

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 07.01.2016

+ LPA 707/2013

HARYANA SHAKTI COLLEGE OF
EDUCATION

..... Appellant

Through: Mr.Sanjay Sahrawat, Mr. Amit
Dabas and Mr. Ratish Kumar, Advocates

Versus

DIRECTORATE OF HIGHER EDUCATION
& ANR.

..... Respondents

Through: Mr.Sradhananda Mohapatra,
Mr. Vipin Singh, Advocates for GGSIPU

+ W.P.(C) 6365/2013

HARYANA SHAKTI COLLEGE OF
EDUCATION

..... Appellant

Through: Mr.Sanjay Sahrawat, Mr. Amit
Dabas and Mr. Ratish Kumar, Advocates

Versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS.

..... Respondents

Through: Mr. Mukul Talwar,
Mr.Sradhananda Mohapatra, Mr. Vipin Singh,
Advocates for GGSIPU
Mr. Arun Birbal, Adv. for DDA
Mr. Raman Duggal, Adv. for GNCTD

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **G.ROHINI, CHIEF JUSTICE:**

1. The present appeal as well as the writ petition are filed by Haryana Shakti College of Education, a college established by Haryana Shakti Education Society.

2. While LPA No.707/2013 has been preferred against the order of the learned Single Judge dated 02.09.2013 in W.P.(C) No.4009/2013, the subsequent order dated 10.09.2013 passed by Guru Gobind Singh Indraprastha University in terms of the directions of the learned Single Judge in W.P.(C) No.4009/2013 has been assailed in W.P.(C) No.6365/2013.

3. Since parties are common and common questions of fact and law arise for consideration in both the matters, we have heard the matters together and decided by this common order.

4. The facts of the case which are not in dispute are as under:

(i) Haryana Shakti Education Society (for short 'the Society') has been running a school under the name of Haryana Shakti Secondary School from the year 1945 in its own land situated in Kanjhawala village, North West District, Delhi. Since the land available is sufficient even to run a college of Education, the society having earmarked 2650 Sq.mtrs. of land for the purpose of B.Ed. college, proposed to start B.Ed. course with an intake of 100 seats from the Academic Year 2012-13.

(ii) As per Section 14 of the National Council for Teacher Education

Act, 1993 (for short 'the Act'), every institution offering or intending to offer a course or training in teacher education needs recognition by the National Council for Teacher Education established under the said Act and affiliation by the Examining Body. The society, therefore, applied for recognition of Haryana Shakti College of Education (hereinafter referred to as 'the petitioner institution') and the same was granted by the Northern Regional Committee, NCTE vide proceedings dated 17.08.2012 for a period of one year from the Academic Year 2012-13 subject to fulfilment of the conditions specified therein. Provisional affiliation for the Academic Year 2012-13 was also granted by the Guru Gobind Singh Indraprastha University (for short 'IP University') on 17.09.2012 and seven seats were claimed to have been filled under the management quota for the Academic Year 2012-13.

- (iii) However, the request of the petitioner Institution for affiliation for the Academic Year 2013-14 was rejected by IP University in the 57th Meeting of the Board of Affiliation held on 05.06.2013 on the ground that NOC had not been granted to the institute by the Directorate of Higher Education, Govt. of NCT of Delhi for the Academic Session 2012-13. The said decision was based on the report of the Directorate of Education, GNCTD dated 16.05.2013 that NOC cannot be granted to the petitioner institution as per the existing policy guidelines since it falls under the category of 'non-conforming area' i.e. the area which under the Master Plan/Zonal Development Plan of Delhi cannot be used for running such Institute.

- (iv) The petitioner institution filed W.P.(C) No.4009/2013 assailing the decision of IP University dated 05.06.2013 as well as the decision of the Directorate of School Education, GNCTD dated 16.05.2013. The learned Single Judge opined that the IP University is not justified in denying the affiliation to the petitioner college solely on the ground that the Government of NCTD had not issued NOC for B.Ed. programme for the Academic Session 2012-13. Accordingly, the learned Single Judge disposed of the writ petition with the following directions:

“19. For the reasons stated hereinabove, the impugned order 16.05.2013 of I.P. University denying affiliation to the petitioner for B.Ed. course is hereby quashed and the I.P. University is directed to reconsider the application of the petitioner-institute for grant of affiliation for its B.Ed. course, without insisting upon requirement of NOC from Government of NCTE of Delhi, **but, taking into consideration the fact that the petitioner institute is being run/sought to be run in a non-conforming area, thereby contravening the provisions contained in Section 14 of Delhi Development Act.** It shall also keep in mind the requirement of Regulation 8(6) of NCTE Regulations. A fresh decision in terms of this direction shall be taken by the University within a week and conveyed to the petitioner immediately thereafter.”

