

SUPREME COURT OF INDIA

M.S.K.Mandal Sanchalt Mskm B.Ed.

Vs.

National Council for Teacher

C.A.No.11215 of 2011

(B.S.Chauhan and T.S.Thakur,JJ.,)

16.12.2011

JUDGMENT

T.S. Thakur,J.,

SLP (Civil)No.28473 of 2011

1. Leave granted.

2. These appeals arise out of an order dated 7th October, 2011 passed by the High Court of Gujarat at Ahmedabad, whereby Special Civil Application No.9485 of 2011 has been dismissed and order dated 20th July, 2011 as modified by order dated 24th August, 2011 issued by the Western Regional Committee under Section 17 of the National Council of Teachers' Education (for short 'NCTE') Act, 1993 withdrawing the recognition of the B.Ed. College established by the appellant upheld.

3. The appellant-Trust has established a college under the name and style Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College, Rajkot. The college had the benefit of recognition granted in its favour in terms of an order dated 29th May, 2007 under Section 14 (3)(a) of the NCTE Act for offering a B.Ed. with an annual intake of 100 students. Shortly after the grant of the said recognition, the NCTE issued a notice dated 27th July, 2008 to the appellant to show cause why the recognition should not be withdrawn in terms of Section 17 of the Act in view of the deficiencies pointed out in the notice like inadequacy of built-up area available to the institution, the land underlying the structure not being in the name of the appellant-Trust and the college being run in a building that is used by two other institutions.

4. The recognition was finally withdrawn by the NCTE on 29th November, 2008 primarily because the appellant had failed to respond to the show cause notice within the period stipulated for the purpose. The withdrawal order was, however, successfully challenged before the High Court by the appellant with the High Court issuing certain directions including a direction to the appellant-college to remove the defects pointed out by the NCTE

and to offer the institution for a fresh inspection by the NCTE. The High Court also directed that while admissions for the current year shall not be affected by the withdrawal of recognition, in the event of non-compliance with the requirements of the Regulations, the institution shall not be permitted to admit any student for the next year. The NCTE was given liberty to have a fresh inspection conducted and pass appropriate orders in accordance with law after issuing a notice to the institution.

5. In compliance with the directions of the High Court, the appellant by its letter dated 20th December, 2010 intimated to the NCTE that the deficiencies in question had been removed and invited the NCTE to depute a team for a fresh inspection of the college. An inspection was accordingly conducted that culminated in the issue of a fresh notice to the appellant again pointing out several deficiencies in the institution including inadequacy of space, staff and the fact that the college had no land in its own name and that the institution was being run in a building which was being used by two other colleges. The appellant appears to have sent a reply to the said show-cause notice but before a final decision could be taken on the same, the appellant filed Special Civil Appeal No.6507 of 2011 before the High Court for a mandamus to the University to allot students to the appellant-college. By an order dated 14th June, 2011, the High Court directed the University to allot the students to the appellant-college for the academic session 2011-2012. In the meantime, the Western Regional Committee issued an order on 20th July, 2011 withdrawing the recognition granted to the appellant-college in exercise of its powers under Section 17 of NCTE Act. The order contained as many as nine different grounds for the said withdrawal. Aggrieved, the appellant filed Special Civil Application No.9485 of 2011 before the High Court, inter alia, contending that the withdrawal of recognition was on grounds that went beyond the show-cause notice issued to the institution. It was also contended that pursuant to the directions of the High Court the University had allotted 60 students to the college who were on its rolls and whose future was likely to be adversely affected by the withdrawal order.

6. While the writ petition filed by the appellant was still pending, Western Regional Committee issued a modified withdrawal order dated 24th August, 2011 relying upon the visiting team report which found the following deficiencies:

“(i) The Institution neither had land on the date of submission of application as per Clause 7(D) of the NCTE regulations 2002, nor does it have the land even today.

(ii) The Institution is running in a flat of Multi Storied Residential Building.

(iii) Registered lease deed of the flat was executed on 18.03.2011, that is beyond the time limit of 31.12.2010 as prescribed by the Hon'ble High Court.

(iv) One of the lecturers was not qualified as on the date of appointment.”

7. The High Court was not happy with the above order as is evident from an interim order dated 30th August, 2011 whereby the Regional Director, Western Regional Committee,

National Council for Teacher Education, Bhopal, was directed to send a new team to inspect the institution and submit a fresh report regarding the defects and deficiencies in the infrastructure provided by the college. An inspection committee was accordingly deputed by the NCTE who filed a report before the High Court in a sealed cover. The report, inter alia, stated:

"The team had done the inspection of infrastructure, institutional facilities etc. The C.D. is enclosed. The videography had been in a continuous manner. The four corners of land and four corners of the buildings are prominently picturised. The photography of land, building, instructional facilities, staff is also done. (C.D. and album enclosed).

