

State Of H.P.& Ors vs H.P.Nizi Vyavsayik Prishikshan ... on 20 April, 2011

Author: P.Sathasivam

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3385 OF 2011

(Arising out of S.L.P. (Civil) No. 23998 of 2009)

State of H.P. & Ors.

.... Appellant(s)

Versus

Himachal Pradesh Nizi Vyavsayik

Prishikshan Kendra Sangh

.... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) Leave granted.

2) This appeal is directed against the final judgment and

order dated 12.08.2009 passed by the High Court of Himachal Pradesh at Shimla in C.W.P. No. 2948 of 2008 wherein the Division Bench of the High Court allowed the writ petition filed by the respondent herein.

3) Brief facts:

(a) In pursuance of the recommendation of the All India

Council for Technical Education (AICTE), the Government of India appointed a Committee called the National Trade Certification Investigation Committee in the year 1951 with instructions to prepare a scheme for the establishment of an All India Trades Board which would award certificates of proficiency to craftsmen in various engineering and building trades. The said Committee made certain recommendations and while accepting the same, a central agency for coordinating the training programmes and awarding certificates of proficiency in craftsmanship on an all-India basis was created. The Government of India decided to transfer the administration of the training organization under the Directorate General of Resettlement and Employment to the control of the State Government concerned, retaining for itself the function of coordinating craftsmen training and laying down the training policy.

(b) Accordingly, in consultation with the State Governments and other concerned parties, National Council for Vocational Training (NCVT) was set up in the year 1956 and was entrusted with the functions relating to establishing and awarding National Trade Certificates to craftsmen, prescribing standards and curriculum for craftsmen training in the technical and vocational trades throughout the country and advising and assisting the Central Government on the overall training policy and programmes. On similar lines, State Council for Vocational Training (SCVT) was created to deal with all the matters relating to Vocational Training at the level of the State. The Government of Himachal Pradesh, in consonance with National Policy of Education (NPE) 1986, as revised from time to time, decided to adopt a policy for producing manpower in the conventional as well as in emerging areas of the Engineering and Technology and in other professional disciplines. The Government, keeping in view the financial constraints to meet the immense requirement of investment in the field, also decided to encourage private sector participation in the State for which the Government was to extend all possible facilities and also to provide for some concessions for arranging the necessary infrastructural facilities for the establishment of technical and other professional institutions in the State. In order to fulfill this objective, the State Government framed Technical Education Policy and the Department of Technical Education issued guidelines for Vocational Training Centres (VTCs) in Himachal Pradesh.

(c) In the year 2004, the State Government through its Department of Technical Education invited private parties/institutions to open Vocational Training Centres (VTCs) within the State of Himachal Pradesh. These Centres were permitted to admit students for the permitted courses on such terms and conditions as provided under the said guidelines. In pursuance of the said invitation, the members of the respondent-Association applied for opening VTCs at different places within the State of Himachal Pradesh. The Letters of Intent were issued to the members of the respondent-Association permitting them to run various courses including Art and Craft, Hotel Management, Ayurveda Pharmacist, Physical Training Instructor, Library Science etc.

(d) A decision was taken in the meeting of SCVT held on 27.04.2006 to wind up certain courses for which there was little scope of employment or self employment and in its place new courses as per demand of the market/industry be started.

Thereafter, in the meeting held on 21.08.2007, while confirming the proceedings of earlier meeting dated 27.04.2006, the State Council granted approval to the opening of 161 new VTCs and for renewal of 112 already existing VTCs.

(e) Despite the endeavour of the State Government to promote and encourage the participation of the private sector, it had not accorded permission to the institutions to run the vocational courses for the academic Session 2007-08. The members of the respondent's Association made representations to the State Government with regard to the same. Thereafter, in the meeting held on 23.10.2008, after detailed deliberation on various issues, it was decided that all the issues raised in the meeting including cancellation of affiliation, permission for fresh admissions and starting of fresh courses in different VTCs would be examined by a Sub-

Committee to be constituted and headed by the Chief Secretary. Accordingly, the Sub-Committee was constituted on 25.10.2008. On 22.11.2008, the Sub-Committee, so constituted, submitted its report to the Government and the matter was taken up in the Cabinet meeting held on 25.11.2008. The effect of the decision of the Cabinet was that for the academic session 2007-08 there would be no admission for the courses which are being taught by the respondent herein and subsequent to the Cabinet decision, Government Order dated 19.12.2008 was issued. In compliance with the Cabinet decision dated 25.11.2008 and the Government Order dated 19.12.2008, eight Inspection Committees were constituted by the Director, Technical Education for the inspection of Vocational Training Centres (VTCs) and recommendations of these Committees were sent to the Government and placed before the State Cabinet in its meeting dated 18.07.2009.

