
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.24711 of 2015
Date of decision:18.05.2016**

Sarita Jain College of Education

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rahul Sharma-I, Advocate,
for the petitioner.

Mr. R.K.Doon, AAG, Haryana.

Mr. Ashish Rawal, Advocate,
for NCTE.

Rakesh Kumar Jain, J.

A public notice dated 26.11.2012 was issued by the National Council for Teacher Education (hereinafter referred to as the “NCTE”), inviting applications for recognition of Teacher Education Courses for the academic session 2013-14 in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 (hereinafter referred to as the “Regulations, 2009”) except for the States mentioned therein, making it clear that the restriction would not apply to the Minority Educational Institutions established under Article 30 of the Constitution of India. The petitioner applied to the NCTE for grant of recognition for starting D.El.Ed. course. The NCTE wrote a letter dated 16.08.2013 to the State of Haryana asking them to furnish their

recommendations/comments regarding application submitted by the petitioner. The State of Haryana did not take any objection rather, vide its letter dated 07.10.2013, issued by the Director General, Elementary Education, Haryana, Panchkula, the petitioner was declared as Jain Minority Institution and permitted to admit 50 students from Jain minority community for the D.Ed. Course from the academic session 2014-2016 at their own level provided that they get the permission from NCTE, Jaipur for grant of recognition for starting D.Ed. Course. The NCTE, after having been satisfied that the petitioner-institute fulfills all the conditions prescribed by it, granted recognition vide its letter dated 03.03.2015 for the annual intake of 50 students. However, it was inadvertently mentioned as “(1 units) (add. Intake)”. The petitioner accordingly informed the Director, Elementary Education, Haryana, Panchkula, about the recognition which was followed by letters dated 12.05.2015 and 14.05.2015. Thereafter, respondent No.3 wrote a letter to the Director, Secondary Education, Haryana, for providing guidelines as to whether the petitioner-institution is to be permitted for admission during the current session 2015-2016 or not. Since the case of the petitioner was not taken to its logical end, the petitioner filed CWP No.18819 of 2015, which was disposed of on 08.09.2015, with a direction to respondent No.2 therein, to decide the issue regarding affiliation and permission to admit the students. The petitioner completed the counselling process and submitted the list of 50 students vide its letter dated 06.10.2015. The petitioner was informed by respondent No.3 that it has no record of any permission having been granted to the petitioner to admit 50 students during the current academic session 2015-2016. In this regard, the petitioner filed the reply and informed respondent No.3 that the

permission was already granted vide letter dated 07.10.2013, subject to the grant of recognition by the NCTE, which was granted to the petitioner on 03.03.2015. The petitioner also approached the Haryana Board of School Education, Bhiwani for depositing the examination fee of the 50 students but the Board refused to open the examination panel permitting the petitioner to deposit the examination fee on the ground that necessary direction has not been issued by respondent No.3 and on 21.10.2015, the petitioner was informed by respondent No.3 that since it does not have the permission from the State to admit 50 students for the academic session 2015-16, therefore, the petitioner has no right to admit any student.

Aggrieved against that decision, the petitioner filed this petition in which at the time of notice of motion, the petitioner was permitted to submit the examination fee of 50 students and the said students were allowed to sit in the examination but the interim order was made purely provisional subject to final decision of the writ petition.

Counsel for the petitioner has submitted that the petitioner has been declared a minority institution vide letter dated 07.10.2013 and was permitted to admit 50 students from the Jain minority community for the D.Ed. course for academic session 2014-2016 at their own level provided that they get the permission from the NCTE for grant of recognition. The said recognition was given by the NCTE on 03.03.2015 and hence, the ban imposed by the respondent-State does not apply to the case of the petitioner. In support of his submission, he has relied upon a Division Bench judgment of the Bombay High Court in the case of **Gyanodaya Shikshan Pracharak Samiti's Gyanodaya B.Ed. College vs. State of Maharashtra and others,**

2009(0) BCI 519, a decision of the Delhi High Court in the case of **Modern College of Education vs. National Council for Teacher Education and others**, W.P.(C) 8870/2015 decided on 20.10.2015 and an order passed by this Court in the case of **Hakeem Harbans Singh New Era College of Education vs. State of Haryana and others**, CWP No.12478 of 2015, decided on 03.08.2015.

On the other hand, the respondents have relied upon a decision rendered by this Court in the case of **D.S.Jain Memorial Educational Trust vs. Maharishi Dayanand University, Rohtak and others**, CWP No.14684 of 2015, decided on 13.01.2016 and has submitted that since the ban has been imposed by the Government, therefore, the permission could not have been granted.

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that the petitioner has been declared a minority institution vide letter dated 07.10.2013 and was also permitted in the same letter to admit 50 students subject to the recognition by the NCTE. It is also an admitted fact that the recognition was granted by the NCTE on 03.03.2015 and hence, the petitioner fulfilled all the qualifications, namely, being a minority educational institution, recognition by the NCTE and permission by the Government to give admission. It is only at the stage when the petitioner had to deposit the examination fee of the 50 students, the objection was raised by the respondents that it is impermissible as the permission has not been obtained by the petitioner.

