

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 3rd February, 2011

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W.P.(C) 5654/2010

**B.K. INSTITUTE OF EDUCATION & TECHNOLOGY
& ANR.**

.....Petitioners

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates.

Versus

GGSSIP UNIVERSITY & ANR.

..... Respondents

Through: Mr. Mukul Talwar, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioners impugn the refusal by the respondent University to grant affiliation to the petitioner no.1 Institute for imparting education in Bachelor of Business Administration (BBA) (General) and BBA (Banking

& Insurance) Courses for the academic year 2010-2011 and also seek mandamus directing the respondent University to grant such affiliation to the petitioner no.1 Institute. The petitioner no.1 Institute is a self financing private Institute imparting higher education, managed and controlled by the petitioner no.2 Society. The petitioner no.1 Institute on 19th April, 2010 applied to the respondent University for affiliation for two courses aforesaid; a joint inspection of the petitioner no.1 Institute was carried out on 18th June, 2010 and an inspection report dated 7th July, 2010 submitted. According to the petitioners the said inspection report did not recommend grant of affiliation sought on the grounds of:-

- (i) the Faculty identified by the petitioners for the proposed courses not meeting the norms laid down by University Grants Commission (UGC)/respondent University and the petitioners being required to appoint a qualified Faculty by a duly constituted committee having a representative of the respondent University;
- (ii) The petitioner no.1 Institute not having infrastructure at its disposal for the said courses;

It was reported that the area of 765 sq. mtrs. for each of the courses counted on the basis of 4.25 sq. mtrs. for each of the 60 students of / in each course as sought by the petitioners was required and which was not available. The present writ petition was filed pleading that the recommendation was made in a vindictive manner; that the objection regarding the Faculty is vague and baseless inasmuch as it was not specified as to how the appointed Faculty did not meet the norms; that the Selection Committee had a representative of the respondent University namely Professor Sanjeev Mittal; with respect to the objection qua non-availability of built up space, it is contended that space for the first year students was available and the inspection team and the respondent University could not have required the requisite space for all the students of all the three years of the courses when in the year 2010-2011 the petitioners had applied for admission in the first year only. It was further pleaded that an appeal had been preferred to the Vice-Chancellor of the University in this regard and in which it was also pointed out that in the past, affiliation/provisional affiliation had been granted to many Institutes having the space for the first year students only.

2. Though in the pleadings no case of the respondent University being vindictive to the petitioner no.1 Institute has been made out save for the use of the word “vindictive” and qua the Inspection Committee but the counsel for the petitioners when the writ petition came up first before this Court on 19th August, 2010 argued that the respondent University had become vindictive towards the petitioners because the University had earlier denied affiliation to the petitioner no.1 for imparting education in B.Ed. course also, compelling the petitioner no.1 to then file W.P.(C) No.6036/2008 in this Court and by orders wherein the respondent University was directed to grant affiliation to the petitioner no.1 for B.Ed. course.

3. Notice of the writ petition was issued and the pleadings have been completed.

4. The respondent University in its counter affidavit has pleaded that the petitioner no.1 as a precondition for grant of affiliation is required to obtain ‘No Objection Certificate’ (NOC) from the Govt. of NCT of Delhi to the effect that it has suitable and adequate physical facilities in terms of

space accommodation etc. as specified by the respondent University from time to time and the requisite Faculty; that though the petitioners along with its application dated 19th April, 2010 for affiliation to the University had stated that recruitment of the staff is under process but before this Court had produced ante letter dated 18th April, 2010 of a purported Selection Committee for selection of the staff—it is pleaded that the said fact was never mentioned in the application/proposal for affiliation. It is yet further pleaded that the documents of selection of committee produced before this Court are also forged inasmuch as advertisement inviting applications is stated to have been published on 6th April, 2010 and interviews held soon thereafter on 18th April, 2010 without even granting reasonable time to the applicants to make applications; that while the requirement of the Professors, Readers and Lecturers is in the ratio of 1:2:3 but applications only for the post of Lecturers are shown to have been invited; the date of interviews and the letters are of the same date showing that no letters offering appointment as per select list prepared given and no time granted for accepting the offer; though candidates are described as Professor but without proof of Doctorate in any subject least of all a

subject of Management or other related fields; that Professor Sanjeev Mittal, if present in Selection Committee, must have been present in his personal capacity and had not been deputed by the respondent University in this regard. It is stated that as per norms of UGC/respondent University, the Lecturers are required to be National Eligibility Test (NET) qualified but none of the applicants except two are shown to be so qualified.

5. With respect to the physical infrastructure, it is pleaded that the land on which the Institute is situated is in a non-conforming area the prescribed use whereof is not institutional; that the Institute is located in extended Lal Dora; that there was no sanctioned plan of the building and no NOC from the concerned Department of Govt. of NCT of Delhi. It is thus pleaded that the application for affiliation was rejected for cogent reasons.

