

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17828 of 2015 (O&M)
Date of decision: 25.2.2016

OGIS Education Society

.. Petitioner

v.

Maharshi Dayanand University and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**Present: Mr. R. K. Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate for the petitioner.**

**Mr. Anurag Goyal, Advocate for the University-respondent
No.1.**

Mr. Tribhuwan Dahiya, Advocate for respondent No. 2.

...

Rajesh Bindal J.

1. The petitioner has filed the present petition impugning the minutes of 247th meeting of the Executive Council of Maharshi Dayanand University (for short, 'the University') (Annexure P-9), held on 3.8.2015, whereby fresh intake of students in Venkateshwara College of Education, (for short, 'the College'), run by the petitioner for the year 2015-16 was reduced to half and penalty of ₹ 1,00,000/- was imposed.

2. Learned counsel for the petitioner submitted that the college is imparting quality education ever since it was established. It has all infrastructural facilities, besides the Faculty required as per the norms laid down by All India Council for Teacher Education (for short, 'the Council'). He further submitted that the proposed penalty recommended by the Academic Council in its meeting held on 17.7.2015 after considering the

reply filed by the petitioner was to withdraw provisional affiliation granted to the college and to put it under “No Admission Category” for the session 2015-16, whereas the final punishment inflicted is reduction of 50% seats for the session 2015-16 and imposition of fine of ₹ 1,00,000/-, for which there is no power vested with the University. He further submitted that as per University Statutes, the seats to the extent of twice the number of irregular admissions made, for the next academic session could be reduced, whereas in the present case, the penalty imposed is that the sanctioned strength has been reduced to 50%. He further submitted that the reply filed by the petitioner was not considered nor speaking order was passed assigning reasons.

3. On the other hand, learned counsel for the University referred to the provisions as contained in the University Statutes, wherein Clause 27 provides that the Executive Council can impose any of the penalties in case a college/institution is not complying with the requirement of National Council for Teacher Education Act, 1993 (for short, 'the Act'), Statutes, Ordinances or Regulations etc., which include reduction in seats and imposition of fine. He referred to the report of the Inspection Committee constituted to see infrastructural facilities in the colleges, where at the time of inspection, the Committee did not find students or any class in the College. The University also received complaints that in the college, required staff and other facilities were not available. Referring to the attendance sheets, learned counsel submitted that students were marked present at two places simultaneously. After considering point-wise reply submitted by the petitioner to the issues raised in the inspection report, initially the Academic Council in its meeting held on 17.7.2015 resolved to recommend to the Executive Council that provisional affiliation granted to the colleges be withdrawn and these be put under “No Admission Category” for the session 2015-16, however, taking a lenient view, the Executive Council merely directed for reduction of 50% seats for the session 2015-16, besides imposing penalty of ₹ 1,00,000/-. The College was given opportunity to make up the deficiencies. It was further submitted that because of mushrooming of B.Ed. colleges in the State of Haryana for the session

2015-16, as against intake capacity of 60,672 students, despite grant of four weeks' extension by the Government by extending the last date for admissions, only 32,811 seats could be filled and 27,861 seats remained vacant.

4. Heard learned counsel for the parties and perused the paper book.

5. The petitioner herein is a society running the college imparting education in B.Ed. Course. It has been granted permission by the Council and affiliation by the University. There had been mushrooming of educational colleges in the State of Haryana in the last 4-5 years, as a result of which the intake capacity increased to 60,672. The number of students available for admission despite grant of extension of last date fixed for admissions was merely 32,811. 27,861 seats still remained vacant. While dealing with CWP No. 25532 of 2015—Ganga Institute of Education v. Maharishi Dayanand University (MDU) and others, wherein the issue raised was for seeking permission to start new integrated course of B.A. B.Ed. and B.Sc. B.Ed., considering the stand taken by Dr. S. K. Chauhan, Regional Director of the Council and Shri Vijai Vardhan, Addl. Chief Secretary to Government of Haryana, Department of Higher Education, who were present in court, it was noticed that there was total lack of co-ordination between three agencies involved, namely, the State, the Council and the affiliating Universities. Apparently, neither at the stage of affiliation or approval nor even thereafter, the availability of infrastructure and the faculty is checked, as a result of which the quality of education was being compromised. The students admitted in the institutions were at the mercy of the colleges with regard to quality of education imparted. They are producing teachers, who are to teach future generations. The order passed in the aforesaid petition on 19.2.2016, is extracted below:

