
(2004) 09 AHC CK 0280
In the Allahabad High Court
Case No : C.M.W.P. No. 707 (M/S) of 2003

Tuples Educational Society	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 37, 37(2)

Citation : (2005) 2 AWC 1443

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : S.P. Singh, Rohit Tripathi and C.B. Pandey, for the Appellant; D.K. Arora, for the Respondent

Judgement

N.K. Mehrotra, J.—This is a petition for issuing a writ in the nature of certiorari quashing the impugned G.O. dated 27.9.2002 (Annexure-1 to the writ petition) in so far as it requires No Objection Certificate ("NOC" for short) from the Government for starting the course of Bachelor of Physiotherapy ("BPT" for short), and further to quash the impugned letters dated 30.11.2002, 18.1.2002 and 1.2.2003 as contained in Annexures-2, 3 and 4 respectively to the writ petition. The petitioner has also sought a relief for issuing a writ in the nature of mandamus directing the opposite party No. 4 Chaudhary Charan Singh University, Meerut and the opposite party No. 3, the Chancellor, Chaudhary Charan Singh University, Meerut to consider the application for the petitioner-society's college for affiliation in accordance with the provisions of the statutes and to extend the privilege of affiliation for the BPT Course for the Session 2003-2004.

2. The petitioner is a registered society and runs an institution in the name of Trident Institute of Information Technology. It is unaided institution. In the year 1999, the Vice-Chancellor of Chaudhary Charan Singh University, Meerut u/s 37 (2) of Uttar Pradesh State University Act, 1973 granted affiliation to the petitioner's institution for the course of Bachelor of Computer Applications. In

the year 2002, the petitioner's Institute applied to the Registrar of the University for affiliation of the college for BPT course from the year 2003-2004" The Registrar of the University instead of proceeding in accordance with the provisions of the statute, forwarded its recommendation to the Government vide his letter dated 30.11.2002 for "No Objection Certificate" from the higher education department. G.O. dated 27.9.2002 (Annexure-1) requires that the necessary NOC has to be obtained from the Government prior to affiliation. In the meantime, the Government sent another direction vide letter dated 18.1.2003 (Annexure-3) informing the petitioner's society that since the BPT Course is a paramedical course, it is necessary for the petitioner's institute to obtain NOC from the medical education department. The Registrar of the University applied to the Government, department of medical education vide his letter dated 1.2.2003 (Annexure -4). It is alleged that the Statute of the University do not provide for any requirement to obtain NOC from the concerned council or the Government as a condition precedent for affiliation of an Institute for the BPT Course. It is alleged that unlike the engineering courses and the medical course, there is no council created either by the Central Government or by the State Government which could lay down the conditions or norms for affiliation of an Institute for the BPT Course. It is alleged that power to extend the privilege of affiliation exclusively vests with the University and this power is to be exercised in accordance with the statutes under which the Chancellor is the sanctioning authority. It is only the University, which can lay down the conditions for affiliation. It is also alleged that the University has extended this privilege of affiliation for BPT Course to Harsharan Das Dental College, Ghazlabad and Santosh Medical College, Ghazlabad.

3. Out of all the opposite parties, the counter-affidavit has been filed by Opposite Parties No. 2 to the State of U. P. through Principal Secretary, Medical Education, Sachivalaya, Lucknow. The case of the opposite party No. 2 is that in the Medical Department of the State Government, a policy is being formulated to conduct the paramedical course in different Districts of the State and enactment is also under consideration. It is after the policy and procedure being enacted in a Statute No Objection Certificate shall be granted to only those Institutes, which would fulfil the standard, prescribed under the proposed Act. This fact is not denied that Santosh Medical College, Meerut was permitted to run BPT Course by the Medical Education Department but it is alleged that no such permission was given by the Medical Education Department to Harsharan Das Dental College, Ghaziabad. It is not denied that such course is being conducted by Harsharan Das Dental College, Ghaziabad.

4. After hearing the learned counsel for the petitioner and the standing counsel for the opposite party No. 2, I find that it is an admitted fact that there is no statutory council or organization to control the education of Physiotherapy. It is also admitted that the medical education department has neither issued any policy nor any Act has been passed by the State Legislature to regulate the opening of the college to impart education in physiotherapy. According to the

stand taken by the Government in Annexure-3, the permission to conduct paramedical course is subject to be dealt with by medical education department of, the State Government according to rules. Therefore, the higher education department which has issued the impugned G.O. dated 27.9.2002 has nothing to do with the grant of No Objection Certificate regarding paramedical course in Physiotherapy. Therefore, if the G.O. dated 27.9.2002 (Annexure-1 to the writ petition) has been issued directing all the Registrar of the State Universities, it is not relevant for the purpose of granting affiliation to the course of BPT by Chaudhary Charan Singh University, Meerut. Therefore, I hold that G.O. dated 27.9.2002 (Annexure-1 to the writ petition) shall not apply at the time of consideration of affiliation sought for by the petitioner for running BPT Course in its institution.

