

(2004) 03 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 7880, 7882, 8382, 8384 and 8385 of 2004

Oxford Teachers Training Institution and Others

APPELLANT

Vs

National Council Teacher Education Southern Regional
Committee

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

National Council for Teachers Education Act, 1993 — Section 12, 14, 15, 3, 32

Citation : (2004) ILR (Kar) 2342 : (2004) 4 KarLJ 574 : (2004) 3 KCCR 287 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : N. Devadass, for the Appellant; Ashok Harnahalli, for the Respondent

Judgement

N. Kumar, J.—As common question of law is involved in all these 5 Writ Petitions, by consent of parties they are taken up for consideration and finally disposed of by this common order, even though they are listed for preliminary hearing.

2. The petitioners in all these Writ Petitions filed an application to the respondents for grant of recognition to B.Ed. course for the Academic year 2004-2005. Their specific case is that the last date prescribed for submitting the applications was 31.12.2003. They have submitted the said application within the stipulated period. As the Government had not granted the No Objection Certificate, they could not produce the same along with application. The Government granted NOC only on 7.2.2004. Immediately on receipt of the NOC, in all these 5 cases, the same has been produced before the respondents within a couple of days thereafter. However, the respondents have declined to consider the application of the petitioners for grant of recognition for the Academic Year 2004 - 2005, on the ground that the application filed by them was not complete as on 31.12.2003 and therefore they would be considering the application for grant of recognition for the Academic Year 2005-2006. Therefore, they have approached this Court for a direction to the respondents to consider the application filed by the petitioners for recognition to B.Ed. course for the

Academic year 2004-2005 only.

3. The respondents have filed a detailed counter. In W.P. 7880/ 2004 and WP. 8385/2004, they contend that the application is filed beyond 31.12.2003. In other Writ Petitions, they admit that the applications are filed in time. But, in all these cases admittedly, NOC has not been enclosed along with applications. According to the regulations, if the application is not complete in all respects on or before 31st December, 2003, the said application has to be considered for grant of recognition for the subsequent year. Therefore they contend that it is not possible to consider the application of the petitioners for grant of recognition for the Academic Year 2004-2005 as NOCs were submitted after the last date prescribed for filing of the application.

4. The learned Counsel appearing for the petitioners Sri N. Devadas contends that though the applications were filed by the petitioners before the stipulated period, they could not comply with the legal requirement of enclosing NOC, as the Government has not granted the said applications. Though all the petitioners had made an application for grant of NOC immediately after issue of Notification by the Government and as the Regulations framed by the NOC provide for six months' time for grant of NOC from the date of making of the application, though the Government has granted the NOC within six months, as the same was granted after the last date prescribed by the NOC, the petitioners cannot be found fault with. Once the NOC has been produced before the respondents they cannot refuse to consider the application filed by the petitioners for grant of recognition to the Academic Year 2004-2005, on the ground that the NOC was submitted after the stipulated period. He further submits that the said provisions provide for production of NOC along with the application, having regard to the other provisions and the purpose for which NOC is granted is taken into consideration, it is only directory and not mandatory. In that view of the matter, he submits that the petitioners are entitled to the directions sought for.

5. Per contra, the learned Counsel appearing for the respondents contend that Regulations provide for the last date for filing applications for grant of recognition. Only in the event that those applications are complete in all respects, the said applications would be considered for the purpose of granting recognition to that particular year for which the application is filed. If the deficiencies pointed out are rectified within the stipulated period, even then the request of the applicant for consideration for grant of recognition for the said period would be considered. But, if the deficiencies are complied with after the last date prescribed for filing the application, the Regulations provide that the said application has to be treated as an application for grant of recognition for the subsequent period and it has to be considered accordingly. As admittedly in this case, the deficiency by way of production of NOC was complied with after the last date prescribed, the said application cannot be considered for grant of recognition for the current year, and it will be considered for the next year. There are no malafides in this conduct of the respondents. They are bound by the

Regulations. Those regulations are applied to every one. Under these circumstances merely because in the given case, some inconvenience is caused to the applicant, that cannot be a reason to deviate from the Regulations which are valid and legal. It is a settled law that the Court cannot grant a writ directing the authority not to follow the law. In that view of the matter, he submits that there is no merit in these Writ Petitions and the respondents would consider all the applications filed by the petitioners for grant of recognition for the Academic Year 2005-2006.

6. In the light of the aforesaid undisputed facts and the rival contentions, the short question that arises for consideration is whether the petitioners are entitled to the directions sought for.

7. In order to answer this question, it is necessary to have a look at the Regulations governing the same and the back ground in which those Regulations are framed and the purpose of those Regulations are framed and the purpose of those Regulations.

