

Committee Of Management Anuragi Devi ... vs State Of U.P And Anr on 29 June, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3831, 2016 (12) SCC 517, 2017 (2) ALJ 613, 2016 (4) AJR 526, AIR 2016 SC (CIVIL) 2769, (2016) 5 SERVLR 478, (2016) 4 KCCR 579, (2016) 117 ALL LR 574, (2016) 3 JLJR 224, (2016) 3 JCR 285 (SC), (2016) 5 MAD LJ 519, (2016) 6 SCALE 95, (2016) 4 SCT 126

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Bench: Shiva Kirti Singh, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1894 OF 2016
(Arising out of S.L.P.(C) 5995 OF 2016)
(CC NO. 1652 OF 2016)

Committee of Management Anuragi Devi ...Appellants
Degree College & Anr.

Versus

State of U.P. & Anr. ...Respondents

J U D G M E N T

Dipak Misra, J.

The first respondents vide its letter no. Aff.333/Seventy-6-2012-2 (356)/2012 dated 12.09.2012, granted prior permission for provisional affiliation to the appellant for a period of 3 years w.e.f. 01.07.2012 i.e. for the period 01.07.2012 to 30.06.2015 for imparting Education in the Arts Faculty for the subjects Hindi, Political Science, Sociology, Medieval History, Education Sanskrit and Home Science. In pursuance of the aforesaid Government order No. 333 dated 12.09.2012, the Deen Dayal Upadhyay Gorakhpur University, Gorakhpur vide its letter no. 7539/ Affi.2012 dated 27.11.2012 permitted the appellant to admit the students in the various subjects of the Arts Faculty.

2. The appellant applied on 10.03.2015, to the University for constituting an Inspection Panel for granting permanent affiliation to the University. Upon perusal of the application dated 10.03.2015 submitted by the aforesaid appellants, the University vide its letter No. DDUGU/Aff.2015/5096 dated 20.03.2015 constituted an Inspection Panel to submit status report of the appellant as far as the Infrastructural Facilities existing in the appellant's college were concerned. The Regional Higher Education Officer Gorakhpur submitted its inspection report on 06.11.2015 to the University.

3. As per Time Schedule prescribed by the State Government, the Inspection Report was not received within the prescribed date. In the absence of the required Inspection Report, the University did not grant permanent affiliation to the appellant for the Academic Session 2015-16. No appeal was preferred before the State Government.

4. As the permanent affiliation was not granted the appellant college preferred a writ petition-C No. 42336 of 2015 and the learned Single Judge of the High Court taking note of the fact that writ petitions seeking similar reliefs had been dismissed, vide its order dated 20.08.2015 declined to interfere. However, it observed that "the petitioner would be entitled for consideration of his claim for the next session". Being dissatisfied with the order passed by the learned Single Judge, the appellant preferred Special Appeal No. 610 of 2015 before the Division Bench.

5. The Division Bench, as the factual scenario would unveil, took note of the prayer of the college that it was in effect seeking issuance of writ of mandamus requiring the University to extend temporary affiliation for the courses of Hindi, Political Science, Sociology, Medieval History, Education, Sanskrit and Human Science at the graduate level for the academic session 2015-2016 and accordingly adverted to the reasonings of the learned Single Judge and concurred with him.

6. It was urged before the Division Bench that application for grant of permanent affiliation in respect of subjects was made well within time, that is, 12.12.2014; that the three-member committee that was constituted by the University on 20.3.2015 had visited the institution on 14.4.2015 and submitted the report; and that the inspection team had recommended extension of temporary affiliation in respect of subjects in question for the academic session 2015-2016 but there had been failure on the part of the University which had caused grave prejudice to the college. The Division Bench noted the stand of the University, referred to the authority in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P. and others*[1], reproduced the time schedule fixed in the said judgment and observed that pursuant to the directions so issued the State Government formulated a time- frame for consideration of applications for affiliation the particulars of which stood embodied in the Government Order dated 14 November, 2014 and in terms of the government order the last date for the grant of affiliation by a University is fixed as 30 May and a person aggrieved by the decision taken by the University was entitled to prefer an appeal against the same by 15 June and the State Government was liable to decide the appeal so preferred latest by 15 July. The appellate-Bench stated that in the facts of the case the affiliation was neither granted by the time fixed under the Government Order dated 14 November, 2014 nor was any appeal preferred before the State Government and, therefore, bearing in mind the directions issued in *Maa Vaishno Devi Mahila Mahavidyalaya (supra)*, it was not open to either the second respondent or the State Government to pass orders of affiliation after 30 May, 2015. Being of this view, it dismissed the

intra- court appeal. Hence, the present appeal by special leave.

