

(2008) 08 MP CK 0063

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5244 of 2008

Siddhi Vinayak Education Society

APPELLANT

Vs

Devi Ahilya Vishwavidyalaya and Others

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

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

Citation : (2008) 3 JLJ 186 : (2008) 4 MPLJ 134

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Piyush Mathur, for the Appellant; Vivek Sharan, for the Respondent

Final Decision : Dismissed

Judgement

Vinay Mittal, J.

This order shall dispose of four writ petitions being WP No. 5244/2008, WP No. 5245/2008, WP No. 5246/2008 and WP No. 5247/2008, as facts of all the four cases are identical and similar arguments have been raised before the Court. For the sake of convenience, facts are borrowed from WP No. 5244/2008.

The Petitioner Siddhi Vinayak Education Society is an educational society, registered under the provisions of Madhya Pradesh Society Registrickaran Adhiniyam, 1973, with effect from May 13, 1997. It is running an educational college at Indore known as Matushree Ahilya Devi Teachers" Education Institute.

The National Council for Teachers" Education (NCTE) is the apex body regulating teachers" training/education in various educational institutions throughout the country and is governed by the National Council for Teachers Education Act, 1993 (hereinafter referred to as "the Act"). Regulations have been framed for governing the procedure for obtaining the recognition and other ancillary matters and are known as National Council for Teachers" Education (Recognition Norms and Procedure) Regulations, 2005 (hereinafter referred to as "the Regulations").

As per the Act and the Regulations, an educational institution is required to obtain a recognition from NCTE before commencing the Diploma/Bachelor or post-graduate courses for teachers' training and thereafter is entitled to seek an affiliation from the relevant University/ Board.

The Petitioner college obtained a no objection certificate from the Higher Education Department of the State Government on May 18, 2007, for running Master's in Education (M.Ed.) course. After getting the aforesaid no objection certificate, the Petitioner college applied to NCTE for seeking recognition under the Act and the Regulations. A conditional recognition order was passed by NCTE on June 16, 2007. The Petitioner college was required to comply with certain conditions for employment of staff, etc. On compliance of the aforesaid conditions, an unconditional order of recognition was passed by the NCTE on January 5, 2008. Armed with the aforesaid order of recognition from NCTE, the Petitioner college applied to the Devi Ahilya Vishwavidyalaya, Indore (hereinafter referred to as "the University"), for grant of requisite affiliation for running M.Ed, classes for the academic session 2007-08. The University accepted the request made by the Petitioner college and granted affiliation on January 17, 2008 (It may be relevant to notice here that in case of remaining three colleges, the Petitioners in other writ petitions, the affiliation was granted by the University much later, i.e., in the month of February/April, 2008).

It appears from the record that even prior to the grant of an unconditional recognition by the NCTE on January 5, 2008 and much prior to the grant of affiliation by the University on January 17, 2008, the Petitioner college, in a wholly unauthorized manner, had admitted twenty five students in the month of July/August/September, 2007 itself.

The examinations to the M.Ed course for the academic session 2007-08 are to be conducted by the University and are due to commence with effect from August 27, 2008. The Petitioner college has pleaded that examination forms of all the twenty five admitted students, along with examination fee, were duly forwarded by it to the University.

It appears that the University, with a view to ascertain the teaching days completed by the students admitted to the Petitioner college, had required information from the Petitioner college with regard to the number of teaching days which the students had completed in the college after the grant of recognition/affiliation.

The college appears to have supplied the requisite information to the Respondents-University. In the aforesaid reply the Petitioner college maintained that since the admissions had been granted to the students by the college much prior to the affiliation, on conditional recognition having been granted by the NCTE, therefore, each of the students had completed more than 180 days of actual teaching days. The matter appears to have been considered by the Respondents-University and vide an order dated August 12, 2008, the Petitioner

college has been informed that since the admitted students of the college had not completed 180 days in one academic year after the recognition granted by the NCTE and the recognition from the NCTE could not be treated to be with retrospective effect in nature, therefore, the said recognition would only be prospective. In these circumstances, the Respondent University has refused to grant permission to the students admitted by the Petitioner college to take M.Ed. Examinations commencing with effect from August 27, 2008.

