

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs. 37001 & 38553 of 2016

Date : 16.12.2016

WP No.37001 of 2016:

Between :

P Bala Raju S/o P Venkataiah
R/o Thimmareddyguda, Tadlapalle village
Shabad mandal, Ranga Reddy District and others

.... Petitioner

And

The State of Telangana
Rep by its Special Chief Secretary,
Education Department, Secretariat,
Hyderabad and others

.... Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 37001 & 38553 of 2016

COMMON ORDER:

Heard Sri S.A.K Moinuddin, learned counsel for petitioner association in W.P.No. 38553 of 2016, Sri S Sri Ram learned counsel for petitioners in W.P.37001 of 2016, learned Government Pleader for School Education (TS) and Sri K.Ramakanth Reddy, learned standing counsel for National Council for Teacher Education-4th respondent.

2. Petitioners in W.P.No. 37001 of 2016 are students who have completed their intermediate education and aspiring to prosecute the course of study leading to awarding of Diploma in Elementary Education (D.El.Ed). Petitioner in W.P.No.38553 of 2016 is association representing institutions which administer the course leading to awarding D.El.Ed certificate. The Rules prescribe schedule to conduct admission process and commencement of academic session. Petitioners are aggrieved by action of the respondents 1 to 3 in not conducting entrance examination to select students for admission into D.El.Ed course for the academic year 2016-17 and declaring it as 'Zero year'.

3. Sri Sriram made following submissions:

3.1 The petitioners are keen to prosecute the course of study leading to awarding of D.El.Ed and on account of inordinate delay in commencing the academic process grave prejudice is caused to their academic ambitions and uncertainty is created due to illegal actions of the respondent authorities. On account of the better employment prospects for D.El.Ed certificate holders, petitioners intend to prosecute the course and the same cannot be denied by the State or its instrumentalities. Due to the lapses of State authorities in complying with statutory norms, students cannot be made to suffer.

3.2 A student has fundamental right to prosecute education of his choice. State can not curtail such right more so because of its lapses in adhering to schedule of conducting admission process.

3.3 It is the primary responsibility of the State to conduct entrance examination and hold admission process as per schedule prescribed in the A.P. Elementary Teacher Training Institutions/District Institutes of Education and Training (Regulation of Admission into Diploma in Elementary Education Course through Common Entrance Test) Rules, 2013 (for short the Rules, 2013). Students or managements are not responsible for delay in initiating process for admission of students. State having failed in adhering to schedule prescribed in the Rules cannot plead that as there is delay in initiating admission process, it cannot conduct admission process now. An academic session cannot be made zero. Having committed illegality in not adhering to schedule to make admissions, State cannot perpetuate illegality further by not making admissions at all.

3.4 Even if admissions are held now, it does not affect academic session and does not compromise on quality of education. It could only postpone completion of academic session. Students are eager to prosecute the course of study and mere delay in completion of academic session is not a ground to deny the opportunity to prosecute D.El.Ed course.

3.5 He would submit that Government ought to have invoked provision in Section 92 of the Education Act.

3.6 It shall be the endeavor of the State not to give break in the academic session and to preserve the academic session to the extent possible. While commencing the academic session now, the State can

also simultaneously initiate measures to regulate academic session for the next academic year.

3.7. In support of his contentions, he placed reliance on following decisions.

Kusheshwar Prasad Singh Vs. State of Bihar and others¹, Varun Saini and others Vs Guru Gobind Singh Indraprastha², Bharathidasan University and another Vs. All-India Council for Technical Education and others³, Maa Vaishno Devi Mahila Mahavidyalaya Vs State of Uttar Pradesh and another⁴, Joseph Sriharsha Mary INdraja Educational Society, Hyderabad and another Vs National Council for Teacher Education, New Delhi⁵.

4. Sri M.A. K. Moinuddin, learned counsel for petitioner association made the following submissions:

4.1 The members of the petitioner association are all granted affiliation; have complied statutory requirements; they have all the infrastructure facilities and made provision for admission of students for the academic year 2016-17. As per the orders of the Government in G.O.Ms.No.18 School Education (PE-PROG.II) Department dated 14.5.2014 colleges are required to secure affiliation for a period of four years on payment of affiliation fee and accordingly the members of the petitioner association have paid affiliation fee of Rs.1 lakh for seeking renewal and renewal was granted. The private unaided institutions depend on fee collected from students. If the students are not provided for this academic year, the teaching faculty recruited by the managements would remain idle, whereas the managements have the responsibility of maintaining all the facilities and payment of pay and

¹ (2007) 11 SCC 447

² (2014)16 SCC 330

³ (2001) 8 SCC 676

⁴ (2013) 2 SCC 617

⁵ 2014 (2) ALD 17

allowances for the faculty engaged. The private educational institutions can sustain only if students are admitted in an academic session. Maintaining infrastructure requires huge funds. Without collection of fee, no institution can run. Not making admissions for the academic year will have impact for two academic years and institutions will suffer grave hardship; the financial implications are very severe and would affect the viability of these institutions for ever.

