

(2013) 02 DEL CK 0308

In the Delhi High Court

Case No : Writ Petition (C) 5532 of 2011 and CM. 11299 of 2011

Guru Nanak Khalsa College

APPELLANT

Vs

National Council for Teacher Education and Another

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 18

Citation : (2013) 02 DEL CK 0308

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Sanjay Sharawat, for the Appellant; Amitesh Kumar and Mr. Chandra Shekhar Singh, Advocates for Respondent/NCTE, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sistani, J.—Pleadings in this matter are complete. With the consent of counsel for the parties, the present writ petition is set down for final hearing and disposal. By the present writ petition petitioner seeks quashing of order dated 05.07.2011 passed by the respondent no. 1/NCTE rejecting the appeal filed by the petitioner institution.

2. Necessary facts to be noticed for disposal of this writ petition are that the petitioner is an institution which was established by a registered society inter alia with the object of imparting teacher training courses. The petitioner institution is already running about 39 post graduate degree and diploma courses, undergraduate courses etc. Apart from running other courses, petitioner institution being desirous of commencing B.P.Ed. and C.P.Ed. courses with a view to seek permission of the respondents for commencing B.P.Ed. teacher training course from the academic session 2006-07, submitted an application dated 28.12.2005 with the Northern Regional Committee (hereinafter for short, "NRC"). On 03.08.2006 the petitioner institution submitted another application dated 26.07.2006 with the NRC for seeking recognition to start C.P.Ed. course from the academic session 2007-08.

3. For about three and a half years the respondents did not take effective steps to process the applications of the petitioner institution. In its meeting held on 10.04.2009 the NRC considered both the cases of the petitioner and decided to issue LOI's subject to submission of a certificate indicating as to whether the college was situated in an urban or rural area. As per the petitioner, the desired documents were submitted with the NRC on 28.04.2009 and the cases of the petitioner were considered by the NRC in its meeting held on 14.06.2009, wherein it was observed that the building plan approved by the competent authority had not been submitted by the petitioner and, thus the file of the petitioner was closed. Being aggrieved by the decision of the NRC/respondent no. 2 taken in the meeting held on 14.06.2009, the petitioner filed a statutory appeal u/s 18 of the NCTE Act, 1993 before respondent no. 1/NCTE on 18.08.2009 with respect to both the courses namely B.P.Ed and C.P.Ed. Since the building is the same for both the courses two separate copies of a common duly approved building plan was submitted along with each appeal. The appeal of the petitioner in respect of C.P.Ed. course was allowed by the respondent no. 1 vide order dated 08.10.2009, setting aside the order of the NRC and the case was remanded back to the NRC for causing inspection and deciding the case as per the norms and standards. However, the appeal filed by the petitioner with respect to B.P.Ed course was rejected by an order dated 26.11.2009, which led to the filing of the first writ petition by the petitioner against the respondents being WP(C) No. 160/2010 on 08.01.2010. The aforesaid writ petition was allowed by this court on 06.05.2010 and the court observed that having regard to the peculiar facts of the case, the matter be remanded back to the Appeal Committee, the Court further directed the NCTE to take into consideration the duly sanctioned building plan submitted by the petitioner along with the appeal for fresh consideration. The Appeal Committee re-considered the case of the petitioner, but rejected the same on almost identical grounds by order dated 18.05.2010.

4. It is the case of the petitioner that while passing the aforesaid order the NCTE did not take into account the direction of the High Court passed in WP(C) No. 160/2010 as the NCTE had rejected the appeal on the ground that the sanctioned building plan was submitted by the petitioner for the first time along with the appeal. According to the petitioner the NCTE had flouted the directions contained in the order dated 06.05.2010 passed by the Delhi High Court in W.P. (C) 160/2010, hence the petitioner filed a contempt petition No. 410/2010 in which notice was issued on 02.06.2010. Simultaneously with a view to safeguard its interest the petitioner filed a Writ Petition No. 4218/2010, in which notice was issued on 05.06.2010. The second Writ Petition No. 4218/2010 was allowed on 02.07.2010, wherein a direction was issued to NRC to decide the application of the petitioner within sixty days. According to the petitioner as a gesture of goodwill the petitioner on 15.09.2010 withdrew the contempt petition No. 410/2010 as his understanding was that the matter would be decided by the NRC as per the directions passed in W.P. (C) 4218/2010 on 02.07.2010.

