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

Date of Decision: 12th April, 2021

+ **W.P.(C) 2069/2021 & CM APPL. 6062/2021**
OM COLLEGE OF EDUCATION Petitioner
versus
NATIONAL COUNCIL FOR TEACHER
EDUCATION & ORS. Respondents

+ **W.P.(C) 2395/2021**
SHIV TAJ EDUCATION INSTITUTE Petitioner
versus
NATIONAL COUNCIL FOR TEACHER
EDUCATION & ORS. Respondents

Present:- Mr. Sanjay Sharawat, Advocate for the petitioners.
Mr. Akshay Chandra, Standing Counsel for NCTE.
Dr. Manish Singhvi, Senior Advocate with Mr. D.K.
Devesh, Advocate for R-3/State of Rajasthan.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioners, institutions located in the State of Rajasthan, have been issued letters of intent ["LOI"] for establishment of the Diploma in Elementary Education ["D.El.Ed."] courses by the

National Council for Teacher Education [“NCTE”]. The grievance with which they have approached the Court is that the Government of Rajasthan has not nominated an expert for appointment of faculty in the proposed institutions.

Facts

2. Both the writ petitions proceed on substantially similar facts, which are largely undisputed. The basic facts, as disclosed in W.P.(C) 2069/2021, are summarised below.

3. The petitioner applied to the Northern Regional Committee [“NRC”] of the NCTE on 29.10.2008 for recognition of its course. The application was rejected on the ground of a prohibition imposed by the State of Rajasthan to the establishment of new courses in the State. By an order dated 22.03.2018, the Rajasthan High Court disposed of a writ petition filed by the petitioner directing the NRC to reconsider the application. The NRC thereafter conducted an inspection of the petitioner’s premises on 03.11.2018. The petitioner’s application was not processed further, which compelled the petitioner to approach this Court by way of W.P.(C) 2262/2020. The petitioner’s writ petition was decided alongwith other similarly placed writ petitions by an order dated 28.02.2020, and the Western Regional Committee [“WRC”] of the NCTE – which had, in the meantime, assumed jurisdiction over institutions in the State of Rajasthan – was directed to take necessary steps in the matter. Proceedings in contempt and further writ petitions were filed, the proceedings of which are not wholly germane to the present petition. Suffice it to say that on

07.12.2020, the WRC issued an LOI to the petitioner for recognition of its course. The conditions imposed therein *inter alia* required the institution to submit the list of faculty duly approved by the affiliating body/University within two months thereafter.

4. The petitioner's application being for recognition of a diploma course, the affiliating body was the State of Rajasthan. The petitioner therefore addressed a communication dated 08.12.2020 to the State of Rajasthan, requesting it to nominate an expert to participate in the selection committee for appointment of faculty. In the said communication, the petitioner also referred to a No Objection Certificate ["NOC"] dated 26.02.2019 which had been issued by the State of Rajasthan. By a communication dated 03.02.2021, the State of Rajasthan returned the petitioner's request stating that the State would not nominate anyone as the Government policy is against the establishment of D.El.Ed. courses in the State. As a result of the aforesaid stand of the State of Rajasthan, the petitioners have been unable to submit the approved faculty list to the NCTE in accordance with the LOI.

5. The petitioner in W.P.(C) 2069/2021 has therefore approached this Court for the following reliefs: -

“[a] Issue a writ of mandamus and direct the Chairperson, of Respondent No. 1 to exercise its powers under clause 12 of NCTE Regulations, 2014 to relax/waive the condition of obtaining approval of faculty list from Respondent No. 3 as prescribed under clause 7 [13], [15] & [16] and permit the Petitioner to appoint faculty on its own in absence of the nominee of the Respondent No. 2 and

to submit the unapproved faculty list with the Respondent No. 2; and

[b] Consequently issue a writ of mandamus and direct the Respondent No. 2 to grant formal recognition to Petitioner under clause 7[16] for D.El.Ed course from academic session 2021-19 (sic) on the basis of faculty list sought to be submitted by the Petitioner without obtaining approval from the Respondent No. 3; and

[c] Alternatively issue a writ of mandamus and direct the Respondent No. 3 to nominate its nominee for the purpose of appointing the faculty members in compliance of the LOI and to grant approval to the faculty list so prepared by Petitioner under clause 7 [13] of NCTE Regulations, 2014 expeditiously to enable the Respondent No. 2 to grant formal recognition for academic session 2021-22 on or before 03.03.2021; and

[d] Pass any other and further order(s) as may be deemed fit.”

