

(2011) 07 MAD CK 0360

In the Madras High Court

Case No : Writ Petition No. 16535 of 2011 and M.P. No's. 1 and 2 of 2011

Arunachalam Saraswathi Charitable Trust

APPELLANT

Vs

The National Council for Teacher Education, Southern
Regional Committee and The Director of Teacher Education,
Research and Training

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 17, 18

Citation : (2011) 07 MAD CK 0360

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : V. Selvaraj, for Robert Bruce, for the Appellant; E. Sampathkumar, Spl. G.P. for Respondent 2 and K. Ramakrishna Reddy, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—By consent of all parties, both the writ petitions are taken up for final disposal.

2. The prayer in the writ petition is to quash the order passed by the first Respondent dated 27.6.2011 withdrawing the recognition granted to the Teacher Training Institute run by the Petitioner Trust under the name and style of "A.S. Teacher Training Institute, Ellis Nagar, Madurai".

3. The case of the Petitioner as could be seen from the affidavit in support of the writ petition are as follows:

(a) The Petitioner Trust established the above said Teacher Training Institute and a B. Ed College in the said name. The first Respondent conducted inspection and granted recognition for the D.T. Ed course by proceedings in FSRO/NCTE/D.T. Ed/2006-2007/10076 dated 9.1.2007 with an intake of 50 students without mentioning any specific period of recognition. The management also obtained

staff approval from the second Respondent for conducting the said course.

(b) The Petitioner Trust has purchased a land and started construction of the building as per the norms of the Respondents as D.T. Ed course is now conducted in a rental building. After the commencement of the construction, the husband of the founder Trustee viz. Arunachalam was hospitalized and subsequently he died. Thereafter the Founder Trustee namely Mrs. Saraswathi also died. Hence the completion of the construction work got delayed.

(c) On 15.4.2011 the first Respondent issued a showcase notice stating that the institution is functioning in a leased roofing and three years period given to shift the School to its own premises has already lapsed; that the management of the institution has not informed about the shifting of the institution to its own building; that adequate teaching staff is not available and thereby the management has violated the regulations, norms and standards of the NCTE issued under the NCTE Act, 1993.

(d) The Petitioner sent a reply on 9.5.2011 and submitted that when the Trust started the institution it was in possession of a leased land and hence the Trust decided to buy a land in its name very near to the town and the land has been registered in the name of the Trust; that the Trust has initiated the process of availing loan from the bank and the loan amount was also sanctioned; that the Trust had started construction of the building at Madurai and the proposed construction is for 30,000 sq.ft. to accommodate the D.T. Ed and B. Ed institution students in the same premises as per NCTE norms; that during the process of construction the husband of the founder Trustee viz., Arunachalam was hospitalized and subsequently he died and the Founder Trustee also subsequently died within a period of one year, which caused the delay in completion of the construction; that in another six months time the construction will be completed and time may be given for shifting the institution to its own premises.

(e) According to the Petitioner even in the application submitted for recognition, the Trust mentioned that both D.T. Ed and B. Ed courses are conducted in the same premises and after verifying the same only recognition was granted. The proposed construction of 30,000 sq.ft is for D.T. Ed and B. Ed institutions, which will be in compliance with the NCTE norms. The institution is having adequate eligible and qualified support staff members for each course. If any staff member leaves the institution an alternate qualified staff is recruited and the second Respondent also approved the staff list. The Petitioner Trust is having an amount of Rs. 5 lakhs in the nature of fixed deposit and Rs. 3 lakhs as reserve fund to show its bonafide to complete the construction. Ultimately the Petitioner Trust requested to grant further time for shifting the institution up to December, 2011.

(f) The impugned order was passed on 27.6.2011 by the first Respondent merely referring the reply without discussing anything about the contents in the reply, stating that in its 205th meeting held on 18th and 19th May, 2011, the reply was found not convincing and hence the Committee decides to withdraw the

recognition for D.T. Ed course with effect from 2012-2013 to enable the present batch of students to complete the course and that the institution is debarred from making any further admission subsequent to the issue of order.

(g) According to the Petitioner the said order was issued on 27.6.2011 and the Plus two results having been declared in May, 2011, the first year admission to D.T. Ed course in the management quota was already completed by the management before the impugned order was passed on 27.6.2011. The non-consideration of the reply stating genuine reasons seeking time as well as appointment of adequate staff members and the fact of giving permission to conduct the course of D.T. Ed and B. Ed in the same premises, are not considered, which are all relevant factors and therefore the impugned order is vitiated and the same is liable to be set aside.

4. The first Respondent filed counter affidavit opposing the writ petition and stating that as per the then existing norms recognition can be granted in respect of temporary premises on condition that institution shall shift to the permanent premises of their own within three years from the date of granting recognition. On 30.11.2006 the said Appendix 5 was changed deleting the part of temporary premises and pre-condition to have fully completed permanent building on the Institution's own land at the time of inspection itself. The Petitioner's recognition application was dated 2.1.2006 and all formalities were completed and a decision was taken to grant recognition based on the rule prevailed prior to 30.11.2006 and consequently recognition order was communicated to the Petitioner Trust on 9.1.2007. The order of recognition is conditional stating that within three years the institution shall shift to its own premises and if any of the provisions of the NCTE Act, 1993, rules, regulations, and orders are violated the Regional Committee is entitled to withdraw the recognition. The period of three years granted came to an end on 8.1.2010 and no report from the Petitioner for shifting was received and therefore show cause notice was issued on 15.4.2011 for which a reply was received on 9.5.2011 stating that the building was not completed and requesting six months further time. The land having been purchased on 18.3.2010 i.e., after the period of three years as per the sale deed produced, the Petitioner's request was rejected and there is no illegality in the impugned order and the order was passed in accordance with the statutory provisions.

