

(2016) 02 P&H CK 0324
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18543 of 2015 (O&M).

Shaheed Captain D.K. Khola Education & Charitable Trust and another APPELLANT

Vs

The Maharishi Dayanand University and another RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 PLR 601 : (2017) 1 RSJ 575 : (2016) 4 SCT 723

Hon'ble Judges : Rajesh Bindal, J.

Bench : Single Bench

Advocate : Pankaj Maini, Advocate, for the Appellant; Anurag Goyal and Amit Rao, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J. - The petitioners have filed the present petition impugning the minutes of 247th meeting of the Executive Council of Maharishi Dayanand University (for short, "the University") (Annexures P-13 and P-22), held on 3.8.2015, whereby fresh intake of students in the petitioners-colleges for the year 2015-16 was reduced to half and penalty of Rs. 2,00,000/- each was imposed.

2. Learned counsel for the petitioners submitted that the petitioners are reputed colleges imparting quality education ever since these were established. They have all infrastructural facilities, besides the Faculty required as per the norms laid down by All India Council for Teacher Education (for short, "the Council"). He further submitted that the proposed penalty recommended by the Academic Council in its meeting held on 17.7.2015 after considering the reply filed by the petitioners was to withdraw provisional affiliation granted to the colleges and to put them under "No Admission Category" for the session 2015-16, whereas the final punishment inflicted is reduction of 50% seats for the session 2015-16 and imposition of fine of Rs. 2,00,000/-, for which no notice was issued.

3. On the other hand, learned counsel for the University referred to the provisions as contained in the University Statutes, wherein Clause 27 provides that the Executive Council can impose any of the penalties in case a college/ institution is not complying with the requirement of National Council for Teacher Education Act, 1993 (for short, "the Act"), Statutes, Ordinances or Regulations etc., which include reduction in seats and imposition of fine. He referred to the reports of the Inspection Committee constituted to see infrastructural facilities in the colleges, where at the time of inspection neither the staff nor the students were found. After considering point-wise replies submitted by the petitioners to the issues raised in the inspection reports, initially the Academic Council in its meeting held on 17.7.2015 resolved to recommend to the Executive Council that provisional affiliation granted to the colleges be withdrawn and these be put under "No Admission Category" for the session 2015-16, however, taking a lenient view, the Executive Council merely directed for reduction of 50% seats for the session 2015-16, besides imposing penalty of Rs. 2,00,000/-. The Colleges were given opportunity to make up the deficiencies. It was further submitted that because of mushrooming of B.Ed. colleges in the State of Haryana for the session 2015-16, as against intake capacity of 60,672 students, despite grant of four weeks" extension by the Government by extending the last date for admissions, only 32,811 seats could be filled and 27,861 seats remained vacant. He further submitted that admission for the session 2015-16 having already been made and there being no interim order passed in favour of the petitioners, the relief to that extent has been rendered infructuous.

4. Heard learned counsel for the parties and perused the paper book.

5. The petitioners herein are educational colleges imparting education in B.Ed. and M.Ed. Courses. They have been granted permission by the Council and affiliation by the University. There had been mushrooming of educational colleges in the State of Haryana in the last 4-5 years, as a result of which the intake capacity increased to 60,672. The number of students available for admission despite grant of extension of last date fixed for admissions was merely 32,811. 27,861 seats still remained vacant. While dealing with CWP No. 25532 of 2015-Ganga Institute of Education v. Maharishi Dayanand University (MDU) and others, wherein the issue raised was for seeking permission to start new integrated course of B.A., B.Ed. and B.Sc. B.Ed., considering the stand taken by Dr. S.K. Chauhan, Regional Director of the Council and Shri Vijai Vardhan, Addl. Chief Secretary to Government of Haryana, Department of Higher Education, who were present in court, it was noticed that there was total lack of co-ordination between three agencies involved, namely, the State, the Council and the affiliating Universities. Apparently, neither at the stage of affiliation or approval nor even thereafter, the availability of infrastructure and the faculty is checked, as a result of which the quality of education was being compromised. The students admitted in the institutions were at the mercy of the colleges with regard to quality of education imparted. They are producing teachers, who are to teach future generations. The order passed in the aforesaid petition on

