

(2017) 03 AHC CK 0022

In the Allahabad High Court

Case No : Special Appeal Nos. 1877 and 1878 of 2012

Shashi Kumar Dwivedi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

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

University Grants Commission Act, 1956 — Section 2, Section 22, Section 3, Section 4

Citation : (2017) 5 ADJ 331

Hon'ble Judges : Arun Tandon and Rajul Bhargava, JJ.

Bench : Division Bench

Advocate : G.K. Singh, Siddharth Khare and V.K. Singh, Advocates, for the Appellants; C.S.C., A.K. Yadav, Km. Rashmi Tripathi, R.C. Tiwari, Ritvik Upadhya and Ritvik Upadhyay, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

1. These two intra-Court appeals are directed against a common judgment of the learned Single Judge dated 11.10.2012 passed in Civil Misc. Writ Petition No. 57527 of 2010 (Shashi Kumar Dwivedi & Others v. State of U.P. and Others) connected with Civil Misc. Writ Petition No. 493 of 2012 (Chandra Prakash Kanyakubj and Others v. State of U.P. and Others).

2. The first petition no. 57527 of 2010 was filed by the students who were admitted to two years Basic Teachers Certificate Course (herein after referred to as "BTC") in the Academic Session 2008-09 in Nehru Gram Bharti University (herein after referred to as the "Deemed University") for quashing of the order dated 14th July, 2010 passed by the Director, State Council of Educational Research and Training (herein after referred to as the "SCERT") and further for a direction upon the SCERT to recognize the BTC course and the certificates granted by the Deemed University as legal and valid for selection and appointment as teachers in Parishadiya Vidyalayas/Junior Basic Schools.

3. Writ Petition No. 493 of 2012 has been filed by the students who have been

admitted by the same Deemed University for two years BTC course in the Academic Session 2009-10. The relief prayed for in this petition is more or less identical to the one in Writ Petition No. 57527 of 2010.

4. The learned Single Judge under the order impugned has held that it is not possible for the Court to grant the relief as has been prayed for. Both the writ petitions have been dismissed. Hence these intra-Court appeals under Chapter VIII Rule 5 of the Allahabad High Court Rules).

5. Facts in short relevant for deciding the present appeals are as follows :-

Rajiv Gandhi Post Graduate College, Kotwa, Jamunipur, Allahabad (herein after referred to as the "Post Graduate College") was established by a Society duly registered under the provision of the Societies Registration Act, 1860 in the name and style of Nehru Gram Bharti. It was a Post Graduate College affiliated to Chhatrapati Shahu Ji Maharaj University, Kanpur (herein after referred to as the "Kanpur University").

6. The Post Graduate College made an application before the National Council for Teachers Education (herein after referred to as the "NCTE") for grant of recognition for starting two years BTC Course under the provisions of National Council for Teacher Education Act, 1993 (herein after referred to as the "NCTE Act").

7. The Northern Region Committee of NCTE vide its letter dated 16.08.2005 granted permission to the Post Graduate College under Section 15(3) of the NCTE Act for starting two years BTC course subject to fulfilment of the terms and conditions as contained in the said letter.

8. It is admitted on record that the Post Graduate College did not take requisite steps for complying with the terms and conditions as mentioned in the permission letter dated 26.08.2005 for years together.

9. The Central Government vide notification dated 27.06.2008 declared the Post Graduate College as a Deemed University with the change of name as Nehru Gram Bharti Deemed University. The College was de-affiliated from the Kanpur University.

10. The Deemed University made a request to the Northern Regional Committee to change the name of the institution as mentioned in the permission letter dated 16.08.2005. Such change in name was granted by the Northern Regional Committee and communicated to the Deemed University vide its letter dated 02.12.2008.

11. The Deemed University is stated to have published an advertisement inviting applications for admission to two years BTC course for the Academic Session 2008-09 and similarly issued advertisement for the Academic Session 2009-10.

12. The petitioners before the writ Court claim that they applied in response to the said advertisement and had participated in the selections. On being

successful they were admitted to two years BTC course for the Academic Session 2008-09 and 2009-10, as the case may be. It is further their case that after completion of the course, they have cleared the BTC examination conducted by the Deemed University and necessary BTC certificate has also been issued in their favour by the Deemed University.

13. It appears that while the Deemed University started its process of admission to BTC course, it simultaneously entered into correspondence with SCERT to grant recognition to said two years BTC course offered by the Deemed University.