(f) Challenging the decision of the Cabinet dated 25.11.2008, the respondent herein filed writ petition being CWP No. 2948 of 2008 before the High Court of Himachal Pradesh. On 12.08.2009, the High Court, by the impugned order, allowed the writ petition and quashed subsequent cabinet decision dated 18.07.2009 discontinuing the three courses, namely, Sl. No. 1 (Art and Craft), Sl. No. 4 (Library Science) and Sl. No. 7 (PTI). In addition, the Court also issued various directions and awarded cost of Rs. 25,000/-.

Aggrieved by the said decision, the appellants have preferred this appeal before this Court by way of special leave petition.

4) Heard Mr. Altaf Ahmed, learned senior counsel for the appellant-State and Mr. Anoop Chaudhary, learned senior counsel for the respondent.

5) Mr. Altaf Ahmed, learned senior counsel appearing for the State, after taking us through the relief prayed for in the writ petition and the stand of the State submitted that after hearing arguments and reserving the judgment on 03.07.2009, the Division Bench of the High Court committed an error in considering the Cabinet decision dated 18.07.2009 which is a subsequent event and quashing the same when the writ petitioner has not pleaded or amended the original prayer in the writ petition. He also pointed out that without appreciating the stand of the State in modifying the "policy", the High Court not only quashed the Cabinet decision but also issued various directions which are all unacceptable. On the other hand, Mr. Anoop Chaudhary, learned senior counsel for the respondent submitted that on the principle of 'legitimate expectation', the State is not justified in altering the policy to promote private institutions for vocational training on various subjects.

6) Admittedly, the respondent herein which is an unregistered association of Vocational Training Centres (VTCs) filed writ petition before the High Court of Himachal Pradesh at Shimla through its President seeking certain reliefs.

According to the respondent-Association, their members are imparting training in different Vocational Training Centres and are also recognized by the Himachal Pradesh SCVT. In order to appreciate the rival contentions, it is useful to refer the relief prayed for in the writ petition which reads as under:-

"It is, therefore, humbly prayed that this writ petition may be allowed, -

(i) the respondents may be directed by issuing writ of mandamus to hold admission test for admitting students in SCVT Courses for the session 2007-08 and consequently sponsor the candidates to the Vocational Training Centres (VTCs) approved by the respondents for SCVT Courses;

(ii) that in case it is felt by the respondents that there are certain other formalities which are required to be completed or there are shortcomings required to be removed by a particular Vocational Training Centre (VTC), the respondents may take corrective measures themselves and the concerned VTC may be allowed to remove the shortcoming within reasonable time and the course may continue uninterrupted;

(iii) that the respondents may be directed to commence admissions process forthwith for all the permitted courses for which the Vocational Training Centres (VTCs) were affiliated/approved in the past and the students may be allocated to the concerned PTC at the earliest;

(iv) that in case the central counseling has become difficult for the respondents, the concerned Vocational Training Centre (VTC) may be permitted to admit students of its own by giving due regard to the minimum standards as fixed by the respondents for a particular course;

(v) Any other relief deemed fit in the facts and circumstances of the case may also be granted, in the interest of justice. Costs may also be awarded."

7) A perusal of all the prayers clearly shows that the respondent-association had not sought for quashing of any policy or scheme or decision or order of the State Government but only prayed for certain directions for admission of students in SCVT courses for the session 2007-08. The State has filed reply conveying its stand. It was highlighted that the institution established must fulfill the requirements of the norms and guidelines of various apex bodies like AICTE, Pharmacy Council of India, NCVT and SCVT. It was also averred in the reply that the whole issue of admission to VTCs was taken up in the Cabinet meeting dated 25.11.2008 and, consequently, a G.O. was issued on 19.12.2008. It is seen from the impugned order of the High Court that while hearing the matter, the Division Bench, on 28.05.2009, directed learned Addl. Advocate General to seek instructions from the State as to what was the stand of the Government with regard to holding of examination for these institutions. A supplementary affidavit was filed by the State Government on 02.07.2009. The Court also recorded the stand of the Government that for the year 2008-09, institutions were permitted to run the courses except Art and Craft, Library Science and Physical Training Instructor (PTI). Ultimately, the High Court has concluded that the State, by permitting the members of the petitioner's association to open the institution in the State of Himachal Pradesh after investing huge amount of money have generated legitimate expectation in them that in future also they shall be permitted to run the courses, which were permitted at the time of setting up of the institutions and further that the members of the petitioner's association cannot be permitted to be left in a lurch by the arbitrary action of the State Government by denying them running of these courses.

The Court has also observed that there is no explanation why the State Government has not permitted the running of these courses. After arriving at such conclusion in the last paragraph, the High Court allowed the petition and quashed the decision taken by the Cabinet on 18.07.2009. It is relevant to point out that after hearing the matter at length, the Division Bench reserved it for judgment on 03.07.2009.

Before the pronouncement of the judgment, that is, on 12.08.2009, the Cabinet of the State Government after taking note of various aspects took a decision on 18.07.2009 discontinuing three courses under SCVT, namely, i) Art and Craft, ii) Library Science and iii) PTI. The High Court, after getting the said decision through the Addl. Advocate General, without reopening the case and hearing both sides about the matter as to the subsequent development, i.e., the decision of the Cabinet on 18.07.2009, simply quashed and set aside the same by issuing various directions.

