

(2015) 08 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13481 of 2015 (O&M)

Sri Guru Ramdass Charitable Society

APPELLANT

Vs

Guru Nanak Dev University and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

National Council For Teacher Education Act, 1993 — Section 14, 14(6), 15, 16, 32

Citation : (2015) 08 P&H CK 0096

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Rajiv Atma Ram, Senior Advocate and A.P.S. Bhinder, for the Appellant; Amrit Paul, Advocate and Pankaj Mulwani, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Gurmeet Singh Sandhawalia, J—The petitioner society seeks a writ of Mandamus directing the respondent No. 1-University to grant affiliation to it from academic session 2015-16 and to permit the petitioner society to make admission to the B.Ed. course on the basis of merit as determined by the Association of Private Self-financing B.Ed. Colleges, Punjab. A writ in the nature of Certiorari quashing the order dated 1.6.2015 (Annexure P-9) whereby the University had declined its request for grant of affiliation on the ground that as per Statute 13 of the University Calendar 2007 Volume I, the last date of opening new college was prescribed as 1.12.2014. In the present case the application had been received from the petitioner College on 15.5.2015 after the prescribed date. Accordingly, request for opening the College for the session 2015-16 was not to be considered and it was open to the petitioner to apply for session 2016-17 application for which could be sent till the prescribed date i.e. 1.12.2015.

2. The pleaded case of the petitioner is that it had applied to the National Council for Teachers Education (hereinafter referred to as "the NCTE") for recognition on 31.12.2012 under the National Council for Teachers Education Regulations, 2009.

The National Council for Teachers Education (Recognition Norms and Procedure) Regulations, 2014 (hereinafter referred to as "the 2014 Regulations") came into force which was framed under the National Council for Teachers Education Act, 1993 (hereinafter referred to as "the NCTE Act") and letter of intent dated 10.5.2015 (Annexure P-4) was issued by the NCTE. The petitioner College was visited by the inspecting team and certified that the College had adequate financial resources, accommodation, library and laboratory as per NCTE norms and standards. The petitioner College had submitted a request on 13.5.2015 (Annexure P-5/A) to the respondent-University for nominating its experts for the purpose of staff selection and a body of experts including 2 Principals had been nominated. The interviews were conducted on 29.5.2015 in which the said experts had participated. The nomination of the experts by the University and the recommendations of the Selection Committee were appended as Annexures P-5/B, P-5/C and P-5/D. The formal recognition order dated 25.5.2015 (Annexure P-7) had also been issued by the NCTE and thereafter even no objection certificate dated 27.6.2015 (Annexure P-6) had been issued by the State of Punjab. The petitioner had submitted an application for affiliation on 15.5.2015 along with requisite amount for the sessions 2015-16 which had been rejected vide impugned order dated 1.6.2015 (Annexure P-9) on the ground noticed above that the said application was made after 1st December of the preceding year the one from which the College wants to start academic session.

3. The Vice-Chancellor and the Dean had been contacted and various representations have been submitted but no action has been taken on the same.

4. In the written statement filed by the respondent-University, the defence taken is that in terms of Statute 13 given in Chapter V of its Calendar 2007 Volume I, the last date for receipt of applications for admission of Colleges to the privileges of the University is Ist December of the year preceding the one in which it is proposed to start the classes. Since the application had been received on 15.5.2015, the University could not go against its own statute. Respondent No. 1-University was not obliged to grant affiliation to the petitioner College for the session 2015-16 without it fulfilling the various norms of the University. Section 16 of the NCTE Act, 1993 was also referred to, and it is submitted that the University has a right to satisfy itself about the fulfillment of the statutory conditions and Regulation 8(10) of the 2014 Regulations was also referred to. It was further averred that the petitioner society did not fulfill the aforesaid requirements of minimum norms for the teaching and non-teaching staff as laid down by the NCTE and was not entitled to seek affiliation. The teaching faculty mentioned had never been selected but only held eligible. Two advertisement issued by the petitioner society in different newspapers were not for the same posts. In one there was no mention of the post of Principal and in the other, only 16 posts of Assistant Professors have been advertised. There was variance and the advertisement should have been given in atleast two newspapers.

5. In the replication filed by the petitioner, it was averred that Regulation 5(5) of

the 2014 Regulations stipulates that in order to get recognition application must be made between 1st March to 31st May of the preceding session from the academic session for which affiliation is sought and the recognition would be granted and communicated to the applicant on or before 3rd day of March of the succeeding year. There was conflict as such between the University Regulations and the NCTE Regulations and the later is to prevail. There was no requirement that advertisements in two newspapers was to be issued as contended for calling of the applications and the University was acting in discriminatory manner as another College namely, the Batala College of Education had also issued advertisement in only one newspaper. The university nominees had participated in the selection process after noticing this fact and after finding them to be eligible and selecting they could not object at this stage.

