
(2004) 04 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1092 of 2004

Maa Durga Shikshan Sansthan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Citation : (2004) 4 RLW 2311 : (2004) 4 WLC 131

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; R.R. Chhaparwal, for Respondents Nos. 1 to 3, Govind Mathur and D.C. Sharma, for Respondent No. 5., for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 4.3.2004 with the prayer that by appropriate writ, order or direction, the order dated 5.1.2004 (Annex.P/1) passed by the respondent No. 2 Dy. Secretary, Education (Group-I) Department, Government of Rajasthan, Jaipur by which the petitioner was denied NOC for running B.Ed. Course for the Academic Session 2004-05, be quashed and set aside and it may be held that the petitioner is entitled to get renewal of NOC from respondent State of Rajasthan for the B.Ed. Course for the Academic Session 2004-05 and also entitled to get recognition from respondent No. 4 Northern Regional Committee, National Council for Teacher Education (N.C.T.E.), Jaipur irrespective of renewal of NOC from State of Rajasthan.

2. The case of the petitioner as put forward by it in this writ petition is as follows:-

The petitioner is a registered society under the Rajasthan Society Registration Act, 1958, having its registration No. 10/Jodhpur/1999-2000. A copy of the registration certificate dated 23.4.1999 issued by the Competent authority is

marked as Annex.P/2.

The petitioner Society sought permission from the State Government to open the B.Ed. College for girls exclusively within the State of Rajasthan and the respondent No. 2 Dy. Secretary, Education vide letter dated 6.10.2001 (Annex.P/3) granted permission to the petitioner by issuing NOC for the year 2002-03 for 120 seats at Jaisalmer.

The further case of the petitioner society is that on 30.12.2002, the respondent No. 2 Dy. Secretary, Education issued NOC for the Session 2003-04 to run the B.Ed. Course. A copy of the NOC for the Session 2003-04 is marked as Annex.P/9.

The further case of the petitioner Society is that for getting NOC for the Academic Session 2003-04 from the respondent No. 4 Northern Regional Committee of the National Council for Teacher Education (for short "NCTE") a statutory body created under the National Council for Teacher Education act, 1993, the petitioner Society could not submit its application before the respondent No. 4 on or before 31.12.2002, the last date prescribed, for the reasons mentioned in para No. 5 of the writ petition and since the application was submitted by the petitioner before the respondent No. 4 with one day delay on 1.1.2003, therefore, the respondent No. 4 Northern Regional Committee of NCTE through letter Annex.P/13 dated 7.2.2003 refused to permit the petitioner to run the B.Ed. Course for the Session 2003-04, but in that letter Annex.P/13, it was specifically mentioned that the application of the petitioner would be carried forward for consideration for the subsequent academic year 2004-05 provided some of the deficiencies, which were pointed out in that letter Annex.P/13, were made good by the petitioner.

Aggrieved from the said letter Annex.P/13 issued by the respondent No. 4 Northern Regional Committee of NCTE, the petitioner preferred a writ petition being S.B. Civil Writ Petition No. 1069/2003 before this Court and this Court through order dated 4.7.2003 (Annex. P/14) dismissed that writ petition of the petitioner But, this Court advised the petitioner to resume the matter in next academic session i.e. 2004-05. The order of the Single Bench of this Court dated 4.7.2003 (Annex.P/14) was upheld by the Division Bench of this Court through judgment dated 4.8.2003 in D.B. Civil Special Appeal No. 494/2003).

The further case of the petitioner Society is that in view of the facts and circumstances just narrated above, it again applied before the respondent No. 2 Dy. Secretary, Education for granting NOC to run B.Ed. Course for the academic session 2004-05, but the respondent No. 2 Dy. Secretary, Education through impugned order Annex.P/1 dated 5.1.2004 refused to grant NOC to the petitioner Society on the ground that the petitioner Society did not start the B.Ed. course earlier though permission was granted to it twice for the Session 2002-03 and 2003-04.

Aggrieved from the said order Annex.P/1 dated 5.1.2004 passed by the

respondent No. 2 Dy. Secretary, Education refusing to grant NOC to the petitioner for the Session 2004-05, the petitioner has preferred this writ petition.

