

\$~1, 2, 18, 20, 23 and 46 (2021 Cause List)

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

Date of Decision 12th August, 2021

+ W.P.(C) 6392/2021

SHRI RAM COLLEGE OF EDUCATION Petitioner

Through: **Mr. Sanjay Sharawat,**
Advocate.

versus

**NATIONAL COUNCIL FOR TEACHER EDUCATION &
ORS.** Respondents

Through: **Mr. Shivam Singh, Standing
Counsel with Mr. Jaideep
Khanna, Advocates for R-1 and
R-2.**

**Mr. Anil Kumar Kaushik, AAG
and Mr. Deepak Thukral, DAG
for R-3 and R-4.**

2.

+ W.P.(C) 6702/2021

SSD COLLEGE OF EDUCATION Petitioner

Through: **Mr. Sanjay Sharawat,**
Advocate.

versus

**NATIONAL COUNCIL FOR TEACHER EDUCATION &
ORS.** Respondents

Through: **Mr. Shivam Singh, Standing
Counsel with Mr. Jaideep
Khanna, Advocates for R-1 and
R-2.**

**Mr. Anil Kumar Kaushik, AAG
and Mr. Deepak Thukral, DAG
for R-3 and R-4.**

18.

+ **W.P.(C) 5010/2021**

SMC COLLEGE OF EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION &
ORS.

..... Respondents

Through: Mr. Shivam Singh, Standing
Counsel with Mr. Jaideep
Khanna, Advocates for R-1 and
R-2.

Mr. Anil Kumar Kaushik, AAG
and Mr. Deepak Thukral, DAG
for R-3 and R-4.

20.

+ **W.P.(C) 5062/2021**

VIDYA DEVI COLLEGE OF EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION &
ORS.

..... Respondents

Through: Mr. Shivam Singh, Standing
Counsel with Mr. Jaideep
Khanna, Advocate.

Mr. Anil Kumar Kaushik, AAG
and Mr. Deepak Thukral, DAG
for R-3 and R-4.

23.

+ **W.P.(C) 5639/2021**

GURU DRONACHARYA COLLEGE OF EDUCATION..... Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION &
ORS. Respondents

Through: Mr. Kartika Sharma, Advocate
for R-1.
Mr. Anil Kumar Kaushik, AAG
and Mr. Deepak Thukral, DAG
for R-3 and R-4.

46.

+ **W.P.(C) 8293/2021**

B.R. COLLEGE OF EDUCATION Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION &
ORS. Respondents

Through: Mr. Kartika Sharma, Advocate
for R-1.
Mr. Anil Kumar Kaushik, AAG
and Mr. Deepak Thukral, DAG
for R-3 and R-4.

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.

W.P.(C) 8293/2021 and CM APPL. 25714/2021 (for stay)

1. Issue notice. Ms. Kartika Sharma, learned counsel, accepts notice for the respondent nos. 1 and 2. Mr. Anil Kaushik, learned Additional Advocate General for the State of Haryana, accepts notice for the respondent nos. 3 and 4. In view of the fact that the issues involved in this writ petition are identical to the issues involved in five other writ petitions which are listed today, the petition is taken up for disposal with the consent of learned counsel for the parties.

W.P.(C) 6392/2021 & CM APPL. 20067/2021 (for stay)

W.P.(C) 6702/2021 & CM APPL. 21074/2021 (for stay)

W.P.(C) 5010/2021 & CM APPL. 15348/2021 (for stay)

W.P.(C) 5062/2021 & CM APPL. 15500/2021 (for stay)

W.P.(C) 5639/2021 & CM APPL. 17573/2021 (for stay)

W.P.(C) 8293/2021 & CM APPL. 25714/2021 (for stay)

1. These six petitions concern applications submitted by the petitioners to the Northern Regional Committee [“NRC”] of the National Council for Teacher Education [“NCTE”] for recognition of their D.El.Ed. courses. All the institutions are situated in the State of Haryana and the petitions arise in substantially similar circumstances.

Facts

2. The facts, as noted from W.P.(C) No. 6392/2021, are as follows:

- (a) The petitioner submitted its application for recognition of the course to the NRC on 29.12.2012.
- (b) The application was returned on 11.09.2013 on account of a ban imposed by the State of Haryana on the establishment of new colleges. W.P.(C) No. 7491/2013, filed by the petitioner, was allowed by this Court and the matter was remanded to the NCTE for fresh consideration by an order dated 24.11.2014.
- (c) The NRC rejected the application once again on the same ground by an order dated 30.12.2015, against which the petitioner's appeal was allowed by the Appellate Committee of the NCTE vide order dated 18.04.2016. The matter was once again remanded to the NRC.
- (d) The NRC, by an order dated 16.02.2017, again rejected the application on the same ground. This Court was moved by way of W.P.(C) No. 59/2018, and by an order dated 29.01.2018 the matter was remanded once again, on the submission on behalf of the NCTE that the matter would be reconsidered irrespective of the State ban. The application was to be decided by 03.03.2018, in accordance with the schedule for the academic year 2018-19.
- (e) The NRC again rejected the petitioner's application by an order dated 21.05.2018, this time on the ground that the petitioner had insufficient land as on the date of the application. This Court,

by an order dated 25.05.2018 in W.P.(C) No. 5751/2018, directed the NCTE to consider the subsequent acquisition of land by the petitioner.