7. We have heard Mr. R.P. Bhatt, learned senior counsel for the appellant, Mr. Kavin Gulati, learned counsel for the respondent-university and Mr. Gaurav Bhatia, learned Additional Advocate General for the State of U.P.

8. At the very beginning, we may note that in *College of Professional Education and others v. State of Uttar Pradesh and others*[2], the Court recorded that for the academic year 2012-13 and subsequent academic years, institution and the State Government had arrived at a broad consensus regarding the procedure and terms and conditions of admission, recognition and affiliation. The terms and conditions which had been accepted by all concerned were reproduced in the said judgment. In the said judgment, as is evident, the Court has referred to the order dated 11.3.2011, and also provided for the time by which the affiliation could be granted to the colleges. Paragraph (vi) (b) clearly stipulated that after the counseling is over, the university concerned will continue to allot the candidates from the relevant waiting list against the vacant seats till all the seats in the colleges were filled up and the organizing university would provide students only to the existing B.Ed college and all those B.Ed colleges which would get affiliation up to 7.7.2011 would not be considered for counseling to the year 2011-2012 and for the next consecutive years and onward the colleges which will get affiliated on or before 10th of May of that year, would be considered for counseling. Certain affiliations were granted to the colleges which were interfered with by the High Court primarily on the ground that the court had no jurisdiction to extend the cut-off date.

9. In *Maa Vaishno Devi Mahila Mahavidyalaya (supra)*, the Court dealing with various aspects, taking into consideration the provisions of the NCTE Act, 1993 and the NCTE Rules 1997, opined that:-

“The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infrastructure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the university. The Department of the State concerned and the affiliating university have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and the university its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for

betterment of the educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist”.

10. And again:-

“67. In the present case, we are concerned with the provisions of the NCTE Act which is a Central legislation referable to Schedule VII List I Entry

66. Thus, no law enacted by the State, which is in conflict with the Central law, can be permitted to be operative.

68. Now, let us examine the conflict that arises in the present cases. In terms of the provisions of the Act, the Regional Committee is required to entertain the application, consider State opinion, cause inspection to be conducted by an expert team and then to grant or refuse recognition in terms of the provisions of the Act. Once a recognition is granted and before an institution can be permitted to commence the course, it is required to take affiliation from the affiliating body, which is the university.

69. Thus, grant of recognition or affiliation to an institute is a condition precedent to running of the courses by the institute. If either of them is not granted to the institute, it would not be in a position to commence the relevant academic courses. There is a possibility of some conflict between a University Act or Ordinance relating to affiliation with the provisions of the Central Act. In such cases, the matter is squarely answered in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya[3] where the Court stated that after coming into operation of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It also observed that provision of the Universities Act regarding affiliation of technical colleges and conditions for grant of continuation of such affiliation by the university would remain operative but the conditions that are prescribed by the university for grant and continuation of affiliation must be in conformity with the norms and guidelines prescribed by NCTE”.

11. After so stating, the Court further proceeded to state:-

“76. In terms of Section 37(10), a college which has been affiliated is entitled to continue the course of study for which the admissions have already taken place. To give an example, under the statute of Meerut University, affiliation of new colleges is dealt with under Statutes 13.02 to 13.10 of Chapter XIII. This requires that every application for affiliation of a college has to be made so as to reach the Registrar in less than 12 months before the commencement of the course and before an application is considered by the Executive Council, the Vice-Chancellor must be satisfied that there is due compliance with the provisions of Statutes 13.05, 13.06 and

13.07. Besides, it requires the conditions like adequate financial resources, suitable and sufficient building, adequate library, two hectares of land, facilities for recreation of students, etc. to be fulfilled. The constitution of the management of every college has also been provided.

