

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.6849 of 2018

ORDER:

The present writ petition is filed to declare the proceedings in Lr.No.1212/RP/SU/KNR, dated 03.03.2018 of the 3rd respondent-Satavahana University, Karimnagar in rejecting the plea for grant of affiliation to the petitioner-college for the academic year 2017-18 for B.Ed., course, as illegal and arbitrary.

2. Counter Affidavits along with vacate petitions have been filed on behalf of 2nd & 5th respondent and 3rd respondent University. As the main challenge in the writ petition is to the impugned proceedings issued by the 3rd respondent University not granting affiliation to the petitioner college for the year 2017-18, and by virtue of interim orders passed by this court, students having been admitted into the college and also having completed the course, with the consent of the counsel representing the parties, the writ petition itself is taken up for hearing and disposal.

3. The brief facts of the petitioner case are that, the petitioner-college was in existence from 2007 onwards and every year till 2015-16, the College had affiliation from the University. Only during the academic year 2016-17, the college did not have affiliation for intake of students. For the academic year 2017-18, the petitioner college having obtained

recognition from National Council for Teacher Education (for short 'NCTE') for B.Ed. course with an annual intake of 50 students each for two units, sought for affiliation once again from the 3rd respondent University. It is further stated that later the University had renewed the affiliation of the petitioner-college for the academic years 2018-19 and 2019-20.

4. The further case of the petitioner is that pursuant to the visit of Inspection Committee to the petitioner college on 11.10.2017 and the deficiencies noted therein, the petitioner complied with the said deficiencies and informed the same to the Registrar, vide letter dated 12.10.2017, and also produced the necessary supportive evidence. The non-consideration of the explanation offered and the subsequent communication of the 3rd respondent University in refusing to grant affiliation on the ground of commencement of academic year is in question.

5. Heard Smt. G. Jhansi, learned counsel for the petitioner-college, Smt. P. Sharada, learned Standing Counsel for the 2nd and 5th Respondent – Telangana State Council of Higher Education and Convenor, Ed-Cet-2017 and Sri. Praveen Kumar Veerjarla, the learned Standing Counsel appearing for 3rd respondent-Satavahana University.

6. It is submitted by the learned counsel for the petitioner that the petitioner-college was in existence from the academic

year 2007-08 onwards as permitted under G.O. Rt. No. 935 dated 26.10.2007 issued by the Government of Andhra Pradesh and has necessary recognition from NCTE, for B.Ed. course with an intake of 100 students every year. Only during the academic year 2016-17, the college did not seek affiliation from 3rd respondent University, since the petitioner college submitted proposals for shifting of college, which was subsequently dropped. However, as the petitioner submitted proposal for shifting earlier and having dropped the same, deciding to continue at the same place, the 3rd respondent insisted for obtaining fresh recognition orders from NCTE for the academic year 2017-18, as the petitioner college sought for affiliation from the 3rd respondent for the academic year 2017-18 without any intake of any students during the academic year 2016-17. The challenge in the present writ petition is to the proceedings in Lr.No.1176/RP/SU/KNR, dated 20.02.2018 whereby the 3rd respondent rejected the application of the petitioner for grant of affiliation for the academic year 2017-18 and the consequential action of the 2nd respondent in not ratifying the spot admissions done by the petitioner college, pursuant to the interim orders of this Hon'ble Court in WP No. 34520 of 2017.

7. The learned Counsel for the petitioner further submits that the petitioner had approached this Hon'ble Court initially, in WP No. 34520 of 2017, when the respondents did not include the petitioner college into the process of

counselling for allotment of students in B.Ed., course for the academic year 2017-18. By drawing attention of this Court to the interim order passed by this court in WPMP No. 42915 of 2017 in WP No. 34520 of 2017, dated 20.10.2017, would submit that the 3rd respondent passed order dated 17.10.2017, (after the matter was adjourned on 16.10.2017), wherein on behalf of 3rd respondent, it is stated that the name of the petitioner-college did not figure at NCTE website list and on that ground, no affiliation was granted, was not accepted by this Court having regard to the fact that NCTE has granted recognition for the academic year 2017-18, which communication was not taken into consideration by the 3rd respondent before passing the order dated 17.10.2017.

8. The learned counsel submits that this Court having regard to the recognition granted by the NCTE, directed the Convener, Ed.CET-2017, to consider the case of the petitioner for spot admission of the students for B.Ed., course for academic year 2017-18 without insisting for formal affiliation by the 3rd respondent.

9. It is claimed by the learned counsel for the petitioner that pursuant to the interim orders of this Court, the petitioner gave a representation on 21.10.2017 to the 2nd respondent to include the name of the petitioner college in the second phase of counselling and spot admission, which the respondents failed to comply.

