

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st November, 2010.

+
%

W.P.(C) No.6227/2010

ESS ESS COLLEGE OF EDUCATION

..... PETITIONER

Through: Mr. Sanjay Sharawat, Advocate

Versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR**

..... RESPONDENTS

Through: Mr. Ayushya Kumar & Mr. Vaibhav
Kalra, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petition entails interpretation of Regulation 7(1) & (1-A) of the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 and which are as under:

“7. Processing of Applications.

- (1) The applicant institutions shall ensure online submission of applications complete in all respects along with hard copy of the application and other documents specified below. However, in case of any inadvertent omissions or deficiencies in the documents submitted, the office of the Regional Committee shall point out the deficiencies

within 45 days of the receipt of the applications, which the applicants shall remove within 60 days from the date of receipt of communication of deficiencies, if any. The online application with separate submission of the following documents only, shall be considered as complete application.

- i. Application in triplicate on the prescribed format.
- ii. Processing Fees as provided under Rule 9 of the National Council for Teacher Education Rules, 1997 as amended from time to time.
- iii. Fixed Deposit Receipt for Rs.5.00 lacs and 3.00 lacs of a Nationalized Bank towards Endowment and Reserve Funds, respectively.
- iv. Certified copy of the registered land documents issued by the competent authority.
- v. Approved building plan by the competent civil authority.
- vi. Notarized copy of Change of Land Use Certificate issued by the competent authority.
- vii. Affidavit in the prescribed form on Rs.100/- stamp paper duly attested by Oath Commissioner or Notary Public, stating the precise location of the land (village, district, state etc.), the total area in possession, the permission of the competent authority to use the land for educational purposes and made of possession i.e. ownership or lease.

(1-A) The application submitted online but not followed by dispatch, through registered post or by hand with the documents mentioned at (i) to (vii) above within 7 days shall be considered as incomplete and shall be summarily rejected with the reasons recorded in writing and returned to the applicant along with the processing fees within 30 days of the receipt of application.”

2. The question which has arisen is, in what cases summary rejection under Regulation 7(1-A) is to be resorted to and what cases are to be treated as of inadvertent omissions or deficiencies which require an opportunity for removal / rectification within 60 days as provided under Regulation 7(1).

3. The counsel for the respondents has argued that if the online application is not followed by dispatch, through registered post or by hand of documents mentioned in Sub-Clause (i) to (vii) of Regulation 7(1) and/or even if the documents along with physical copy of the application are dispatched but the documents are not precisely as required by Sub-Clause (i) to (vii) of Regulation 7(1), summary rejection has to be resorted to and no opportunity for removing inadvertent omissions and deficiencies as required under Regulation 7(1) is to be given. He has in this regard relied upon *National Council for Teacher Education Vs. Committee of Management* 2006 III AD (SC) 65 where the Apex Court while dealing with the corresponding provisions of the Regulations of the year 2002, set aside the order of the High Court directing the Regional Committee of National Council for Teacher Education (NCTE) to consider the application for recognition and give an opportunity to the applicant to remove the deficiencies / defects.

4. The question raised assumes significance because Regulation 5(4) requires “duly completed applications in all respects” to be submitted to the Regional Committee concerned, during the period from 1st day of September till 31st day of October of the preceding year to the academic session for which recognition is sought. The Regional Committee is required to process only those applications received online on or before 31st day of October.

Thus, if an application for recognition is rejected summarily in exercise of powers under Regulation 7(1-A), it affects the right of the applicant to commence imparting education from the academic session of the following year and the applicant will have to wait for one full year before applying again for recognition.

5. The Supreme Court in the judgment aforesaid observed that the NCTE has a statutory duty to perform and if its Regulations so permit, it is entitled to not consider an application, defects / deficiencies wherein are not removed within time. It was further held that six months time is necessary for processing the papers, inspection of the Institution and to take a decision.

6. I have repeatedly enquired from the counsel for the respondents that if his interpretation as aforesaid is to be accepted and an application submitted online even if followed by delivery of physical copy with documents mentioned at Sub-Clause (i) to (vii) of Regulation 7(1) could be rejected summarily under Regulation 7(1-A) for the reason of the documents being not as per Sub-Clause (i) to (vii) of Regulation 7(1), in what cases the procedure prescribed in Regulation 7(1) of giving an opportunity to remove omissions and make up the deficiencies within 60 days of communication thereof would apply. The counsel could only state that the said procedure applies to cases where there are inadvertent omissions or deficiencies inspite

of compliance of Sub-Clause (i) to (vii) of Regulation 7(1). I am however unable to fathom as to what would be those cases. If the documents are as per Sub-Clause (i) to (vii) of Regulation 7(1), there would be no scope for any inadvertent omission or deficiency in the documents/application submitted.