19.2.2016, is extracted below:

"In terms of the order passed yesterday i.e. 18.02.2016, Dr. S.K.Chauhan, Regional Director, National Council for Teacher Education (for short, the Council) incharge of eight States i.e. Chandigarh, Haryana, Punjab, Himachal Pradesh, Delhi, Uttrakhand, Uttar Pradesh and Rajasthan and Sh. Vijai Vardhan, Addl. Chief Secretary to Govt. of Haryana, Department of Higher Education, Chandigarh are present in person. Dr. S.K.Chauhan, Regional Director has pointed out that as per Council Act and Regulations, the Council is monitoring the following courses:

1. Diploma in early childhood education programme leading to Diploma in Preschool Education (DPSE)
2. Elementary teacher education programme leading to Diploma in Elementary Education (D.El.Ed.)
3. Bachelor of elementary teacher education programme leading to Bachelor of Elementary Education (B.El.Ed.) degree
4. Bachelor of Education programme leading to Bachelor of Education (B.Ed.) degree
5. Mater of Education programme leading to Master of Education (M.Ed.) degree
6. Diploma in Physical Education programme leading to Diploma in Physical Education (D.P.Ed.)
7. Bachelor of Physical Education programme leading to Bachelor of Physical Education (B.P.Ed.) degree
8. Master of Physical Education programme leading to Master of Physical Education (M.P.Ed.) degree
9. Diploma in Elementary Education programme through open and distance learning system leading to Diploma in Elementary Education (D.El.Ed.)
10. Bachelor of Education programme through open and distance learning system leading to Bachelor of Education (B.Ed.) degree
11. Diploma in arts education (Visual Arts) programme leading to Diploma in Arts Education (Visual Arts)
12. Diploma in arts education (Performing Arts) programme leading to Diploma in Arts Education (Performing Arts)
13. 4-year integrated programme leading to B.A.B.Ed./B.Sc.B.Ed. Degree
14. Bachelor of Education programme (part time) leading to Bachelor of Education (B.Ed.) degree
15. B.Ed.M.Ed.(3-years integrated) programme leading to B.Ed.M.Ed.

(integrated) degree

As regards the procedure to be followed, Dr. S.K. Chauhan, Regional Director, has submitted that initially a communication is sent to the respective State governments seeking their comments as to whether more colleges to impart courses in education are required or not. In case comments are received in positive, an advertisement is published in the newspaper for inviting applications from the persons seeking permission to open colleges. In case the State Government communicates stating that no further colleges/courses are required, the name of that State or course is not added in the advertisement. However, in case no comments are received from the State Government, the applications are invited for all the courses. He further submitted that the Council has the data of projected demand and supply for each course and that is taken into consideration by the Committee constituted for taking final decision for grant of approval of any application for starting a new course. However, he was candid in saying that the number of seats, for which permission is to be granted, to be prospective applicants for imparting education in a course is neither mentioned by the Council or by the State Government in its communication. It only relates to a course. Whosoever fulfils the conditions laid down for starting a new college or for additional intake of seats, is granted the letter of intent.

Many times, the State Government responds after the applications have already been received by the Council, either when those are sent for comments to the State Government or after that but in that situation the Council considers those applications and wherever applicants fulfil the conditions and the committee recommended their case, the permission is granted. As per the regulations framed in the year 2014 NOC from the University from which the Institute is to have affiliation, is a prerequisite. Such NOC is to be submitted along with the application. One set of application is sent to the State Government for its comments. The comments are required as to whether in a particular area any further colleges are required or not. Whether any comments are received or not for which two opportunities within 90 days were granted to the State Government, the Council sends a team of two nominated members from the Council and one from the State Government for inspection. It is generally felt that State Governments do not nominate any member. In case, with the inspection report, it is found that the applicant fulfils all the conditions mentioned in the Act and regulations, the same is considered by the committee and the letter of intent is issued.

