

(2009) 09 MAD CK 0306

In the Madras High Court

Case No : Writ Petition No. 14501 of 2009

D.A.V. Educational Trust

APPELLANT

Vs

The Regional Director National Council for Teacher Education
Southern Regional Committee and The Secretary to
Government Higher Education Department Government of
Tamil Nadu

RESPONDENT

Date of Decision : 29-09-2009

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(1), 17, 17(1)
National Council for Teachers Education (Recognition, Norms and Procedure)
Regulations, 2002 — Regulation 8, 8(11)
National Council for Teachers Education Rules, 1997 — Rule 8

Citation : (2010) 1 LW 73 : (2010) 2 MLJ 1015

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : N.R. Chandran for R. Kannan, for the Appellant; K. Ramakrishna Reddy, for Respondent 1 and Dhakshayani Reddy, Government Advocate for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first respondent dated 2.7.2009, by which the first respondent has withdrawn the recognition granted to Christ College of Education, Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 to run B.Ed. course from the academic session 2009-2010, however directing that the ongoing batch of students be permitted to complete their course and that the said institution should not make any admissions subsequent to the withdrawal order.

2.1. The first respondent has granted permission to the Christ Educational Trust to run the college named Christ College of Education to conduct B.Ed. course from the academic session 2004-2005 with annual intake of 100 students, after

satisfying with the presence of infrastructure. It is stated that the Christ College of Education is located at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108. The Government of Tamil Nadu, while granting No Objection vide G.O.Ms. No. 54, Higher Education Department, dated 18.2.2005 has also made it clear that the college is situated at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District and the University has ultimately granted affiliation, which was renewed from time to time.

2.2. It is the case of the petitioner that Christ Educational Trust was originally having three trustees with Founder - E.Chakravarthy, Dr.P.S.Chandra Kumar and Mrs.C.Nalini. Thereafter, the trustees co-opted the DAV Educational Trust and the Chairman and Managing Trustee - S. Varadarajan, V. Rajendran and Mrs .J. Geetha. It is stated that after induction of the three trustees the previous founder of Christ Educational Trust - E. Chakravarthy and Mrs. C. Nalini retired and the other trustee - Dr. P.S. Chandra Kumar ceased to be a trustee by lapse of time. It is stated that a subsequent deed of declaration has been entered on 14.7.2007 and registered and there are only three trustees now, namely S. Varadarajan, V. Rajendran and Mrs .J. Geetha.

2.3. It is stated that on 2.7.2008, the trustees have taken a decision to change the name of the trust from Christ Educational Trust as DAV Educational Trust and also the address of the trust as Plot No. 5, Mohanapuri, Adambakkam, Chennai - 600 088 instead of 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050. But, the college is run only in the same place, namely Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 and was not shifted to any place. Therefore, the change was only in respect of the trust, not the location of the college. The same was intimated to the first respondent on 31.10.2008, since no permission is necessary for change of name of the trust.

2.4. However, the first respondent has issued a show cause notice on 22.4.2009 u/s 17 of the National Council for Teacher Education Act, 1993 (for brevity, "the Act") relating to the change of trust. A reply was given on 14.5.2009 informing that it was only a change of trust and not transfer of location of college or property. Thereafter, without giving any personal hearing, the impugned order came to be passed withdrawing the recognition on the assumption that the institution has been shifted to another building without permission from NCTE, that the name has been changed, and that the institution has been sold out.

3. The impugned order has been challenged on various grounds that the same is against the principles of natural justice, that when Section 17 of the Act is invoked it can be only for violation of any of the provisions of the Act or the Rules or Regulations or any conditions of approval, that Rule 8 of the Rules contemplates the procedure for inspection which is mandatory before invoking Section 17 of the Act and it has not been followed, that even as per the proviso to Section 17 of the Act a reasonable opportunity ought to have been given and

in the absence of such opportunity the order become invalid, that the order is wrong on the basis that it proceeds on a wrong premise as if the college location is shifted to some other place, and that it is only the office of the trust which has been shifted to some other place and there is a change in the trust name and that the change of trust name will not alter the character of the trust.

4.1. In the counter affidavit filed by the first respondent, it is stated that by order dated 7.9.2004 the first respondent granted recognition to the Christ Educational Trust located at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050. The address for communication was given as No. 18, Sastri Nagar, Muduchur Road, Chennai - 600 048. The land documents relating to 99 years lease was in respect of the Christ Educational Trust and the lands are located at Santhavellore Village, Sriperumbudur, Kancheepuram District to an extent of 5.08 Acres. The lease deed is dated 9.6.2003.

