

(2016) 03 MAD CK 0216

In the Madras High Court

Case No : Writ Petition No. 38466 of 2015

Devi Venkatachalam College of Education

APPELLANT

Vs

The Regional Director and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
National Council for Teacher Education Act, 1993 — Section 14 (3) (a), Section 14 (5),
Section 17, Section 17 (1), Section 17 (2), Section 18, Section 32
Tamil Nadu Teachers Education Universit

Citation : (2016) 4 MLJ 359

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : B. Rabu Manohar, for the Appellant; K. Ramakrishna Reddy for P.R. Gopinathan, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—1. The petitioner has filed this writ petition praying to quash the order dated 27.05.2011 of the first respondent, in and by which, the recognition granted to the petitioner institution has been withdrawn. The petitioner also seeks for a consequential direction to forbear the first respondent from withdrawing the recognition granted to their institution without following the due process of law as has been prescribed under Section 17 of The National Council for Teacher Education Act, 1993.

2. The brief facts which are necessary and essential for disposal of this writ petition are as follows:-

(i) The petitioner institution, established by Devi Venkatachalam College of Educational Trust, has decided to start one year B.Ed., Degree course in furtherance to the objects with which the trust was formed. According to the petitioner, initially, the college was functioning at Kanniar Campus, Valayampattu Post, Vaniyambadi, Vellore District in a rental building. The Government of Tamil

Nadu also granted No objection to the educational agency namely Devi Venkatachalam College of Educational Trust to commence and offer one year B.Ed., Degree course by issuing a Government letter No. 21896/E1/2005-2, Higher Education Department dated 14.11.2005. Thereafter, the first respondent also conducted an inspection and granted recognition to the petitioner institution under Section 14 (3) (a) of National Council for Teacher Education Act, 1993 (hereinafter referred to as NCTE Act) with an intake of 100 students from the academic session 2006-2007. At the time of granting recognition, conditions were imposed to the effect that the petitioner institution shall ensure availability of one Principal and 7 faculty duly approved by the affiliated University to teach the students before the commencement of the course. Another condition is that the petitioner has to shift the premises to it's own building within three years from the date of grant of recognition. Subsequently, the affiliating University viz., Thiruvalluvar University also granted affiliation to the petitioner institution on 12.01.2007.

(ii) According to the petitioner, during the year 2008, by virtue of Act 33 of 2008 enacted by the Government of Tamil Nadu, the second respondent became the affiliating/examining body with regard to B.Ed., and M.Ed., colleges in the State. Therefore, the petitioner applied for continuation of affiliation with the second respondent from the academic year 2008-2009 which was also granted and the students admitted during the academic year 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 have been permitted to write the one year B.Ed., course examination by the second respondent.

(iii) It is claimed by the petitioner that in compliance of the conditional recognition granted to it, they have constructed a building after obtaining planning permission and shifted the college to the permanent site. Even after shifting the college premises from the temporary building to the permanent site, the recognition and approval granted by the authorities continued in favour of the petitioner and the petitioner has been admitting the students sponsored by the Government through single window system.

(iv) While facts are so, the first respondent has notified a new regulation namely NCTE (Recognition, norms and procedures) in exercise of the power under Section 32 of the NCTE Act whereby it was stated that the recognition hitherto granted to the teacher education system shall stand lapsed. According to the petitioner, the new Regulations introduced in the year 2014 are applicable only to newly established institutions and not to the existing institutions like the petitioner. However, on the strength of the new system, the respondents insisted that the existing teacher educational institutions like the petitioner also has to take appropriate action to adhere to the new regulations, norms and standards as prescribed therein. In this context, the second respondent insisted the petitioner to submit an undertaking affidavit within 21 days to the effect that the institution shall fulfil the revised norms relating to infrastructural and other facilities.

