

(2019) 05 UK CK 0087

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1537 Of 2015

Mangal Jyoti Sansthan

APPELLANT

Vs

Director State Council Education For Research And Training
SCERT And Others

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

National Council For Teacher Education Act, 1993 — Section 18, 32(2)
National Council For Teacher Education Rules, 1997 — Rule 9
Constitution Of India, 1950 — Article 14, 21, 19(1)(g), 301
National Council For Teacher Education (Recognition Norms & Procedure) Regulations,
2009 — Regulation 4, 5, 5(5), 7, 7(2), 7(2)(a)(b), 7(3), 7(4), 7(5), 7(6), 7(13), 7(16)

Citation : (2019) 05 UK CK 0087

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : B.D. Pande, K.N. Joshi, Yogesh Pacholiya

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. The petitioner is a registered society registered under the Societies Registration Act, which as per its object contained under the Article of Association, as well as, memorandum of Association, it provides its object, to be the establishment of professional educational institutions, to impart education as per the object contained under the bylaws of the society as well as in the Article of Association. For the said purposes of imparting of education in the field called as D.El.Ed., the process for the grant of permission/recognition for the purposes of running the institution has been contemplated under the notification as issued by the NCTE on 28.11.2014.

2. The petitioner's contention is that after adherence to the guidelines as provided by the NCTE and for getting the recognition to run the institution and to start the D.El.Ed. course they had moved the requisite applications before the

competent authorities, who after processing the application under Regulation 7 of the Regulations called as NCTE (regulations called as NCTE) Regulations of 2009, had processed the application of the petitioner and after processing the same, rather the NCTE had granted a letter of intent in favour of the petitioner under sub-regulation 13 of the Regulation 7 of 2009. It was only after the grant of letter of intent in favour of the petitioner by the NCTE on 09.04.2015, that the Additional Director SCERT, i.e. respondent no. 1 to the writ petition, had passed the impugned order, whereby, the respondent no. 1 has declined to the grant permission to the petitioner's institution to run the aforesaid course on the ground that since in the State there are sufficient number of Government Educational institutions available, which are already imparting education in the said course and, hence, the permission cannot be granted to the petitioner to conduct D.El.Ed. course. The relevant part of the reasoning assigned in the impugned order dated 28.05.2015 passed by R.I. for denial to grant the permission is quoted hereunder:

"उक्त के क्रम में अवगत कराना है कि अपर मुख्य सचिव, उत्तराखण्ड शासन ने शासनादेश संख्या-906/XXIV(1)/2015-07 /2013 दिनांक 27 मई, 2015 द्वारा निम्न निर्णय लिया गया -

राज्य के निजी संस्थानों को डी0एल0एड0 पाठ्यक्रम संचालित किये जाने की अनुमति हेतु राज्य सरकार की सहमति दिया जाना सम्भव नहीं है, क्योंकि वर्तमान में राजकीय जिला शिक्षा एवं प्रशिक्षण संस्थानों में राज्य की मांग के अनुरूप प्रशिक्षुओं के प्रशिक्षण की पर्याप्त सुविधा उपलब्ध है।"

3. The argument as extended by the learned counsel for the petitioner is to the effect that after having filed an application for the grant of recognition before the NCTE under Regulation 5 which provides for the process for granting of the recognition to the institution of the petitioner was required to be undertaken in accordance with the provisions contained under Regulation 7 of the Regulations of 2009. Sub regulation (2) of Regulation 7 provides the circumstances under which the applications thus submitted for the grant of recognition to run a particular course could be rejected summarily for the reasons, which has been assigned under sub-clause (a) & (b) of sub regulation (2) of Regulation 7.

"5. Manner of making application and Time Limit.?"

(1) An institution eligible under Regulation 4, desirous of running a teacher education programme may apply to the concerned Regional Committee of National Council for Teacher Education for recognition in the prescribed form in triplicate along with processing fee and requisite documents.

(2) The prescribed form may be downloaded from the website of the National Council for Teacher Education namely www.ncte?india.org.

(3) The application may be essentially submitted electronically through online mode available on the website of National Council for Teacher Education along with the processing fee. However, while submitting the application through on? line mode, the application and requisite documents in triplicate shall have to be submitted or send by registered post separately to the office of the Regional

Committee concerned, immediately after on?line submission of the application.

(4) Duly completed applications in all respect may be submitted to the Regional Committee concerned during the period from the 1st day of September 3 till 31st day of October of the preceding year to the academic session for which recognition has been sought.

