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HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 24th February, 2011

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Judgment Pronounced on: April 20, 2011

+ 1. LPA No. 743/2010

NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR.

..... Appellants

Through: Mr.Parag Tripathi, ASG with Mr.Amitesh
Kumar & Mr.Ravi Kant, Advocates

Versus

G.D. MEMORIAL COLLEGE OF EDUCATION Respondent

Through: Mr.Sanjay Sherawat with Mr.Sundar Rao
K.P. & Ms.Sangeeta Batra, Advocates

2. LPA No. 830/2010

THE MEMBER SECRETARY NATIONAL
COUNCIL FOR TEACHER EDUCATION & ORS..... Appellants

Through: Mr.Mayank Manish Advocate for
Mr.Amitesh Kumar, Advocate.

Versus

GURU NANK KHALSA COLLEGE

..... Respondent

Through: Mr.Sanjay Sherawat, Advocate.

3. LPA No. 833/2010

THE MEMBER SECRETARY NATIONAL
COUNCIL FOR TEACHER EDUCATION & ORS..... Appellants

Through: Mr.Mayank Manish Advocate for
Mr.Amitesh Kumar, Advocate.

Versus

BALAJI COLLEGE OF EDUCATION

..... Respondent

Through: Mr.Sanjay Sherawat, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. Whether reporters of the local papers 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 |

DIPAK MISRA, CJ

The controversy raised in these appeals fundamentally pertain to the interpretation of the Regulation 8(7) of National Council for Teacher Education (Recognition, Norms & Procedure) Regulations, 2007 (for brevity '2007 Regulations') framed under Section 32 of the National Council for Teacher Education Act, 1993 (for short 'the NCTE Act'). They were heard together and are being disposed of by this common order. In LPA No.833/2010 as the factual matrix is slightly different, the relief clause therein shall be adverted to separately. For the sake of clarity and convenience, we shall advert to the facts in LPA No.743/2010 where the assail is to the order dated 13th July, 2010 passed by the learned Single Judge in WP (C) No. 4094/2010.

2. The facts, which are required to be unfurled, are that the respondent, G.D. Memorial College of Education, submitted an application to the Northern Regional Committee of NCTE (NRC) on 9th June, 2008 seeking recognition for B.Ed. course. It was pleaded in the writ petition that the respondent-institution is managed and run by Shri Krishna Shiksha Samiti, a society registered under the Societies Registration Act, 1860. After submitting the application, it came to the knowledge of the respondent that as per the 2007 Regulations the society or the institution was required to be

the owner of the land. It was contended that Shri Baldev Krishna, the Chairman of the Society had constructed the building in his name and had executed a 99 years lease in respect of the said land in the name of the society. After coming to know about the amendment, Shri Baldev Krishna executed a deed of gift in favour of the society. The copy of the gift deed was filed before the NRC. Despite filing of the said document, when the application of the respondent-writ petitioner was not processed, he filed WP (C) No. 8749/2008 and the said writ petition was disposed of on 10th December, 2008 by recording the statement of the NRC that the application of the respondent for recognition shall be processed and decided within 90 days. After the said order was passed, NRC did not inspect the institution but communicated by letter dated 12th March, 2009 that the application did not deserve consideration as the State Government by recommendation, as required under Clause 7(3) of the 2007 Regulations, did not recommend for recognition and had provided reasons/grounds and statistics for not granting recognition; that the institution has not submitted permission letter from the competent authority to use the land for educational purpose, as required under Clause 8(8) of the 2007 Regulations; and that the land is not in the name of the institution as required under Clause 8(7) of the 2007 Regulations.

3. Being dissatisfied with the said decision, the respondent preferred an appeal before the Appeal Committee of NCTE and the Committee by order dated 12th April, 2010 dismissed the appeal on the ground that the institution

did not fulfill the mandatory requirements under Regulation 8(7) of the 2007 Regulations.

4. Being grieved by the aforesaid order, the respondent preferred the writ petition. It was contended that the NRC as well as the Appeal Committee had fallen into error by not granting recognition though subsequently the land was gifted and further it was incumbent on the part of the NRC to grant time to the applicant to remove the defects and, therefore, when the defect was made good, recognition should have been granted. The said stand was controverted by the appellant-NCTE contending, inter alia, that as per the regulation in force, at that time it was obligatory on the part of the college or society governing the same to be the owner of the land on which the building of the college was situated and since admittedly on that date, the college/society governing it did not have the ownership and was merely the lessee for 99 years, the application was not in order and had been rightly rejected. The learned Single Judge took note of the fact that on the date of application, the writ petitioner did not satisfy the requirement of ownership but it satisfied the requirement before the application was considered. The learned Single Judge considering the regulations came to hold that the applicant seeking recognition is required to be given an opportunity for making up the deficiency, if any, in the application. The prohibition under Regulation 8(7) of the 2007 Regulations was only for such applicants' institutions, which were not even in possession of the land on the date of the application. The writ petitioner was in possession of the land having a lease

