

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.05.2015

+ **W.P.(C) 1591/2015 & CM 2840/2015**

**BISHNUPRIYA COLLEGE OF
EDUCATION & ANR**

..... Petitioners

versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Vikash Singh, Sr. Advocate with
Mr Amitesh Kumar.

For the Respondents : Mr Arjun Harkauli, Advocate with
Mr Satyawan Shekhawat.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, praying that the respondents be directed to dispatch the formal order granting recognition to petitioner institute to commence B.Ed. course for academic session 2014-15.

2. According to the petitioners, the respondents had granted recognition to the petitioner institute under clause 7(11) of the National Council of Teacher Education (Recognition, Norms and Procedure) Regulations, 2009 (hereafter referred to as '2009 Regulations'). Although the decision for issuance of recognition was published on the website, the

formal recognition order has not been dispatched to the petitioner.

3. It is an admitted position that the Eastern Regional Committee (hereafter 'ERC') had, in its 170th Meeting held on 28.02.2014 and 01.03.2014, decided to grant approval to the petitioner institute for intake of 100 students with effect from the academic session 2014-15. The formal recognition order was also signed on 03.03.2014, however, the same was not dispatched. In the meantime, ERC received a letter from the National Council of Teacher Education (hereafter 'NCTE') to reconsider its decision to grant approval. Accordingly, the formal order of recognition has not been dispatched as yet. In the meantime, the petitioners acted on the approvals and have conducted the course in affiliation with the West Bengal State University.

4. It is also relevant to note that the Supreme Court had by an order dated 10.09.2013 passed in Special Leave to Appeal (Civil) Nos.4247-4248/2009 directed that all pending applications for recognition be processed as per the new regulations being framed. The new regulations, i.e. National Council of Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 (hereafter referred to as '2014 Regulations') were notified on 01.12.2014 – although the notification is dated 28.11.2014 - and the last date for grant of recognition has been extended by the Supreme Court up to 31.05.2015.

5. Despite sufficient opportunity, respondent no. 1 - NCTE did not file a counter affidavit. However, in compliance with directions issued by this court, the member secretary of NCTE filed an affidavit which indicates that

a complaint had been received alleging that applications of certain institutions had been processed contrary to the 2009 Regulations and an inquiry with respect to the same was pending. The said affidavit is bereft of any details and does not disclose the nature of the allegations. However, on inquiry, the learned counsel for the respondents submitted that the complaint in respect of the petitioner institute, related to grant of approval prior to the petitioner institute furnishing Fixed Deposit Receipts to be jointly operated by ERC and the petitioner institute. The learned counsel for the respondents further submitted that this was also one of the principal reasons for not dispatching the formal order of recognition.

6. In the aforesaid circumstances, the limited controversy to be addressed is whether the petitioner institute was entitled to act on the decision of the ERC prior to the formal communication and is entitled to the formal order of recognition under Regulation 7(11) of the 2009 Regulations.

7. Briefly stated the relevant facts necessary to consider the aforesaid controversy are as under:-

7.1 On 26.11.2012/27.11.2012, NCTE issued a public notice inviting application for recognition of teacher education courses for the academic session 2013-14 in accordance with the 2009 Regulations.

7.2 On 28.12.2012, Bishnupriya Memorial Trust (petitioner no.2) submitted an online application to the ERC of NCTE seeking recognition for establishing an institution in the name of Bishnupriya College of Education (petitioner no.1) for B.Ed. course for the academic year 2013-

14. ERC, in its meeting held on 21st – 22nd January, 2013, rejected the application of the petitioner no.2. Petitioner no. 2 appealed against this decision under Section 18 of the National Council of Teacher Education Act, 1993 (hereafter the ‘Act’).The NCTE allowed the appeal filed by petitioner no. 2 and by an order dated 25.10.2013, the matter was remanded to ERC to process the application of petitioner no.2 in accordance with the 2009 Regulations.

7.3 ERC in its 166th Meeting held on 19.12.2013 and 20.12.2013 considered the application of petitioner no.2 and appointed a visiting team for inspecting the petitioner institute. The visiting team submitted its report and the petitioner no.2’s application was considered by the ERC in its 169th Meeting held on 13.02.2013 -14.02.2014. At the said meeting, the ERC decided that a letter of intent be issued to the petitioner institute. The relevant extract of the minutes of the said meeting are quoted below:-

“After considering the records available in the file, and relevant provisions of the NCTE Act 1993, Rules, Regulations and guidelines issued by NCTE Hqrs. VTR, the committee discussed the matter in detail and decided as under:

Letter of intent u/c 7(9) of the NCTE Regulation may be issued to the institution.”