Provided further that the condition of last date for submission of application shall not apply to any innovative programme of teacher education, for which separate guidelines have been issued by National Council for Teacher Education.

(5) All applications received on?line on or before the 31st day of October of the year shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated to the applicant on or before the 15th day of May of the succeeding year.

7. Processing of Applications.?

(1) The applicant institutions shall ensure on?line submission of applications complete in all respects along with hard copy of the application and other documents specified below. However, in case of any inadvertent omissions or deficiencies in the documents submitted, the office of the Regional Committee shall point out the deficiencies within 45 days of the receipt of the applications, which the applicants shall remove within 60 days from the date of receipt of 4 communication of deficiencies, if any. The on?line application with separate submission of the following documents only, shall be considered as complete application

i. Application in triplicate on the prescribed format.

ii. Processing Fees as provided under Rule 9 of the National Council for Teacher Education Rules, 1997 as amended from time to time

iii. Fixed Deposit Receipt for Rs. 5.00 lacs and 3.00 lacs of a Nationalised Bank towards Endowment and Reserve Funds, respectively.

iv. Certified copy of the registered land documents issued by the competent authority

v. Approved building plan by the competent civil authority.

vi. Notarized copy of Change of Land Use Certificate issued by the competent authority.

vii. Affidavit in the prescribed form on Rs. 100/? stamp paper duly attested by Oath Commissioner or Notary Public, stating the precise location of the land (village, district, state etc), the total area in possession, the permission of the competent authority to use the land for educational purposes and mode of possession i.e. ownership or lease.

1?A) The application submitted on?line but not followed by dispatch, through

registered post or by hand with the documents mentioned at (i) to (vii) above within 7 days shall be considered as incomplete and shall be summarily rejected with the reasons recorded in writing and returned to the applicant alongwith the processing fees within 30 days of the receipt of application.

(1?B) Furnishing any wrong information or concealment of facts in the application, which may have bearing on the decision making process or the decision pertaining to grant of recognition, shall result in withdrawal of recognition of the institution besides other legal action against its management; order of withdrawal of recognition shall be passed after affording reasonable opportunity of hearing through a show cause notice to the institution. 5

(2) A written communication alongwith a copy of the application form submitted by the institution(s) shall be sent by the office of Regional Committees to the State Government or Union Territory Administration concerned within 30 days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

(3) On receipt of the communication, the State Government or Union Territory Administration concerned shall furnish its recommendations or comments on the applications to the office of the Regional Committee concerned within 45 days from the date of issue of the letter to the State Government or Union Territory. In case, the State Government or Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application.

(4) If the recommendation of the State Government is not received within a period of 45 days from the date of the issue of letter to the State Government, the Regional Committee concerned shall send a reminder to the State Government providing further time of another 30 days from the date of issue of the reminder letter to furnish their comments on the proposal. Thereafter, on expiry of this period, the matter shall be placed before the Regional Committee alongwith the recommendation of the State Government, if received. Placing the application before the Regional Committee shall not be deferred on account of non?receipt of comments or recommendation of the State Government. After consideration of the recommendation of the State Government or on its own merits, the Regional Committee concerned shall decide that institution shall be inspected by a team of experts called visiting team with a view to assess the level of preparedness of the institution to commence the course. Inspection shall not be subject to the consent of the institution, rather the decision of the Regional Committee to cause the inspection shall be communicated to the institution with the direction that the inspection shall be caused on any day after 10 days from the date of communication by the Regional Office. The Regional Committee shall ensure that inspection is conducted ordinarily within 30 days from the date of this 6 communication to the institution. The institution shall be required to provide details about the infrastructure etc. on the duly filled up

proforma available on National Council for Teacher Education website to the visiting team, at the time of inspection along with building completion certificate issued by the competent civil authority, if not submitted earlier.

The Regional Committee shall organise such inspections strictly in chronological order of the receipt of application for the cases approved by the Regional Committee for Inspection.

The members of the visiting team for inspection shall be decided by the Regional Committee, out of the panel of experts approved by it, and in accordance with the visiting team policy of National Council for Teacher Education.

(5) At the time of the visit of the team of experts to an institution, the institution concerned shall arrange for the inspection to be videographed in a manner that all important infrastructural and instructional facilities are videographed along with interaction with the management and the faculty, if available at the time of such visit. The visiting teams, as far as possible, shall finalise and courier their reports alongwith the video tapes on the same day:?

