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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 782/2014 & CM APPL. 1564/2014

DELHI COLLEGE OF EDUCATION Petitioner

Through Mr. Sanjay Sahrawat, Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA

UNIVERSITY & ORS

..... Respondents

Through

Mr. Mukul Talwar with
 Mr. Sradhananda Mohaptra, Advocates
 for R-1.
 Mr. Amitesh Kumar, Advocate for
 R-2 and 3.

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Date of Decision : 07th March, 2014**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****JUDGMENT****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed primarily seeking a direction to respondent-University to follow the mandate of Clause 7(9) of National Council of Teacher Education Regulations, 2009 (for short "Regulations, 2009") and to approve the Faculty List submitted by petitioner to enable it to furnish the same to respondent-NCTE for final decision for grant of recognition.

2. The facts of the present case are that on 26th November, 2012 a public notice was issued inviting fresh applications seeking permission to start various courses.

3. In response to the petitioner's application, an inspection was conducted by the respondent-Northern Regional Committee (hereinafter referred to as "NRC"). On 15th November, 2013, NRC decided to issue a Letter of Intent to the petitioner under Clause 7(9) of Regulations, 2009.
4. On 19th November, 2013, the Board of Affiliation of respondent-University took a decision that it would neither nominate any expert for Selection Committee nor would it approve the faculty list submitted by petitioner.
5. Despite NRC having issued a formal Letter of Intent dated 19th December, 2013 and petitioner having constituted a Selection Committee in accordance with respondent-University's guidelines, respondent-University did not approve the faculty list. On 21st January, 2014, respondent-University informed the NRC about the decision taken by its Board of Affiliation in its 58th meeting held on 19th November, 2013. The decision of respondent-University was also formally communicated to the petitioner by way of a letter dated 21st January, 2014.
6. Mr. Sanjay Sharawat, learned counsel for petitioner contends that in pursuance to the Letter of Intent issued under Clause 7(9) of Regulations, 2009, petitioner was required to appoint the faculty and get it approved from the respondent-University within a strict time frame. Mr. Sharawat states that respondent-University was required to nominate its nominee to the Selection Committee for appointing the faculty. However, according to him, respondent-University took the illegal decision of not nominating any person to the Selection Committee.
7. Mr. Sharawat states that it was in these circumstances that the petitioner under the Regulations, 2009 exercised its option of appointing the faculty in a transparent, objective and judicious manner. He states that respondent-

University had arbitrarily taken the decision not to approve the faculty list furnished by the petitioner. He submits that without obtaining approval from the affiliating university, petitioner cannot submit the said list with the NRC. He submits that obtaining approval of the affiliating University is a mandatory requirement under Clause 7(9) of the Regulations, 2009. Clause 7(9) of the Regulations, 2009 reads as under:-

"7. Processing of Applications.-

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(9) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per National Council for Teacher Education norms within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee."

8. Mr. Sharawat states that respondent-University has been established by Government of NCT of Delhi under the Guru Gobind Singh Indraprastha University Act, 1998 read with its Amendment in 1999. He submits that the said Act is relatable to entry 25 of List III of Seventh Schedule to the Constitution of India. He points out that respondent-NCTE is a statutory body created under the National Council for Teacher Education Act, 1993 (for short "Act, 1993") under entry 66 of List I of the Seventh Schedule. According to Mr. Saharwat, in case of conflict between any provision of the two statutes, the legislative command of the Act, 1993, has necessarily to prevail and respondent-University is under a constitutional obligation to follow the

mandate of Act, 1993 and Regulations, 2009. In support of his submission, Mr. Sahrawat relies upon following judgments :-

- a) ***St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Anr., (2003) 3 SCC 321.***
- b) ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors, (2006) 9 SCC 1***
- c) ***Chairman, Bhartiya Education Society & Anr. Vs. State of Himachal Pradesh & Ors., (2011) 4 SCC 527.***
- d) ***Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh and Ors., (2013) 2 SCC 617.***

9. Mr. Sahrawat further states that respondent-University had in the past complied with the requirement of Clause 7(9) of the Regulations, 2009 and approvals had been granted by it to a large number of colleges. He points out that in 2012 respondent-University had granted approval to the faculty list of Fairfield Institute of Management & Technology and Haryana Shakti College of Education just on the basis of letter of intent issued by NRC under Clause 7 (9).

10. Mr. Sahrawat lastly submits that the controversy in the present case is squarely covered by a judgment of a co-ordinate bench of this Court in ***K.C. College of Education Vs. Union of India and Ors., W.P.(C) 6221/2010***, decided on ***20th September, 2010***.