5. It is pointed out instead of complying with the order passed in the Second Writ Petition No. 4218/2010 the respondent challenged the order dated 02.07.2010 by means of filing LPA No. 830/2010 which was decided on 20.04.2011. Being aggrieved by the said judgment the petitioner filed a review petition No. 259/2011 which was allowed by an order dated 25.05.2011. By the said review petition the order of the learned Single Judge dated 02.07.2010 passed in W.P. (C) 4218/2010 was set aside, however the matter was remitted to the Appeal Committee to be adjudicated afresh, which was duly considered and rejected by an order dated 05.07.2011 on practically the same grounds which were subject matter of the two earlier writ petitions and the LPA and the review petition, which has led to the filing of the third writ petition in the addition to the LPA and a review petition.

6. Counsel for the petitioner submits that admittedly a copy of the sanctioned building plan was not filed by the petitioner along with the application submitted for seeking permission for starting a B.P.Ed. course from the academic session 2006-07, when an application was filed on 29.12.2005. Counsel for the petitioner submits that however, when the appeal came up for hearing, the building sanctioned plan was submitted along with the appeal, and thus, once the High Court had directed the respondent to consider the building plan at the stage of filing of the appeal, the respondent was duty bound to do so.

7. It is the contention of counsel for the petitioner that the orders passed by the respondent are not only illegal and arbitrary, but they are contemptuous, as the respondent has shown scant regard to the repeated directions passed by the High Court in two writ petitions being Writ Petition No. 160/2010 and WP(C)4218/2010, and in LPA No. 830/2010.

8. Mr. Amitesh Kumar, counsel for the respondent submits that firstly the respondent has the highest regard and respect for the orders passed by this court and they have not wilfully flouted the same. Counsel for the respondent also submits that as per the Regulations an application is to be filed before the respondent, which has to be complete in all respects and the respondent would be well within its right to reject any application, which is incomplete or deficient in nature and it is for this reason that the first order was passed on 14.06.2009 when the NRC found that the application of the petitioner was deficient as copy of the building plan approved by the competent authority had not been submitted.

9. Counsel for respondent further submits that the order passed by the learned Single Judge on 02.07.2010 in the second writ petition (WP(C)4218/2010), has been set aside by the Division Bench and thus it cannot be said that respondent has flouted the directions contained in the order dated 02.07.2010.

10. I have heard counsel for the parties and perused the orders which have been passed by two Single Judges of this Court, the order passed in the LPA & the order passed in the review petition, the pleadings of the parties and considered

their rival submissions. Filing of an application with a view to seek permission to start B.P.Ed. course from the academic session 2006-07 and C.P.Ed. course from the academic session 2007-08 is not in dispute. It is also not in dispute that on 14.06.2009 on account of deficiency i.e. non-filing of the building plan approved by the competent authority, the NRC closed the file of the petitioner. It is also not in dispute that in an appeal the respondent allowed the appeal with regard to C.P.Ed. course in respect of the same area where the college is situated and the same building plan but for a different course "B.P.Ed." by an order dated 26.11.2009 rejected the appeal of the petitioner.

11. Order dated 26.11.2009 was challenged by the petitioner by filing a Writ Petition No. 160/2010 the following order was passed:

I have heard learned counsel for the parties. Considering the peculiar facts of the case, let the appellate committee take into consideration the duly sanctioned building plan submitted by the petitioner along with the appeal for fresh consideration. The appellant Committee shall take into account their earlier decision dt. 8.10.2009 in recommending inspection of the institution so far C.P.Ed course was concerned.

The decision be taken by the appellate committee within a period of 10 days from the date of this order. Let the petitioner approach the appellate authority within three days and request them for fixation of the date for hearing.

With the above directions, the petition stands disposed of.