He further submitted that though the Council has the data of number of seats already permitted and colleges in the State, but do not have any data of the number of the admissions. Hence they are not considering this aspect while granting permission to the new colleges or new courses to the old colleges. He further stated that in case the State sends its comments regarding requirement of colleges in a particular area or number of seats required, that can be taken care of before inviting applications for start of new colleges/courses.

After grant of letter of intent, the applicant colleges are required to fulfil certain formalities, such as appointing faculty and providing other infrastructural facilities. After fulfilment thereof within time granted, final permission is granted.

He did not dispute the fact that after initial permission is granted, there is no infrastructure or staff available with the Council to further regulate or monitor the working of the colleges with regard to quality of education imparted or with regard to the faculty or other facilities required. Even the self appraisal reports are not sent by all the colleges and wherever these reports are submitted, these cannot be appraised on account of lack of staff.

Learned counsel for University submitted that before grant of NOC for affiliation only the land and building available with the applicant is seen. He has further submitted that while granting NOC, the University should examine total number of seats already available in the colleges affiliated to the University and actual number of students admitted.

Mr. Vijai Vardhan, Addl. Chief Secretary to Govt. of Haryana, Deptt. of Higher Education submitted that from the year 2007 onwards, the State Government had been regularly writing to the Minister concerned of the Union Government and the Council also that no further colleges are required in the State for imparting B.Ed. In one communication dated 22.08.2011 from Mr. E. Ahamad, Minister of State for External Affairs and Human Resource Development, Government of India, it was intimated that the matter was got examined. The Council had informed that it had already imposed a ban in Haryana for opening new B.Ed. Colleges (except for minority institutions) w.e.f. 08.07.2009. The ban continued upto the academic year 2012-13. He further stated that despite this ban, in the year 2009-10, Council granted permission to 114 new colleges. In the year 2010-11, 37 new permissions were granted. In the year 2012-13, 19 new permissions were granted. In the year 2013-14, no new permission was granted by the Council. For the year 2014-15, the State Government had written to the Council that new college was not required, but still Council granted new permission to 19 colleges. For the year 2015-16 also, the State Government has also written to the Council for not granting new permission to any new college for imparting education. No permission was granted.

Mr. Chetan Mittal, Asstt. Solicitor General of India, who is present in Court, was requested to assist the Court on the issue why Union of India is not taking care of regulatory statutory body under the National Council for Teacher Education Act, 1993. The regional office of Council who controls eight States with around 6,000 colleges, is functioning merely with a staff of eight regular officers. Rest of the staff is appointed on contract basis. He further submitted that the information, which he could get from the concerned officer is that a Committee was constituted to examine the number of persons required in the Council and certain recommendations have been made by Ms. Anshu Bains, the then Secretary of Elementary Education. That matter is pending consideration with the Government. He seeks time to have instructions as how to get the matter

expedited.

What transpires from the procedures and facts as clarified by Dr. S.K. Chauhan and Mr. Vijai Vardhan, is that there is lack of coordination among the three bodies namely the Council being the parent regulatory body, the State Government and the University in monitoring the quality of education and further regarding the number of colleges and the seats required in a particular course, as the data submitted before this Court suggest that in the State of Haryana, there are 491 self financing Education Colleges and three Government colleges having an intake capacity of 60,672 students out of which in the current session i.e. 2015-16, 32,811 seats were filled up and 27,951 seats are lying vacant despite granting four weeks extra time for counselling after the last cut off date.

In the light of the aforesaid facts, it is paramount for the regulatory body, affiliating university and the State Government to see that no further colleges are allowed to be opened, which will result in compromising the quality of education.

As far as the issue regarding inspection of existing colleges to see the availability of infrastructure or quality of education imparted, the matter needs to be examined. There has to be coordination among the three bodies i.e. Council, State Government and the concerned affiliating university.

