

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 21.03.2016

PRONOUNCED ON : 05-04-2016

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 6389 of 2016

Royal College of Education
run by Sydhans Education Trust
rep. by Managing Trustee S.A. Anwar
Varattanapalli Road
Kattinayanapalli Post
Krishnagiri - 635 001

... Petitioner

Versus

1. The Regional Director
National Council for Teacher Education
Southern Regional Committee
Jnana Bharathi Campus Road
Opp. National Law School
Nagarabhavi
Bangalore 560 072

2. The Higher Education Secretary
Department of Higher Education
St. George Fort
Chennai - 600 009

3. The Registrar
Tamil Nadu Teachers Education University
Lady Willington College Campus
Kamarajar Salai, Chennai - 600 005

... Respondents

Petitions filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent in F.No.SRO/NCTE/SRCAPP1476/B.A.B.Ed., B.Sc.,B.Ed/TN/2016-17/80918 dated 30.01.2016, quash the same and direct the first respondent herein to issue recognition to the petitioner college for four year integrated course - B.A., B.Ed.,/ B.Sc., B.Ed., for the academic year 2016-2017 in Application ID Number

SCRAPP 14767

For Petitioner : Mr. G. Suryanarayanan
For Respondents : Mr. K. Ramakrishna Reddy
Senior Central Government
Standing Counsel for R1

Mr. V.S. Ramesh
Government Advocate for R2

Mr. U. Venkatesan for R3

ORDER

The petitioner institution has come forward with this writ petition questioning the correctness of the order dated 30.01.2016 of the first respondent. In and by the said order dated 30.01.2016, the first respondent rejected the application for recognition submitted by the petitioner for running B.A., B.Ed.,/B.Sc., B.Ed., course for the academic year 2016-2017.

2. The petitioner institution has obtained recognition from the first respondent for conducting B.A., B.Ed.,/B.Sc., B.Ed., a four year integrated course, from the academic year 2008-2009. For the purpose of getting similar recognition for the academic year 2016-2017, the petitioner institution has submitted an application on 30.06.2015 in Application ID No.SRCAPP14767. On receipt of such application, the first respondent insisted the petitioner to obtain No Objection from the third respondent as a condition precedent for grant of recognition. In fact, even before the submission of the application dated 30.06.2015 to the first respondent, the petitioner submitted an application dated 29.06.2015 to the second and third respondent followed by reminders dated 18.11.2015 and 01.12.2015 for issuing No Objection. However, the third respondent did not act upon such reminders and kept the issue relating to issuance of No Objection Certificate pending for seven months. If the third respondent did not issue any No Objection Certificate for more than two and half months, it shall be deemed that the third respondent has no objections to be made and in such event, the first respondent has to process and decide the case independently on merits without waiting for No Objection Certificate from the third respondent.

3. According to the petitioner, on 21.10.2015, a show cause notice was issued by the first respondent calling upon the petitioner to show cause why No Objection Certificate has not been produced inter alia indicating that if the show cause notice is not produced within 21 days therefrom, the application for recognition will be rejected. Immediately, the petitioner sent a reply dated 18.11.2015 stating that they have applied for issuance of No Objection Certificate but the third respondent failed to issue the same. While so, to the shock and surprise of the petitioner, the first respondent passed the

impugned order dated 30.01.2016, rejecting the application of the petitioner for recognition of B.A., B.Ed.,/B.Sc., B.Ed., four year integrated course for the academic year 2016-2017. It is further stated that in the impugned order, wrong provision of the Regulation has been quoted by the first respondent namely Regulation (2) of Section 7 (2a) and (2b) instead of Regulation 7 (1) of The National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 and this itself would vitiate the entire order. The Regulation 7 (2) (a) deals about non-payment of fee and the Regulation 7 (2) (b) deals about non-production of title deeds. But the application of the petitioner is not rejected for any of the above grounds stated in Regulation 7 (2).

4. The learned counsel for the petitioner would contend that as per the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 which was framed in exercise of the powers conferred by sub-section (2) of Section 32 of the National Council for Teacher Education Act, 1993 and in supersession of the 2009 Regulation, Regulation 7 (4) specifically contemplate that a written communication along with a copy of the application form submitted by the institution for recognition shall be sent by the first respondent to the State Government concerned as well as the affiliating body within three days from the receipt of the application. On receipt of such communication, the State Government shall furnish its recommendations or comments to the Regional Committee concerned within 45 days from the date of issue of the letter of the State Government. In case the State Government is not in favour of recognition, it shall furnish the reasons thereof with necessary statistics which shall be taken note of by the Regional Committee while disposing of the application. On the other hand, if recommendation of the State Government is not received within the period aforesaid, the Regional Committee shall send a reminder to the State Government by giving 30 days further time to furnish the comments on the proposal. Even thereafter, if no reply has been received, a second reminder shall be sent for furnishing the recommendation within 30 days therefrom. In case, even thereafter, if no reply is received from the State Government, then the Regional Committee shall process the application of the institution on merits. In other words, the first respondent has to wait for the No Objection Certificate for two and half a month alone and if No Objection Certificate is not forthcoming, it shall be deemed that the third respondent has no objections to raise as against the proposed recognition to be granted in favour of the petitioner institution.