12. It is also not in dispute that after passing of the aforesaid order, the case of the petitioner was again rejected by the respondent by an order dated 18.05.2010, which led to filing of the contempt petition No. 410/2010 which was dismissed as withdrawn by the petitioner when order dated 2.7.2010 was passed in W.P. (C) 4218/2010. In the second writ petition filed by the petitioner being WP(C)4218/2010, while allowing the same, the learned Single Judge had noticed the pendency of the earlier writ petition and the order so passed by the Single Judge. The learned Single Judge came to the conclusion that there was nothing to prevent the NCTE while exercising the appellate powers from considering the subsequent events unless there was ambiguity with respect to the subsequent events or the subsequent events required a further examination by the Regional Committee for which the matter can always be remanded back to the Regional Committee. Paragraphs 14 to 20 of the Order dated 02.07.2010 in W.P. (C) 4218/2010 reads as under:

14. The counsel for the petitioner has also contended that the NCTE is in violation of the order dated 6th May, 2010 (supra) of this Court whereby the NCTE was directed to decide after taking into consideration the duly sanctioned Plans already submitted by the petitioner. It is stated that a contempt petition in this regard has already been filed and of which notice has already been issued. Per contra, the counsel for the respondent contends that the NCTE has in the order impugned in this petition considered the matter as directed by this Court.

15. The appeal before the NCTE was against the order refusing or declining recognition on account of deficiencies in complying with the requirements or pre-conditions for such recognition. In the opinion of this Court, in the appeals of such nature, if the deficiencies owing where to application for rejection has been declined/rejected, are removed/remedied during the pendency of appeal, the effect thereof can be seen/noted by the Appellate Authority and if satisfied that the deficiency owing where to the Regional Committee had rejected the application, has been removed/remedied, the order of Regional Committee can be set aside and the application for recognition either allowed or ordered to be proceeded with further, instead of requiring the applicant to apply afresh. It is the settled principle that an appeal is a continuation of the original proceeding and the Appellate Court is always entitled to, while deciding the appeal, take into account the subsequent events. I have perused the Act, Regulations and the Rules (supra) providing for appeal and procedure of its disposal. I find nothing therein to prevent NCTE from, while exercising such appellate powers considering the subsequent events aforesaid. Of course, where there is any ambiguity qua the subsequent events or such subsequent events require further examination by the Regional Committee, the NCTE can always remand back the matter to the Regional Committee. The order of the NCTE impugned in this petition refusing to notice the sanction of Building Plans on a date after the order of NRC under appeal before it is thus not found to be in accordance with law.

16. The contention of the counsel for the respondents that the petitioner should be asked to apply afresh on the basis of sanctioned plan does not take note of the fact that the application filed by the petitioner on 28th December, 2005 came to be decided/dealt with by NRC after about four years. If the petitioner is directed to start the procedure afresh, yet further time may be wasted. Now when as per the petitioner it is ready to commence imparting education in the course, there is no justification for delaying it further. There is a dearth of educational institutions with the number of students seeking admissions being far more. If the petitioner is found ready and entitled to recognition, red tape of procedure or technicalities of filing fresh application should not be allowed to come in way. The respondents, entrusted with regulatory powers over teacher education system ought to show expediency in all their actions rather than indulging in legalese. Moreover when the only deficiency owing where to the file of the petitioner was closed or rejected, is found to have now been removed and it is not in dispute that the building plans of the College of the petitioner have been sanctioned, it defies logic as to why the NCTE in appeal ought not to have directed the NRC to proceed further in the matter.

17. The counsel for the respondents has contended that the NCTE in the impugned order has also held that the sanctioned building plans submitted by the petitioner do not contain Khasra No./Survey No./plot No. etc. It is contended that it was for this reason that the sanctioned building plans were not found satisfactory. The said argument is also of no avail. It is not as if the matter was to attain finality before the NCTE. Even after the requirement of the sanctioned

building plans being met, the matter was to be remanded to the NRC for further inspection in accordance with law. During the said inspection, the NRC if dissatisfied in any respect could ask for it to be fulfilled and if not fulfilled deny the recognition.

18. There is yet another factor which prevails with this Court in deciding as aforesaid. The counsel for the petitioner on enquiry has stated that both the course i.e. C.P.Ed. & B.P.Ed. are to be conducted in the same building on different floors. Once the file of the petitioner with respect to one course is being processed further in pursuance to the earlier order of the NCTE, though labelled as erroneous by the NCTE in the impugned order, expediency demands that the process with respect to the B.P.Ed. course be also completed simultaneously.

19. Accordingly, this petition succeeds. The order dated 18th May, 2010 of the NCTE impugned in this petition is set aside and the order of the NRC closing the file of the petitioner with respect to the B.P.Ed. course is set aside. The matter is remanded back to the NRC for inspection of the Institution of the petitioner to ascertain the fulfillment of the other requirements in accordance with the prescribed norms. The said procedure be completed within sixty days from today.