for 99 years and subsequently it became the owner of the property though such a deficiency was not pointed out. The learned Single Judge also referred to Regulation 8(10) of the 2007 Regulations, which stipulates that the institution is required to fulfill all the norms for recognition at the time of inspection. The learned Single Judge further observed that the Appeal Committee did not deal with the contentions but passed a routine order concurring with the view taken by the NRC under these circumstances, the learned Single Judge found merit in the writ petition and remitted the matter to the NRC for decision on the application of the applicant in accordance with law.

5. We have heard Mr.Parag Tripathi, learned Additional Solicitor General along with Mr.Amitesh Kumar and Mr.Ravi Kant, learned counsel for the appellants and Mr.Sanjay Sherawat along with Mr.Sundar Rao K.P. and Ms.Sangeeta Batra, learned counsel for the respondent.

6. The gravamen of controversy as has been unfolded is whether the NCTE was under legal obligation to entertain the application for grant of recognition despite the fact that the applicant – institution had not complied with Regulation 8(7) of 2007 Regulations. Submission of Mr.Parag Tripathi, learned Additional Solicitor General is that the said Regulation is mandatory in nature and imperative in character. It is also urged by him that the respondent could not have advanced a mercurial plea that he was not aware of the Regulations and, therefore, he could not transfer the land and, further, the NCTE should have granted the institution an opportunity to

remove the defect or to make the defect good. Learned Additional Solicitor General would further submit that in the meantime a new set of Regulations, namely, NCTE (Recognition Norms and Procedure) Regulations, 2009 (for short '2009 Regulations') has come into force with effect from 31.8.2009 and further the NCTE has imposed a ban regarding acceptance of application for recognition of Teacher Training Courses / Additional intake for the academic session 2011-2012 in various states for specified courses.

7. Learned counsel for the respondent, per-contra, would submit that subsequent event should be taken into consideration and on such technical plea the inspection could not have been denied. That apart, it is further canvassed that the order of the learned Single Judge is absolutely impeccable and the recognition of the institution has to be decided as per the 2007 Regulations.

8. Regard being had to the submissions canvassed, it is apposite to refer to Section 14 of the Act which deals with grant of recognition:

“14. Recognition of institutions offering course or training in teacher education.-

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations :

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under Sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under Sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in Sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing :

Provided that before passing an order under Sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under Sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under Clause (b) of Sub-section (3).

(6) Every examining body shall, on receipt of the order under Sub-section (4),-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.”

9. On a perusal of the said provision, it is luminescent that an application has to be submitted in such a manner as may be prescribed by the Regulations and the application is to be considered by the Regional Committee which shall record its satisfaction that such an institution has adequate financial resources, accommodation, laboratory, qualified staff, library and it fulfills other such conditions required for the proper functioning of the institution to offer a course or training in teacher education as may be determined by the Regulations and thereafter pass an order granting recognition to such institution subject to such condition as may be determined by the Regulations.

10. Section 32 of the Act empowers the National Council for Teacher Education (National Council) to frame Regulations. The NCTE has framed Regulations from time to time and the 2007 Regulation came into force w.e.f. 10.12.2007. Regulation 5 deals with manner of making an application and the time limit. It reads as follows:

“5. Manner of making application and Time Limit

(1) An institution eligible under Regulation 4, desirous of running a teacher education programme may apply to the concerned Regional Committee of NCTE for recognition in the prescribed form in triplicate along with processing fee and requisite documents.

(2) The form can be downloaded from the Council's website www.ncte-in.org, free of cost. The said form can also be obtained from the office of the Regional Committee concerned by payment of Rs.1000 (Rs. One thousand only) by way of a demand draft of a Nationalized Bank drawn in favour of the Member Secretary, NCTE payable at the city where the office of the Regional Committee is located.

(3) An application can be submitted conventionally or electronically online. In the latter case, the requisite documents in triplicate along with the processing fee shall be submitted separately to the office of the Regional Committee concerned. Those who apply on-line shall have the benefit of not to pay for the form.

(4) The cut-off date for submission of application to the Regional Committee concerned shall be 31st October of the preceding year to the academic session for which recognition has been sought.

(5) All complete applications received on or before 31st October of the year shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated by 15th May of the succeeding year.”

