
(2006) 11 AHC CK 0052
In the Allahabad High Court

Shresth Shiksha Sanstha

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Constitution of India, 1950 — Article 252

National Capital Region Planning Board Act, 1985 — Section 2, 3, 5

Citation : (2006) 7 AWC 7343

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Petitioner - Shresth Shiksha Sanstha has preferred this writ petition challenging orders dated 19.8.2004, 17.5.2006 and 31.7.2006, passed by the State of U.P. in the matter of cancellation of "No Objection Certificate" for imparting higher education course by the petitioner in Ghaziabad with affiliation to Guru Gobind Singh Indraprastha University, Delhi (hereinafter referred to as Indraprastha University).

2. Heard learned Counsel for the petitioner and learned Standing Counsel.

3. Sri Shashi Nandan, learned Senior Advocate, assisted by Sri Anoop Trivedi, learned Counsel for petitioner, urged that the Indraprastha Vishwavidyalaya Act, 1998 was enacted by the Legislative Assembly of Delhi and the jurisdiction of the University is defined u/s 4 of the Act. The University is competent to exercise powers within the area of National Capital Region as defined in the National Capital Region Planning Board Act, 1985, which is an Act of Parliament. National Capital Region has been defined u/s 2(f) of the National Capital Region Planning Board Act, 1985 which comprises whole of District of Bulandshahr comprising the Tehsils of Anupshahr, Bulandshahr, Khurja, Sikanderbad, whole of District of Meerut comprising the Tehsils of Meerut, Bagpat, Mawana and Sardhana and the whole of District of Ghaziabad comprising the Tehsils of Ghaziabad and Hapur. He further urged that National Capital Region Planning Board consists of members

which includes Union Minister for Works and Housing, the Chief Minister of the State of Haryana, the Chief Minister of the State of Rajasthan, the Chief Minister of the State of Uttar Pradesh and the Administrator of the Union Territory. Under the provisions of Indraprastha Vishwavidyalaya Act, 1998 in order to establish a College under the Indraprastha University Act, 1998 within the periphery of National Capital Region "No Objection Certificate" of the State is necessary. It was urged that "No Objection" was granted to the petitioner, but subsequently it was wrongly and illegally withdrawn without any valid reason and, thus, the orders withdrawing "No Objection" as well as rejecting petitioner's representation for granting "No Objection Certificate" are liable to be quashed.

4. In reply to the same, learned Standing Counsel urged that petitioner wants to establish and run Educational Institution within the territorial limit of the State of Uttar Pradesh which could be granted under the provisions of law enacted by the Legislature of the State of Uttar Pradesh. It is further urged that for establishing any Institution within the territorial limits of the State of Uttar Pradesh, petitioner is bound to comply the provisions of the U.P. State University Act, 1973 and not the Indraprastha University Act, 1998, which is not the Act to regulate and control Universities established within the limits of State of Uttar Pradesh. He further urged that petitioner who has relied upon the judgment reported in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, cannot establish any Professional Institution ignoring Rules and Regulations of the State of Uttar Pradesh to control such institutions and as such "No Objection Certification" was rightly withdrawn which is strictly in accordance with law. Petitioner is bound to comply the terms and conditions contained in U.P. State University Act, 1973 before establishing any Professional Institution in the State of Uttar Pradesh.

5. In Rejoinder, learned Counsel for petitioner referred Paragraph-7 of the writ petition, to the effect, that the National Capital Region Planning Board Act, 1985 was enacted with concurrence of the Legislatures of the all concerned States including State of U.P. The Legislature of State of Uttar Pradesh also passed resolutions to constitute National Capital Region Planning Board to develop infrastructure in the National Capital Region to be regulated by the Parliament by National Capital Region Planning Board Act. He urged that Paragraph-7 of the writ petition has not been denied in Paragraph-6 of the Counter Affidavit, hence in the State of Uttar Pradesh cannot refuse for "No Objection Certificate" to petitioner for affiliation to Indraprastha University which has jurisdiction in the National Capital Region.