5. There is legal provision to regulate the affiliation to different courses by the State University u/s 37 of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as "Act"). Section 37 (2) of the Act is as follows :

"37 (2). The Executive Council may, with the previous sanction of the Chancellor, admit any college which fulfils such conditions of affiliation, as may be prescribed, to the privileges of affiliation or enlarge the privileges of any college already affiliated or subject to the provisions of Sub-section (8), withdraw or curtail any such privilege ;

Provided that if in the opinion of the Chancellor, a college substantially fulfils the conditions of affiliation, the Chancellor may sanction grant of affiliation to that college or enlarge the privileges thereof in specific subjects for one term of a course of study on such terms and conditions as he may deem fit ;

Provided further that unless all the prescribed conditions of affiliation are fulfilled by a college, it shall not admit any student in the first year of the course of study for which affiliation is granted under the foregoing proviso after one year from the date of commencement of such affiliation."

6. It is clear from the aforesaid provisions that before granting affiliation, the previous sanction of the Chancellor is statutory requirement. Further every State University has framed Regulations/Statutes for exercising the power under Uttar Pradesh State Universities Act, 1973 and procedure for granting affiliation has been regulated by making such statute. The petitioner has filed the copy of those statutes as contained in Annexure-8 to the writ petition.

7. On the application of the petitioner, the Registrar of Meerut University has sought No Objection Certificate from medical department on 1.2.2003 as contained in Annexure-4 to the writ petition. In view of the counter affidavit filed by the State of U. P. and the provisions of the Uttar Pradesh State Universities Act, 1973, it is clear that this letter is not required in statutory procedure under the Uttar Pradesh State Universities Act, 1973. It provides only the previous sanction by the Chancellor and the State Government does not come in the way of the Chancellor to grant previous sanction for affiliation. It is for the Chancellor

to get the matter examined by any agency of his own choice. Therefore, I find that letter (Annexure-4) is not in accordance with the statutory provisions and statute of the University.

8. It is established from the averments made in the counter-affidavit that the matter of affiliation relating to the BPT Course to be run by the petitioner's institute is pending for long and the State Government is not granting No Objection Certificate at the request of the Registrar of Chaudhary Charan Singh University because there is no policy formulated by the State Government to regulate the opening of paramedical course in the State. At the same time, it is also established that two colleges ; namely Santosh Medical College, Meerut and Harsharan Das Dental College, Ghaziabad are running BPT Course in their institute. Santosh Medical College, Meerut has been granted No Objection Certificate by the Medical Education Department of the State Government in the year, 1996. It is not denied that Harsharan Das Dental College, Ghaziabad has not been granted permission to run BPT Course. The denial is restricted in the way that the Medical Education Department has not granted permission to Harsharan Das Dental College, Ghaziabad. It means that Harsharan Das Dental College, Ghaziabad has been granted permission by any other department of the State Government. Otherwise there would have been no affiliation by the University. The Chaudhary Charan Singh University, Meerut has not filed any counter-affidavit.

9. I am of the view that it is fundamental right of the petitioner to administer an educational institution or to start new course in an educational institution as has been held in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, Islamic Academy of Education and Another Vs. State of Karnataka and Others, and Modern School v. Union of India and Ors. (2004) SCC 583. Imparting education is the State function. The State having regard to these functions is not always in a position to perform its duties. Therefore, the function of imparting education has been taken over in most of the cases by the citizen themselves. If, one institution applies for affiliation for a particular course, the State cannot pick and choose by granting No Objection Certificate to two institutions and withhold No Objection Certificate for the petitioner simply on the ground that the policy is being formulated. While in the absence of any policy other institutions have been granted NOC for BPT Course, the petitioner may also be considered for grant of affiliation to BPT Course for which as per provisions of U. P. State Universities Act, 1973, the State Government does not come in picture.

10. In this case, there is no necessity to grant the writ of certiorari to quash the G.O. dated 27.9.2002 (Annexure-1) and the letter dated 30.11.2002 of the Registrar of the University addressed to the Chief Secretary (Annexure-2) and a letter dated 18.1.2003 written by the Joint Secretary to the Registrar of the University (Annexure-3) simply because, the G.O. dated 27.9.2002 (Annexure-1) is not applicable in the case of paramedical course and the letters dated 30.11.2002 and 18.1.2003 (Annexures-2 and 3 respectively to the writ petition)

are simply correspondence. Letter dated 1.2.2003 (Annexure-4) written by the Registrar of the University to the Secretary Medical Education is the letter which is not in accordance with the procedure given under U. P. State Universities Act and the statute of Chaudhary Charan Singh University, Meerut. Therefore, this letter dated 1.2.2003 will not come in the way for consideration for grant of affiliation to BPT Course in the petitioner's institution. I hold that the matter of affiliation to BPT Course to the petitioner's institution is to be considered in accordance with the statutes of Chaudhary Charan Singh University, Meerut and Section 37, U. P. State Universities Act, 1973.

11. In view of the above, the writ petition is disposed of finally with the direction to the Opposite Party Nos. 3 and 4 to consider the grant of affiliation to the BPT Course of the petitioner's institution from the Session 2003-2004 expeditiously in accordance with statutes of Chaudhary Charan Singh University, Meerut and Section 37 of U. P. State Universities Act, 1973. The opposite party No. 4 is directed to refer the matter for previous sanction of the Chancellor within a period of two weeks from the date a copy of this judgment is produced before the Registrar of Chaudhary Charan Singh University, Meerut and the Chancellor of the University shall take a decision within two weeks from the date of receiving the reference u/s 37 of the U.P. State Universities Act.