
(2005) 01 JH CK 0017

Jharkhand High Court

Case No: Letters Patent Appeal No's. 14 and 15 of 2003

Vinoba Bhave
University and Others

APPELLANT

Vs

Imamul Hai Khan
Educational Society
and Another

RESPONDENT

Date of Decision: Jan. 25, 2005

Acts Referred:

- Bihar State Universities Act, 1976 - Section 21(2)

Citation: (2005) 1 BLJR 717 : (2005) 2 JCR 49

Hon'ble Judges: S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench: Division Bench

Advocate: I. Sen Choudhary, for the Appellant; R. Krishna and Saurav Arun, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. In both the appeals as common question of law are involved and most of the parties are common, they have been heard together and are being disposed of by this common judgment.

2. Both the Letters Patent Appeals arise out of one judgment, passed by the learned Single Judge. A writ petition bearing CWJC No. 1078 of 1999 R was preferred by the writ petitioners-respondents herein for a direction on the Vinoba Bhave University, Hazaribagh (hereinafter to be referred as "the University") appellant herein, to hold examination of Bachelor of Education (B.Ed. for short) of the students of the writ petitioner-respondent No. 2 Al-Habeeb Teacher's Training College, Bokaro Steel City, Bokaro (hereinafter to be referred to as "the Institution") on the ground that the Institution

had been granted recognition by the State Government for the Sessions 1991-92 onwards till 1st July, 1995 where the Central Act, namely, Nation Council of Teachers Education Act, 1993 (in short "NCTE Act",) came into effect.

3. Learned Single Judge by his judgment dated 19th March, 2001 held that the petitioner-Institution will be deemed to be recognized before the NCTE Act came into existence and the respondent authorities, including the University, are bound to conduct "and hold the examination during the period in question since the Institution, in question, was recognized by the competent authority, Accordingly, the appellant-University was directed to hold examination of the B. Ed. for the students of the Institution for the Sessions 1991-92 to 1994-95 i.e. the period prior to coming into existence the Central Act, namely, NCTE Act, 1993.

4. The appellant-University, thereafter, preferred a Civil Review Application being Civil Review No. 69 of 2001, which was dismissed by the learned Single Judge vide order dated 26th August, 2002. One of the Letters Patent Appeals i.e. LPA No. 15 of 2002 has been preferred by the appellant-University against the original order dated 19th March, 2001, passed by the learned Single Judge in CWJC No. 1078 of 1999 R whereas the other LPA No. 14 of 2002 has been preferred by the appellant-University against the order dated 26th August, 2002, passed by the learned Single Judge in Civil Review No. 69 of 2001.

5. The main plea, taken by the appellant-University, are :

(i) There is no valid order of affiliation regarding the Institution, issued by the University,

(ii) NCTE Act, 1993 having come into force with effect from 1st July, 1995, the Acting Vice-Chancellor of the University or the State Government had no jurisdiction to give affiliation to a Teachers Training College,

(iii) The so called order of affiliation dated 25th February, 1999 can not be treated to be an affiliation, granted by the University, having been given by the Acting Vice-Chancellor of the University, who had no jurisdiction,

(iv) The National Council of Teachers Education having rejected the claim of the petitioner Institution to grant affiliation by letter dated 13th March, 2000, the University can not be directed to held examination for the students of the aforesaid Institution.

6. For determination of the issues, it is necessary to notice the relevant facts, as pleaded by the parties and mentioned hereunder :

Respondent No. 1 Imamul Hai Khan Educational Society, Bokaro, is a society registered under the Societies Registration Act. It has opened an institute, known as Al-Habeeb Teacher"s Training College, Bokaro Steel City, Bokaro (2nd respondent). In the year, 1987 the respondents sought for affiliation of the Institution from the State Government.

However, the matter remained pending. In the meantime, though the Institute was not affiliated, students were admitted and stated to have imparted Teachers Training. Many of the students were admitted since 1991-92 onwards.

While the matter remained pending, the Central Act, i.e. NCTE Act, 1993 came into effect with effect from 1st July, 1995. u/s 14 of the NCTE Act, 1993 the Institutions, already offering the course or training in teachers education, have been allowed to make applications for their recognition by National Council of Teachers Education. Under Sub-section (5) to Section 14 other Institutions, in respect of which recognition has been refused, are to discontinue the course or training in teachers education from the end of Academic Sessions, next following the date of receipt of the order, refusing recognition, passed under Clause (b) of Sub-section (3), Sub-section (6) to Section 14 stipulates that every Examining Body, on receipt of order under Sub-section (5), shall cancel the affiliation of the Institution, where recognition has been refused. Section 16 debars the Examining Body to grant affiliation, whether provisional or otherwise, to an Institution and also debars to hold examination, as quoted hereunder :

"16. The 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 recognized institution,

unless the institution concerned has obtained recognition from the Regional Committee concerned u/s 14 or permission for the course or training u/s 15."

7. On 15th March, 1997 the Deputy Secretary, Department of Secondary, Primary and Mass Education, Govt. of Bihar, issued letter, containing Memo No. 848, and informed that the State Government has given permanent recognition to the respondent-Institution for the sessions 1991-92. Though such order has been issued, the University did not issue any order, granting affiliation in favour of the Institution for about two years. On 25th February, 1999, the Acting Vice-Chancellor of the University issued an order vide Memo Nos. 3537-3544, granting provisional affiliation in favour of the Institution for the sessions 1991-92 onwards in anticipation of approval of Senate. However, even thereafter, no examination was conducted for the students of the Institution.

