
(2009) 10 AHC CK 0064
In the Allahabad High Court

Shri Radha Govind Mahavidyalaya and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(1), 17

Citation : (2010) 1 AWC 773

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—This writ petition as well as W.P. No. 49973 of 2007 and W.P. No. 49970 of 2007 have been filed for quashing the decision of the Executive Council dated 11.3.2007 communicated by the Registrar vide its letter dated 25.5.2007. Further a writ in the nature of mandamus commanding the respondent-University to permit the students of petitioners' institution to appear in the examination of B.Ed. which are being conducted by the University in near future.

2. The facts arising out of the writ petition are that petitioners in Writ Petition No. 49968 of 2007, on 27.12.2002 "No Objection Certificate" was issued by the State Government for setting up an institution for running B.Ed. course under the Self Financing Scheme with effect from the academic session 2003-04. No Objection Certificate was subject to the condition that recognition was granted by the National Council for Teachers Education. The National Council for Teacher Education granted recognition to petitioners' institution for running B.Ed. course for one year duration with effect from academic session 2003-04. On 30.1.2004, the Chancellor passed an order granting affiliation to the aforesaid college with effect from 1.7.2004 for a period of one year. An application was made for extension of affiliation with effect from 1.7.2005. On 5.12.2005, Chancellor passed an order refusing to extend the affiliation for the session 2005-06. The said communication was communicated to petitioners vide its letter dated

10.1.2006. A representation to that effect was made stating therein that objections taken for refusing extension does not exist and appears to be misconceived. Before any order is passed one Amar Singh Yadav, a member of Legislative Assembly made a complaint before the Vice Chancellor in respect of grant of affiliation to the colleges run by petitioner No. 2 which was followed by filing Public Interest Litigation as Writ Petition No. 46708 of 2006. The aforesaid writ petition was disposed of finally to consider the matter by an appropriate authority. In compliance, the Vice Chancellor directed the Registrar to proceed with the matter and a Three Member Committee is constituted for inquiring into the allegations against petitioners' college. The Three Member Committee submitted their report on 27.10.2006, then a show cause notice was issued by the Registrar. Petitioners have submitted reply and an order was communicated to petitioners by the Registrar withdrawing the affiliation of petitioners' college. Hence, the present writ petition.

3. The facts of the other connected writ petitions mentioned above are also the same, therefore, it is not necessary to mention it again.

4. Sri G.K. Singh, learned advocate appearing for petitioners has submitted before this Court that affiliation granted to petitioners' college could not be withdrawn by respondent-University. The Colleges in question were granted affiliation by National Council for Teachers Education as per Section 14(1) of the National Council for Teachers Education Act, 1993. Section 14(6) of the aforesaid Act clearly provides that every examining body shall on receipt of order under sub-section (4) grant affiliation to the institutions, where recognition has been granted or cancel the affiliation of the institution, where recognition has been refused. From the aforesaid facts and circumstances, it is therefore, clear that where college is recognised by the National Council for Teachers Education (N.C.T.E.), examining body i.e., the University is bound to give affiliation to the said college. If for some reason, it is felt by the governing body that the college in question was not entitled to have such recognition or affiliation it can always bring the relevant facts and circumstances to the knowledge of the N.C.T.E. for its consideration and based upon the aforesaid information. N.C.T.E. can always withdraw recognition which would automatically result in withdrawal of the recognition of the University. Section 17 of the National Council for Teachers Education Act, 1993 clearly provides that the Regional Committee of the aforesaid council on its own motion or on any representation received from any person on being satisfied that the recognised institution has contravened any provision of the Act, Rules, Regulations or orders made by it or any condition subject to which recognition under the Act was granted, may withdraw recognition of such recognised institution.

5. In case of the respondent-University was of the view that college in question was not entitled to have recognition or affiliation it could have referred the matter to N.C.T.E. for necessary action u/s 17(1) of the Act. N.C.T.E. Act, 1993 being a Central Act would have an over-riding effect upon the State Universities