7.4 Although a letter of intent (LOI) dated 20.02.2013 was dispatched to the petitioner institute on 22.02.2013, the petitioner institute did not receive the said LOI as it was dispatched to an incorrect address. The said LOI was also accompanied with two FDRs of the sum of ₹5,00,000/- and ₹3,00,000/- which were submitted by the petitioner institute earlier. Even though the LOI was not received by the petitioner institute at the material

time, the petitioners became aware of the decision of ERC. Since the parties are required to adhere to a time schedule, the petitioners acted on the information and took steps to comply with the requirements of the LOI, which are quoted below:-

“3. Before grant of format recognition under Regulation 7 (11) is considered, you are requested to submit the following:-

- a. faculty list approved by affiliating body after the appointment through duly constituted selection committee and ensuring compliance of NCTE norms of teaching staff etc.
- b. advertisement in leading newspapers
- c. letter of university / affiliating body, nominating experts / representatives for the selection committee
- d. minutes of the selection committee duly constituted as per the norms of the affiliating body
- e. approval of the university / affiliating body to the selected faculty in the prescribed format.
- f. an affidavit on Rs.100/- stamp paper to the effect that the institution has selected staff as per NCTE / State / University norms in the prescribed format
- g. an affidavit on Rs.10/- non judicial stamp paper by the individual faculty member selected by the institution. Details should be filled in by every faculty member selected in the prescribed format.
- h. Educational & Professional qualification certificates of all teaching staff showing their eligibility for appointment as per the NCTE norms and experience certificate of the Principal / HOD
- i. FDRs duly converted (for a period of five years) in favour of joint name of the society / trust / institution and Regional Director, ERC, NCTE,

Bhubaneswar with joint operation mode and a letter to the concerned bank is being sent by authorizing the bank on behalf of the regional direction for the conversion in the joint name.

- j. An undertaking from the management of the institution as per the prescribed format available on ERC website
- k. Down loaded copies of the website of the institution with the hyperlink of the same as per provisions of 7 (10) of the NCTE Regulations, 2009

The institution after appointing the requisite faculty or staff as per the provisions of the sub regulations 8 (9) and after fulfilling the conditions under sub regulation 7 (10) shall submit its compliance along with all necessary documents accompanied with an affidavit in support of reply of the above points within 30 days of issue of Letter of Intent prior to recognition.

- 4. The institution shall launch its own website covering inter alia, the details of the institution, its location, name of the course applied for with intake, availability of physical infrastructure (land, building, Office classrooms and other facilities / amenities), instructional facilities (laboratory, library etc.) and the particulars of their proposed teaching and non-teaching staff etc. with photographs. The downloaded copy of the website is required to be submitted.
- 5. Before issuance of the formal recognition order, the institution is required to convert / renew the Original FDR(s) of Endowment Fund of Rs.5 lakhs and Reserve Fund of Rs.3 lakhs in the joint name of the society / trust / institution and Regional Director, ERC, NCTE, Bhubaneswar, (Joint Operation Mode) and (Original FDRs are enclosed along with this letter). The institution shall submit the original joint FDRs to ERC, NCTE after conversion. (for self-financed institution only)

1. FDR/MBDR/COD/TDA/TDR/(5Lakhs)No.696181
Dated 27-Dec-12
2. FDR/MBDR/COD/TDA/TDR/(3Lakhs)
No.696182 Dated 27-Dec-12

(The validity of original FDRs of Rs.5.00 and Rs.3.00 Lakhs, if expired, is to be renewed as per the above instruction (para No.5) from the concerned bank)”

7.5 As is apparent from the above, one of the conditions of the LOI was that the petitioner institute was required to convert the FDRs to a joint operation mode with ERC. Since the petitioner institute had not received the FDRs, the petitioner institute secured a certificate from Corporation Bank, Kolkata confirming that the FDRs issued by the said bank for a sum of ₹5,00,000/- and ₹3,00,000/- would be converted into joint operation mode after receiving the original FDRs.

7.6 The petitioner no.2's application was considered by ERC in its 170th meeting held on 20.02.2014 and 01.03.2014. Apparently, the ERC was satisfied that the petitioner institute had complied with the requirements of the LOI and it decided as under:-

“After considering the records available in the file and relevant provisions of the NCTE Act 1993, Rules, Regulations and Guidelines issued by NCTE Hqrs, VTR, and replies of the institution dated 24.02.2014 in response to letter of intent, the Committee discussed the matter in detail and decided as under:

Formal Recognition Order under clause 7(11) of the NCTE Regulation 2009 for the applied course B.Ed. with an intake 100 of one basic unit from the academic session 2014-2015 may be issued to the institution.”