The aforesaid order/communication issued by the Respondent-University has been appended as Annexure P-15 with the present petition and is the subject-matter of challenge before this Court.

At the outset, it may be relevant to notice that an intervention application has been filed by certain colleges, namely Indore Mahavidyalaya and others. Shri A.S. Kutumbale, learned senior counsel for the interveners has expressed an apprehension that the aforesaid intervention application has been filed only with a view to contest an ex (sic)pate interim order, which may be passed by the Court, staying the holding of the examinations. Shri Kutumbale states that the interveners are not at all interested in the controversy between the Petitioners and the University, in any manner.

I have heard Shri Piyush Mathur, learned Counsel for the Petitioner and Shri Vivek Sharan, learned Counsel for the Respondent-University, which are the only contesting parties to the writ petitions.

Shri Piyush Mathur, learned Counsel for the Petitioner has argued that once the recognition was granted by the NCTE and an affiliation was granted by the University, then under any circumstances, the admitted students of the Petitioner college could not have been denied the permission to take the examinations, which were to commence from August 27, 2008 and, therefore, the action taken by the Respondent University in passing the order Annexure P-15, was wholly without any authority and jurisdiction, and was also unwarranted under the facts and circumstances of the case. Shri Mathur has also maintained that as per the provisions of the Act and the Regulations, even a violation of the provisions of the Act and the Regulations could only be monitored by the NCTE itself and the University had no authority to enforce the said Regulations by claiming the violation thereof by the Petitioner college.

On the other hand, Shri Vivek Sharan, learned Counsel for the Respondents University, has placed strong reliance upon Regulation 8(10) of the Regulations to contend that an institution was required and entitled to make admissions only after obtaining unconditional letter of recognition from the Regional Committee of NCTE and affiliation from the examining body. Shri Sharan points out tht since in the present case, an unconditional order of recognition had been granted by the NCTE only on January 5, 2008 and affiliation had been accorded by the Respondent University on January 17, 2008, therefore, the Petitioner college had absolutely no authority or jurisdiction to admit any students to M.Ed, course in

the month of July/August/September, 2007. Shri Sharan has maintained that the admissions granted to the students by the Petitioner college were in fact wholly unauthorized and even contrary to the recognition order. Shri Sharan has also defended the order Annexure P-15 passed by the Respondent University and has maintained that the order of recognition Annexure P-6, dated January 5, 2008, passed in favour of the Petitioner college specifically provided for grant of recognition/permission for starting M.Ed. (Co.Ed.) course of one year duration with an annual intake of 25 (PG) students. Thus, according to Shri Sharan, the recognition had specifically stipulated the completion of one year duration for the course and since, in the present case, affiliation had been granted to the Petitioner college on January 17, 2008, therefore, requisite 180 teaching days within one year could never be deemed to have been completed. Shri Sharan has also placed strong reliance upon the two Division Bench judgments of this Court (Principal seat) in cases of Jan Seva Shiksha Samiti v. State of Madhya Pradesh and Ors. WP No. 12133/2007 (and other connected matters) decided on December 14, 2007 and WP No. 9926/2008 decided on August 19, 2008, Swami Vivekanand College of Professional Studies v. The State of Madhya Pradesh and Ors.

I have duly considered the rival contentions raised by the learned Counsel for the parties and with their assistance have also gone through the record of the case. In my considered view, the writ petitions are wholly devoid of any merit and are liable to be dismissed.