6. In W.P. (C) 2395/2021, the relief sought has been framed in the same terms.

7. By an order dated 25.02.2021, this Court *inter alia* directed the NCTE to consider whether the present case is a fit one for invocation of the power of relaxation under Regulation 12 of the Regulations.

Regulatory provisions

8. Before recording the contentions of the parties, it is necessary to notice the relevant provisions of the NCTE (Recognition Norms and Procedure) Regulations, 2014 [“the Regulations”]: -

“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 for recognition in the

prescribed application form along with processing fee and requisite documents:

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(3) The application shall be submitted online electronically alongwith the processing fee and scanned copies of 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.

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7. Processing of applications.--

(1) In case an application is not complete, or requisite documents are not attached with the application, the application shall be treated: incomplete and rejected, and application fees paid shall be forfeited.

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(4) A written communication alongwith a copy of the application form submitted by the institution shall be sent by the office of Regional Committee to the State Government or the Union territory administration and the affiliating body concerned within thirty days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

(5) On receipt of the communication, the State Government or the Union territory administration concerned shall furnish its recommendations or comments to the Regional Committee concerned within forty five days from the date of issue of the letter to the State Government or Union territory, as the case may be. In case, the State Government or Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with

necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application.

(6) If the recommendation of the State Government is not received within the aforesaid period, the Regional Committee concerned shall send a reminder to the State Government providing further time of another thirty days to furnish their comments on the proposal. In case no reply is received, a second reminder shall be given for furnishing recommendation within fifteen days from the issue of such second reminder. In case no reply is received from the State Government within aforesaid period the Regional Committee shall process and decide the case on merits and placing the application before the Regional Committee shall not be deferred on account of non-receipt of comments or recommendation of the State Government.

(7) After consideration of the recommendation of the State Government or on its own merits, the Regional Committee concerned shall decide that institution shall be inspected by a team of experts called visiting team with a view to assess the level of preparedness of the institution to commence the course. ...

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(9) The application and the report alongwith the video recordings or CDs of the visiting team shall be placed before the Regional Committee concerned for consideration and appropriate decision.

(10) The Regional Committee shall decide grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the National Council under the Act, rules or regulations, including, the norms and standards laid down for the relevant teacher education programmes.

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(13) 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 the norms of the Council within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

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(15) The institution concerned, after appointing the requisite faculty or staff as per the provisions of norms and standards of respective programmes, and after fulfilling the conditions under regulation 8, shall formally inform about such appointments to the Regional Committee concerned.

(16) 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 Receipts of Endowment Fund and Reserve Fund have been converted into a joint account and after receipt of the said details, the Regional Committee concerned shall issue a formal order of recognition which shall be notified as provided under the Act.

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12. Power to relax.--

(1) On the recommendations of the Central Government, or State Government, or Union territory Administration concerned, or in cases for removal of any hardship

caused in adhering to the provisions in these regulations, keeping in view the circumstances peculiar to the said Governments or Union territory, it shall be open to the Chairperson, for reasons to be recorded in writing, to relax any of the provisions of these regulations, in respect of any class or category of institutions, in the concerned State or Union Territory, or of Central Government institutions to such an extent and subject to such conditions, as may be specified in the order and decisions shall be brought to the notice of the Council in the next meeting. In exceptional cases and for reasons to be recorded in writing, the Chairperson, shall be competent to relax any of the provisions of these regulations and the related norms and standards subject to its ratification by the Council.”

(Emphasis supplied.)

Submissions of counsel for the parties

9. Mr. Sanjay Sharawat, learned counsel for the petitioners, submits that Regulations 7(4) and 7(5) vest ultimate authority to decide an application for recognition in the NCTE. The NCTE is required to consider the recommendations of the State Government in this regard, but the recommendations are not binding upon it. He submits that, after issuance of the LOI in terms of Regulation 7(13), the stage of faculty approval is required to be complied with. In this regard, Mr. Sharawat submits that the State Government is not entitled to rely upon its policy against the establishment of new institutions to impede the process after the LOI has been issued. He places reliance upon the judgment of the Supreme Court in *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.* (2006) 9 SCC 1, particularly paragraphs 13, 62 to 64, 68 and 74 in support of this contention. Mr. Sharawat also relied upon several orders of this

Court which, according to him, were passed in essentially similar circumstances relating to the State of Haryana. In particular, he drew my attention to the order of this Court dated 15.05.2015 in W.P.(C) 4472/2015 [*Modern College of Education vs. National Council for Teacher Education and Ors.*], and order dated 15.02.2018 in W.P.(C) 943/2018 [*Modern College of Education vs. National Council for Teacher Education & Ors.*], which also concerned approvals of the faculty lists in the face of the prohibition/bans imposed by the State Government.