In this petition, the petitioner Society has challenged the order Annex.P/1 dated 5.1.2004 on various grounds and the main ground is that when the respondent No. 4 Northern Regional Committee of NCTE had already observed in the letter Annex.P/13 that the case of the petitioner would be considered for the next academic year 2004-05, therefore, denial of NOC for the academic year 2004-05 by the respondent No. 2 Dy. Secretary, Education is in flagrant violation of justice, fairness and principles of natural justice. Hence, impugned order Annex.P/1 passed by the respondent No. 2 Dy. Secretary, Education cannot be sustained and liable to be quashed and set aside.

A reply to the writ petition was filed by the respondents Nos. 1 to 3 stating that there is no dispute on the point that for the academic sessions 2002-03 and 2003-04, the petitioner Society was granted NOC to run B.Ed. Course at Jaisalmer, but since the petitioner Society was not in a position to satisfy the prescribed norms of the respondent No. 4 Northern regional Committee of NCTE, therefore, the respondent No. 4 Northern Regional Committee of NCTE through letter Annex.P/13 dated 7.2.2003 did not grant NOC to the petitioner for the academic session 2003-04. Apart from this, the formalities for grant of NOC were to be completed by the 31st December and the time is over now, therefore, it is not possible for them to grant NOC to the petitioner Society for the academic session 2004-05. Hence, no case for interference is made out and this writ petition deserves to be dismissed.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and gone through the materials available on record.

4. There is no dispute on the point that for the academic sessions 2002-03 and 2003-04, NOC was granted by the respondent No. 2 Dy. Secretary, Education in favour of the petitioner Society to run B.Ed. Course at Jaisalmer.

5. There is also no dispute on the point that for the reasons best known to the petitioner, it could not get NOC from the respondent No. 4 Northern Regional Committee of NCTE for the academic session 2003-04.

6. There is also no dispute on the point that even for the academic session 2003-04, the petitioner could not get NOC from the respondent No. 4 Northern Regional Committee of NCTE as the application, which was required to be submitted on or before 31.12.2002, was submitted by the petitioner with one day delay on 1.1.2003 and because of that reason, through letter Annex.P/13 dated 7.2.2003, the respondent No. 4 Northern Regional Committee of NCTE did not grant NOC to the petitioner stating that its application could not be processed for the academic session 2003-04, but the application of the petitioner would be considered for subsequent year 2004-05 provided some of the deficiencies, which were pointed out in that letter Annex.P/13, were made good by the petitioner.

7. There is also no dispute on the point that the petitioner challenged the letter Annex.P/13 before this Court by filing writ petition being S".B. Civil Writ Petition No. 1069/2003 and this Court dismissed that writ petition through order Annex.P/14 dated 4.7.2003, but this Court advised the petitioner to resume the matter in next academic session and that order of the Single Bench of this Court dated 4.7.2003 (Annex.P/14) was upheld by the Division Bench of this Court through judgment dated 4.8.2003 in D.B. Civil Special Appeal No. 494/2003.

8. There is also no dispute on the point that thereafter, the petitioner Society again applied before the respondent No. 2 Dy. Secretary, Education for grant of NOC for the academic Session 2004-05, but the same was refused by the respondent No. 2 Dy. Secretary, Education through impugned order Annex.P/1 dated 5.1.2004 on the ground that though earlier permission was granted to the petitioner twice for running B.Ed. Course for the academic sessions 2002-03 and 2003-04, but it did not start the B.Ed. Course.

9. The question for consideration is whether in the facts and circumstances just narrated above, the impugned order Annex.P/1 dated 5.1.2004 passed by the respondent No. 2 Dy. Secretary, Education can be sustained or not.

10. In my considered opinion, the impugned order Annex.P/1 dated 5.1.2004 passed by the respondent No. 2 Dy. Secretary, Education refusing to grant NOC in favour of the petitioner Society to run B.Ed. Course for the academic session 2004-05 cannot be sustained and deserves to be quashed and set aside because of the following reasons:-

(i) That in the impugned order Annex.P/1 dated 5.1.2004, it has been stated that for the academic sessions 2002-03 and 2003-04 permission was granted to the petitioner Society to run B.Ed. Course, but despite permissions having been granted within time, the petitioner Society did not start the B.Ed. Course and because of these reasons, the NOC for the academic session 2004-05 was not granted to the petitioner and in my considered opinion, these reasons are not good and valid reasons, but appear to be arbitrary in nature.