Concededly, the facts on record show that after obtaining a no objection certificate from the Higher Education Department of the State Government on May 18, 2007, the Petitioner college had applied for obtaining recognition from NCTE under the Act and Regulations. A conditional order of recognition was passed by the NCTE on June 16, 2007. Certain conditions were imposed. Later on the aforesaid conditions were complied with and an unconditional order of recognition was passed on January 5, 2008 by the NCTE. The aforesaid unconditional order has been appended as Annexure p-6 with the present petition. Relevant extract from the aforesaid recognition order may be noticed as follows:

3. Now therefore, in exercise of the powers vested u/s 14(3)(a) of the NCTE Act, 1993, the Western Regional Committee hereby grants recognition to Matushri Ahilyadevi Teachers Educational Institute, Village Sulakhedi (Manglia) Post Kadwali Bujurg, Indore-453771, Madhya Pradesh for conducting M.Ed. (Co.Ed.) course of 1 year duration with an annual intake of 25 (PG) students under Clause 7(10) of Regulation dated 13.1.2006 (if applicable) subject to fulfilment of the following:

I. The institution shall, within one month of the receipt of recognition order, convert the endowment fund account into a joint account to be operated along with an official of the Western Regional Committee.

II. The institution shall comply with the various other norms and standards prescribed in the NCTE regulations, as amended from time to time.

Armed with the aforesaid recognition, the Petitioner college applied to the Respondent University for obtaining an affiliation for conducting one year duration M.Ed. Course. The aforesaid affiliation was granted to the Petitioner college by the Respondent University on January 17, 2008. However, for the reasons best known to the Petitioner college and without there being any authority vested in it, the Petitioner college had chosen to admit twenty five students to M.Ed course in the months of July/August/ September, 2007. The aforesaid admissions, apparently, were much prior to the order of recognition by the NCTE and even prior to the affiliation granted by the Respondent University. Although the Petitioner college has maintained that the admitted students had continued to study the course and attend the classes conducted by it, but it is also apparent that the aforesaid admissions being wholly unauthorized and illegal, the classes conducted by the Petitioner college for M.Ed course were without any justification and could not be treated to be the classes ever authorized by the NCTE or the University.

It further appears that when the University sought information from the colleges with regard to the days completed by each of the admitted students, after the affiliation, the college in its reply tried to take the advantage of its illegal admissions made prior to the recognition by the NCTE itself. However, while passing the impugned order, Annexure P-15, the University has rightly rejected the claim made by the Petitioner college by observing that the recognition granted by the NCTE was to operate prospectively and could not be treated to be retrospective, in any manner. It has also been observed by the University, that as per the recognition granted by the NCTE, the academic year was of one year, out of which, 180 teaching days were required to be completed by a student seeking examination to M.Ed course. Apparently, the Petitioner college had never conducted a course for one year and had never completed 180 teaching days in the duration of one year, as was required under the recognition letter, Annexure P-6. Relevant extract from the recognition letter has already been quoted above. The Petitioner college cannot be claimed to have fulfilled the aforesaid essential conditions, entitling the admitted students to appear in the examinations.

It may also be noticed that in WP No. 5245/2008, Yash Shikshan Sansthan Evam Gramin Vikas Samiti v. Devi Ahilya Vishwavidyalaya and Ors., the unconditional recognition was granted by the NCTE on March 15, 2008 and affiliation was granted by the University on April 11, 2008; in WP No. 5246/2008, in the case of Vidya Sagar School Samiti v. Devi Ahilya Vishwavidyalaya and Ors., the unconditional recognition was granted by the NCTE on January 10, 2008 and affiliation was granted by the University on April 11, 2008; and in WP No. 5247/2008, Shri Kanwar Tara Chazed Parmarthik Nyas v. Devi Ahilya Vishwavidyalaya and Ors., unconditional recognition was granted by the NCTE on April 24, 2008 whereas the affiliation seems to have been granted on February 6,

2008, by the University.

At this stage, it would also be pertinent to notice the directions issued by a Division Bench of this Court in the case of Jan Seva Shiksha Samiti (*supra*), as follows:

12. Regard being had to the factual matrix in entirety, we proceed to state our conclusions and directions in seriatim:

(a) Though the letters of recognition issued by the NCTE are couched in different phraseology in various cases, yet the same lead to one inescapable conclusion that they are conditional recognitions.

(b) The conditional recognitions could have been ripened after satisfying certain statutory requirements like appointment of teaching and non-teaching staff and other conditions enumerated/provided in regulations 7 and 8 of the Regulations as they are conditions precedent and relate to fundamental realm of recognition.

(c) Certain conditions are relatable to the institutions after they become functional but on that foundation it cannot be construed that the orders of recognition are totally unconditional.

