

(2024) 06 GAU CK 0004

Gauhati High Court

Case No: Writ Appeal No. 197 Of 2020

Purnendu Sekhar Debnath

APPELLANT

Vs

State Of Assam And 6 Ors.

RESPONDENT

Date of Decision: June 4, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 226
- National Council for Teacher Education Act, 1993 - Section 14, 15, 16, 17

Hon'ble Judges: Vijay Bishnoi, CJ; Suman Shyam, J

Bench: Division Bench

Advocate: N Dhar

Final Decision: Allowed

Judgement

Suman Shyam, J

1. Heard Mr. N. Dhar, learned counsel assisted by Mr. T. U. Laskar, learned counsel appearing for the appellant. Also heard Mr. N. J. Khataniar, learned Standing Counsel, Secondary Education Department, Assam appearing for the respondent Nos.1, 2 and 3, Mr. I. Alam, learned Standing Counsel, NCTE appearing for the respondent No.4, Mr. S. C. Keyal, learned Standing Counsel, Assam University, Silchar appearing for the respondent No.5 and Mr. B. Purkayastha, learned counsel representing the respondent No.7/writ petitioner.

2. In this intra-court appeal, the judgment and order dated 27.02.2020 passed by the learned Single Judge in WP(C) No.4443/2017 has been put to challenge. By filing WP(C) No.4443/2017 the respondent No.7, as writ petitioner, had called into question the validity of the B.Ed. degree obtained by the writ appellant on the ground that due to want of recognition of the concerned Institute by the National Council for Teachers

Education (NCTE) at the relevant point of time, the B. Ed. degree was invalid in the eyes of law and hence, the writ appellant cannot be granted any service benefit on the basis of such invalid B. Ed. Degree. By the impugned judgment and order dated 27.02.2020 the learned Single Judge has accepted the plea of the respondent No.7/writ petitioner and declared that the B. Ed. degree obtained by the writ appellant was invalid. Hence, this appeal.

3. The facts and circumstances of the case, briefly stated, are these. The writ appellant herein had got admission in B.Ed course for the session 1995-96 under the Vivekananda College of Education (VCE), Karimganj on 22.06.1995. At that point of time, the VCE did not have recognition of NCTE. As a matter of fact, the NCTE was not in existence on that date. However, the National Council for Teachers Education Act, 1993 (herein after referred to as the "Act of 1993") enacted by the Parliament came into force with effect from 01.07.1995 which is the appointed date. As per the provision of the Act of 1993, it was mandatory for all institutions offering B. Ed. degree, to obtain recognition/permission from the NCTE.

4. While the appellant was pursuing his B.Ed. course, the Assam University, Silchar, by the communication dated 25.07.1995 had granted permission to VCE for establishment of a new B. Ed. College. Thereafter, by the communication dated 31.05.1997, the Assam University had also communicated the decision of the Affiliation Committee of the University to accord ex-post facto renewal of permission to VCE for 1996-97 session. On 02.09.1996, the VCE had applied before the Regional Committee, ERC, NCTE seeking recognition of the Institute. While the application made by the VCE seeking recognition was pending consideration, the appellant had completed his B.Ed. degree course on 08.03.1997.

5. It is not in dispute that on the date of completion of B.Ed. degree course by the appellant, the VCE did not have the recognition of the NCTE. However, what would be significant to note herein that VCE had admittedly submitted its application seeking recognition within the prescribed period of time. On 23.06.1998 the ERC of NCTE, on consideration of the application made by VCE seeking recognition, had granted permission to continue with its B. Ed. degree course for the session 1998-1999. Thereafter, on 24.11.1998, provisional recognition for one more year i.e. 1999-2000 was granted to VCE by the NCTE. Finally, on 13.03.2001, the NCTE had granted recognition to VCE for conducting B. Ed. degree course.

6. The NCTE, which was impleaded as respondent No.4, had filed affidavit in the writ petition inter-alia stating that the B. Ed. degrees obtained from VCE, Karimganj prior to 13.03.2001 would not be valid as the Eastern Regional Committee (ERC) of the NCTE had granted its recognition to VCE only on 13.03.2001. The stand of the VCE before the learned Single Judge, on the other hand, was that since the writ appellant had taken

admission in the B.Ed. course on 22.06.1995, which is prior to the coming into effect of the Act of 1993, hence, the provisions of the Act would not be applicable in the case of the appellant.

