

(2010) 05 AHC CK 0156

In the Allahabad High Court

Case No : Writ Petition No. 3836 (M/B) of 2010

Vaishno Devi Prashikshan Mahavidyalaya Gondahi, Chergarh
Pratapgarh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 17, 32
National Council for Teachers Education (Recognition, Norms and Procedure)
Regulations, 2005 — Regulation 7(11), 7(12)

Citation : (2010) 05 AHC CK 0156

Hon'ble Judges : Pradeep Kant, J and Anil Kumar, J

Final Decision : Allowed

Judgement

1. Heard Sri O.P. Srivastava, learned counsel for the petitioner and Sri Vinay Bhushan learned counsel for National Council for Teacher Education and Dr. Ravi Kumar Misra for Dr. Ram Manohar Lohia Avadh University, Faizabad.

2. The petitioner's institution applied for recognition to the National Council for Teacher Education (NCTE). On being satisfied that the institution fulfills all the requirements and is fit for grant of recognition of the course, NCTE passed the order dated 24.1.2007, which says that the institution in question alongwith other institutions was found fit for grant of recognition of the course and intake of 100 seats mentioned against its name subject to the condition of appointment of qualified staff through duly constituted Selection Committee as per the norms of NOTE/ State Government/Affiliating University/Body before the commencement of the course etc. As a result of the aforesaid conditional recognition in terms of guidelines issued by NCTE, the petitioner's institution was supposed to appoint qualified staff through duly constituted Selection Committee as per norms prescribed before the commencement of the course so that regular recognition could have been granted.

3. The petitioner's case is that this unconditional recognition order did not

prescribe the outer limit for the appointment of the staff as mentioned therein and therefore, it cannot be said that the institution defaulted in any manner in complying with the aforesaid directive about the appointment of staff when it made such appointments and communicated the same to the NCTE on 10.7.2009.

4. The submission is that in absence of any maximum limit being prescribed under which the staff should have been appointed, coupled with the fact that unless staff is appointed and this information is duly communicated to the NCTE, regular/ permanent recognition could not be granted so as to enable the petitioner's institution to take the students for B.Ed course, therefore, it cannot be said that the educational institution in any way defaulted in complying with terms of the conditional recognition order so as to cancel or withdraw the conditional recognition. In other words, it is the institution, which would stand deprived of the benefit of the conditional recognition, if it takes time in making the appointments of qualified staff.

5. Further argument has been raised that the impugned order has been passed under Section 14 (3) (b) of the NCTE Act which specifically provides for affording reasonable opportunity before refusing the recognition but admittedly no opportunity has been afforded to the petitioner and that in case the order is to be treated under Section 17 of the Act, even then the proviso to subsection (1) requires of giving reasonable opportunity of making representation against the proposed order but the said opportunity has also not been given.

6. On a query being put to Sri Vinay Bhushan, learned counsel for the NCTE, that under which provision of law, such conditional recognition can be granted by the NCTE without requiring the institution first to appoint the qualified staff and leaving it upon them to do it before the start of the course, Sri Vinay Bhushan drew the attention of the Court to the Regulations framed and notified in December, 27, 2005 known as the National Council for Teacher Education (Recognition, Norms & Procedure) Regulations 2005 and made specific reference to Regulations 7 (11) and (12) which are quoted below:

"(11) The institution concerned shall be informed of the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session.

(12) The institution concerned, after appointing the requisite faculty/staff, shall put the information on its official website and also formally inform the Regional Committee concerned. The Regional Committee concerned shall then issue a formal unconditional recognition order."

7. The regulations lay down the conditions for grant of recognition and have been framed in exercise of power under Section 32 subsection (2) NCTE Act, 1993.

8. A perusal of the aforesaid regulation reveals that under Regulation 7 (11), the institution is only to be informed of the decision for grant of recognition or

permission and subject to appointment of qualified faculty members, before the commencement of the academic session, unconditional recognition shall be granted, which does not mean that any conditional recognition has been granted for running the course or for seeking affiliation from the concerned University.

9. The decision taken for grant of recognition cannot be termed as recognition granted under the Act, within the meaning of Section 14. In fact neither the Act, nor the Regulations, speak of any conditional recognition, a term which appears to be used loosely, for describing the decision to grant recognition as mentioned in Regulation 7 (11) and therefore recognition granted by issuing a formal order under Regulation 7(12) is being called regular or unconditional recognition.

10. A decision to grant recognition cannot be taken to mean, that the institution has been granted recognition by NCTE and the examining body on such a decision, can grant affiliation under Section 14(6).