(v) According to the petitioner, the new Regulation has brought in drastic changes in the teacher education system prevailing in the State. For example, the duration of the hitherto one year B.Ed., and M.Ed., programmes have been increased from one year to two year. Similarly, the minimum strength of the institution has been reduced to 50. The petitioner therefore opposed the applicability of the new regulations to their institution and requested the first respondent to re-consider the decision. Moreover, the petitioner also sent a letter dated 06.07.2015 to the first respondent stating that they are adhering to the 2014 regulations framed by National Council for Teacher Education and they have also filed an affidavit of undertaking in the prescribed format. In response, the petitioner was shocked to receive a letter dated 22.07.2015 of the first respondent stating that the recognition granted to the petitioner has been withdrawn already as per the decision taken in the 204th meeting held on 27.05.2011. The first respondent also stated that in view of such decision, revised order could not be issued to the petitioner. According to the petitioner, the order withdrawing the recognition has never been served on them. The petitioner therefore once again sent representation dated 04.08.2015 to the respondents. The said representation dated 04.08.2015 has been placed in the 292nd meeting of the SRC NCTE on 29- 30.09.2015 wherein a decision was taken not to grant recognition to the petitioner institution on the ground that they have not shifted to the permanent building site within three years. This decision of the respondents was downloaded from their official website. In the decision, it was also stated that notice was sent to the petitioner's college on 14.09.2009 and a final show cause notice dated 31.01.2011 for which the petitioner has not responded and therefore the recognition was withdrawn on 27.05.2011. Therefore, challenging the order withdrawing the recognition, the petitioner is before this Court with this writ petition.

3. The learned counsel appearing for the petitioner would vehemently contend that the notices dated 14.09.2009 and 30.01.2011 or the order dated 27.05.2011 withdrawing the recognition given to the petitioner institution were never served on the petitioner. This could be evident that even after the so-called order dated 27.05.2011 withdrawing the recognition given to the petitioner institution, the second respondent permitted the students of the petitioner institution to write the B.Ed., examination during the academic years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015. If really an order dated 27.05.2011 has been passed and served on the petitioner, the second respondent could not have permitted the students to write the examination. It is further stated that the first respondent has not followed the procedures contemplated under Sections 17 (1) and 17 (2) of the NCTE Act as per which, if the Regional Committee, either on its own or on the basis of a representation received from any person to the effect that the institution has contravened any of the provisions of Act and Rules, the committee shall pass orders withdrawing the recognition, provided the institution is given reasonable opportunity of hearing before passing any such order. In the present case, such a

procedure has not been followed by the first respondent and therefore, the impugned order is liable to be set aside. It is further stated by the counsel for the petitioner that in compliance with the conditional recognition, the petitioner has appointed faculties and also shifted the college premises to a permanent site. When the petitioner has complied with the conditions attached to the recognition, the respondents are estopped from withdrawing the recognition, especially without providing adequate opportunity to the petitioner before passing the order of withdrawal. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of (National Council for Teacher Education and another Vs. Vaishnav Institute of Technology and Management) , (2012) 5 Supreme Court Cases 139 to contend that de-recognition or withdrawal of recognition is a drastic measure and it would result in relocating the students, teacher and staff. Therefore, before passing such an order, the institution should be put on notice and given a chance to rectify the defects either by following the procedure contemplated under Section 13 or Section 17 of the NCTE Act. By relying upon this decision, the learned counsel for the petitioner would contend that in the present case, the impugned order withdrawing the recognition has not at all been served on the petitioner and the petitioner institution has not been given an opportunity to rectify the defects. Therefore, the learned counsel for the petitioner prayed this Court to set aside the impugned order and allow this writ petition.

4. On the contrary, the learned counsel for the first respondent, relying on the counter affidavit, would submit that after complying the Rules and Regulations, the Southern Regional Committee (in short SRC) granted recognition to the petitioner institution on 06.10.2006. Subsequently, as per the decision of SRC taken in the 175th meeting held on 13th and 14th May 2009, with regard to the institutions which are carrying on the institution in rented premises and those institutions which have not shifted the institution to it's own premises in compliance with the order of recognition, it was decided to withdraw the recognition granted for violation of the recognition. In the said meeting the case of the petitioner institution also was taken up. As per the decision taken in the meeting, inasmuch as the petitioner institution did not comply with the recognition to shift the premises to a permanent site, notice dated 14.09.2009 was issued calling upon the petitioner to produce documents for having shifted the institution to it's own premises. However, as the petitioner did not submit any reply, the case of the petitioner institution was reviewed in the subsequent 196th meeting held on 15th and 16th September 2009 and the committee decided to issue one more notice to the institution on 26.10.2010. Since the petitioner did not respond to the subsequent notice also, the case of the petitioner was taken up in the 199th meeting held on 22nd to 23rd December wherein it was decided to issue a final show cause notice to the petitioner. Accordingly, a final show cause notice dated 31.01.2011 was issued for which also the petitioner did not respond. Thus, the first respondent has given adequate opportunity to the petitioner in compliance with Section and 17 of the

