
(2012) 01 AHC CK 0433
In the Allahabad High Court
Case No : Writ Petition No. 6017 (MIS) of 2011

St.Andrew's college

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0433

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Counter and rejoinder affidavits filed by the respective parties are taken on record.

2. Heard Mr. Padmesh Jain, learned Counsel for the petitioner, Mr. Sanjay Sarin, learned Standing Counsel, Mr. Rajesh Chandra Misra, learned Counsel for the University and Mr. Vinay Bhushan, learned Counsel for NCTE.

3. By means of instant writ petition, the petitioner prays for quashing the Order dated 21.9.2010. He further prays for a direction to the opposite party Nos.2 and 3 to allot college code to the petitioner institution so as to enable it to get the University examination forms for B.Ed. course 201011 filled in and besides other prayers.

4. Brief facts of the present case are that the petitioner's institution is a minority selffinanced private educational institution which was established in 1899 for imparting higher education. The petitionerinstitution has been established by St. Andrew's College Association, Gorakhpur, a society registered under the Societies Registration Act, 1860 which has framed its byelaws, rules and regulations. The State Government, the opposite party No.1, vide Government Order dated 18.1.1996, had granted the minority status to several institutions in which name of the petitionerinstitution finds place at Sl. No. 7. It is duly recognized by the NCTE and affiliated with the Deen Dayal Upadhyay Gorakhpur University. Being a Minority Institution, the petitioner has been taking admission

of 100 students in B.Ed. course on its own after inviting applications from the eligible students as per the NCTE norms and conducting the examination for this purpose and taking admission without any objection or hindrance from any of the opposite parties since 200405. When the opposite parties started hindrance in admission, the petitioner filed a writ petition No. 5554 (MB) of 2004 in which this Court, vide order dated 16.12.2004, restrained the opposite parties from interfering in the admission of B.Ed. course. When the opposite parties tried to make an attempt to restrict the aforesaid order only for the academic session 200405, the petitioner was compelled to move an application for clarification of the order and this Court vide order dated 26.5.2006 clarified that the order dated 16.12.2004 is not applicable only for the academic session 200405 or for any particular period. Till 200809, the opposite parties did not interfere in the admission of petitioner.

5. Despite the fact that this Court vide order dated 26.5.2006 clarified that the order dated 16.12.2004 is not applicable only for the academic session 200405 or for any particular period, the opposite party no.2 vide letter dated 3.9.2010 requested the NCTE to cancel the recognition granted to the petitioner institution for 100 seats from academic session 201011. The aforesaid order was challenged in Writ Petition No. 8824 (MB) of 2010 and this Court vide order dated 3.9.2010 provided that no further action will be taken against the petitioner in pursuance of the directives issued by the ViceChancellor dated 3.9.2010 and the petitionerinstitution shall be allowed to continue to provide education to the B.Ed. students and the students so admitted shall be allowed to appear in the examination also, their results shall be declared and mark sheets shall also be issued.

6. Learned Counsel for the petitioner submits that despite the order dated 8.9.2010 passed by this Court, the opposite party No.1, vide order dated 21.9.2010 informed the opposite party No.2 that the State Government has granted its prior sanction to deaffiliate the petitionerinstitution from Academic Session 201011 purely on the basis of letter dated 3.9.2011 though the said letter was already stayed. Further, he submits that the action of the opposite parties is nothing but it is utter disregard of the directives issued by this Court in earlier writ petition, referred to above and as such, the impugned order is liable to be set aside by this Court at the very outset. Apart from above, The action of the opposite parties is violative of the minority rights of the petitionerinstitution and also violative of Articles 14, 19 (1) (g), 26 and 30 of the Constitution of India which stipulated that all citizens have a right to establish and administer educational institutions under Articles 19 (1), (g) and 26. Even this was also reiterated by the Hon"ble Supreme Court in the case of TMA Pai Foundation.