11. Regulation 7 provides for ‘Processing of Applications’. Clauses (1) to (3) being relevant for the present purpose are reproduced below:

“(1) The applicant institutions shall ensure submission of applications complete in all respects. However, in order to cover the inadvertent omissions or deficiencies in documents the office of the Regional Committee shall point out the deficiencies within 30 days of receipt of the applications, which the applicants shall remove within 90 days. No application shall be processed if the processing fees of Rs.40,000/- is not submitted and such applications would be returned to the applicant institutions.

(2) Simultaneously, on receipt of application, a written communication alongwith a copy of the application form submitted by the institution(s) shall be sent by the office

of Regional Committees to the State Government / U.T. Administration concerned.

(3) On receipt of the communication, the State Government/UT Administration concerned shall furnish its recommendations on the applications to the office of the Regional Committee concerned of the National Council for Teacher Education within 60 days from receipt. If the recommendation is negative, the State Government / UT Administration shall provide detailed reasons / grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while deciding the application. If no communication is received from the State Government / UT Administration within the stipulated 60 days, it shall be presumed that the State Government / UT Administration concerned has no recommendation to make.”

12. Regulation 8 deals with the conditions for grant of recognition.

Clauses (1) and (7) being pertinent are reproduced below:

“(1) An institution must fulfill all the prescribed conditions related to norms and standards as prescribed by the NCTE for conducting the course or training in teacher education. These norms, inter alia, cover conditions relating to financial resources, accommodation, library, laboratory, other physical infrastructure, qualified staff including teaching and non-teaching personnel, etc.

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(7) No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government / Govt. institutions for a period of not less than 30 years. In cases where under relevant State / UT laws the maximum permissible lease period is less than 30 years, the State Government / UT Administration law shall prevail. However, no building could be taken on lease for running any teacher training course.”

13. As the factual matrix would reveal the respondent institute submitted the application for seeking recognition for B.Ed programme on 9.6.2008. The institute did not satisfy the requirement of ownership of land on the date of making of the application for recognition. The Regulation 5(1) clearly provides that an eligible institution desirous of running a teacher education programme may apply to the concerned Regional Committee of NCTE for recognition in the prescribed form with processing fee and requisite documents. Regulation 8(1) stipulates in a categorical manner that an institution must fulfill all the prescribed conditions related to norms and standards as prescribed by the NCTE for conducting the course or training in teacher education. Regulation 8(7) lays the postulate that no institution shall be granted recognition under these Regulations unless it is in possession of required land on the date of application. The land has to be free from all encumbrances either on ownership basis or on lease from Government / Govt. institutions for a period of not less than 30 years. It is not in dispute that both the conditions were not satisfied on the date when the application was submitted.

14. Learned counsel for the appellants has drawn our attention to a Division Bench decision of the Punjab and Haryana High Court in LPA No.794/2009. In the said case the Division Bench has held thus:

“6. Learned counsel for the NCTE submits that rejection of the application of the appellant was justified in view of scheme of regulations which require that on the date of application, the applicant should have

ownership or lease from the Government, which eligibility was not fulfilled by the appellant. He further submits that if any fresh application is made, the same will be considered in accordance with law.

7. We are unable to hold that the appellant had a right to be considered for recognition, irrespective of its eligibility on the date of application. Thus, acquisition of ownership after making of application was not enough. Contention that requirement of opportunity to make up deficiency of documents entitled the appellant to consideration on the basis of subsequent eligibility, cannot be accepted. However, there is no bar to making of a fresh application, as stated by learned counsel for the NCTE.”

15. In this context our attention has also been drawn to the decision in *National Council for Teachers Education and Another v. Committee of Management, 2006 III AD (S.C.) 65*. In the said case the Apex Court was dealing with non-filing of essential documents by the institution and the rejection of recognition by the NCTE. Their Lordships referred to Section 14, Section 32 and the Regulations framed under Section 32 as regard being had to the duty cast on the NCTE and the requisite infrastructural facilities for imparting education to the teachers. Their Lordships have held thus:

“15. Regulations could be framed by the appellant under Sub-section (1) of Section 32 read with Section 14 thereof. Section 14, as noticed hereinbefore, itself provides that the applications are required to be filed in such form and in such a manner as was determined by the Regulations. The Regulations could have thus also been framed in terms of Sub-section (1) of Section 14 of the Act. We have, however, noticed hereinbefore that Clause (e) of Sub-section (2) of Section 32 specifically refers to Section 14 of the Act for the purpose of laying down the form and manner in which the applications for recognition are required to be submitted. The High Court was, therefore, entirely wrong in arriving at the

conclusion that the Council had no such power. The Regulations, having been validly framed, indisputably, were required to be complied with. The Council has a statutory duty to perform. It is an autonomous body. Its jurisdiction extend to the entire territory of India except the State of Jammu and Kashmir and in that view of the matter, it is indisputably required to process a large number of applications received by it from various institutions situate throughout the country. Six month's time, in view of the statutory scheme, is necessary for processing the papers, inspection of the institution and to take a decision on the basis of report submitted pursuant thereto as to whether the institution in question, having regard to Entry 66 of List II of the Seventh Schedule of the Constitution of India, has the requisite infrastructural facilities for imparting education to the teachers.