NCTE Act but the petitioner institution did not submit any reply. In such circumstances, it was decided to withdraw the recognition granted to the petitioner institution from the academic year 2011-2012 so as to enable the students studying at that point of time in the petitioner institution to complete the course. As per Section 14 (5) of NCTE Act, when once the recognition is withdrawn, the petitioner institution shall discontinue the course or training in teacher education from the end of academic session next following the date of receipt of the order refusing recognition. Accordingly, the first respondent passed the order withdrawing the recognition on 27.05.2011 with a specific condition that the petitioner is debarred from admitting any student subsequent to the date of passing the order of withdrawal of recognition. The order of withdrawal of recognition dated 27.05.2011 has also been communicated to the petitioner and it was sent to the petitioner by registered speed post bearing PIN No. EK 47796402 4IN. While so, it cannot be gainsaid that the impugned order has not been served on the petitioner.

5. As regards the new Regulations introduced in the year 2014, the learned counsel for the first respondent submits that pursuant to the new Regulation, all applications, both present and fresh, has to be processed. While so, only on 06.07.2015, the petitioner submitted a representation seeking to continue the recognition as per the 2014 Regulations. In response, the first respondent sent a communication dated 27.07.2015 stating that the order of recognition granted to the petitioner has already been withdrawn on 27.05.2011 itself and a revised order cannot be issued. Further, it is submitted that the order of withdrawal was also communicated to the second respondent which is the University/examining body in the State even on 27.05.2011 and it was sent by EMS Speed Post vide Pin No. EK 47796402 4IN and till date the letter sent to the second respondent has not been returned.

6. The learned counsel for the first respondent invited the attention to Section 18 of the NCTE Act to contend that there is a provision to prefer an appeal as against the order withdrawing the recognition within 60 days and a copy of the format to prefer the appeal was also enclosed along with the order dated 27.05.2011 withdrawing the recognition. However, instead of filing a statutory appeal, the petitioner has come forward with this writ petition and therefore, the writ petition is not maintainable. As regards the permission granted to the students of the petitioner institution to write the examination even after withdrawal of recognition, the learned counsel for the first respondent submits that only after the notice served in this writ petition, did they came to know the permission granted by the second respondent in favour of the petitioner institution to enable their students to write the examination. At any rate, when once an order has been passed withdrawing the recognition, the second respondent, being a statutory body, ought not to have permitted the students of the petitioner institution to write the examination after 27.05.2011.

7. The learned counsel for the first respondent also invited the attention of this

Court to clause 7 (10) and 8 (11) of Regulations & Norms & Standards w.e.f. 10.12.2007 of the NCTE wherein it is stated as follows:-

"7. Processing of Applications:-

(10) All the applicant institutions shall launch their own website soon after the receipt of the letter from the Regional Committee under Regulation 7 (9) covering, inter alia the details of the institution, its location, name of the course applied for with intake, availability of physical infrastructure (land, building, office, classrooms and other facilities/amenities) instructional facilities (laboratory, library etc.,) and the particulars of their proposed teaching and non-teaching staff etc., with photographs, for information of all concerned.

8. Conditions for grant of recognition:-

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."

8. By relying on the above clauses in the Regulations, the learned counsel for the first respondent contends that as per Regulation 7 (10) the petitioner institution has not launched their own website and as per Regulation 7 (11), prior approval of the Regional Committee has been obtained before shifting the premises to their own site. As the petitioner did not comply with the above regulations, the order has been passed withdrawing the recognition granted in their favour.