4.2. At the time when the original permission was granted there was no construction put up and therefore, the Christ Educational Trust requested to run the institution temporarily at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050 and recognition was granted. Thereafter, the superstructure appears to have been put up and the Christ Educational Trust has chosen to get affiliation to the new address at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108, which fact was not informed to the first respondent at all. The affiliation from the State Government has been obtained contrary to the recognition order of the first respondent.

4.3. As per the amended Regulation 8(11) of Regulations, 2007 which came into effect from 10.12.2007, the norms applicable for shifting the premises will apply for change of management/society/trust, etc also. There was a change of constitution of the trust on 14.2.2007 and the decision was taken on 2.7.2008. The name of the trust was changed from Christ Educational Trust to DAV Educational Trust and the address was also changed to Plot No. 5, Mohanapuri, Adambakkam, Chennai - 600 088 instead of 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050. The name of the college has also been changed on 2.7.2008 from Christ College of Education to that of DAV College of Education.

4.4. The original permission granted to run the college was at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050 and even though the petitioner has put up construction at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 and obtained affiliation from the State Government, the same has been without the knowledge of the first respondent, who is the authority under the Act to grant permission.

4.5. The institution which has admitted students in the temporary address for which approval was granted at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai ? 600 050 has shifted to Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 without the approval from the first respondent. Therefore, it is in violation of the

Act and the Regulations and a notice was issued u/s 17 of the Act. Since the petitioner has admitted the action, the recognition was withdrawn under the impugned order dated 2.7.2009 and there is no illegality.

4.6. It is also stated that it is the petitioner who has violated the mandatory requirement of Regulation 8, which prohibits change of management/society/trust, etc. without prior approval of the first respondent. Section 17 of the Act contemplates surprise inspection for which advance notice is not necessary. There is no opportunity necessary since the petitioner has admitted shifting of institution without prior approval from the first respondent. There is a FD standing in the joint names of both the institution and the first respondent and the website is in the name of the original institution and the change has been effected without following the mandatory provisions and therefore, the impugned order came to be passed. It is also stated that by induction of three new trustees and exit of three trustees, the management itself has changed and the new trustees have virtually purchased the original college.

5.1. Mr. N.R. Chandran, learned senior counsel appearing for the petitioner would submit that even though temporary permission was given for Christ College of Education to run the college at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050, the permission was given to run the institution at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 after putting up the construction. Therefore, when once the construction has been put up at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108, there is no necessity to get fresh approval.

5.2. As far as the inclusion and exclusion of the trustees is concerned, it is his submission that inasmuch as the character of the trust is not changed, it is not for the first respondent to question the same. It is his submission that the College is run only at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 and it is not changed to any other place and therefore, the question of prior approval does not arise. It is his case that the institution is an existing institution and therefore, the original Regulations of the year 2002 alone will be applicable.

6. On the other hand, by relying upon the amended Regulations, 2007 which has come into effect on 10.12.2007, Mr. K. Ramakrishna Reddy, learned Counsel for the first respondent would submit that as per Regulation 8(11) prior approval is necessary not only for shifting the premises but also for change of management/society/trust, etc. and the same has not been done and therefore, notice was issued. It is his case that when once the petitioner has accepted, there is no question of any further opportunity and therefore, impugned order passed is well within the powers of the first respondent.

7. A reference to the original grant of recognition by the first respondent dated 7.9.2004 shows that the recognition has been granted in terms of Section 14(1)

of the Act to Christ College of Education at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050 to run B.Ed. course of one year duration for academic session 2004-2005 with annual intake of 100 students. One of the conditions as contemplated under the original recognition in Clause 3(b) is the institution shall shift to its own premises within three years from the date of recognition (in case the course is started in temporary premises). It is also one of the conditions of recognition in Clause 6 that if the institution contravenes any of the above conditions or any of the provisions of the NCTE Act, Rules, Regulations and Orders made or issued there under, the Southern Regional Committee may withdraw the recognition under the provisions of Section 17(1) of the NCTE Act, 1993.

8. It is admitted case, as stated by the first respondent in the counter affidavit, that the permission to run the institution at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050 was granted temporarily since the construction is to be put up in a new place, which is stated to be at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108.

9. The Regulations which were in existence at that time, namely Regulations, 2002, Appendix-5, Clause 7 which speaks about the infrastructural facilities, Sub-Clause (d) states as follows:

7. Infrastructural Facilities:

a) to c)

d) To provide these facilities, the Management/Institutions shall, at the time of making application, have in its possession adequate land/land and building on ownership basis free from all encumbrances. Govt. land acquired on long-term lease as per the law of the concerned State/UT will also be considered valid for the purpose. Pending construction of permanent building in the above land, the institution may provide these facilities in suitable temporary premises up to a maximum period of 3 years, before expiry of which the institution should shift to its permanent building.