5. The learned Counsel appearing for the Petitioner submitted that the show cause notice itself is illegal as the Petitioner has already admitted qualified teaching staff for D.T. Ed course and the competent authority, the second Respondent has also approved the teaching staff appointed to all subjects viz., for Tamil by order dated 9.3.2007; Principal by order dated 19.11.2009; Lecturer in Science by order dated 19.11.2010; and the Lecturers in English, Social Science and Mathematics by order dated 25.3.2011. Therefore the notice issued stating that the Petitioner's D.T. Ed institution has no adequate teaching staff as per NCTE norms is patently illegal. The learned Counsel further submitted that D.T. Ed course and B. Ed course were permitted to be commenced in the same

premises based on the application submitted for recognition, and due to the death of the husband of the founder Trustee and the subsequent death of the Founder Trustee herself, the construction of the building could not be completed even though construction has already commenced. The said aspects even though were pointed out in the explanation for the show cause notice, the first Respondent has not considered anything, except referring the reply dated 9.5.2011 in the impugned order and the impugned order having been issued after the commencement of the academic year 2011-2012, prohibiting admission for the first year is illegal.

6. The learned Counsel for the Respondents on the other hand justified the impugned order stating that the Petitioner has not complied with the conditional order of recognition by shifting the institution to its own building within three years and therefore the order is perfectly in order.

7. I have considered the rival submissions made by the respective learned Counsels.

8. The Petitioner Teacher Training Institute was granted recognition u/s 14 of the NCTE Act, 1993. The second Respondent granted staff approval to all subjects. In the recognition order, a condition was imposed to shift the institute to its own building within three years. It is not in dispute that the Petitioner Trust purchased lands in their own name and commenced construction of the building by raising pillars and proof to that effect was also furnished before the first Respondent and informed that due to the illness of the husband of the Founder Trustee and his subsequent death and the death of the Founder Trustee also, construction couldn't be proceeded.

9. In the reply to the show cause notice the Petitioner has furnished the details regarding availability of funds to complete the construction and prayed for granting time till December, 2011 to shift the institution. The said reply was submitted on 9.5.2011, which was received by the first Respondent on 11.5.2011. The first Respondent conducted its 205th meeting on 18th and 19th of May, 2011 and merely concluded that the reply submitted by the Petitioner is not convincing and unsatisfactory, without discussing or going into the details mentioned therein, particularly regarding the illness of the husband of the Founder Trustee and his death as well as the death of the Founder Trustee herself and the approval of the staff granted by the second Respondent. The said facts having not been considered and discussed, the relevant factors are not taken into consideration by the first Respondent in its 205th meeting and a decision was taken to withdraw the recognition u/s 17 of the NCTE Act, 1993, and the order was also communicated to the Petitioner only on 27.6.2011.

10. Section 17 of the NCTE Act, 1993, empowers the first Respondent to withdraw recognition on any valid grounds and reasons for withdrawal should be recorded in writing and before withdrawing recognition, reasonable opportunity of making representation against the proposed order has to be given to the

recognized institution. The order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order. From the above statutory provision it is evident that a reasonable opportunity of making representation is made as a condition precedent to pass orders of withdrawal of recognition. The reasonable opportunity provided under the statutory provision should be given due importance by the first Respondent. It shall not be treated as an empty formality.

11. The Petitioner has submitted explanation as stated supra giving reasons as to why the buildings couldn't be completed and the reason as to why it was not shifted to the own building in own land. The said reasons stated has not been discussed or considered in detail by the second Respondent while taking a decision and the order merely says that the explanation submitted is not convincing and unsatisfactory. The said action of the second Respondent is in violation of the principles of natural justice and fair play.

12. A statutory authority while passing order, shall consider relevant facts. Failure to do the same can be treated as an arbitrary decision. If all relevant facts were considered, there might be a possibility of arriving at a different conclusion in this case by the first Respondent.

13. When the statutory provision gives a direction to give reasonable opportunity, it shall not be treated as an empty formality. The reasonable opportunity includes consideration of the objection/explanation submitted for the show cause notice. The non-consideration of the relevant factor by a statutory authority while passing the adverse order against an institution has got serious consequences, particularly when the recognition granted is ordered to be withdrawn. Hence the first Respondent is all the more duty bound to consider the representation or explanation in its right spirit and arrive at a just decision, promoting the interest of the students as well as the institution, which has invested huge amount for its establishment and cater the needs of the society.

14. From the perusal of Section 17 of the NCTE Act, 1993, it is clear that personal hearing to the institution is not excluded. In the decision reported in Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others, in paragraphs 80 and 81 it is held thus,

80. unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural

justice can neither be put in a straitjacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon consideration of these matters that the question of application of the said principle can be properly determined.

Thus, the Petitioner should have been given an opportunity of hearing before taking a decision to withdraw the recognition by the first Respondent.

15. The Petitioner is having a remedy to file appeal before the NCTE u/s 18 of the Act. This Court is entitled to entertain writ petition if it is established that the principles of natural justice is violated even if alternate remedy is available, as per the decision of the Supreme Court reported in Committee of Management and Another Vs. Vice Chancellor and Others, .

16. For the above reasons, I am of the view that the impugned order is unsustainable and the same is set aside. The matter is remitted back to the second Respondent to consider the explanation submitted by the Petitioner Trust seeking time to complete the construction as well as the approval of staff granted by the second Respondent, and pass necessary orders within a period of eight weeks from the date of receipt of copy of this order.

17. The writ petition is allowed accordingly. No costs. Connected miscellaneous petitions are closed.