
(2014) 09 MP CK 0186

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10091 of 2014

Shriyut Shiksha Samiti

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(3), 17

Citation : (2014) 09 MP CK 0186

Hon'ble Judges : Rajendra Menon, J;Anil Sharma, J

Bench : Division Bench

Advocate : K.C. Ghildiyal, Advocate for the Appellant; Rahul Jain, Harpreet Ruprah and K.K. Singh, Advocate for the Respondent

Judgement

Rajendra Menon, J.—Amendment as prayed for vide I. A. No. 11813/14 is allowed.

2. Amendment be incorporated during the course of the day.

3. As the newly added respondents are formal parties and are already represented by the office of Advocate General and as the contesting respondents are only respondent nos. 2 and 3, hearing of the matter can be proceeded with.

4. Petitioner is an institute established in the District of Rewa and is imparting education in various courses including D. Ed. right from the year 2006. Petitioner was granted recognition by the National Council for Teachers Education (hereinafter referred to as the "N.C.T.E") vide Annexure P-1 on 30.06.06 for admitting 50 students for the course i.e. D. Ed.

5. The recognition and approval was granted in accordance with the statutory provisions namely the N.C.T.E. Act and in the communication made to the petitioner institute, it was indicated that the recognition is formal and is subject to receipt of list of faculties from the Western Regional Committee, (N.C.T.E.).

6. Based on the approval and recognition granted by the N.C.T.E. , the Board of

Secondary Education also granted approval and affiliation to the institute from the academic session 2006-07 which continued upto the academic session 2013-14. Petitioner institute is being treated as recognized and is receiving the benefit of recognition. However, the grievance of the petitioner started when the question for approval from the academic session 2014-15 arose and when after giving admission to the students, the institute applied for grant of affiliation and approval from the Board of Secondary Education.

7. It is the case of the petitioner that they sought for grant of renewal of their affiliation from the Board for the academic session 2014-15 and submitted their application for renewal vide Annexure P-9 on 10.03.14, when this application was submitted, petitioner received various correspondences and they were informed that the list of faculty members should be certified and approved by a Principal of the particular Government institute and in the absence of the certification, the approval for renewal of affiliation cannot be granted.

8. Various correspondences took place and it is the case of the petitioner that the Principal of the Govt. institute refused to certify the faculty members and, therefore, the petitioner requested the Board to nominate any other Principal or institute. When this was not done and finally when they were not granted affiliation, this writ petition has been filed.

9. Shri K. C. Ghildiyal took us through the documents and material available on record and submits that once the N.C.T.E. has granted approval and recognition to the institute under the statutory provisions, then seeking further affiliation from the respondent Board is not necessary. In this regard, he invites our attention to a Standing Order issued by the Board vide Annexure P-5 on 18.06.09 and clause 5 thereof to say that once, the affiliation is granted by the Board, then every year renewal of the affiliation is also not necessary as per this order.

10. However, subsequently Annexures P-6 and P-7 were issued wherein fresh provisions were made for granting affiliation and also renewal of affiliation. Shri K. C. Ghildiyal invites our attention to Clause 11 of the new guidelines and scheme for affiliation Annexure P-7 dated 22.02.14 to say that this clause pertains to grant of affiliation for the first time to a newly established institute and it is only in Clause 11 that the provision is made for certification of the faculty by the Principal of the Govt. institute. It is argued by him that as far as renewal for affiliation of an already running institute is concerned, the same is contemplated under clause 13. This clause provides for renewal but does not say about certification as per the provision contemplated under clause 11.

11. Shri K. C. Ghildiyal drew our attention to the distinction between the two clauses and emphasized that in the matter of renewal of affiliation of an already established institute, further certification by the Principal of the Govt. college as contemplated under clause 11 is not necessary and, therefore, he argues that insistence of the respondents in getting the certification done by the Principal of

the Govt. College with regard to faculty members is not warranted.

12. However, after making such a submission in the alternate, he argued that even if such certification is necessary, petitioner is willing to get its faculty certified. He refers to various correspondences available on record to say that petitioner is willing to adhere to this alternate prayer but the Board has not considered the same in the matter of grant of renewal of affiliation and the situation now created by the respondents is not proper. It is further stated by Shri K. C. Ghildiyal that once, the N.C.T.E. has granted the approval and affiliation for all the years right from the academic session 2006-07, the action of the respondents in denying the affiliation to the petitioner institute is unsustainable. He further stated that N.C.T.E. is impleaded as a formal party but he criticized the manner in which the respondent no. 3 has filed the return in which it has stated that after the session 2006-07, there was no formal order of recognition passed in favour of the petitioner institute, and, therefore, affiliation to the institute could not be granted.

13. Shri K. C. Ghildiyal vehemently criticized this return filed by the N.C.T.E. and invited our attention to the order Annexure P-2, material in the official website of the N.C.T.E. wherein the list of recognized institutes are displayed, it is pointed out that right from the year 2006-07 upto the academic session 2014-15 in the website of the N.C.T.E., the name of the petitioner institute is indicated at serial no. 95 as a recognized institute having approval from N.C.T.E. It is said that this attitude of the respondents in denying the claim for affiliation is not correct.

