

(2013) 09 MP CK 0149

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5891 of 2013

Ashok Kusum Shiksha Prasar Samiti

APPELLANT

Vs

NCTE and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

National Council for Teachers Education (Recognition, Norms and Procedure)
Regulations, 2009 — Regulation 7(2)

Citation : (2013) 09 MP CK 0149

Hon'ble Judges : S.K. Gangele, J;M.K. Mudgal, J

Bench : Division Bench

Advocate : R.B.S. Tomar, for the Appellant; Vivek Khedkar, Dy. Advocate General for the Respondents Nos. 3 and 4 on advance notice and Shri Tapan Trivedi, Advocate takes notice on behalf of Respondents Nos. 1 and 2, hence, no process fee is necessary, for the Respondent

Final Decision : Allowed

Judgement

1. Because the point involved in this petition has already been decided by this Court in W.P. No. 4275/2013 (Vikas Education & Environment Academy Society Vs. NCTE and others), hence, with the consent of the parties, this petition is disposed of at motion hearing stage itself. The petitioner challenged the resolution passed by the respondent No. 2 taking in its 185th meeting held on 13-15/06/2013. By the aforesaid resolution, WRC resolved that earlier the opinion of the State Government had been obtained, however, as per the order passed by the Hon'ble Supreme Court, the cases are rolled over to the session 2014-15 in regard to recognition because the date from which the recognition could be granted as per the directions of the Hon'ble Supreme Court is already over, hence, a fresh opinion from the State Government be obtained.

2. The controversy raised in this petition has already been decided us in W.P. No. 4275/2013 (Vikas Education & Environment Academy Society Vs. NCTE and others) vide order dt. 8.5.2013. The following order has been passed by the

court:-

The question of consideration in all these Writ Petitions is that whether the decision of WRC (Western Regional Committee) to receive fresh opinion from the State Government in regard to grant of recognition to the petitioners institution to conduct D.El.Ed. course is proper when the State Government had already granted NOC to the petitioners institution.

To decide the issue the facts mentioned in W.P. No. 4275/2013 have been taken into consideration. The petitioner is a society registered under the M.P. Societies Registrikaran Adhiniyam, 1973. It submitted an application for recognition to conduct D.El.Ed. course from the academic session 2012-13 to the NCTE. The application was forwarded to the respondent No. 2 and the same authority vide letter dt. 25.2.2012 directed the petitioner institution to remove certain defects. The petitioner institution removed the defects pointed out by the WRC. The respondent No. 2 rejected the application of the petitioner institution on the ground that the State Government had taken a decision that no institution would be permitted to conduct D.El.Ed. course. Against the aforesaid order, a writ petition was filed by the petitioner institution, which was registered as W.P. No. 5699/2012 and the court allowed the writ petition with the following directions:-

In this view of the matter, petition of the petitioner is allowed. The impugned order Annexure P/1, dated 05-06-2013 and the decision of the Western Regional Committee in its 162nd meeting dated 10th May 2012 in regard to the petition, are hereby quashed. The Committee is directed to send for comments of the State Government as well as Rajya Shiksha Kendra and to decide the application submitted by the petitioner to run D.El.Ed. course afresh by taking into account the recommendations sent by the State Government and Rajya Shiksha Kendra. The aforesaid exercise shall be completed within a period of one month from today. It is made clear that this Court has not expressed any opinion on the merits of the case.

With the aforesaid directions, the writ petition is disposed of.

C.C. as per rules.

Thereafter, the WRC forwarded the matter in regard to NOC to the Government. The Government granted no objection certificate to the petitioner institution. Then in accordance with the regulations framed by the NCTE namely National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 (hereinafter referred to as "Regulations 2009"), WRC constituted visiting team for inspection of the petitioner institution in its 175th meeting held on 02.02.2013. Accordingly, the visiting team conducted the inspection of the petitioner institution and submitted its report alongwith CD. WRC in its 181st meeting considered the case of the petitioner institution and had taken a decision to issue a letter of intent in accordance with clause 7(9) of the Regulations 2009. After holding that the petitioner institution had good building and sufficient infrastructure. However, the petitioner institution was not granted recognition for

the academic session 2012-13 in view of the judgment passed by Hon''ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, and the WRC in its 184th meeting held on May 27-29, 2013 decided that the case of the petitioner institution for consideration of recognition of D.El.Ed. course shall be considered for the academic session 2014-15 and for the aforesaid purpose a fresh opinion of the State Government be obtained. The petitioner institution has challenged the decision of the WRC in regard to obtain fresh permission.