Act, 1973. The submission to this effect relied by respondents that order of recognition granted by N.C.T.E., as the college in question failed to fulfil the conditions mentioned therein, it is always open to the examining body to withdraw the affiliation granted to the college. Clause 3(f) of the order of recognition granted by N.C.T.E. provides that non-compliance of the conditions mentioned, an action can be initiated u/s 17(1) of the Act to withdraw recognition. In view of aforesaid provision, if respondent-University was of opinion that college in question does not fulfil the requisite conditions for grant of recognition or affiliation, the matter could have been referred to N.C.T.E. for appropriate action as provided u/s 17(1) of the Act. Further submission has been made by learned Counsel for petitioners that it is for this reason that this Court while disposing of the writ petition filed by Sri Amar Singh Yadav has issued a direction to the Vice-Chancellor to refer the matter to appropriate authority and according to the direction, matter would have been placed before the appropriate authority i.e., N.C.T.E. The Executive Council of the University on its own has no jurisdiction to withdraw the affiliation in favour of petitioners because as per Section 14(6) of the N.C.T.E. Act, examining body is bound to grant affiliation to a college which has been given recognition by the N.C.T.E. In *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others*, the Apex Court has held that provision of N.C.T.E. Act will have an over-riding effect upon the State Universities Act and the State Government and the Examining Body are bound by the orders passed by N.C.T.E. Paragraphs 63 and 74 are relevant for the said purposes. The same is reproduced below:

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (N.C.T.E.) with a view of achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. With a view of achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher education system "throughout the country". N.C.T.E., therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State

Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of N.C.T.E. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.

6. Further submission has been made by the learned Counsel for petitioners that while withdrawing the affiliation, provisions of the State Universities Act has not been followed, as such, the order is liable to be quashed.

7. Section 37 of the Universities Act deals with the affiliation. Sub-section (7) of the aforesaid provision provides that Executive Council may direct an affiliated college so inspected to take such action as may appear to it to be necessary within a specific period. Sub-section (8) provides that, in case, the affiliated college fails to comply any of the direction of the Executive Council under Sub-section (7) or to fulfil the conditions of affiliation may, after obtaining a report from the Management of the College and with the previous sanction of the Chancellor, be withdrawn or curtailed by the Executive Council in accordance with the provisions of the statutes. The Executive Council shall get the college inspected and thereafter it shall give a direction as may appear to be necessary and it is only when the college fails to comply with the said direction given by the Executive Council or to fulfil the conditions of the affiliation, then Executive Council will proceed to withdraw or curtail the affiliation but it has to be after giving an opportunity of hearing to the management and with the previous sanction of the Chancellor.

8. In the present case, upon complaint made by one Sri Amar Singh Yadav and in view of the order of this Court, an inquiry was initiated by the Vice-Chancellor and a Three Member Committee was constituted. The Vice-Chancellor constituted Three Member Committee and this was not done by the Executive Council. The report of the enquiry officer was submitted on 27.10.2006 and based upon aforesaid report a show cause notice was issued by the Registrar on 28.10.2006. The said report was also not placed before the Executive Council before issuance of the said show-cause notice. The Executive Council has not given any direction to petitioners' college after considering the report of the Three Member Committee. The matter was placed directly before the Executive Committee on 11.3.2007 and it was decided to withdraw the affiliation and the same was communicated to petitioners through Registrar and no reasons have been recorded. The reasons given by Executive Council that Executive Council has applied its mind has also not been brought on record. There is no prior sanction of Chancellor before withdrawing the affiliation of the petitioners' college. The letter of Chancellor dated 7th August, 2006 also finds reference of letter of Registrar dated 25.5.2007 which is impugned in the writ petition. The letter dated 7.8.2006 would show that by means of the aforesaid order, a simple direction has been given by the Chancellor to initiate proceedings u/s 37(8) of the Act, in

respect of affiliation of aforesaid colleges and to take action in accordance with law. This cannot be said to be an order of sanction by the Vice-Chancellor. After enquiry report of the Three Member Committee was received by the University, a letter was sent to the Chancellor on 14.11.2006. By this letter, approval of the Chancellor was sought. However without waiting for an order from Vice-Chancellor granting or disapproving the approval, matter was placed before Executive Council and the decision withdrawing the affiliation of colleges was taken. From this it appears that no prior approval of the Chancellor was ever obtained by Executive Council before withdrawing the affiliation. Therefore, there cannot be any proper procedure adopted by respondents as provided u/s 33(8) of the Act.

9. A submission has been made by the learned Counsel for petitioners that it is well-settled principle of law that law requires a thing to be done in a particular manner. Section 37 of the Act laid down the procedure which has to be followed by respondent-authorities. The same has not been followed. Reliance has been placed upon a judgment of the Apex Court in *Ramchandra Keshav Adke (Dead) by L.Rs. v. Govind Joti Chavare and Ors.* 1975 SCC 915. Para 25 of the said judgment is relevant for this purpose. The same is being quoted below:

25. A century ago, in *Taylor v. Taylor* (1875) 1 Ch D 426 ; Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in AIR 1936 253 (Privy Council) and later by this Court in several cases, *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, *Deep Chand Vs. The State of Rajasthan*, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn. pp. 362-363." The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed is implied in these provisions. Failure to comply with these mandatory provisions, therefore had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b).