6. The petitioners have filed rejoinder reiterating their case and annexing thereto the representation made to the Vice-Chancellor of the respondent University together with documents regarding selection of Faculty and the guidelines of the respondent University for accreditation.

7. The counsels for the parties have been heard.

8. At the outset it may be stated that the Courts generally are loath to interfere with the decision of the academic institutions in such matters particularly as to the affiliation. Now, when the private sector has been permitted in the field of education, the Universities play a very important role in screening as to who is to be granted affiliation. Cases are not unknown where private players not fully equipped, have obtained affiliations and have been unable to fulfill the obligations to the students, to the prejudice of the career of the said students and compelling the students to either give up their education midway or to be accommodated beyond the sanctioned strength in other Colleges/Institutes. One of the grounds on which this Court would still, definitely interfere in the decision of the academic bodies as the respondent University is, when a case for *mala fide* or bias is made out. Though the counsel for the petitioners herein also has during the arguments and also in fact at the time when the writ petition came up first before this Court purported to make out a case of the University being vindictive but there is no basis therefor in the

pleadings save for the use of single the word “vindictive”. On the basis of the said word and a plea that an earlier writ petition was filed by the petitioners qua B.Ed. course, the counsel has argued that the respondent University is biased against the petitioners for the reason of the petitioner no.1 having been granted affiliation under orders of this Court in the earlier writ petition. However the only document filed in this regard is the order dated 9th February, 2010 in the earlier writ petition being W.P.(C) No.6036/2008 preferred by the petitioners. However the said order records that affiliation was denied by the respondent University to the petitioner no.1 for the reason of the petitioners running a Primary School in the same campus wherefrom it was proposed to run the B.Ed. course; that during the pendency of the writ petition, a fresh inspection ordered found that then no Primary School was being run by the petitioner; in view of the said fact and there being no other objection for refusal of affiliation, this Court directed grant of affiliation. It is thus not as if the denial earlier by the respondent University for B.Ed. course was without any reason or that the reason given by the respondent University for denying affiliation was set aside by the Court for the respondent University to be vindictive towards

the petitioner. Rather, it was the petitioners who removed the objection then raised by the respondent University by shifting/removing the Primary School owing where to the affiliation was then denied. I therefore do not find any case of bias or vindictiveness to have been made out.

9. The counsel for the petitioners has also argued that though till the date of filing of the writ petition, there was no formal response by the respondent University to the application of the petitioner no.1 for affiliation for BBA courses but after the filing of this writ petition, the letter dated 20th August, 2010 informing the decision dated 20th July, 2010 of the Board of Affiliation of the University was received by the petitioners. On the basis of the said fact also, it is argued that the conduct is *mala fide*. I am unable to agree. It is not as if the petitioners at the time of filing of the writ petition were in the dark. The petitioners were aware of the negative recommendation of the inspection team and had rather challenged the grounds thereof. The delay in communication of the decision is thus not found to be such as intended to harass the petitioners.

10. The counsel for the petitioners has then argued that Statute 24 of the

respondent University relating to conditions of affiliation requires an applicant for affiliation to have such infrastructural facilities as specified by the respondent University from time to time for maintenance of requisite standards in the Ordinance. It is contended that no Ordinance prescribing the standards has been issued by the respondent University. It is argued that without promulgating Ordinances prescribing standards for affiliation, affiliation cannot be denied on the vague ground of the petitioner no.1 not meeting the required standards. It is argued that it will lead to arbitrariness.

11. It is similarly argued that the respondent University nowhere prescribes the number of days to be given in advertisement inviting applications for the post of Lecturers/Readers/Professors. It is stated that the Faculty shortlisted by the petitioner is stated to be not having the requisite qualifications but the said qualifications are nowhere prescribed. It is contended that the requirement of built up space for students of all three years of the courses cannot be insisted upon when admissions are to be made to the first year itself and undertaking of the College for increase

in built up space each year should be accepted. It is contended that if the requirement for the first year students only is considered, the petitioners have the requisite built up space. It is also argued that it has not been stated that which of the Faculty does not meet the criteria and how. It is contended that the assurance/undertaking of the petitioner no.1 that it will build the requisite space by the next year, ought to have been accepted inasmuch as it is in petitioners' own interest to comply with the requirements so as to obtain affiliation in the next year. Lastly, it is argued that no opportunity was granted to the petitioners to satisfy the respondent University that there were infact no deficiencies.

12. The counsel for the respondent University has argued that the application for affiliation of the petitioner no.1 has been rejected on three grounds i.e.:-

(a) That the Institute of the petitioner no.2 is situated in the extended Lal Dora and no permission for affiliation with respect to such Institute can be granted without NOC from the Govt. of NCT of Delhi. It is argued that it remained to be pointed out to this Court

at the time of the earlier writ petition when the petitioners were seeking affiliation for B.Ed. course that such NOC is required and the respondent University is in the process of applying for review of the said order.