8. When the matter came to the notice of the Chancellor, he vide his decision, contained in Memo No. 1189 dated 15th April, 1999 communicated that no University is to grant affiliation for the past session and without following the mandatory statutory provisions, governing such affiliation. It was further informed that no University is to hold examination for the past sessions, as had been the practice and till then directed all the Universities to assist the National Council of Teachers Education in the matter of affiliation and

recognition and to ensure compliance of the NCTE norms.

9. When the matter came to the notice of the State Government, it vide letter No. 1276 dated 13th September, 1999 cancelled its earlier order, contained in letter No. 15th March, 1997, whereby, permanent recognition was given to the Institution.

10. The University in its meeting dated 13th November, 2000 held that the letter dated 25th February, 1991, issued by the Acting Vice-Chancellor, granting affiliation in favour of the Institution for the sessions 1991-92 onwards was without jurisdiction.

11. In the meantime, the Institution in question, applied before the National Council of Teachers Education for its recognition under NCTE Act, 1993. After inspection and enquiry, as the Institution was found not fulfilling the requisite conditions, the National Council of Teachers Education vide its letter dated 31st March, 2000 refused to grant recognition.

12. Respondent No. 2 Imamul Hai Khan Educational Society, Bokaro, filed a writ petition being CWJC No. 810 of 2000 R wherein, it challenged the order dated 13th September, 1999, issued by the State Government, whereby the earlier order dated 15th April, 1997, granting permanent recognition in favour of the Institution, was withdrawn, The said writ petition was heard by the learned Single Judge of this Court, who vide his order dated 19th March, 2001, without going into the merits of the case, quashed the order dated 13th September, 1999 and remitted the matter to the Secretary, Department of Secondary, Primary and Adult Education, Government of Jharkhand, Ranchi, for fresh decision in accordance with law.

13. In the meantime, the writ petition, in question, i.e. CWJC 1078 of 1999 R was already filed by the respondents i.e. Imamul Hai Khan Educational Society, Bokaro, and the Institution for a direction on the respondent authorities to hold examination of B. Ed. for the students of the College. It was also taken up by the learned Single Judge on 19th March, 1991 wherein, a direction was given to the University, to hold examination, which is under challenge.

14. The only question arises whether the Institution in question is an affiliated college of the University and thereby, the University can be directed to hold B.Ed. Examination for the students or not.

15. Admittedly, NCTE Act, 1993 came into effect from 1st July, 1995 and it was given prospective effect. In case of refusal to give recognition by the National Council of Teachers Education, the University was bound to cancel the affiliation of an institution as envisaged under Clause (b) of Sub-section (6) of Section 14 of the Act, 1993. Thus, the affiliation, if any, granted by the University for the sessions 1991-92 onwards can be de-affiliated with effect from 1st July, 1995 and not from a prior date.

16. So far as affiliation is concerned, the following provisions have been made under the Bihar State University Act, 1976, an Act, which was applicable at that relevant point of time :

"4. Purpose and powers of the University.--There shall be the following purposes and powers of the University :--

XX XX XX XX

(19) to affiliate or disaffiliate Colleges according to Statutes subject to prior approval of the State Government :

21. Powers and duties of the Senate.--

XX XX XX XX

(2) In particular and without prejudice to the generality of the foregoing powers, the senate shall exercise the following powers the following duties, namely--

XX XX XX XX

(d) of exercising the powers for the purpose of control in Colleges and Tols, and of superintendence which include affiliation and disaffiliation of Colleges :

Provided that affiliation or disaffiliation of Colleges or Tols shall not take effect, unless it is approved by the State Government :

Provided further that no medical college shall be affiliated except without the prior approval of the State Government.

Before granting such an approval, the State Government shall consider the financial viability of the College, the nature and form of the proposed management of the College, the viability of the academic standard and all other conditions which are likely to have adverse effect on the interests of students admitted to such a College."

17. From a plain reading of the aforesaid provisions, it will be evident that the power to affiliate or disaffiliate a College, including B.Ed. College, is vested with the Senate of the University. But such affiliation or disaffiliation can not take effect unless it is approved by the State Government. If 1st and 2nd proviso to Clause (d) of Sub-section (2) to Section 21 are read together, it will be evident that in the matter of Medical College while prior approval of the State Government is required, for other College, including B.Ed. College, it is post-facto approval of the State Government. It is only when the State Government approves the affiliation of a college, including B.Ed. College, it comes into effect and not prior to that.

18. In the present case, even it is presumed that the Acting Vice-Chancellor in absence of the Senate, on its behalf, granted affiliation to the Institution in question vide order, contained in letter dated 25th February, 1999, in absence of any subsequent approval of such affiliation, given by the State Government, it can not be said that the affiliation, so granted, was given effect to. Therefore, the so called affiliation of the Institution, as it claims, having not been given effect, the respondents-writ petitioners or its students have no right to pray for issuance of a writ of mandamus on the University to hold B.Ed. Examination for the students of the Institution.

19. The learned Single Judge having failed to notice the aforesaid provisions of law, as quoted above, and the fact that the so called affiliation, granted by the Acting Vice-Chancellor, was never given effect to in the eyes of law, the impugned judgment can not be upheld. The judgment and order dated 19th March, 2001, passed in CWJC No. 1078 of 1999 R, as also the order dated 26th August, 2002, passed in Civil Review No. 69 of 2001, both being against the law, are hereby set aside and both the appeals are hereby, allowed. However, in the fact and circumstances, there shall be no order as to costs.

Narendra Nath Tiwari, J.

20. I agree.