“In terms of the order passed yesterday i.e. 18.02.2016, Dr. S.K.Chauhan, Regional Director, National Council for Teacher Education (for short, the Council) incharge of eight States i.e. Chandigarh, Haryana, Punjab, Himachal Pradesh, Delhi, Utrakhand, Uttar Pradesh and

Rajasthan and Sh. Vijai Vardhan, Addl. Chief Secretary to Govt. of Haryana, Department of Higher Education, Chandigarh are present in person. Dr. S.K.Chauhan, Regional Director has pointed out that as per Council Act and Regulations, the Council is monitoring the following courses:

1. Diploma in early childhood education programme leading to Diploma in Preschool Education (DPSE)
2. Elementary teacher education programme leading to Diploma in Elementary Education (D.El.Ed.)
3. Bachelor of elementary teacher education programme leading to Bachelor of Elementary Education (B.El.Ed.) degree
4. Bachelor of Education programme leading to Bachelor of Education (B.Ed.) degree
5. Master of Education programme leading to Master of Education (M.Ed.) degree
6. Diploma in Physical Education programme leading to Diploma in Physical Education (D.P.Ed.)
7. Bachelor of Physical Education programme leading to Bachelor of Physical Education (B.P.Ed.) degree
8. Master of Physical Education programme leading to Master of Physical Education (M.P.Ed.) degree
9. Diploma in Elementary Education programme through open and distance learning system leading to Diploma in Elementary Education (D.El.Ed.)
10. Bachelor of Education programme through open and distance learning system leading to Bachelor of Education (B.Ed.) degree
11. Diploma in arts education (Visual Arts) programme leading to Diploma in Arts Education (Visual Arts)
12. Diploma in arts education (Performing Arts) programme leading to Diploma in Arts Education (Performing Arts)
13. 4-year integrated programme leading to

B.A.B.Ed./B.Sc.B.Ed. Degree

14.Bachelor of Education programme (part time) leading to Bachelor of Education (B.Ed.) degree

15.B.Ed.M.Ed.(3-years integrated) programme leading to B.Ed.M.Ed. (integrated) degree

As regards the procedure to be followed, Dr. S.K.Chauhan, Regional Director, has submitted that initially a communication is sent to the respective State governments seeking their comments as to whether more colleges to impart courses in education are required or not. In case comments are received in positive, an advertisement is published in the newspaper for inviting applications from the persons seeking permission to open colleges. In case the State Government communicates stating that no further colleges/courses are required, the name of that State or course is not added in the advertisement. However, in case no comments are received from the State Government, the applications are invited for all the courses. He further submitted that the Council has the data of projected demand and supply for each course and that is taken into consideration by the Committee constituted for taking final decision for grant of approval of any application for starting a new course. However, he was candid in saying that the number of seats, for which permission is to be granted, to be prospective applicants for imparting education in a course is neither mentioned by the Council or by the State Government in its communication. It only relates to a course. Whosoever fulfills the conditions laid down for starting a new college or for additional intake of seats, is granted the letter of intent.

Many times, the State Government responds after the applications have already been received by the Council, either when those are sent for comments to the State Government or after that but in that situation the Council considers those applications and wherever applicants fulfill the

conditions and the committee recommended their case, the permission is granted. As per the regulations framed in the year 2014 NOC from the University from which the Institute is to have affiliation, is a pre-requisite. Such NOC is to be submitted along with the application. One set of application is sent to the State Government for its comments. The comments are required as to whether in a particular area any further colleges are required or not. Whether any comments are received or not for which two opportunities within 90 days were granted to the State Government, the Council sends a team of two nominated members from the Council and one from the State Government for inspection. It is generally felt that State Governments do not nominate any member. In case, with the inspection report, it is found that the applicant fulfills all the conditions mentioned in the Act and regulations, the same is considered by the committee and the letter of intent is issued.

