

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7972 of 2017

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Surendra B.Ed. Teachers Training College, Surendra Nagar,
Shivala More, Neora, Khagaul, Patna, P.S.- Bihta, District- Patna,
running under Surendra Hemant Education & Social Welfare
Society, through its Secretary Nagar Dr. Shashi Bhushan Singh,
Son of Shri Surendra Prasad Singh, Resident of Village- Surendra
Nagar, P.S.- Neora Bihta, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Bihar, Patna.
3. The Vice-Chancellor, Aryabhatta Knowledge University, Chanakya National Law University Campus, Near Bus stand, Mithapur, Patna.
4. The Registrar, Aryabhatta Knowledge University, Chanakya National Law University Campus, Near Bus stand, Mithapur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Anuj Kumar, Adv.

For the University : Mr. Anand Kumar Ojha, Adv.

For the State : Mr. Madhav Pd. Yadav, GP-23
Mrs. Meera Singh, AC to GP-23

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 11-08-2017



The petitioner-Surendra B.Ed. Teachers Training College (*hereinafter referred to as the 'college'*), is said to be run by one Surendra Hemant Education & Social Welfare Society (*hereinafter referred to as the 'Society'*) and is an institution within the meaning of Section 2(e) of National Council for Teacher Education Act, 1993 (*hereinafter referred to as the 'Act'*), which offers courses or training in teacher education. It is the claim of the petitioner-college that it has been granted recognition by the National Council for Teacher Education (*hereinafter referred to as the 'NCTE'*), under Section 14(3)(a) of the Act, which fact is not in dispute and which is evident from the pleadings and other materials on record.

2. This application, under Article 226 of the Constitution of India, has been filed on behalf of the petitioner-college, seeking quashing of a letter, dated 28.10.2016, issued by the Registrar, Aryabhata Knowledge University, Patna (*hereinafter referred to as the 'University'*), communicating the Chairman of the petitioner-college that the Affiliation and New Teaching Programme Committee and the Court of Affiliation, being not satisfied with the reply submitted by the petitioner-college, have resolved not to grant extension of provisional affiliation for the academic session 2016-17.



3. At the cost of re-petition, this is to be noted here that the University does not dispute that the petitioner-college has recognition by the NCTE, under Section 14(3)(a) of the Act, for the said academic session, *i.e.*, 2016-17.

4. The second relief, which the petitioner-college has sought in the present writ application, is that the students, who have already been admitted in B.Ed. course for the academic session 2016-17, be allowed to appear for the final examination meant for 2016-17.

5. The other reliefs, sought for on behalf of the petitioner-college in the present writ application, are not material, worth being referred to, which relate to direction for fresh inspection of the petitioner-college.

6. The two reliefs, which have been sought for in the present writ application, have two different aspects. On the question of refusal by the University to extend affiliation, the issue, which is involved, is as to whether the University could at all refuse affiliation when the petitioner-college is enjoying the status of recognized institution of NCTE. In relation to the second aspect, *i.e.*, to allow the students to appear for the examination, the question is as to whether such students can be held to be legally admitted by the petitioner-college and if their admissions itself is found to



be in teeth of law, whether the Court can still direct the University to allow them to appear for B.Ed. examination for the academic session 2016-17.

7. In relation to the question, as to whether the University could refuse to grant affiliation or to extend affiliation, granted to the petitioner-college, which is recognized by the NCTE, under Section 14(3)(a) of the Act, I need to first take note of Section 14(6) and Section 16 of the Act, which state thus:-

"14. (6) Every examining body shall, on receipt of the order under sub-section (4),-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused."

"16. Affiliating body to grant affiliation after recognition or permission by the Council.-

Notwithstanding anything contained in any other law for the time being in force, no



examining body shall, on or after the appointed day,-

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognize institution.

Unless the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course or training under Section 15.”

8. The language of sub-Section (6) of Section 14 is unambiguous and clear. It mandates and casts legal obligation on every examining body to grant affiliation to the institution, where recognition has been granted, and to cancel affiliation of the institution, where recognition has been refused. No option/choice/discretion lies is with the examining body, in terms of sub-Section (6) of Section 14 of the Act, in the matter of grant of affiliation to the institution, where recognition has been granted and cancellation of affiliation of the institution, where recognition has been



refused.