10. Further, it is also submitted that since, this Hon'ble Court permitted the petitioner to admit students through spot counselling, the petitioner college admitted 62 students and furnished the details of such students admitted to the 2nd respondent by its letters dated 15.11.2017 and 19.11.2017.

11. The learned counsel would further submit that due to the willful disobedience of the order of this Court dated 20.10.2017 in WP No. 34520 of 2017, by the 2nd respondent and 5th respondent herein, the petitioner initiated contempt proceedings against the respondents in Contempt Case No.2243 of 2017, which proceeding was closed on 02.02.2018 taking note of the fact that the petitioner college completed spot admissions. The claim of the 2nd and 5th respondents, that the names of the students admitted into the petitioner college were not ratified since, the 3rd respondent did not grant affiliation, is not valid and sustainable, is the submission of the learned counsel for the petitioner.

12. In so far as, the action of the 3rd respondent in rejecting the grant of affiliation by impugned proceeding dated 20.02.2018 is concerned, the learned counsel would submit that the 3rd respondent adopted wait and watch approach, choose to pass the impugned order after this court closing the contempt proceedings, which it is claimed is unsustainable and clearly vitiated in addition to other grounds of challenge in the present writ petition.

13. In opposition to the submissions of the counsel for the petitioner, Smt. P. Sharada, the learned Standing Counsel for the 2nd and 5th respondent would submit that granting of affiliation or not to a particular college is in the domain of the 3rd respondent-University, and upon the 2nd respondent being intimated of list of colleges who have affiliation, the same would be included in the list of colleges into which students who qualify through eligibility test can seek admission. Since, the petitioner college was not accorded affiliation by the 3rd respondent for the academic year 2017-18, the name of the petitioner college was not included among the list of 187 colleges and having regard to the fact the dates notified for first phase of counselling being in September, 2017 and the second phase of counselling being over by 16.10.2017 and seat allotment was done on 22.10.2017, the petitioner college would not be entitled to admit students, as spot admission is permitted only for left over seats of the colleges, which were included in the counselling process and since, the petitioner college was not included in the web counselling (1st or 2nd Phase), the petitioner college cannot make any spot admissions on their own. Further, the learned counsel would also submit that the petitioner college has submitted the list of admitted students to the 2nd respondent on 03.02.2018 through registered post, well beyond the cut-off date and its only the 5th respondent which can ratify the admissions made under the spot admission category that too only if the

admissions are made in accordance with the rules and regulations. As the petitioner did not submit the list of admitted students admitted through spot admissions to the 5th respondent, such admissions are illegal and invalid and cannot be ratified.

14. On behalf of the 3rd respondent-University, the learned standing counsel while justifying the impugned proceeding and seeking its sustenance, would submit that when inspection committee visited the petitioner college and found certain deficiencies, a notice was issued to the petitioner to comply with the same for granting provisional affiliation, the petitioner merely gave letter on 12.10.2017 informing 'the deficiencies have been fulfilled completely' without enclosing the details and it is only letter in February 2018 the petitioner has complied with the deficiencies by which time the academic year 2017-18 having commenced, the 3rd respondent-University issued the impugned proceedings rejecting the application for grant of affiliation of the petitioner-college.

15. Having regard to the submissions made and perusing the record, the entire dispute revolves around the deficiency letter issued by the Inspection Committee on 11.10.2017, wherein the said committee noted five deficiencies, which need to be complied by the petitioner college for according

provisional affiliation to offer B.Ed., course for the academic year 2017-18. The deficiencies noted are -

- i) College name is to be figured in the NCTE list.*
- ii) Appointment of Principal and (13) teachers through duly constituted selection committee and submit the faculty approval with all necessary documents.*
- iii) (10) Computers to be procured.*
- iv) To purchase books worth Rs.25,000/-.*
- v) Qualified librarian should be recruited /appointed.*

16. By the said deficiency letter issued, the petitioner was called upon to fulfill the deficiencies on or before 12.10.2017 (i.e. in one day). In response to the said deficiency notice issued by the Inspection Committee, the petitioner on the following day itself, has submitted its letter dated 12.10.2017 mentioning that they have complied with the objections as noted in the notice. The said letter addressed by the petitioner was submitted to the 3rd respondent-Registrar wherein it is stated that “we are hereby submitting the necessary documents for clearing the deficiencies. The said deficiencies have been fulfilled completely.”

17. Though it is sought to be contended by the learned Standing Counsel representing the 3rd respondent-University that the petitioner merely submitted the letter, however, did not enclose any documents as being claimed and for the reason that the authorities have issued subsequent communications. Having regard to the said stand taken by the 3rd respondent, this Court called upon the Standing

Counsel to make available the original record. The learned Standing Counsel pursuant to the orders noticed, had made available the record for perusal of this Court.

