

(2013) 07 DEL CK 0554

Delhi High Court

Case No: Writ Petition (C) 4472 of 2013

Gitarattan International Business
School

APPELLANT

Vs

Guru Gobind Singh Indraprastha
University

RESPONDENT

Date of Decision: July 24, 2013

Acts Referred:

- National Council for Teacher Education Act, 1993 - 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 Shashtra 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.