6. I Carefully considered arguments of learned Counsel for the parties and perused the materials on record.

7. It is clear from the record that by an order dated 17.6.2004, State of Uttar Pradesh granted "No Objection Certificate" to affiliation of petitioner with Indraprastha University, Delhi to teach professional Courses such as Bachelor of Journalism, Mass Communication, LL.B., B.Ed., B.B.A and B.C.A. on certain

conditions in Ghaziabad/Greater NOIDA. Aforesaid "No Objection Certificate" was withdrawn by the Principal Secretary (Education), State of U.P under the impugned order dated 19.8.2004. Representations of the petitioner for granting "No Objection Certificate" which was directed to be considered by an order of this Court dated 13.2.2006 passed in Writ Petition No. 8541 of 2005 were also rejected by an order dated 17th May, 2006.

8. For consideration of arguments of learned Counsel for the parties certain provisions of Indraprastha University Act, 1998 are necessary to be quoted. For ready reference Section 4 of the Indraprastha University Act, 1998 is being reproduced below:

4(1) Save as otherwise provided by or under this Act, the limits of the area within which the University shall exercise its powers, shall be those of The National Capital Region as defined in the National Capital region Planning Board Act, 1985 (2 of 1985).

9. The powers of the University has been defined u/s 5 of the Act, the relevant portion is being reproduced below:

5. The University shall have the following powers, namely:

x x x x (14) to declare colleges and institutions, with their consent, in the manner prescribed, as autonomous colleges and institutions, and determine the extent of the autonomy and the matters in relation to which they may exercise such autonomy.

10. Sections 5(21) and 5(21A) of the Indraprastha University Act are also relevant, same are being reproduced below for ready reference:

(21) to admit to its privileges colleges and institutions, not maintained by the University, in accordance with such conditions as may be prescribed and to withdraw all or any of these privileges;

(21 A) to establish and maintain colleges, institutions and such other centres of education, research, training and extension as deemed appropriate by the University.

11. The National Capital Region Planning Board Act, 1985 was enacted by the Parliament. Under this Act, National Capital Region has been defined u/s 2(f) of the Act according to which "National Capital Region" means the areas specified in the Schedule, provided, that the Central Government with the consent of the Government of the concerned participating State and in consultation with the Board, may, by notification in the Official Gazette, add any area to the Schedule or exclude any area therefrom.

12. Preamble of the National Capital Region Planning Board Act, 1985 mentions that this Act was enacted after receiving resolutions from all the Houses of concerned State Legislatures. Relevant of the Preamble of the National Capital Region Planning Board Act, 1985 is being quoted below:

And Whereas in pursuance of the provisions of Clause (1) of article 252 of the Constitution, resolutions have been passed by all the Houses of the Legislatures of the States of Haryana, Rajasthan and Uttar Pradesh to the effect that the matters aforesaid should be regulated by those States by Parliament law.

13. The Schedule of the area prepared u/s 2(f) of the National Capital Region Planning Board Act, 1985 specifies the areas of different States, i.e., Delhi, Haryana, Rajasthan and Uttar Pradesh which shall be governed by the National Capital Region Planning Board Act, 1985. Section 3 of the Schedule is relevant which mentions areas of State of Uttar Pradesh, the same is being reproduced below for ready reference:

3. Uttar Pradesh

(i) The whole of District of Bulandshahr comprising the Tehsils of Anupshahr, Bulandshahr, Khurja and Sikanderabad;

(ii) The whole of District of Meerut comprising the Tehsils of Meerut, Bagpat, Mawana and Sardhana; and

(iii) The whole of District of Ghaziabad comprising the Tehsils of Ghaziabad and Hapur.

14. It was also brought to the notice of the Court that u/s 26(2) of the Indraprastha University Act, 1998, the Board of Management of the Guru Gobind Singh Indraprastha University, with the prior approval of the Chancellor, may make the statute relating to the conditions under which colleges and institutions may be admitted to the University and the conditions under which same may be withdrawn. Statute (ii) makes it clear that no college or institution shall be admitted to the privileges of the University unless it has been granted a no-objection certificate by the concerned state government and recognized by the appropriate statutory authority, wherever applicable, for the subjects and courses of study for which affiliation is being sought.