77. The fields which are sought to be covered under the provisions of Section 37 of the Universities Act and the statutes of various universities are clearly common to the aspects which are squarely covered by the specific language under the Act. That being so, all State laws in regard to affiliation insofar as they are covered by the Act must give way to the operation of the provisions of the Act. To put it simply, the requirements which have been examined and the conditions which have been imposed by NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State law. The affiliating/examining body and the State Government must abide by the proficiency and command of NCTE's directions.

To give an example, existence of building, library, qualified staff, financial stability of the institution, accommodation, etc. are the subjects which are specifically covered under Section 14(3)(b) of the Act. Thus, they would not be open to re-examination by the State and the university. If the recognition itself was conditional and those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform NCTE forthwith of the shortcomings and non-compliance with the conditions. In such situation, both the Central and the State body should act in tandem and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation. But certainly, the State Government and the university cannot act in derogation to NCTE.

78. Now, we may deal with another aspect of this very facet of the case. It is a very pertinent issue as to what the role of the State should be after the affiliation is granted by the affiliating body. We have already discussed that the State opinion, as contemplated under Section 37 of the University Act, to the extent it admits to overreach, is reconcilable and its results are not in its orientation to the directives of NCTE are void and inoperative to the extent they can be resolved in which case clear precedence is to be given to the directives of NCTE during such resolution. The opinion of the State, therefore, has to be read and construed to mean that it would keep the factors determined by NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the university to determine the grant or refusal of affiliation and role of the State should be the bare minimum, non-interfering and non-infringing.

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, NCTE shall send a copy of the application with its letter inviting recommendations/comments of the State Government on all aspects within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified fields is called for. This is the stage where the State and its Department should play a vital

role. They must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy vis-à-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated at the time of grant of affiliation. Once the university conducts inspection in terms of its statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to the life of the students working in the school because of non-compliance with a substantive condition imposed by either of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

80. In Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya the view of this Court was that the State Government has no role whatsoever. However, in Bhartia Education Society[4] it was stated that the role of the State Government was limited to the manner of admission, eligibility criteria, etc. without interfering with the conditions of recognition prescribed by NCTE. The exercise of discretion by the State Government and affiliating body has to be within the framework of the Act, the Regulations and conditions of recognition. Even in St. Johns Teachers Training Institute[5] the Court stated that the State Government or the Union Territory has to necessarily confine itself to the guidelines issued by NCTE while considering the application for grant of “no-objection certificate”. Minimisation of the role of the State at the second stage can also be justified on the ground that affiliation primarily is a subject-matter of the university which is responsible for admission of the students laying down the criteria thereof, holding of examinations and implementation of the prescribed courses while maintaining the standards of education as prescribed”.

12. After laying down the principles of law, the Court opined that adherence to the schedule is the essence of granting admission in a fair and transparent manner as well as to maintain the standard of education. The Court further observed that:-

“..... None in the hierarchy of the State Government, university, NCTE or any other authority or body involved in this process can breach the schedule for any direct or indirect reason. Anybody who is found to be defaulting in this behalf is bound to render himself or herself liable for initiation of proceedings under the provisions of the Contempt of Courts Act, 1971 as well as for a disciplinary action in accordance with the orders of the Court”.

13. In that context, the Court further proceeded to state:-

“83. Undoubtedly, adherence to the schedule achieves the object of the Act and its various aspects. Disobedience results in unfair admissions, not commencing the courses within the stipulated time and causing serious prejudice to the students of higher merit resulting in defeating the rule of merit.

84. We may very clearly state here that we adopt and reiterate the schedule stated by this Court in College of Professional Education in relation to admission as well as recognition and affiliation. This obviously includes the commencement of the courses in time. However, in order to avoid the possibility of any ambiguity, we propose to state the schedule for recognition and affiliation in terms of the NCTE Regulations, 2009 and the judgment of this Court in College of Professional Education.