7. The Assam University, which was impleaded as respondent No.5, had also filed affidavit in the writ petition stating that VCE, Karimganj was operational prior to 01.07.1995 and it had also applied for recognition from the NCTE as per the Act of 1993, which was never refused by the NCTE. Taking note of the stand taken by the respondent Nos.4, 5 and 6 in the writ petition, the learned Single Judge had arrived at the conclusion that the B.Ed. degree held by the appellant was invalid.

8. Referring to the materials on record, Mr. N. Dhar, learned counsel for the appellant has strenuously argued that his client had taken admission in the B.Ed. course in VCE, Karimganj prior to 01.07.1995. As such, the provisions of the NCTE Act, 1993 cannot have any bearing on the B.Ed. degree obtained by the appellant. It is also the submission of Mr. Dhar that the VCE had proper affiliation under the Assam University, which is recognized by the University Grants Commission (UGC). That apart, VCE had also submitted application seeking recognition of the NCTE within the time prescribed under the statute. Under the circumstances, submits Mr. Dhar, there was no justifiable ground for the learned Single Judge to declare that the B.Ed. degree obtained by the appellant was invalid. Mr. Dhar has further argued that the case of the appellant is squarely covered by the decisions of the Division Bench of this Court rendered in the case of Swapan Kumar Singha Vs. State of Assam and others [Writ Appeal No.154/2022 dated 28.04.2023] and Muchabbir Ali vs. State of Assam and others [Writ Appeal No.415/2023 dated 21.02.2024]. Therefore, the impugned judgment and order dated 27.02.2020 is liable to be set aside by this Court.

9. Mr. B. Purkayastha, learned counsel for the private respondent No.7, on the other hand, has opposed the submissions advanced by Mr. Dhar. He has made an attempt to distinguish the decisions of the Division Bench rendered in the case of Swapan Kumar Singha (supra) and Muchabbir Ali (supra) on facts. By referring to the materials available on record, Mr. Purkayastha has also questioned the procedure adopted by the Assam University while granting affiliation to the VCE by contending that since proper procedure was not followed by the University, hence, the affiliation itself stood vitiated in the eyes of law. In support of his above argument Mr. Purkayastha has not only referred to the provisions of Sections 14, 15, 16 and 17 of the NCTE Act, 1993 but has also relied upon and referred to the decisions rendered in the case of Mukta Ram Deka Vs. State of Assam and others reported in 2013 (4) GLT 528 as well as the decision of the Supreme Court in the case of National Council for Teacher Education and another vs. Venus Public Education Society & others reported in (2013) 1 SCC 223 and Dr. Zakir Hussain Primary Teacher vs. State of Bihar reported in 2010 (0) Supreme (Pat) 2613 to argue that the impugned judgment and order passed by the learned Single

Judge does not suffer from any infirmity warranting interference by this Court.

10. The learned counsel appearing for the official respondents have fairly submitted that the main controversy involved in this appeal is covered by the decisions of this Court rendered in the case of Swapan Kumar Singha (supra) and Muchabbir Ali (supra).

11. We have considered the arguments made by the learned counsel for the parties and have also gone through the materials available on record.

12. At the very outset, it deserves to be mentioned herein that the National Council for Teacher Education Act, 1993 (Act of 1993) came into force with effect from 01.07.1995 which is the appointed date. As per section 14 of the Act of 1993, an application seeking grant of recognition is required to be submitted to the Regional Committee as per the procedures prescribed by the Regulations. Section 14 further lay down that any institution offering a course or training in teachers education immediately before the appointed date would be entitled to continue with such course or training for a period of six months if it had made an application for recognition within the said period and until the disposal of the application by the Regional Committee. Subsequently, the period for making such application was extended by the NCTE till 18.08.1997 and finally, till 31.03.1999. There is no controversy about the fact that the VCE, which was in existence prior to 01.07.1995, had, in fact, made an application seeking recognition from the NCTE on 02.09.1996 which was within the extended period of time, as prescribed by the NCTE. The application made by the VCE was duly considered by the NCTE and recognition was also granted to VCE, provisionally on 24.11.1998 and thereafter, finally on 13.03.2001.

