

## **Gitarattan International Business School Vs Guru Gobind Singh Indraprastha University**

**Court:** Delhi High Court

**Date of Decision:** July 24, 2013

**Acts Referred:** National Council for Teacher Education Act, 1993 â€" Section 14, 15

**Hon'ble Judges:** V.K. Jain, J

**Bench:** Single Bench

**Advocate:** P.D. Gupta, for the Appellant; Mukul Talwar, for the Respondent

**Final Decision:** Disposed Off

### **Judgement**

V.K. Jain, J.

The petitioner before this Court is imparting business and technical education in various disciplines and is affiliated to Guru

Gobind Singh Indraprastha University. Vide application dated 24.12.2012, the petitioner applied to the respondent-University inter alia for starting

MCA (Dual Degree) course with intake capacity of 60 students. The said course has duration of five years and the candidates taking admission in

the said course have an option to quit after three years and in that case, degree of BCA is awarded to them. Similarly, the petitioner also applied to

Department of Technical Education, Government of NCT of Delhi for revalidation of LOC for existing courses and grant of NOC for the new

MCA (Dual Degree) course, with intake capacity of 60 students. Vide application dated 10.01.2013, the petitioner also applied to AICTE

seeking its approval for the aforesaid new dual degree course. Vide communication dated 08.04.2013, AICTE granted approval to the petitioner

for MCA (Dual Degree) course with intake capacity of 60 students for the academic year 2013-2014. The inspection of the petitioner-institute

was carried out by a joint team appointed by the University on 06.05.2013 and the inspecting team recommended the new course for which

application was submitted by the petitioner. Vide communication dated 07.06.2013, Government of NCT of Delhi conveyed approval for

revalidation of provisional NOC inter alia in respect of additional MCA (Dual Degree) course, with intake capacity of 60 students.

2. The grievance of the petitioner is that despite approval accorded by AICTE and NOC from the Government, I.P. University, which is the

affiliating University for the petitioner-institute, has not granted affiliation to it in respect of the aforesaid MCA (Dual Degree) course. The petitioner

is accordingly seeking a direction to the University to include its name in the schedule of counseling for BCA programme for Academic Session

2013-2014 for admission towards MCA (Dual Degree) course or in the alternative a direction to immediately notify the schedule for counseling for

MCA (Dual Degree) programme for the Academic Session 2013-2014.

3. When this matter came up for hearing on 17.07.2013, Shri Mukesh Talwar, counsel for the University, who appeared on advance notice sought

time to take instructions. He, however, informed that during Academic Year 2013-2014, the University is not offering admission to MCA (Dual

Degree) course and has not given any approval for admission to the said course. Today, the learned counsel for the respondent has placed on

record a communication dated 23.07.2013, addressed to the petitioner-institute. The said communication, to the extent it is relevant, reads as

under:-

With reference to your proposal submitted for grant of affiliation MCA (Dual Degree) at Gitarattan International Business School for academic

session 2013-4, I am directed to inform you that the matter was referred to Academic Committee/Concerned University School of

Studies/Director, Academic Affairs to examine the proposal for introduction of this programme and the matter was also placed before the

Competent Authority, who has order to referred to matter to Academic Council.

In view of above, it is informed that the request of the Institute for grant of affiliation of MCA (Dual Degree) programme, cannot be considered for

the academic session 2013-14.

This issues with the approval of the Competent Authority.

4. The contention of the learned senior counsel for the petitioner is that once AICTE, which is the only regulatory body to supervise and coordinate

development of technical education in the country and maintenance of norms and standards in technical courses has given its approval, the affiliating

University cannot refuse affiliation for the course for which approval has been granted by AICTE. In support of his contention, he relies upon the

decision of Supreme Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, .

Per contra, the learned counsel for the University submits that there is no legal obligation on the University to grant affiliation merely on account of

approval granted by AICTE and the University has a discretion to refuse affiliation in appropriate cases. He further submits that there can be no

question of granting affiliation in respect of a course which the University is not offering to anyone. He also submits that University lacks

infrastructure such as faculty which can set question papers and evaluate answer sheets in the course for which affiliation is sought by the petitioner-

institute.