8. The Parliament has enacted the National Council for Teachers Education Act, 1993, to provide for the establishment of the National Council for Teachers Education with a view of achieving planned and co-ordinate development of the Teacher Education system through out the country. The Regulations provide for proper maintenance of norms and standards in the Teachers Education system and for matters connected therein. Section 3 of the Act provides for establishment of the Council and Section 12 of the Act provides for functions of the Council, Section 14 of the Act provides for recognition of institution offering course or training in teacher education and Section 15 of the Act provides for permission for a new course or training by recognised institution. After passing of the aforesaid Act, every institution offering or intending to offer a course or training in teacher education or on after the appointed date has to make an application to the Regional Committee concerned for grant of recognition under the Act and without such permission they cannot offer a course or training in teacher education. By virtue of the power conferred in Section 3 and 32 r/w Section 14 and 15 of the NCTE Act, 1993, the National Council for Teachers 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 of training) Regulation 2002 (for short, herein after referred to as the "Regulations") has been named. Regulation -3 provides for manner of making applications. Regulation -4 provides for the cost of the application form. Regulation -5 provides for the fees. Regulation -6 deals with requirement of NOC from the State Government issued to Administration. Regulation -7 prescribes the time limit for making an application.

9. There was a controversy regarding the fact whether the NOC granted by the Government, is really relevant and required for the council to consider the application for permission to start a new college. A learned Single Judge of this

Court took the view that it was unnecessary and the Division Bench of the Court reversing the said Judgment held that it is required as it would be in the nature of an input to the council, while considering the request of the petitioner for grant of recognition. Ultimately, the Supreme Court in the case of ST.JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHERS EDUCATION AND ANR., has held that the provisions requiring production of NOC along with their application is valid, intravires of the Parent Act and thus upheld the judgment of the Division Bench of this Court. In the course of the judgment, it was noticed that though the application is made to the State Government for grant of NOC, the Government took its own time to consider the said request. Therefore, the Supreme Court in the aforesaid judgment made it clear that the State Government must take a decision on the application moved by an institution for grant of NOC within reasonable time. If the State Government does not take a decision within a reasonable time, it will affect the right of the institution to have its application considered by the Regional Committee. It will therefore be proper that the Council frames appropriate Regulations fixing the time limit. A decision is to be taken by the State Government on the application moved by an institution for grant of NOC. It is in terms of the directions issued by the Supreme Court, Para 6 of the aforesaid Regulations was amended on 6th June 2003 by NCTE (Form of application for recognition, the time limit for submission of application, determination of norms and standards for recognition of Teachers Education Programmes and permission to start new course or training) (Amendment) Rules, 2003.

10. After the aforesaid amendment the NCTE addressed a letter to the State Government of Karnataka by the letter dated 25th June 2003 that as per Regulations of the NCTE Act, 1993, the application for recognition should be submitted before 31st December of the current year for starting the course in the ensuing academic year. The application for recognition should be submitted along with NOC from the concerned State Government. The date of submission of NOC will be considered as the date of submission of the application. Under these circumstances the said order directs to clearly specify that the NOC being issued by the State Government of Karnataka for B.Ed and TCH course is for the academic year 2004-2005 and not for the academic year 2003-2004.

11. Para - 6 of the aforesaid amended Regulation reads as under:-

(i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission, to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the institution is located. Application without NOC/ endorsement of the State Government/UT shall not be processed by the concerned Regional Committee of NCTE.

(ii) Every State Government /UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training in

teacher education or seeking permission to start a new course or training and/or increase in intake, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government /UT.

(iii) Every State Government/UT Administration while considering application for grant of No Objection Certificate shall take into account the guidelines for issue of No Objection Certificate issued by the NCTE from time to time.

(iv) The NOC/endorsement of the State Government/UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.

(v) The State Government/UT Administration will indicate in the NOC the number of seats for which NOC is, being granted within the ceiling of basic unit fixed by the NCTE for the concerned pre-service course on teacher education and without this information it will be presumed that the NOC is for the basic unit of the course.

(vi) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.

(vii) The NOC will be deemed to have lapsed if the institution fails to get recognition from NCTE for the course within three years from the date of its issue.

(viii) Requirement of NOC shall not apply to Government institutions.

(ix) Requirement of NOC shall not apply to University Departments for taking up innovative teacher education programmes for a maximum intake of 50 (Fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee.

Regulation - 7 deals with time limit for making application, which reads as under:-

"Every institution seeking recognition to start a course or training in teacher education or an existing institution seeking permission to start a new course or training and/or increase in intake shall make an application in the prescribed form so as to reach the concerned Regional Committee on or before 31st December every year. Provided that in the case of States where academic session begins from January every year the last date for submission of application would be 30th June of every year for the course or training commencing in the next academic session."

12. The application for grant of recognition shall be in the prescribed form in Appendix-1A. Appendix-1B deals with the list of essential documents which have to be submitted along with the application for grant of recognition in triplicate. One such essential document to be submitted is the NOC from the State Government/UT Administration (in original). Appendix-1B reads as under:

"Application for grant of recognition including permission for additional intake should be submitted in triplicate in the format given at Appendix 1A to the concerned Regional Committee along with the following essential documents.

(i) Prescribed Application fee (Non-refundable) in the form of a crossed Demand Draft drawn in favour of the concerned Regional Committee, NCTE payable at the place of the Regional Committee concerned.

(ii) "No Objection Certificate" from the State Government/UT Administration (in original).

(iii) Copies of valid land documents along with a "Land Title Certificate" by a local practicing lawyer (as per the format at Appendix-1C).

(iv) Copy of Approved Building Plan.

