
(2019) 03 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (C) No. 156 Of 2018

G.D. Bagaria Teachers' Training College

APPELLANT

Vs

Member Secretary And Ors

RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

National Council For Teacher Education Act, 1993 — Section 14
National Council for Teacher Education Rules, 1997 — Rule 9
Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 03 JH CK 0003

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ritu Kumar, Ravi Kumar Singh, P.A.S. Pati

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the order dated 27.11.2017 (Annexure-12) passed by respondent No.1 by which appeal preferred by the petitioner against the order dated 31.03.2017 as under Annexure-10 has been rejected.

2. The brief facts of the case of the petitioner is that in pursuance to the NCTE regulation as per the notification dated 28.11.2014 which contains the condition/ criteria and method of making applications for getting recognition for conducting courses of Teachers' Education, the application has been made for conducting D.EI.Ed course of two years commencing from 2017-19 under Section 14 of the NCTE Act, 1993 in accordance with NCTE (Recognition, Norms and Procedure) Regulations, 2014 and also according to the instructions uploaded on the Website of NCTE on 28.05.2016.

3. The condition as per the instructions in the Clause 6(ii), the petitioner preferred to make payment of processing fee through demand draft, but after on-line application, the petitioner filed hard-copy of the application along with the required documents on 02.06.2016. However, time limit for submission of

application form was extended upto 30th June, 2016. The respondent No.2 vide its letter dated 30th June, 2016 forwarded the copy of application of the petitioner to the department of Human Resources Department, Government of Jharkhand for its recommendation, but the respondent No.2 vide letter dated 09.11.2016 informed the petitioner that in course of verification of application, the respondent No.2 in its 223rd meeting held on 14th-15th October, 2016 by which certain observations against the petitioner's institution has been made and therefore, the petitioner was served with a show cause notice, the Committee has found some deficiencies in the application of the petitioner, that are:-

(a) The applicant has submitted Demand Draft of Rs.1.50 lakhs towards processing fee but as per the on-line NCTE portal, payment through on-line is only accepted.

(b) As per the printout copy of the on-line application it is observed that application number is not available.

(c) That application has not appeared on the Dashboard of the on-line NCTE portal due to which on-line process cannot be carried out.

4. The petitioner has submitted his reply on 24.11.2016 along with all relevant documents explaining the deficiencies as pointed out in the show cause under reply. But the respondent No.2 has not considered the explanation and in a mechanical manner refused recognition to the petitioner's institution in the decision taken in the 234th meeting held on 27.02.2017 to 03.03.2017 and in consequence thereof, the recognition has been denied vide order dated 31.03.2017 against which the appeal was preferred before respondent No.1 but the same has also been rejected, therefore, the instant writ petition has been filed.

5. The petitioner has taken the ground of the predicament of the student, the discrimination and arbitrariness on the part of the authority and non application of mind.

6. According to the petitioner, the demand draft has been submitted in pursuance to the instruction as contained under Annexure-2 which contains a provision that in case of payment is not possible through the above mentioned mode, the same can be paid through demand draft also, and therefore, there is no irregularity in submitting the application form.

The plea of discriminatory attitude has been taken since in the similar circumstances with respect to the case of St. Joseph College, the recognition has been accorded but the petitioner has been discriminated by not taking positive decision even though its case is on the similar footing as that of St. Joseph College.

The recognition has also been granted with respect to the other institutions for the academic session 2018-19, which suggests that the recognition has been granted even after closure of the portal.

7. While on the other hand, Mr. Pati, learned counsel for the NCTE has vehemently opposed the submission and ground urged by the petitioner.

It has been submitted that it is not a case of discrimination rather the petitioner himself has invited such situation since in the notice inviting application it has specifically been mentioned in condition No.5(6) that all applications is to be received on-line from 01st March to 31st May of the year which shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year.

8. Here it is the admitted case of the petitioner that on-line application has been made on 28.05.2016 along with the demand draft of the required amount in hard-copy and therefore, the condition stipulated under condition No.5(6) of the notice inviting applications has not been complied with and in view thereof, a show cause notice was issued to the petitioner to explain as to why the application be not rejected and after providing an opportunity, the decision has been taken by refusing the recognition of the petitioner's institution.