7. An interpretation which would make any part of the Regulation otiose, is to be avoided. The first attempt has to be to harmoniously construe so as to give effect to each part of the Regulations. Only if the same is impermissible, does the question of giving priority of one over the other arise. Here, if the interpretation suggested by respondents is accepted it would render Regulation 7(1), to the extent providing for opportunity to rectify inadvertent omissions or deficiencies in the application otiose.

8. In my opinion, harmonious construction of the Regulations aforesaid is permissible. Rather in my view, the same is the literal interpretation of the Regulations.

9. Regulation 7(1-A) is to apply to cases either where the online submission of application is not followed by dispatch of physical application at all or where the dispatch of physical application is without documents mentioned at Sub-Clause (i) to (vii). However, if documents as per Sub-Clause (i) to (vii) are “purportedly” dispatched / delivered but are found to

be not precisely so, then Regulation 7(1) would apply and communication of inadvertent omissions / deficiencies shall have to be made and the application cannot be rejected summarily. For instance, if the application instead of being in triplicate as required is in duplicate or if there is any error in certification of land documents or in notarization of change of land use or in attestation of the affidavit etc., then it is not open to the Regional Committee to summarily reject the application for recognition under Regulation 7(1-A). The Regional Committee would then be required to communicate the omissions and deficiencies and call upon the applicant to remove / rectify the same. Only if the applicant fails to so remove / rectify the defects within 60 days would then the application again become liable for rejection, even though the same is not so expressly provided. Another situation which may arise is, where one or more document is not even submitted. In such cases, in my opinion the rule of substantial compliance is to be followed. Regulation 7(1) uses the words “omission” as well as “deficiency”. Thus, even if there is omission to file any document, if it is inadvertent, it is permitted to be rectified.

10. Reference can now be made to the facts of the present case. The Northern Regional Committee (NRC) in the present case did not summarily reject the application of the petitioner under Regulation 7(1-A) but gave a notice dated 8th February, 2010 giving time of 60 days for removal of defects / deficiencies. The same was responded to by the petitioner on 5th

April, 2010 i.e. within 60 days. The NRC however still finding defects, vide order dated 11th May, 2010 closed the file and ordered the return of the FDR submitted by the petitioner. The petitioner preferred an appeal before the Appeal committee of the NCTE which was also dismissed vide order dated 27th August, 2010 for the reason that the documents submitted being defective, the application was liable to be rejected under Regulation 7(1-A) and against which order this writ petition has been preferred.

11. It may be noted that the notice of inadvertent omissions and deficiencies under Regulation 7(1) having been issued, the rejection could not be under Regulation 7(1-A) as held by the Appeal Committee. The rejection upon failure to remove inadvertent omissions or deficiencies within 60 days even though not expressly provided, is axiomatic. However, such rejection would not be a summary rejection under Regulation 7(1-A). While Regulation 7(1-A) provides for rejection within 30 days of the receipt of the application, Regulation 7(1) requires communication of inadvertent omissions and deficiencies within 45 days of receipt of application and gives time of 60 days thereafter for removal thereof.

12. At this stage reference may also be made to Section 14 of the NCTE Act, 1993 providing for recognition. The proviso to Sub-Section 3 thereof provides for a reasonable opportunity of representation before recording satisfaction that the Institution does not fulfill the requirement of adequate

financial resources, accommodation, library, qualified staff, laboratory etc. for proper functioning of the Institution for a course or training in teacher education. The said opportunity of representation is not to be confused with the opportunity provided in Regulation 7(1). The order made upon failure to remove inadvertent omissions and deficiencies within 60 days under Regulation 7(1) would remain an order of rejection and would not become an order under Section 14(3)(b) of refusal of recognition. The scheme, under the Act and the Regulations is of the Regional Committee, if finding the application with documents to be in order, i.e. post Regulation 7(1), to thereafter process the application by enquiring into adequacy of financial resources, accommodation, library and staff etc. including inspection of the premises of the Institute. However, the order of rejection of application cannot be confused with an order of refusal of recognition. The Regional Committee while rejecting the application, whether summarily under Regulation 7(1-A) or upon failure to remove the inadvertent omissions or deficiencies inspite of opportunity, would not be expressing any satisfaction as to the applicant not having adequate financial resources, accommodation, library, staff etc. but merely finding the application to be not in order. However, such rejection, which necessarily would be after the date stipulated for making the application, would prevent the applicant from commencing the course in the following academic year but would leave the option open to the applicant to apply again for the next academic year. On

the contrary, refusal of recognition under Section 14(3)(b) disentitles the applicant from applying again for recognition unless satisfies that the deficiencies in financial resources, accommodation, library, staff etc. have been remedied.