Provided that the videography should clearly establish the outer view of the building, its surroundings, access road and important infrastructure including classrooms, labs, resource rooms, multipurpose hall, library etc. The visiting team shall ensure that the videography is done in a continuous manner, the final unedited copy of the videography is handed over to them immediately after its recording and its conversion to a CD should be done in the presence of visiting team members:?

Provided further that at the time of inspection for new courses or enhancement of intake of the existing course, the visiting team shall verify the facilities for existing teacher education courses accorded recognition by National Council for Teacher Education and would ascertain the fulfillment 7 and maintenance of Regulations and Norms and Standards for the existing courses as well.

(6) The application and the report alongwith the video tapes or CDs etc of the visiting team shall be placed before the Regional Committee concerned for consideration and appropriate decision.

(7) The Regional Committee shall decide grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the National Council for Teacher Education under the National Council for Teacher Education Act, Rules or Regulations, including, the norms and standards laid down for the relevant teacher education programme or course.

(8) In the matter of grant of recognition, the Regional Committees shall strictly act within the ambit of the National Council for Teacher Education Act, 1993, the National Council for Teacher Education Rules, 1997 as amended from time to time and the Regulations made under the National Council for Teacher Education Act, 1993 including the norms and standards for various teacher education programmes and shall not make any relaxation thereto. The Regional Director,

who is the convener of the Regional Committee, while putting up the proposals to the Regional Committee, shall ensure that the correct provisions in the National Council for Teacher Education Act, Rules and Regulations including Norms and Standards for various Teacher Education Programmes are brought to the notice of the Regional Committee to enable the Regional Committee to take appropriate decisions.

(9) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per National Council for Teacher Education norms within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

(10) (i) All the applicant institutions shall launch their own website with hyperlink to National Council for Teacher Education and corresponding Regional Office website soon after the receipt of the letter of intent from the Regional Committee, as provided under sub-regulation (9) covering, inter alia, the details of the institution, its location, name of the course applied for with intake, availability of physical infrastructure such as land, building, office, classrooms, and other facilities or amenities, instructional facilities such as laboratory, library etc. and the particulars of their proposed teaching faculty with photograph and non-teaching staff etc. with photographs, permanent account number or unique identity number of the teacher educators, whenever issued by National Council for Teacher Education, for information of all concerned. The information with regard to the following shall also be made available on the website :?

- (a) Sanctioned programmes along with annual intake in the institution;
- (b) Name of faculty and staff in full as mentioned in school certificate along with their qualifications, scale of pay and photograph;
- (c) Name of faculty members who left or joined during the last quarter;
- (d) Names of students admitted during the current session along with qualification, percentage of marks in the qualifying examination and in the entrance test, if any, date of admission, etc.;
- (e) Fee charged from students;
- (f) Available infrastructural facilities;
- (g) Facilities added during the last quarter;
- (h) Number of books in the library, journals subscribed to and additions, if any, in

the last quarter;

(i) The institution shall be free to post additional relevant information, if it so desires 9

(ii) Any wrong or incomplete information on website shall render the institution liable for withdrawal of recognition

(11) The institution concerned, after appointing the requisite faculty or staff as per the provisions of sub-regulation (9) and after fulfilling the conditions under sub-regulation (10), shall formally inform the Regional Committee concerned that the faculty has been appointed as per National Council for Teacher Education norms and has been approved by the affiliating body. The letter granting approval for the Selection or appointment of faculty shall also be provided by the institution to the Regional Committee with the document establishing that the Fixed Deposit Receipt of Endowment Fund and Reserve Fund have been converted into a joint account. The Regional Committee concerned shall then issue a formal order of recognition which shall be notified as per provision of the National Council for Teacher Education Act.

(12) In cases, where the Regional Committee, after consideration of the report of the visiting team and other facts on record, is of the opinion that the institution does not fulfill the requirements for starting or conducting the course or for enhancement of intake, such an institution shall not be allowed any further opportunity for removal of deficiencies or inspection and the decision of the Regional Committee thereon shall be final, against which the institution may prefer an appeal under section 18 of the National Council for Teacher Education Act.

(13) The reports of inspection of the institutions along with the names of the visiting team experts shall be made available on the Official website of the Regional Committee concerned after the same have been considered by the Regional Committee."