(b) Secondly, on the ground of the petitioner not having physical infrastructure and

(c) Lastly, the petitioner not having the requisite Faculty.

13. It is argued that the Inspection Committee was duly constituted and had submitted a report on the basis whereof the application for affiliation of the petitioner no.1 has been rejected. It is further argued that had the petitioner no.1 been not affiliated for B.Ed. course, the application for affiliation of the petitioner no.1 without the NOC of the Govt. of NCT of Delhi would have been outrightly rejected; however because the petitioner no.1 stood affiliated for B.Ed. course, inspection of the premises of the petitioners was carried out. From the inspection report, it is shown that while the requirement is of 3030 sq. mtrs., the existing area is only 2080

sq. mtrs. and additional construction of only 356.74 sq. mtrs. was found and even after which construction, there would be a deficit. Attention is invited to Ordinance 1 of the respondent University laying down the procedure for considering proposal for affiliation of Colleges/Institutions. It is argued that one “J.P. Gupta Committee” was constituted and the petitioners heard. It is contended that part of the built up space in the petitioner no.1 Institute is being used for the residence of the Chairman. From the documents regarding selection of Faculty, it is shown that they are of the same date and do not inspire confidence; that the candidates without having the qualification of Doctorate have self designated themselves as Professor. Regulations of the UGC in this regard are handed over.

14. The counsel for the petitioners in rejoinder has handed over a copy of the order dated 24th July, 2010 of the Govt. of NCT of Delhi regarding permission to grant NOC to allow existing higher educational institutions to run existing approved courses from Lal Dora, Extended Lal Dora, Agricultural Land, School Building and other Non-confirming areas

including Institutes running in rented premises and also permission to grant NOC to allow increase in intake and addition of courses to the Institutes/Colleges functioning from Lal Dora/Extended Lal Dora for the academic year 2010-2011. On the basis thereof it is contended that the first objection aforesaid of the respondent University disappears. With respect to the objection as to the built up space, it is contended that there is no Ordinance and criteria of 4.25 sq. mtrs. space per student stands fulfilled with existing built up space, if the students in the first year only are counted. It is contended that since there are no second and third year students immediately, their space requirements are not to be considered. It is yet further contended that on the same basis affiliation has been granted to others. It is argued that affiliation is from year to year basis and ought not to be denied for lack of space when there are no students in that year. With respect to the Faculty, it is argued that the UGC Norms now relied upon by the respondent University were required to be incorporated in the Ordinances of the respondent University and without the same happening, no reliance thereon can be placed. Similarly, it is contended that the NET qualified Lecturers are not available immediately and the Universities

themselves have been issuing exemption from time to time and this ought not to come in the way of the petitioners getting affiliation.

15. Of the three main objections to the affiliation of the petitioner no.1, in view of the order dated 24th July, 2010 (supra) the said objection at least for the academic year 2010-2011 in which a general NOC had been granted by the Govt. of NCT of Delhi, does not survive.

16. As far as the infrastructural requirement in terms of space is concerned, it cannot be doubted that the requirement is of 4.25 sq. mtr. per student. I am unable to find any provision whereunder the petitioner no.1 would be entitled to affiliation for a three years course by providing space for only the first year students even if immediately admissions are to be for first year only. Once the students are admitted to a particular Institute/College, their fate gets intertwined to the said Institute/College and they cannot be left at the mercy of the Institute/College. If the Institute/College would not be able to build additional space, the students will suffer. The students will be left in a lurch upon denial of affiliation in the second year. Even if the said students are

promoted, but without fresh admissions in first year, the College/Institute is likely to cut corners to the prejudice of the students. I do not see any error in the respondent University insisting upon the built up space requirement for the entire three years being met before permitting admission in the first year in a new course.

17. Similarly, as far as the ground of the petitioners not having the requisite Faculty is concerned, what emerges is that the petitioners in their application for affiliation did not disclose that advertisement had been invited, applications received and Selection Committee constituted. The same is an after thought of the petitioners. The documents filed by the petitioners indeed cast a doubt as to the manner of appointment. Though the counsel for the respondent University has fairly stated that after the judgment in *T.M.A. Pai Foundation* case, the respondent University has no role in selection of the Faculty but the University nevertheless as a condition of affiliation is entitled to ensure whether the appropriate Faculty exists or not.

18. The counsel for the petitioners has placed strong reliance on judgment dated 21st July, 2008 of this Court in W.P.(C) 4244/2008 titled ***Trinity Institute of Higher Education Vs. Govt. of NCT of Delhi.*** However, in that case there was no factual controversy in view of the pronouncement of Supreme Court in ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*** JT 2006 (4) SC 201. The present case does not fall in the same category for a direction to be issued to the University as in that case. The decision of the experts of the University ought to be respected. This Court is not exercising appellate jurisdiction over their decision. No case of arbitrariness, illegality or of a decision which no reasonable person could have reached, is made out.

There is no merit in the writ petition, the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 3, 2011
bs.