

(2021) 10 KL CK 0063
In the High Court Of Kerala
Case No : Writ Petition (C) No. 22254 Of 2020

Jamia Trust

APPELLANT

Vs

National Council For Teachers Education

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 2(c), 2(i), 2(j), 3(1), 12, 14(3), 15(3), 17(1), 20, 32, 32(2)??1993

Citation : (2021) 10 KL CK 0063

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : George Poonthottam, Nisha George, Dr.Abraham P.Meachinkara, Thomas Abraham

Final Decision : Allowed

Judgement

Raja Vijayaraghavan V, J

1. The Jamia Trust, the petitioner herein, runs the Jamia Training College, an institute established in the year 2007 for conducting B.Ed course. Recognition was granted as per Ext.P1 order by the Southern Regional Committee (SRC) of the National Council for Teacher Education (NCTE) to the institute for conducting Secondary (B.Ed) course. By Ext.P9 order, the SRC has withdrawn the recognition granted to the Training College for conducting the aforesaid course with effect from 2020-2021 academic session invoking its powers under Section 17(1) of the National Council for Teacher Education Act, 1993. The aforesaid order is under challenge in this writ petition.

2. In order to appreciate the issues involved in this Writ Petition, it is necessary to state the bare minimum facts:-

a) The NCTE, based on the application filed by the petitioner, granted recognition as per Ext.P1 order to conduct Secondary (B.Ed.) course of one-year duration with an annual intake of 100 students. The recognition granted as aforesaid was

subject to the fulfilment of all such requirements as may be prescribed by other regulatory bodies. The State Government issued No Objection Certificate as is evident from Ext.P2 and on its strength Ext.P3 provisional affiliation was granted by the University.

b) In the year 2015, the petitioner was granted revised recognition as per Ext.P4 order, as per which they were permitted to conduct B.Ed programme of two years duration with an annual intake of 50 students of one basic unit as per the NCTE (Recognition Norms and Procedures) Regulations, 2009.

c) While they were running the institute as aforesaid, Ext.P5 show cause notice was issued as per which, the petitioner was informed that the institute has not submitted the documents mentioned in the notice in compliance with the conditions in Ext.P4 revised order of recognition. Among other records, the petitioner was directed to produce certified copies of land documents issued by the revenue authorities, land use certificate, non-encumbrance certificate, approved building plan, site plan, building completion certificate, staff list duly approved by the Registrar of the Affiliating body and Form-A totalling Rs.12 lakhs towards Endowment Fund and Reserve Fund. The petitioner was informed that if some of the documents were in the Regional language, notarized copies of the English version are also to be submitted. The petitioner contends that immediately thereafter Ext.P6 final show cause notice was served on the petitioner reiterating the very same demands. The petitioner contends that Ext.P7 reply was issued appending all the documents which were sought for by the 1st respondent. It is contended that nothing further was heard from the respondents thereafter.

d) It is the case of the petitioner that physical copies of all the documents were handed over to the 1st respondent while their office was in Bangalore. Later, the petitioner came to understand from other sources that recognition granted to the petitioner was withdrawn for various reasons. The petitioner managed to obtain a copy of Ext.P8 order wherein the following reasons are stated for withdrawing the recognition.

"The institution was issued a Final Show Cause Notice (FSCN) dated 31.10.2019. The institution has submitted its reply on 29.11.2019. The Committee considered the reply and found the following deficiencies:-

1. The institution has not submitted certified copy of Registered Land documents along with the notarized English version of the same.
2. The institution has not submitted Land Use Certificate duly approved by the competent authority.
3. The size of the multi purpose Area & Site Area is not mentioned in the Building Plan submitted by the institution. The institution has not mentioned Survey No. & Site Area.
4. Built-up area is mentioned in the Building Completion Certificate documents as

891.2 m² against the requirement of 1500 sq.mt. as per NCTE Norms. However, Building Plan document show the total built-up area total 1846 m².