5. The learned counsel for the petitioner also relied on Regulation 7 (1) and 7 (2) (a) and (b) of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, to contend that if an application submitted by the institution is not complete or requisite document has not been enclosed, then the first respondent shall reject the

application in terms of Rule 7 (1). If the institution did not furnish the application fee before the prescribed date through on-line as required under Regulation 7 (2) (a) or if the institution did not submit print out of the application made online along with the land documents on-line, as required under Regulation 7 (2) (b), the application submitted by the petitioner institution can be summarily rejected. In the present case, the petitioner has submitted the application in terms of the Regulations of the first respondent. However, as regards the No Objection from the respondents 2 and 3, even though the petitioner submitted an application dated 29.06.2015 to the second and third respondents followed by two reminders on 18.11.2015 and 01.12.2015, the respondents 2 and 3 have not considered the same. By reason of non-issuance of the No Objection Certificate by the third respondent the petitioner institution should not be made to suffer. It is well settled proposition of law as laid down by the Honourable Supreme Court that if the No Objection Certificate is not issued within the time stipulated in the Regulations, then it shall be deemed that the State Government or the affiliating body, as the case may be, has no objections to be raised. While so, the first respondent, without adverting to the above procedural aspects, has rejected the application submitted by the petitioner for grant of recognition only for non-submission of No Objection Certificate from the third respondent. Therefore, the learned counsel for the petitioner would contend that the reasons assigned by the first respondent for rejection of the application submitted by the petitioner institution for grant of recognition for conducting B.A., B.Ed.,/B.Sc., B.Ed., four year integrated course is illegal, arbitrary and against the settled proposition of law laid down by the Honourable Supreme Court in catena of decisions. In this context, the learned counsel for the petitioner placed reliance on the decision of the Apex Court in the case of (Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh and others) (2013) 2 Supreme Court Cases 617 wherein in para Nos. 77, 78, 79, 81, 82, 83 and 85, it has been held as follows:-

"77. The fields which are sought to be covered under the provisions of Section 37 of the Universities Act and the Statutes of various universities are clearly common to the aspects which are squarely covered by the specific language under the Act. That being so, all State laws in regard to affiliation in so far as they are covered by the Act must give way to the operation of the provisions of the Act. To put it simply, the requirements which have been examined and the conditions which have been imposed by the NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State Law. The affiliating/examining body and the State Government must abide by the proficiency and command of the NCTE's directions. To give an example, existence of building, library, qualified staff, financial

stability of the institution, accommodation, etc. are the subjects which are specifically covered under Section 14(3) (b) of the Act. Thus, they would not be open to re-examination by the State and the University. If the recognition itself was conditional and those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform the NCTE forthwith of the shortcomings and non-compliance of the conditions. In such situation, both the Central and the State body should act in tandem and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation. But certainly, the State Government and the University cannot act in derogation to the NCTE.

78. Now, we may deal with another aspect of this very facet of the case. It is a very pertinent issue as to what the role of the State should be after the affiliation is granted by the affiliating body. We have already discussed that the State opinion, as contemplated under Section 37 of the University Act, to the extent it admits to overreach, is reconcilable and its results are not in its orientation to the directives of the NCTE are void and inoperative to the extent they can be resolved in which case clear precedence is to be given to the directives of the NCTE during such resolution. The opinion of the State, therefore, has to be read and construed to mean that it would keep the factors determined by the NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the University to determine the grant or refusal of affiliation and role of the State should be bare, minimum non-interfering and non-infringing.

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, the NCTE shall send a copy of the application with its letter inviting recommendations/comments of the State Government on all aspects within a period of 30 days. To such, application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified fields are called for. This is the stage where the State and its Department should play a vital role. They must take all precautions to offer proper comments supported by due reasoning. Once these

comments are sent and the State Government gives its opinion which is considered by the NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy viz-a-viz the State Government as well as the affiliating body. Normally, these questions cannot be re-agitated at the time of grant of affiliation. Once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to life of the students working in the school because of non-compliance of a substantive condition imposed by either of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

81. Lastly, the question which is required to be discussed in light of the facts of the present cases is adherence to the Schedule. Once the relevant Schedules have been prescribed under the Regulations or under the Judge made law, none, whosoever it be, is entitled to carve out exceptions to the prescribed Schedule. Adherence to the Schedule is the essence of granting admission in a fair and transparent manner as well as to maintain the standards of education. The purpose of providing a time schedule is to ensure that all concerned authorities act within the stipulated time. Where, on the one hand, it places an obligation upon the authorities to act according to the Schedule, there it also provides complete clarity to other stakeholders as to when their application would either be accepted and/or rejected and what will be the time duration for it to be processed at different quarters. It also gives clear understanding to the students for whose benefit the entire process is set up as to when their examinations would be held, when results would be declared and when they are expected to take admission to different colleges in order of merit obtained by them in the entrance examinations or other processes for the purposes of subject and college preference.

