

\$~12-13 (2021 Cause List)

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

Date of Decision: 16th July, 2021

+ W.P.(C) 2069/2021

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. Naveen R. Nath, Senior Advocate with Ms. Lalit Mohin Bhat and Mr. Anuj Kapoor, Advocates for the Respondents/Review Applicants.

Dr. Manish Singhvi, Sr. Advocate with Mr. D.K. Devesh, Advocate for R-3/State of Rajasthan.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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

CM APPL. 20828/2021 (delay) in REVIEW PET. 101/2021 in W.P.(C) 2069/2021

CM APPL. 20733/2021 (delay) in REVIEW PET. 100/2021 in W.P.(C) 2395/2021

For the reasons stated in the applications seeking condonation of delay, the delay of 52 days in filing the review petitions is condoned. The applications stand disposed of.

CM APPL. 20829/2021 (exemption) in REVIEW PET. 101/2021 in W.P.(C) 2069/2021

CM APPL. 20734/2021 (exemption) in REVIEW PET. 100/2021 in W.P.(C) 2395/2021

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

REVIEW PET. 101/2021 in W.P.(C) 2069/2021

REVIEW PET. 100/2021 in W.P.(C) 2395/2021

1. These petitions have been filed by the National Council for Teacher Education [“NCTE”], seeking review of a judgment dated 12.04.2021 in the captioned writ petitions, to the extent that the Chairperson of the NCTE was directed to exercise the powers conferred under Regulation 12¹ of the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2014 [“the

¹ “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.”

Regulations”].

2. The captioned writ petitions were filed by institutions in whose favour the NCTE had issued Letters of Intent [“LOI”] under Regulation 7 of the Regulations. The petitioners were required under the conditions of the LOI to obtain approval of their faculty lists from the affiliating body, i.e., the State of Rajasthan. The State of Rajasthan did not cooperate in this process in view of a government policy against the establishment of Diploma in Elementary Education [“D.El.Ed.”] courses in the State.

3. In the judgment under review, this Court noticed the judgment of the Supreme Court in *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*², and passed the following directions:

“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

² (2006) 9 SCC 1

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.

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The NCTE seeks review, particularly, of direction (c) above.

4. Mr. Naveen R. Nath, learned Senior Counsel for the NCTE, submits that the judgment under review suffers from an error apparent in the interpretation placed upon Regulation 12. He argues that, on a proper interpretation, Regulation 12 is concerned with situations in which a recommendation is made by the Central Government, State Government or Union Territory administration to relax the provisions of the Regulations. He further submits that the “hardship” referred to in Regulation 12 must be in the nature of exceptional circumstances such as pandemics, floods or other natural events which render adherence to the Regulations impossible. Mr. Nath contends that Regulation 12 contemplates relaxation of the provisions of the Regulations only in respect of a class or category of institutions, and cannot enure to the benefit of individual institutions which may be

aggrieved by any action or inaction on the part of a State Government. He also refers to the last sentence of Regulation 12 to submit that the “exceptional cases” referred to therein must also be read *ejusdem generis* with the power conferred in the earlier part of the Regulation.

5. Mr. Nath further submits that the judgment under review inserts the NCTE into the process of affiliation of institutions after the grant of an LOI, which is beyond the scope of the NCTE’s role under the Regulations, and falls within the domain of the affiliating body. According to him, exercise of the jurisdiction conferred by the judgment under the review, would embroil the NCTE in the exercise of affiliation all over the country, leading to administrative and logistical difficulties. Mr. Nath cites the decision of the Supreme Court in *Dr. B.R. Ambedkar Medical College and Others vs. Union of India and Another*³ in support of his contentions.

6. Mr. Sanjay Sharawat, learned counsel for the writ petitioners, opposes the review petitions on the ground that the judgment under review suffers from no error apparent on the face of the record. He submits that the contentions of the NCTE do not fall within the review jurisdiction of the Court. Mr. Sharawat draws my attention to the orders passed by this Court in a similar situation⁴ to submit that the NCTE was directed to consider the institution’s applications for grant of recognition, disregarding the lack of faculty approval by the affiliating body. According to Mr. Sharawat, the directions given in the aforementioned orders, which were accepted by the NCTE, went

³ (2013) 10 SCC 280

⁴ *Modern College of Education vs. National Council for Teacher Education and Anr.* [Orders dated 15.05.2015 and 29.05.2015, in W.P.(C) 4472/2015 and W.P.(C) 5860/2015 respectively]

much further than the judgment under the review, wherein an option has been given to the NCTE to provide alternative mechanisms for the approval of the petitioners' faculty.

