

(42) We have examined the record and have also put it to the learned counsel for the HSIIDC as to whether there was any hypothecation of plant and machinery with it. The record does not show any such hypothecation nor Mr. Kamal Sehgal, learned counsel for the HSIIDC has been able to support the aforesaid averments. Therefore, there is factual error and to that extent the impugned order deserves to be modified. It is, thus, clear that the HSIIDC would be simply a secured creditor with regard to the raw material and, in fact, an unsecured creditor *qua* plant and machinery. It cannot claim any right of association with the process of sale or participation at par with the Securitisation Company.

(43) For the reasons aforementioned, these appeals are dismissed. However, the factual error is accepted and the following line, as it exists in para 3 of the impugned judgment, is ordered to be *deleted* :

“The plant and machinery alone had been the subject of hypothecation to HSIIDC at the time when the Company was wound up.”

R.N.R.

Before Permod Kohli, J.

RAJ RAJESHWARI COLLEGE OF EDUCATION,
NACHIARAUN AT RADAUR,—*Petitioner*

versus

KURUKSHETRA UNIVERSITY, KURUKSHETRA
AND OTHERS,—*Respondents*

C.W.P. No. 15634 of 2009

2nd February, 2010

Constitution of India, 1950—Art. 226—NCTE granting recognition to a self-financed unaided institution to impart B.Ed course—University also granting provisional affiliation—University issuing notice to petitioner regarding location of building which was inspected and duly approved by University as also N.C.T.E.—College operating for last two academic sessions—Assuming there is some change of location University failing to point out any prejudice caused to it or any student with alleged change of

location—No breach of any of conditions of affiliation nor any such case is sought to be projected by University—Action of University, thus, not justified and liable to be set aside—Withholding of affiliation without offering an opportunity of hearing to petitioner—Violative of principles of natural justice—Petition allowed.

Held. that the University has limited role of examining the infrastructural facilities available with the institution. Be that as it may be, action initiated against the petitioner is not on account of deficiency in infrastructural facilities as per the laid down norms. It is only a dispute regarding the location of the building. It is the same building which was inspected and duly approved by the University as also the N.C.T.E. and provisional affiliation was granted. The College has been operating for the last two academic sessions. It is only when the third session was to commence that an issue is sought to be raised regarding location of the building. In all the documents submitted by the petitioner, location of the building is shown to be at Nachraun at Radaur. Nachraun is a village and Radaur is a Sub Tehsil. The Head Quarter of the Society is at Radaur. At all times, the NCTE and the University have been accepting this position not only on papers but on ground as well, i.e. why the affiliation was granted by the University. Assuming there is some change of location, the University has not pointed out any prejudice caused to it or any student with the alleged change of location and the reason for withholding of the affiliation. There has been no breach of any of the conditions of affiliation nor any such case is sought to be projected by the University. The action of the University is, thus, not justified and liable to be set aside.

(Para 17)

Further held. that the action of the University is also liable to be set aside being in violation of the principles of natural justice. In the show cause notice itself the penal action has been taken while asking the petitioner to show cause, the affiliation has been simultaneously withheld. In other words without offering any opportunity of being heard, the petitioner has been punished. The impugned order is liable to be set aside on this ground as well.

(Para 18)

Vikas Behl, Advocate

C.B. Goel, Advocate

PERMOD KOHLI, J.

(1) The petitioner is a self financed, un-aided institution established by a Society to impart B.Ed. Course. The society has its office at Radaur. The Society applied for grant of recognition to the N.C.T.E. in the year 2007. On completion of all the requisite formalities, the N.C.T.E. deputed its inspection committee. The inspection committee visited the site of the College and after assessing its infrastructural facilities, faculty and other related aspects, submitted its report to the N.C.T.E. The Apex body on being satisfied about the availability of infrastructural and other facilities granted recognition to the petitioner—institution to commence B.Ed Course vide its letter dated 28th September, 2007 with initial intake of 100 students in the session 2007-08. the petitioner also applied for affiliation to the Kurukshetra University-respondent No. 1 herein. The University also inspected the relevant facilities with the College and,—vide its letter dated 4th October, 2007 granted provisional affiliation with intake of 100 students for the session 2007-08. Receiving recognition and affiliation the petitioner admitted the students on the basis of the counseling etc. conducted by the respondent-University for the sessions 2007-08 to 2008-09. In the year 2009 the University appointed another inspection team. On the basis of the report of the inspection committee, a show cause notice dated 25th June, 2009 (Annexure P-4) was issued to the petitioner indicating as under :—

“As has been pointed out by the Inspection Committee and confirmed from the revenue record of Nachraun village ‘Raj Rajeshwari College of Education Nachraun at Radaur’ is not functioning at the site where the college had been approved by the NCTE”.