16. For the afore-mentioned purpose, it is not necessary for us to determine the question as to whether the provisions of the Regulations are imperative in character or not. There cannot, however, be any doubt or dispute that even if they are directory in nature, substantial compliance thereof was necessary. It is no ground that such an application could not be filed by the first respondent before 31st December, 2004 as it received the NOC issued by the State Government. In view of the provisions of the Act and the Regulations, it was obligatory on the part of the first respondent to file an application, which was complete in all respects. It does not lie in the mouth of the applicant to state that despite requirements of law it would not comply with the same. It is not a case where the requirements were not capable of being complied with. The first respondent was required to show that it has a legal and valid title in respect of the land on which the building in question was required to be constructed. It was also required to furnish the copy of the building plan approved by the competent authority. We have noticed hereinbefore that the application form itself provides for as to what infrastructural facilities are necessary for running the institution. The infrastructural facilities required to be provided must be commensurate with the requirements stated in the said form itself. One of them is to state the number of different rooms and their respective sizes thereof available in the proposed institution. So far as the title over the land in question is concerned, it was stated

by the respondent that the land is available in the name of institution on a long-term basis. It is not disputed that copy of the registered Deed of Lease was furnished for the first time by the first respondent on 9.6.2005. Similarly, complete information as to whether the building plan had been sanctioned or not was furnished only on the said date. We are, therefore, of the opinion that the impugned judgment cannot be sustained.”

16. From the aforesaid enunciation of law, it is manifest that substantial compliance has to be done. We are not inclined to enter into the realm of substantial compliance as there has been a change of scenario. The NCTE has framed 2009 Regulations. Regulation 8(7) of 2009 Regulations reads as follows:

“(i) No institution shall be granted recognition under these Regulations unless the institution or society sponsoring the institution is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than 30 year. In cases where under relevant State or Union Territory laws the maximum permissible lease period is less than 30 years, the State Government or Union Territory Administration law shall prevail. However, no building shall be taken on lease for running and teacher training course.

(ii) The society sponsoring the institution shall have to ensure that proposed teacher education institution has a well demarcated land area as specified by the norms. The teacher education institution shall not be allowed to have any other institution within its demarcated area or building and shall not have any other course(s) in its building.

(iii) The physical education institution shall similarly be required to have a separate demarcated area or building and shall not house any other course including other teacher education courses.

(iv) The society sponsoring the institution shall be required to transfer and vest the title of the land and building in the name of the institution within a period of six months from the date of issue of formal recognition order under sub-regulation (11) of Regulation 7. However, in case, the society fails to do so due to local laws or rules or bye-laws, it shall intimate in writing with documentary evidence, of its inability to do so. The Regional Office shall keep this information on record and place it before the Regional Committee for its approval.”

17. A stand has also been taken that there has been a ban regarding acceptance of application for recognition of teacher training courses for the academic session 2011-12 in various States for specific courses and so far as State of Haryana is concerned, there is a ban on D.El.Ed, B.Ed., D.P. Ed. and B.P.Ed. Even if the submission of the learned counsel for the respondent is accepted, it is difficult to put the clock back and say that the application should be considered in accordance with 2007 Regulations and application should be processed. The application can alone be processed after the ban is lifted or for that matter for 2012-13, depending upon the change of policy.

18. In view of the aforesaid, there is no necessity to address with regard to the nature and character of the Regulations and the compliance thereof. Therefore, we are only inclined to direct that the application which has been brought in order after compliance of the condition provided under Regulation 8(7) the same shall be processed in accordance with law for grant of recognition as stipulated under Section 14 of the Act after the ban is lifted and there is a change in the policy decision. As far as other courses are

concerned where ban is not there the application shall be considered for the academic session 2011-12.

19. In LPA No.833/2010 the prayer has been for grant of recognition for imparting education in M.Ed course. As we perceive, there is no ban on consideration for the 2011-12 in the State of Punjab and Haryana. Therefore, the application filed may be considered in accordance with 2009 Regulations for the academic session 2011-12.

20. In the result, the appeals are allowed and the order passed by the learned Single Judge is set aside with the aforesaid modifications. There shall be no order as to costs.

CHIEF JUSTICE

APRIL 20, 2011
Kapil/dk

SANJIV KHANNA, J