10. Relying upon Regulation 12 of the Regulations, Mr. Sharawat's alternative contention is that the NCTE ought to have exercised its power to relax the requirement of approval by the State Government in the facts and circumstances of the case. He has drawn my attention to the minutes of the meeting of the general body of the NCTE dated 29.09.2020 to submit that the Chairperson of NCTE has exercised the power of relaxation in certain cases.

11. Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, submits that the policy decision of the State of Rajasthan to disallow establishment of new teacher training colleges and enhancement of the intake in teacher training colleges is on account of the abundance of trained teachers in the State, for whom employment is not available. Dr. Singhvi emphasises that the order of this Court dated 28.02.2020 requiring the NCTE to process the petitioner's application was passed in a writ petition to which the State was not a party. He submits that the record does not reveal as to whether the recommendations of the State were taken into account by

the NCTE while issuing the LOI. Further, Dr. Singhvi's submission is that the policy of the State Government is being applied uniformly to all institutions, and the policy itself is not under challenge in the present case. He finally submitted that the NOC dated 26.02.2019 issued by the State of Rajasthan was limited to the academic year 2019-20, and would not have application for any subsequent academic year.

12. Mr. Akshay Chandra, learned Standing Counsel for the NCTE, confined his submissions to the issue of relaxation under Regulation 12. He drew my attention to the minutes of the 335th meeting of the WRC held on 04.03.2021, in which the WRC has considered the issue. After noticing the directions of this Court in the present petitions and the provision of Regulation 12, the WRC observed as follows: -

“The WRC also observed that this is the case where the Affiliating body is not approving the Staff list of the institution, after issue of 7 (13) by NCTE under NCTE Regulations 2014, which is required as per clause 7(13), 7(14), 7(15) and 7(16) of NCTE Regulations 2014.

This is not a fit case for relaxation under clause 12 of NCTE Regulations 2014.

The WRC decided that the Advocate of NCTE may be informed accordingly, so as to apprise the Hon'ble Court. The copy of the letter should also be endorsed to Regulations Division, NCTE-HQrs.”

On the basis of this decision, Mr. Chandra submitted that the WRC has taken a call that the relaxation under Regulation 12 of the Regulations ought not to be granted. However, he also submitted that

a final call in the matter may be taken by the Chairperson of the NCTE.

Analysis

(a) Legality of the action of the State of Rajasthan

13. Turning first to the question of the petitioner's grievance against the State of Rajasthan, it is evident from a plain reading of the Regulations, particularly Regulation 7(5), that the State Government is entitled to furnish recommendations to the Regional Committee concerned with regard to an application for recognition. The recommendation would be taken into consideration by the Regional Committees, but is not binding upon it. A reading of the Regulations as a whole, particularly Regulations 5 and 7, make it clear that the decision-maker is the NCTE – the application for recognition is made to the concerned Regional Committee of the NCTE and is to be decided by it. The application must be accompanied by a NOC of the affiliating body – in the present case, the State of Rajasthan had indeed issued the required NOCs, albeit for the year 2019-20. While considering the applications, the NCTE seeks the comments and recommendations of the State concerned, but the role of the State Government is confined to providing its opinion. Indeed, in a situation where the State Government does not offer its opinion despite two time-bound reminders, Regulation 7(6) requires the NCTE to proceed without it. This also indicates that the role of the State is not intended to be accorded primacy in this process.

14. The judgment of the Supreme Court in *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra)*, cited by Mr. Sharawat, to my mind, puts this issue beyond the pale of doubt. The Court considered the provisions of the NCTE Act 1993, and held (in paragraphs 62 to 64) that the enactment is referable to the legislative competence of Parliament under Entry 66 of List-I. The observations of the Supreme Court in paragraphs 68 and 74 of the judgment is in the following terms: -

“68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of no-objection certificate by the State Government/Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.