82. We are constrained to reiterate with emphasis at our command that the prescribed schedules under the Regulations and the judgments

must be strictly adhered to without exceptions. None in the hierarchy of the State Government, University, NCTE or any other authority or body involved in this process can breach the Schedule for any direct or indirect reason. Anybody who is found to be defaulting in this behalf is bound to render himself or herself liable for initiation of proceedings under the provisions of the Contempt of Courts Act, 1971 as well as for a disciplinary action in accordance with the orders of the Court.....

83. Undoubtedly, adherence to Schedule achieves the object of the Act and its various aspects. Disobedience results in unfair admissions, not commencing the courses within the stipulated time and causing serious prejudice to the students of higher merit resulting in defeating the rule of merit.

84. We may very clearly state here that we adopt and reiterate the Schedule stated by this Court in the case of College of Professional Education (supra) in relation to admission as well as recognition and affiliation. This obviously includes the commencement of the courses in time. However, in order to avoid the possibility of any ambiguity, we propose to state the schedule for recognition and affiliation in terms of the NCTE Regulations 2009 and the judgment of this Court in the case of College of Professional Education (supra) :

85. The process for grant of recognition, affiliation and thereby sanctioning of commencement of the courses in terms of the Regulations and the orders of this Court gives an outer period of approximately 270 days, i.e. 9 months, from 1st September to 10th May of the year immediately preceding the concerned academic year. Thus, for the entire process to be within this framework, it must be completed within the afore-stated period. The process inter alia includes various steps including comments of the State, inspection of the institution and compliance of the various conditions afore-noted in the order of recognition and affiliation by the affiliating body...."

6. The learned counsel for the petitioner placed heavy reliance on the decision of the Apex Court in (St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and another) (2003) 3 Supreme Court Cases 321 to contend that even if No Objection Certificate is not granted by the concerned State Government or affiliating body, the entire matter shall be examined by the Regional Committee while taking a decision on the application for recognition.

7. The learned counsel for the petitioner also relied on the Full Bench decision of this Court rendered in (Rukmani College of Education, rep. by Rukmani Educational and Charitable Trust, Tirunelveli District rep. by its Correspondent S. Deepak vs. The State of Tamil Nadu, rep. by its Secretary, Higher Education Department, Fort St. George, Chennai and others) 2008 (1) CTC 545 to contend that when once the National Council for Teacher Education has granted recognition, the grant of affiliation by the University is only a formality. Relying on the above decision, the learned Counsel for the petitioner would vehemently contend that for non-issuance of No Objection by the respondents 2 and 3, the petitioner or the students of the petitioner institution should not be made to suffer, hence, he prayed for allowing the writ petition.

8. On the contrary, the learned counsel for the first respondent would contend that before submitting an application to the first respondent for recognition, the petitioner institution ought to have obtained No Objection from the competent State Government or affiliating body namely the third respondent. In this case, only after submitting the application for recognition to the first respondent, the petitioner applied for issuance of No Objection with the respondents 2 and 3. The learned counsel for the first respondent invited the attention of this Court to Regulation 7 (1) of National Council for Teacher Education (Recognition, Norms and Procedure) Regulations wherein it is specifically that if the requisite documents are not enclosed along with the application, the application shall be deemed to be incomplete. The requisite document indicated in Regulation 7 (1) would mean and include No Objection from the concerned State Government or affiliating body and in the absence of the same, the application submitted by the petitioner shall be deemed to be incomplete. Further, the contention of the counsel for the petitioner that the first respondent has to wait for 2 1/2 months to communicate to the State Government or affiliating body is incorrect. The Regulation 7 (4) will come into play only at a latter point of time. Regulation 7 (4) has nothing to do with the non-production of No Objection Certificate and as per the said Regulation, the application submitted by the institution has to be forwarded by the first respondent to the State Government before granting recognition. Further, as per Regulation 5 (3), production of No Objection Certificate is mandatory and it cannot be dispensed with. No doubt, even though the application submitted by the petitioner is in accordance with Regulations 7 (2) (a) and (b), the application was rejected for non-submission of No Objection Certificate from the affiliating body along with the application. It is the bounden duty of the petitioner to obtain the No Objection Certificate and in the absence of the same, the first respondent cannot be expected to process the application of the petitioner to grant recognition. The learned counsel for the first respondent relied on the decision of the Honourable

Supreme Court in (National Council for Teacher Education and others vs. Shri Shyam Shiksha Prashikshan Sansthan and others etc., etc.,) 2011 (2) Scale 59 to contend that the No Objection Certificate from the State Government/Union Territory Administration are mandatory and an institution is not entitled to recognition unless it fulfils the conditions specified in various clauses of Regulations.