He further submitted that though the Council has the data of number of seats already permitted and colleges in the State, but do not have any data of the number of the admissions. Hence they are not considering this aspect while granting permission to the new colleges or new courses to the old colleges. He further stated that in case the State sends its comments regarding requirement of colleges in a particular area or number of seats required, that can be taken care of before inviting applications for start of new colleges/courses.

After grant of letter of intent, the applicant colleges are required to fulfill certain formalities, such as appointing faculty and providing other infrastructural facilities. After fulfillment thereof within time granted, final permission is granted.

He did not dispute the fact that after initial permission is granted, there is no infrastructure or staff

available with the Council to further regulate or monitor the working of the colleges with regard to quality of education imparted or with regard to the faculty or other facilities required. Even the self appraisal reports are not sent by all the colleges and wherever these reports are submitted, these cannot be appraised on account of lack of staff.

Learned counsel for University submitted that before grant of NOC for affiliation only the land and building available with the applicant is seen. He has further submitted that while granting NOC, the University should examine total number of seats already available in the colleges affiliated to the University and actual number of students admitted.

Mr. Vijai Vardhan, Addl. Chief Secretary to Govt. of Haryana, Deptt. of Higher Education submitted that from the year 2007 onwards, the State Government had been regularly writing to the Minister concerned of the Union Government and the Council also that no further colleges are required in the State for imparting B.Ed. In one communication dated 22.08.2011 from Mr. E.Ahamad, Minister of State for External Affairs & Human Resource Development, Government of India, it was intimated that the matter was got examined. The Council had informed that it had already imposed a ban in Haryana for opening new B.Ed. Colleges (except for minority institutions) w.e.f. 08.07.2009. The ban continued upto the academic year 2012-13. He further stated that despite this ban, in the year 2009-10, Council granted permission to 114 new colleges. In the year 2010-11, 37 new permissions were granted. In the year 2012-13, 19 new permissions were granted. In the year 2013-14, no new permission was granted by the Council. For the year 2014-15, the State Government had written to the Council that new college was not required, but still Council granted new permission to 19 colleges. For

the year 2015-16 also, the State government has also written to the Council for not granting new permission to any new college for imparting education. No permission was granted.

Mr. Chetan Mittal, Asstt. Solicitor General of India, who is present in Court, was requested to assist the Court on the issue why Union of India is not taking care of regulatory statutory body under the National Council for Teacher Education Act, 1993. The regional office of Council who controls eight States with around 6,000 colleges, is functioning merely with a staff of eight regular officers. Rest of the staff is appointed on contract basis. He further submitted that the information, which he could get from the concerned officer is that a Committee was constituted to examine the number of persons required in the Council and certain recommendations have been made by Ms. Anshu Bains, the then Secretary of Elementary Education. That matter is pending consideration with the Government. He seeks time to have instructions as how to get the matter expedited.

What transpires from the procedures and facts as clarified by Dr. S.K.Chauhan and Mr. Vijai Vardhan, is that there is lack of coordination among the three bodies namely the Council being the parent regulatory body, the State Government and the University in monitoring the quality of education and further regarding the number of colleges and the seats required in a particular course, as the data submitted before this Court suggest that in the State of Haryana, there are 491 self financing Education Colleges and three government colleges having an intake capacity of 60,672 students out of which in the current session i.e. 2015-16, 32,811 seats were filled up and 27,951 seats are lying vacant despite granting four weeks extra time for counseling after the last cut off date.

In the light of the aforesaid facts, it is paramount for the regulatory body, affiliating university and the State

government to see that no further colleges are allowed to be opened, which will result in compromising the quality of education.

As far as the issue regarding inspection of existing colleges to see the availability of infrastructure or quality of education imparted, the matter needs to be examined. There has to be coordination among the three bodies i.e. Council, State Government and the concerned affiliating university.

Mr. Vijai Vardhan, Addl. Chief Secretary seeks short adjournment to find out whether there is some accredited private agency, which can carry out this work or the State Government may have to constitute teams. He further stated that he will communicate with other affiliating university in the State to streamline the working of the education colleges in the light of the facts noticed above. It needs to be noticed that entire work has to be done in coordination of the Council, State Government and the affiliating University.