4.2. Though academic session is required to commence from First August of the academic year, for the last few years this did not happen and academic session actually started some time in January/February. The first year students admitted during the academic year 2015-16 would complete their course of study by January, 2017. Thus, even if the admissions are made, no prejudice would be caused to any person and academic year can commence in January/February. Managements cannot be subjected to losses for the lapses of the state authorities. The management will cooperate to regulate academic sessions for the future academic year.

5. Learned Government Pleader appearing for respondents 1 to 3 would submit that on account of the bifurcation of erstwhile State of Andhra Pradesh and establishment of separate State of Telangana w.e.f. 2.6.2014, on various issues State administration faced lot of difficulties. Even with reference to regulating the academic session for D.El.Ed course, the State experienced difficulties and in the two previous academic years, there was inordinate delay in commencement of the academic session. For the course of 2014-16, the session commenced on 27.1.2015 and would close on 29.11.2016. For the course of 2015-17 the first year session commenced on 1.3.2016 and it is likely to be closed on 23.1.2017. As per the intake capacity provided to the institutions imparting the course of study, the maximum strength for two years put

together is 100. Since till January, 2017 the first year students of the batch of 2015-17 would continue to study, it is not possible to commence another first year batch before January, 2017. By this process, the academic session get extended year after year. The State intend to regulate the academic session and put it back to regular schedule. This is possible only if no admissions are made for this academic year.

6. The D.El.Ed course is part of programme of Teacher Education regulated by Section 2 (1) of National Council for Teacher Education Act, 1993 (Act 1993). Duration of the course is 2 years. National Council for Teacher Education (Regulation Norms and Procedure) Regulations, 2014 (for short Regulations, 2014) are made under the Act. The Act and Regulations made there under prescribe detailed procedure for according affiliation to institutions which intend to administer the course of study leading to awarding of D.El.Ed. During the academic year 2016-17, on due compliance of the required norms, the National Council for Teachers Education (for short NCTE) granted affiliation to 163 institutions in the state of Telangana and total intake capacity of these institutions is approximately 7,000 students.

7. Regulation 11 of Regulations 2014 mandate strict observance of academic calendar and requires prescribing admission schedule at least 3 months in advance of commencement of each academic session. The norms notified by NCTE prescribe admission either based on marks secured in the qualifying examination or in the entrance examination. In terms thereof and in exercise of power conferred under Sections 3 and 15 of A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, the Rules, 2013 were made.

8. Rules, 2013 envisage Common Entrance Test called as DEECET for assigning marks and merit order to the students and same shall be the basis for admission of students into the D.El.Ed course. The Rules, 2013 also envisage constitution of Common Entrance Test Committee and appointment of Convener. Rule 9 of these Rules prescribe schedule to conduct DEECET and admissions. It mandates completion of admission process by last week of July and commencement of classes in the first working day of August of the academic year. Table appended to Rule 9 stipulate detailed schedule commencing from meeting of admission committee to commencing of the course. The Rules do not vest power to give relaxation.

9. As noted above, Rule 9 stipulates schedule for commencement of admission process, notification calling for applications, conduct of DEECET, holding counseling for admissions, spot admissions and first day of instruction for new academic session. Admission process should conclude by end of July and classes should commence on the first working day of August. Admittedly, admission process has not commenced. No Convener was appointed and State is not in favour of holding entrance examination and intends to make the academic year 2016-17, as 'Zero year'. As against the schedule drawn in the Rules, 2013, prayer sought by petitioners is to declare the action of respondents in treating the present academic year as 'Zero year' and seek further direction to take steps forthwith to conduct counseling by conducting entrance test.

10. The schedule drawn up in Rule 9 indicates 13 stages and requires 5 months to complete these 13 stages. These writ petitions are instituted in end of October/ in early November of 2016. If the prayer as sought for is granted, it would mean the schedule to make admissions must commence now and it would require 5 months to complete. In

other words, as per Rule 9, admissions can not be finalized till May, 2017. Even if some stages are excluded, from the date of issuance of notification to conduct of DEECET, it would still require 4 months. As noted above, no power is vested in the State to relax the requirement of schedule, as such all the stages of the schedule are required to be followed. This Court cannot direct the State to give a go bye to the statutory prescription and to make admissions. It is pertinent to note that there is no challenge to the Rules, 2013 and Regulations, 2014.