9. The plea, which has been taken on behalf of the University, is that the University has been established under Aryabhatta Knowledge University Act, 2008 (*Bihar Act of 2008*), enacted by the State Legislature. Referring to the said Act, learned counsel, appearing on behalf of the University, contends that the University can consider grant of affiliation, subject to conditions laid down under the Statutes, Ordinances and Regulations, made in this regard. It is further plea on behalf of the University that Statutes have been framed in that regard, which contemplates constitution of Board of Affiliation and a visiting team in order to assess the suitability for grant of affiliation to any institution to be affiliated by the University. It is the further case of the University that the petitioner-college has been found to be not fulfilling the requisite conditions for grant of affiliation and, accordingly, the University, has refused to extend affiliation to the petitioner-college.

10. My attention has been drawn to the terms and conditions, incorporated in the order, dated 30.05.2015, of the NCTE, granting recognition to the petitioner-college, with particular reference to Clause 6 thereof, which requires that the said recognition is subject to fulfillment of other requirements as may be prescribed by



other regulatory bodies like UGC, affiliating University Body, the State Government etc. as applicable. It is, accordingly, the plea of the University that since the petitioner-college does not fulfill the conditions laid down by the University, for the purpose of grant of affiliation, the University has rightly refused to grant extension of affiliation.

11. Mr. Yogesh Chandra Verma, learned Senior Counsel, appearing on behalf of the petitioner-college, in support of his plea that once recognition has been granted by the NCTE, it is obligatory on the part of the affiliating body/examining body to grant affiliation, has placed reliance on Supreme Court decision in case of ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.***, reported in ***(2006) 9 SCC 1***. He has also relied on another Supreme Court decision in case of ***Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh & Ors.***, reported in ***(2013) 2 SCC 617***, to buttress his contention.

12. In response to the said contention, Mr. Anand Kumar Ojha, learned Counsel, appearing on behalf of the University, has relied on Supreme Court decision in case of ***Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam & Ors.***, reported in ***AIR 1990 SC 123***, to contend that if the contention made on behalf of the petitioner is to be accepted,



the State Act and the Statutes framed thereunder, regulating affiliation of the colleges, shall become nugatory and it should be always the approach of the Courts to uphold and harmonize statutory provisions, in case of conflict. He has placed great reliance on paragraph 70 and 71 of Supreme Court decision in case of Maa Vaishno Devi Mahila Mahavidyalaya (***supra***).

13. In order to deal with the question and rival submissions advanced on behalf of the parties, I may take note of clear observations made in paragraph 63, 64, 74 and 76 of Supreme Court decision in case of State of Maharashtra (***supra***), wherein, the Supreme Court has clearly held that the field of teacher education is fully and completely occupied by an Act of Parliament and covered by Entry of List I of Schedule VII of the Constitution. It has further been held that it is not open to the State Legislature to encroach upon the said field and Parliament alone could have exercised the power by making appropriate law. It is not open to the State Government to refuse permission relying on a State Act or on "policy consideration", the Supreme Court held. Paragraph 74 of the said decision is relevant, wherein, the Supreme Court held that it was neither open to the State Government nor to a University to consider the local conditions or apply "State Policy" to refuse such



permission, in view of the act of the Parliament, dealing with teacher education system "throughout the country".

14. Reiterating the view of the Supreme Court, in case of Maa Vaishno Devi Mahila Mahavidyalaya **(supra)**, the Supreme Court held in paragraph 43, referring to Section 16 of the Act, that since it opens with a *non obstante language* and has an overriding effect over all other laws for the time being in force, it requires that unless the institution concerned has obtained recognition from the Regional Committee concerned, no examining body shall grant affiliation, whether provisional or otherwise or even hold examination, whether provisional or otherwise, for the courses in the teacher training programme.

15. Upon conjoint reading of sub-Section (6) of Section 14 of the Act and the Supreme Court decision in case of Maa Vaishno Devi Mahila Mahavidyalaya **(supra)**, I have no hesitation in reaching a definite conclusion that the Act will have supremacy over all other laws in the matter of teacher education and provisions under any law, made by the State Legislature, will have to yield to the provisions of the Act. The Supreme Court clearly held that amplitude of the provisions of Section 14 of the Act is very wide and extensive and hardly leaves any matter relatable to an educational institution outside its ambit. The Court held that NCTE is a



supreme body and is vested with wide powers to be exercised with aid of expertise, in granting or refusing to grant recognition to an educational institution. NCTE is the paramount body for granting approval/recognition not only for commencing of fresh courses but even for increase in intake, etc., the Supreme Court has held.