The respondents No. 1 and 2 in their reply have pleaded that it is necessary for the respondents NCTE to follow Regulations 2009 and the respondents NCTE could not accord recognition to the petitioner institution for D.El.Ed. course for the academic session 2013-14 because the NOC from the State Government was not received within time and as per the decision of the Hon''ble Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya (supra), the cut off date was over. Hence, the decision was taken to consider the application of the petitioner institution for the academic session 2014-15 and for that purpose fresh recognition of the State Government is necessary.

Regulation 7 of the Regulations 2009 prescribes procedure in regard to process of application. The Regulation has a statutory force of law. For the purpose of decision of these petitions, Regulation 7(2), (3) & (4) of Regulations 2009 are necessary. The relevant Regulations are as under:-

(2) A written communication alongwith a copy of the application form submitted by the institution(s) shall be sent by the office of Regional Committees to the State Government or Union Territory Administration concerned within 30 days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

(3) On receipt of the communication, the State Government or Union Territory Administration concerned shall furnish its recommendations or comments on the applications to the office of the Regional Committee concerned within 45 days from the date of issue of the letter to the State Government or Union Territory. 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.

(4) If the recommendation of the State Government is not received within a period of 45 days from the date of the issue of letter to the State Government, the Regional Committee concerned shall send a reminder to the State Government providing further time of another 30 days from the date of issue of the reminder letter to furnish their comments on the proposal. Thereafter, on expiry of this period, the matter shall be placed before the Regional Committee alongwith the recommendation of the State Government, if received. Placing the application before the Regional Committee shall not be deferred on account of

non-receipt of comments of recommendation of the State Government. 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. Inspection shall not be subject to the consent of the institution, rather the decision of the Regional Committee to cause the inspection shall be communicated to the institution with the direction that the inspection shall be caused on any day after 10 days from the date of communication by the Regional Office. The Regional Committee shall ensure that inspection is conducted ordinarily within 30 days from the date of this communication to the institution. The institution shall be required to provide details about the infrastructure etc. on the duly filled up proforma available on National Council for Teacher Education web-site to the visiting team, at the time of inspection along with building completion certificate issued by the competent civil authority, if not submitted earlier.

The Regional Committee shall organise such inspections strictly in chronological order of the receipt of application for the cases approved by the Regional Committee for Inspection.

The members of the visiting team for inspection shall be decided by the Regional Committee, out of the panel of experts approved by it, and in accordance with the visiting team policy of National Council for Teacher Education.

Regulation 7(3) of the Regulations 2009 prescribes that on receipt of communication, the State Government shall furnish its recommendations within 45 days from the date of issuance of letter to the State Government. Regulation 7(4) of the Regulations 2009 further prescribes that if the recommendation of the State Government is not received within a period of 45 days from the date of issuance of letter to the State Government, the Regional Committee shall send a reminder and further grant time of another 30 days to furnish their comments and thereafter on expiry of this period the matter shall be placed before the Regional Committee alongwith the recommendation of the State Government if received and it has further been mentioned that if no comment or recommendation of the State Government is received, the Regional Committee shall consider the application. It clearly shows that the statutory regulation prescribes a time limit for submitting recommendation by the State Government on the application of recognition.

Hon''ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra) has considered the role of the State in granting recognition and held as under:-

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, 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 field is 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 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 vis-a-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated 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 the life of the students working in the school because of non compliance with 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.

From the aforesaid judgment of the Hon''ble Supreme Court, it is clear that once the 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. In the present case after considering the No Objection Certificate, the WRC-respondent No. 2 in its 181st meeting has decided to issue letter of intent under Clause 7(9) of the Regulations 2009, which is as under:-

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

Thereafter, subsequent decision of the WRC to send the application to the government for fresh comments is contrary to the statutory provisions of Regulations 2009 and the law laid down by the Hon''ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra).

Hence, all the Writ Petitions are allowed. The impugned decision of the

respondent No. 2 (Annexure P/1) taken in its 184th meeting in regard to inviting fresh opinion from the State Government is hereby quashed. No order as to costs.

3. Hence, the Writ Petition is allowed. The impugned decision of the respondent No. 2 (Annexure P/1) taken in its 185th meeting in regard to obtaining fresh opinion from the State Government is hereby quashed. No order as to costs.