10. Another Division Bench judgment has been reported in *Ram Asrey Lal Rajendra Kumar Vs. State of U.P. and Others*, of the said judgment is being reproduced below:

5. When the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at

all. Other methods or mode of performance are impliedly and necessarily forbidden. (Vide Taylor v. Taylor (1876) 1 Ch D 4 26 ; AIR 1936 253 (Privy Council) Deep Chand Vs. The State of Rajasthan, Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, State of Uttar Pradesh Vs. Singhara Singh and Others, Nika Ram Vs. State of Himachal Pradesh, Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, State of Bihar and Another Vs. J.A.C. Saldanha and Others, A.K. Roy and Another Vs. State of Punjab and Others, State of Mizoram Vs. Biakchhawna, J.N. Ganatra Vs. Morvi Municipality, Morvi, and Babu Verghese and Others Vs. Bar Council of Kerala and Others,

11. Further submission has been made that resolution of Executive Council does not disclose any reason. The decision dated 11.3.2007 has been communicated by the Registrar vide its letter dated 25.5.2007. The said letter does not contain any reason based upon which respondent-University has proceeded to withdraw the affiliation of three colleges run by petitioners. Further a copy of the resolution passed by the Executive Council dated 11.3.2007 has also not been appended along with the reply submitted by the respondents. However, no document has been filed by respondents or University has produced any document to show therein that application of mind by Executive Council in the matter. Further the reply submitted by petitioners have not been taken into consideration by respondents. The case of respondents is that no reply has ever been submitted by petitioners college. The fact mentioned herein is totally incorrect. As it is apparent that the complete proceeding against petitioners were politically motivated, therefore, reply submitted by petitioners has been ignored and order has been passed without considering the reply filed by petitioners.

12. In view of aforesaid fact, learned Counsel for petitioners submits that order impugned is liable to be quashed.

13. On the other hand, counter-affidavit has been filed on behalf of respondent Nos. 2 and 3 and learned standing counsel has put an appearance on behalf of respondent No. 1.

14. Learned Counsel for respondent-University submits that as withdrawal of affiliation proceeding u/s 37(8) of the U.P. State Universities Act, 1973 was initiated against all three institutions on the basis of complaint of one Amar Singh Yadav, the State Government on this complaint has constituted High Level Committee of three officers to inquire the allegations of the complaint. A spot inspection of the institutions was made by Committee and a report was submitted separately for three institutions mentioning that rooms are not constructed as per norms and on the spot, basic required infrastructure as per norms are not available. On the basis of the aforesaid report, Chancellor sent a letter to Registrar directing to ensure proceeding in accordance with Section 37(8) of the U.P. Universities Act for withdrawal of the affiliation. The Registrar submitted a detailed report before the Vice-Chancellor. The Registrar of the

University has issued an order dated 22.8.2006 to Three Members Committee of the Executive Council nominated by the Vice-Chancellor to examine and to study the relevant record of the institution. The Secretary Higher Education has also sent a letter dated 17.10.2006 to the Vice-Chancellor enclosing the enquiry report of the Committee. A joint report was submitted to the Vice-Chancellor and various shortcomings and irregularities were found and recommended to ask explanation from institutions. A permission was sought for sending of show cause notice/ explanation to institutions. Show-cause notice was given to institutions and various informations were sought for on 28.10.2006. After expiry of seven days of the aforesaid show cause notice dated 28.10.2006, a reminder was also sent for asking explanation within three days. Then the matter was placed before Executive Council for its meeting dated 11.3.2007 and after discussing the entire aspect of the matter and report it was decided to withdraw the affiliation of institution with effect from 11.3.2007. The decision was communicated by Registrar to the institutions.

15. Learned Counsel for respondents submits that there are two different procedure and provisions for granting affiliation and for withdrawal of granting affiliation. The affiliation is granted u/s 37(2) of the Universities Act, while affiliation can be withdrawn u/s 37(8) of the Act. If the college fails to comply any direction of Executive Council u/s 37(7) of the Act, the provisions of withdrawal of affiliation can be initiated by competent authority. The provisions and procedure of withdrawal of affiliation has also been specifically been mentioned in the statute from para 12.28 to 12.33 which is fully in consonance of the provisions of Section 49(m) of the U.P. State Universities Act. The same is being quoted below:

12.28. Continuance of affiliation shall depend on continued fulfilment of conditions laid down by the University.

12.29. An affiliated college shall be deemed to have been disaffiliated if it fails to send up any candidate for an examination conducted by the University for three successive years.