6. Counsel for the petitioner has accordingly raised a legal submission that NCTE Regulations being a parent statute would prevail over the statute of the University and has placed heavy reliance upon the judgment of the Apex Court in *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others*, (2013) 1 AD 428 : (2012) 12 SCALE 440 : (2013) 2 SCC 617 . It is submitted that the Act itself provide that once there is a recognition granted, affiliation has to follow as a matter of course. Reliance has also been placed upon the judgment of the Apex Court in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others*, (2006) 4 JT 201 : (2006) 3 SCALE 675 : (2006) 9 SCC 1 .

7. Mr. Amrit Paul, counsel for the University on the other hand submitted that at this stage it is too late in the day to grant affiliation since the classes have commenced from 10th August, 2015. The judgment in *Maa Vaishno Devi's* case (supra) itself had also been relied upon to submit that the time table was fixed by the Apex Court and specific directions were issued as to what is the last date for affiliation and it has further been ordered if the same was not adhered to it would amount to contempt of Court. The syndicate meeting dated 28.6.2007 was referred to show that there should be minimum three eligible candidates for each post and advertisement has to be given in two newspapers one English and one Punjabi. The selection committee had only identified the staff but not given the approval of appointments. The University could verify whether the land and building was in place and whether full faculty was in place before granting affiliation. The recognition granted on 25.5.2015 was beyond the schedule prescribed as per the 2014 Regulation itself and therefore no fault could be found in the decision of the University.

8. The NCTE Act no doubt gives the primacy to the Council and the recognition which is to be granted under Section 14(6) of the NCTE Act. The examining body is to grant affiliation where recognition has been granted and as per Section 16 the NCTE Act the same is to be done after the recognition or permission had been granted by the Council. Relevant provisions read as under:-

14. RECOGNITION OF INSTITUTIONS OFFERING COURSE OR TRAINING IN

TEACHER EDUCATION

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4),-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused."

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16. AFFILIATING BODY TO GRANT AFFILIATION AFTER RECOGNITION OR PERMISSION BY THE COUNCIL:

Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,--

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution, Unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under Section 15."

9. Under Section 32 of the NCTE Act power to make regulations is given and the 2014 Regulations provide the manner of making the application and time limit. As per Regulation 5(5) of the 2014 Regulations the duly completed application in all respects is to be submitted to the Regional Committee of the NCTE between 1st March to 31st May of the preceding year of the academic session for which recognition is sought for. Under Regulation 5(6) of the 2014 Regulations processing is to be done of the application received between the said dates for the next academic session and final decision either recognition granted or refused is to be communicated before 3rd day of March of the succeeding year. The relevant provisions read as under:-

"5. Manner of making application and time limit.--

(1) An institution eligible under regulation 4, desirous of running a teacher education programme may apply to the concerned Regional Committee for recognition in the prescribed application form along with processing fee and requisite documents:

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(5) Duly completed application in all respects may be submitted to the Regional Committee concerned between 1st March to to 31st May of the preceding year from the academic session for which recognition is sought: Provided that the aforesaid period shall not be applicable for submission of application to innovative programmes of teacher education.

(6) All applications received online from 1st March to 31st May of the year shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year."

10. As per Regulation 7(4) of the 2014 Regulations while application is being processed the written communication is to be sent by the Institution to the affiliating body also and as Regulation 7(13), the NCTE is to inform through a letter of intent regarding the decision for grant of recognition or permission

subject to appointment of qualified faculty members before the commencement of the academic session. The affiliating body is also to be given the information so that staff and faculty can be appointed as per the norms of the Council within two months. The institution then has to submit the list of faculty as approved by the affiliating body to the Regional Committee. Relevant clauses of the 2014 Regulations read as under:-

7. Processing of applications.--

(1) In case an application is not complete, or requisite documents are not attached with the application, the application shall be treated: incomplete and rejected, and application fees paid shall be forfeited.

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(4) A written communication alongwith a copy of the application form submitted by the institution shall be sent by the office of Regional Committee to the State Government or the Union territory administration and the affiliating body concerned within thirty days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

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(13) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per the norms of the Council within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

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(16) The letter granting approval for the selection or appointment of faculty shall also be provided by the institution to the Regional Committee with the document establishing that the Fixed Deposit Receipts of Endowment Fund and Reserve Fund have been converted into a joint account and after receipt of the said details, the Regional Committee concerned shall issue a formal order of recognition which shall be notified as provided under the Act."