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74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system “throughout the country”. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply “State policy” to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State

Government, therefore, was contrary to law and has rightly been set aside by the High Court.”

(Emphasis supplied.)

15. In this view of the matter, it was open to the NCTE to choose whether or not to follow the recommendations of the State of Rajasthan while deciding the question of grant of LOI to the petitioners. The NCTE decided to grant the LOI, and the petitioners are entitled to proceed further towards establishing their courses. The limited role of the State Government has been upheld by the Supreme Court in the aforesaid judgment. In fact, Dr. Singhvi did not argue that the recommendation of the State Government was binding upon the NCTE, but submitted that the record does not disclose whether the recommendations of the State Government were properly considered by the NCTE at the time the LOI was issued. The doubt expressed by Dr. Singhvi in this regard, in my view, would go to the validity of the LOI itself, which has not been challenged.

16. I also do not find merit in Dr. Singhvi’s submission that the State Government ought to have been made party to the writ petition which culminated in the order of this Court dated 28.02.2020. The role of the State Government is delineated in the Regulations – it is required to give its recommendation under Regulation 7(4) and 7(5) when called upon by the Regional Committee of the NCTE. At the time the writ petitions were instituted, the Regional Committee had not processed the petitioners’ applications, and the direction given by the Court was also only to process the application. The State was not, at that stage, a necessary party to the *lis*.

17. Seen in this context, the refusal of the State of Rajasthan to participate in the selection of faculty, as reflected in the communication dated 03.02.2021, is clearly in the teeth of the Regulations. Once the LOI is granted, the institution is required to meet the conditions set out therein. Regulation 7(13) mandates approval of the faculty list by the affiliating body. Regulations 7(15) and 7(16) also emphasise the importance of the approved faculty list. It is undisputed that, as far as the State of Rajasthan is concerned, the State mandates that an expert nominated by it, in fact, should participate in the selection committee. As the affiliating body, the State Government is bound by the Regulations, and cannot seek to override the decision taken by the Regional Committee. By refusing to nominate its expert, relying upon its policy decision, the State is, in effect, seeking to arrogate to itself the power to decide whether the petitioner establishes the institution or not. Under the Regulations, however, the State does not have the power to negate the decision of the NCTE in issuing the LOI to the petitioners. Such obduracy on the part of the State Government reflects a desire to do indirectly, what it is not permitted to do directly.

18. Mr. Sharawat has also drawn my attention to an order dated 15.05.2015 in *Modern College of Education (supra)*, wherein this Court was concerned with a decision taken by the State Council of Educational Research and Training in Haryana not to process the application for faculty approval on account of the policy decision of the State to withhold recognition for D.El.Ed. courses. The Court, in the said order, held as follows: -

“2. The grievance of the petitioner is that its application under the National Council of Teacher Education (Recognition of Norms and Procedures) Regulations, 2014 (hereafter 'NCTE Regulations, 2014') cannot be processed without respondent no.3, State Council of Educational Research & Training (hereafter 'SCERT'), approving the faculty of the petitioner. And, although the petitioner has submitted the faculty list to SCERT on 23.04.2015, SCERT has not responded to the same.

3. Mr Karunesh Bhardwaj, Sr. Spl. Incharge of Teacher Education, SCERT, Gurgaon, Haryana is present on behalf of SCERT. He states that SCERT has not approved the faculty list provided by the petitioner since there is a blanket that has been imposed by the State Government of Haryana for granting recognition for D.El.Ed. course. He further states that SCERT does not wish to file a counter affidavit and the petition may be disposed of by considering the aforesaid contention.

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5. By virtue of Regulation 7(13) of the NCTE Regulations, 2014, the institution seeking recognition has to submit the list of faculty (as approved by the affiliating body) to the Regional Committee. In the present case, SCERT is the affiliating body and is required to consider the list of faculty and either grant its approval or reject the same. In either case the affiliating body would have to examine the faculty list and take a decision. Thus, SCERT cannot withhold its decision on the ground that general directions issued by the State Government proscribe establishment of Institutions for conducting D.El.Ed course. In view of the express language of the NCTE Regulations, 2014, I am of the view that SCERT must take a decision with regard to approval of the faculty list as submitted by the petitioner.