14. That apart, he invites our attention to the principles laid down by the Supreme Court in the case of Vedula College of Education Vs. Barkatullah University, , Rewa B.Ed. College Vs. National Council for Teachers Education I. L. R. 2008 M. P. 706 and a judgment of the Supreme Court in the case of Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, to make out a contention that once the recognition/approval is granted by the N.C.T.E. in accordance with the provisions of Section 14(3) of the N.C.T.E. Act until and unless the recognition is not withdrawn under Section 17, the recognition continues and the institute can function. Accordingly, Shri Ghildiyal submits that in the facts and circumstances of the case, respondents be directed to grant affiliation to the institute for the academic session 2014-15.

15. Shri K. K. Singh, learned counsel appearing for the N.C.T.E. only made a submission that the order Annexure P-1 dated 30.06.06 granting recognition to the petitioner institute for the academic session 2006-07 is a provisional recognition and, therefore, the submission made in the return is correct.

16. However, Shri Harpreet Ruprah tried to emphasize that to check malpractices and various irregularities committed by various institutes, the Board has formulated a policy for insisting on checking the credentials of the institute, its faculty and in this regard, petitioner should not have any grievance and he tried to justify the action of the respondent Board.

17. We have considered the rival contentions and we find that the institute in question is granted recognition by the N.C.T.E. vide Annexure P-1 and if the documents Annexures P-2 and P-3 are taken note of, we find that upto 13th June, 2014, the N.C.T.E. is treating the petitioner institute to be recognized under the provisions of Section 14(3) of the N.C.T.E. Act. This fact is evident from the material available on record and, therefore, the assertion made by the respondent N.C.T.E. in the return that the petitioner institute is only having a formal recognition seems to be an assertion made casually without referring to the facts and circumstances of the case and the principles of law laid down in various cases as indicated by Shri K. C. Ghildiyal are correct.

18. Accordingly, we are not inclined to accept the objections raised by the N.C.T.E. to say that the institute is not approved or recognized. There is no material available on record to show that the N.C.T.E. has cancelled or withdrawn the recognition/approval and is prohibiting the petitioner institute from admitting students to the course in question.

19. That apart, we find that the petitioner institute is treated by N.C.T.E. to be fulfilling all the norms as are required for recognition upto the current academic session 2014-15 and on such assumption, we are proceeded to decide the main controversy involved in the matter.

20. The Board of Secondary Education has granted the affiliation to the petitioner institute right from the year 2006- 07 and in view of the circular namely the Standing Order dated 18.06.09 Annexure P-5 issued by the Secretary of the Board of Secondary Education, Bhopal, the affiliation continues till the session 2013-14.

21. However, when the new scheme for affiliation for the current academic session vide Annexure P-7 was issued, a new guideline and procedure for affiliation was brought into force and this guideline is relevant for the purpose of deciding the present controversy, only clause 11 and clause 13 are relevant, Clause 11 reads as under:-

Clause 13 reads as under:-

22. On a meticulous analysis of the aforesaid clauses, we find that the process for certification of the faculty through a Principal of the Post-graduate College of the district as is contemplated in Clause 11 is for seeking fresh affiliation whereas Clause 13 deals with the procedure for renewal of affiliation and in this procedure, there is nothing to indicate that the provisions of Clause 11 and the procedure contemplated therein for certification of the faculty is applicable in cases of renewal. This clause i.e. Clause 11 specifically says that for renewal of recognition and affiliation, the Principal certification is necessary.

23. It is therefore a case where the respondent Board is unable to justify their action in insisting upon the petitioner institute to get certification of its faculty for renewal nor is it unable to show that the institute has violated the norms of

affiliation with regard to the faculty members.

24. However, the Board of Secondary Education has the power to verify the credentials of the faculty members and they can always insist upon to get verification of the faculty but in the garb of doing so, they cannot say that a particular procedure should be followed, then only renewal can be granted. This cannot be done in view of the different procedure laid down in the guidelines for fresh grant and renewal.

25. Accordingly, we are of the considered view that the petitioner institute has submitted their application for renewal vide Annexure P-9 and also enclosed the particulars of staff and faculty from page 41 onwards, therefore, the Board should now examine the same and if they find that the credentials of the faculty members have to be verified by a Principal of the post-graduate college, they may get it verified and after hearing the petitioner institute again, decide the question of affiliation. However, as a pre-condition, insisting upon the faculty to be verified before consideration of the matter, we are of the considered view that the Board has committed an error and has acted in contravention of the circular Annexure P-7 dated 22.02.14.

26. The Board has a right to verify the credentials of the institute even for the purpose of renewal but that has to be done by the Board while considering the application for renewal and the Board has to follow such a procedure for renewal as permissible under law. In implementing the provisions and formalities as provided in clause 11 for the purpose of renewal also, the mandate of the circular dated 22.02.14 Annexure P-7 is violated. For the purpose of renewal of affiliation, only the requirements of Clause 13 can be insisted upon.

27. Accordingly, we allow this petition, quash the decision and order of the Board dated 3.06.14 and issue the following directions :-

The Board shall process the application of the petitioner institute for renewal Annexure P-9 in accordance with the procedure contemplated for renewal and the observations made hereinabove, get it verified if required and in case, any defect or error arise, a reasonable opportunity be given to the petitioner to rectify the error and accordingly decide the application for grant of renewal in accordance with law within a period of two months from the date of receipt of certified copy of this order.

28. With the aforesaid, the petition stands allowed and disposed of.