18. As can be seen from the record, the letter as filed by the petitioner with the 3rd respondent on 12.10.2017, did not mention separately the enclosures that are being filed as shown in the acknowledged copy filed by the petitioner along with the writ petition. However, as noted herein above, in the content of the letter, it is stated that they are submitting necessary documents. The original letter, as available on record, shows an endorsement directing the concerned to enclose the said letter to the application form of the petitioner college. If the contention of the Standing Counsel for the 3rd respondent is to be accepted that no documents were enclosed to the letter, the 3rd respondent, to whom the said letter is addressed, being a responsible officer of the University, at the helm of the affairs, could not have kept quiet or make the endorsement directing the concerned to enclose the said letter to the application form of the petitioner college. The normal reaction in such circumstances of such a responsible officer would have to communicate to the petitioner that no documents as mentioned in the letter are enclosed to evidence the deficiency having been removed/fulfilled and call upon the petitioner to submit the same for further action thereon.

19. On the contrary by subsequent communication in Lr. No.745/RP/SU/KNR dated 17.10.2017 addressed by the 3rd respondent to the petitioner, the 3rd respondent has only noted the non-compliance with deficiency relating to - petitioner college not enclosing/submitting mandatory affidavit online to NCTE and the petitioner college name not being figured/shown at NCTE website list and did not raise any objection regarding the non-compliance of other deficiencies as noted in the inspection committee report. Further, even the subsequent exchange of correspondence, would also indicate, that the 3rd respondent taking some objection with regard to appointment of principal and staff members not being as per norms and also the laboratory not being furnished with equipment as per the norms, it did not indicate/mention, that the petitioner did not furnish any information under the cover of letter dated 12.10.2017. On the other hand, when the petitioner questioned the action of the respondents in not including the name of petitioner college for admitting students before this court in WP No.34520 of 2017, the action was sought to be justified by the 3rd respondent on the basis of the order dated 17.10.2017, which only mentioned about the mandatory affidavit not being filed online and the name of the petitioner college not being shown at the NCTE website.

20. Though, in the impugned proceeding reference is made to a communication dated 27.10.2017, whereby it is claimed that the petitioner college was called upon to remove the deficiency, which it is being claimed as having submitted only on 03.02.2018, and is thus, being claimed as too late to accord affiliation, it is to be seen that the major emphasis in the letters addressed by the 3rd respondent on 27.10.2017 and 21.12.2017 was in relation to the submission of mandatory affidavit to NCTE online being not available and not with regard to the petitioner college being in non compliances with other deficiencies as noted in the inspection committee report. This would be evident from the replies given by the petitioner college to the said communications, whereby it is stated that the petitioner has fulfilled the deficiencies. Further, this court while passing interim order dated 20.10.2017 in WP No. 34520 of 2017 took note of the fact of NCTE granting recognition to the petitioner college by its proceedings dated 12.09.2017 (though wrongly mentioned in the order as 12.10.2017), directed the 2nd respondent to allow the petitioner college to admit students through spot admissions, without insisting for formal affiliation by the 3rd respondent, and the petitioner college having secured interim orders subsequently from the Delhi High Court in WP(C) No. 1092 of 2018, even the said deficiency stands fulfilled.

21. It is worthwhile to note here, as to whether the other objection raised by the 3rd respondent with regard to principal, staff members and laboratory equipment not being as per the norms, as raised in the deficiency letter dated 11.10.2017 is concerned, this court considered such issue being raised by the state government for not issuing permission for setting up colleges or the university not according affiliation, in a batch of writ petitions in W.P.No.26870 of 2016 and others, and by the common order delivered on 16.09.2016, was pleased to observe as under –

“Once the NCTE had granted recognition, it is deemed and implied that it had satisfied itself that the institution in question has adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of the institution for a course or training in teacher education.”

This court while holding as above, placed reliance on the dicta laid down by the Hon’ble Supreme Court in the judgement rendered in the case of ***Bharatia Education Society Vs State of H.P.***¹, wherein the Supreme Court was pleased to hold that –

“determination of standards in institutions for higher education” is exclusive to Parliament and NCTE Act, 1993 made by Parliament referable to the said field, is paramount.

¹ (2011) 4 SCC 527

The said common order in W.P. No. 26870 of 2016, was affirmed by a Division Bench of this court in W.A. No. 1047 of 2016 and batch. Further appeal to the Hon'ble Supreme Court by way of SLP (C) No. 3708-3716 of 2017 was also disposed of on 04.08.2017. In view of the above legal position, the objection of the 3rd respondent-university, as to the petitioner college being in non-compliance of the deficiencies indicated by the Inspection Committee and that it is only in February, 2018 the petitioner has complied with the deficiencies by which time the admission process for the year are over, cannot be accepted. Further, the timing of the passing of the impugned order by the 3rd respondent is also to be taken note of, which apparently is after this court closing the contempt case on 02.02.2018.