6. It is also not disputed that the aforesaid controversy is covered by the decisions of a Coordinate Bench of this

Court in K. C. College of Education v. Union of India and Ors.: W.P.(C) 6221/2010, decided on 20.09.2010 and Delhi College of Education v. Guru Gobind Singh Indraprastha University and Ors.: W.P.(C) 782/2014, decided on 07.03.2014.

7. In the circumstances, SCERT is directed to examine the list of faculty and take an appropriate decision thereon. SCERT shall communicate the decision to the petitioner within 10 days from today.”

(Emphasis supplied.)

19. The same view was taken by this Court in an order dated 15.02.2018 in W.P.(C) 943/2018, wherein the Court directed the affiliating body to consider the request for approval, notwithstanding the policy decision of the State of Haryana that no further courses should be recognized in the State.

20. The position in the present petitions is, in my view, on all fours with the aforesaid orders of this Court.

(b) Applicability of Regulation 12

21. Turning now to the effect of Regulation 12 of the Regulations, it may first be noticed that the power under Regulation 12 is to be exercised by the Chairperson. Despite the order dated 25.02.2021 passed in these petitions, the Chairperson has not rendered any decision, one way or the other, on the effect of Regulation 12. What has been done instead is for the WRC to decide that the circumstances do not require exercise of the power of relaxation. The role of the WRC with regard to Regulation 12 could, at best, be recommendatory, and the final decision in this regard would have to be taken by the Chairperson of the NCTE, which admittedly has not yet been taken.

22. The extracts of the WRC decision quoted above are also sketchy. The observation that the affiliating body is not approving the staff list, and therefore not a fit case for relaxation, really begs the question. The provision of Regulation 12 is applicable *inter alia* in order to alleviate hardship caused in a particular situation. It specifically refers to circumstances peculiar to a particular State or Union Territory, and empowers the Chairperson to relax the provisions of the Regulations to the extent and subject to conditions as may be specified in the order. The NCTE is faced here with a situation when a particular State has taken a view which clearly impedes the implementation of the Regulations. The decision taken by the WRC on this issue, whatever its value, does not reflect an adequate consideration of the matter in the light of the regulatory regime.

Conclusion

23. For the reasons aforesaid, I am of the view that the petitioners' right under the LOI to commence its course, subject to the terms and conditions laid down by the NCTE, has been unnecessarily and illegally impeded by the actions of the State of Rajasthan, and the failure of the NCTE to consider the case under Regulation 12 of the Regulations.

24. In these circumstances, the petitions are disposed of with the following directions: -

a. The Directorate of Elementary Education, Government of Rajasthan is directed to nominate an expert to participate in the

selection committee of the faculty for the petitioner-institutions within a period of one week from today.

b. In the event the State of Rajasthan nominates its expert within the aforesaid period, the expert and the State of Rajasthan will cooperate in the expeditious conduct of the selection process, so that the process of faculty approval is concluded within a period of four weeks thereafter.

c. In the event the State of Rajasthan does not nominate an expert in terms of the aforesaid direction, the matter be placed before the Chairperson of the NCTE in terms of Regulation 12 of the Regulations. The participation of the representative of the State of Rajasthan in the Selection Committee and the requirement for the approval of the faculty list by the State of Rajasthan will be waived in the facts and circumstances of the case. The Chairperson will take a decision in terms thereof and may impose such conditions as he/she thinks fit, including nomination of an expert by the NCTE itself to participate in the selection process. The Chairperson's decision be taken within two weeks from today. The faculty list will then be formulated in consonance with the directions of the Chairperson under Regulation 12. The process will be completed within four weeks thereafter.

d. The cut-off date for approval for institutions for the academic year 2021-22 has already passed. The aforesaid directions will therefore enure to the benefit of the petitioners for establishment of their courses for the year 2022-23. However, Mr. Sharawat states that proceedings are pending before the Supreme Court for extension of

the last date for approval for the year 2021-22. In the event the process of faculty approval is concluded in accordance with the aforesaid directions within the extended time, if any, granted by the Supreme Court, the NCTE will consider the petitioners' case for approval for the year 2021-22 as well. However, this will be strictly subject to the extension of the time period granted by the Supreme Court, if any.

25. The writ petitions are allowed in the aforesaid terms. The State of Rajasthan will pay costs of ₹25,000/- to each of the petitioners.

PRATEEK JALAN, J.

APRIL 12, 2021

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