In Gyanodaya Shikshan Pracharak Samiti's case (supra),

the Bombay High Court, while relying upon the judgment in the case of **Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, 2006(3) ALL MR (S.C.) 94**, has made the following observations:-

“14. It is therefore required to be considered whether the State Government can refuse permission on the alleged policy mentioned in the affidavit. In the judgment cited supra wherein the issue was as regards granting of no objection or refusing to grant affiliation by the University examining body in the matter of the B.Ed. Colleges, the Apex Court has held on consideration of the provisions of NCTE Act and considering that the said Act is an act of Parliament referable to Entry 66 of List I of Schedule VIII. The Apex Court has held that the final authority under the said Act lies with the NCTE and the NCTE cannot be deprived of its authority or power in taking appropriate decision under the said Act irrespective of absence of no objection certificate by the State Government/Union Territories. It has been held that the State Government can not refuse the permission on the basis of policy considerations. It has also been held by the Apex Court in the said judgment that the State Government has no power to refuse permission or over rule the decision of the NCTE.”

“17. In our view, the reliance placed by the learned AGP on the said interim order of the Apex Court is mis-founded, as the issue before the Division Bench was as regards recognition/permission granted to D.Ed. colleges by the NCTE and not the B.Ed. Colleges which is the subject matter of the instant petitions. In our view, considering the judgment of the Apex Court cited (Supra) above the petitions are required to be allowed and are accordingly allowed in terms of prayer clause (a) of all the petitions. However, prayer clause (a) of the Writ Petition No.5886 of 2009 is reproduced herein under:

“(a) that this Hon'ble Court be please to issue a writ of mandamus or a writ, order or direction in the nature of mandamus thereby directing the Respondent Nos.1 & 2 to produce the relevant records and after considering the legality and validity and propriety thereof this Hon'ble Court be please to direct the Respondent Nos.1 and 2 to forthwith grant the necessary permission and affiliation to the Petitioners for starting a new B.Ed. College at Savarkar

Nagar, Dist.-Thane from academic year 2009-2010 as recognized by the respondent No.3.”

Since we have allowed the petitions on the application of the judgment of the Apex Court in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, we have not gone into the aspect as to whether the petitioners who are minority institutions are entitled to the reliefs in view of the directions of the Head Office of the NCTE. Needless to state that the petitioners would be entitled to admit the students for the academic year 2009-2010. Rule is accordingly made absolute to the aforesaid extent.”

In **Modern College of Education's case (supra)**, the similar objection was raised about the policy decision of the Haryana Government not to give permission to the institutions as there is no requirement of teachers, which has been dealt with in para 5 of its judgment, which reads as under:-

“5. Mr. Sherawat, on the other hand, has submitted, that insofar as the first objection is concerned, which is that since, the State of Haryana has taken a policy decision not to permit recognition of institutions as there is, in effect, saturation in number of teachers available, that issue is covered by judgment of the Supreme Court in the case of : **State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.** (2006) 9 SCC 1.”

A similar view has been taken by this Court in **Hakeem Harbans Singh's case (supra)**.

Insofar as the judgment relied upon by the respondents in **D.S.Jain Memorial Educational Trust's case (supra)** is concerned, it is not applicable because in that case, a pertinent issue was framed as to whether the petitioners are minority institutions as contended under the National Commission for Minority Educational Institutions Act, 2004 and, therefore, exempt from any such policy decision and free from the restrictions imposed by the State” but the answer to that question was

rendered as under:-

“This Court in **CWP No. 7977 of 2015, Sh. Guru Nanak Mission Educational Trust (Regd.) vs. State of Haryana** decided on 09.09.2015 held that where the NOC is not granted, then there will be a deemed NOC granted under Section 10(3). The power of the Commission to issue such a certificate on its own without exercise of the appellate power is thus not justified. In such circumstances, in the absence of any application made to the competent authority, the petitioners institute cannot claim any right of being a minority institution on the strength of the certificate issued by the Commission which is merely an appellate body. Accordingly, issue no. 2 is also decided against the petitioners.

Thus, in view of the findings recorded on issue no. 2, this Court is of the opinion that the petitioners cannot be granted the benefit of the minority status in the absence of an appropriate certificate having been issued from the competent authority. As noticed above, it is always open to the petitioners to apply for the said certificate from the said authority who is duly authorized and on that basis seek the benefit of being a minority institution. In case the petitioners are able to show that their applications were dismissed and the National Commission for Minority Educational Institutions had set aside the said order and thereafter issued directions for grant of certificate, then the petitioners will be entitled for the benefit of the same. Similarly, the petitioners will only be entitled where they were able to show that they had applied and the State Government had not acted on the said request within the prescribed period and thereafter, they had got a declaration that there was a deemed sanction in their favour. However, it is made clear that it is always open to the petitioners to file an application before the competent authority for the necessary relief.”

In fact, it was observed by the Court that the institution in that case was not declared a minority institution in accordance with law because it had directly approached the Appellate Authority i.e. National Commission for Minority Educational Institutions instead of the Competent Authority i.e. State, whereas in the present case, the petitioner has been declared a

minority institution by the State of Haryana which is reflected from the letter dated 07.10.2013.

Thus, keeping in view the totality of the facts and circumstances discussed here-in-above, I am of the considered opinion that the impugned order dated 21.10.2015 is totally illegal and the same is hereby set aside and the direction is issued to the respondents to declare result of the students who had taken their exam in terms of the interim order passed by this Court forthwith.

May 18, 2016
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(Rakesh Kumar Jain)
Judge