10. Therefore, at that time, there was no condition that the Christ Educational Trust which was granted permission to run the College temporarily at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050 while shifting it to its own place at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 within three years should get further permission for such shifting. In the absence of such provision in the Regulation in existence at that time and also any such condition stipulated in the original recognition granted on 7.9.2004 and when it is not the case of the respondents that in the shifted own place there are no adequate infrastructure facilities, it cannot be said that for the purpose of shifting to its own place, namely Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108, the Christ Educational trust should have obtained prior permission from the first respondent. As per the terms of the

recognition dated 7.9.2004 and the Regulations, 2002, it is clear that such specific permission for shifting to its own place is not required. Therefore, the case of Christ Educational Trust that within three years from the date of original grant, namely from 7.9.2004 it has shifted its place and conducting the College at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 cannot be said to be against the Regulations.

11. In such view of the matter, the running of the institution at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 by Christ Educational Trust cannot be said to be against the Regulations and even in the present context, the petitioner does not want to shift the place of running of the College from Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 to any other place.

12. It is the case of the petitioner that the Christ College of Education, which was governed by the Christ Educational Trust, originally having three trustees E. Chakravarthy, Dr. P.S. Chandra Kumar and Mrs .C. Nalini have inducted three new trustees S. Varadarajan, V. Rajendran and Mrs. J. Geetha and after the induction the original three trustees have exited, but the original trust continues with its objects. However, the fact remains that by change of trustees, the object of the trust may remain as it is but the character of the trust has changed by the change of name, viz., from Christ Educational Trust to that of DAV Educational Trust.

13. It is admitted that a deed of declaration has been entered on 14.7.2007 and by the said deed of declaration, the changes effected in the constitution of the trust have been recorded and thereafter on 2.7.2008, the new Board consisting of all the three newly inducted trustees have decided to change the name of the trust from that of Christ Educational Trust to DAV Educational Trust and also changed the address from 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050 to Plot No. 5, Mohanapuri, Adambakkam, Chennai - 600 088. It is also admitted that on 2.7.2008 new Board of trustees have taken a decision to change the name of the college from Christ College of Education to DAV College of Education.

14. The new Regulations and Norms and Standards have been introduced by the first respondent as per the terms of the Act, by an amendment which has come into effect from 10.12.2007. It is not in dispute that under the Regulations, 2002 there was no provision for such contingencies like change of name of the trust as well as the change of name of institution, etc. and therefore, technically speaking, when the deed of declaration was entered on 14.7.2007, by which all the old three trustees have gone out and the new trustees have stepped in, thereby making a change in the constitution of the trust, it does not require apparently any approval from the first respondent as per the Regulations, 2002. But, the fact remains that the present Board of Trustees have taken a decision on 2.7.2008 to change the name of the trust from Christ Educational Trust to that of

DAV Educational Trust and also change of place of office to Plot No. 5, Mohanapuri, Adambakkam, Chennai - 600 088, even though there is no change in the place of running of the College, namely at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108.

15. As per the amended Regulations which have come into effect from 10.12.2007, Regulation 8(11), which is as follows, contemplates a prior approval in case of change of premises from the Regional Committee and such prior approval is required for change of management/society/ trust, etc.

8. Conditions for grant of recognition:

(1) to (10)

(11) In case of change of premises, prior approval, of the Regional Committee concerned shall be necessary, which could be accorded after due inspection of the institution at the new site. The change can be permitted to a site which, if applied initially, could have qualified for establishment of an institution as per prescribed norms of NCTE. The change shall be displayed on website thereafter. The application for change of premises shall be accompanied by a demand draft of Rs. 40,000/- of a Nationalized Bank drawn in favour of the Member Secretary, NCTE and payable at the city where the Regional Committee is located. Similar procedure would be applicable in case of change of management/society/trust etc. excluding change of Management Committee as per registered by-laws of the management/society/trust.

16. By virtue of the decision taken by the new trustees on 2.7.2008, by which time the amended Regulations, 2007 have already come into effect, there is certainly a change in the management of the trust and change in the name of the trust, apart from change of the name of the college and change of address, which on a reading of Regulation 8(11) of Regulations, 2007 requires prior approval from the Regional Committee of the NCTE.

