

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3380 OF 2009

ACHARYA VIDYA SAGAR TECH.EDUN.STY.

Appellant (s)

VERSUS

STATE OF M.P.& ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T., directions, vacating stay and prayer for interim relief and office report)

WITH W.P(C) NO. 246 of 2008

(With appln. for directions and office report)

Civil Appeal NO. 3381 of 2009

(With prayer for interim relief and office report)

Civil Appeal NO. 3382 of 2009

(With appln. for directions and exem. from filing O.T. and with prayer for interim relief and office report)

Civil Appeal NO. 3383 of 2009

(With prayer for interim relief and office report)

Civil Appeal NO. 3384 of 2009

(With prayer for interim relief and office report)

Civil Appeal NO. 3385 of 2009

(With prayer for interim relief and office report)

Civil Appeal NO. 3386 of 2009

(With appln. for transposing respondents as petitioners)

Civil Appeal NO. 3387 of 2009

(With appln. for directions and exem. from filing O.T. and with prayer for interim relief and office report)

Civil Appeal NO. 3388 of 2009

(With appln. for directions and exem. from filing O.T. and with prayer for interim relief and office report)

Civil Appeal NO. 3389 of 2009

(With appln. for directions and exem. from filing O.T. and with prayer for interim relief and office report)

Civil Appeal NO. 3390 of 2009

(With appln. for directions and with prayer for interim relief and office report)

Civil Appeal NO. 3391 of 2009

(With office report)

Civil Appeal NO. 3392 of 2009

(With appln. for impleading party and permission to file addl. documents and exem. from filing O.T. and office report)

Civil Appeal NO. 3393 of 2009

(With appln. for vacating stay and directions and with prayer for interim relief and office report)

S.L.P.(C)...CC NO. 8973 of 2012

(With appln. for c/delay in filing SLP and office report)

Date: 19/09/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s) Mr. B.K.Satija, Adv.

Mr. Raju Ram Chandran, Sr. Adv.
Mr. Jasbir Singh Malik, Adv.
Mr. Varun Punia, Adv.
Mr. Nitin Kumar, Adv.

Mr. Mohan Pandey, Adv
Mr. Mohd. Parvez Dabas, Adv.
Mr. Shuaib Uddin, Adv.
Mr. Shakil Ahmed Syed, Adv
Mr. B.K. Satija, Adv
Mr. Varun Thakur, Adv.
Mr. Varinder Kumar Sharma, Adv
Mr. Triloki Nath Razdan, Adv

For Respondent(s)

Mr. T.S. Doabia, Sr. Adv.
Ms. Sadhna Sandhu, Adv.
Mr. Rashmi Malhotra, Adv.
Mr. SS Rawat, Adv.
Ms. Sushma Suri, Adv.

Mr. M.P. Jha, Adv.
Mr. Ram Ekbal Roy, Adv.
Mr. Harshvardhan Jha, Adv.

Mr. Vikas Upadhyay, Adv.
Mr. B.S. Banthia, Adv

Mr. Annam D.N. Rao, Adv
Ms. Neelam Jain, Adv.
Ms. Manisha Monga, Adv.

Mr. Mohan Pandey, Adv.

Mr. Yatish Mohan, Adv.
Ms. Pooja, Adv.
Mr. Shekhar Prit Jha, Adv.

Mr. SK Sabharwal, Adv.

Mr. Dipankar Das, Adv.
Mr. Rajiv Agnihotri, Adv.
Mr. Prakhar Sharma, Adv.
Mr. Sanjeev Kumar Sharma, Adv.
Ms. Anu Gupta, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted in SLP(C) No.....(CC) No. 8973 of

2012.

The appeals and writ petition are allowed in terms
of the signed order.

In view of the disposal of civil appeals,
all pending I.As stand disposed of.

|(Shashi Sareen)
|Court Master

|(Veena Khera)
|Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL No. 3380 OF 2009

Acharya Vidya Sagar Tech. Edun. Sty. ... Appellant

Versus

State of M.P. and Ors. ... Respondents

With

Civil Appeal No. 3381 of 2009
Civil Appeal No. 3382 of 2009
Civil Appeal No. 3383 of 2009
Civil Appeal No. 3384 of 2009
Civil Appeal No. 3385 of 2009
Civil Appeal No. 3386 of 2009
Civil Appeal No. 3387 of 2009
Civil Appeal No. 3388 of 2009
Civil Appeal No. 3389 of 2009
Civil Appeal No. 3390 of 2009
Civil Appeal No. 3391 of 2009
Civil Appeal No. 3392 of 2009
Civil Appeal No. 3393 of 2009
Writ Petition No. 246 of 2008

Civil Appeal No..... of 2012
(Arising out of SLP (C) No..... of 2012 (CC No.8973 of
2012)

O R D E R

Leave granted in special leave petition.