11. Mr. Amitesh Kumar, learned counsel appearing for respondents-NCTE and NCR supports the case of the petitioner. He states that the judgment of the Apex Court in ***Prof. Yashpal & Anr. Vs. State of Chhattisgarh & Ors., (2005) 5 SCC 420*** also supports the case of the petitioner.

12. Mr. Mukul Talwar, learned counsel for respondent-University submits that in accordance with the judgment of the Supreme Court in ***T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors., (2002) 8 SCC 481***, the respondent-University does not micromanage the self-financing institutes affiliated to it. He states that respondent-University does not interfere with the selection process conducted by the Institute for filling up teaching or non-teaching posts even with regard to the institutes affiliated to the respondent-University.

13. Mr. Talwar further submits that Clause 7(9) of the Regulations, 2009 is ultra vires the Act, 1993 as said Act does not provide or grant jurisdiction to the NCTE to frame regulations delegating its functions upon the universities. He also submits that the judgment of learned Single Judge in ***K.C. College of Education*** (supra) does not lay down correct law as the Supreme Court in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*** (supra) has only held that if there is a conflict between Central enactment and State enactment, then the provisions of the Central enactment would prevail. According to Mr. Talwar, in the present case there is no conflict between Guru Gobind Singh Indraprastha University Act, 1998 and Regulations, 2009.

14. Having heard learned counsel for the parties, this Court finds that the issue involved in the present case is no longer res integra as it is squarely covered by the judgment of this Court in ***K.C. College of Education*** (supra). In the said case, the M.D. University, Rohtak had declined to approve the faculty list on the similar ground that the same can be approved only after the University grants affiliation to the College. Even in that case, Regulations, 2009 required that approved list was to be submitted before grant of formal recognition. Learned Single Judge allowed the writ petition vide order dated 20th September, 2010 by directing the respondent-University to approve the

faculty list of the college while relying upon decision of the Supreme Court in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*** (supra). The relevant portion of ***K.C. College of Education*** (supra) reads as under:-

“3. It was thus found that while the Regional Committee for recognition required the list of appointed faculty to be approved by the affiliate University and the affiliate University required the petitioner to be first recognized by the NCTE before affiliating the petitioner and approving the faculty. To resolve the stalemate, on the oral request of the counsel for the petitioner, the affiliating University viz. Maharishi Dayanand University (MDU), Rohtak was impleaded as a respondent and ordered to be served.

4. The counsel for the MDU, Rohtak has today stated that the University as of today has no relationship with the petitioner and its Rules do not permit it to approve the faculty of any Institution/ College which is not affiliated to it.

5. The NCTE Regulations, 2009 in Regulation 7(9) thereof require the Regional Committee to first issue a Letter of Intent to the applicant for recognition and only after the Institution / College submits the list of faculty, as approved by the affiliating body, its application for recognition to be processed further. If the University starts taking the stand as taken by the MDU, Rohtak in the present case, it would put the procedure for recognition to naught. The senior counsel for the respondent NCTE also states that except for MDU, Rohtak all other Universities are approving the list of faculty even prior to recognition and affiliation.

6. Though the counsel for MDU, Rohtak seeks adjournment to file counter affidavit and to place before this court its Rule and Regulations owing where to the request of the petitioner has been declined but it is not deemed expedient to adjourn the matter. In accordance with the judgment in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (2006) 9 SCC 1 laying down that the provisions of the University's Act must give way to the provisions of the NCTE Act and Regulations, the MDU, Rohtak is directed to, upon the petitioner approaching it and within one week of the petitioner so approaching it, consider the

appointment of faculty made by the petitioner and if finding the same as per the norms of the University, to approve the same. The counsel for MDU, Rohtak states that approval of faculty is a long drawn procedure requiring confirmation from several sources and all of which cannot be completed in a week. He seeks liberty to, on the basis of the documents produced by the petitioner, if satisfied grant approval subject to verification from other sources. It is clarified that the respondent University would be entitled to follow the said procedure.”

15. This Court is in agreement with the view expressed by the Coordinate Bench of this Court in the aforesaid judgment. It is pertinent to mention that vires of Clause 7(9) of Regulations, 2009 has not been challenged before this Court. Consequently, respondent-University is directed, upon petitioner's approaching it within three weeks, to consider the appointment of faculty made by petitioner and if the same is found in accordance with norm, to approve the same. With the aforesaid observations and directions, present petition and application stand disposed of.

MANMOHAN, J

MARCH 07, 2014

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