15. Considering the facts borne out from the different statutes and different provisions of law, it is clear that by resolutions of all the Houses of concerned Legislatures including the State of Uttar Pradesh, National Capital Region was established and the Chief Minister of Uttar Pradesh is also a Member of the National Capital Region Board. It is also clear from the record that Guru Gobind Singh Indraprastha University could establish an Institution affiliated with the Indraprastha University in the National Capital Region only after a "No Objection Certificate" is granted by the concerned State. In the instant case, petitioner proposed to establish a Professional Institution in the National Capital Region falling within the territory of State of Uttar Pradesh. The State of Uttar Pradesh, though earlier granted a "No Objection Certificate" on certain conditions, but subsequently said "No Objection Certificate" was withdrawn on the ground that under the U.P. State University Act there is no provision for granting "No Objection Certificate" to the Institutions affiliated with the Universities

established outside the State.

16. I have also carefully gone through the impugned orders, which state that on reconsideration at higher" level "No Objection Certificate" issued to Shresth Shiksha Sansthan for conducting higher educational courses in Ghaziabad with affiliation of Guru Gobind Singh Indraprastha University was withdrawn. The impugned order passed on 19th August, 2004 does not assign any reason for withdrawing "No Objection Certificate" to the petitioner.

17. From the materials on record, it transpires that State of Uttar Pradesh through Secretary, Medical Education, has already granted "No Objection Certificate" to Army Welfare Society and State of Uttar Pradesh granted "No Objection Certificate" to Vaccine Homeopathy College, Greater NOIDA. Similarly, Special Secretary to the Chancellor had also granted "No Objection Certificate" to B.L.S. College of Management, Mohan Nagar, Ghaziabad. The only ground mentioned in the order of State of U.P. dated 17th May, 2006 is that "No Objection Certificate" was given to Army Welfare Society as an exceptional case and further there was no evidence to show that "No Objection Certificates" were granted to two other Institutions. Subsequently by a representation dated 12th June, 2006, petitioner brought to the notice of the Secretary (Higher Education), U.P. Government, Secretariat, Lucknow annexing the "No Objection Certificate" dated 13.6.2003 granted to Vaccine Homeopathy College, Greater NOIDA and "No Objection Certificate" granted to B.L.S. Institute of Management, Mohan Nagar, Ghaziabad dated 17.2.2000 by the Special Secretary to the Chancellor. It was also brought to the notice of the State that those Institutions were granted "No Objection Certificate" for affiliation to Gur Gobind Singh Indraprastha University and B.L.S. Institute of Management, Mohan Nagar, Ghaziabad was granted "No Objection Certificate" for affiliation to Guru Gobind Singh Indraprastha University and thereafter its affiliation to Chaudhary Charan Singh University, Meerut was withdrawn. The State of Uttar Pradesh while deciding petitioner"s representation dated 12.6.2006 did not consider these relevant facts at all and rejected the representation on the ground that these "No Objection Certificates" were not granted by the Higher Education Department, but by other Departments of State of Uttar Pradesh.

18. In the facts of the case where the State of Uttar Pradesh has granted "No Objection Certificate" mentioned above to petitioner, it was incumbent upon the State to apply mind in the matter of granting/withdrawing "No Objection Certificate" for establishing any Institution in the National Capital Region. "No Objection Certificate" once granted to the petitioner cannot be withdrawn by the State only on the ground that the State of U.P. through Secretary, Medication Educations and Special Secretary to the Chancellor of U.P. State Universities granted "No Objection Certificate" and not the Higher Education Department.

19. Considering the facts mentioned above, this Court is of the view that the impugned orders suffer from error of law apparent on the face of record and was passed without application of mind and on non-consideration of relevant facts

stated above and as such matter requires reconsideration afresh in accordance with law.

20. With the result writ petition succeeds and is allowed. Impugned orders dated 19.8.2006, 17.5.2006 and 31.7.2006 are quashed and the matter is relegated to the State of Uttar Pradesh to pass an appropriate reasoned order in accordance with law after hearing the petitioners and considering all relevant factors mentioned in the judgment including "No Objection Certificate" given to other Institutions and in the light of the observations made in the judgment within six weeks" from the date of production of a certified copy of this order.

21. No order as to cost.