86. There appear to be some overlapping periods and even contradictions between the dates and periods stated under the regulations inter se and even with reference to the judgments of this Court prescribing the schedule. For example, in terms of the judgment of this Court in College of Professional Education, the last date for grant of affiliation is 10th May of the year concerned, but as per Regulation 5(5) of the NCTE Regulations, 2009, the last date for grant of recognition is 15th May of the relevant year. Similarly, there is an overlap between the period specified in Regulation 7(1) and that under Regulation 7(2). Such overlapping is likely to cause some confusion in the mind of the implementing authority as well as the applicant. Thus, it is necessary for this Court to put to rest these avoidable events and unnecessary controversies.

87. Compelled by these circumstances and to ensure that there exists no ambiguity, uncertainty and confusion, we direct and prescribe the following Schedule upon a cumulative reading of the Regulations and judgments of this Court in relation to recognition and affiliation:

87.1. Schedule for Recognition and Affiliation |87.1.1.|Submission of |1st September to 1st | | applications for |October of the year | | recognition in terms of |immediately preceding| | Regulation 5(4) |the relevant academic| | |year | |87.1.2 |Communication of |Within 45 days from | | deficiencies, |the date of receipt | | |shortcomings or any other|of the applications | | discrepancy in the | | | application submitted by | | |the applicant to the | | |applicant in terms of | | | Regulation 7(1) | |87.1.3.|Removal of such |Within 60 days from | | deficiencies by the |the date of receipt | | applicant |of communication | |87.1.4.|Forwarding of copy of the|Within 90 days from | | application to the State |the date of receipt | | |Government/UT |of the application | | Administration for its | | | recommendations/comments | | |in terms of Regulation | | |7(2) | |87.1.5 |Recommendations/comments |Within 30 days from | | of the State |the date of issue of | | Government/UT |letter to it | | Administration to be | | |submitted to the Regional| | |Committee under | | |Regulation 7(3) | |87.1.6.|If |Within seven days | | recommendations/comments |from the date of | | are not received within |expiry of the period | | 30 days, the Regional |of 30 days | | Committee shall send to | | |the State Government/UT | | |Administration a reminder| | |letter for submission of | | |the | | | recommendations/comments | |87.1.7.|State Government/UT |Within 15 days from | | Administration shall |the date of receipt | | |furnish the |of such reminder | | recommendations/comments |letter | |87.1.8.|Intimation regarding |Within 10 days from | | inspection by the |final

scrutiny of the | | Regional Committee to the | application | | applicant under | | | Regulation 7(4) | | 87.1.9. | Report by the Inspection | 20 days thereafter | | Committee under | | | Regulation 7(5) | | 87.1.10 | Letter of intent to the | 10th of February of | | institution with respect | the succeeding | | to grant or refusal of | year/relevant year | | recognition in terms of | | | Regulation 7(9) | | 87.1.11 | Time to comply with | 20 days from the date | | certain specified | of issuance of letter | | conditions, in terms of | of intent | | Regulations 7(10) and | | | 7(11) | | 87.1.12 | Issuance of formal order | By 3rd March of each | | of recognition | year | 87.1.13 | Last date for submitting | By 10th March of each | | proposal for affiliation | year | 87.1.14 | Forwarding of proposal by | By 10th March of each | | the University to the | year | | State Government/UT | | | Administration after | | | inspection by expert team | | 87.1.15 | Comments to be submitted | By 10th March of each | | by the State | year | | Government/UT | | | Administration, if any | | 87.1.16 | Final date for | By 10th March of each | | issuance/grant of | year | | affiliation for the | | | relevant academic year | | 87.2. All notices/orders/requirements/letters in terms of the above schedule or under the provisions of the Act or terms and conditions of already granted recognition/affiliation shall be sent by the authority concerned by speed post/e-mail on the address given in the application for correspondence, etc. and shall be posted on the website of the Authority/Committee/ Council/Government concerned.

87.3. The recognition and affiliation granted as per the above Schedule shall be applicable for the current academic year. For example, recognition granted up to 3-3-2013 and affiliation granted up to 10-5-2013 shall be effective for the academic year 2013-2014 i.e. the courses starting from 1-

4-2013. For the academic year 2013-2014, no recognition shall be issued after 3-3-2013 and no affiliation shall be granted after 10-5-2013. Any affiliation or recognition granted after the above cut-off dates shall only be valid for the academic year 2014-2015.