4. Admittedly in the case at hand the petitioner's application was not rejected summarily under sub-regulation (2) of Regulation 7 for being in violation of any of the conditions contained therein. The argument as extended by the learned counsel for the petitioner is that after filing of his application for the grant of recognition he had to comply with various other conditions which are given therein pertaining to the affirmation of the nature of infrastructure, the details of the faculty available, and other facilities which are essentially required for the institution to run a particular course as per the regulations of 2009. The petitioner submits that after having applied before the NCTE the application of the petitioner after being processed as per procedure provided under Regulation 7, he had sent the application to the Regional Committee and then to the State Government and the affiliating body concerned and as per sub-regulation (4) of Regulation 7, the Regional Committee after the receipt of the application in the chronological order, in which it is received in the office of the Regional

Committee, is required to consider the application by placing the same before the Regional Committee for consideration for the grant of recognition, which was proposed to be run and to be conducted by the applicant under Regulation 5.

5. The argument of the learned counsel for the petitioner is that after having applied under sub-regulation (5) of Regulation 5 the Regional Committee vide its communication as it is expected it ought to have written to the State Government or to the union territory, as the case may be, and the State Government or the union territory as the case may be are mandatorily required to respond back to the said communication within 45 days from its receipt, either making recommendations in favour of the grant of recognition to the applicant institution or not to grant recognition, but in such eventuality, where the State Government under sub-regulation (5) of Regulation 7 on the receipt of communication from the Regional Committee decides to declines to grant permission for granting the recommendation from the NCTE, the State is bound to give the reasons and the grounds on which the denial has been made. Sub regulation (5) of Regulation 7 provides that it is only on the receipt of such communication from the State Government that either favoring recommendations or declining it, it has to be disposed of by the Regional Committee concerned while considering the application.

6. Another limb of argument though not very relevant for the present controversy, but still since it has been argued it is incumbent for this Court to deal with that in the light of the provisions contained under sub-regulation (6) of Regulation 7, which provides that in case the State receives the communication from the Regional Committee seeking for the grant of recommendation to run a particular course, if no response or recommendation is received from the State Government, within a period of 45 days as referred under sub-regulation (5) of Regulation 7, the Regional Committee would further send a communication to the State Government as a second opportunity for providing an additional 30 days' time to furnish its comment on the proposal sent to the Regional Committee

7. The argument of the learned counsel for the petitioner is that whenever the Regional Committee takes a decision by referring the matter back for the recommendation for the State Government and has fixed the maximum time limit of 30 days for its response as per sub-regulation (6) of Regulation 7, if it is not received after the second reminder given by the Regional Committee and the recommendation if it is not received within 15 days thereafter, it would be deemed that the State Government has got no option and the recommendation stood granted and, consequently the Regional Committee will process and decide the case on merits after placing the application before the Regional Committee and in such an eventuality, where the State does not respond back in pursuance to the first and the second opportunity contemplated under sub-regulation (5) & (6) of Regulation 7, it will not create any embargo, as far as the decision of the Regional Committee is concerned, from considering the application for the grant of recommendation to the particular course as applied for by an applicant.

8. The argument of learned counsel for the petitioner is that the NCTE vide various communications and correspondences made had directed the petitioner to fulfill the various conditions with regards to the formulation of the faculty infrastructure and various other aspects, which was required to be fulfilled for the consideration of grant of recognition by the NCTE. The contention of the petitioner is that on the said communication being made by the NCTE the petitioner has already undertaken various processes by taking financial assistances, issuing advertisements for inducing an adequate faculty, to provide the infrastructural facilities and thereafter the NCTE on being informed about the said fulfillment of the conditions by the petitioner had proceeded to grant the letter of intent as contemplated under sub-regulation (13) of Regulation 7.

9. It was after the grant of letter of intent to the petitioner, which was issued in his favour by the NCTE on 09.04.2015 under sub-clause (13) of Clause 7 of the Regulations of 2009, the copy of the same was also furnished to the respondent no. 1, though only stipulation, which restricted the action of the administration as contained under sub-regulation (16) of Regulation 7 was to be only after obtaining an affiliation from the University or the examining body concerned, that may not be an issue, which would hold the writ petition, as it was not the bone of contention or in controversy in the present writ petition ever raised by the respondent. It was subsequent to the process which the petitioner has already completed in pursuance to the directives issued in the letter of intent in its clause 5 and having fulfilled all the conditions contained therein, the respondent no. 1 had unilaterally without providing any opportunity of hearing and rather in contravention to the provisions contained under sub-clause (5) & (6) of the Clause 7 of the NCTE Regulation of 2009 had proceeded to pass the impugned order, the excerpt of which has already been quoted above declining to grant recommendation/approval on the premise that in the State there happens to be sufficient number of Government District Education Centers, which are equipped with sufficient facilities to impart education in the D.El.Ed. course.