11. Similarly under Regulation 8 and sub-regulation (10) of the 2014 Regulations, the affiliation is to be granted only after formal recognition order is issued under sub-regulation (16) of Regulation 7 is to be issued. Relevant Regulations of the 2014 Regulations read as under:-

"8. Conditions for grant of recognition.--

(1) New Teacher Education Institutions shall be located in composite institutions and the existing teacher education institutions shall continue to function as stand-alone institutions; and gradually move towards becoming composite institutions.

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(10) The university or examining body shall grant affiliation only after issue of the formal recognition order under sub-regulation (16) of regulation 7 and admissions by the institution shall be made only after affiliation by the university or affiliating body."

12. In the present case as noticed, letter of intent was issued only on 10.5.2015 which was much later than the prescribed date of 3rd of March as per Regulation 5(6) of the 2014 Regulations. The formal recognition order was only issued on 25.5.2015(Annexure P/7) from the academic session 2015-16 subject to fulfillment of the conditions prescribed. As per the condition the institution could make admission only after getting affiliation from the examining body and the institution would have to show required number of academic staff was in position. As per Clause 4 of the said recognition, the affiliating body was to verify the authenticity of the land & building documents as well as appointment of requisite teaching & non-teaching staff before grant of affiliation to an institution. The said clause reads as under:-

"4. Further, the recognition is subject to fulfillment of all such other requirements as may be prescribed by other regulatory bodies like UGC, affiliating University Body, the State Government etc. as applicable. The affiliating body (University/ State Govt.) shall also required to verify the authenticity of the land & building documents as well as appointment of requisite teaching & non-teaching staff as per provisions of the NCTE Regulations, 2014 by the concerned institution before grant of affiliation to an institution."

13. The Apex Court in Maa Vaishno Devi's case (supra) decided on 13.12.2012 while considering the issue of the provisions of the NCTE Act laid down a schedule which has now been recognized in the 2014 Regulations itself. A specific date of issuance of formal order of recognition was fixed as 3rd day of March as per Sr. No. 12 of the Schedule. The last date submitting the proposal for affiliation was before 10th of May as corrected at Sr. No. 13. Similarly all other actions had to be completed by 10th of May. The relevant observations reads as under:-

"87. Compelled with these circumstances and to ensure that there exists no ambiguity, uncertainty and confusion, we direct and prescribe the following schedule upon a cumulative reading of the Regulations and judgments of this Court in relation to recognition and affiliation."

All notices/orders/requirements/letters in terms of the above schedule or under the provisions of the Act or terms and conditions of already granted recognition/ affiliation shall be sent by the authority concerned by Speed Post/e-mail on the

address given in the application for correspondence etc. and shall be posted on the website of the concerned Authority/Committee/Council/Government.

The recognition and affiliation granted as per above schedule shall be applicable for the current academic year. For example recognition granted up to 3rd March, 2013 and affiliation granted up to 10th May, 2013 shall be effective for the academic year 2013-2014 i.e. the courses starting from 1st April, 2013. For the academic year 2013-2014, no recognition shall be issued after 3rd March, 2013 and no affiliation shall be granted after 10th May, 2013. Any affiliation or recognition granted after the above cut off dates shall only be valid for the academic year 2014-2015.

We make it clear that no Authority/person/Council/Committee shall be entitled to vary the schedule for any reason whatsoever. Any noncompliance shall amount to violating the orders of the Court."

14. The Hon"ble Apex Court vide order dated 28.6.2013 passed in IA No. 8 in Writ Petition (Civil) No. 276 of 2012-Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of UP. and others corrected the dates in the schedule for affiliation for the academic years 2014-2015 onwards in the following manner:-

15. From perusal of above schedule it would rather go on to show that it had been specifically laid down that affiliation had to be granted by 10th of May and would be effective for the said academic session and no affiliation was to be granted after the said date. Counsel for the University is well justified in submitting that if the NCTE is late in processing the application, University could not be asked to flout direction of the Apex Court. Reliance has also been placed upon the relevant statute of the University which provided that the last date for receipt was 1st day of December and Statute 13 of Chapter V of Calendar 2007 Volume I reads as under:-

"13. No. application for admission to the privileges of the University from a new College shall be entertained unless full facts regarding the Endowment Fund or the guaranteed income are available. A Committee of enquiry shall be appointed only after the Academic Council is satisfied that the Institution applying for admission to the privileges of the University possesses the required funds, etc. The last date for receipt of applications for admission of Colleges to the privileges of the University is December 1 of the year preceding the one in which it is proposed to start the classes"

16. Similarly a decision of the Syndicate in the meeting held on 28.6.2007 also provides that how the staff is to be selected and how the advertisement is to be done. Relevant portion reads as under:-

"The advertisements for the posts of Principals and lecturers be given in two different newspapers (one English and one Punjabi) and that interview be held on receipt of applications of minimum three eligible candidates for each post. But, if three applications for the posts of Principals/Lecturers are not received,

then the post be re-advertised after giving a gap of 7 days. For the advertisement given for the second time, the applications received earlier may also be considered and the interview may be got conducted of whatever eligible candidates are there. Here it is clarified that those candidates who had applied in response to the first advertisement, they will not be required to apply again. For these posts, those candidates who are already doing regular service in an institution, they will have to apply through proper channel."