Common questions of law and fact arise for consideration in this batch of appeals by special leave, which were heard together and shall stand disposed of by this common order. In order, however, to avoid any confusion in the narration of facts leading to the filing of these appeals, we are referring to the factual backdrop in Civil Appeal No. 3380 of 2009 filed on behalf of Acharya Vidya Sagar Technical Education Society.

The appellant society applied to the National Council for Teachers Education for permission to run a diploma in Education (D.Ed.) course on 14.11.2006. The receipt of the said application was acknowledged by the NCTE and a Reference Code allotted to the society. The society was further informed by NCTE by its letter dated 17.04.2007 that a team of experts shall visit the institution to verify its infrastructural and instructional facilities.

An inspection was accordingly conducted by a team of experts, who submitted a report that was placed before the Western Regional Committee in its 99th meeting held between 19th to 22nd July, 2007. The case of the appellant society is that upon consideration of the report submitted by the experts and after being satisfied about the availability of the requisite infrastructure needed for the start of a D.Ed. course, the Western Regional Committee of NCTE decided to grant conditional recognition to the proposed Course which it appears is a two year course that equips those undergoing the same to teach at the primary school level. A copy of the minutes of the meeting of the Western Regional Committee has been placed on record. It is all the same important to mention that the said decision of the Western Regional Committee was not followed by a formal communication granting conditional recognition to the college being run by the society, despite a request made by the society in terms of its letter dated 16.08.2007.

Absence of a formal communication of the decision taken by the Western Regional Committee did not, - however, deter the appellant society from applying for affiliation to the M.P. State Board of Secondary Education which constitutes an important requirement under the NCTE Act for any institution to offer a teachers training course or to make admissions. In response to the request for affiliation, the Board intimated to the society by its letter dated 12.09.2007 that since the society did not have the requisite recognition from the NCTE for the academic session 2007-2008, its application for affiliation could not be considered. The Board called upon the society to furnish a letter of recognition to enable it to proceed further.

The appellant's case is that since the Western Regional Committee had not granted the requisite recognition despite the request made to it and since all formalities had been completed by the appellant and more importantly since the time fixed for making admissions for the Session 2007-2008 was expiring by 30.09.2007, the appellant had no option but to go ahead with the admission of the students. Consequently it admitted 50 students to the D.Ed. course for the year 2007-2008 and intimated to the -

Board about the same in terms of its letter dated 01.10.2007 enclosing therewith the names and particulars of the students so admitted. In the meantime, the petitioner society also filed Writ Petition No.2176 of 2008 before the High Court of Madhya Pradesh at Jabalpur in which it challenged the validity of communication dated 12.09.2007 whereby grant of affiliation was declined by the Board in the absence of an order granting recognition by the NCTE. An interim prayer for grant of provisional affiliation to the society was also made in the writ petition.

A Division Bench of the High Court of M.P. at Jabalpur disposed of the above petition in terms of an order dated 21.04.2008 by which the High Court relying upon an earlier order passed by it in Jan Seva Shiksha Samiti Vs. State of Madhya Pradesh and Ors. (W.P. 12133 of 2007) decided on 14.12.2007 directed that in case NCTE granted unconditional recognition to the appellant society the Board shall grant the requisite affiliation in its favour. The present appeal questions the correctness of the said order as already mentioned earlier.