87.4. We make it clear that no Authority/person/Council/Committee shall be entitled to vary the Schedule for any reason whatsoever. Any non-compliance shall amount to violating the orders of the Court.”

14. We are obliged to state here that there is justification for reproducing the above paragraphs from the aforesaid decision. The Court has taken pains to explain the scheme of the Act, role of the university and the purpose of fixing a time schedule for each purpose. Certain action of the authorities can be flawed and eventually fall in the sphere of illegality. It has to be so declared by the Court. In the case at hand, the benefit could not be extended as the appellants have not maintained the time schedule fixed by the State Government pursuant to judgments of this Court. Therefore, the order passed by the learned single Judge as well as the Division Bench cannot be found fault with.

15. The controversy does not end here. The stand of the University is that the appellant College has admitted students without having the necessary affiliation for the academic session 2015-16. This

kind of conduct has become a disease, and when the conduct becomes a disaster, it is a disastrous phenomenon. While dealing with admissions without affiliation from CBSE, the Court in Sunil Oraon (minor) through guardian and others v. CBSE and others[6] referred to earlier decisions and was constrained to state thus:-

“Time and again, therefore, this Court had deprecated the practice of educational institutions admitting the students without requisite recognition or affiliation. In all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities. As the factual scenario delineated against goes to show that the school has shown scant regards to the requirements for affiliation and as rightly highlighted by learned counsel for CBSE, the infraction was of very serious nature. Though the ultimate victims are innocent students that cannot be a ground for granting relief to the appellant. ...”

16. In Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale and others[7] the Court has laid down that:-

“(xv) The students admitted by unrecognised institution and institutions which are not affiliated to any examining body are not entitled to appear in the examination conducted by the examining body or any other authorised agency.” The Court further proceeded to direct:-

“88. (ii) The result of the students admitted by an unrecognised institution or by an institution which had not been granted affiliation by the examining body shall not be declared. The result of the students who were admitted without qualifying the entrance examination shall also not be declared. In other words, the students admitted by the private institutions on their own shall not be entitled to declaration of their result. If any private institution had not complied with the requirements of completing the prescribed training, then the result of students of such institution shall also not be declared.”

17. In National Council for Teacher Education and another v. Venus Public Education Society and others[8] the two-Judge Bench ingeminating the anguish of the Court was compelled to observe:-

“... It is urged by him that NCTE had procrastinated its decision at every stage and such delay was deliberate and, therefore, the Society was compelled to admit the students and impart education, regard being had to the fact that there were really no deficiencies. As has been laid down in many a pronouncement of this Court that without recognition from NCTE and affiliation from the university/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. If we allow ourselves to say so, the institution had given admission in a nonchalant manner. Possibly, its functionaries harboured the idea

that they had incomparable fertile mind. The students who had taken admission possibly immersed with the idea that ignorance is a bliss. It is also necessary to state that the institution had the anxious enthusiasm to commercialise education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law. ..”

18. Coming to the present case. As is evincible, the University has not granted affiliation as the schedule for the same was over. No appeal was preferred by the appellant College. The High Court rightly held that it cannot issue a writ contrary to the judgment of this Court. However, we observe that the University shall consider the application for affiliation, if not considered already, within a span of four weeks and, if the affiliation is granted, the students who had been granted admission shall be treated as students as admitted for the academic session which would be covered by the affiliation to be granted in future. We have so directed so that the appellant College would not be in a position to admit any other student after affiliation is granted.

19. Consequently, the appeal stands dismissed. There shall be no order as to costs.

.....J. [Dipak Misra], J.

[Shiva Kirti Singh] New Delhi;

June 29, 2016

- [1] (2013) 2 SCC 617
- [2] (2013) 2 SCC 721
- [3] (2006) 9 SCC 1
- [4] (2011) 4 SCC 527
- [5] (2003) 3 SCC 321
- [6] (2006) 13 SCC 673
- [7] (2012) 2 SCC 425
- [8] (2013) 1 SCC 223
