

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.02.2015

+ **W.P.(C) 1775/2015**

JITENDER YADAV & ORS.

..... Petitioner

versus

**INDRA GANDHI NATIONAL OPEN
UNIVERSITY AND ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sharad Prakash Pandey and Mr Deepesh
Divedi.

For the Respondents : Mr Aly Mirza and Mr Kulish Tanwar
for R-1.
Mr Sunil Singh Parihar for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioners claim to be students who had obtained admission in the course of Diploma in Elementary Education (D.El.Ed.) with All India Society for Electronics and Computer Technology (AISECT) Bhopal (i.e. respondent no.2 herein). The petitioners allege that it was represented to them that AISECT was conducting the said course in collaboration with Indira Gandhi National Open University (IGNOU).

2. It is asserted that AISECT had adopted more than 5000 multipurpose training centres including over 4000 common service centres under the initiative.

3. The grievance of the petitioners is that the IGNOU did not conduct

the examination for the first semester of D.El.Ed. within time and has also failed to declare the result thereof; the said exam was conducted after a period of 2 years in 2013. Further, IGNOU has also failed to conduct the examination for the second semester. The petitioners pray that a direction be issued to the respondents for declaring the results of the exam already conducted and further directions be issued to conduct the examination for the second semester immediately.

4. The learned counsel for IGNOU who appears on advance notice submits that the present petition is abuse of process. It is submitted that the petitioners have filed this petition to take an additional chance in this Court after the High Court of Madhya Pradesh, Gwalior Bench has deliberated on the substratal controversy and rendered a decision thereon. He has referred to a decision of a Division Bench of the Madhya Pradesh High Court in **Dharmendra Rawat and Others v. Indira Gandhi National Open University and Others: W.P.(C) 4266/2013, delivered on 07.08.2014.** In that matter, the petitioners who were also students of AISECT had approached the Court by way of a writ petition, *inter alia*, praying that they be permitted to appear in the examination of D.El.Ed. course conducted by IGNOU. The Court had examined their claim and had noted that National Council of Technical Education (NCTE) granted approval to IGNOU for conducting the D.El.Ed. programme through 'Open Distance Learning'(ODL) mode for service teachers in the State of Madhya Pradesh. This was pursuant to the request made by the State of Madhya Pradesh for conducting such programme in the said state. The permission for the course was granted subject to certain terms and conditions which were

referred to by the Division Bench and are quoted hereunder:-

- “1. The duration of the programme shall be of two academic sessions/years (four semesters).
2. The commencement and completion of the programme shall be so regulated that too long spells of vacations (summer/winter) are available to the learners for guided/ supervised instructions and face to face contact sessions.
3. Each study centers shall enroll only one hundred students in a given session.
4. Working teachers who are possessing senior secondary or equivalent examinations with 50% marks and two years' teaching experience in a Government or Government recognized primary/elementary school would only be considered eligible.
5. There should be a suitable procedure for the selection of candidates.
6. The reservation of SC/ST/OBC shall be as per the Central/State Rules whichever be applicable and relaxation in marks at entry qualification with 5% in favour of SC/ST/OBC may be considered.
7. The institution/University offering D.El.Ed. programme through ODL system shall have an exclusive core full time faculty of six members comprising of Prof.-One, Reader/Associate Professor- One and Lecturer/Assistant Professor - Four with experience in all disciplines like education, science, mathematics, social science

and two language i.e. english and regional languages. One faculty members shall be designated as programme coordinator.

8. Teacher Educator/Supervisor engaged for various activities at the Study Centers shall be fully qualified as per NCTE norms and must be oriented by the open University/ Institution in the practice of ODL system from time to time.
9. Resource Persons should be engaged as per need of the programme which may preferably in the ratio of 1:50.
10. The Study Centre shall be existing teacher training institutions recognized by the NCTE offering the D.El.Ed. programme in face to face mode and having all the requisite infrastructure and staff as per NCTE norms. The Study Center shall provide to the distance learners allocated to it access to its library and other physical facilities.
11. A systematic monitoring mechanism shall be adopted by the Hqrs.
12. The Hqrs. shall develop curriculum, self-learning materials, model lesson plans and audio visual materials for use of the study centers. At the end of 1st and 2nd year external examination shall be conducted which would include theoretical examination and examination of practice teaching and work experience components.
13. The approval is restricted to 34,902 untrained working teachers in the state of Madhya Pradesh only.