-
When the petition came up for preliminary hearing before a Bench comprising C.K. Thakker and Lokeshwar Singh Panta, JJ. on 30.05.2008, the Court while issuing notice to the respondents directed that students admitted by the appellant society shall be permitted to appear in the examination scheduled to commence in the month of June, 2008. It is not in dispute that the students admitted by the appellant society were accordingly permitted to appear in the examination on 12.06.2008. By another order passed by this Court on 06.08.2009, the respondent Board was directed to announce the 1st year B.Ed. examination results of the candidates who had appeared in the said examination. The results were, accordingly, announced. By the very same order the students were allowed to continue their studies in the D.Ed. second year course and to appear in the examination if they had completed 180 days compulsory attendance after passing of their D.Ed. First year examination. The students accordingly completed the requisite study/course spreading over 180 days of actual attendance and appeared for the second year D.Ed. -

examination. The result for the second year D.Ed. examination was also announced by the Board on 06.10.2010 and their respective marks sheets uploaded on the website.

It is evident from the above that not only were the students allowed to continue in the first year course and to appear in the examination but they were permitted to continue their studies for the second year of the said course and to appear in the examination for the said year as well. With the announcement of the result of the second year and the publication of their mark list the entire process stood completed save and except the issue of the requisite certificates in favour of the successful candidates.

When the matter came up before us for hearing on 19.07.2012 one of the submissions made by Mr. A.D.N. Rao, learned counsel for the respondent-Board was that while the students had completed the minimum attendance

of 180 days of actual study for the second year of the course, the question whether they had fulfilled the said - requirement for the first year of the course required verification from the record. We had accordingly adjourned the writ petition to enable the Board to verify the record and file an affidavit stating whether the students had actually undergone the course for the stipulated minimum of 180 days. Mr. Rao today submits on instructions that the Board does not have any such record and is, therefore, unable to say whether the students have indeed attended classes for a period of 180 days for the first year of the course. He urged that since the students have been permitted to appear in the examination under the orders of this court, the Board did not insist on verifying the said fact and had permitted the students to appear in the examination.

We have no difficulty in rejecting the submission feebly urged by Mr. Rao that the students who have been declared successful in the 1st year examinations may not have attended the requisite 180 days of actual study for the first year of the course. We say so because it was open to the Board to raise a contention to that effect when the - students sought permission to appear in the 1st year examination. No such contention having been urged before the Court, it is too late for the respondents to contend that the students did not qualify for taking the first year examination on account of their not having undergone the course for the stipulated period of 180 days. That is so also for the reason that nothing prevented the Board from verifying at its own level the eligibility of the students from the academic point of view and holding that they were not eligible if the Board really thought that the requirement of the statute insofar as the period of study was concerned had not been satisfied. It is noteworthy that when the issue regarding the attendance of the second year students came up, the Board had raised the contention that they must undergo the stipulated period of 180 days of actual study before they could appear in the second year examination. This Court had accordingly made it clear in the order passed by it that the students shall be permitted to appear in the second year examination only if they had undergone study for a period of 180 days after the declaration of the - result for the first year examination. Such being the position, we have no hesitation in holding that the students were allowed to appear in the first year examination after being found eligible to do so. The fact that the students had passed the said examination is only an additional factor for us to hold that the course criteria had been fulfilled by the students before they appeared and were declared successful in the examination.

In the totality of the above circumstances the only question that falls for determination is whether the certificates that remain to be issued to the successful students should or should not be directed to be issued to them. It was vehemently argued by Mr. Rao that the admission of the students was itself illegal inasmuch as admissions made in September, 2007 were wholly unauthorised and impermissible since the institutions did not have the requisite recognition from the NCTE nor the requisite affiliation from the Board. Reliance in support was placed by Mr. Rao upon Sections 16 and 17 of the NCTE Act and Regulation 8(10) of the Regulation framed thereunder, - in support of his submission that the institutions were forbidden from making any such admission before they were granted the requisite recognition by the NCTE and affiliation by the Examination Board. Failure of the statutory requirements which were mandatory in character, argued by Mr. Rao, would render the entire process of admission illegal and non est in the eye of law. It was submitted on the authority of the decisions of this Court that illegal admissions should not be recognised and that institution that resort to such illegal methods by over reaching statutory provisions and misleading students should not be allowed to flourish at the cost of innocent students, and standards of education in teachers training.