(emphasis supplied)

- (v) In pursuance thereof, IP University passed a fresh order dated 10.09.2013 again refusing affiliation. Aggrieved by the same, the petitioner institution filed W.P.(C) No.6365/2013.
- (vi) The petitioner institution is also aggrieved by the order dated 02.09.2013 in W.P.(C) No.4009/2013 to the extent of the learned

Single Judge directed IP University to consider the request of the petitioner institution taking into consideration the fact that it is being run in a non-conforming area and therefore, challenging that part of the order in W.P.(C) No.4009/2013, the petitioner institution filed LPA No.707/2013.

5. We have heard the learned counsel for both parties and perused the material available on record.

6. The contention of the petitioner institution before the learned Single Judge was that rejection of NOC by the Directorate of School Education on the ground that the petitioner institution is situated in the non-conforming area is erroneous and illegal. It was pleaded that the Chief Commissioner, Delhi by notification dated 12.08.1959 issued under Section 1(2)(c) of the Delhi Lands Reform Act, 1954 declared the land owned by the Society, which is being used for educational purpose, is exempted from the provisions of the said Act and therefore, the same cannot be treated as an agricultural land. It was contended that since the application made by the petitioner institution for revalidation of NOC has been under consideration for regularization in terms of the policy guidelines dated 06.05.2011 issued by GNCTD for revalidation of NOC to educational institutions located in non-conforming area which have been in existence prior to 01.01.2006, IP University ought to have granted affiliations to the petitioner institution in terms of the said guidelines for the Academic Session 2013-14. It was also contended that once the recognition was granted by the NCTE under Section 14 of the Act, the concerned University is bound to grant affiliation and grant of NOC from the State Government is not a prerequisite condition. Per contra, it was

contended by the IP University and GNCTD that as per the policy guidelines dated 06.05.2011, schools having 2.5 acres of land in conforming area alone can conduct B.Ed. courses and since the petitioner is running the school in Kanjhawala village on agricultural land and proposes to start the B.Ed. course in the same building, it does not fulfil the criteria under the policy guidelines and thus the affiliation was rightly rejected.

7. After referring to the relevant provisions of NCTE Act and the Regulations made thereunder as well as the decided cases on the issue as to whether affiliation must necessarily be granted by the University to an institution which has been granted recognition by NCTE, the learned Single Judge summed up the legal position as under:

“(i) The State Government cannot act contrary to the provisions of NCTE Act and, therefore, if a policy decision is taken by the State not to permit a new college/institution to impart B.Ed. programme such a decision would be illegal being contrary to the provisions of NCTE Act.

(ii) NCTE is the final authority to decide the matters which fall in its domain under Section 14(3) of the NCTE Act, but, the affiliating University, while granting affiliation, is entitled to require strict compliance with the guidelines/norms laid down by it.”

8. The learned Single Judge further held:

“The Regional Committee of NCTE is duty bound to ensure that the institute, seeking recognition, complies with the requirements laid down in its regulations, including the requirement laid down in Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005,

relating to permission of the Competent Authority, to use the land on which the institute is situated for educational purposes. Ordinarily, the University must grant affiliation to an institution, recognized by NCTE, but, for considerations, which are legal, cogent and justified in law, the affiliating University may deny affiliation to such an institute. This would include non-fulfilment of the requirements laid down in NCTE regulations such as the permission envisaged under Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005.”

9. On facts of the case, the learned Single Judge opined that it is a mandatory requirement to use a land or building in Delhi only for the purposes specified in the Master Plan and the Zonal Development Plan and that any use of the land and the building in contravention either of the Master Plan or of the Zonal Development Plan contravenes the provisions of Section 14 of Delhi Development Act, 1957 which is punishable under Section 29 thereof. It was further held that the University to which affiliation is sought will be entitled to refuse such affiliation if it finds that the use of the land or the building for running the course in respect of which affiliation is sought would contravene the provisions of Section 14 of Delhi Development Act, 1957.