11. The stand of the State not to conduct admissions for this academic year is on the ground that due to bifurcation of State of Andhra Pradesh and formation of State of Telangana, in the two previous academic years, admissions could not be made in time and academic session is postponed and unless admissions are deferred for one academic year, the academic sessions cannot be regulated. The facts on record would disclose that in the two previous academic years admissions were delayed and course of study commenced after long delay from the scheduled date.

12. If academic session is allowed to commence after 31.12.2016, it would mean one more year of delayed commencement of academic session. It appears that for each year, the intake capacity is 50 and at any given point of time there would be 100 students, first and second year put together. The infrastructure and faculty would be structured in the said manner. For this year also, if academic session is permitted to commence after 31.12.2016, it would mean by 1.8.2017, there would be full strength of 100 students for two years. Thus, even if Government regulates admissions for next academic year as per schedule prescribed in Rule 9 of the Rules, 2013, the institutions may be lacking the infrastructure to accommodate the new batch of first year students.

13. Thus, the reasoning assigned by Government not to make admissions for this academic year can not be held as arbitrary, baseless and without just cause and cannot be faulted. It is the responsibility of the State to provide good education in all fields of education and learning. On detailed analysis of admission process, Government takes a conscious decision not to make admissions for the academic year 2016-17. In matters of this nature, Court should not trench upon the wisdom of the State and sit and decide as an appellate forum.

14. There is merit in the contention of Mr Sriram that a student has a right to prosecute the course of study of his choice and liking and it is the obligation of the State to provide all facilities to enable the student to realise his aspirations. He would further submit that the Rules, 2013 mandate the State to strictly follow the schedule and authority having failed to follow the schedule to make admissions cannot be permitted to take advantage of its default. In support of the said contention, he placed reliance on the decision of Supreme Court in **Kusheshwar Prasad Singh**. In **Kusheshwar Prasad Singh**, Supreme Court held:

“16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.

15. No doubt State ought to have taken proper care in adhering to the mandate of Rules, 2013. But stark reality is, so far no steps are taken to commence admission process and in terms of Schedule prescribed in the Rules, 2013 minimum of 4 months is required to complete the exercise, which would mean that academic session can commence only by May, 2017. Petitioners ought to have been diligent in

complaining State inaction when admission process was not set in motion in March, 2016 or soon thereafter. They instituted writ petition only in the last week of October, 2016. As a knee-jerk reaction, the managements followed the suit. Thus, if the relief sought by petitioners is granted, it would continue to disturb the academic schedule. Thus, in order to ensure certainty to the academic schedule and to ensure sanctity to the statutory scheme, it is necessary to concede elbow room to the State. In the larger public interest and to put back the academic schedule on rails, it is desirable to mandate the State machinery to set in motion the admission process at least to the next academic year, strictly in accordance with the schedule prescribed in Rule 9 of the Rules, 2013.

16. In **Varun Saini**, the Court was concerned with admissions to technical courses for the academic year 2014-15. Batch of writ petitions were filed praying to extend time schedule to complete the admission process. Court noticed that there were significant special features that have occurred in the academic year 2014-15, one of them being formation of State of Telangana. While observing that the agonizing situation inviting national waste could have been avoided if only the AICTE and the University were more careful, cautious and circumspect, having regard to the larger public interest and to do complete justice, time was extended to conduct online counseling. The said decision cannot come to the rescue of petitioners. The Supreme Court reiterated that the adherence to time schedule to complete the admission process is sacrosanct. However, in the peculiar facts of those cases and to do complete justice, time for counseling was extended in exercise of its jurisdiction under Article 142 of the Constitution of India. Further, the time extended was to conduct one more round of counseling whereas by then the whole gamut of selection process was undertaken and what is required was only to hold additional counseling and to hold counseling,

only a short time is required. In the instant case, entire gamut of admission process required to be undertaken that would take minimum of four months. In **Maa Vaishno Devi Mahila Vidyalaya**, the adherence to time schedule is emphasized.

17. **Joseph Sriharsha Mary Indreja Educational Society** concerns grant of affiliation. Having regard to peculiar facts of the case, this Court while holding repeated rejection for same reason as illegal, directed grant of affiliation even though time fixed by Supreme Court in **Maa Vaishno Devi Mahila Mahavidyalaya** expired. The said decision was made in the peculiar facts of the case. This decision also does not come to the rescue of petitioners.

18. In the peculiar facts of these cases and having regard to statutory mandate, relief sought for by petitioners cannot be granted. No direction can be issued to conduct admission process for admission to D.El.Ed course for the academic year 2016-17 at this stage. The writ petitions are liable to be dismissed. They are accordingly dismissed. However, it is hoped and expected that respondent authorities shall adhere to the schedule prescribed in Rules, 2013 for the academic year 2017-18. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

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