7.7 In the meantime, the LOI issued by the ERC was received back by ERC along with original FDRs on 03.03.2014. The LOI was again dispatched by ERC on 16.03.2014, which was received by the petitioner institute on 24.03.2014. On receipt of the FDRs, the petitioner institute caused the same to be converted into joint names with ERC and submitted the same to ERC on 31.03.2014. The same were received by the ERC on 02.04.2014.

7.8 Since the formal order of recognition signed on 03.03.2014 had not been dispatched, the ERC sought clarification from the Member Secretary, NCTE whether the said order of recognition could be dispatched after the cut off date of 03.03.2014. In the meantime, a complaint was also received that recognition orders had been issued to certain institutions without receipt of documents and completion of requisite formalities.

7.9 A letter dated 29.09.2014 was issued by the Members Secretary, NCTE directing ERC to reconsider the case of the petitioner institute. In the meantime, the petitioners acted on the decision of ERC to grant recognition under Regulation 7(11) of the 2009 Regulations and applied to West Bengal State University for grant of affiliation. The same was granted to the petitioner institute and by a letter dated 13.03.2014, the petitioner institution was informed of the conditions to be fulfilled by the petitioner institute. Thereafter, 100 students were selected for admission to the petitioner institute through Central Counseling of the West Bengal State University. The students were admitted to the B.Ed. course for the academic session 2014-15 and are presently enrolled with the West Bengal State University. The petitioner institute has proceeded with imparting

training to the said students.

8. Undisputedly, the ERC had decided to accord formal recognition to the petitioner institute in its 170th Meeting held on 28.02.2014 and 01.03.2014. Concededly, the decision that recognition had been granted by ERC, was uploaded on the website of NCTE; the formal letter of recognition was also signed on 03.03.2014. Apparently, the letter of recognition was not dispatched solely for the reason that FDRs of endowment and reserve funds converted in a joint operation mode were not received by the ERC.

9. In the aforesaid circumstances, the following questions arise for consideration:-

(a) Whether the formal order of recognition could be withheld after the decision to grant recognition had been taken and communicated to the petitioner institute?

(b) Whether, in the given facts, the respondents were justified in withholding the recognition order on account of non receipt of the FDRs?

10. Before proceeding further to address the controversy, it is necessary to refer to Regulations 7(9), 7(10) and 7(11) of the 2009 Regulations which were in force at the relevant time. The said Regulations are quoted below:-

“7. Processing of Applications.-

XXXX XXXX XXXX XXXX XXXX

(9) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or

permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per National Council for Teacher Education norms within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

(10) (i) All the applicant institutions shall launch their own website with hyperlink to National Council for Teacher Education and corresponding Regional Office website soon after the receipt of the letter of intent from the Regional Committee, as provided under sub-regulation (9) covering, inter alia, the details of the institution, its location, name of the course applied for with intake, availability of physical infrastructure such as land, building, office, classrooms, and other facilities or amenities, instructional facilities such as laboratory, library etc. and the particulars of their proposed teaching faculty with photograph and non-teaching staff etc. with photographs, permanent account number or unique identity number of the teacher educators, whenever issued by National Council for Teacher Education, for information of all concerned. The information with regard to the following shall also be made available on the website:-

- (a) Sanctioned programmes along with annual intake in the institution;
- (b) Name of faculty and staff in full as mentioned in school certificate along with their qualifications, scale of pay and photograph;
- (c) Name of faculty members who left or joined during the last quarter;

- (d) Names of students admitted during the current session along with qualification, percentage of marks in the qualifying examination and in the entrance test, if any, date of admission, etc.;
 - (e) Fee charged from students;
 - (f) Available infrastructural facilities;
 - (g) Facilities added during the last quarter;
 - (h) Number of books in the library, journals subscribed to and additions, if any, in the last quarter;
 - (i) The institution shall be free to post additional relevant information, if it so desires.
 - (ii) Any wrong or incomplete information on website shall render the institution liable for withdrawal of recognition
- (11) The institution concerned, after appointing the requisite faculty or staff as per the provisions of sub-regulation (9) and after fulfilling the conditions under sub-regulation (10), shall formally inform the Regional Committee concerned that the faculty has been appointed as per National Council for Teacher Education norms and has been approved by the affiliating body. The letter granting approval for the Selection or appointment of faculty shall also be provided by the institution to the Regional Committee with the document establishing that the Fixed Deposit Receipt of Endowment Fund and Reserve Fund have been converted into a joint account. The Regional Committee concerned shall then issue a formal order of recognition which shall be notified as per provision of the National Council for Teacher Education Act.”