9. The learned counsel for the first respondent would contend that it is true that wrong provisions of the Regulation has been quoted in the order which is impugned in the writ petition but that by itself will not vitiate the validity of the order.

10. On the above submission of the counsel for the petitioner and the first respondent, this Court heard the counsel for the respondents 2 and 3 and perused the materials placed on record. The learned counsel for the petitioner made a detailed argument and contended that for non-issuance of No Objection Certificate by the respondents 2 and 3, the petitioner cannot be made to suffer. On the contrary, the learned counsel appearing for first respondent would contend that as per Regulation 5 (3), production of No Objection Certificate is a mandatory and it cannot be dispensed with. Therefore, before proceeding further, it is necessary to look into Regulation 5 (3) of National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014, which reads as follows:-

"5. Manner of making application and time limit:--

1.....

2.....

3. The application shall be submitted online electronically along with the processing fee and scanned copies of the required documents such as no objection certificate issued by the concerned affiliating body. While submitting the application, it has to be ensured that the application is duly signed by the applicant on every page, including digital signature at appropriate place at the end of the application.

11. It is evident from Regulation 5 (3) mentioned supra that production of No objection Certificate by the institution from the affiliating body is mandatory and it cannot be dispensed with. In Regulation 5 (3), it is clearly stated that the application for recognition must accompany scanned copies of document and it also includes no objection certificate issued by the concerned affiliating body. Therefore, it is evident that submission of no objection certificate is one of the mandatory documents required to be accompanied along with the application for recognition and in the absence of the same, the first respondent cannot process the application seeking recognition. Even though the petitioner has applied for

issuance of no objection certificate with the respondents 2 and 3, it is for the petitioner to take appropriate steps as are necessary to get the no objection certificate from the respondents 1 and 2. In any event, when production of No Objection Certificate is a mandatory requirement, as has been contemplated under Regulation 5 (3) mentioned supra, the respondents cannot be compelled to process the application of the petitioner in the absence of such document.

12. As regards wrong quoting of provisions of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 in the impugned order, I am of the view that it will not vitiate the impugned order and this submission of the counsel for the petitioner is hereby rejected. In any event, the first respondent has correctly pointed out Regulation 5 (3) of the Regulation which deals with production of No Objection Certificate and only for non-compliance of the same, the impugned order came to be passed.

13. As rightly pointed out by the learned counsel for the first respondent, the Honourable Supreme Court in the decision reported in (National Council for Teacher Education and others vs. Shri Shyam Shiksha Prashikshan Sansthan and others etc., etc.,) 2011 (2) Scale 59 held that No Objection Certificate from the State Government/Union Territory Administration are mandatory documents and an institution is not entitled to get recognition unless it fulfils the conditions specified in various clauses of Regulations. In the said decision, the Apex Court issued a further direction to the first respondent/NCTE to ensure that in future no institution is granted recognition unless it fulfils the conditions laid down in the Act and the Regulation and the time schedule fixed for processing the application by the Regional Committee and the communication of the decision on the issue of recognition is strictly adhered to. Therefore, in the light of the above decision of the Honourable Supreme Court I hold that the first respondent is justified in rejecting the application submitted by the petitioner without No Objection Certificate obtained from the respondents 2 and 3 and such an order is in adherence to Regulation 5 (3) of National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014.

14. For all the reasons mentioned above, I do not see any reason to interfere with the order which is impugned in this writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

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To

1. The Regional Director
National Council for Teacher Education
Southern Regional Committee
Jnana Bharathi Campus Road
Opp. National Law School
Nagarabhavi
Bangalore 560 072
2. The Higher Education Secretary
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3. The Registrar
Tamil Nadu Teachers Education University
Lady Willington College Campus
Kamarajar Salai, Chennai - 600 005

+1cc to Mr.U. Venkatesan, Advocate, S.R.No.21366

+2cc's to Mr.K. Ramakrishna Reddy, Advocate,
S.R.No.21823 & 21338

+1cc to the Government Pleader, S.R.No.21751

W.P No. 6389 of 2016

PPA(CO)
CA(28/04/2016)

सत्यमेव जयते

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