Mr. Vijai Vardhan, Addl. Chief Secretary seeks short adjournment to find out whether there is some accredited private agency, which can carry out this work or the State Government may have to constitute teams. He further stated that he will communicate with other affiliating university in the State to streamline the working of the education colleges in the light of the facts noticed above. It needs to be noticed that entire work has to be done in coordination of the Council, State Government and the affiliating University.

Let the needful be done, however, it should be kept in mind that this exercise has to be done in the shortest possible time."

6. In the case in hand, both the petitioners-colleges are affiliated to the University. Certain standards have been laid down by the Council for permitting a college to impart education for B.Ed. and M.Ed. Courses. The colleges have to provide those facilities. The University being the affiliating body has right to consider that infrastructural facilities and the faculty to be provided to the colleges are available. In the present case, petitioner No. 1-college was inspected on 1.4.2015 by a team constituted by the University and it was found that there were lot of discrepancies. In B.Ed. class, only 13 out of 200 students were present. For M.Ed. Class, only 7 out of 35 students were present. There was no record of attendance etc. Only three teachers were there. Even the students present in the college complained about lack of infrastructure and teaching Faculty. The Inspecting Team caught the staff of the college red-handed while completing the incomplete registers regarding attendance etc. in a separate room at the time of inspection. Though the college was running other courses, such as MBA, MCA and BBA, but neither any teacher nor any student was found

present. The report of the Inspecting Team is extracted below:

" Surprised Inspection Report of Sahid Capt. D.K. Khola College of Education and College of Management and Technology, Jainabad, Dhina, Rewari

A two member team consisting of Prof. S.S. Dahiya, Department of Public Administration and Sh. Satnarayan Sharma (In-charge Colleges) conducted the surprised visit of above said college on 01.04.2015 at 10.30 a.m. The team met the Head Clerk in his office as the Principal of the college was not available in his office and demanded for the necessary record including the Attendance Register of both teaching and non-teaching staff, B.Ed and M.Ed. students, Salary Register of both teaching and non-teaching staff and the Accession Register. But the college staff was found reluctant in this regard. In the mean time, the team visited the B.Ed. class and found only 13/200 students present in the class. The list of these students along with their signatures has been attached as Annexure-I. The team also interacted with B.Ed. students and came to know that they were taught only by three teachers viz. Ajit, Pooja and Suman. The B.Ed students also expressed their resentment before the team complaining that despite their repeated demands the College authorities failed to provide them Maths, Science and English teacher.

After this, the team visited the M.Ed. class and found 7/35 students sitting in the class. The list of the students having the signatures of the available students is also attached along with this report as Annexure-II. The team members were surprised to note that the names of the same teachers earlier stated by the B.Ed. students were repeated by the M.Ed. students during their interaction with the team. In simple words, as per the version of the students of both classes, the three above mentioned teachers are found teaching both the classes of B.Ed. and M.Ed.

On the day of inspection, only one teacher named Ajit was found present in the College and rest of the teachers named Pooja and Suman were found absent without any prior intimation to the office. It is also interesting that the names of only two teachers Ajit and Pooja were found mentioned in the teaching staff Register meant for B.Ed. students and the name of third teacher Suman was found nowhere mentioned in the Register.

With regard to the other courses MBA, MCA and BBA neither any student nor any teacher was found present in the College. No record of the students and teachers was produced before the team by the President of the Institution despite its repeated demand.

As far as the record of B.Ed and M.Ed. course is concerned, the College authorities failed to produce before the team upto 12 noon despite its repeated demand. Ultimately one of the team members went upstairs and caught the college staff completing the Registers red-handed. The team member snatched the Register of the teaching staff engaged for M.Ed class. The Attendance Register of the teaching staff meant for M.Ed. is still empty. Please found

attached the photocopy of it as Annexure-III along with the report."