5. Academic Faculty and Administrative staff:-

i. The Institution has 1+9 staff list is not approved by the affiliating body.

ii. Regarding non-teaching staff the institution only submitted details of 2 staff members. The institution has not submitted the details of all non-teaching staff as required under NCTE Regulations, 2014.

iii. The institution has not appointed faculty for Fine Arts & performing arts.

iv. Photographs of all faculty members are not affixed over the proforma submitted by the institution."

e) The petitioner contends that most of the grounds upon which the recognition was withdrawn were never put to the petitioner and were never mentioned in the earlier show-cause notices. It is contended that the petitioner had responded to the earlier show-cause notices and had produced the records which were sought for. It is further contended that as per the second proviso to Section 17 (1) of the NCTE Act, 1993, an order withdrawing recognition shall come into force only with effect from the end of the academic session next following the date of communication of such order. However, in the impugned order, the recognition has been withdrawn with effect from the academic year 2020 - 2021 itself. It is further stated that if the 1st respondent was intending to pass any order proposing to withdraw the recognition of the institution, the grounds on which the withdrawal is proposed, ought to have been intimated to the petitioner and a reasonable opportunity ought to have been granted. It is on these grounds that the Writ petition was filed seeking the following reliefs:

a) Issue a writ of certiorari calling for the records leading to Ext.P5, P6 and P8 and to quash the same;

b) Issue an appropriate writ directing the 1st respondent to hear the petitioner on the defects noted in the Ext.P8 minutes and take a fresh decision in accordance with law;

c) Issue a writ declaring that the petitioner's College is eligible to make admissions in the 2020-21 academic year and entitle to get allotment to students to the petitioner's college in the allotment process for the 2020-21 academic year.

3. While the writ petition was pending consideration, the petitioner was served with Ext.P9 decision informing them that the recognition has been cancelled with effect from the next academic session. It is contended that Ext.P9 decision was taken without affording a fair chance to the petitioner to rectify the mistakes and it would offend Section 17(1) of the NCTE Act. Ext.P9 was placed on record and the writ petition was amended seeking to quash Ext.P9 and also for declaring that Ext.P9 decision has been taken in violation of the principles of natural justice.

4. A statement has been filed by the learned standing counsel appearing for the 1st respondent. In the statement, it is stated that originally recognition was granted to the petitioner to conduct B.Ed course of one-year duration with an intake of 100 students. After coming into force of the 2014 regulations, the NCTE issued revised recognition order as is evident from Ext.P4. It is stated that the SRC decided to seek clarification in respect of certain documents and it was in the said circumstances that Ext.P5 show cause notice was issued to the petitioner. However, the petitioner did not care to reply to the notice. It is in the afore circumstances that Ext.P6 final show cause notice was issued on 31.10.2019 seeking to submit the documents sought for. The matter was considered in the meeting of the SRC and found five deficiencies. It was in the said circumstances that a decision was taken to withdraw the recognition.

5. When this matter had come up on 28.10.2020, this Court had issued an interim order directing the University not to act upon the order of withdrawal of recognition till the writ petition is decided.

6. In the course of proceeding, the petitioner has produced Ext.P10 copy of the approved staff list issued by the University and Ext.P11 copy of the non-teaching staff approved by the University. It is stated that the University had not issued the staff list on yearly basis and it was only after the order of withdrawal of recognition that the approved copy of the staff list was issued. The petitioner has also produced Ext.P12 true copy of the notarized English version of the land document, Ext.P13 copy of the land use certificate approved by the competent authority, Ext.P14 notarized building plan and site plan and Ext.P15 copy of the building completion certificate showing the total built-up area as 1847.51 sq.mts. Relying on these documents, it is contended by the petitioner that they had rectified all the defects shown in the withdrawal order and, if an opportunity was granted to the petitioner to substantiate the same before issuing the order of withdrawal of recognition, they would have been in a position to clear the confusion.