13. We find from the materials on record that although the NCTE had apparently taken a stand before the learned Single Judge that the B.Ed. degree obtained by the appellant was not valid, yet, by filing an additional affidavit in the Writ Appeal on 22.08.2023, a somewhat different stand has been taken by the NCTE. The averments made in paragraphs 6, 7 and 8 of the affidavit would be relevant for the purpose of this case and therefore, are being reproduced herein below for ready reference :-

“6. That your humble deponent begs to state that the ERC also extended the time of six months as provided under Section 14 of NCTE Act upto 18.08.1997 for the colleges who have not applied but to apply before the extended date of 18.08.1997. The Section 14 of the NCTE Act which is quoted below for your Lordships ready reference :

“14. Recognition of institutions offering course of training in teacher education.—(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such

form and in such manner as may be determined by regulations :

Provided that an institution offering a course of training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee."

7. That the humble deponent begs to state that the Assam University granted permission vide letter dtd. 25.07.1995 to start B.Ed. Classes for the session 1995-96 to the Institute Vivekananda College of Education, Karimganj. The NCTE Act, 1993 came into force from 01.07.1995. Under the Section 14 of the NCTE Act, the institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months which was extended upto 18.08.1997. The deponent humbly begs to state that the ERC allowed the B.Ed. degree obtained from the existing colleges who have applied within 18.08.1997 as a valid degree and this Hon'ble Court also accepted the stand of the ERC, NCTE.

8. That your humble deponent begs to state that the Assam University on 25.07.1995 granted permission to establish new B.Ed. College namely Vivekananda College of Education, Karimganj, Assam and the NCTE Act came into force from 01.07.1995 as such the institute, namely Vivekananda College of Education is not an existing institution when the NCTE Act came into force. However, it is made clear that the Vivekananda College of Education applied on 02.09.1996 for recognition before the ERC which is within the extended period of 18.08.1997."

14. This Court had the occasion to deal with a question of similar nature in the case of Swapan Kumar Singha (supra) pertaining to validity of B.Ed. degree granted by "Dr. Shashi Bhushan Institute of Education". The challenge made to the B. Ed. degree obtained by a candidate was on the ground that the B. Ed. degree was obtained prior to granting of recognition by the NCTE to the said institution. A Division Bench of this Court had rejected the challenge made to the B.Ed. degree in the case of Swapan Kumar Singha (supra).

15. The decision in Swapan Kumar Singha (supra) was followed by another Division Bench of this Court in Muchabbir Ali (supra). That was also a case where the B.Ed. degree granted by "Dr. Shashi Bhushan Institute of Education, Hailakandi" to the private respondent No.7 therein, was called into question by filing a writ petition before this Court on the ground that the institution was not recognized by the NCTE on the date on which the B.Ed. degree was obtained. In that case also the institute was established on 31.12.1995 and it had applied for recognition of its B.Ed. degree course from the NCTE on 12.08.1997. The NCTE had granted provisional recognition on

13.01.2000 and final recognition was granted on 15.06.2001. However, respondent No.7 in that proceeding had obtained his B.Ed. degree from the institute in the year 1997 on which date, Dr. Shashi Bhushan Institute of Education was admittedly not recognized by the NCTE. The learned Single Judge had rejected the prayer made by the Writ Petitioner in WP(C)No.5221/2022 assailing the B.Ed. degree of the private respondent No.7 on the above grounds. The appeal, being Writ Appeal No.415/2023, preferred by the writ petitioner therein was also dismissed by the Division Bench by observing that the NCTE had issued notification extending the time for submitting application seeking recognition, initially, upto 01.04.1997 and thereafter, upto 18.08.1997 and finally, upto 31.03.1999. By referring to the decisions rendered by the Supreme Court of India in the case of State of U.P. and others vs. Bhupendra Nath Tripathi & others reported in (2010) 13 SCC 2023 as well as other connected decisions this Court has held that "Dr. Shashi Bhushan Institute of Education" had filed application seeking recognition of its B.Ed. degree within the extended period of time. Therefore, the B.Ed. degree cannot be held to be invalid. The observations made in paragraphs 15, 16 and 17 of the decision rendered in the case of Muchabbir Ali (supra) would be relevant and therefore, are being reproduced herein below for ready reference :-

15. Considering the above fact situation, as already noted above, the Division Bench of this Court in WA No. 154/2022 [Swapan Kumar Singha (supra)] has clearly held that the B.Ed. degree offered by Dr. Shashi Bhushan Institute of Education for the academic session 1996-1997 is a valid degree.