8) We have already adverted to the relief prayed for by the respondent-association in the said writ petition. Admittedly, there is no prayer for quashing of even earlier Cabinet decision or order of the government. The conclusion of the High Court quashing the Cabinet decision dated 18.07.2009 and

as a consequence issuing several directions is unacceptable and contrary to the well established principles. First of all, there was no prayer for quashing of any decision of the State Government much less the subsequent Cabinet decision dated 18.07.2009. If the High Court was interested in going into the said decision that too after reserving the judgment on 03.07.2009, it is but appropriate to reopen the case, permit the petitioner's association to amend the relief portion, afford adequate opportunity to the State to put-forth their stand for modifying this "policy" curtailing certain courses under SCVT.

Admittedly, the High Court has not resorted to such recourse and simply quashed the decision of the Cabinet dated 18.07.2009 and issued various directions which are impermissible.

9) As rightly pointed out by Mr. Altaf Ahmed, without any arguments having been heard, without there being any question raised by any party as to the validity of the Cabinet decision dated 18.07.2009 and without the same being in question, or any relief sought for in the writ petition, the High Court has gone into the said decision of the Cabinet having taken place after the judgment was reserved. The decision of the Cabinet generally ought not to be interfered with in judicial review so lightly as has been done in the present case.

The quashing of the Cabinet decision without analyzing the pros and cons in the manner seeks to restrict the State's constitutional authority and powers to frame policy especially in such vital areas like imparting technical education is not acceptable. The following is the outcome of the Cabinet decision dated 18.07.2009:

"Dated: 18.07.2009 ITEM NO.37 Government of Himachal Pradesh Department of General Administration (Confidential & Cabinet) Subject:- Regarding State Council for vocational Training In the meeting of Cabinet held on 18.07.2009, the above proposal has been discussed and the following decision has been taken:

"Points for consideration 1, 2 and 4 has been approved with following amendments:-

(i) All courses shown in Annexure-"Gha" except S.No.1,4 and 7 are approved.

(ii) One institution must not be allowed to start more than 4 courses.

The implementation report may sent to this Department within 15 days.

Sd/-

Special Secretary (GAD) to the Government of Himachal Pradesh Additional Chief Secretary (Technical Education)"

10) It is seen that the Cabinet considered the proposal of the State Council for Vocational Training and after deliberation, the decision has been taken to continue various courses under SCVT except for the courses at Sl. No. 1 (Art and Craft), Sl. No.

4 (Library Science) and Sl. No. 7 (PTI). Though in the supplementary affidavit, the State has not highlighted the reason for discontinuing the three courses in the State of Himachal Pradesh, the High Court presumed that the State is precluded from taking fresh/revised policy in the matter of imparting technical education. In fact, in the said decision, the State has not barred all the institutions from continuing the courses already notified under SCVT. The Cabinet decided to discontinue only three courses. Inasmuch as the said Cabinet decision dated 18.07.2009 not being the subject-

matter or issue of the writ petition, the State was not in a position to highlight all the details before the Court.

Accordingly, we are satisfied that the High Court was not justified in interfering with the Cabinet decision dated 18.07.2009 which was not the issue or challenge in the writ petition. We are also unable to accept the conclusion of the High Court that the petitioner's association (respondent herein) is entitled to run all the courses under the principle of 'legitimate expectation'.

11) The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The Courts do not substitute its views in the decision of the State Government with regard to policy matters. In fact, the Court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

12) With regard to the importance of human resources, especially manpower requirement in various professional and technical fields, the Government is free to frame its policy, alter or modify the same as to the needs of the society. In such matters, the Courts cannot interfere lightly as if the Government is unaware of the situation. Apart from these aspects, procedurally also the High Court has committed an error in quashing the Cabinet decision dated 18.07.2009 which was not challenged in the writ petition by raising valid grounds. Further, both parties were not afforded opportunity to put-forth their stand as to the subsequent development, namely, Cabinet decision dated 18.07.2009. For all these reasons, the impugned order of the High Court is to be interfered with. However, we permit the respondent's association or its members to challenge the said decision/order of the Government by way of fresh proceeding, if they so desire.

13) Under these circumstances, the impugned order of the High Court quashing the Cabinet decision dated 18.07.2009 and issuing various directions including awarding cost of Rs.25,000/- in favour of the respondent-association are set aside. As observed earlier, the respondent's association or its members are free to challenge the order of the Government in the High Court by way of an appropriate writ by projecting valid grounds, if any. In such event, the State Government is equally entitled to highlight its policy, need for the change, and demand of the society insofar as courses prescribed under SCVTs.

14) With the above observations, the civil appeal is allowed with no order as to costs.

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.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN) NEW DELHI;

APRIL 20, 2011.