7. In the case of petitioner No. 2-college, the inspection was carried out on 8.12.2014. There was none available in the college at that time, though a working day. Even Chowkidar came later on. He made a call to one Mr. Yadav, who informed that the college students and the Faculty and ministerial staff are on three days" tour to Agra, Mathura and Vrindavan. The Committee found that several rooms were barely furnished. The laboratories were empty. No computers were available. On the first floor, class rooms were designated for different classes, such as 5th and 7th class, besides other discrepancies. The report of the Inspecting Team is extracted below:

" Surprise Inspection of Krishna College of Education, Village Bhotwas, PO Jatusana, District Rewari

Ref: no. CB-IX/2014/27037 dated 26.11.2014

Members of the inspection Committee:

Professor Nina Singh, Department of Geography Dr. (Mrs.) Suman Lata, Department of Law

Date of Inspection: 8.12.2014

Time of Inspection: 10.30 am to 11.30 am

The inspection team reached the college at 10.30 a.m. There was no one in the College. A Chowkidar came a few minutes later. A call was made to one Mr. Yadav whose telephone number was written on the board of the College. He informed that all the college students, faculty and ministerial staff are on three day tour to Agra, Mathura and Vrindavan.

The Committee took photographs of several rooms all which were barely furnished and gave a deserted look. The ET lab and Psychology lab were empty. On peeping through the locked room, it appeared that the computers had not been installed.

The Committee found school related text/help books in one of the rooms on the ground floor. On the first floor several class rooms were designated for different school classes e.g. fifth class, eleventh class, etc.

A call was made to the College Branch, of M.D. University by the Committee members apprising them of the position obtaining in the College, upon which half an hour later the Head Clerk of the College arrived.

From all the paraphernalia (class rooms, reading material) available, it appeared without any doubt that a school was being run in the premises designated for the said B.Ed College. On asking the Head Clerk emphatically stated that there is no school running in the building. However, on the table top where we were sitting we found an invitation card regarding celebration of "Grand-Parents Day" on dated 07.12.2014 (copy enclosed). It seems the school was off today on account

of celebration yesterday."

8. A perusal of the aforesaid inspection reports shows that there was total lack of infrastructure or teaching faculty available in the colleges. Students were not available. Even the record was being tampered with.

9. Considering the comments made by the Inspection Team and the response of the petitioners, the matter was considered by the Academic council and recommendations were made that provisional affiliation granted to the colleges be withdrawn and the colleges be put under "No Admission Category" for the session 2015-16. The aforesaid recommendations of the Academic Council were considered by the Executive Council in its 247th meeting held on 3.8.2014 and taking a lenient view, while granting time to the petitioners to remove the deficiencies, number of seats permitted in the colleges for the year 2015-16 were reduced to half and penalty of Rs. 2,00,000/- each was imposed. In terms of Clause 27 of the Statutes, the University is competent to invoke even financial penalty on an educational institution, besides directing relaxation in seats.

10. The contention of learned counsel for the petitioners that order for imposition of penalty and reduction of seats was not called for as no opportunity of hearing was granted before that. The proposal by the Academic Council was for withdrawal of affiliation. However, the contention deserves to be rejected being misconceived, as the Executive Council, while considering the recommendations made by the Academic Council, took a lenient view and instead of withdrawing affiliation and putting the colleges under "No Admission Category" for the coming session, time was granted for removing the deficiencies, besides imposing penalty of Rs. 2,00,000/- each, reduction of 50% sanctioned seats was directed for next academic session. The admissions for the session 2015-16 are already over. During the pendency of the present petition, no interim stay was granted to the petitioners. In any case, as was the data furnished before this court, the total admissions against the available seats in the State of Haryana was only to the extent of 54%.

11. As regards imposition of penalty is concerned, I do not find any reason to interfere with the order for the reason that the petitioners were found lacking in infrastructure and the faculty at the time of surprise inspection, besides the fact that these are required to be made available by any educational college prior to even approval by the Council. It is not in dispute that the Colleges were functional. They were found to be tampering the records. The number of students available in the colleges was far less than the admissions made, hence, the order of penalty is upheld.

12. For the reasons mentioned above, the writ petition is dismissed.