On behalf of the appellants it was per contra argued that this was not a case where the institutions did not have the requisite infrastructural or instructional facilities. It was a case where on account of indifference and apathy of the statutory authorities the applications made by the institutions for grant of recognition and affiliation had languished before them. It was also pointed out that

the -

Western Regional Committee had taken a decision in its 99th meeting held on 19th to 22nd July, 2007 to grant conditional recognition to the appellant. The NCTE should not have delayed the issue of the recognition till 5th January, 2008. Our attention was drawn pointedly to letter dated 15th January, 2008 issued by the Western Regional Committee which appears to have been ready for issue on 26th July, 2007, but was issued only on 15th January, 2008, as it bears both these dates. Learned counsel submitted that the recognition was as good as granted as early as in July, 2007 and because of certain internal administrative problems the NCTE had issued the formal communication nearly six months after the decision by Western Regional Committee's decision on the subject. Our attention was also drawn to the communication dated August, 2007 issued by the Western Regional Committee in favour of the appellant in the connected appeal intimating to it that Western Regional Committee had granted the requisite conditional recognition in its favour. It was contended that the council had thus selectively issued intimation letter to some of the - institutions while unfairly withholding the same in respect of others without any lawful justification. The admission of students was at any rate bona fide and based on a transparent method in which merit was the only consideration. Having said that learned counsel for the appellant argued that this Court has been taking a humanitarian view in cases where the students are likely to be affected adversely for no fault of theirs. Students in the present case had appeared in the examination conducted by the Board and passed as per the academic standards fixed by it. The result also having been declared, withholding or denial of the certificates to them would be extremely harsh and unfair for the same is bound to jeopardise their future as qualified teachers. It is also submitted that in order to atone for the fault committed by the appellant institutions they are ready and willing to admit as many students as were admitted for the course during the academic Session 2007-2008 in batches of eight students every year free of any tuition fee.

-

The Court has on several previous occasions examined the question whether admissions made unauthorisedly by educational institutions should be recognised having regard to the interest of the students. By a long line of decisions rendered by this court the practice of such admissions being made by institutions that do not possess the requisite recognition and affiliation has been deprecated. This Court has also in several such decisions disapproved of the High Courts granting interim orders by which the institutions that are not possessed of the requisite infrastructure and instructional facilities are allowed to continue with the professional and academic courses. We need not refer in detail to all such decisions, for we had an occasion to deal with a somewhat similar situation in *Shri Morvi Sarvajanic Kelvani Mandal Sanchaljit MSKM B.Ed College Vs. National Council for Technical Education and Ors.* (2012) 2 SCC 16 (to which one of us Thakur, J. was a party). We had in that decision referred to several decisions of this Court in which recognition to admissions made to professional courses were declined on consideration of equity pleaded before this - Court. To the same effect is another decision of this Court in *Adarsh Shiksha Mahavidalaya And Ors. Vs. Subhash Rahangdale and Ors.* (2012) 2 SCC 425 where this Court had the occasion to interpret the provision of the NCTE Act and Regulation framed thereunder and lay down certain broad guidelines to be followed in such matters.

Three distinct features distinguish the present batch of cases from the above cases. The first and foremost is that in *Morvi Sarvajanic's* case (supra) the institution was on repeated inspections by the team of experts found to be lacking in infrastructural and instructional facilities. This is evident from the following passage appearing in the said decision:

"12. The present is one such case where the Institution established by the appellant has been inspected more than once and several deficiencies that seriously affect its capacity to impart quality education and training to future teachers were specifically pointed

out. Inadequacy of space and staff, apart from other requirements stipulated under the provisions of the Act and the Regulations, is something which disqualifies any institution from seeking recognition. Such deficiencies have not been disputed before us nor can the same be disputed in the light of the reports submitted by the inspecting teams from time to time, including the report submitted on the basis of the latest - inspection that was conducted pursuant to the directions issued by the High Court.

13. It is difficult to appreciate how the Institution could have reported compliance with the requirements of the Regulations and complete removal of the deficiencies after the order passed by the High Court when the Institution had neither the land standing in its name nor the building constructed in which it could conduct the training programme. The fact that the Institution was being run in a building which was shared by two other colleges was itself sufficient to justify withdrawal of the recognition granted in its favour. It was also noted by the inspecting team that four lecturers employed by the appellant did not have the requisite MED qualification. Suffice it to say that the Institution was lacking in essential infrastructural facilities which clearly justified withdrawal of the recognition earlier granted to it."

