

(2004) 01 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) 157, 246 and connected cases of 2004

Lazar Nadar Education and Research Foundation

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 KLT 1061

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : George Poonthottam, Kurian George Kannanthanam and M.S. Radhakrishnan Nair, for the Appellant; P.C. Iype, State Attorney, C.S. Vaidyanathan V.M. Kurian, K. Jaju Babu, K.R.B. Kaimal, M.C. Cherian, Siby Mathew, E.D. George, P.M. Saneer and P.P. Jacob, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The issue raised in the Writ Petitions and the Contempt Case pertain to the same matter and, therefore, the Writ Petitions are consolidated together and heard alongwith Contempt Case and I proceed to dispose of all the case by this common judgment.

2. The petitioner in the Writ Petitions and the party respondents were applicants before the State Government for NOC for starting B.Ed. Colleges. Pending decision of this Court in the earlier Writ Petitions, i.e., O.P. No. 1702 of 2003 and connected cases based on the study conducted by the Expert Committee appointed by the Government, the Government informed the court that there was scope for starting only 75 more B.Ed. Colleges in the State. Based on the Expert Committee recommendation. Accepted by the Government, this Court in the batch cases, gave specific direction to the Government to engage Expert Committee for collecting particulars of infrastructural and instructional facilities available for the applicants, and to select 75 out of 291 applicants based on the relative merits of the applicants. The Government accordingly engaged it's Officers, collected data and selected 75 institutions and issued NOC to them. In

fact though this Court had specifically limited the issue of NOC to 75 applicants, the Government first forwarded names of 75 applicants and later another 21 names of institutions to the NCTE for the purpose of scrutiny for recognition. Against grant of NOC to 96 colleges, that is in excess of the limit earlier fixed by the Government and approved by this Court, some of the petitioners approached this Court with Writ Petitions. Shortly after filing of the WPs. the Government withdrew NOC issued to additional 21 institutions; i.e., in excess of 75 selected earlier. In the course of proceedings before this Court, the Government withdrew NOC issued to another 11 more colleges on the ground that there were objections against grant of NOC to them. The controversy now therefore, is confined to the selection of 64 colleges and the grant of NOC to them. While rival claims are raised by the petitioners claiming to be applicants with better facilities over the selected applicants, the respondents who are in the list, are supporting the decision of the Government on the ground that they are rightly found to have better facilities and they are rightly selected in preference to the petitioners. The cancellation of NOC to some of the applicants who are originally issued NOC during the pendency of the WPs. is also under challenge on the ground that such action without even giving opportunity to them and without proper enquiry on allegations is arbitrary and unsustainable.

Pursuant to interim orders of this Court, the State Attorney, Shri. P.C. Iype, produced copies of applications and files containing data gathered in respect of each applicant in regard to availability of land, building, school-linkage etc. On going through the files, I found lot of infirmities in the applications, in as much as complete particulars are not furnished. On going through the data collected by the Expert Committee appointed by the Government, I find at least some of the institutions who have superior claims over the selected institutions were declined NOC by the Government. After going through the records produced, this Court was prima facie satisfied that the earlier judgment was not complied with, that there is prima facie contempt and, therefore, another order was passed directing the Secretary to Government to file an affidavit in this Court as to why contempt proceedings should not be initiated. It is at this stage that the Government has filed separate affidavits stating that it has decided to cancel NOC granted to 64 applicants and will reconsider all the applicants after one more study and assures this Court that proper decision will be taken in regard to selection of 75 applicants for NOC in the place of the present order granting NOC to 64 which is being recalled by the Government. In the Contempt Case the Government has filed an affidavit expressing regret in the matter and has tendered unconditional apology for violation of judgment, in any.

3. I heard counsel for the petitioner, the State Attorney, Shri. P.C. Iype, counsel appearing for the party-respondents and Shri. V.M. Kurian, counsel appearing for NCTE. The petitioners demand the entire data collected by the Government in respect of selected colleges so that they can compare the facilities available in those institutions with that of theirs and contest the grant of NOC to those institutions in preference to them as according to them they have better claims