9. In support of his contention, the learned counsel for the first respondent relied on several decisions of the Honourable Supreme Court and they are (i) (Union of India and others Vs Shah Goverdhan L. Kabra Teachers" College - , (2002) 8 Supreme Court Cases 228 (ii) (National Council for Teacher Education and others Vs Shri Shyam Shiksha Prashikshan Sansthan and others etc., - , 2011 (2) SCALE 59 and (iii) (Abhyudya Sanstha Vs Union of India and others) , (2011) 6 Supreme Court Cases 145. All these decisions have been relied on by the counsel for the first respondent to drive home the point that in the absence of recognition, the petitioner institution cannot admit the students and if students are admitted, it will be contrary to the statutory Regulations of the first respondent. Further, unless the conditions laid down in the order of recognition granted in favour of the petitioner are fulfilled, the petitioner is not entitled to grant of recognition. In this case, as the petitioner has not fulfilled the conditions attached to the order of recognition, the learned counsel for the first respondent

therefore prayed this Court to dismiss the writ petition.

10. The learned counsel for the second respondent, relying on the counter affidavit of the second respondent, would contend that by virtue of the Tamil Nadu Teachers Education University Act, 2008 which came into effect from 01.07.2008, the second respondent is the affiliating body to the colleges of education on the basis of unconditional recognition granted by the first respondent. In this case, on 06.10.2006 itself, the first respondent granted affiliation to the petitioner institution with certain conditions as regards shifting of the premises to a permanent site etc., In compliance with the conditional recognition, the petitioner also moved to a permanent site within three years. Before the Act came into force on 01.07.2008, Thiruvalluvar University has granted provisional affiliation to the petitioner on 12.01.2007 and it expired on 11.01.2008. As per Section 54 of the Tamil Nadu Teachers Education University Act, 2008, the colleges imparting courses of study in teacher education in the University area shall be disaffiliated from the University established under any of the acts specified in which they are affiliated on the date i.e., 30.06.2008 immediately preceding such day shall be deemed to be affiliated to the second respondent. Further, Thiruvalluvar University in their letter dated 12.01.2007 has categorically informed the petitioner institution that fresh admissions should not be made during the next year under any circumstances until order granting continuation of provisional affiliation is obtained. In this case, the provisional affiliation granted to the petitioner by Thiruvalluvar University expired on 12.01.2008 and thereafter, the college has not obtained any affiliation. In such circumstances, the application dated 31.12.2012 submitted by the petitioner for continuation of provisional affiliation has not been taken up for process and the second respondent has not granted any permission. However, the second respondent inadvertently permitted the petitioner institution to function and offer B.Ed., courses by applying Section 54 of the Act. Further, the order of withdrawal of recognition passed by the first respondent has not been served on the second respondent and therefore, without knowing the decision of the first respondent, the petitioner's college was allowed to offer B.Ed., degree programme till the academic year 2014-2015. However, after the proceedings dated 29-30.09.2015 of the SRC has been communicated, the second respondent did not permit the petitioner college to offer teacher education programme from the academic year 2015-2016. In such view of the matter, the learned counsel for the second respondent prayed for dismissal of the writ petition.

11. I heard the counsel for the petitioner, the learned counsel for the first respondent as well as the second respondent. I had carefully examined the materials made available.

12. The main ground of attack of the petitioner is that the impugned order of withdrawal was not served on them. It is also the further grievance that even the show cause notices, which were said to have been issued prior to passing the impugned order were also not served on the petitioner institution and therefore,

the impugned order passed by the first respondent, withdrawing the recognition granted in favour of the petitioner is in violation of the principles of natural justice. Therefore, it has become necessary to examine whether the show cause notices or the impugned order dated 27.05.2011 have in fact been served on the petitioner.