7. Having heard learned counsel for the parties, I am of the view that the NCTE has failed to make out any case for review of the judgment dated 12.04.2021. I am unable to subscribe to Mr. Nath's narrow interpretation of Regulation 12 for the following reasons:-

- (a) On a plain reading, Regulation 12 contemplates invocation of the power under various situations, including where a hardship is caused in view of circumstances peculiar to a particular State government or Union Territory. The recommendations of the Central Government, State Government or Union Territory administration are not required in cases which fall in this category, as the clauses in the Regulation are disjunctive.
- (b) In the present cases, the hardship in adhering to the Regulations was caused by the policy decision of the State of Rajasthan. In the judgment under review, following the decision of the Supreme Court in *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*⁵, it was held that this was in excess of the power conferred upon the affiliating body under the Regulations. The circumstances caused by a policy decision of a particular State gives rise to a hardship peculiar to a particular State Government, within the meaning of Regulation 12.
- (c) Similarly, Mr. Nath's submission that the judgment under review leads to application of Regulation 12 for individual

⁵ Supra (Note 2)

institutions, and not a class or category of institutions, is misconceived. The directions flow out of a policy decision applicable to all institutions in the concerned State, and not just to the petitioners. Although learned counsel for the parties have also addressed submissions as to whether a single institution can form a class or category within the meaning of Regulation 12, it is unnecessary to enter into that controversy in this case.

- (d) Although, in the review petitions, the aspects of cooperative federalism and delineation of the powers of the State and the central regulatory body have been emphasised, the upshot of the NCTE's submissions would, in fact, be to condone the inaction of an intransigent State, quite contrary to the demarcation of the regulatory power in the Regulations itself.
- (e) Mr. Nath's final contention was with reference to Regulation 9 of the Regulations and Rule 5.4 of Appendix 2 thereof, which provide that the selection procedure for faculty would be in accordance with the policy of the State Government. While this indicates the primary role of the State Government or the affiliating body in staff selection, it does not denude Regulation 12 of the effect which it would have in circumstances where the State Government refuses to act according to the Regulations.
- (f) Regulation 12 has been incorporated in the Regulations to address a variety of situations where hardship may be caused in their implementation, and does not admit of the exceedingly restrictive interpretation placed by Mr. Nath. It is surprising that the NCTE should oppose the invocation of a Regulation which

would further the implementation of the LOI granted by it, in which the State Government by its inaction places an unnecessary and illegal obstacle. I do not read the Regulation to require such a restrictive interpretation.

8. The judgment of the Supreme Court in *Dr. B.R. Ambedkar Medical College*⁶ cited by Mr. Nath is inapplicable to the present case. Unlike the present case, the challenge before the Supreme Court was to the *vires* of a notification confining the benefits of certain Regulations to government medical colleges only. The Central Government was empowered to modify the time schedule laid down in the said Regulations in favour of a class of institutions. The Court held that this power could be exercised in favour of government institutions to the exclusion of private medical institutions. The said judgment does not indicate that, even under a Regulation as such Regulation 12 [which is, admittedly, not in similar terms as the Regulation before the Supreme Court], the power can be exercised only in terms of the classifications laid down by the Court. The Regulation here is in different terms. The regulatory regimes for teacher education and medical education stand on different footings, and in any event, the judgment does not, in my view, go nearly as far as Mr. Nath suggests.

9. It may be noted that the directions in the judgment under review were passed after giving two opportunities, by orders dated 25.02.2021 and 12.03.2021, for the Chairperson of the NCTE to take a decision on the invocation of Regulation 12. No such decision was

⁶ Supra (Note 3)

taken, and what was placed before the Court was a decision of the concerned regional committee itself, which was found to be unsatisfactory and inadequate for the purpose. Suffice it to say that the case sought to be made out in the review petitions was not advanced at the hearing of the writ petitions.

10. Although Mr. Sharawat has relied upon the orders of this Court in W.P.(C) 4472/2015 and W.P.(C) 5860/2015, in the view that I have taken of the interpretation of Regulation 12, it is not necessary to consider whether the power exercised by this Court therein was referable to Regulation 12 or to the powers of this Court under Article 226 of the Constitution itself.

11. Mr. Nath has not referred to any binding judgment or statutory provision which has escaped the attention of the Court in the judgment under review, but has sought to re-interpret Regulation 12. As indicated above, the interpretation now advanced was not suggested by the NCTE at the hearing of the writ petitions. This is really an attempt to revisit the judgment under review on grounds which do not fall within the review jurisdiction of the Court.

12. For the reasons aforesaid, the review petitions are without merit, and are hereby dismissed.

PRATEEK JALAN, J

JULY 16, 2021

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