10. Regarding Section 14 of Delhi Development Act, 1957 which provides for user of land and buildings in contravention of plans, the learned Single Judge was of the view that the benefit of the proviso to Section 14 is available to the extent the building being used for an institution on the date of Master Plan came into force i.e. 01.09.1962. Accordingly, the learned Single Judge constituted a Committee to inspect

the institute of the petitioner, examine the documents submitted with the writ petition and report after considering the entire matter and carrying out the field survey as to whether the portion shown in red colour in the site plan i.e. the land claimed to have been in use for running a school on the land of the petitioner Society in Kanjhawala on the date of the Master Plan came into force was being used for running a school or not. The said Committee submitted a report dated 09.08.2013 and basing on the said report the learned Single Judge concluded that the petitioner was not able to establish before the Committee that the portion shown in red colour in the site plan was being used by the school on 01.09.1962 when the Master Plan for Delhi came into force and therefore it is difficult to accept the claim that the whole of the portion shown in red colour in the site plan was being used by the school as on 01.09.1962. However, it was opined that the decision of the University to refuse recognition solely for want of NOC from the State Government is bad in law. Accordingly, the writ petition was disposed of with a direction to IP University to reconsider the application of the petitioner institute for grant of affiliation.

11. The said order is assailed before us contending *inter alia* that the learned Single Judge has proceeded on an erroneous assumption that the petitioner's land is agricultural land and falls in "non-conforming area" as per the Master Plan of Delhi, 2021. It is contended that by virtue of the Notification 12.08.1959 issued by the Chief Commissioner, Delhi under Section 1(2) of the Delhi Land Reforms Act, 1954 in respect of the entire land of the society admeasuring 34 acres, the land use has been changed from agricultural to public purpose i.e. educational and consequently the society is entitled to protection of the proviso to Section 14 of the Delhi

Development Act, 1957. It is contended by the learned counsel for the appellant that on a combined reading of Section 1 of the Delhi Land Reforms Act and Section 14 of the Delhi Development Act, 1957 the land in question can no longer be held to be agricultural and consequently it does not fall in “non-conforming area”. The further contention is that the learned Single Judge ought not to have directed the University to take into consideration the fact that the appellant is situated in “non-conforming area” since the same would amount to predetermining the issue. Similarly, there cannot be any direction to the University to decide the application of the appellant for affiliation in terms of Regulation 8(6).

12. Since the University has already passed an order dated 10.09.2013 rejecting affiliation in pursuance of the directions of the learned Single Judge in W.P.(C) No.4009/2013, it would be appropriate to refer to the reasons stated therein. The said order read as under:

“In pursuance to direction of the Hon’ble Delhi High Court dated 02.09.2013 reference above, the Hon’ble Vice Chancellor constituted a Sub-Committee of the Board of Affiliation to re-consider the proposal of Haryana Shakti College of Education submitted by the Institute vide its letter dated 11.01.2013 for grant / continuation of Affiliation for Academic Session 2013-14. The said committee met on 09.09.2013 and examined the proposal along with their letters dated 05.09.2013 and 06.09.2013. The committee noted / observed the following:

- (i) The Institute in point 4 of Application for Grant / Continuation of Provisional Affiliation under the heading details of land and building has mentioned prescribed land use as conforming, whereas this land comes under non-conforming area.
- (ii) As per requirement of Section 8(6) of NCTE

regulation the Society has submitted an Affidavit. The Society vide point 3 of this Affidavit dated 02.06.2011 submitted to NCTE for seeking grant of recognition / permission for B.Ed programme, has mentioned the following:

“That the land is exclusively meant for running the educational institution and the permission of the competent authority to the effect has been obtained vide letter No. SDM/SV/2011/886, dated 18.04.2011 and a copy thereof is enclosed and also notified by Chief Commissioner of Delhi on dated 12.08.1959.”

Whereas, the aforesaid letter dated 18.04.2011 of SDM, Kanjhawala, Delhi gives the status report in r/o Haryana Shakti College of Education, Kanjhawala to be run by Haryana Shakti Education Society on land bearing khasra no. 152 in the revenue estate of village Kanjhawala, Delhi, and not the permission given by the Competent Authority, which in this case is DDA/MCD. Further, letter dated 03.06.2011 of DDA issued to Haryana Shakti Education Society reveals that their case is under process for regularization as per the policy, and has not been granted clear approval by the Competent Body/Authority.