So far as the grievance of the petitioner that the discriminatory attitude has been adopted, submission has been made that the St. Joseph College has submitted on-line application but initially the hard-copy of demand draft was submitted but prior to the last date i.e. 30th June, 2016, the St. Joseph College has submitted on-line requisite fee of Rs.1.50 lakhs and therefore, the case of the St. Joseph College has been considered but here in the case of the petitioner, no such on-line transmission of requisite money has been made and therefore, it cannot be said that the case of the petitioner is similarly situated.

So far as the contention that as yet the recognition is being granted with respect to other institution for the session 2018-19, submission has been advanced that in pursuance to the condition stipulated in the advertisement as per the condition No.5(6), the application received in between 1st March to 31st May, the decision is to be taken for granting or refusing the recognition on or before 3rd day of March of the succeeding year and the case of such institution in whose context the final decision of granting or refusing the recognition has not been taken, the decision has been taken for the next subsequent academic session but their application was in order being submitted in between the period from 1st March to 31st May.

In view of such factual aspect, it has been submitted that it is not a case of violation of Article 14 of the Constitution of India.

In response Mrs. Ritu Kumar, learned counsel for the petitioner submitted that as yet the petitioner is ready to deposit the on-line requisite fee but Mr. Pati has submitted that as on date, no decision is there to accept the application for according recognition to the institution and therefore, it is not possible to accede to such submission of the petitioner.

9. Having heard the learned counsel for the parties and after appreciating their rival submissions, the factual aspect which is not in dispute in this case is that a notification was issued on 28th November, 2014 by National Council for Teacher Education inviting applications on-line from 1st March to 31st May of the year for granting recognition for the next academic session, the recognition granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year.

10. The relevant condition as stipulated under condition No.5(6) is referred hereinbelow:-

"5(6) All applications received online from 1st March to 31st May of the year shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year."

11. It is evident from the aforesaid notice inviting application as per the condition stipulated under condition No.6 which contains about the processing fees is to be deposited as prescribed under Rule 9 of the National Council for Teacher Education Rules, 1997 as amended from time to time, shall be paid by the applicant for processing for an application for grant of recognition to an institution to conduct a teacher education programme or addition to programme or intake in the existing programme online to the designated banks as may be notified by the Council.

This condition about processing fees stipulates that the same is to be deposited on-line to the designated banks.

The petitioner has submitted on-line application on 28.05.2016 with a hard-copy of demand draft.

The last date of acceptance of application form after the extension was 30th June, 2016.

12. After expiry of the last date, the case of the petitioner has been scrutinized and it has been found that the application was not on order since the processing fees was not through on-line mode apart from that the other irregularities, that are:-

(a) As per the printout copy of the online application it is observed that application number is not available.

(b) That application has not appeared on the Dashboard of the online NCTE portal due to which online process cannot be carried out.

13. The petitioner has been issued with a show cause to apprise as to why the application be not rejected, the petitioner has submitted reply but the decision was taken by the competent body by refusing the recognition against which the appeal was preferred which has also been dismissed.

14. Learned counsel for the petitioner has given much emphasis on the instruction as contained in Annexure-2 wherein it has been provided for payment through demand draft, but it is evident from the said annexure which was much before the issuance of public notice inviting applications for the year 2017-18 as contained in Annexure-1, moreover, the said instruction is for the session 2016-17 and as such the same is not applicable.

Further ground has been taken in the writ petition that in the District of Giridih, there is frequent interception in the on-line system but according to the considered view of this Court that cannot be a ground for granting relaxation to the petitioner by sitting under Article 226 of the Constitution of India.

15. The petitioner has taken the ground of discrimination by taking example of St. Joseph College and other institutions in whose favour recognition has been made, statement along with records have been made in the affidavits.

16. This Court has examined the content of the decision taken by the competent authority so far as it relates to St. Joseph College wherefrom it is evident that the St. Joseph College has submitted hard-copy of incomplete on-line application that is prior to generation of application code number and also submitted original DD of Rs.1.50 lakhs towards processing fees.

One e-mail was sent to EDP cell on 27.06.2016 to send the details of application code and payment paid through DD for further processing of application.

St. Joseph College has submitted the on-line processing fees and therefore, the decision for recognition of the said institution has been accorded.

17. The petitioner's plea that his case is similarly situated to that of St. Joseph College and the authority has given premium by making e-mail to the said institution but the said treatment has not been given to the petitioner's institution.

The question herein is that the St. Joseph College has also not followed the condition stipulated in the notice inviting application although its application has been accepted and recognition has been granted.