and those selected institutions do not have the required facilities. The specific contention of the petitioners is that the Government in the first place did not conduct a proper evaluation of the data collected and decide the relative merit of candidates, but has taken decisions based on extraneous considerations, and they have cited some cases where obviously deserving institutions are declined NOC, while some most undeserving institutions were granted NOC to total disregard of the earlier judgment. Since grant of NOC has to be based on relative merit of applicants, the applicants are entitled to know the data based on which the rival applicants were granted NOC. Therefore, the petitioner's right to get copies of documents containing data about the colleges selected by the Government has to be necessarily upheld. However, the question is whether this Court should proceed to decide the relative claims of the petitioners and party-respondents even after the Government conceded mistakes and agreed to reconsider the entire matter afresh. Of course, if the Government takes a wrong decision, this Court has the authority to review it and correct the Government. However, in the course of judicial review this Court should not take over the executive functions of the Government and decide the matter for itself. As far as possible, this Court should correct mistakes in the decision-making process and decision by itself should be taken only in exceptional cases. In this particular case, if the respondents' request for consideration of the case of each and every selected candidate in relation to the petitioners is accepted, then this Court would be virtually taking over the Government's function to select and grant NOC to 75 colleges. When the Government concedes mistakes in one selection and undertakes to correct themselves, which again will be subject to scrutiny by this Court, I do not think the petitioners can have any grievance. So far as party-respondents, who support the order of the Government in granting NOC to them, are concerned, the position is not different because by cancelling the list for the time being with an undertaking by the Government to reconsider case of all the applicants, they cannot have any grievance because, if they are eligible in preference to others, they will get NOC in the process of selection, which the Government undertakes to take up immediately after judgment. I find substance in the grievance of all those who are "entitled to NOC because by the repeated process of selection and the consequence delay, they are not able to start the B.Ed. Course . The academic year 2003-04 is coming to a close, and those B.Ed.Colleges who are eligible for NOC, in any case after recognition by NCTE, will be able to commence the course in the next academic year commencing from June, 2004. I do not think there should be any difficulty for the Government to make final selection and grant NOC within a period of two months from now, and within another two months the NCTE will be able to process the selection and grant recognition to eligible colleges so as to enable such colleges to start B.Ed. Course from the academic year 2004-05, which starts in June-July, 2004. Therefore, I do not find any justification for this Court to engage itself in the process of deciding the correctness of grant of NOC to each and every college to which it is granted in relation to contesting parties. Moreover, it is a cumbersome process involving collection of data from all the institutions, evaluation of the

same with reference to the norms for grant of NOC and to take a decision based on relative merit of the candidates which is the function of the Executive and not of the Judiciary. The petitioners as well as respondents can approach this Court, if they have any grievance, after fresh process of selection and grant of NOC is over. For one of the petitioners senior counsel Shri. T.P.Kelu Nambiar raised a contention that as no policy issue is involved in the grant of NOC to different colleges, the Government cannot reverse their earlier order. I do not find any merit in this contention because the cancellation now made is the selection made pursuant to an earlier judgment and the cancellation is only for fresh selection in the place of the cancelled last. The contentions raised by other counsel pertain to delay contrary to NCTE regulations, delay in commencement of course etc., are also not tenable. However, the contentions such as separate college building is not required but only separate block of existing building complex of college is sufficient, concentration of B.Ed. Colleges in same facility without linkage with schools for training of students etc., should engage serious attention of those deciding the matter. Therefore, I dispose of the WPs. based on the undertaking by the Government to make a proper selection based on the earlier judgment and accordingly the Government is given freedom to cancel the selection already made forthwith for reconsideration of the case of all the applicants. However, in view of the controversy and in order to avoid repetition of the same mistake, the following directions are issued to the Government:

1. Selection should be State-wise and should be only from out of 291 original applicants based on earlier judgment. The very same Experts who have collected data based on which selection was made and now cancelled should not be engaged for inspection of the same institutions. However the data collected earlier can be utilised for the purpose of confirming or controverting the data gathered afresh by the Expert Committee now being appointed.
2. The Experts gathering data should be directed to give a brief description of the facilities available in each college, with reference to the land, building, laboratory, library, linkage to schools etc., and the rating and evaluation thereof, so that it will be possible for the contesting parties to compare those facilities with that of theirs and stake their claim. Once evaluation is made and rank list prepared, the same should be published in draft form before finalisation.
3. The process of appointment of Experts, collection of data by them after notice to all the applicants and publication of proposal for selection in draft form in the order of priority should be completed within six weeks from now granting opportunity to the rival claimants to raise their objections against grant of NOC to any of the candidates. After receipt of such objections, and after hearing both the parties, and if necessary after rechecking the facilities, a final decision will be taken in regard to grant of NOC within a period of two weeks after publication of draft list. In other words, the process of selection and grant of NOC should be completed within two months from now.
4. The names of the selected candidates will be forwarded by the Government to

the National Council for Technical Education for grant of recognition and the NCTE within two months from the date of receipt of the applications conduct inspection and grant recognition to the eligible colleges.

So far as the Contempt Case is concerned, I accept the unconditional apology of the Secretary to Government, on behalf of the respondents, However, I do not take this as a case of bona fide mistake or omission or wrong evaluation that affected the process of selection. The impugned list was published by the Government pursuant to specific directions of this Court which are admittedly flouted by the Government. I therefore, express my displeasure over the scant respect shown by the Government to the rule of law and the authority of court. I wish the Government will not repeat this. However, the contempt case is closed and if there is repetition of the same mistake, this Court will spare no-one from contempt action. The Government is therefore, directed to ensure that all the Officers engaged in the process of selection comply with the judgments failing which this Court will have no option but to take action against all involved.