7. An additional statement has been filed by the learned standing counsel for the 1st respondent. In the said statement, it is stated that enough opportunities were granted to the petitioner and it was when they failed to respond where recognition was withdrawn. It is further stated that a personal hearing is provided in the appeal stage and even if the personal hearing was granted, it would have proven futile.

8. I have heard Sri. George Poonthottam, the learned senior counsel appearing for the petitioner as instructed by Sri. Arun Chandran, the learned counsel, Sri. Abraham Meachinkara, the learned Standing Counsel appearing for the 1st respondent, Sri. Thomas Abraham, the learned standing counsel appearing for the University of Kerala and the learned Government Pleader.

9. It was with a view to achieving the object of planned and coordinated development of the teacher education system throughout the country and for

regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith, that the Parliament had enacted the 1993 Act. The 1993 Act provides for the establishment of a Council to be called the National Council for Teacher Education with multifarious functions, powers and duties.

10. Section 2(c) of the Act defines the term "Council" to mean a Council established under sub-section (1) of Section 3. Section 2(i) defines the term "recognised institution" to mean an institution recognised under Section 14. Section 2(j) defines the term "Regional Committee" to mean a committee established under Section 20.

11. Section 12 of the Act enumerates the functions of the Council. The Council is granted authority under the Act to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under the Act, the Council may undertake surveys and studies, make recommendations to the Central and State Governments, Universities, UGC etc, coordinate and monitor teacher education and its development in the country, lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in recognised institutions, lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum, lay down guidelines for compliance by recognised institutions, for starting new courses or training and for providing physical and instructional facilities, staffing pattern and staff qualifications and such other matters as provided in Section 12.

12. Section 17 of the NCTE Act deals with the contravention of the provisions of the Act and the consequence thereof. The said provision reads as follows:

17. Contravention of provisions of the Act and consequences thereof.-

(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of Section 14 or permission under sub-section (3) of Section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the

academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under sub-section

(1)-

(a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and

(b) shall be published in the Official Gazette for general information.

(3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section

(1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

13. A close analysis of the provisions of Section 17 would show that where the Regional Committee, on its own motion or on any representation received from any person, is satisfied that a recognised institution has contravened any of the provisions of the Act or the Rules, Regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of Section 14 or permission under sub-section (3) of Section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing. As per the first proviso to sub-section (1), no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution. As per the second proviso to sub-section (1), the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order. In view of the provisions under sub-section (3) of Section 17, once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel the affiliation of the institution in accordance with

the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

14. It is in the exercise of the power vested in it under Section 32 of the Act that the National Council for Teacher Education has, from time to time, framed the regulations. Initially, NCTE framed "the National Council for Teacher Education (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permissions to Start New Course or Training) Regulations, 1995. In 2002, the NCTE framed "the National Council for Teacher Education (Form of Application for Recognition, the Time-Limit of Submission of Application, Determination of Norms and Standards for Recognition of Teacher Education Programmes and Permission to Start New Course or Training) Regulations, 2002. Between 2003 and 2005, six amendments were made in the 2002 Regulations, which were finally repealed with the enactment of "the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005 (for short "the 2005 Regulations"). Finally, by notification dated 28.11.2014, in the exercise of the powers conferred by sub-section (2) of Section 32 of the National Council for Teacher Education Act, 1993, (73 of 1993) and in supersession of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009, the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 was brought into force.

15. In the case on hand, it appears that after the coming into force of 2014 Regulations, the NCTE issued revised provisional recognition order on 20.5.2015 on the basis of an affidavit filed by the petitioner that they are willing to adhere to the Regulations 2014. Ext.P5 show cause notice issued on 22.7.2019 on the premise that the petitioner had not complied with the undertaking given by them to produce the relevant records. This was followed up with Ext.P6 show-cause notice. The reply submitted by the petitioner was considered by the 1st respondent and they went on to note several other discrepancies which were not mentioned in the show-cause notices. I find that the discrepancies noted in Ext.P9 are not what was highlighted in Exts.P5 and P6 notices. For instance, in the show cause notices it has not been stated that the size of the multi-purpose area and site area was not mentioned in the Building Plan submitted by the institution. Insofar as Academic Faculty and Administrative staff is concerned, the 1st respondent has noticed several discrepancies which fact is not seen stated in the show cause notices issued earlier.