11. Before recognition is granted, the institution cannot take admissions nor d it can run the course.

12. In the instant case, it appears that on the basis of the decision to grant recognition as envisaged under Regulation 7(11) (described as conditional recognition), the University granted temporary affiliation for a period of one academic year but it cannot be explained that how such an affiliation could have been granted when there was no recognition as required under Regulation 7(12) nor any such formal order was issued.

13. Regulations framed under Section 32 (2) of the NCTE Act, 1993 known as National Council for Teacher Education (Recognition, Norms and Procedure) Regulations 2005 prescribe the eligibility criteria for different category of institutions for grant of recognition as given under regulation 4 and the manner of making application has been prescribed in regulation 5 after depositing the process fee as required under the Regulations. Processing of applications has to be done as per provisions of Regulation 7 with added sub clauses (8),(9),(10), (11) and (12) whereas subclause (9) says that the Regional Committee shall decide the grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the NCTE under the NCTE Act, Rules or Regulation, including, inter alia, the norms and standards laid down for the relevant teacher education programme/course.

14. Sub clause (10) of Regulation 7 says that in the matter of grant of recognition, the Regional Committees shall strictly act within the ambit of the National Council for Teacher Education Act, 1993, the National Council for Teacher Education Rules, 1997 as amended from time to time and the regulations including the norms and standards for various teacher education programmes and shall not make any relaxation thereto. The regional Directors shall be responsible for ensuring that the decisions of the Regional Committees are not in contravention of the NCTE Act, NETE Rules and regulations including the norms and standards.

15. The reading of the aforesaid regulations leave no doubt that the Regional Committee while considering the matter of grant of recognition shall strictly act within the ambit of the Act, Rules and Regulations and no recognition can be granted to any institution without complying with the norms prescribed. The responsibility has been fixed on the Regional Directors to ensure that the decision of Regional Committees is not in contravention of NCTE Act, Rules and Regulations including the norms and standards prescribed.

16. It is only on the satisfaction of the aforesaid Regional Committee as given in Regulation? (11), the institution concerned has to be informed of the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session.

17. This decision to grant recognition is merely a decision for grant of recognition which is conditional as the recognition cannot be granted, unless, the requirement of appointing the qualified staff is complied with. Since such a recognition is taken to be a conditional recognition therefore, it is necessary to explain that this conditional recognition is in fact is not the recognition but only a decision of the Committee indicating that the institution fulfills all the requirements as provided under the Act, Rules and Regulations and such institution after making the appointment of qualified staff as per the Rules shall communicate it to the Regional Committee which information shall also be put on its official website. The Regional Committee shall then issue a formal recognition order. It is only when such a formal order is issued in fact the recognition is said to have been granted.

18. Merely because a decision has been taken under Regulation 7(11) for granting recognition, it cannot be said that the recognition has been granted to the institution nor on the basis of such a decision, affiliation can be granted and consequently no admission can be taken unless affiliation is granted by the concerned university.

19. It is evident also by reading of Regulation 7(10) which shows that an institution shall make admission only after it obtains unconditional letter of recognition from the Regional Committee concerned, and affiliation from the examining body. The aforesaid regulation thus makes it clear that the University cannot grant affiliation on a decision of granting recognition in favour of any institution, and unless recognition which has been termed as unconditional recognition is granted under Regulation 7(12) of the Regulation, no institution can be allowed to be affiliated with the concerned University.

20. The said Regulation is also in consonance with Section 14 of the NCTE Act which shows that 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 category, make an application to the Regional Committee concerned in such form and in such manner as maybe determined by regulations whereas subclause (3) of Section 14 of the Act lays down that on receipt of an

application by the Regional Committee from any institution under subsection (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 of 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 subclause(a), pass an order refusing recognition to such institution to be recorded in writing.

21. The proviso says that before passing an order under subclause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

22. So far as Sub Clause (a) of subsection (3) of Section 14 of the Act is concerned, it says that every examining body shall grant affiliation to the institution, where recognition has been granted. This "recognition" is the recognition which is granted under Regulation 7 (12).

23. Section 14 (6) of the Act says that every examining body shall, on receipt of the order under subsection (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.

24. On a reading of Act of 1993 as well as regulation, there appears to be no provision where the National Council for Teacher Education on grant of conditional recognition can allow the institution to seek affiliation from the concerned university for the course in question nor the University can grant any affiliation on the basis of such decision of recognition, unless unconditional recognition is granted under Regulation 7(12). Consequently, in absence of such a formal order of recognition no affiliation can be granted by the University.