(ii) That as per the reply of the respondents Nos. 1 to 3, the petitioner Society was granted NOC for the academic sessions 2002-03 and 2003-04 to run B.Ed. Course at Jaisalmer and thus, according to them, the petitioner Society was fulfilling all the per-requisite conditions for grant of NOC to run B.Ed. Course.

However, it may be stated here that the petitioner Society could not start B.Ed. Course because NOC from the respondent No. 4 Northern Regional Committee of NCTE was not granted and granting of NOC by the State Government (respondent No. 2 Dy. Secretary, Education) was not sufficient to start the B.Ed. Course and apart from getting NOC from the respondent No. 2 Dy. Secretary, Education, NOC from the respondent No. 4 Northern Regional Committee of NCTE was also required, but due to some reasons as stated by the petitioner Society in this petition, it could not obtain NOC from the respondent No. 4 Northern Regional Committee of NCTE for the academic session 2003-04, since

the application was made by the petitioner Society before the respondent No. 4 with one day delay on 1.1.2003, therefore, because of that reason, the respondent No. 4 Northern Regional Committee of NCTE through letter Annex.P/13 dated 7.2.2003 did not permit the petitioner Society to start B.Ed. Course for the Session 2003-04. But, in that letter Annex.P/13, it was specifically mentioned that the application of the petitioner would be considered for the subsequent year i.e. 2004-05 and same observations were made by this Court through order Annex. P/14 dated 4.7.2003 while dismissing the writ petition of the petitioner Society.

The letter Annex.P/13 dated 7.2.2003 issued by the respondent No. 4 Northern Regional Committee of NCTE and order Annex.P/14 dated 4.7.2003 passed by this Court while dismissing the writ petition of the petitioner Society do not reveal the fact that in case the petitioner Society could not start B.Ed. Course earlier, that would be a ground to refuse further permission to the petitioner Society. The basis of refusal as is found in the impugned order Annex.P/1 is that since the petitioner had not started B.Ed. Course earlier, therefore, it would not be proper to grant NOC to it for the academic session 2004-05. In my considered opinion, the order Annex.P/1 itself shows arbitrariness on the part of the respondent No. 2 Dy. Secretary, Education in not granting NOC in favour of the petitioner Society to run B.Ed. Course for the session 2004-05.

(iii) That had the NOC would have not been granted to the petitioner Society on the ground that some requisite formalities were not fulfilled by the petitioner the position would have been different, but the petitioner was refused NOC on such considerations, which can-not be said to have been based on equity, justice and good conscience and therefore, there is a clear flagrant violation of these principles in the impugned order Annex.P/1 dated 5.1.2004. Thus, a legal right has accrued in favour of the petitioner Society to get the order Annex.P/1 quashed and set aside and also to get directions against the respondents Nos. 1 to 3 to issue NOC in favour of the petitioner Society for the academic session 2004-05.

(iv) That so far as the granting of NOC by the respondent No. 4 Northern Regional Committee of NCTE is concerned, for that the NOC of respondent No. 2 Dy. Secretary, Education is must and now that stage has not come to far because the respondent No. 2 Dy. Secretary have refused to grant it in favour of the petitioner Society.

(v) That so far as the argument of the respondent Nos. 1 to 3 that now it is not possible for them to grant NOC to the petitioner for the session 2004-05 is concerned, it is for them, but if a legal right is there, the petitioner Society cannot be deprived to enjoy the fruit of that legal right.

11. For the reasons stated above, the impugned order Annex.P/1 dated 5.1.2004 passed by the respondent No. 2 refusing to grant permission to the petitioner Society for the academic session 2004-05 cannot be sustained and liable to be

quashed and set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioner Society is allowed and the impugned order Annex.P/1 dated 5.1.2004 passed by the respondent No. 2 Dy. Secretary, Education (Group-I), Government of Rajasthan, Jaipur is quashed and set aside and the respondents Nos. 1 to 3 are directed to issue NOC in favour of the petitioner Society to run B.Ed. Course for the academic session 2004-05, forthwith. But, such directions cannot be issued against the respondent No. 4 Northern Regional Committee of NCTE as the respondent No. 4 would consider the application of the petitioner Society only when the same submitted before it. However, it is hoped that the respondent No. 4 Northern Regional Committee of NCTE would do the needful in favour of the petitioner Society, as expressed by it in its letter Annex.P/13 dated 7.2.2003.