(2) Reply to the petitioner was solicited within 10 days. In the meantime, the University withheld the provisional affiliation for the session 2009-10 and it was debarred from participating in the admission process and making admission to the B.Ed Course. Aggrieved of the action, the petitioner filed CWP No. 9649 of 2009 challenging the show cause notice referred to above. This writ petition, however, came to be withdrawn,—vide order dated 17th July, 2009 with liberty to avail the alternative remedy as is evident from Annexure P-5. The show cause notice was challenged in an appeal before the duly constituted appellate authority on 31st July, 2009. It appears that the appeal having not been decided the petitioner made another representation,—vide its letter dated 29th September, 2009. While

the matter was under consideration when the appellate authority-respondent No. 2 passed the order dated 1st October, 2009 (Annexure P-8) informing the petitioner that it is not entitled to make any admission for B.Ed (Regular Course) for the session 2009-10 in view of the withholding of extension in provisional affiliation. The petitioner has, accordingly, challenged the show cause notice dated 25th June, 2009 (Annexure P-4) and order dated 1st October, 2009 (Annexure P-8) in the present writ petition.

(3) *Vide* interlocutory order dated 9th October, 2009 while issuing notice of motion, following interim order was passed :—

“In the meantime, the petitioner-institution shall be permitted to participate in the counselling for allocation of the students. Students may also be allocated to the petitioner-institution. However, the petitioner institution will not make any formal admission without further direction from this Court”.

(4) The respondent-University was put to notice and filed written statement reiterating its stand that the petitioner constructed its building at village Nachraun instead of Radaur in violation of recognition and affiliation granted to it. This provisional affiliation has been withheld for the session 2009-10 on the report of the inspection committee of the University.

(5) Mr. C.B. Goel, learned counsel appearing on behalf of the respondent-University has vehemently argued that the petitioner has obtained the affiliation by misrepresentation. According to him, the petitioner has shown a different land whereas the building has been constructed on a different land and, thus, affiliation has been withheld.

(6) With a view to appreciate the contention raised by the University, record from the N.C.T.E. as also from the respondent-University, has been summoned.

(7) The petitioner in its application dated 5th January, 2007 addressed to the Regional Director, N.C.T.E. Jaipur, furnished various documents including building completion certificate, map of the building, photocopy of the lease deed of the land and also no objection certificate from the Gram Panchayat. The document that is the lease deed annexed with the application from the property is shown to be 26 kanal of land situated at village Nachraun. Lease deed is a duly registered document. The completion certificate of the building also show that the building is situated at village Nachraun at Radaur, Tehsil Jagadhri, District Yamuna Nagar. The

site plan annexed also show that the building is situated at village Nachraun, Radaur. The inspection team of the N.C.T.E. in its report has also mentioned that the building is situated at village Nachraun at Radaur. Even the letter of recognition issued to the petitioner indicate the same position.

(8) I have also perused the application form and other related documents furnished by the petitioner to the respondent-University at the time of applying for affiliation. In all the documents, the property is shown at village Nachraun at Radaur. It is important to note that at no stage or in any of the documents furnished by the petitioner, it was indicated that the property is at Radaur. Two inspection committees one constituted by the N.C.T.E. and the other by the Kurukshetra University visited the building site and submitted their respective reports certifying the availability of requisite infrastructural and other facilities available with the petitioner-College. At no stage the College was pointed out that it has constructed the building at a different place than shown in the application or the accompanied documents. The College has been admitting the students since 2007-08. It was only in the last inspection conducted by the University before the commencement of session 2009-10 that it has been pointed out that the building has been constructed at a different place than the approved by the University.

(9) Mr. Goel, learned counsel appearing for the University has referred to various averments made in the writ petition to support his contention that the building has been constructed at a different place. In para 3 of the writ petition the petitioner has mentioned that Radaur is a small town between Yamuna Nagar and Ladwa on Kurukshetra Yamuna Nagar Road where the village Nachraun is at a distance of 2 kilometers from Radaur and with a view to give better approach and facilities to the students, building was constructed in the land of Radaur.

(10) Mr. Goel, has further referred to the recognition and affiliation letter wherein the location of the College is said to be in village Nachraun, Radaur. Based upon the aforesaid averment and the documents, it is sought to be projected that the petitioner has misrepresented the University and N.C.T.E. by showing different land whereas building has been constructed at a different place.

(11) I have heard learned counsel for the parties at length and perused the record to which reference has been made hereinbelow.

(12) It is the admitted case of the parties that the building has been constructed on the land acquired by the petitioner on patanama, copy whereof was submitted at the time of grant of recognition/affiliation. The site plan, building completion certificate do indicate this fact. It is nobody's case that the petitioner is in possession of two buildings one at Nachraun and other at Radaur and the affiliation has been granted in respect of one building whereas the College is being operated from another building. To the contrary, it is on record and is now admitted factual position that the petitioner has only one building, which was shown in the application form and the maps and inspected by the inspection committees of N.C.T.E. and University. After such inspection and being satisfied of the availability of requisite infrastructural facilities, recognition/affiliation was granted to the petitioner. The dispute is sought to be raised by the University after a period of two years from the date of grant of provisional affiliation. As far as the infrastructural facility is concerned, it is the sole prerogative of the N.C.T.E., the Apex body empowered to grant recognition for establishing the College/Institution. The University is only an examining body and affiliation is essential to enable the University to conduct the examination and to grant degree. It is the N.C.T.E., which has laid down the norms for infrastructural facilities and is the sole repository of examining this aspect whereas the University is primarily concerned with the faculty and education related facilities. The N.C.T.E. at no stage disputed the availability of the infrastructural facilities or even the right of the petitioner to run the College at the present place where the only building has been constructed and where from the College is being operated upon. Another related question is the role of University and the extent of its interference regarding the infrastructural facilities. This issue has been considered by the Hon'ble Apex court in case of **State of Maharashtra versus Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (1)**.