16. It is only when the Council is satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, can the Council withdraw the recognition of such recognised institution. However, no such order can be passed without affording a reasonable opportunity of making a representation against the proposed order. While issuing

the show cause notice to an institution, the 1st respondent is required to specifically point out the deficiencies/contraventions that have come to their notice and the institution should be permitted to rectify the deficiencies and/or the contraventions, if any, of the provisions of the Act, Rules and Regulations. If the show cause notice is issued stating one or the other deficiency/contravention and if the order of withdrawal is passed for different reasons, the said procedure would clearly violate the provisions of Section 17 of the Act. Withdrawal of recognition is a drastic measure and only if the conditions in Section 17 of the Act is satisfied can the steps initiated for withdrawal can be justified.

17. A learned Single Judge of this Court in the judgment dated 25.9.2020 in W.P. (C) No. 18243/2020 [St. Jacob Training College, Menamkulam v. Regional Director and Ors.] and connected cases had occasion to hold that an order of withdrawal of recognition passed by the Regional Committee in the exercise of powers under sub Section (1) of Section 17 shall be on any of the contraventions alleged in the show cause notice and if the order of withdrawal of recognition is founded on grounds which are at variance from that in the show-cause notice, it would amount to a violation of the principles of natural justice. It was also held that the order of withdrawal of recognition passed by the Regional Committee contrary to the above principles suffers from the vice of the violation of the principles of natural justice. It was held that if the afore conditions are satisfied, there is no necessity to relegate the matter to the appellate authority. I respectfully concur with the principles laid down in St. Jacob (supra).

18. Having considered Exts.P5 and P6 show-cause notices and testing the same with Ext.P8 and P9 withdrawal orders, there cannot be any doubt that the reasons stated in Exts.P8 and P9 are at variance with Exts.P5 and P6. I am therefore of the view that Exts.P5 and P6 do not satisfy the requirements of a valid show cause notice under the first proviso to Section 17(1) of the Act. Furthermore, the petitioner has produced Exts.P10 and P11 approved copy of the staff list, Ext.P12 notarized English version of the land documents, Ext.P13 land use certificate issued by the competent authority, Ext.P14 notarized building plan and site plan and Ext.P15 building completion certificate showing that the petitioner is in possession of a total built-up area of 1847.51 sq.mts. The above action of the petitioner coupled with their contention that they had furnished all the records along with the reply notice furnished to the 1st respondent persuades this Court to hold that the order withdrawing the recognition was on feeble grounds.

19. In National Council for Teacher Education v. Vaishnav Institute of Technology and Management [(2012) 5 SCC 139], the Apex Court had occasion to hold that post recognition, the recognized institution acquires a different position and the interest of the teachers, employees and students intervene. If a recognized institution is found wanting in its functioning, it has to be granted a reasonable opportunity to rectify the deficiencies. Derecognition or withdrawal of recognition of a recognized institution is a drastic measure and it would result in dislocating

the students, teachers and staff. Having considered the matter in all its perspectives, I am of the view that an opportunity has to be granted to the petitioner to rectify the deficiencies in a time-bound manner for which directions can be issued:

Resultantly, Ext.P8 and P9 will stand set aside. There will be a direction to the petitioner to furnish the entire documents made mention of in Exts.P5, P6, P8 and P9 within a period of ten days from 12.10.2021. If any further clarifications are required, the 1st respondent shall require the petitioner to produce those records as well within a period of one week from 12.10.2021. Thereafter, the 1st respondent shall take a decision as per procedure and in strict adherence to the provisions of law after affording an opportunity of being heard to the petitioner. Appropriate orders shall be passed within a period of one month from the date of submission of the documents. Till orders are passed, the interim order granted by this Court on 28.10.2020 shall continue.