16. In the present case, the respondent No.7 has obtained the B.Ed. Degree from Dr. Shashi Bhushan Institute of Education in the academic session 1996-1997 and therefore, there is no reason to hold that the said B.Ed. Degree obtained by the respondent No.7 is invalid.

17. So far as the argument of the learned Senior Counsel for the appellant that Section 14 of the NCTE Act speaks only about those Institutions which were existing on the appointed day, i.e. 01.07.1995 is concerned, the same cannot be accepted in view of the fact that the NCTE vide various notifications has extended the last date for submission of application seeking recognition of B.Ed. Degrees and with the extension of the said date all the Institutions existing up to the extended date and offering B.Ed. courses were eligible for submitting applications seeking recognition of B.Ed. Degrees offered by them. Needless to say that the power of the NCTE of extending the date has already been recognized by the Division Bench of this Court in WA No. 154/2022 [Swapan Kumar Singha (supra)] and the said judgment has already been affirmed by the Hon'ble Supreme Court by dismissing the SLP preferred (supra)."

16. Having regard to the facts and circumstances of the present case, we are of the unhesitant opinion that the ratio laid down in the case of Swapan Kumar Singha (supra) as well as in Muchabbir Ali (supra) would be squarely applicable to the facts of the present case. If that be so, we are of the opinion that the learned Single Judge has committed a serious error in holding that the B.Ed. degree obtained by the appellant was invalid.

17. Having held as above, we have also noted that although the writ petitioner/respondent No.7 did not have any right which could be specifically enforced in the writ petition, yet, he had instituted WP(C) No.4443/2017 with the prayer to declare the B.Ed. degree of the writ appellant as invalid. On a pointed query made by this Court as to the reason for doing so, Mr. B. Purkayastha, learned counsel for the respondent No.7 has submitted that the writ appellant had earlier challenged the Masters degree obtained by the writ petitioner/respondent No.7 which had briefly interfered with his promotion/appointment to the post of Principal of the school and that is the reason, the writ petitioner/ respondent No.7 had also instituted the writ petition assailing his B.Ed. degree. We are afraid, such an argument of the learned counsel for the respondent No.7 is wholly unacceptable.

18. Under Article 226 of the Constitution of India, the Writ Courts are required to exercise extraordinary jurisdiction meant for protecting the fundamental and legal rights of the citizens. The forum of writ court cannot be used to settle private vendetta between two or more individuals or entities. Permitting such a recourse would clearly amount to abuse of the process of the court. Such being the position, we have serious doubt about the locus standi of the writ petitioner/ respondent No.7 to institute the writ petition. It appears that, unfortunately, the said aspect of the matter has completely escaped the notice of the learned Single Judge.

19. In so far as the plea raised by the learned counsel for the respondent No.7 questioning the validity of the affiliation granted by the Assam University to the VCE, such argument of Mr. Purkayastha also cannot be entertained by this Court for two reasons. Firstly, materials on record do not indicate that any such specific plea was taken in the writ petition. Secondly, from a plain reading of the impugned judgment and order dated 27.02.2020, we find that no such case was even projected by the writ petitioner before the learned Single Judge. Such being the position, the learned counsel for the respondent No.7 cannot be permitted to take a new plea for the first time before the appellate forum, that too in an appeal preferred by the opposite party being aggrieved by the judgment and order dated 27.02.2020.

20. For the reasons stated herein above, we are of the opinion that the learned Single Judge was not correct in declaring the B.Ed. degree of the appellant invalid by the impugned judgment and order dated 27.02.2020. Therefore, the judgment and order

dated 27.02.2020 stands set aside.

21. The writ petition being W.P.(C) No.4443/2017 stands dismissed.

22. The Writ Appeal is allowed accordingly.

Parties to bear their own cost.