13. A first show cause notice dated 26.10.2010 was sent by the first respondent. In the show cause notice, in the right hand side top, it was indicated as "By Speed Post". In and by the said notice, the petitioner was called upon to show cause as to why recognition granted could not be withdrawn for non- submission of certain compliances pointed out therein. The postal receipt as well as the despatch report have been submitted by the first respondent as proof of service. As there is no response, the first respondent once again sent a final show cause notice on 31.01.2011 and this was also sent by speed post. For having served this notice, the first respondent also filed the postal receipt and despatch report. At any rate, it is clear that both the notices have been sent by speed post and the receipts have been produced to show that those notices were sent only by speed post. As there was no response inspite of issuance of two notices, the first respondent passed the order dated 27.05.2011, which is impugned in this writ petition, withdrawing the recognition granted in favour of the petitioner. At any rate, the first respondent has duly substantiated the service of notice to the petitioner through speed post through which it could be inferred that notices have been sent to the petitioner institution. However, it is claimed by the petitioner that they were not in receipt of the notices or the final order withdrawing the recognition. In such circumstances, this Court cannot conduct a roving enquiry about the proof of notice purportedly in exercise of the powers under Article 226 of The Constitution of India. The fact remains that the first respondent has substantiated the service of notice to the petitioner through speed post, however, the service of the notices and the impugned order are disputed by the petitioner.

14. The next question arise for consideration is whether the petitioner has complied with the conditions of recognition or not. Even according to the petitioner, the recognition granted in their favour is attached with conditions. One of the conditions is that they must shift their premises from the then rented building to a permanent site. The petitioner claimed that they have shifted to a permanent site after obtaining building planning permission and provided infrastructure required for running the educational institution. However, as per clause 8 (11) of the Regulations, Norms & Standards of the NCTE, mentioned supra, it is incumbent on the part of the petitioner to intimate the Regional Committee regarding the compliance of the conditions attached to the order of recognition. On intimation, the first respondent or their representative shall cause due inspection to satisfy themselves about the infrastructural facilities made available. However, admittedly, the petitioner has not intimated the first respondent either regarding the shifting of the premises to a permanent site or the infrastructural amenities provided in the new location by submitting

necessary application to the Member Secretary, NCTE, as required under Clause 8 (11). The petitioner merely claims that within the three year period, they have shifted the premises to a permanent site. Admittedly, the recognition granted to the petitioner expired and it was not renewed. It is not known as to whether the petitioner has shifted the premises to a permanent site before the three years period stipulated in the recognition order. The recognition was granted on 06.10.2006 by the first respondent and there is no proof to show that within three years period, the petitioner shifted the premises to a permanent site and intimated it to the first respondent to enable the first respondent to cause an inspection. This, in my consideration, is in violation of clause 8 (11) of the Regulation of NCTE.

15. Yet another contention of the petitioner is that they were not aware of the order withdrawing the recognition granted in favour of the petitioner and it could be evident that the students of their institution were permitted to write the examination by the second respondent. In this context, the second respondent has filed a counter affidavit stating that unknowingly, they have permitted the students of the petitioner institution to write the examination till 2014. In this context, useful reference can be made to Clause 8 (12) of the Regulations & Norms & Standards of the NCTE, which mandates an institution to make admission of students only after it obtains order of recognition from the Regional Committee concerned under Regulation 7 (11) and affiliation from the examining body. In the present case, admittedly, the recognition granted in favour of the petitioner has been withdrawn and it was not renewed thereafter. While so, the mere fact that the second respondent inadvertently permitted the students of the petitioner institution to write the examination till 2015 will not be a ground to set aside the impugned order withdrawing the recognition granted to the petitioner.

16. It is not out of place to mention that even assuming that the impugned order has not been served either on the petitioner or the second respondent, still, the petitioner is required to obtain recognition when once it is lapsed. Further, as mentioned above, the petitioner has to intimate the first respondent regarding the compliance of the conditions attached to the grant of order of recognition namely the shifting of the premises to a permanent site. Unless it is intimated by the petitioner the first respondent cannot be expected to cause an inspection and to satisfy themselves about the infrastructural facilities made available. In those circumstances, I hold that the impugned order withdrawing the recognition is legally sustainable in accordance with Clause 8 (11) of Regulations & Norms & Standards of the NCTE which came into effect on 10.12.2007.

17. In the result, the writ petition filed by the petitioner fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.