11. A plain reading of the Regulation 7(9) of the 2009 Regulations indicates that the institution would be informed through a LOI regarding the decision to grant recognition subject to fulfillment of other conditions. This LOI would not be notified in a Gazette but would be sent to the concerned institution and the affiliating body for initiation of appointment

of a qualified staff. After receipt of the LOI, the institution is required to submit the list of faculty as approved by the affiliating body to the Regional Committee. In addition, the institution is required to launch its own website providing the information as indicated in Regulation 7(10) of the 2009 Regulations. In terms of Regulation 7(11) of the 2009 Regulations, the concerned institution is, after complying with the conditions as specified under Regulations 7(9) and 7(10) of the 2009 Regulations, required to submit a letter granting approval for selection or appointment of faculty along with *“the document establishing that fixed deposit receipts of endowment funds and reserve funds have been converted into a joint account.”*

12. There is no dispute that the petitioner institute has complied with all the conditions that were stipulated by NCTE within time. The only question is whether the petitioner institute had submitted the document establishing that FDRs of the endowment fund and reserve fund, were converted into a joint account. It is important to note that it is not mandatory that FDRs be submitted; the only requirement is that a document, establishing that a FDR for endowment and reserve funds have been converted into a joint account, be furnished. In the present case, the petitioner institute had, admittedly, furnished a certificate dated 24.02.2014 from Corporation Bank, Kolkatta conforming that the bank had received instruction for conversion of the FDRs into the joint operation mode. At that stage, the original FDRs had been dispatched by ERC but had not been received by the petitioner institute. The ERC had, unreservedly, accepted the bank certificate and decided to grant recognition to the petitioner institute. The

LOI, which was dispatched to an incorrect address, was received back by ERC on 03.03.2014 alongwith the original FDRs. Thus, it is also apparent that on 03.03.2014, the ERC had the original FDRs and also a certificate from the bank that it would convert the same to joint operation mode on the original FDRs being furnished.

13. Given the circumstances, there could be no doubt that the petitioner institute had done all that was possible to comply with the necessary requirement of furnishing a document for establishing that the FDRs would be converted into a joint mode. The FDRs itself were in transit with the postal authorities and on 03.03.2013 were in back in possession of the ERC. Thus, there was no possibility of furnishing FDRs converted in joint names, but a certificate establishing that the bank would so convert the FDRs issued by it, was furnished. This, in my view, would be sufficient compliance of the Regulation 7(10) of the 2009 Regulations, in the given circumstances.

14. It is also relevant to note that the FDRs were received back by the petitioners and the petitioners furnished the converted FDRs to ERC, thereafter.

15. The contention that grant of approval had not been communicated to the petitioner institute is also without substance. Concededly, the decision had been placed by the respondents on their website. It cannot be disputed that publishing documents/decisions on the website is also a mode of communication. This is also in conformity with the strict time schedule fixed for completion of the process for recognition as postal delays cannot

be permitted to interdict the process.

16. The petitioner institute acted on the approval as communicated through the website - in my view rightly so - and took immediate steps to comply with all conditions. In the aforesaid facts, the decision to withhold the formal order of recognition is patently unreasonable and arbitrary and, therefore, cannot be sustained.

17. Having stated the above, there is yet another aspect of the matter that needs to be considered - although, neither the petitioner nor the respondent advanced any contentions regarding the same during the course of hearing - and that is, the directions issued by the Supreme Court to process the pending applications under the 2014 Regulations. Plainly, the application submitted by the petitioner no. 2 would be considered as a pending application as NCTE, by an order-dated 25.10.2013, had remanded the matter to ERC for fresh consideration. Thus, the petitioner's application ought to have been kept pending and processed under the 2014 Regulations, which were notified subsequently, on 01.12.2014. However, as the respondents processed the application under the 2009 Regulations, the petitioner institute and the students enrolled with the petitioner institute cannot be penalised. Further, it appears that ERC had considered all applications pending at the material time, under the 2009 Regulations. Thus, the petitioner institute would also have to be treated in parity with other institutions, which had been granted recognition.

18. In the aforesaid circumstances, the petition is allowed and the respondents are directed to forthwith dispatch the order of recognition.

Pending application stands disposed of. No order as to costs.

VIBHU BAKHRU, J

MAY 25, 2015
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