5. In Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others (supra), the petitioner-society, which was respondent before the Apex

Court, was running a secondary school and desire to start B.Ed. course. It spent a huge amount to meet the requirement on infrastructure, library,

staff, etc. and submitted an application to the concerned University for affiliation and also paid the requisite affiliation fee. It also made an

application to the National Council for Teacher Education (NCTE) for grant of permission to start B.Ed. college in accordance with the provisions

of National Council for Teacher Education Act, 1993 and the National Council for Teacher Education (Norms & Conditions for recognition of

Bachelor of Elementary Education) Regulations, 1995. After inspection by an Expert Committee, NCTE granted permission to the petitioner for

the proposed B.Ed. college. The petitioner then applied to Government of Maharashtra for grant of permission to start the college and include the

name of the college in the Central Admission Process. The State Government passed an order to the effect that it had taken a policy decision not

to grant NOC to any institution for starting new B.Ed. colleges for the said academic year. The petitioner filed a writ petition before Bombay High

Court seeking quashing of the said order. The State Government also challenged the decision of NCTE. The High Court held that the only

authority which could take a decision regarding opening of new B.Ed. college or increase in intake capacity was NCTE and such decision could

not be ignored either by the State authorities or by the University. It was also held by the High Court that it was incumbent upon the University to

implement the decision of NCTE and it could not take any action overlooking the said decision. The High Court also held that Sections 82 and 83

of Maharashtra University Act, to the extent they required the University to grant affiliation only after permission was granted u/s 82 were null and

void. Dismissing the appeal filed by the State Government, Supreme Court inter alia, held as under:-

79. Before parting with the matter, we may state that at one stage, the High Court has observed that:

in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted u/s 14, the

University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after

permission is granted u/s 82 of the Maharashtra University Act. To that extent the provisions of Section 82 and 83 are inconsistent with the

provisions of NCTE Act and are null and void.

(emphasis supplied)

6. Section 14 of NCTE Act, to the extent it is relevant, reads as under:-

14 (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.

(6) Every examining body shall, on receipt of the order under sub-section (4),--

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.

It would thus be seen that as far as B.Ed. courses are concerned, if recognition in terms of Section 14 of the Act is granted by NCTE, the

concerned University has no option, but to grant affiliation to the institute which has obtained recognition from NCTE. However, there is no

identical provision in AICTE Act, 1987, requiring the examining University to grant affiliation once approval by AICTE is granted to a particular

technical course. Therefore, the aforesaid decision would not apply to the case before this Court. The learned counsel for the petitioner also relies

upon the decision of Supreme Court in Secretary, Cannanore District Muslim Educational Association, Kanpur Vs. State of Kerala and Others, .

However, the said decision would have no applicability to the issue as to whether the University is mandated by law to grant affiliation once

approval by AICTE is granted to a technical course.

A perusal of the application submitted by the petitioner to the University would show that the application form was issued to the petitioner subject

to rules and regulations of the University and policy and guidelines of the Government of NCT of Delhi and the University for Academic Session

2013-2014. The contention of the learned counsel for the respondent is that the University has taken a decision not to grant affiliation for MCA

(Dual Degree) course in the academic year 2013-2014. No such policy decision by the Academic Council of the University has been placed

before the Court. The communication dated 23.07.2013 would show that the application of the petitioner was considered by the Academic

Committee/Concerned University School of Studies/Director, Academic Affairs and was also placed before the Competent Authority who

directed the matter to be referred to the Academic Council. Therefore, the decision on the application of the petitioner now needs to be taken by

the Academic Council. Even otherwise, it is the Academic Council of the University which ought to decide as to whether the University should

grant affiliation in respect of a particular course or not. This is more so when the respondent has not placed before the Court any

rule/regulation/ordinance of the University, indicating as to who in the University is competent to take a decision of this nature. In these

circumstances, the writ petition is disposed of with a direction to the respondent-University to place the application of the petitioner-institute

seeking affiliation for the MCA (Dual Degree) course, before its Academic Council within two weeks from today for consideration and decision.

The decision taken by the Academic Council shall forthwith be communicated to the petitioner, which, if dissatisfied from the said decision will be

entitled to avail such remedy as is available to it in law.

The writ petition stands disposed of.