

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1710 of 2017  
IN  
Civil Writ Jurisdiction Case No. 9479 of 2017**

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J. P. Memorial Trust, Prabhat Colony Chas, Bokaro through its Secretary, Mr. Shailesh Kumar Son of Late Jageshwar Prasad Resident of Mohalla - Prabhat Colony Chas (Bokaro), P.O. & P.S. - Chas, District - Bokaro (Jharkhand).

.... .... Petitioner/Appellant

Versus

1. The Magadh University, Bodh Gaya through the Registrar.
2. The Vice Chancellor of the Magadh University, Bodh Gaya.
3. The Registrar of the Magadh University, Bodh Gaya.
4. The Director, National Council for Teachers Education, Neelkanth Nagar, Nayapalli, Bhubneshwar (Odisha).

.... .... Respondents/Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Abhinav Srivastava  
For Magadh University : Mr. Shivendra Kishore, Sr. Advocate  
Mr. Priyank Deepak  
For N C T E : Mr. Sunil Kumar Singh

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 05-03-2018**

Seeking exception to an order dated 16.10.2017 passed by the Writ Court in CWJC No. 9479 of 2017 this appeal has been filed under Clause 10 of the Letters Patent.

There being a delay of 31 days in filing of this appeal,



IA No. 8933 of 2017 has been filed seeking condonation of delay. Keeping in view the reason indicated in the application for condonation of delay the same is allowed. The delay in filing of the appeal is condoned.

Petitioner-institute appellant herein had filed the writ petition challenging a decision taken by the Magadh University, Bodh Gaya refusing to issue No Objection Certificate (N.O.C., in short) to a teachers training institute for running B.Ed. course at Bihar Sharif, Nalanda. It is the grievance of the petitioner-appellant that for grant of affiliation the petitioner deposited the requisite fee of Rs.5,50,000/- . However, no inspection was done and, inter alia, contending that a policy decision has been taken by the University in the meeting of the Senate not to grant any N.O.C. to any institute and the claim was rejected. Challenging this policy decision the writ petition in question was filed and the learned Writ Court holds that once the University has taken a policy decision not to issue any N.O.C. the Writ Court cannot interfere into the matter.

Learned counsel appearing for the appellant argued that recognition and approval for starting a teachers training institute granted in accordance with the provisions of the National Council for Teachers Education Act, 1993 (hereinafter referred to 'the Act') and once the statutory provision contained in the Act, 1993 permits grant



of approval or recognition, the University cannot by taking such a policy decision in an arbitrary manner refuse to grant N.O.C. He argues that the University is bound to conduct an inspection, examine the claim for denial in accordance with the rules governing grant by the University and it would take a decision on merit of the matter and not on ground as policy decision for not granting any N.O.C. to B.Ed. Learned counsel invited out attention to the principles of law laid down by the Supreme Court in the case of *Maa Vaishnodevi Mahila Mahavidyalaya vs. State of Uttar Pradesh [(2013) 2 SCC 617]* and the case of *Aadarsh Shiksha Mahavidyalaya vs. Subhash Rahangdale (AIR 2012 SC 1097)*. Learned counsel for the appellant argues that such a policy decision which runs contrary to the mandate of the Act, 1993 is not permissible. It is an arbitrary decision and, therefore, the same is liable to be quashed with a direction to the University to conduct the inspection of the institute for the next academic session as per rules and conditions laid down for affiliation and take a decision.

Refuting the aforesaid contention learned counsel for the University argues that the Syndicate of the University in its meeting held on 15.06.2017 took a decision not to issue any N.O.C. and, therefore, as a policy decision has been taken in the matter by the University. The learned Writ Court has not committed any error



in refusing to interfere with the policy decision.

Having heard learned counsel for the parties it is seen that Agenda No. 2(d) which was passed for consideration before the Syndicate on 16.02.2017 reads as under :-

***“Agenda No. 2(d): Status report of B.Ed. Colleges and their regulatory mechanism to prevent exploitation of students, teachers and profiteering.”***

And, the resolution passed on this Agenda is as follows:-

***Resolution:*** Resolved to approve the following transitory regulation for B.Ed. Colleges and also other affiliated colleges.

*1. The University shall not issue any NOC. The rationale for the non-issuance of the new NOC is as follows:*

- (i) There is in progress a joint enquiry by the members of the NCTE, Govt. and the University, on the order of the Hon’ble High Court, therefore, fresh NOC should be issued only after understanding the order of the final outcome of the case.*
- (ii) There are too many B.Ed. Colleges under the jurisdiction of the Magadh University vis-à-vis total population.*
- (iii) The University has a jurisdiction in 6 districts of Bihar and the number of said B. Ed. Colleges is around 87.”*



From the aforesaid decision of the University it is seen that the University has decided not to issue any N.O.C. and the rationale for non-issuing the N.O.C. are the reasons given in Clause (i), (ii) and (iii) of the resolution reproduced hereinabove. In our considered view, such a decision taken by the University in the matter of granting affiliation to a teachers training institute is not permissible. The teachers training institute and the question of granting recognition for starting such institute is based on the Act, 1993 and nothing can be done in a manner which is contrary to or provided for in the Act, 1993 and which consequently has the effect of taking away the right of petitioner-institute available under the 1993 Act, i.e. Council for Teachers Education as a statutory authority constituted under the Act, 1993 with the responsibility of maintaining the standard of education, judging upon the infrastructure and other facilities available for imparting professional education in teachers training and as is held by the Supreme Court in the case of ***Maa Vaishnodevi Mahila Mahavidyalaya*** (supra) the Council takes precedence over the office of the State Government or the affiliating University. The role available to a Department of the State Government or the affiliating University is very limited. The Hon'ble Supreme Court in Paragraph-59 of its judgment in the case of ***Maa Vaishnodevi Mahila Mahavidyalaya*** (supra) holds that a Department



of the State Government or the affiliating University be laid down any guideline or policy which would be in conformity with the Central Statute or the standard laid down by the Central Body, i.e. the Council. It has been held by the Supreme Court that the State can frame its policy for admission to such professional course but again the policy has to be in conformity with the directive of the Council. Similarly, the University as an affiliating body cannot take any decision which is repugnant to what has been laid down in the condition for approval granted by the Council. After discussing in detail various provisions of the Act, 1993 with regard to the role of the examining body in granting affiliation in Paragraph-71 in the case of *Maa Vaishnodevi Mahila Mahavidyalaya* (supra) the principles crystallized by the Hon'ble Supreme court in the following manner :-

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

- (a) eligibility of students for admission;
- (b) conduct of examinations;
- (c) the manner in which the prescribed courses 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.”

If the decision of the University impugned in the writ petition is evaluated in the backdrop of the aforesaid legal principles we find that the decision of the University not to issue any N.O.C. and the reason given as indicated in the resolution are not the conditions or the parameters laid down by the Central Council under N C T E Act and such conditions laid down in our considered view are not permissible. These are the conditions stipulated by the Syndicate which not only violate the Central Act governing the field for grant of the approval and recognition to an institute and nothing is brought to our notice on the basis of which the decision of the Syndicate can be approved being permissible in accordance with the rules governing in the University. That being so, once we are of the considered view that the policy decision taken by the Syndicate of the University impugned in the writ petition is not permissible under law, we have no option but to quash the resolution so far as it denies issuance of N.O.C, on the ground contained in the impugned resolution.

Accordingly, we allow this appeal quashing the



resolution no. 1 as reproduced hereinabove and direct the University to consider the case of the petitioner for grant of affiliation in accordance with law well before commencement of the next academic session.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

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