Even in Adarsh Shiksha's case (supra) this Court emphasised the need for compliance with the provisions of the NCTE Act and Regulations specially those prescribing the infrastructural and instructional facilities. This Court observed:

"7. highlighting the need for well-equipped and trained teachers because in the last three decades private institutions engaged in conducting teacher training courses/programmes have indulged in brazen and bizarre exploitation of the aspirants for admission to teacher training courses and rank commercialisation and the regulatory bodies constituted under the laws enacted by Parliament and the State Legislatures have failed to stem the rot. The cases filed by these institutions, many of which have not been granted - recognition due to non-fulfilment of the conditions specified in the National Council for Teacher Education Act, 1993 (for short "the 1993 Act") and the Regulations framed thereunder and by the students who have taken admission in such institutions with the hope that at the end of the day they will be able to get favourable order by invoking sympathy of the Court, have choked the dockets of various High Courts and even this Court. The enormity of litigation in this field gives an impression that implementation of the provisions contained in the 1993 Act and the Regulations framed thereunder has been acutely deficient and the objects sought to be achieved by enacting the special legislation, namely, planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system have not been fulfilled so far."

In the cases at hand, there is no dispute as to the infrastructural or instructional facilities being available in the appellant institutions. Mr. Rao, did not even mention any such deficiency to us, to bring these cases at par on facts with the two cases referred to above. We, therefore, proceed on the basis that the institutions are equipped with the necessary infrastructure including the facility for imparting education to those admitted to the colleges. If that be so, there is a fundamental difference between the cases at hand and those to which we have briefly referred above.

The second and equally significant difference is that the students have continued in the course since 2008 under the protection of the orders passed by this court. As already seen the continuance of the students and their appearance in the examination and so also the declaration of their result has been all in pursuance of the directions of this court. Such being the case we see no reason why the benefit of those orders should be nullified by refusal of the resultant relief that is now being prayed for in the form of a direction to the Board to issue the requisite certificates in their favour.

Thirdly, because from the facts of these cases it is evident that the decision to grant recognition was taken before the making of the admissions. It is true that the said decision was conveyed only to some of the institutions but the fact remains that the decision was indeed taken based on the reports submitted by the committees of experts deputed to inspect the colleges. We are in the light of the above inclined to direct that the results already declared by the Board shall now be followed by the issue of requisite certificates in favour of the students. -

That in our opinion takes care of the interest of the students who appear to be innocent parties in these proceedings.

That brings us to the question whether we need to pass any orders to chastise the appellant institutions, for their defiance of the provisions of the NCTE Act and Regulations that prohibited them from making any admissions, unless the colleges are recognised by NCTE and duly affiliated by the examining body. We were at one stage toying with the idea of imposing heavy financial burden upon the appellants in the form of costs to be deposited by them with the affiliating body under a scheme to promote the educational opportunities for the less fortunate members of our society. We have upon deeper consideration come to the conclusion that the offer made by the appellant themselves namely admission of eight students per year "free of any fee" from out of students who belong to economically weaker sections of the society should serve the very same purpose though in a slightly different way. In our opinion, the process of allotment of the students may require constitution of a committee and drawing up of some scheme by the State Government to avail of this additional - facility that shall be available to such of the students as are unable to afford education on their own.

The State Government shall in this regard ensure that the process of allocation of eight students per year per appellant-institution is undertaken over the next six years so as to offset the benefit which each one of these institutions have unfairly drawn by reason of granting admission to 50 students for the academic session 2007-2008 that was not justified under the Rules. Such free admissions of deserving students could start from the academic session 2013-2014.

In the result we allow these appeals and connected W.P. No.246 of 2008 but only in part and to the following extent:

1) The respondent-Board shall issue the requisite certificates and mark sheets to the successful candidates admitted by the appellant-institution to the D.Ed. course for the Session 2007-2008. The needful shall be done within six weeks from the date a copy of this order is received by the Board.

-
2) The State Government shall formulate a scheme for admission of eight students per year per appellant-Institution w.e.f. 2013-2014 for the next six academic sessions free of any charge by the concerned institution, giving preference to students who belong to economically weaker sections of the society including SC & ST candidates. The procedure and norms for allocation of such free seats shall be drawn up by the State Government.

3) The parties to bear their own costs.

.....J.
(T.S.THAKUR)

.....J.
(GYAN SUDHA MISRA)

New Delhi,
September 19, 2012