- (iii) The Haryana Shakti College of Education does not fulfil the requirement mentioned in Section 14 of DDA Act 1957, which reads as under:

“After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force”.

- (iv) The University has not given Affiliation to any New Institution, in Academic Session 2013-14, which is located in Non Conforming Area especially in view of the letter dated 17.06.2011 of DHE.

In view of above the committee recommends that Haryana Shakti College of Education does not qualify for grant of Affiliation for conduct of B.Ed. programme with an intake of 100 for the Academic Session 2013-14.

The above recommendations of the committee has been duly approved by the Hon'ble Vice Chancellor on behalf of the Board of Affiliation of the University.

This is for your information please.”

13. As already mentioned above, Section 14 of NCTE Act provides for recognition by the NCTE established under the said Act before commencing a course or training in teacher education. The recognition shall be subject to such conditions as may be determined by the Regulations made under the said Act. In exercise of the powers conferred by Section 32 of NCTE Act, 1993, the National Council for Teacher Education made NCTE (Recognition Norms and Procedure) Regulations, 2007. Regulation 8 deals with conditions for grant of recognition. Clause (6) of Regulation 8 requires the institution to furnish an affidavit stating the precise location of the land, the total area in possession and the permission of the competent authority to use the land for educational purposes and mode of possession i.e. ownership or lease. In the present case, the controversy is regarding the permission of the competent authority to use the land in question for educational purposes.

14. It is no doubt true that NCTE is the final authority for the purpose of grant of recognition, however, it is mandatory for the institution to

comply with the requirements laid down in the Regulations which included the permission of the competent authority to use the land on which the institute is situated for educational purpose. So far as the affiliation by the University is concerned, in the light of Clause (3)(b) of Statute 24 of Guru Gobind Singh Indraprastha University, the institution seeking affiliation must have been granted NOC by the State Government.

15. Section 14 of the Delhi Development Act, 1957 no doubt provides that no person shall use any land or building in a zone after coming into operation of the Master Plan otherwise than in conformity with such plan. However, the proviso thereto carves out an exception to continue to use any land or building for the purpose to which it is being used upon the date on which the Master Plan came into force. The specific case of the petitioner Institution is that by the date the Master Plan came into force i.e. 01.09.1962, the land in question was being used by the Society for the Secondary School run by it from the year 1945. On the basis of the report of the Committee constituted by this court, the learned Single Judge concluded that the petitioner Institution failed to establish that the entire land was being used by the school as on 01.09.1962.

16. Apparently, the learned Single Judge did not consider the plea of the petitioner that by virtue of the Notification issued by the Chief Commissioner, the land use has been changed from 'agricultural' to 'public purpose'. While passing the fresh order dated 10.09.2013, the IP University has also failed to take into consideration the said aspect and proceeded on the premise that the land comes under non-conforming area. Therefore, it appears to us that the matter requires reconsideration. We also find force in the submission of the learned counsel appearing for the

petitioner Institution that the learned Single Judge ought not to have limited the scope of consideration while directing the University to reconsider its request for grant of affiliation.

17. It is also brought to our notice by the learned counsel for the petitioner institution that the petitioner institution made an application dated 05.01.2009 for mutation in the revenue records stating that Haryana Shakti School which was established by the Society in the year 1945 has now been self-sufficient since it is affiliated to CBSE and getting grant and aid from the Director of Education and having accepted the same, the mutation has been ordered on 20.08.2009.

18. We, therefore, consider it appropriate to permit the petitioner institution to place all the relevant material before IP University to establish that the land in question does not fall in 'non-conforming area' within four weeks from today. The University thereupon shall re-consider the whole issue and pass an appropriate order in accordance with law regarding grant of affiliation to the petitioner institution after giving an opportunity of being heard. The order under appeal in LPA No.707/2013 shall stand modified to that extent. The order of IP University dated 10.09.2013 impugned in W.P.(C) No.6365/2013 is hereby set aside and both the LPA and writ petition are accordingly disposed of.

No costs.

CHIEF JUSTICE

JAYANT NATH, J.

JANUARY 07, 2016

kks/pmc