20. On suggestion of this Court, the counsel for the petitioner on instructions states that to maintain the cordiality of the relationship, the petitioner shall withdraw the contempt petition filed against the respondents and their officials. The petition is disposed of.

No order as to costs.

13. The respondent thereafter filed an LPA No. 830/2010, assailing the order of the learned Single Judge which was decided by a Judgment dated 20.04.2011. However, on a review of the order dated 20.4.2011 filed by the petitioner, the said order was set aside and order dated 25.05.2011 was passed, which reads as under:

Having heard, Mr. Sanjay Sharawat, learned counsel for the applicant and Mr. Amitesh Kumar, learned counsel for the NCTE-respondent, the order passed in LPA No. 830/2010 and the writ petition are set aside and the matter is remitted to the appeal committee to be adjudicated afresh. It is open to the applicant to raise all contentions before the appeal committee and it is expected that the appeal committee shall address all submission by giving cogent and germane reasons and also keep in view the concept of parity. Needless to say, the adjudication has to be in accordance with law.

To cut short delay, it is directed that the applicant or its authorised representatives shall appear before the appeal committee on 7th June, 2011.

The application for review is, accordingly, disposed of.

14. A reading of all the three orders, which have been passed by the High Court (two by the learned Single Judge of this court and the third one by the Division

Bench), there is uniformity on one aspect i.e. the matter should be decided afresh by the Appellate Committee.

15. It may also be noticed that in the order dated 02.07.2010 in paragraph 20 it has been clearly stated that on the suggestion of the Court, the counsel for the petitioner on instructions and with a view to maintain cordiality of the relationship, the petitioner had agreed to withdraw the contempt petition filed by them against the respondents and their officials.

16. It is a matter of concern that despite three orders of this court and more particularly the fact that the first order which was passed in Writ Petition No. 160/2010 on 06.05.2010 where the Court observed that keeping in view the peculiar facts of the case, Court directed the Appellate Committee to take into consideration the sanctioned building plan submitted by the petitioner along with the appeal for fresh consideration. In the second order, the Appeal Committee was also directed to take into account an earlier decision dated 08.10.2009 in recommending inspection of the institution so far as C.P.Ed. course was concerned and ten days time was granted to the Appeal Committee. This first order has attained finality as the same was never challenged.

17. Since this order was not complied with in letter and spirit, the petitioner had filed a contempt petition and on the suggestions of the Court had withdrew the same, which is evident from the reading of the order dated 02.07.2010 passed in W.P. (C) 4218/2010.

18. While this court reiterates the fact that Regulations 5.4 of the NCTE, provides that the application filed by the applicant should be complete in all respects. However, in the case in hand the High Court had noticed the peculiar facts and remanded the matter back with a clear mandate to the respondent to consider the subsequent events which the Appeal Committee was bound to do so in the spirit of the order which had been passed.

19. Having not complied with the order in letter and spirit to say the least is not appreciated by this court, especially in view of the fact that this order has attained finality. The court also cannot lose track of the fact that in the order dated 02.07.2010 the learned Single Judge in detail went on to hold that there is no bar for the Appeal Committee to take into consideration the subsequent event.

20. No doubt while dealing with the review petition, the Division Bench has stated that the order of the Single Judge is set aside, but the court cannot lose track of the fact that Division Bench also passed the order remitting the matter to the Appeal Committee for fresh adjudication. The Division Bench also noticed that it would be open for the parties to raise all contentions before the Appeal Committee and the Appeal Committee would address all the submissions by giving cogent and germane reasons and also keeping in view the concept of parity which had also been observed by the Single Judge in the order dated 06.05.2010 in the Writ Petition No. 160/2010 which order has attained finality.

21. While making it clear that this order is being passed in the peculiar facts of the case and keeping in view the background that this is the fifth round of litigation between the parties and also keeping in view the three orders passed by the different courts remitting the matter back and having regard to the fact that for a different course of the petitioner pertaining to the same premises, the respondent has already taken the fresh building plans into consideration and also taking into consideration that there is absolutely no bar in the Appeal Committee in considering the subsequent events on record, without being treated as a precedent, the matter is remanded back to the NRC, who will take a final decision in the matter within four weeks from receipt of the order. Writ petition and the application stand disposed of, in above terms.