13. It is also deemed appropriate to deal with the scope of Section 18 providing for appeals against the order of Regional Committee. Appeals are provided against the orders made under Section 14, 15 or 17 of the Act. The question which arises is would an order of rejection whether it is under Regulation 7(1) or Regulation 7(1-A) be an order under Section 14 of the Act and whether the appeal thereagainst would lie. If it is found that no appeal thereagainst would lie and the appeal is provided only against the order of refusal of recognition under Section 14(3)(b), then the only remedy against the order of rejection would be of judicial review under Article 226 of the Constitution of India.

14. However, I find that the making of an application for recognition and the manner of making the application is also provided in Sub-Section (1) of Section 14 and the Regulations as to the manner of making the application are in exercise of powers under Section 32(2)(e) of the Act. Thus, the order even if of rejection, be it under Regulation 7(1) or Regulation 7(1-A) would be appealable before the Appeal Committee. If the order of rejection is set aside in appeal, the application for recognition will have to be considered by

the Regional Committee for recognition for the following academic year.

15. Another question which was urged was as to the scope of removal of inadvertent omissions or deficiencies – whether it extends to removal of omissions and deficiencies even after the cutoff date for making of the application. For instance, where the Fixed Deposit Receipt (FDR) required to be submitted of ₹5,00,000/- is inadvertently made for ₹50,000/-, whether the FDR for ₹5,00,000/- got prepared after 31st October, 2010 upon communication of the omission/deficiency would serve the purpose or it would be said that since the FDR has been prepared after the cutoff date, there was no application within the cutoff date. Another problem which has been frequently arising is of registered land documents and of approved building plans. In several cases, it is found that though on the date of application and even by the cutoff date of 31st October there is no registered land document or approved building plan in favour of the applicant but registration is done or approval of building plan obtained before the date for making up the deficiency. I have in W.P.(C) No.4094/2010 titled ***G.D. Memorial College of Education Vs. National Council for Teacher Education*** decided on 13th July, 2010 though not in the context of rejection but in the context of refusal of recognition under Section 14(3)(b) held that such subsequent developments are also to be taken note of. The counsel for the respondents during the arguments has expressed that the NCTE is facing considerable difficulty in choosing the course to be followed since the

Division Bench of the High Court of Punjab & Haryana in LPA No.794/2009 decided on 18th November, 2009 titled *Shri Guru Ram Das Educational & Charitable Trust Vs. State of Punjab* has taken a contrary view to the effect that such subsequent documents cannot be accepted. It is up to the NCTE to have the said inconsistency of opinions resolved and the same cannot come in the way of this Bench following its earlier judgment. According to me what has been held good in *G.D. Memorial College of Education* (supra) for the purpose of refusal of recognition holds good for the purpose of removal of inadvertent omissions and deficiencies also. If it were to be held that removal of inadvertent omissions or deficiencies would not include such matters or would not entitle the fresh notarization after 31st October to be got done upon defect in notarization of prior to 31st October being pointed out, then it would make the opportunity given under Regulation 7(1) farcical. As observed *G.D. Memorial College of Education*, the NCTE has been set up to ensure standards in the field of teacher education and the function of NCTE and the Regional Committees is not to punish for such inadvertent omissions.

16. Coming back to the facts of the present case, the order insofar as of the Appeal Committee holding the rejection to be under Regulation 7(1-A) cannot be sustained since the application was not rejected within 30 days of receipt but after communication of inadvertent omissions and deficiencies under Regulation 7(1). However, the NRC has rejected the application of

the petitioner on three grounds i.e. (i) the name of the College mentioned in land documents do not match with the land documents submitted earlier appear to be tampered; (ii) land documents are not certified; (iii) submitted CLU is not notarized. However, the NRC in the communication under Regulation 7(1) had not pointed out the last two inadvertent omissions/ deficiencies aforesaid. As far as the objection regarding discrepancy in land documents is concerned, it is the case of the petitioner that the same is a typographical mistake and in any case has been got rectified.

17. Since the matter has not been examined by the NRC in the correct light, the application of the petitioner for recognition is remanded to the NRC for consideration in accordance with law. The NRC shall consider whether the application in the light of the explanations of the petitioner and in the light of the observations herein above is in order so as to be processed further or still liable to be rejected.

18. The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st November, 2010
'gsr'..