Now, can on the basis of the recognition granted in favour of the St. Joseph College, the same benefit be given to the petitioner, this is the question to be looked into by this Court.

18. It is not in dispute that Article 14 of the Constitution of India always envisages the positive equality and there is no concept of negative equality to be followed, meaning thereby, if any result has been given by the authority contrary to the rules regulations and conditions stipulated in the advertisement or the notice inviting application, the others cannot derive any benefit on the basis of the said benefit since equality not to be claimed being a negative right, reference in this regard be made to the judgment rendered in the case of State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr., reported in AIR 2000 Supreme Court

2306 wherein at paragraph-30 it has been laid down as :-

"The concept of equality as envisaged under Art. 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."

Reference may also be made to the judgment rendered in the case of Union of India & Anr. vs. International Trading Co. & Anr., reported in AIR 2003 Supreme Court 3983 wherein at paragraph-14 it has been laid down as :-

"Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case; direction should be give for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Art. 14 cannot be pressed into service in such cases. What the concept of equal treatment -presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on par. Even if hypothetically it is accepted that wrong has been committed in some other cases by introducing a concept of negative equality respondents cannot strengthen their case They have to establish strength of their case on some other basis and not by claiming negative equality."

Reference may also be made to the judgment rendered in the case of Chaman Lal vs. State of Punjab & Ors., reported in AIR 2014 Supreme Court 3640 wherein at paragraph-11 it has been laid down as :-

"Coming to the next submission advanced by Shri Garg regarding the discrimination as a similar relief claimed by the appellant has been granted to similarly situated person, namely, Charanjit Lal by a Civil Court and the said judgment and decree attained finality and had not been challenged.

Shri Garg has taken us through the said judgment and decree. We are shocked that in the said suit the plaintiff therein, for the reasons best known to him, did not implead the State of Punjab as a defendant. The suit had been filed only against the Fish Farmers Development Agency, Gurdaspur and the Chief Executive Officer of the said Agency. No one else was added as a party. Relief of pension was sought against the State of Punjab, which was not even impleaded as a party in the suit. In fact, no relief was sought against the defendants therein. Thus, the State was not bound by such a judgment and decree."

It is evident from the aforesaid legal position that Article 14 of the Constitution of India is not need to perpetuate irregularity or fraud.

In the light of this position of law admittedly herein the petitioner has submitted application but not in pursuance to the condition stipulated in the notice inviting

application and it is settled that the condition stipulated in the notice inviting application is strictly to be adhered to, reference in this regard be made to the judgment rendered in the case of Ramana Dayaram Shetty Vrs. The International Airport Authority of India & Ors. reported in (1979) 3 SCC 489, the Hon'ble Apex Court has laid down that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observed those standards on pain of invalidation of an act in violation of them.

19. The question herein would be as has been stipulated by Mr. Pati, that so many applications have been rejected on this ground and if any positive direction would be passed in favour of the petitioner by this Court then why not with respect to others and if the positive direction would be passed in favour of the petitioner that will amount to relaxing the terms and conditions of the advertisement which is not permissible under the jurisdiction of Article 226 of the Constitution of India.

Therefore, even if any relief has been granted in favour of the St. Joseph College that does not mean that the petitioner has got accrued right to get the same benefit.

20. So far as other condition that the online applications have been received and even as for the session 2018-19, the recognition is being granted, I find substance in the arguments advanced on behalf of Mr. Pati who is disputing the aforesaid ground by referring to the condition stipulated under clause-6 of the notification dated 28.11.2014 by submitting that the applications which have been received in between 1st March to 31st May but process could not have been made before the 3rd day of March of the succeeding year, the said application is being considered and recognition for the succeeding academic session is being granted but their applications have been received in between the period from 1st March to 31st May and hence the petitioner cannot take any advantage of such recognition being granted for the session 2018-19 since the petitioner admittedly has submitted its application form not in terms of the condition stipulated under the Condition No. 5(6) and 6 of the notification dated 28.11.2014.

Furthermore, in the instant case the final decision has been taken by the competent authority by following the principles of natural justice which has been affirmed by the appellate authority also.

21. In the entirety of the facts of the case as narrated hereinabove, according to the considered view of this Court the petitioner has not been able to make out a case for passing out a positive direction for quashing the decision already taken by the authority which are impugned in this writ petition, accordingly the writ petition fails and stands dismissed.