the counselling. The students were admitted, who responded to the advertisement and the question of merit as contemplated under the Government Order dated 12.8.2008 was given go bye. Apart from it, the right to admission of students was vested with the petitioner-institution only after there was affiliation by the University. However, there was no affiliation by the University and only a provisional affiliation was obtained by the petitioner fraudulently from the Assistant Registrar, who was given the charge of the Registrar for one day and he granted provisional recognition in respect of four institutions. He was proceeded with departmentally and action has been taken against him and the recognition granted by him has been cancelled. The petitioner thereafter preferred Writ Petition No. 59661 of 2008 at Allahabad in which the petitioner did not implead the Meerut University from where the question of affiliation could have been verified and got an interim order in its favour on 19.12.2008, wherein it was provided that in case the students are available in the select list prepared by the Kanpur University, Kanpur itself, the counselling may be held so that the institutions, which are eligible either under the orders of this Court or otherwise may be given opportunity of counselling, but it has to be seen that the petitioner was not qualified under law to admit the students and, therefore, the said order was not applicable in case of the petitioner and neither the petitioner has come forward to say that the admissions were made by the petitioner on the basis of the said order. The said writ petition was got dismissed having become infructuous on 9.12.2011. The petitioner thereafter obtained another device by filing Writ Petition No. 39931 of 2011 through its students to get an interim order seeking prayer to appear in the examination. In the said writ petition, counter-affidavit was called for and thereafter on 17.10.2011 an order was passed by this Court at Allahabad wherein the Court emphasized as to whether the institution was affiliated u/s 37(2) of the U.P. State Universities Act or not. The petitioner thereafter adopted another device and filed Writ Petition No. 2660 (MS) of 2011 on behalf of the 45 students and this Court vide order dated 10.5.2011 rejected the interim relief application. The said writ petition was got dismissed having become infructuous on 2.1.2012. Having failed in all its tactics either on behalf of the students or itself, the petitioner has approached this Court again by means of the present writ petition claiming therein that affiliation is not required under law. The inspection committee pointed out certain short comings on account of which the State Government took a decision on 10.2.2012 declining permission in respect of 100 seats. The inspection committee reported that the District Magistrate was asked to give information, who reported that infrastructure for

appointment of teachers in respect of the additional 100 seats after 200 seats was not clear and so it was decided not to grant affiliation vide order dated 29.11.2010. The Vice-Chancellor, Meerut University passed an order dated 9.5.2012 refusing to grant affiliation to the petitioner in pursuance to the order of this Court dated 5.12.2011 passed in Writ petition No. 7349 of 2011 as the students were not admitted on the basis of the merit of the select list prepared by the Agra University.

6. The argument advanced by the counsel for the petitioner in respect of question of non-requirement of affiliation cannot be accepted in view of the law laid down by the Apex Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra).

7. The Apex Court in a recent judgment in the case of Chairman, Bhartiya Education Society (supra), drew the difference between recognition and affiliation and came to the conclusion that examining body can impose its own requirement in regard to eligibility of students for admission to a course in addition to those prescribed by the NCTE. The recognition order was also relied upon and interpreted by the Apex Court. In Paras-22 and 24 of the said judgment, the Apex Court observed as under:

22. Sub-section (6) of Section 14 no doubt mandates every examining body to grant affiliation to the institution on receipt of the order of NCTE granting recognition to such institution. This only means that recognition is a condition precedent for affiliation and that the examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by NCTE while granting recognition. For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State Government and/ or the examining body. Even the order of recognition dated 17.7.2000 issued by NCTE specifically contemplates the need for the institution to comply with and fulfil the requirement of the affiliating body and the State Government, in addition to the conditions of NCTE.

24. The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The State Government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in

admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of NCTE. Sub-section (6) of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition. An institution requires the recognition of NCTE as well as affiliation with the examining body, before it can offer a course or training in teacher education or admit students to such course or training. Be that as it may.

8. Emphasis laid upon an interim order of this Court passed in Writ Petition No. 2286 (MB) of 2009, laying down the preposition of law that affiliation was not required stands diluted in view of the judgment rendered by the Apex Court in the case of Chairman, Bhartiya Education Society (supra). Therefore, reliance placed upon the aforesaid interim order is of no consequence.

9. The matter again came up for consideration before the Apex Court in regard to withdrawal of recognition, wherein several deficiencies were pointed out and the institution was found to be not equipped with the infrastructure as required under the Act and also not in a position to impart quality education.

10. The Apex Court in the case of Shri Morvi Sarvajani Kelavni Mandal Sanchalit MSKM B.Ed. College (supra), deprecated the practice of granting approval in respect of institutions which are ill-equipped and noticed the mushroom growth of ill-equipped, under-staffed and unrecognized educational institutions. In the said case, certain shortcomings were found and withdrawal of recognition to B.Ed. College was under challenge. The Apex Court found that the deficiencies were in the nature of inadequacy of built-up area available to the institution, the land underlying the structure was not in the name of the appellant-Trust and the college was being run in a building that was used by two other institutions. The Apex Court took a serious view and proceeded to consider the case laws propounded by the Apex Court in this respect time and again. In paras- 8, 10 and 17 of the aforesaid judgment, the Apex Court held as under:

8. The High Court upon a consideration of the relevant records including the inspection report placed before it, dismissed the writ petition relying upon the decisions of this Court in Chairman, Bhartiya Education Society and Another Vs. State of Himachal Pradesh and Others, , N.M. Nageshwaramma v. State of Andhra Pradesh and another, (1986) Supp. SCC 166, Students of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra and others, SLP (C) No. 2067 of 1991, decided on 19.2.1991, Andhra Kesari Educational Society Vs. Director of School Education and Others, and a few others. The High Court held that the appellant was not entitled to any relief in the writ proceedings filed on its behalf and accordingly dismissed the writ petition. Hence the present appeals, assail the said judgment and order.