12.30. The Executive Council may direct a college not to admit students to a particular class if the conditions laid down for starting the class have, in the opinion of the Executive Council, been disregarded by the college concerned. The classes may, however, be restarted with the prior permission of the Executive Council when the conditions are fulfilled to its satisfaction.

12.31. If a college disregards the requirements of the University regarding the fulfilment of the conditions of affiliation and fails to fulfil the conditions in spite of notice issued by the University, the Executive Council may, with the previous sanction of the Chancellor, suspend the affiliation till the conditions are fulfilled to the satisfaction of the Executive Council.

12.32. (1) The Executive Council may, with the prior sanction of the Chancellor, deprive an affiliated college of the privileges of affiliation either wholly or for any

degree or subject, if it fails to comply with the directions of the Executive Council or to fulfil the conditions of affiliation or for gross mismanagement, or if for any reason the Executive Council is of opinion that the college should be deprived of such affiliation.

(2) If the salaries of the staff are not paid regularly, or if the teachers are not paid their salaries to which they were entitled under the Statutes or the Ordinances, the college concerned would be liable to withdrawal of affiliation within the meaning of this Statute.

12.33. The Executive Council shall, before taking any action under the preceding Statutes, call upon a college to take, within a specified period, such action as may appear to be necessary in respect of any of the matters referred to in the conditions of affiliation.

16. In view of aforesaid provision, it is clear that power of withdrawal of affiliation is only to Executive Council of- University, therefore, the authority as per direction by this Court, Executive Council of University has passed an order. Since N.C.T.E. is not an affiliating body and has no power to grant affiliation, as such, N.C.T.E. has got no power to withdraw the affiliation of the college. u/s 14(3)(a) of the Act, N.C.T.E. is the authority to grant recognition on certain conditions. The recognition and affiliation are entirely different things. For granting affiliation, recognition by N.C.T.E. is not only condition but one of the condition. Recognition is granted under N.C.T.E. Act while affiliation is granted under the U.P. Universities Act by the State Government on the recommendation of the University after making spot inspection by panels of inspector as per provisions of the statutes, therefore, power of withdrawal of affiliation vest only to the Executive Council as per Section 37(8) of the State Universities Act.

17. In N.C.T.E. Act there is no provision of withdrawal of the affiliation. There is a proviso for withdrawal of recognition only. In the present case, controversy is relating to withdrawal of affiliation not withdrawal of recognition. Under the present facts and circumstances of the case, it is for withdrawal of affiliation under the provisions of Section 37(8) of the State Universities Act. If the recognition has been granted by N.C.T.E., it does not mean that University or State Government has got no power to inspect the institution regarding fulfilment of terms and conditions and norms of the affiliation by the State Government in addition to the N.C.T.E. This cannot be accepted that in case after granting recognition by the N.C.T.E., the State Government is bound to grant affiliation to the petitioners' institution. Before granting affiliation by the State Government, recognition of the institution by the N.C.T.E. is one of the conditions. The object of Section 14(6) of N.C.T.E. Act does not mean that after granting recognition to any institution, State Government cannot refuse to grant affiliation if it is found that required norms laid down by the State Government for affiliation are not fulfilled by the institution. The Supreme Court judgment relied upon by the learned Counsel for petitioner is not applicable to the present case. In the aforesaid case, the issue was to grant affiliation after recognition

while the present writ petition is relating to withdrawal of affiliation after granting recognition and affiliation.

18. It is also incorrect to state that petitioners were not afforded full opportunity of hearing by issuance of show cause notice and reminders before passing the order impugned. All relevant provisions have been followed, therefore, writ petition is liable to be dismissed.