- (f) Pursuant to the aforesaid order, an inspection was conducted and a Letter of Intent [“LOI”] was issued on 12.09.2018. The petitioner submitted its faculty list to its affiliating body, being the respondent no. 3-State Council of Educational Research and Training [“SCERT”], but it was not approved. This led to the petitioner’s fourth writ petition [W.P.(C) No. 10385/2018], in which by an order dated 29.10.2018 the SCERT was directed to decide the application within a period of four weeks.
- (g) The SCERT approved the faculty list on 19.12.2018.
- (h) On 27.02.2019, however, a show cause notice was issued by the NRC, which was stayed by an order dated 08.03.2019 passed by this Court in W.P.(C) No. 2301/2019. The writ petition was ultimately allowed by an order dated 06.11.2019 with a direction upon the NRC to adjudicate the show cause notice within ten weeks, in accordance with the procedure laid down in the said order.
- (i) The NRC subsequently issued two further show cause notices dated 05.02.2021 and 06.04.2021, seeking certain further compliances, including a current faculty list approved and signed by the SCERT.
- (j) By a communication dated 10.03.2021, the petitioner requested the SCERT to approve its current faculty list. This request has been rejected by the impugned communication dated

27.04.2021, citing a ban imposed upon opening of new colleges. Similar rejections were issued vide communications dated 15.04.2021 in W.P.(C) Nos. 5010/2021 and 5062/2021.

3. The factual narratives in WP(C) Nos. 5010/2021, 5062/2021 and 8293/2021 are substantially similar, particularly with regard to the issuance of LOIs in September, 2018, approval of the faculty lists by the SCERT in November, 2018, and the NRC imposing the requirement of a current approval of the faculty lists. In W.P.(C) No. 8293/2021, the petitioner claims to have approached the SCERT with an application for approval of the current faculty list, but states that the application has not been accepted by the SCERT at all.

4. In W.P.(C) Nos. 6702/2021 and 5639/2021, the petitioners' applications were made in the year 2012 but LOIs have been issued on 02.03.2021 and 06.04.2021 respectively. Here, the faculty lists have been submitted to the SCERT for the first time pursuant to the aforesaid LOIs, but the SCERT, by its communications dated 27.04.2021 and 11.06.2021 [in W.P.(C) No. 6702/2021] and 25.05.2021 [in W.P.(C) No. 5639/2021], has rejected the requests on the ground of the ban imposed by the State of Haryana.

Reliefs sought

5. In these circumstances, the petitioner in W.P.(C) No. 6392/2021 has sought 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 requiring the Petitioner to obtain approval of the faculty list from Respondent No.3 as required under clause 7 [13], [15] & [16] and

consequently direct the Respondent No.2 to accept the unapproved faculty list sought to be submitted by the Petitioner and grant formal recognition under clause 7 [16] for D.El.Ed course from academic session 2021-22; and

[b] In the alternative and without prejudice to the prayer [a] issue a writ of certiorari and quash the show cause notice dated 06.04.2021 issued by the Respondent No.2 and consequently direct the Respondent No.2 to grant recognition to the Petitioner on the basis of the approved faculty lists dated 19.12.2018 and 27.02.2019; and

[c] In the alternative and without prejudice to the prayer [a] and [b] issue a writ of certiorari and quash the communication dated 27.04.2021 issued by the Respondent No.3 and consequently direct the Respondent No.3 to grant approval to the faculty list submitted by the 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; and

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

6. Although there are some differences in the framing of the reliefs in some of these writ petitions, Mr. Sanjay Sharawat, learned counsel for the petitioners, confines the relief sought in all the petitions to a direction upon the SCERT to process the petitioners’ requests for approval of the current faculty lists so that the NCTE may, in turn, process the petitioners’ applications.

7. It may be noted that prayer [a] of W.P.(C) No. 6392/2021, and similar prayers in some of the other petitions, concern waiver by the NCTE of the condition of approval of the faculty lists by the SCERT. These petitions seek exercise of powers under Regulation 12 of the NCTE (Recognition Norms & Procedure) Regulations, 2014 [“the Regulations”], which has been considered in the judgment of this Court dated 12.04.2021 in W.P.(C) Nos. 2069/2021 and 2395/2021

[*Om College of Education vs. National Council for Teacher Education and Ors.*]. However, the NCTE has carried the judgment in appeal to the Division Bench by way of LPA Nos. 238/2021 and 240/2021, in which notice has been issued on 11.08.2021. In view of the fact that Mr. Sharawat has confined the relief sought in these petitions to a direction upon the SCERT to process the petitioners' applications for approval of the faculty lists, the issue pending before the Division Bench does not arise in the present writ petitions. The petitions have been heard on the question whether the other relief sought can be granted to the petitioners, as Mr. Sharawat has specifically given up the relief in terms of Regulation 12 of the Regulations.