14. Reference may be had to the letter dated 10.02.2010 forwarded by the Deemed University to SCERT with a request to approve the two years BTC course and include the name of the Deemed University in the list of approved institutions so that the students with BTC certificate granted by the Deemed University had no difficulty in employment as Assistant Teachers in Junior Basic Schools.

15. One of the petitioner students is also stated to have sent similar request to SCERT. He was informed by the Director, SCERT vide letter dated 14.07.2010 that his papers were being returned as they did not concern SCERT.

16. This has led to the filing of two writ petitions with prayers as aforesaid.

17. In order to keep the record straight, it may be noticed that on the asking of the Deemed University, the State Government vide Government Order dated 29.05.2013 granted recognition to the BTC course offered by the Deemed University from the Academic Session 2012-13. This order of recognition was however, modified vide Government Order dated 07.07.2014 and it was provided that in place of Academic Session 2012-13 for the purposes of recognition of BTC course, the same may be read as Academic Session 2010-11 onwards. The Government Order dated 07.07.2014 has since been revoked under the Government Order dated 27.09.2016. These Government Orders dated 29.05.2013, 07.07.2014 and 27.09.2016 are not subject matter of challenge in these special appeals.

18. During the course of hearing of the present appeals, we were informed that the Government Order dated 27.09.2016 was subjected to challenge by the Deemed University itself by means of Civil Misc. Writ Petition No. 61528 of 2016 before an Hon'ble Single Judge of this Court. The writ Court has been pleased to set aside the Government Order dated 27.09.2016 on the ground that the same has been passed without notice and opportunity of hearing to the Deemed University with the observations that it would be open to the State to take a fresh decision if it so desires, after affording opportunity of hearing to the Deemed University.

19. On behalf of the petitioner-students, the basic contention raised before the writ Court was that once permission was granted under Section 15(3) of the NCTE Act in favour of the Post Graduate College which was subsequently

converted into a Deemed University for starting of the two years BTC course, the issue of seeking affiliation/recognition from the examining body became redundant after issuance of the notification dated 27.06.2008 whereby the Post Graduate College was declared to be a Deemed University. It was contended that the Deemed University has a right to conduct its own examination, therefore, no approval is required from any authority for conduct of examinations in respect of two years BTC course offered by the Deemed University subsequent to 27.06.2008 in view of the law laid down by the Apex Court in the case of *State of Maharashtra v. Sant Dayaneshwar Shikshan Shastra Mahavidyalaya & Others* reported in (2006) 9 SCC 1, as also in view of the Division Bench judgment of this Court in Special Appeal No. 1639 of 2007 (*State of U.P. and Others v. Dau Dayal Mahila P.G. College & Others*) decided on 31.07.2009 and in the case of *State of U.P. & Others v. Furqan Ali and Others* reported in 2011 (1) ADJ, 480.

20. The claim set up by the petitioner-students was strongly opposed by the State of U.P. through its Advocate General. With reference to the notification dated 27.06.2008 itself it was submitted that Nehru Gram Bharti University could offer only such courses as were being offered immediately before the conferment of the status of the Deemed University or alike courses thereto. Deemed University could award degrees only for conventional/general degree programmes leading to B.A./B.SC./B.Com. or M.A./M.Sc. degrees covered under Section 22(3) of the University Grants Commission Act (herein after referred to as the "UGC Act").

21. On behalf of the State it was explained that BTC course is not a Degree course nor a course recognised by the University Grants Commission (herein after referred to as "UGC"). Therefore, merely because the Post Graduate College had been declared to be a Deemed University, it cannot be presumed that it gets a right to act as an examining body for BTC course, which is not provided for or taken care of under the UGC Act.

22. According to the case of the State under the Government Order dated 27.02.2004, the examining body for BTC examinations is the Examination Regulatory Authority, U.P., the head of which is the Secretary. Reference is also made to National Council for Teachers Education (Recognition Norms and Procedure), Regulation, 2007 in support of the contention that admission process, or qualifying examination, or the entrance examination, has to be as per the policy of the State Government/U.T. Administration. Reliance had been placed upon the judgments of the Apex Court in the case of *State of Rajasthan and Others v. Lata Arun* reported in AIR 2002 SC, 2642 and in the case of *Yogesh Kumar and Others v. Government of NTC, Delhi and Others* reported in (2003) 3 SCC, 548.