The Hon'ble High Court has directed to do the inspection with regards to the defects shown in the withdrawal order. The inspection is done accordingly following the orders of the Hon'ble High Court. The observations of the visiting team regarding the defects/deficiencies are noted below:

“(i) It is true that the institution does not have the registered land document and is occupying the land belonging to Shri Uma Education Trust.

(ii) It is true that the institution has submitted the building plan of Shri Uma Education Trust. This building plan was approved by Sarpanch, Vajdi (Virda). The approval of Rajkot Urban Development Authority is still not obtained by the Uma Education Trust.

(iii) It is true that the land use certificate submitted by the Institution is about the land of Uma Education Trust.

(iv) It is true that the Institution does not have its own land and building. The institution is running on the premises of the Uma Education Trust.

(v) The teaching staff profile is approved by In-charge Vibhagiya Officer, Saurashtra University on 18.02.2009 on 11.05.2011 and 13.05.2011. Four lecturers have no M.Ed. qualifications. One common observed that all lists were approved by in-charge, Vibhagiya Officer of the University.

(vi) Uma B.Ed. college and Jalaram B.Ed. College are being run on the same premises.

(vii) It is true that the institution has submitted the building plan of Shri Uma Education Trust. This building plan was approved by the Sarpanch, Vajdi (Virda). The approval of Rajkot Urban Development Authority is still not obtained by the Uma Education Trust.

(viii) Morvi Sarvajanik Kelevani Mandal and Jalaram Education Trust are unilaterally merged with Uma Education Trust without due authorisation of the competent authority and also without the approval of the WRC. The matter is still under correspondence.

(ix) The institution/Morvi Sarvajanik Kelavani Mandal did not possess adequate land or govt. land acquired on long terms lease basis or on ownership."

8. The High Court upon a consideration of the relevant records including the inspection report placed before it, dismissed the writ petition relying upon the decisions of this Court in *Chairman, Bhartia Education Society and Anr. v. State of Himachal Pradesh and Ors*¹. *N.M. Nageshwaramma v. State of Andhra Pradesh and Anr*². *Students of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra and Ors*³. decided on 19.2.1991, *Andhra Kesari Educational Society v. Director of School Education*⁴ and a few others. The High Court held that the appellant was not entitled to any relief in the writ proceedings filed on its behalf and accordingly dismissed the writ petition. Hence the present appeals, assail the said judgment and order.

9. We have heard learned counsel for the parties and perused the record.

10. Mushroom growth of ill-equipped, under-staffed and un-recognised educational institutions was noticed by this Court in *State of Maharashtra v. Vikas Sahebrao Roundale and Ors*⁵. This Court observed that the field of education had become a fertile, perennial and profitable business with the least capital outlay in some States and that societies and individuals were establishing such institutions without complying with the statutory requirements. The unfortunate part is that despite repeated pronouncements of this Court over the past two decades deprecating the setting up of such institutions. The mushrooming of the colleges continues all over the country at times in complicity with the statutory authorities, who fail to check this process by effectively enforcing the provisions of the NCTE Act and the Regulations framed thereunder.

11. The present is one such case where the institution established by the appellant has been inspected more than once and several deficiencies that seriously affect its capacity to impart quality education and training to future teachers specifically pointed out. Inadequacy of space and staff, apart from other requirements stipulated under the provisions of the Act and the Regulations, is something which disqualifies any institution from seeking recognition. Such deficiencies have not been disputed before us nor can the same be disputed in the light of the reports submitted by the inspecting teams from time to time, including the report submitted on the basis of the latest inspection that was conducted pursuant to the directions issued by the High Court. It is difficult to appreciate how the institution could have reported compliance with the requirements of the regulations and complete removal of the deficiencies after the order passed by the High Court when the institution had neither the land standing in its name nor the building constructed in which it could conduct the training programme. The fact that the institution was being run in a building which was shared by two other colleges was itself sufficient to justify withdrawal of the recognition granted in its

favour. It was also noted by the inspecting team that four lecturers employed by the appellant did not have the requisite M.Ed. qualification. Suffice it to say that the institution was lacking in essential infrastructural facilities which clearly justified withdrawal of the recognition earlier granted to it.

12. Confronted with the above position, learned counsel for the appellant argued that the students admitted to the college for the academic session 2011-2012 could be allowed to appear in the examination to avoid prejudice to them and to save their careers. A similar contention urged before the High Court has been rejected by it relying upon the decisions of this Court in which decisions this Court has not favoured grant of such relief to students admitted to unrecognised institution on consideration of misplaced sympathy. The High Court has also noted that the students had been transferred to other recognised colleges and that in any case students admitted for the academic session 2011-2012 could not be allowed to continue in an institution which did not have the requisite infrastructure prescribed under the NCTE Regulations and norms. It was argued on behalf of the appellants that the High Court was not right in observing that students had been transferred to other institutions. At any rate the order withdrawing recognition could not, according to the learned counsel, affect students admitted to the institution for the academic session 2011-2012 as the withdrawal order could only be prospective in nature and having been passed in August, 2011 was relevant only for the academic session 2012- 2013. We do not think so, firstly, because the recognition of the institution stood withdrawn on 20th July, 2011 which meant that while it had no effect qua admissions for the academic session 2010-2011 it was certainly operative qua admissions made for the academic session 2011-12 which commenced from 1st August, 2011 onwards. The fact that there was a modification of the said order of withdrawal on 24th August, 2011 did not obliterate the earlier order dated 20th July, 2011. The modifying order would in our opinion relate back and be effective from 20th July, 2011 when the recognition was first withdrawn. Such being the position admissions made for the academic session 2011-2012 were not protected under the statute.