8. The relief sought in prayer [b] extracted above seeks processing of the petitioners' applications for recognition on the basis of faculty lists approved in 2018-19. This relief is also not pressed in all these petitions.

Analysis

9. I have heard Mr. Sharawat for the petitioners, Mr. Kaushik for the SCERT, and Mr. Shivam Singh, learned counsel for the NCTE.

10. The issue to be considered is whether the decision of the State authorities declining to process the petitioners' applications for approval of the faculty lists on the ground of the State ban is justified. In this connection, the provisions of Regulations 5 and 7 of the Regulations are relevant:-

"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:

(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.

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.

(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.

(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.

(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.

(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.

*****”

11. The Supreme Court, in its decision in *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors.*¹, has considered the delineation of power between the NCTE and the State authorities, in the context of the provisions of the NCTE Act, 1993 and the NCTE Regulations, 1995. The background in which the appeal arose has been set out in paragraphs 13 and 15 thus:

“13. The High Court, therefore, was called upon to consider the role played by the State Government in the process of consideration of application by the institutions seeking recommendation of opening BEd colleges by NCTE in the light of the provisions of the Act in juxtaposition to the extent of trained manpower required by the State and to take policy

¹ (2006) 9 SCC 1

decision on the basis of output of teachers by such colleges. The Court was also called upon to consider whether in the absence of any material being made available by the State Government to NCTE the latter can process the application and take a decision contrary to the decision of the State Government. A question had also arisen as to whether the State Government can refuse permission to an institution which had been granted permission to start BEd college by NCTE under the Act and whether policy decision of the State Government not to grant NOC would bind NCTE in the light of the provisions of the Act.

15. The High Court held that in the light of the relevant provisions of the Act as interpreted by this Court in various decisions, the appropriate authority to take decision regarding opening of new colleges was NCTE and neither the State Government nor the University can act contrary to the decision of NCTE. According to the High Court, under the Act, the only authority which could take a decision regarding opening of new BEd college or increase in intake capacity was NCTE and such decision cannot be ignored either by the State authorities or by the University. So far as the function of the State Government was concerned, the High Court observed that it was in the nature of supply of necessary data and materials so as to enable NCTE to undertake the process of coming to an appropriate decision but the State had no power to decide that it had taken a policy decision not to grant permission to open new BEd college for a particular period. Such decision was not in accordance with the provisions of the Act nor in consonance with law laid down by this Court. Regarding role of the University, the High Court held that it was incumbent on the University to take an appropriate decision and consequential action on the basis of the decision of NCTE and the provisions of the University Act required the University to implement such decision. It was, therefore, not open to the University to take any action overlooking the decision of NCTE and relying on a decision of the State Government. In the light of the above findings the High Court allowed the petition filed by the institutions and dismissed

the writ petition of the State Government.”

12. After considering the relevant authorities on the point, the Court held as follows:

“63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on “policy consideration”.

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on “policy consideration”. As already observed earlier, policy consideration was negated by this Court in Thirumuruga Kirupananda Trust [(1996) 3 SCC 15 : JT (1996) 2 SC 692] as also in Jaya Gokul Educational Trust [(2000) 5 SCC 231 : JT (2000) 5 SC 118].

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.

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 BEd 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.”

13. Having regard to the provisions of Regulations 5 and 7 and the judgment of the Supreme Court, the position which emerges is that the State Government is required to give its recommendations to the concerned Regional Committee of the NCTE, with regard to an application for recognition. The NCTE, however, is authorized to take a decision one way or the other and is not bound by the recommendations of the State Government. The role of the State Government is confined to this stage of the proceedings, prior to the

grant of the LOI. Once the LOI is issued, the State Government cannot proceed on the basis of a ban imposed by it.

14. In view of the above, the impugned decisions of the SCERT are set aside, and the SCERT is directed to proceed with the petitioners' applications for approval of their current faculty lists, without reference to the ban imposed by the State of Haryana. The SCERT is directed to complete this process within two weeks from today. The NRC will, thereafter, proceed with the petitioners' applications for recognition of the courses and dispose of the same within two weeks thereafter.

15. The time for grant of recognition for the year 2021-22 has already lapsed. The recognition, if granted by the NRC, would, therefore enure to the petitioners' benefit for the academic year 2022-23. However, Mr. Sharawat submits that, in the event the recognition is granted, the petitioners will approach the Supreme Court for relaxation of the schedule laid down in *Maa Vaishno Devi Mahila Mahavidyalaya vs. State of UP & Ors.*². Needless to say, if the Supreme Court grants relief to the petitioners for the year 2021-22, the parties will be subject to that decision.

16. The petitions, alongwith pending applications, are disposed of with these directions.

PRATEEK JALAN, J.

AUGUST 12, 2021

'vp'

² (2013) 2 SCC 617