23. The learned Single Judge after referring to the provisions of Section 2, 3 and 4 of the guidelines framed by the UGC under the UGC Act relating to the grant of status of Deemed University and clause 1 of the notification dated 27.06.2008 which reads as follows :-

"(1) The programmes conducted by the University or to be conducted in future shall satisfy the norms and standards prescribed by the Statutory Authorities like, UGC, AICTE and the deemed University shall not confer any degree or degrees which have not been specified by the University Grants Commission. The deemed University shall also ensure that the degrees awarded by it are prescribed by University Grants Commission contemplated under Section 22 of the UGC Act namely a degree which, with the previous approval of the Central Government, has been specified by the Commission by notification issued in the Official Gazette.

(2) The deemed University shall not introduce a fresh education programme without seeking prior permission from the Health and Family Welfare Ministry and the concerned Statutory Authorities like Medical Council of India/All India Council for Technical Education. The deemed University shall confer degrees to only such students who have been granted admission after the issuance of the notification from the academic session 2008-09 and those who have been admitted earlier will be conferred degrees by the concerned University to which the Postgraduate College was affiliated.

(3) The deemed University shall follow the conditions prescribed by the appropriate Statutory Authorities like, University Grants Commission, All India Council for Technical Education with respect to the admissions of the students, the sanctioned strength and the new courses to be introduced.

(4) The deemed University shall not run any Distance Education Programme without the prior approval of the University Grants Commission and the Distance Education Council.

(5) The deemed University, without prior approval of the University Grants Commission, shall not open an Education Centre/Campus Centres/Offshore Centre."

has held that in view of Section 22, a University can only grant such Degrees which have been specified by the UGC in the Official Gazette and that BTC is not one of the Degrees mentioned therein. With reference to the provision of NCTE Act and Regulations of 2007, it has been held that the Post Graduate College, even after grant of permission by the Northern Regional Committee of NCTE, kept silent and did not take steps for starting two years BTC course for long duration and after confirmation of the status of the Deemed University invited applications for the Academic Session 2008-09 and similarly for 2009-10.

24. The learned Single Judge has gone on to hold that the Deemed University cannot act as an Examining Body for the BTC course and it had to obtain necessary permission from the examining body namely SCERT which was the examining body for the BTC course. The learned Single Judge has also considered the definition of "Examining Body" as well as the judgment of the Apex Court in the case of Prof. Yashpal and Another v. State of Chhatisgarh and Others reported in (2005) 5 SCC. 420.

25. It has been concluded that the petitioners were not possessed of a BTC certificate from an institution having due authority of law to be the examining body for the course, therefore, such certificates did not make them eligible for appointment as Assistant Teacher in Junior High Schools.

26. It is these reasons recorded in the judgment of the learned Single Judge which are challenged in these two appeals.

27. Since the issue involved in these special appeals had wide ramifications including loss of academic years of the petitioner-appellants because of the false assurance held out by the Deemed University in respect of two years BTC course offered by it, a Division Bench of this Court vide order dated 17.11.2016 required the Deemed University to respond to the proceedings and to show cause as to why for the loss of Academic Sessions of the petitioners-students, admitted to BTC course without proper recognition by the examining body, exceptional cost per student may not be imposed. The Court also required the learned Chief Standing counsel to produce the entire records leading to the grant of recognition by the State for the Academic Session 2012-13 onwards, as noticed herein above.

28. The Division Bench also required the UGC to file their affidavit explaining the correct position in the eyes of law with regards to the right of the Deemed University to conduct the BTC examinations.

29. We have heard learned counsel for the parties and have gone through the records which have been produced before us.

30. At the very outset we may notice that permission to start two years BTC course was granted in favour of Post Graduate Degree College under the letter of the NCTE, Northern Regional Committee dated 18.08.2005, copy whereof has been enclosed along with short counter affidavit filed on behalf of the Deemed University as Annexure-SCA-2.

31. From a simple reading of the letter it is apparently clear that permission was granted subject to fulfilment of eight conditions mentioned therein and enumerated as "a to h" in paragraph 2 of the letter. Condition "a" required appointment of the faculty members and staff duly qualified as per the norms of NCTE/State Government/SCERT to be completed before the commencement of the course. It is not in dispute that at the relevant time SCERT was the examining body for the BTC course. Therefore, it was but necessary for the Post Graduate Degree College to have appointed qualified teachers and staff as per the SCERT norms read with NCTE norms.

32. Under clause "b" countersigned statement of faculty members from the Director, SCERT was required to be submitted before the commencement of the academic session.

33. Under clause "c" the institution had to agree to adhere to all other regulations and guidelines as framed by NCTE from time to time.