13. Secondly, because this Court has in a long line of decisions rendered from time to time disapproved of students being allowed to continue in unrecognised institutions only on sympathetic considerations. In N.M. Nageshwaramma (supra) this Court while dealing with the prayer for grant of permission to the students admitted to unrecognised institution observed:

"3. xxxxxx We are unable to accede to these requests. These institutions were established and the students were admitted into these institutes despite a series of press notes issued by the Government. If by a fiat of the court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose. The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not

be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched. We have no hesitation in dismissing the writ petitions with costs."

(emphasis supplied)

14. To the same effect is the decision of this Court in *Managing Committee of Bhagwan Budh Primary Teachers Training College and another v. State of Bihar & Ors*⁶. where this Court observed:

"2. It is not possible to grant any such permission as prayed for because the granting of such permission would be clearly violating the provisions of the Education Act (see the judgments in S.L.P. No. 12014 of 1987 decided on November 25, 1987 and the *A.P. Christians Medical Educational Society v. Government of A.P.*)....".

15. In *State of Tamil Nadu and Ors. v. St. Joseph Teachers Training Institute and Anr*⁷. this Court once again found fault with the grant of relief to students admitted to unrecognised institutions on humanitarian grounds. This Court said:

"6. The practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by this Court. In *A.P. Christians Medical Educational Society v. Government of A.P*⁸ a similar request made on behalf of the institution and the students for permitting them to appear at the examination even though affiliation had not been granted, was rejected by this Court. The court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognised would be in clear transgression of the provision of the Act and the regulations. The court cannot be a party to direct the students to disobey the statute as that would be destructive of the rule of law. The Full Bench noted these decisions and observations and yet it granted relief to the students on humanitarian grounds. Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law."

(emphasis supplied)

16. Reference may also be made to *State of Maharashtra v. Vikas Sahebrao Roundale and Ors.*(supra) and *Chairman, Bhartia Education Society v. Himachal Pradesh & Ors.* (supra). In the latter case this Court observed :

"15. The practice of admitting students by unrecognised institutions and then seeking permission for the students to appear for the examinations has been repeatedly disapproved by this Court (see *N.M. Nageshwaramma v. State of A.P.*, *A.P. Christian Medical Educational Society v. Govt. of A.P.* and *State of Maharashtra v. Vikas Sahebrao Roundale*⁴). We, therefore, find no reason to interfere with the decision of the High Court rejecting the prayer of the students admitted in 1999 to regularise their admissions by directing the Board to permit them to appear for the JBT examination conducted by it. The two appeals (CAs Nos. 1228 and 1229 of 2011) filed by the Society/Institute and the students in regard to the 1999 admissions are therefore liable to be dismissed."

17. There is no distinguishing feature between the cases mentioned above and the case at hand for us to strike a discordant note. The institution established by the appellant is not equipped with the infrastructure required under the NCTE Act and the Regulations. It is not in a position to impart quality education, no matter admissions for the session 2011-2012 were made pursuant to the interim directions issued by the High Court. We have, therefore, no hesitation in rejecting the prayer for permitting the students to continue in the unrecognised institution of the appellant or directing that they may be permitted to appear in the examination. We, however, make it clear that this order will not prevent the respondent-University from examining the feasibility of reallocating the students who were admitted through the University process of selection and counselling to other recognised colleges to prevent any prejudice to such students. Such re-allocation for the next session may not remedy the situation fully qua the students who may have to start the course afresh but it would ensure that if such admissions/reallocation is indeed feasible, the students may complete their studies in a recognised college instead of wasting their time in a college which does not enjoy recognition by the NCTE. We, however, leave this aspect entirely for the consideration of the University at the appropriate level, having regard to its Rules and Regulations and subject to availability of seats for such adjustment to be made as also the terms and conditions on which the same could be made. This order shall also not prevent the affected students from seeking such reliefs against the appellant college as may be legally permissible including relief by way of refund of the fee recovered from them.

18. With the above observations, these appeals fail and are hereby dismissed with costs assessed at Rs.20,000/-.

Judgment Referred.

¹(2011) 4 SCC 0527

²(1986) Supp. SCC 0166

³SLP (C) No.2067 of 1991

⁴(1989) 1 SCC 0392

⁵(1992) 4 SCC 0435

⁶(1990) Supp. SCC 0722

⁷(1991) 3 SCC 0087

⁸(1986) 2 SCC 0667