7. On the other hand, learned counsel for the University submits that the petitioner is a minority institution and running the B.Ed. course which is recognized by the NCTE under the National Council for Teachers Education Act, 1973. After granting the recognition, Executive Council of the University granted

necessary affiliation with the prior approval of the State Government under the U.P. State University Act, 1973. As the petitioner institution is running the B.Ed. course according to the NCTE Rules and Regulations and no discretion has been given irrespective of institution either minority or nonminority, admission shall be made through single window system, i.e. common entrance test conducted by the State Government. According to him, if any admission was taken beyond the settled procedure in the case of P.A. Inamdar v. State of Maharashtra, it is illegal and unsustainable in the eye of law. Further, he states that the petitioner assails the impugned order dated 21.9.2010 after lapse of one year and no explanation has been offered by him while filing the writ petition and as such, the writ petition is liable to be dismissed only on the ground of laches.

8. Considered the submissions made by the learned Counsel for the parties and perused the record including the impugned order. According to the petitioner, the impugned order dated 21.9.2010 has been passed by the State Government purely on the basis of order dated 3.9.2010 written by the opposite party University to the NCTE thereby requesting to withdraw the recognition granted to the petitioner institution to run B.Ed. course with annual intake of 100 seats, which is evident from the noting done at the bottom of the Government Order dated 21.9.2010, but the State Government has miserably failed to give any clarification. Further, the State government has also not mentioned anything with regard to the order dated 28.5.2010 passed by this Court in Writ Petition No. 5554 (MS) of 2004 whereby this Court recalled the order dated 9.4.2009 and restored the writ petition to its original number. This Court further provided that the interim orders dated 16.12.2004 and 26.5.2006 which were operating in favour of the petitioner shall remain operative. Against the orders dated 16.12.2004, 26.5.2006 and 28.5.2010, Gorakhpur University approached the Hon'ble Supreme Court by filing SLP (Civil) CC No.1556015562 of 2011 which was dismissed on 9.12.2011 and upon dismissal of the SLP of Gorakhpur University, the aforesaid orders passed in Writ Petition No. 5554 (MS) of 2004 have attained finality.

9. Further, against the interim order dated 8.9.2010 passed by this Court in Writ Petition No. 8824 (MB) of 2010, Gorakhpur University approached the Hon'ble Supreme Court by filing SLP (Civil) CC No. 15348 of 2011 which was also dismissed vide order dated 16.12.2011 on the ground of delay. Therefore, the interim order dated 8.9.2010 has attained finality.

10. In Writ Petition No. 1905 (MS) of 2011 Haji Ismail Degree College v. State of U.P. and others, this Court vide order dated 18.5.2011 permitted the institution to forward the applications of B.Ed. for the Academic Session 200910, against which the University filed a Special Appeal No. 605 of 2011, which was dismissed vide order dated 29.8.2011. While dismissing the aforesaid appeal, the Division Bench of this Court, as regard to minority institution, observed as under:

".... the position is clear that the minority institutions are a class by themselves, therefore, they are free to admit the students of their choice, of course, subject

to the condition that the merit of students cannot be ignored. Moreover, in an identical case of minority institutions being Writ Petition No.10694 (MB) of 2010 (Muslima Girls Degree College Sir Syed Nagar Moradabad v. State of U.P.) the direction given by this Bench to the University to hold examination for the Session 200910 is said to have attained finality on disposal of Civil Appeal No. 7137 of 2011 on 19th August, 2011."

11. Since the writ petition No. 5554 (MS) of 2004 is pending disposal and the petitioner institution was permitted to make admission for the B.Ed. course, vide order dated 16.12.2004, the impugned order dated 21.9.2010, relying upon the letter dated 3.9.2010, which was stayed by this Court in the aforesaid writ petition, is liable to be set aside. It is pertinent to add that the impugned order has been passed in the teeth of the judicial order passed by this Court as in a pending writ petition No. 8824 (MB) of 2010, this Court stayed the letter dated 3.9.2010 of the ViceChancellor. It is surprising that the State Government while passing the impugned order did not consider this very vital fact. Moreover, it appears that the impugned order has been passed just to circumvent the order passed by the High Court in other writ petitions preferred by the institution.

12. Accordingly, the writ petition is allowed and the impugned order dated 21.9.2010 is hereby set aside. The University/respondents shall abide by the directions issued by this Court in Writ Petition No. 5554 (MS) of 2004 and in other writ petitions.