34. Under clause "d" the institution had to within one month of the receipt of Recognition order, convert the Endowment Fund account into a Joint Account in the form of FDR for a period of not less than 60 months (five years) in a Nationalized Bank only to be operated along with an official of the Regional Committee.

35. Under clause "e" the Reserve Fund for an amount equal ant to three months salary of the Teachers and Staff had to be created within one month from the date of issuance of the letter and maintained in the form of FDR in favour of the management/institution, for a period not less than sixty months (five years) in a Nationalized Bank.

36. Under clause "f" prior permission of the competent authority for conducting the entrance exam and approval of the curriculum for the course had to be obtained.

37. Under clause "g" it is specified that in case the institution starts the training programme without prior permission of the competent authority/examining body regarding the curriculum they have adopted and conducts examination for award of Diploma/certificate the recognition of such institution shall be withdrawn.

38. Under clause "h" it was specified that non-compliance of the above mentioned conditions shall cause action under section 17(1) of the NCTE Act, 1993.

39. Paragraph 3 of the same letter required the affiliating body to ensure that among other things, the institution has appointed required number of faculty (including Principle/Head of Department), as per the norms of the NCTE/State Government/Affiliating Body.

40. Paragraph 4 contemplated that recognition is subject to fulfilment of all such other requirements as may be prescribed by other regulatory bodies like SCERT/ State Government etc. The institution was obliged to submit a Self-Appraisal Report at the end of each academic year along with a copy of the approval of affiliating body/State Directorate of Education. It was again reiterated that any violation of the above mentioned conditions or of the NCTE Act would result in withdrawal of the recognition under the provisions of NCTE Act.

41. Such non-compliance of the statutory conditions is more or less admitted in paragraph 5 to 9 of the supplementary affidavit filed by the Deemed University dated 5.10.2016. It is stated that under the policy decision of the State of U.P., private colleges were not given recognition for running of BTC course despite there being permission by the NCTE. The issue in that regard came to be settled under the judgment of the Division Bench of this Court dated 31.07.2009 wherein a direction was issued requiring the State Government to formulate a policy and not to create any impediment in running of BTC course by private institutions also who fulfil the norms prescribed by NCTE.

42. It is needless to emphasize that under the same Division Bench judgment, it

has clarified that mere grant of permission by NCTE does not amount to automatic affiliation for running the BTC course, until and unless the institution fulfils the norms which are prescribed by the NCTE.

43. From paragraph 9 of the short counter affidavit of Deemed University, it is admitted that the State Government in terms of the Division Bench judgment of this court took a policy decision to grant recognition/affiliation to private institutions also for imparting training of BTC course under Government Order dated 15.01.2010.

44. What logically follows is that the question of any recognition being granted to a private institution up to 15.01.2010 for the BTC course in the State of U.P. does not arise.

45. It is further admitted by the Deemed University in paragraph 20 of the same affidavit that during the transition period I.e. between 2005 to 2008, formalities as required for recognition from the examining body had not been completed and now BTC course is being run as per the norms of NCTE. In paragraph 21 of the same affidavit, it is admitted that teachers were duly appointed in 2010 and onwards and entrance examination of the students was conducted after making advertisement in the newspaper.

46. Paragraph nos. 9, 20 and 21 of the short counter affidavit filed by the Deemed University are being quoted below :-

"9. That after aforesaid judgment was passed, the State Government has issued Government Order dated 15.01.2010 and thereafter they had started BTC Course in the Private Institutions.

20. That it is further relevant to mention that as it was transition period between 2005 to 2008, therefore, formalities as required for recognition was not so completed, however, after that same was duly completed and now BTC Course is running as per order of NCTE.

21. That all the Teachers were duly appointed in 2010 and onward and further entrance examination to the students was conducted and by making due advertisement in the newspapers examination was conducted and thereafter on the merit admission was made, syllabus etc. is absolutely up to the standard of the NCTE. There is no irregularity at all."

47. It is, therefore, writ large on record that Deemed University admits non-fulfilment of the terms and conditions of recognition letter dated 16.08.2005 at least till 2010.

48. In our opinion once such is the admitted position, the question of there being any valid recognition in favour of the Deemed University till 2010 does not arise. Therefore, on this ground alone we have no hesitation to hold that for the Academic Session 2008-09 and 2009-10 neither any entrance examination could have been conducted by the Deemed University nor any examination could have

been conducted by the University for the BTC course.