Let the needful be done, however, it should be kept in mind that this exercise has to be done in the shortest possible time.”

6. In the case in hand, the college is affiliated to the University. Certain standards have been laid down by the Council for permitting a college to impart education for B.Ed. Course. The college has to provide those facilities. The University being the affiliating body has right to consider that infrastructural facilities and the faculty to be provided by the colleges are available. In the present case, the college was inspected on 22.11.2014 by a team constituted by the University and it was found that there were lot of discrepancies. The Committee did not find any student or any class in the college. Only the Principal was there. According to the Principal, the students of B.Ed. had gone for practical teaching programme in different schools. There were three teachers present who had not been selected by the proper Selection Committee. The report of the Inspecting Committee is extracted below:

“The committee comprising of Prof. Krishna Joon and Prof. Supriti visited the above said college on 22nd Nov. 2014 at 12.30 PM. The committee did not find students or any class in the college. Only Principal was there. According to the Principal, the students of B.Ed. are going for practice teaching programme from 3rd Nov. to 26th Nov. 2014 in different schools. So, it is not possible for us to present manual attendance of our B.Ed. students. There were three teachers present who had not been selected by the proper Selection Committee.”

7. A perusal of the aforesaid inspection report shows that there was total lack of infrastructure or teaching faculty available in the college. Students were not available.

8. On the basis of the report, show cause notice was served upon the Principal and Chairman of the College for withdrawal of provisional affiliation of the college. The petitioner submitted reply to the show cause notice. Irregularities pointed out by the Inspection Committee and the reply given by the College is reproduced below:

Sr. No.	Irregularities pointed out in the show cause notice	Reply of show cause notice
1	The committee did not find students or any class in the college	That in an annual routine inspection report last year we were granted time upto 31 st March, 2015 to give a compliance report. We have already submitted the compliance report on 27 th Mar 2015 with the list and proceeding of the staff for both B.Ed. And M.Ed. Courses. On 9.4.2015 again that same deficiency is being pointed out, with great regard a fresh copy of staff approval is being attached
2	Only Principal was there. According to the Principal, the students of B.Ed. are going for practice teaching programme from 3 rd Nov. to 26 th Nov. 2014 in different schools. So it is not possible to present manual attendance of B.Ed. students	That on 22.11.2014, our B.Ed. student were on teaching practice in various schools, principal and 3 teachers were present in the college where as other 5 were with the students deputed for teaching practice
3	There were three teachers present who have not been selected by the proper Selection Committee	On that day 83 students were present

Sr. No.	Irregularities pointed out in the show cause notice	Reply of show cause notice
4		They have also supplied a list of school in which the students were reported for teaching practice
5		Regarding infrastructural facilities they state that entire required infrastructure in the college is there and same can be inspected any time. Other pointed out deficiencies documents in the show cause notice are also attached with the reply.
6		Our College is having approved teaching staff as per the NCTE and MDU norms and result in last years was excellent.

9. Considering the comments made by the Inspection Committee and the response of the petitioner, the matter was considered by the Academic council and recommendations were made that provisional affiliation granted to the colleges be withdrawn and the colleges be put under “No Admission Category” for the session 2015-16. The aforesaid recommendations of the Academic Council were considered by the Executive Council in its 247th meeting held on 3.8.2015 and taking a lenient view, while granting time to the petitioner to remove the deficiencies, number of seats permitted in the college for the year 2015-16 were reduced to half and penalty of ₹ 1,00,000/- was imposed. In terms of Clause 27 of the Statutes, the University is competent to impose even financial penalty on an educational institution, besides directing reduction in seats.

10. The contention of learned counsel for the petitioner that order for imposition of penalty and reduction of seats was not called for as no opportunity of hearing was granted before that. The proposal by the Academic Council was for withdrawal of affiliation. However, the contention deserves to be rejected being misconceived, as the Executive Council, while considering the recommendations made by the Academic Council, took a lenient view and instead of withdrawing affiliation and putting the college under “No Admission Category” for the coming session, time was granted for removing the deficiencies, besides imposing penalty of ₹ 1,00,000/-, reduction of 50% sanctioned seats was directed for next academic session. The admissions for the session 2015-16 are already over.