“48. 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 under Section 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 permisison is granted under Section

82 of the Maharashtra University Act. To that extent the provisions of Sections 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void.

49. In our opinion, the observation that the provisions of Section 82 and 83 of the Maharashtra University Act are “null and void” could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Section 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university (examining body) is obliged to grant affiliation to such institution and sections 82 and 83 of the University Act do not apply to such cases.”

(13) A Division Bench of this Court also examined a similar controversy in case of **Nancy College of Education and another versus Punjabi University, Patiala and others (2)**. In the aforesaid case also Punjabi University, Patiala cancelled the affiliation granted to the petitioner on account of certain deficiencies. Hon’ble Division Bench noted following issue for consideration :—

“The question for consideration is whether and to what extent the university has a role in examining the availability of infrastructure of a Teacher Training College and where there is a conflict in the opinion formed, whether the university can withdraw affiliation rendering recognition granted by the NCTE to be redundant.”

(14) With a view to answer the aforementioned questions the Hon’ble Division Bench referring to the judgement in case of **State of Maharashtra versus Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya** (*supra*) observed as under :—

“In view of law settled by the Hon’ble Supreme Court in Sant Dnyaneshwar (*supra*), following which a Division Bench of this Court rendered its judgement in *Mange Ram (supra)*, we are of the view that the issue is concluded in favour of the petitioners and it has to be held that grant of affiliation automatically follows on grant of recognition by the NCTE.”

(15) Hon'ble Division Bench further examined the scope of two legislations and held as under :---

“The scheme of the NCTE Act as analysed in the judgement of the Hon'ble Supreme Court is that the said Act having been enacted with reference to Entry 66 of List I of Seventh Schedule of the Constitution, any State Act, including University Act will not override the statutory provisions of a Central Act. Since under the scheme of the Central Act, the NCTE has been given statutory power of conducting inspection with reference to availability of infrastructure and to determine whether an educational institution was entitled to recognition, any contrary view of any authority under the State Act cannot override the power of the NCTE and recognition so granted cannot be rendered redundant. The clear stand has been taken by the NCTE that the petitioner college fulfilled all the norms for recognition. In such circumstances, affiliation had to follow as a matter of course and cancellation of affiliation so long as recognition was operative, was not permissible. The authority of the examining body is to assess the students in examination and to conduct examination and to that extent university may have total autonomy in accordance with law but the university could not encroach upon the power of NCTE on the issue of grant and continuance of recognition. By cancelling affiliation recognition could not be rendered redundant.”

(16) The university was accordingly advised to send its report to the NCTE for consideration and the action of the university for cancellation of the affiliation was set aside.

(17) In view of the above legal proposition what emerges is that the University has limited role of examining the infrastructural facilities available with the institution. Be that as it may be, action initiated against the petitioner is not on account of deficiency in infrastructural facilities as per the laid down norms. It is only a dispute regarding the location of the building. It is the same building which was inspected and duly approved by the University as also the N.C.T.E. and provisional affiliation was granted. The College has been operating for the last two academic sessions. It is only when the third session was to commence that an issue is sought

to be raised regarding location of the building. In all the documents submitted by the petitioner, location of the building is shown to be at Nachraun at Radaur. Nachraun is a village and Radaur is a Sub Tehsil. The Head Quarter of the Society is at Radaur. At all times, the N.C.T.E. and the University have been accepting this position not only on paper but on ground as well, i.e., why the affiliation was granted by the University. Assuming there is some change of location, the University has not pointed out any prejudice caused to it or any student with the alleged change of location and the reason for withholding of the affiliation. There has been no breach of any of the conditions of affiliation nor any such case is sought to be projected by the University. The action of the University is, thus, not justified and liable to be set-aside.

(18) The action of the University is also liable to be set aside being in violation of the principles of natural justice. In the show cause notice Annexure P-4 itself the penal action has been taken while asking the petitioner to show cause, the affiliation has been simultaneously withheld. In other words without offering any opportunity of being heard, the petitioner has been punished. The impugned order is liable to be set aside on this ground as well.

(19) *Vide* interim order dated 9th October, 2009, a direction was issued to allocate 100 students to the petitioner by permitting to participate in the counselling. Mr. Vikas Behl, Advocate, has argued that the students have been allocated, though, admission having not been made, the same being not permitted by this Court. With the quashment of the impugned order, the petitioner shall be entitled to make admissions, subject to fulfilling of the following conditions :—

- (i) If students have been allocated and are available and willing to seek admissions.
- (ii) If the petitioner is in a position to complete requisite essential lectures before the examination for which the University shall make assessment and issue necessary direction.

(20) This petition is, accordingly, allowed in the above manner.