16. Coming to the submission made on behalf of the University, with reference to paragraph 70 and 71 of Supreme Court decision in case of Maa Vaishno Devi Mahila Mahavidyalaya (*supra*), it would be apt to quote the said paragraphs, which read thus:-

“70. Under Section 14 and particularly in terms of Section 14(3)(a) of the Act, NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In other words, granting recognition is the basic requirement for grant of



affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining body. It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expressions of distinct meaning and consequences. In *Bhartia Education Socceity v. State of H.P.* this Court held that: (SCC p. 534, para 19)

“19. The purpose of ‘recognition’ and ‘affiliation’ is different. In the context of the NCTE Act, ‘affiliation’ enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diplomas and certificates. On the other hand, ‘recognition’ is the licence to the institution



to offer a course or training in teaching education."

The Court also emphasised that the affiliating body/examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by NCTE while granting recognition."

"71. The examining body can impose conditions in relating to its own requirements. These aspects are:

(a) eligibility of students for admission;

(b) conduct of examinations;

(c) the manner in which the prescribed course should be completed; and

(d) to see that the conditions imposed by NCTE are complied with.

Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation



automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto.”

(Emphasis added)

17. On reading of these two paragraphs, as noted above, of the Supreme Court decision in case of Maa Vaishno Devi Mahila Mahavidyalaya (*supra*), it can easily gathered that in the opinion of the Supreme Court, examining body can impose conditions in relating to its own requirement. The aspects, however, in relation to which the conditions can be imposed, have been clearly laid down in paragraph 71.

18. If what is being contended on behalf of the University is accepted and the Universities are allowed to refuse affiliation, on the ground that an institution does not fulfill the requisite conditions, despite there being recognition by the NCTE, this will amount to giving them jurisdiction to tinker with the decision of the NCTE of granting recognition under Section 14(6)(a) of the Act and thereby diluting the



clear legislative intent. This, in my view, cannot be allowed. If the University, on the basis of any inspection carried out and other information received, is of the view that the concerned institution does not fulfill the conditions for grant of recognition/affiliation, it can take up the matter with the NCTE and in that circumstance, NCTE only can take a final decision. In any event, refusal by the University to grant affiliation or to extend affiliation, during the currency of recognition by the NCTE, will be in breach of Section 14(6) of the Act.

19. Paragraph 13 of Supreme Court decision in case of ***State of Rajasthan Vs. LBS B.Ed. College & Ors.***, reported in ***AIR 2016 SC 1***, reliance on which has been placed by learned counsel, appearing on behalf of the University, as a matter of fact, supports the view which has been taken, hereinabove, by me. The Supreme Court observed in the said paragraph that once the NCTE grants recognition, then such grant attains supremacy, *vis-à-vis*, the State Government as well as the affiliating body.

20. In view of the discussion as above, in my view, the impugned order, communicated through letter, dated 28.10.2016, issued under the signature of Registrar, Aryabhatta Knowledge University, Patna, cannot be sustained and is, accordingly, quashed.



21. The University is directed to issue orders afresh, strictly in terms of Section 14(6) of the Act.

22. Coming to the second question as to whether the students of the petitioner-college, admitted for the academic session 2016-17, can be said to have been legally admitted to the said B.Ed. course and can be allowed to appear for the examination, certain aspects are to be taken note of.

23. This is not in dispute that the petitioner-college has taken admission of these students, without following any prescribed procedure through entrance test. A Division Bench of this Court, in case of **Mirza Ghalib T.T. College & Ors. Vs. The State of Bihar & Ors.**, reported in **2017(1) PLJR 256**, has categorically held that admission to such courses could be taken only on the basis of Combined Entrance Test, though, certain exceptions can be made to this rule, but as provided in the said decision. It is not the case of the petitioner-college that any entrance test was taken for admission in the college. The said Division Bench of this Court has been upheld by the Supreme Court. This is also to be taken note of that several writ applications were filed before this Court by institutions seeking permission to allow such institutions to take admission to B.Ed. course on their own. Certain interim orders were passed in case of



some of the institutions, whereby, they were allowed to take admission to B.Ed. course, subject to final result of the case. In case of Mirza Ghalib T.T. College (*supra*), the Court held that the institutions could not be allowed to take admission without holding Combined Entrance Test. Paragraph 75 of the said decision reads thus:-

“75. In the facts and circumstances of the case, we direct the Universities to hold a Combined Entrance Test for admission to B.Ed. courses in unaided education institutions, if not already held, within a period of one month from today, in accordance with the provisions of the Ordinance.”

