
(2010) 07 DEL CK 0037

In the Delhi High Court

Case No : Writ Petition (C) 4218 of 2010

Guru Nanak Khalsa College

APPELLANT

Vs

National Council for Teacher Education and Another

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 18
National Council for Teachers Education (Recognition, Norms and Procedure)
Regulations, 2007 — Regulation 7, 7(1), 8, 8(10)
National Council for Teachers Education Rules, 1997 — Rule 10, 11

Citation : (2010) 07 DEL CK 0037

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjay Sharawat, for the Appellant; Vaibhav Kalra, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition impugns the order dated 18th May, 2010 of the respondent No. 1 National Council for Teacher Education (NCTE), dismissing the appeal filed by the petitioner against the order dated 25th September, 2009 of the respondent No. 2 being the Northern Regional Committee (NRC) of NCTE closing the file for grant of recognition to the petitioner for conducting B.P.Ed. (Bachelor of Physical Education) course, on the ground that the petitioner had not submitted the building Plan of its Institute/ College, duly approved by the competent authority. Though notice of this petition had not been issued till now but the petition has been listed earlier on three occasions and on all of which the counsel for the respondent has also appeared. In the circumstances and finding no need for requiring a counter affidavit, the counsels have been heard finally.

2. The counsel for the petitioner contends that the petitioner had on 28th December, 2005 applied to the NRC for recognition for conducting two courses i.e. B.P.Ed. (with which present petition is concerned) and C.P.Ed. (Certificate in Physical Education).

3. The NRC of the NCTE in its 139th meeting held from 10th April to 12th April, 2009, with respect to the application of the petitioner for recognition for C.P.Ed. course recommended issuance of Letter of Intent for inspection, subject to i) submission by petitioner of approved building Plan from competent authority and also ii) subject to the petitioner submitting documents to show whether its Institute/College is located in urban or rural area.

4. With respect to the application of the petitioner for B.P.Ed. course, in the same meeting, it was recommended that Letter of Intent for inspection be issued subject to submission by petitioner of certificate whether the Institute/College is located in urban area or rural area. Significantly, with respect to the said application no condition for producing the approved building Plan was imposed, as in case of application for recognition of C.P.Ed. course.

5. The NRC in its 142nd Meeting held from 14th to 16th June, 2009 decided to close the file with respect to both the applications of the petitioner on the ground that the building plans approved by competent authority had not been submitted.

6. The petitioner preferred appeals to the NCTE against the order aforesaid closing both its applications. The NCTE vide its order dated 8th October, 2009 allowed the appeal with respect to the application for C.P.Ed. course, on the basis of the statement of the petitioner before it that the concerned Municipal Committee had approved all the building Plans and had also issued a letter mentioning that the College is situated in an urban area. The NCTE accordingly remanded the case back to the NRC for inspection of the Institution of the petitioner to ascertain availability of necessary infrastructure, instructional and other facilities in accordance with the norms prescribed by the NCTE.

7. However, the NCTE vide order dated 26th November, 2009 dismissed the appeal preferred by the petitioner with respect to its application for B.P.Ed. course on the ground that the building Plan submitted by the petitioner was not approved by any competent authority and also did not indicate the existing built-up area, Khasra No./ Survey No./ Plot No. etc.

8. The petitioner preferred WP(C) No. 160 of 2010 in this Court with respect to the order dated 26th November, 2009 of the NCTE dismissing its appeal for the B.P.Ed. course. Notice of the said writ petition was issued to the respondents who filed a counter affidavit. The said writ petition was disposed of vide order dated 6th May, 2010. The matter was remanded to the NCTE and NCTE was directed to decide the matter taking into consideration the duly sanctioned building Plan submitted by the petitioner along with the appeal and the fact that the appeal with respect to the C.P.Ed. course had been allowed.

9. Upon such remand, the NCTE has passed the order dated 18th May, 2010 impugned in this petition. The NCTE in the impugned order has noted that the building plans of the Institute/College of the petitioner had been sanctioned on 13th August, 2009 but after the decision of the NRC from 14th/16th June, 2009. The NCTE has thus held that since admittedly there were no sanctioned building

Plans as on the date of the decision of NRC under appeal, there was nothing wrong in the decision of the NRC. The NCTE has also held that the appeal of the petitioner with respect to the C.P.Ed. course had been erroneously/wrongly allowed on 8th October, 2009 but noted that since that decision had been implemented, it could not be reviewed. The NCTE however held that the decision dated 8th October, 2009 with respect to the C.P.Ed. appeal being erroneous/wrong could not be a precedent for allowing the appeal with respect to the B.P.Ed. course.

10. Section 14 of the National Council for Teacher Education Act, 1993 provides for obtaining recognition for offering a course or training in teacher education. It inter alia provides that before passing an order holding an institution to be not fulfilling the requirements for such recognition, the Regional Committee shall provide a reasonable opportunity for making a written representation. Section 18 of the said Act provides for an appeal to the NCTE against an order of Regional Committee and for it to be made in such form as may be prescribed and for the appeal to be disposed of following such procedure as may be prescribed.

11. Regulation 7 of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2007 provides for the processing of the applications. The applicant institutions are required to ensure submission of applications complete in all respects. Regulation 7(1) however provides that in order to remove/correct the inadvertent omissions and deficiencies in documents, the office of the Regional Committee shall point out the deficiencies within 30 days of the receipt of the applications and which the applicants are required to remove within 90 days. Regulation 8 provides for conditions for grant of recognition. Regulation 8(10) provides that "at the time of inspection", the building of the institution shall be complete in the form of a permanent structure on the land possessed by the institution and equipped with all the necessary amenities and fulfilling such requirements as may be prescribed. Though the said Regulations of 2007 since stand superceded by Regulations of 2009 but both counsel agree that at the relevant time the Regulations of 2007 were in force and would apply.

12. Rule 10 & 11 of the National Council for Teacher Education Rules, 1997 provide for appeals and procedure for disposal of the appeals.

13. It is the contention of the counsel for the petitioner that NRC in its 139th meeting while recommending issuance of Letter of Intent to the petitioner for the B.P.Ed. course did not make the same subject to the production of the sanctioned building Plan and hence could not have closed the file with respect to the said application on the said ground. Relying on Regulation 7(1) (supra), it is contended that before closing the file on said ground an opportunity ought to have been given to the petitioner to produce the sanctioned Plan. Per contra, the counsel for the respondents draws attention to the letter dated 28th April, 2009 of the petitioner in pursuance to the minutes of the 139th meeting and undercover of which letter the petitioner also purported to enclose the approved

building plans along with the certificate of its College building being situated in an urban area. It is thus contended that the petitioner was fully aware of the requirement to produce the sanctioned building Plans and there is nothing wrong in the order of the NCTE in appeal holding that the application of the petitioner for the B.P.Ed. course being not complete as on the date of the order of the NRC closing the said file. It is further contended that it is always open to the petitioner to apply again to NRC.

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 whereto 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 whereto 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.