25. In the instant case admittedly only a decision to grant recognition as provided under Regulation 7(11) was taken on 24.1.2007. The institution was communicated about the said decision and therefore the requirement on the part of the institution was to make appointment of qualified faculty members as per the norms prescribed and to apprise the Regional Committee both ways, viz. by putting it on official website and also by communicating the same to the NCTE Regional Committee. After the aforesaid appointment of qualified faculty members, the Regional Committee was to grant unconditional recognition as given Regulation 7(12) but it transpires that after the decision to grant recognition, was taken by Regional Committee, the State Government granted

approval for affiliation and consequently temporary affiliation was granted by the University for a period of one year for the academic session commencing from 1.7.2008/.6. for the academic Session 20082009.

26. Sri Ravi Kumar Misra, has specifically stated that even after approval being granted by the State Government for grant of affiliation for the aforesaid academic session, University has not issued any formal order of affiliation but on a the strength of the approval for affiliation being granted by the State Government the institution has been taken to be temporarily affiliated, and the permission to admit students was given by the University.

27. Sri O.P. Srivastava, learned counsel appearing for the petitioner, however, states that admissions have been made by the institution for the said academic session of the students sent by the University itself.

28. We, under the circumstances, are of the view that students having been admitted during the period of aforesaid recognition/affiliation, may be allowed to complete their course by allowing them to appear in the examinations. NCTE by the order impugned, also while withdrawing the recognition has protected the students who have been admitted and were pursuing their course, we, therefore, deem it appropriate to observe that the admission so made till date would not be effected and the University shall allow those students to appear in the examinations and their result would be declared.

29. We take judicial notice of the fact that almost in all the cases only the decision for grant of recognition under Regulation 7(11) has been taken to mean as the grant of recognition by the NCTE and on that basis, affiliation has been granted by the University.

30. We also take notice of the fact, that the University being the examining body is competent to grant affiliation but merely on approval for affiliation being granted by the State Government, without any order of affiliation being passed, by the University, the colleges are allowed to take admission.

31. In view of the aforesaid discussion, a mere decision to grant recognition e under Regulation 7(11) would neither permit the institution to seek affiliation from the concerned University nor the University can send recommendation for grant of approval to the State Government under Section 37(2) of the Act, and likewise, the State Government cannot entertain any such request nor can grant approval unless recognition is granted under Regulation 7(12).

32. The aforesaid provision is for the benefit of the institution as well as that of the students who are willing to take admission in teaching course.

33. The Act is conscious of the fact that if temporary recognition or conditional recognition is treated sufficient for grant of affiliation, then it would createasense of uncertainty in every academic session in which temporary affiliation is granted for one academic session, as neither the institution would know whether it would g be granted affiliation for next academic session nor the students who intend to

take admission in such institution would know their fate.

34. A number of writ petitions have come before us where the affiliation is granted for one academic session and thereafter it is granted in mid of the next academic session with effect from a back date, and during this period, the institution is in lurch whether to take admission for the next academic session or not, the reason being that if they do not take admission for the successive academic session, despite their request already being made to the University, they would not have students for the said session though the affiliation may be granted after approval being granted by the State Government during mid of session from the back date and if admissions are taken without any affiliation then of course if the affiliation is refused, the question will arise whether the students who stand admitted, should be allowed to appear in the examination or not. Such type of writ petitions are being filed almost every day which persuade us to see whether the students could have been admitted by such institution and whether such students be allowed to complete their course on the ground of equity as they are not at fault.

35. We though have taken notice of the anomaly in granting affiliation on the basis of the additional recognition under Regulation 7(11) by the Universities till date, but looking to the interest of the institutions and the students, we provide that even in the cases, where affiliation has been granted on the basis of the aforesaid additional recognition, they will not be affected by this order but in future it shall be ensured that affiliation is granted only after formal order of recognition is issued under Regulation 7(12).

36. Such anomalies occur apparently because in the absence of any recognition being granted to the institution under Regulation 7(12), the entire process of granting affiliation is made on mere decision to grant recognition under Regulation 7(11).

37. Further, since the impugned order has been passed without affording any opportunity to the petitioner, the same cannot be sustained even on this ground.

38. We, therefore, allow this writ petition and set aside the impugned order with the direction that the Regional Committee shall take a fresh decision in the matter after affording an opportunity to the petitioner within a maximum period of one month from the date of receipt of a certified copy of this order.

39. Let copy of this order be sent to the Chief Secretary, Government of U.P. and Chairman/Member Secretary, National Council for Teacher Education, New Delhi.