49. We may also record that on one hand the University claimed that after conferment of the status of Deemed University upon the Post Graduate College it became the examining body for all courses including BTC course but on the other it continued to write letters to the Director, SCERT to grant recognition to the certificate issued by it and to include the name of the University in the list of approved institutions for the purposes of treating its certificate to be a valid qualification for appointment as Assistant Teachers in Junior High Schools recognised under the U.P. Basic Education Act, 1978.

50. It is also worthwhile to mention that recognition was granted in favour of the University under the Government Order dated 29.05.2012 addressed to the Director, SCERT from the Academic Year 2012-13 and amongst other it was provided under Clause 4 that admission of students to the BTC course shall be done only in terms of the examinations to be held and the procedure laid down by the State Government and after application of reservation rules.

51. Similarly, the time-table and other curriculum prescribed by the SCERT would be binding. The affiliation was in respect of 50 seats for the Academic Session 2012-13. The conditions imposed under the said letter of recognition dated 29.05.2012 are not in dispute nor have been challenged by the Deemed University. As a matter of fact in paragraph 10 of the short counter affidavit filed by the Deemed University, it has been stated that up to the year 2012-13, BTC examinations were conducted by the University and a certificate was also issued by it but after 2012-13 it is the DIET which is providing training and issuing certificates. Paragraph 10 is being quoted herein below :-

"That it is relevant to mention here that during session 2012-13, BTC examination was conducted by the University and the certificates were also issued by it. The DIET is providing training and issuing certificates after the session 2012-13."

52. Facts as stated above demonstrate that University itself accepts that under the recognition letter dated 29.05.2012, the entrance examination for BTC course could be held by the State Government and it was the State which was competent to lay down the curriculum and for issuance of certificate through SCERT. We fail to understand as to how for any period prior to it i.e. 2012-13, the Deemed University can claim itself entitled to admit students and to provide its own curriculum and to issue BTC certificate, and thereafter to seek recognition from the State Government.

53. We may not be called upon to record any conclusive finding in respect of the letter issued by the State Government earlier changing the year from which the recognition had been granted from 2012-13 to 2010-11 onwards dated 07.07.2014 and its recall vide order dated 27.09.2016 inasmuch as the matter in that regard has been directed to be examined by the State Government after affording opportunity of hearing to the Deemed University under the judgment

and order of the learned Single Judge passed in Civil Misc. Writ Petition No. 61528 of 2016 which order is not under consideration in these two special appeals.

54. We are definite in our view that, in the facts of the case, the Deemed University was not legally authorised to start the BTC course for the Academic Session 2008-09 and 2009-10 respectively in absence of strict compliance of the letter of recognition dated 16.08.2005 as also in view of it having itself asked for recognition from the examining body, i.e. State/SCERT which recognition in fact had been granted under the letter dated 29.05.2013 for the academic session 2012-2013.

55. We are also of the view that there is little or no reason to take any different view than the one recorded by the learned Single Judge for coming to the conclusion that the Deemed University was not competent to hold any examination for BTC course in view of the conclusion drawn with regard to the definition of Examining Body read with Section 22(3) of the UGC Act. It is not necessary to reproduce the reasons recorded in the judgment of the learned Single Judge for coming to the said conclusion. We only record our concurrence with the reasons so recorded.

56. For the reasons which have been assigned by the learned Single Judge as also for the reasons recorded by us herein above, we are of the considered opinion that both the appeals as presented by the petitioners-students/appellants are liable to be dismissed. It is ordered accordingly.

57. However, this takes the Court to the issue as to whether the petitioner-students be permitted to suffer because of the negligence on the part of the Deemed University for not acting in accordance with law and to have mislead the petitioner-students by admitting them to BTC course which the University was not legally authorised to conduct. In our opinion statutory authorities like Deemed University, while dealing with career of the students, cannot be permitted to act in such negligent manner. The future of students must be of serious concern for the University, it must ensure that degrees and certificates awarded, on completion of the course, have due recognition from the State authorities/competent authorities in the matter of employment on various posts.

58. Playing with career of the students in the manner it has been done by the Deemed University cannot be approved of. It has to be saddled with exceptional cost.

59. We direct that each petitioner-student shall be paid Rs.50,000/- by the Deemed University in addition to refund of entire fee which was paid for the two years BTC course in 2008-09 and 2009-10 respectively. Let this money be paid through Account Payee Cheque within two months from today.

60. We also deem it fit and proper to leave it open to the concerned authority of the University to take appropriate action against all those responsible for creating

the situation and to recover the money lost due to payment to the students as aforesaid from the person so found responsible in accordance with law.

61. The Special Appeals are dismissed subject to the directions issued.