19. After hearing learned Counsel for the parties and after perusal of the relevant record, it appears that on scrutiny of applications, N.C.T.E. has granted recognition to the institution. On the said basis, Chancellor of the University vide its order dated 30.1.2003 has granted affiliation for B.Ed course for the session 2004. It appears that somebody was having enmity with petitioners and made certain complaints as well as filed a Public Interest Litigation before the Court. The said writ petition was disposed of by this Court with a direction to the State Government and other relevant authorities to make proper inspection regarding complaint and to make an enquiry in accordance with law and to pass appropriate orders. It also appears from the record that Vice-Chancellor of the University directed the Registrar to proceed with the matter and Three Member Committee was constituted inquiring into the allegation made against petitioner's college. The Three Member Committee submitted a report and a show cause notice was issued to petitioners. Petitioners submitted a reply and the order was passed for withdrawal of affiliation and the same was communicated by Vice-Chancellor vide its order dated 25.5.2007. Section 14(1) of the National Council for Teachers Education Act, 1993 provides regarding the recognition on the basis of certain norms provided under the Act. From perusal of the aforesaid provision it appears that where the college is recognised by N.C.T.E., unless and until something is found otherwise, an affiliation is to be granted by the examining body. While considering the claim after recognition given by N.C.T.E., if the University is of the opinion that particular institution is not fulfilling the norms, as provided, then Section 17 provides that on the basis of representation or suo-motu, recognition can be withdrawn. Under the State Universities Act, Sub-section (7) of Section 37 provides that Executive Council may direct affiliated college to inspect or to take action, if necessary, within a specific period and to give a notice to that effect and if direction of the Executive Council under Sub-section (7) is not fulfilled then action can be taken under Sub-section (8) of Section 37 of the Act. Section 37 itself provides regarding the procedure which is to be adopted by respondent-University while withdrawing affiliation of the college. Sub-section (7) of Section 37 provides that after inspection, if something is found lacking, Executive Council may direct an affiliated college to take necessary steps accordingly. Sub-section (8) provides that if the college fails to comply the direction of Executive Council, after obtaining the report from the management and with the prior sanction of the State Government, affiliation can be withdrawn. But from the record it appears that procedure prescribed has not been followed by respondents. The order impugned has been communicated by the Registrar only stating the fact that the

decision has been taken by Executive Council to withdraw the affiliation. Further it has to be noted that the Division Bench of this Court while disposing of the writ petition has directed that the matter be enquired and a final decision in the matter in pursuance of the report of the Enquiry Committee dated 24.4.2006 and 19.5.2006 be taken expeditiously and to refer the matter for further action to the appropriate statutory authority. The contention of petitioners to this effect appears to be correct that intention of the Court was regarding reference to the authority u/s 17 of the National Council for Teachers Education Act, 1993 but it has not been done so and decision has been taken by respondent No. 1. From the record, it does not appear that matter was referred to Executive Council for taking a decision in an appropriate manner. It also appears that from the office of the Governor, a letter was sent on 7th August, 2006 to the Registrar of the University to take action against petitioners' institution u/s 17(8) of the Universities Act after making an enquiry. On that basis it appears that Registrar of the University sent a letter dated 28.10.2006 to the institution for submitting a reply. Reply was submitted by petitioners but in the meantime, on 14.11.2006, Registrar of the University has requested the Chancellor to cancel the affiliation of petitioners' institution and it appears that on the basis of that recommendation, the order impugned has been passed and communicated to petitioners. There is nothing on record to show that decision on the basis of relevant report submitted by the Enquiry Committee was considered by Executive Council who is the relevant authority to pass the appropriate orders. From the perusal of Clause 8, it also appears that order can be passed withdrawing or curtailment with the previous sanction of Chancellor by the Executive Council in accordance with provisions of the statute. From the perusal of the order impugned it does not appear that proper procedure has been followed. Further the Apex Court judgment relied upon by petitioners in State of Maharashtra (supra) held that in case, recognition has been granted by N.C.T.E., the University was bound to grant affiliation whenever permission was granted u/s 14. The University authorities are bound to grant affiliation. The Apex Court has further held that once the recognition has been granted by N.C.T.E. u/s 14(6) of the Act, every University (examining body) is obliged to grant affiliation to such institution.

20. In view of aforesaid fact, I am of opinion that order impugned cannot be sustained as from the record it appears that Executive Council has not taken a decision in a proper manner as provided and if University authority on the basis of complaint and inspection has come to the conclusion that petitioners' institution does not fulfil the criteria, as required, after making inspection should have submitted a report to the National Council of Teachers Education for passing the appropriate orders. Once recognition has been given, affiliation can be withdrawn in a proper manner provided under the statute. If it has not been adopted, the order passed by respondents will not be just and proper.

21. In view of aforesaid fact, writ petition is allowed. The order dated 11.3.2007 is hereby quashed and the matter is remanded back to appropriate respondent

to pass the appropriate orders in accordance with law after affording full opportunity to petitioners by a speaking and reasoned order, if possible, within a period of three months from the date of production of certified copy of this order.

No order as to costs.