17. Therefore, keeping in view the fact that schedule has been fixed and there was a delay on part of the NCTE, no fault can be found as such with the action of the University in declining the affiliation within a short prescribed period. The formal recognition was only granted on 25.5.2015 and the petitioner's application was rejected on 1.6.2015.

18. It is necessary to mention that respondent-NCTE remains unrepresented on account of being unserved, therefore, it has not filed any counter. The contesting party being only the University, the matter was proceeded ahead with, in view of the urgency of the matter.

19. A Division Bench of this Court in *Saint Solider Educational Society, Janakpuri New Delhi and another Vs. State of Punjab and others* 2009 (3) RSJ 246 while taking into account the observations made by the Apex Court in *Sant Dayaneshwar's case* (supra) distinguished the same and held that the University is a regulatory/examining body in the conduct of the examination and is justified in refusing permission till such time proper teaching faculty is appointed. Relevant observations read as under:-

"7. The said case is not applicable in the facts of the present case. In the present case, NCTE has granted recognition subject to fulfillment of all such other requirements, as may be prescribed by the other Regulatory Body, such as UGC etc. wherever applicable. The State Government granted permission subject to condition that norms of staff are fulfilled before admission. The University is a Regulatory Body in respect of conduct of examination. Therefore, in terms of Para 4 of permission granted by NCTE and the permission granted by the State Government, the University was duty bound to examine the fulfillment of requirements as per norms fixed by the NCTE itself. As per norms reproduced above, the petitioner has seven members on regular teaching faculty, whereas other Civil Writ Petition No. 19009 of 2008 [9] seven have been engaged on ad hoc basis. Such undisputed fact shows that the norms fixed by the NCTE itself have not been satisfied by the petitioners.

8. The University or the State Government has not refused the permission but, after examining the norms and standards for Secondary Teacher Education Programme framed by the NCTE itself, it has found that the teaching faculty is not suitable. Such power has been exercised in terms of the liberty granted by the NCTE to the State Government and the University. The University, as examining body, is, thus, justified in refusing permission till such time proper

teaching faculty is engaged by the petitioner as in the absence of proper teaching faculty, the standard expected in respect of imparting of teachers education is likely to be suffered."

20. Recently the Apex Court in *Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others*, (2011) 3 SCALE 48 : (2011) 4 SCC 527 : (2011) 2 SCR 461 , it was held that sub-section 6 of Section 14 of the Act cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber stamping consequent upon the recognition. Para 24 reads as under:-

"The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The state government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of the NCTE. Sub-section (6) of section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition. An institution requires the recognition of NCTE as well as affiliation with the examining body, before it can offer a course or training in teacher education or admit students to such course or training."

21. Thus, in such circumstances, this Court is not inclined to interfere with the order of the University declining the affiliation.

22. In *Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others*, AIR 2012 SC 1097 : (2012) 1 SCALE 82 : (2012) 2 SCC 425 : (2012) 1 UJ 437 : (2012) AIRSCW 1573 , the right of affiliating body was also recognized in Clauses (xi) and (xviii) of the principles and it was directed that institution which had not been granted affiliation by the examining body would not be entitled for any interim relief. Relevant Clauses (xi) and (xviii) read as under:-

"(xi) While granting affiliation, the examining body shall be free to demand rigorous compliance of the conditions contained in the statute like the University Act or the State Education Board Act under which it was established or the guidelines/norms which may have been laid down by the concerned examining body.

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(xviii) In future, the High Courts shall not entertain prayer for interim relief by unrecognized institutions and the institutions which have not been granted affiliation by the examining body and/or the students admitted by such

institutions for permission to appear in the examination or for declaration of the result of examination. This would also apply to the recognized institutions if they admit students otherwise than in accordance with the procedure contained in Appendix-1 of the Regulations."

23. Keeping in view the cumulative factors in mind that the recognition was granted late and the University did not have adequate time to examine the faculties of teaching and infrastructure no fault can be found with its decision. The argument that the NCTE Act is to prevail over the University Act, in such circumstances need not be considered as in the peculiar facts and circumstances of the case formal recognition order was only granted on 25.5.2015 leaving little or no time for the University to get its act together and complete process of affiliation.

Accordingly, the present writ petition is dismissed.