The relevant clause 27 of the University Statutes, under which the University has taken the action is reproduced hereunder:

“(27) If at any time, the Executive Council finds that a College/Institution is not complying with the requirements of the Act, Statutes, Ordinances or Regulations of the University or any instructions issued by it or on its behalf, the Executive Council will have the authority to impose any one or more of the following penalties:

- (i) students of the College concerned shall not be accepted for the University examinations;
- (ii) the College Staff shall be debarred from University work such as appointment as Examiner, Superintendent of Examination Centres etc.;
- (iii) the Principals or the Teacher concerned shall be debarred from seeking election or nomination to a University Body or his name shall be removed from the list of members of the University Bodies;
- (iv) the recognition, granted to the Governing Body of the College, be withdrawn in part or in whole.
- (v) Financial penalty as may be deemed appropriate by the Academic Council may be imposed keeping in view the circumstances of each case.
- (vi) Reduce seats for the next academic session at the most by twice the number of irregular admissions made. Provided that whenever any penalty under clause (v) and/ or (vi) above is imposed the same shall be communicated to the Central Regulatory Body/Authority for such further action as may be decided at that/ their level.”

11. A perusal of the aforesaid clause shows that besides imposition of penalty, the University can reduce seats for the next academic session at the most twice the number of irregular admissions made. In the case in hand, the Executive Council has reduced the intake of the college for the

academic session 2015-16 to the extent of 50%. Such a punishment is not envisaged under the provision sought to be relied upon by the University, hence, that cannot be sustained. It is not the case of the University that in the present case any irregular admission was made in the earlier year, in terms of which the number of seats for the next year were to be reduced, hence, the penalty to that extent is liable to be set aside.

12. As at the time of admission of the present petition, operation of the impugned order dated 3.8.2015 was stayed and the admissions have already been made by the college, the admissions already made deserve to be regularised. It is for the reason that even otherwise about 60% seats could be filled up in total though specific data of the petitioner-college was not provided. Ordered accordingly.

13. As far as the contention raised by learned counsel for the petitioner to the extent that no speaking order was passed is concerned, in the case in hand, the matter was firstly considered by the Academic Council after receiving the comments of the petitioner on the observations made by the Inspection Committee deputed for surprise inspection of the college. All the issues raised and response of the petitioner were clearly noticed, the same were not found to be satisfactory. Initially, the Academic Council proposed penalty of withdrawal of provisional affiliation for the session 2015-16 and placing the petitioner under “No Admission Category”, however, the Executive Council taking a lenient view, merely imposed reduction of 50% seats for the session 2015-16, besides imposition of penalty of ₹ 1,00,000/-.

14. As regards imposition of penalty is concerned, I do not find any reason to interfere with the order for the reason that the college was found lacking in infrastructure and the faculty at the time of surprise inspection, besides the fact that these are required to be made available by any educational college prior to even approval by the Council. It is not in dispute that the College was functional. No student was found in the college at the time of inspection. A perusal of the attendance sheet, produced by the petitioner, shows that a candidate bearing roll No. 15, namely, Diksha Kashyap figured at two different places at the same time, i.e., one at Sr. No.

10 in attendance sheet of Govt. Senior Secondary School, Rajula Garhi, Sonapat, and again at Sr. No. 3 in attendance sheet of P. S. Public School, Bhurri, Sonapat. Another candidate bearing roll No. 86, namely, Simran Pandey figured at two different places, one at Sr. No. 11 in attendance sheet of P. S. Public School, Bhurri, Sonapat and again at Sr. No. 16 in attendance sheet of Ramjas Senior Secondary School, Sonapat. Hence, the order imposing penalty is upheld.

15. For the reasons mentioned above, as far as the decision of the Executive Council reducing the intake of the college for the academic session 2015-16 to the extent of 50% is set aside, whereas penalty of ₹ 1,00,000/- imposed on the petitioner is upheld.

16. The writ petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

25.2.2016
mk

(Refer to Reporter)