

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7068 OF 2004

The President,
Mulund Gymkhana
Versus

.... Petitioner

Shri Nagarkar Ajit Chandrakant
And Others

.... Respondents

.....

Mr. S.M. Oak I/b Mr. A.A. Garge for the Petitioner.

Mr. Sariputta Pramod Sarnath for Respondent Nos.1 to 4.

....

CORAM : S.C.GUPTE, J.

DATE : 19 JULY 2018

Oral Judgment

. Heard learned Counsel for the parties.

2 The challenge in the present petition is to an order passed by University and College Tribunal at Mumbai in an appeal filed under Section 59 (1) of the Maharashtra Universities Act, 1994 ("Act"). The appeal was filed by the Respondents herein (Respondent Nos.1 to 4) challenging the orders of termination of their services and seeking reinstatement with continuity of service and back wages. By the impugned order the appeal was allowed by the tribunal.

3 The Petitioner is a trust registered under the Bombay Public Trust Act. It used to run a college of physical education. The Respondents were appointed as teachers in this college initially on an ad-hoc basis and later, on directions of a duly constituted selection committee. The college was an unaided college affiliated to Mumbai University. There was only one division of maximum number of 70 students. After coming into force of the National Council for Teacher Education Act 1993, the National Council for Teacher Education ("NCTE"), Western Region committee, addressed a letter to the Registrar of University of Mumbai for recognition of all institutions conducting courses in physical education under the jurisdiction of Mumbai University. The Petitioner had to accordingly apply with information in prescribed form for recognition by NCTE. The Petitioner duly submitted its application for recognition. A committee of NCTE thereafter visited the college and issued a show cause notice on 28 December 1999 calling upon the Petitioner to show cause why their college should not be refused recognition. A reply was submitted by the college. NCTE vide its letter 2 June 2000 refused to grant recognition to the college. (By the time this letter was received by the college (i.e. on 10 June 2000), the academic year 2000-2001 had already started. Upon guidance sought by the college from the university on the implication of the refusal letter, correspondence ensued between the two, during the course of which the latter permitted the college to provisionally admit students on conditions mentioned.) Being aggrieved, the Petitioner preferred an appeal before the appellate authority of NCTE. The appeal was heard in the month of July 2001. By its order dated 31 August 2001, the appellate authority remanded the matter to NCTE, Western Region for reconsideration. The order refusing the recognition was, however, neither

stayed nor was the Petitioner granted permission to start college. In the premises, by their letter dated 7 May 2002, the Petitioner informed the Registrar of Mumbai University that since NCTE, Western Region, had not granted recognition to their college, they were unable to start the college for the academic year 2002-2003. It is also important to note that since the Petitioner's college was not recognized, the Controller of Examination of Mumbai University, refused to conduct any examination in the college during the academic year 2001-2002. He also refused to issue passing certificates to those students, who had passed from the Petitioner's college during the academic year 2000-2001. These latter actions of the university were challenged by the Petitioner before this court in a writ petition. This court directed the university to conduct the examinations, declare results and issue passing certificates. In these circumstances, the Petitioner had no option but to close the college with effect from the academic year 2002-2003, whereupon termination orders were issued to the staff including Respondents. These terminations were exclusively on account of the fact that due to non-recognition by NCTE, the college had been closed down. The terminations, as noted above, were challenged in the appeals filed by the Respondents under Section 59(1) of the Act, which appeals were allowed by the tribunal. In the meantime, by an order dated 21 August 2002, NCTE granted its approval to the college.

4 The tribunal appears to have held in favour of the Respondents and set aside the termination orders and reinstated them on the ground, firstly, that the college could not have been closed down unilaterally by the management without prior permission of the State Government. The tribunal appears to have relied on Section 92 of the Act, which makes it

obligatory for a college affiliated to the university to seek the latter's permission before closing down any college. Secondly, it held that though recognition was initially denied by NCTE, after the matter was remanded by the appellate tribunal, NCTE granted its approval on 21 August 2002 permitting intake of fifty students for the academic year 2002-2003; but by the time this recognition and university's communication based thereof came to the Petitioner, the Petitioner had already closed down the college by a communication addressed to the university.

5 There is no question of the college management writing to the State Government and seeking its permission under Section 92 of the Act. The recognition granted by the university, in the first place, was subject to recognition by NCTE. This recognition being denied to the college, the college had no option but to close down. As the Supreme Court held in the case of **State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya**¹, the subject of higher education or research, scientific and technical institutions being exclusively covered by Entry 66 of List I of Schedule VII to the Constitution, the State has no power to encroach upon the legislative power of the Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament and the State Legislatures. The State law, in any case, will have to make way to if any Central Legislation occupies the field. Section 14 of the National Council for Teacher Education Act, 1993 requires every institution offering or intending to offer a course or training in teacher education to continue such course or training only subject to the recognition being granted to it under sub-

1 (2006) 9 Supreme Court Cases 1

section (1) thereof. Every institution, in respect of which recognition has been refused, is duty bound to discontinue the course or training in teacher education from the end of the academic year next following the date of receipt of the order refusing recognition passed under clause sub-section (3)(b) of Section 14. It is not in dispute that such order was passed by NCTE and accordingly, the Petitioner was bound to discontinue the course or training. Section 92 of the Maharashtra Universities Act cannot come in the way of such discontinuation.

6 It is true that on remand, NCTE did grant its approval to the college for an intake of fifty students, but that order came as late as on 21 August 2002. By that date, the college had already been closed down. The action of the college in closing down cannot be faulted in any manner. After all, ever since the original order of refusal of recognition passed by NCTC, there was no stay. The appellate order remanding the matter of recognition to NCTE also did not grant any stay or permission to run the college or admit any students.

7 Since anyway the college has been closed down admittedly with effect from the Academic Year 2000-2003 (and rightly so, as the law stands), there is no question of continuing any teacher. The impugned order of the tribunal discloses a serious error of jurisdiction and has, thus, no merit and is liable to be struck down.

8 In the premises, Rule is made absolute and the writ petition is allowed by quashing and setting aside the impugned orders of Mumbai University and College Tribunal dated 25 June 2004 and 02 July 2004 and

dismissing the Respondents' appeal. No order as to costs.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

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by Rajesh Vasant
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