10. After having considered the rival contentions raised by the learned counsel for the parties, this court is of the view that the reason, which has been assigned in the impugned order dated 28.05.2014 declining to grant recommendation/permission to run the institution on the premise of availability of sufficient educational institutions in the State, is not a reason which is contemplated under any statute including the regulations of 2009, which could form as the basis for denial to grant recommendation. Even otherwise also, the reason, which has been assigned in the impugned order, would be violative of Article 14, 21, 19 (1) (g) and 301 of the Constitution of India.

11. Besides this, since the action taken by the impugned order being arbitrary and unilateral decision, it suffers from the vices of non-compliance of the principles of natural justice as the petitioner was not noticed prior to passing the impugned order by the State declining to grant the permission to run the institution.

12. The impugned order dated 28.05.2015 and the reason assigned therein for denial to grant recommendation is yet again not sustainable in the eyes of law for the reason being that under sub-clause (5) and sub-clause (6) of Clause 7 of the Regulations of 2009 as framed by the NCTE while exercising its power under sub-section (2) of Section 32 of the NCTE Act of 1993, that itself contemplates the stages in which the State has to respond to the recommendations or the communication made by the Regional Committee at the time of consideration of the application for the grant of recommendation in favour of the applicant. More particularly, when after the recourse available sub-regulation 5 & 6 of Regulation 7, if ultimately the Regional Committee takes a decision under sub-regulation (13) of Regulation 7, it would be deemed that as per the implications of sub-clause (6) of Regulation 7 that the State, in fact, in principal had no objection to the consideration of the application of the petitioner for the grant of permission to run the course. Because had there been any objection raised by the State either under sub-clause (5) or under sub-clause (6) and once the proceedings has culminated by issuance of letter of intent under sub-clause (13) of Clause 7 of the Regulations of 2009, a presumption as provided under sub-clause (6) will come into play and there would be a presumption that the State has no objection in the grant of recommendation by the NCTE. Thus, consequently if after the culmination of the proceedings upto the stage of grant of letter of intent under sub-clause (3) of Regulation 7 of the Regulations of 2009, which has been framed under the central legislature, atleast the State could not have passed the order impugned dated 28.05.2015 declining to grant permission to run the course of D.El.Ed. by the petitioner as the said order would run contrary to the provisions of the sub-regulation (5) & (6) of Regulation 7 of Regulations of 2009 because it has an effect of overriding the deeming clause contained under sub-regulation (6) of Regulation 7 of the Regulations of 2009.

13. Thus, in these circumstances this Court is of the view that the impugned order apart from that it suffers from the vices of non application of mind, it also suffers from the vices of not being an order in consonance to the provisions contained under Article 14, 21, 19(1)(g) and 301 of the Constitution of India. It also does not satisfy to test of reasonableness as prior to passing of the order of the same no opportunity of hearing was provided to the petitioner. It would not be out of place to mention at this juncture itself and at the cost of repetition too that once the deeming clause under sub-regulation (6) of Regulation 7, has come into play resulting into the ultimate grant of letter of intent under sub-regulation (13) of Regulation 7 the order impugned would have an overriding effect to the provisions of the subordinate legislation, which has been framed under the Central Act, which cannot be permitted and that too for the reasons, which has contained in it, it is not contemplated under any of the procedures provided for grant of recommendation for running the course in question as per the Regulations of 2009.

14. Consequently, the writ petition succeeds and is allowed. The impugned order dated 28.05.2015 as passed by respondent no. 1 is quashed. A writ of

mandamus is issued to respondent no. 1 and is directed to grant the permission to run the course in question, for which the letter of intent had already been issued in favour of the petitioner by the NCTE on 09.04.2015.

15. Consequent to the grant of recommendation by respondent no. 1 in pursuance to the judgment in question the respondent no. 2 is also directed to comply with the letter of intent and provide assistance to the petitioner in fulfilling the conditions of the letter of intent as well as for the grant of formal recognition to the course in question.

16. However, there will be no order as to costs.