

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1417 of 2012

IN

Civil Writ Jurisdiction Case No 19259 of 2011

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Krishna Devi Millat Teachers Training College, Siswa Saraiya, P.S.- Bairiya,
District- West Champaran, Through Its Chairman Syed Reyaz Ahmad, S/O Syed
Abu Hussain, Resident Of Village Ahwar Shaikh, P.S.- Majhauria, District- West
Champaran

.... Appellant/s

Versus

1. The State Of Bihar through the Director, Higher Education, Govt. Of Bihar,
Patna
2. The National Council for Teachers Education, Eastern Regional Committee, 15
Neelkantha Nagar, Nayapalli, Bhubaneswar (Orissa) Through Its Regional
Director
3. The Regional Director, National Council For Teachers Education, Eastern
Regional Committee, 15 Neelkantha Nagar, Nayapalli Bhubaneswar (Orissa)
4. The Member Secretary, National Council For Teachers Education, Bahadur Shah
Zafar Marg, New Delhi

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Siya Ram Shahi & Sunil Kr Sharma, Advocates

For the NCTE : Mr S N Pathak, Advocate

For the State : Mr Md N Hoda Khan, SC 18 with
Ms Babita Kumari, AC to SC 18

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 03-11-2015

Heard the parties including the learned counsel for the
National Council for Teachers' Education (for brevity, *NCTE*).
NCTE has also filed a counter affidavit, pursuant to orders of this
Court, which is on record. A rejoinder thereto has been filed by the

writ petitioner-appellant.

2 With the consent of parties, this appeal is being disposed of at this stage itself.

3 By the writ petition, the writ petitioner had challenged the order dated 11.09.2009 passed by the NCTE, New Delhi by which the writ petitioner's appeal against the order dated 18.05.2009 passed by the Regional Director of NCTE has been dismissed.

4 The facts are not in dispute. The writ petition, filed by the appellants was not entertained by the learned Single Judge, against the aforesaid orders, and, that is what has brought the writ petitioner in this intra-Court appeal. The writ petitioner-institution, intending to impart education of their B Ed level, filed an application before the NCTE for grant of recognition on or about 15.10.2008. It had acquired, by way of absolute gift, the requisite land on which building construction had been started. In the meantime, it was operating from rented premises. Upon such an inspection report, on the solitary ground that the petitioner-institution was operating from a leased premises though had its own land on which the building was being constructed, recognition was refused by the Regional Director, NCTE by his order dated 18.05.2009 (Annexure 5). Writ petitioner appealed before the National Council which was rejected by order

dated 11.09.2009 (Annexure 6) reiterating the same ground.

5 In the writ petition and in this intra-Court appeal, the writ petitioner stated that there were large number of institutions imparting B Ed education to whom NCTE had granted recognition long after rejection of writ petitioner's application even though they were all operating on private leased lands.

6 Initially, no counter affidavit was being filed on this issue. We then passed a specific order on this issue and then NCTE filed a counter affidavit. In the counter affidavit so filed, which has been sworn by the Regional Director, Eastern Region, in paragraph 7, there is a clear admission that there were 13 institutions which have been granted recognition for different teachers' education programme in the State of Bihar to run the institution from private leased lands. Annexure A, to which we would revert in detail, gives the list of those 13 institutions. The distinction, that is being sought to be made, is that writ petitioner had applied after the 2007 regulations came into force, with effect from 27.11.2007, though the formal order of recognition, after inspection, was passed in those 13 cases much after and, in at least 7 cases, after rejection of writ petitioner's application.

7 To illustrate, St Joseph's Mishri Singh Vishwamohinee Memorial Teachers Training College, Samastipur had made application on 02.01.2007. It was granted permission and



recognition on 07.04.2008. Similarly, Bibi Fatma Teachers' Training College (again Samastipur) made application on 08.06.2007 and it was granted permission and recognition on 19.05.2009. Gautam Budh Teachers' Training College, Nalanda made application on 24.07.2007 but was granted recognition and permission on 24.12.2009. Solanki B Ed Teachers' Training College, Chapra made application on 13.06.2007 and was granted permission and recognition on 30.01.2010. Rashidiya Rani Sagari Teachers Education College, Gaya made application on 19.01.2007 and was granted recognition on 23.11.2010 but so far as writ petitioner is concerned, its application was rejected on 18.05.2009.

8 It would, thus, be seen that on the ground that the writ petitioner was functioning from a private leased property, though it had permanent land on which building was being made, it was rejected recognition on 18.05.2009, whereas, not only in that year but in subsequent years also, large number of institutions, who had no private land and were working on privately leased lands, were granted recognition and permission. On the face of it, such action cannot be countenanced. The finical distinction being made that all those, who were allowed and who were granted recognition in the years, 2009-2010 on private leased lands, had applied soon before the 2007 regulations came into being with effect from 27.11.2007 and, as such,

their cases were considered under 2005 regulations which had no such restrictions. However, 2007 regulations puts a restriction that no institution could work or receive recognition if it had been running on a privately leased land.

9 To us, this distinction of 2005 regulation and 2007 regulation is not valid for the reason that the requirement of law, as existing on the day when recognition is to be granted, has to be seen. If an institution could be granted recognition in the year 2009 or 2010, as is admitted by NCTE even though it was existing on privately leased land, then we see no reason why this permission was refused in the year, 2009 itself to the writ petitioner, moreso, when the authorities themselves were cognizant of the fact that it had its own land in which constructions had already started and it is only, in the meantime, they were in the private building. Even this fact did not persuade the authorities to take a different view of the matter. We are to see as to the substance of the matter. If institutions could later be granted recognition even though they did not have their own land, then why deny the writ petitioner the same on a finical distinction?

10 We are, thus, of the view that the writ petitioner who, as per NCTE itself, has its own land on which it is constructing its own building and in the meantime, it was operating from a private leased premises, it ought not to have been denied the permission,

moreover, when this denial was on 18.05.2009, whereafter, as noticed above, large number of other such institutions were granted permission even though they had no land of their own and were operating from private leased premises.

11 We, therefore, set aside the orders of the Regional Director of NCTE and NCTE, New Delhi and direct the Regional Director of NCTE to take a fresh decision in this regard. If it is found that the writ petitioner is developing its own land, then recognition be granted to it, contingent to its making the permanent structure and moving therein, within a reasonable time-frame so that continuity of teaching can be maintained.

12 With the aforesaid observation and direction, this intra-Court appeal is allowed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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