14. State Government shall clear the backlog of untrained teachers and henceforth ensure that DIET's and other elementary teacher education institutions have sufficient number of intake so as to meet the requirement of elementary teachers needed by the State Government for running schools in tune with RTE Act, 2009.
15. The D.El.Ed. programme shall be in consonance with the guidelines issued by the NCTE to the IGNOU for ODL Mode vis-a vis the provisions given in NCFTE, 2009.
16. The State Government before launching the programme would provide details of the material prepared for D.El.Ed. programme through ODL mode and an undertaking that this programme would be restricted to the 34,902 untrained working teachers and that it would ensure that the future appointments shall be made as per the qualification prescribed by the NCTE from time to time.”

The Division Bench concluded as under:-

“7. The letter is dated 31st March 2011. From the terms and conditions of the NCTE, it is clear that IGNOU or some other appropriate agency was authorised to impart education of D.El.Ed. two years duration course to the untrained teachers working in government or government recognised primary elementary schools only. The course could be offered at the study centers qualified as per NCTE course.

8. In the present case, the IGNOU entered into an MOU with the respondents No.3 and 4 on 11th September 2009. Admittedly, on the aforesaid date

IGNOU had no permission or recognition to impart D.El.Ed. course ODL Mode, hence, it had no power and authority to sign the MOU. Apart from this, as per the terms and conditions of the NCTE, the course could only be offered to the untrained teachers working in government or government recognised primary elementary schools only. The petitioners nowhere pleaded that they were working as untrained teachers in government or government recognised primary elementary schools. Hence, the admission of the petitioners by the respondents No.3 and 4 in D.El.Ed. course was per se illegal.”

5. In addition, the Division Bench also expressed their, *prima facie*, opinion that AISECT had fraudulently admitted students to the D.El.Ed. course.

6. In the present case also, the petitioners claim to be unemployed person who were admitted in the D.El.Ed. course by respondent no.2 in 2011. In terms of the approval granted by NCTE, the D.El.Ed. course could only be conducted in respect of working teachers who were possessing senior secondary of the equivalent examination with 50% marks and 2 years teaching experience in a Government or Government recognized primary/elementary school. No other person would be eligible for grant of admission to the D.El.Ed course.

7. *Prima facie*, the claim of the petitioners would be covered by the decision of the Madhya Pradesh Court in ***Dharmendra Rawat and Others*** (*supra*).

8. It is also relevant to note that the petitioners are residents of the State of Madhya Pradesh and had joined the course with AISECT at Bhopal.

Concededly, IGNOU has a centre in the State of Madhya Pradesh and has been defending several writ petitions, which had been filed in connection with the D.El.Ed course conducted by AISECT, before the different Benches of the High Court in that state. It is also clear that substantial cause of action also arises within the territory of the State of Madhya Pradesh.

9. Although, the learned counsel for the petitioner contends that since the examination are to be conducted by the IGNOU, this court would have the jurisdiction to entertain the present petition. However, I am not inclined to do so for the reason that that substantial part of the cause of action has arisen in the State of Madhya Pradesh. Further, the High Court of Madhya Pradesh has examined the controversy with regard to the course in question conducted by AISECT/IGNOU in several petitions. It is also asserted on behalf of IGNOU that the relevant records and material is available with its centre in the State of Madhya Pradesh. Thus, in my view, applying the principle of *forum conveniens*, this court would not be the appropriate court to consider the controversy sought to be raised by way of this petition.

10. A full bench of this court in **Sterling Agro Industries v. Union of India & Ors.**; AIR 2011 Del 174 has held as under:-

“31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note

of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens”

11. Accordingly, the present petition is disposed of by granting liberty to the petitioners to approach the High Court in Madhya Pradesh. No order as to costs.

FEBRUARY 27, 2015
MK/RK

VIBHU BAKHRU, J