(d) The State Government cannot refuse "no objection certificate" relying on the M.R. Vishwavidyalaya Adhinyam, 1973 in view of the decision of the apex Court rendered in the case of Sant Dhyaneswar Shikshan Shastra Mahavidyalaya (*supra*).

(e) The institutions are bound to follow the regulations of the NCTE and the Universities are required to respect the regulations as they have overriding effect on the University statutes.

(f) As the Union of India has interfered with the pending applications and the present cases do constitute a hybrid category, it is apposite that the apex body of the NCTE shall look into the matter from all spectrums including calling for recommendations from the State Government with a specified span of time.

(g) If the apex body of NCTE grants unconditional recognition the University shall extend the benefit of affiliation and in case the conditional recognition is granted by the NCTE the University shall grant affiliation on satisfaction of the conditions enumerated in the order itself and shall not entrench or encroach upon the field by taking recourse to its Act or its statutes.

(h) The University shall be totally bound by the conditions imposed in the order and shall not travel beyond them.

(i) The institutions who have admitted students *de hors* the Act and the regulations and admitted students without proper recognition and affiliation cannot be extended the benefit of equity and the students who have been admitted can be imparted education afresh after recognition and affiliation are granted.

(j) If the institutions are eventually granted recognition and affiliation fees collected from the students shall be adjusted for fresh course which would commence after recognition and affiliation.

(k) If the students do not intend to prosecute studies in the institution they would be entitled to claim refund of their fees and the institution shall be bound to refund the fees to the said students on receipt of proper application, as the institute, as have admitted the students at their own risk." [emphasis supplied]

It would also be relevant to notice some observations made in the case of Swami Vivekanand College of Professional Studies (*supra*), as follows:

It is clear from the bare language of Regulation 8(12) quoted above, that the institution shall make admission only after it obtains an order of recognition from the Regional Committee concerned under Regulation 7(11) and affiliation from the examining body. Hence, the Petitioner college could not have admitted the additional 50 students in the D.Ed. course during the academic year 2007-08 without first obtaining the order of recognition from the NCTE and affiliation from the Board. The admission of the additional 50 students is, therefore, contrary to the statutory regulations and such students admitted contrary to the regulations cannot be allowed to take examinations conducted by the Board.

It is, thus, clear that the Petitioner college cannot claim to have acquired any rights for itself and for its admitted students, on the basis of admissions which were apparently in clear violation of the regulations and also in utter disregard of the fact that no order of recognition had been passed by the NCTE and no affiliation had been granted by the University at the time when the Petitioner college had chosen to admit students.

This brings me to the next limb of the argument raised by Shri Piyush Mathur, as noticed above. Shri Mathur has raised a complaint against the University that it could not be permitted to enforce the regulations, a right which was vested only in NCTE. The argument, on the face of it, is fallacious and cannot be accepted. NCTE as well as the University are both bodies, which are involved in the controlling and regulating of imparting education to the students. In fact, the nature of job and performance of duties of both the aforesaid bodies are complementary to each and cannot be treated to be exclusive of each other. Grant of recognition by the NCTE presupposes the grant of affiliation at the later relevant time by the University and the grant of affiliation by the University essentially requires a prior recognition by the NCTE. Thus, if the conditions of recognition are found wanting by the University, the University can always refuse affiliation, and in any case, having granted affiliation, is not bound to permit the admitted students to appear in the examinations, if such admitted students are found deficient in fulfilment of the essential conditions as per the recognition letter. The University appears to have taken note of prevalent malpractices in the country, whereby a large number of teaching shops have come up, taking advantage of liberal attitude adopted by the Central/State Governments. Rather

than permitting a right to establish an educational institution, merely teaching shops are growing every day. The aforesaid practice needs to be curbed with strong hands. The course adopted by the University, rather than being commented adversely, needs to be commended.

Consequently, I do not find any merit in the present petition. The same is dismissed. No order as to costs.

For the view, I have taken above, and also keeping in view that all the writ petitions have been dismissed, the intervention applications have been rendered infructuous and are disposed of accordingly.

CC as per rules.