22. Further, from the record that has been placed before this Court, it is also seen that some of the evidences of even date of the letter i.e. 12.10.2017, which is submitted by the petitioner with regard to purchase of books and computers, is available on record. When this court queried with the learned counsel for the petitioner as to employing the sufficient staff, which was found to be deficient in number, as noted by the Inspection Committee, the learned counsel for the petitioner made available before this Court, the salary payment register from the month of October onwards and filed a copy of extract of the register of such employees, to support the submission that the deficiency fulfilled as stated in the letter dated

12.10.2017 is borne out from record, as petitioner college was ready to start and was only awaiting for grant of formal affiliation by the 3rd respondent, even though only a days time was granted.

23. The learned counsel for the petitioner would also submit that the petitioner college having admitted the students pursuant to the interim orders granted by this Court, could not have afforded not to comply with the objections of the Inspection Committee nor the students would have kept quiet if no faculty, necessary infrastructure not being made available, having secured admissions into the college, also merits consideration.

24. The other aspect which needs to be considered, is the plight of the students, who took admission into the petitioner college, pursuant to the interim orders of this Court, for pursuing the 2 year B.Ed., course from the academic year 2017-18.

25. On the basis of the interim orders of this Court, the petitioner-college granted admission to 62 students of which, 40 students were selected on spot admission basis and 22 students were selected under management quota. Further, the students who took admission into petitioner college were also permitted to write examinations by virtue of the interim orders of this Court in IA No.5 of 2018 and IA No. 8 of 2018. However, such permission accorded by this Court was subject

to the outcome of writ petition and the petitioner shall not claim equities in future.

26. It is submitted that the students who have obtained admissions in the petitioner college during the academic year 2017-18 have completed their degrees. If this Court at this point of time takes a view with regard to the non-compliance by the petitioner-college for granting affiliation, the same would hamper the career and life of the 57 students out of 62 students, who appeared for 2nd year final examination during the year 2018-19, conducted in August, 2019 for which the results have been declared on 13.09.2019 and completed their academic pursuit, as all their efforts in pursuing their studies would go in vain. Thus, this Court should be sensitive to the hardship that would be caused to the innocent students who are caught in fight between the petitioner college and 3rd respondent and the mighty state.

27. In **Medical Council of India v. Rajiv Gandhi University of Health Sciences**², the Hon'ble Supreme Court, while dealing with admission into MBBS course, and granting of interim orders had put in a word of caution by observing -

“If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions.”

² (2004) 6 SCC 76

28. However, what weighed with this court in granting interim relief on 20.10.2017 in W.P. No.34520 of 2017, in directing the respondents therein to consider the petitioner college for permitting spot admissions, is the fact of NCTE granting recognition to the petitioner college by its proceedings dated 12.09.2017, being the ultimate authority in relation to ensuring maintenance of standards in teacher education, and the affiliation by the 3rd respondent university being formal in nature, as noted in the said interim order. Having regard to the above, the action of the 3rd respondent in rejecting the grant of affiliation for the academic year 2017-18 on the ground that the petitioner has fulfilled the deficiencies only –

“on 03.02.2018, which is too late since half of the academic year is already completed.”

cannot be said to be a valid ground. Further, it is also not the case of the 3rd respondent-university either in the counter affidavit or during the course of hearing of the matter, that the petitioner college did not admit students or commence classes. On the other hand petitioner college by its letters dated 15.11.2017 and 19.11.2017 sent by registered post to the 2nd respondent gave the list of students who were admitted into the B.Ed., course. Even the 3rd respondent was informed of the petitioner college completing the admissions in the month of November, 2017 itself and commencing classes the batch of 2017-18, by their letter date 20.12.2017.

29. In view of conclusions arrived as above, since the students have been permitted to be admitted by the petitioner-college and such students having been permitted to write examinations, if any orders are passed by this Court in refusing to recognize the petitioner-college, would adversely effect the career of the students who have taken admission and who are awaiting for issuance of their completed degree course certificates to seek employment for their livelihood.

30. Having regard to the facts and circumstances of the case and in view of the conclusions arrived at, this Court is of the considered view that the action of the 3rd respondent-University in rejecting the application of the petitioner college for grant of affiliation for the academic year 2017-18 cannot be sustained and the impugned proceeding in Lr.No.1212/RP/SU/KNR, dated 03.03.2018 is set aside. The 3rd respondent-University is hereby directed to declare the results of the students of the petitioner-college for the year 2017-18 who have qualified in examinations conducted by the University in August, 2019 including their practical marks and issue degree certificates.

31. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

32. As a sequel thereto, miscellaneous applications, if any, pending in these writ petitions shall stand closed.

T. VINOD KUMAR, J