24. The Court declared, even those admissions taken by the institutions in the light of interim orders, passed by this Court, to be illegal. This is also to be noticed here that the petitioner-college had not approached this Court by filing any writ application, seeking such relief, as was done by some other institutions, which were allowed to take admission on the basis of interim orders.

25. The Supreme Court, without interfering with the decision of Division Bench of this Court, in case of Mirza Ghalib T.T. College (*supra*), passed following order on



30.01.2017:-

"Heard learned counsel for the parties.

The High Court by virtue of certain orders, had permitted the colleges to give admission to the students to B.Ed. course in respect of the academic session 2015-17. Be it stated, the High Court had also passed the interim orders on 13th May, 2016 and on some proximate dates, as a consequence of which, the students had taken admission in the course that is meant for 2016-18.

In view of the aforesaid, we only protect the admissions given by virtue of the interim orders passed by the High Court and direct that the students shall be permitted to appear in the examination and their results shall be published.

With the aforesaid observations, the present special leave petitions are disposed of accordingly."

(Emphasis added)



26. A bare reading of the said order makes it clear that the Supreme Court protected the admissions given by virtue of interim orders, passed by the High Court, and directed that only such students shall be permitted to appear in the examination and their results shall be published.

27. Mr. Verma, learned Senior Counsel, appearing on behalf of the petitioner-college, has submitted that admissions taken by the petitioner-college are covered by the said order of Supreme Court, dated 30.01.2017, inasmuch as one interlocutory application was filed, on 23.06.2016, by the petitioner-college in CWJC No. 635 of 2016, being I.A. No. 4996 of 2016. In the said CWJC No. 635 of 2016, the interim order, allowing the colleges, in question, to take admissions, subject to final result of the case was passed on 25.01.2016. This is not in dispute that no order was ever passed by this Court on the said I.A. No. 4996 of 2016, filed by the petitioner-college. There is no dispute over the fact that I.A. No. 4996 of 2016 was filed much after passing of the interim order, dated 25.01.2016..

28. Thus, no interim order had been passed by this Court ever, allowing the petitioner-college to take admissions. Despite that, if the petitioner-college had given admissions, it did so at its own risk.

29. Mr. Yogesh Chandra Verma, learned



Senior Counsel, appearing on behalf of the petitioner-college, has submitted that the petitioner had also filed special leave petition before the Supreme Court, being SLP (C) No. 36271 of 2016, after permission was granted by the Supreme Court to file special leave petition. He has submitted that since the said order, dated 30.01.2017, has been passed by the Supreme Court, in batch of special leave petitions including the one filed on behalf of the petitioner-college, the protection given by the Supreme Court should be extended to the petitioner-college and its students also.

30. The submission so advanced on behalf of the petitioner-college deserves to be rejected. The Supreme Court has very clearly said in the order, dated 30.01.2017, that the Court wanted to protect only such admissions given by virtue of the interim orders passed by this Court. The protection given by the Supreme Court is apparently confined to such admissions given by virtue of interim orders of this Court. This is an admitted fact that no interim order was passed in favour of the petitioner-college, allowing it to give admissions. The admissions, so given by the petitioner-institution, being illegal, the University cannot be directed to allow the students of the petitioner-college to appear for the examination in question.

31. This application is, accordingly,



dismissed.

32. Since, I am of the view that the petitioner-college has taken admissions of students contrary to provisions of law, without obtaining any interim order from this Court; it has put the students, so admitted, to great disadvantage, touching their career. I find it difficult to duly compensate the damage caused to them in the present proceeding, particularly when they are not before this Court.

33. However, in the facts and circumstances of the case, I direct the petitioner-college to refund all fees and charges, accepted by the petitioner-college, to such students within a period of one (1) month from the date of receipt/production of a copy of this order. Though, I find it to be not sufficient amount, I direct the petitioner-college to pay an amount of Rs. 10,000/- to each of the students, illegally admitted to the B.Ed. course, within the same period of one (1) month.

34. This application is partly allowed, with the observations as above.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
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