17. The contention in this regard by the learned Senior Counsel for the petitioner that by change of the name of the trust as well as the institution, there is no change of premises where the college is run and therefore, it does not require prior approval as per the amended Regulations, 2007 has no meaning. The change effected on 2.7.2008 is not merely a change of management committee, it is a change of management itself, which includes the change of name of the trust, change of name of the college and change of the address of the registered office, which can be significantly included on the basis of the principle of ejusdem generis to the word "etc" which finds place in Regulation 8(11) of Regulations, 2007. What is excluded as per the said Regulation is the change of management committee as per registered by-laws. But, in the present case, it is not by virtue of by-laws there has been change of trustees either by election or otherwise, and in such circumstances, certainly it requires prior approval as per the amended Regulations, 2007 which have come into effect from 10.12.2007 and such

approval has not been obtained by the petitioner from the first respondent.

18. In fact, in the representation dated 31.10.2008, the petitioner has categorically admitted that there has been a change in the constitution of Christ Educational Trust with the new trustees changing the name of the trust from Christ Educational Trust to DAV Educational Trust and also changing the registered office. In the said letter the petitioner has sought permission to have the name changed. However, the change has been already effected by the time when the said representation was made by the petitioner and therefore, the complaint of the first respondent is prior approval has not been obtained as per the existing Regulations, 2007.

19. As stated above, as per the show cause notice dated 22.4.2009 issued by the first respondent, the first respondent has admitted that the Christ Educational trust has been permitted to have its College conducted at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 and admittedly, the petitioner has not attempted to change the place of running of the College from that place, but the trust and the constitution has changed.

20. In the show cause notice dated 22.4.2009, while admitting that permission was granted to run the college at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108, it proceeds on the basis that from the temporary premises at 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600 050, the college has been shifted to Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 without approval and as rightly submitted by the learned senior counsel for the petitioner, the show cause notice itself which has been issued u/s 17 of the Act proceeded on a wrong premise.

21. If the show cause notice issued was in respect of the change of constitution of the trust, change of name of the trust, change of the name of the college, change of address of the registered office of the trust without prior approval, there is some meaning based on the amendment which has come into effect from 10.12.2007. But, strangely, the first respondent in the show cause notice dated 22.4.2009, having admitted in one paragraph that permission was granted to Christ Educational Trust to run the college at Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108, which is as follows:

Whereas recognition has been granted by SRC, NCTE to Christ Educational Trust, No. 2/74, Nehru Street, Kumaran Nagar, Padi, Chennai - 600050, Tamilnadu for offering Christ College of Education, Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District, Pin - 602 108, Tamil Nadu for B.Ed course vide order No. F.TN/SEC/28/SRO/NCTE/2004-05/6986 dated 7.9.2004 with an intake of 100 students has chosen to take a totally contrary stand in the next paragraph as if the shifting has been

made to Nandimedu Road, Santha Vellore, Sungurvarchatram, Sriperumudur Taluk, Kancheepuram District - 602 108 without prior approval, which is a total misnomer and confusion created by the first respondent in the very show cause notice dated 22.4.2009.

21. It is very strange that the first respondent, having known about the change of the name of the trust, change of name of the college, etc., has not chosen to raise that issue under the show cause notice as per the amended Regulations, 2007, but proceeded on total misnomer and that was replied by the petitioner and thereafter, the impugned order came to be passed, by which the recognition granted to the Christ College of Education has been withdrawn. It is also strange that in the impugned order passed by the first respondent, the first respondent raised a totally new issue about the change of the name of the trust as DAV Educational Trust from Christ Educational Trust and also change of the registered office, etc., which was not raised in the show cause notice issued by the first respondent.

22. Naturally, as submitted by the learned senior counsel for the petitioner, if action was taken u/s 17 of the Act as per its proviso, the show cause notice should have given proper grounds for which the first respondent was seeking to take action. In the absence of giving such grounds in the show cause notice, it cannot be expected that the petitioner would have given a reply for a different issue which was not the subject matter in the show cause notice. In the absence of such issue regarding the change of trust raised in the show cause notice dated 22.4.2009, the final impugned order passed withdrawing recognition on a different ground of change of name of trust, about which an opportunity was not given to the petitioner, cannot be sustained in law.

23. Due to the above said reasons, I am of the considered view that the impugned order suffers from the vice of violation of the principles of natural justice which is inherent in any statute even when such principle has not been explicitly stated. In such view of the matter, even though an appeal is provided against the impugned order, I am of the considered opinion that inasmuch as there is a violation of the principles of natural justice in passing the impugned order, there is no necessity to drive the petitioner to the appellate authority. In these circumstances, the impugned order of the first respondent dated 2.7.2009 stands set aside, however with liberty to the first respondent to issue fresh show cause notice as per the provisions of Section 17 of the Act relating to the issue raised in the impugned order, if so advised, and pass appropriate orders after giving sufficient opportunity to the petitioner.

This writ petition stands allowed. No costs. Consequently, M.P. No. 1 of 2009 is closed.