10. Mushroom growth of ill-equipped, under-staffed and unrecognised educational institutions was noticed by this Court in *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, . This Court observed that the field of education had become a fertile, perennial and profitable business with the least capital outlay in some States and that societies and individuals were establishing such institutions without complying with the statutory requirements. The unfortunate part is that despite repeated pronouncements of this Court over the past two decades deprecating the setting up of such institutions. The mushrooming of the colleges continues all over the country at times in complicity with the statutory authorities, who fail to check this process by effectively enforcing the provisions of the NCTE Act and the Regulations framed thereunder.

17. There is no distinguishing feature between the cases mentioned above and the case at hand for us to strike a discordant note. The institution established by the appellant is not equipped with the infrastructure required under the NCTE Act and the Regulations. It is not in a position to impart quality education, no matter admissions for the session 2011-2012 were made pursuant to the interim directions issued by the High Court. We have, therefore, no hesitation in rejecting the prayer for permitting the students to continue in the unrecognised institution of the appellant or directing that they may be permitted to appear in the examination. We, however, make it clear that this order will not prevent the respondent-University from examining the feasibility of reallocating the students who were admitted through the University process of selection and counselling to other recognised colleges to prevent any prejudice to such students. Such re-allocation for the next session may not remedy the situation fully qua the students who may have to start the course afresh but it would ensure that if such admissions/reallocation is indeed feasible, the students may complete their studies in a recognised college instead of wasting their time in a college which does not enjoy recognition by the NCTE. We, however, leave this aspect entirely for the consideration of the University at the appropriate level, having regard to its Rules and Regulations and subject to availability of seats for such adjustment to be made as also the terms and conditions on which the same could be made. This order shall also not prevent the affected students from seeking such reliefs against the appellant college as may be legally permissible including relief by way of refund of the fee recovered from them.

11. So far as the laying down of additional qualification by the State Government is concerned, the Apex Court in the case of *Laxmi Sharma (supra)*, found that the college was granted only temporary affiliation and permanent affiliation was refused by the University. Though the students were admitted and permitted by the Court to appear in the examination, but the results were not declared. In those very special situation, direction was given to admit the students, but so far as affiliation was concerned, the affiliating body was directed for giving opportunity to the college and it was very clearly laid down that the Courts cannot direct the concerned authorities to grant affiliation, as it would amount to trespass on the jurisdiction of the University. The Apex Court in Para-20 of the

said judgment held as under:

20. As far as the appeals preferred by the college against the common judgment and the order passed on the review application are concerned, we agree with the view expressed by the High Court that it is not for the Court to direct the concerned authorities to grant affiliation as that would amount to trespassing on the jurisdiction of the university. We can only request the university to consider the grant of such affiliation in view of the several inspection reports and the recommendations made by the inspection teams for grant of such recognition. The appeals preferred by the college are, therefore, disposed of with a direction upon the university to consider the grant of permanent affiliation to the college after giving the college authorities a reasonable opportunity of being heard.

12. Even in the case of Adarsh Shiksha Mahavidyalaya (supra) in clause (xv) of para 87 it has been provided that the students admitted by unrecognized institutions and institutions, which are not affiliated to any examining body are not entitled to appear in the examination conducted by the examining body or any other authorised agency. In clause (xviii) of the said para it has also been held that in future, the high Courts shall not entertain prayer for interim relief by unrecognized institutions and the institutions which have not been granted affiliation by the examining body and/or the students admitted by such institutions for permission to appear in the examination or for declaration of the result of examination. This would also apply to the recognised institutions if they admit students otherwise than in accordance with the procedure contained in Appendix 1 of the Regulations.

In para 79 of the said judgment, it has been held as under :

79. What needs to be emphasised is that no recognition/permission can be granted to any institution desirous of conducting teacher training course unless the mandatory conditions enshrined in Sections 14(3) or 15(3) read with the relevant clauses of Regulations 7 and 8 are fulfilled and that in view of the negative mandate contained in Section 17A read with Regulation 8(10), no institution can admit any student unless it has obtained unconditional recognition from the regional committee and affiliation from the examining body.

In the said case the students were allowed to appear in the examination as they were admitted. Since in the present case, the students were not validly admitted after affiliation, therefore, they cannot be allowed to appear in the examination. The petitioner, therefore, has failed to make out a case for interference. There has been no affiliation from the examining body. In absence of affiliation, the petitioner was not entitled to admit the students and anyhow if any mistake was committed by the Agra University, that will not entitle the petitioner to claim any parity or any illegal parity is supposed to grant indulgence in favour of the petitioner. It appears that by mistake 48 students were admitted illegally by the petitioner, whereas recognition was only in respect of 200 seats. Therefore, I find no illegality in the order passed by the opposite party No. 3.

Writ petition is devoid of merit. It is accordingly dismissed.