(v) Fixed deposit receipt in original for Rs. 500 lacs (Rupees five lacs only) towards endowment fund.

(vi) A copy each of the certificate of Registration, Memorandum of Association and Bye-laws in case the institution is managed by a Society/Trust/Board.

(vii) Undertaking in non-judicial stamp paper (As per the format at Appendix-1D).

(viii) A sworn affidavit verifying the contents given in the application form and the documents attached therewith. The affidavit must be attested through a First Class Magistrate/SDM/ADM.

Note: (1) If the application is found incomplete i.e. without all the essential documents, the institution may be asked to make good deficiencies in the application on or before the last date prescribed in the regulation.

(2) In the event when deficiencies in an application get removed only after the last date, the application of institution shall be carried forward by the Regional Committee for consideration for the subsequent academic year i.e., for the course that would be offered one year later."

13. The reading of the aforesaid provisions makes it very clear that an application from every institution seeking recognition to start a course or training in Teacher Education shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the Institution is located. The application without NOC/Endorsement of State Government /UTA shall not be processed by the concerned Regional Committee of NCTE.

14. The State Government shall endeavor to dispose of the application of the institution seeking NOC as expeditiously as possible and shall provide its NOC/Endorsement within six months of the last date on the receipt of application for grant of NOC fixed by the concerned State Government/UT. While considering the said grant of NOC, the State Government shall take into account the guidelines issued by the NCTE from time to time. The said NOC/Endorsement of the State Government will be considered by the Regional Committee, while taking a

decision on the application for recognition. The NOC issued by the State Government/UT Administration will remain valid till the such time, the State Government/UT Administration withdraws/cancels it. The NOC will deemed to have lapsed if the institution fails to get recognition from the NCTE for the purpose within three years from the date of its issue. If the application is not accompanied by NOC, the application is not complete. Therefore it shall not be processed by the concerned Regional Committee of NCTE. When the application is not complete, the institution may be asked to make good deficiencies in the application on or before the last date prescribed in the Regulations. In the event, when the deficiencies in an application get removed only after the last date, the application of the institution shall be carried forward by the Regional Committee for consideration in the subsequent academic year, i.e., for the course that would be offered one year later.

15. Regulation 7 provides for the last date prescribed for making an application in the prescribed form on or before 31st December every year. However, in the case of States where academic year session begins from January every year, the last date for submission of application will be 30th June of every year. Therefore, the last date for submission of application is statutorily prescribed by the Regulations.

16. If an application is made for grant of recognition within the stipulated period that application will be considered for grant of recognition for the next ensuing academic year. If the application is not complete in all respects and if the deficiencies pointed out in the application are removed only after the last date, the law mandates, the application of institution shall be carried forward by the Regional Committee for consideration for the subsequent Academic year, i.e., for the course that would offer one year later. Therefore no discretion is left to the Regional Committee to consider the said application for the ensuing year for which the application is made. The Regulations also make it very clear keeping in mind that in some cases it is not possible to produce the NOC before the last date, the NOC issued by the State Government will remain valid till such time, the State Government cancels it. The NOC will deem to have lapsed if the Institution fails to get recognition for the course within three years from the date of its issue. Therefore once NOC is granted, it will have life for a period of three years or unless it is cancelled before that day. Similarly if an application is made for recognition for a particular year, if the deficiencies pointed out are not removed within the last date prescribed, automatically the said application is treated as an application for subsequent year. Thus the interest of the applicant has been taken care of by these Regulations. No doubt these provisions are contained as a note to Appendix-1B. Therefore the question would be what is the validity of these provisions. The Supreme Court in the aforesaid Judgment in the case of ST. JOHNS TEACHERS TRAINING INSTITUTION v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR.(Supra) deals with the validity of the Regulations framed under the NCTE Act has held as under:-

"A regulation is a rule or order prescribed by a superior for the Management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling act and the delegate on whom such a power is conferred has to act within the limits of the authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary and subordinate legislation functions, or what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need of delegated legislation is that it is framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by parliament. The main justification for delegated legislation is that the legislation being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature."

17. In view of the aforesaid authoritative pronouncement of the Supreme Court, the Regulations made under the NCTE Act and consequent minute details worked out regarding form of how to make an application for recognition, the time limit of submission of application, determination of norms and standards of recognition as contained in Regulations - 2002 and amended Regulations 2003 and other minute details worked there under would have the force of law and it has to be obeyed."

18. The learned Counsel appearing for the petitioner relying on a Judgment of the Supreme Court in the case of the COMMISSIONER OF CENTRAL EXCISE v. M.P.V. & ENGINEERING INDUSTRIES contended Bureaucratic delay and Red Tapism should not deny the right of a person.

19. In the aforesaid judgment of the Supreme Court, the Supreme Court held that the benefit of the Notification has to be given to a party from the day he makes an application for grant of exemption and not from the date the registration certificate is issued to him. The ratio of the decision has no

application to this case. In the first place, the authorities have not declined to extend the benefit of recognition to the petitioner, as all that has been said is, such Regulations mandate if the application is not complete in all respects within the stipulated period and if the deficiencies are removed subsequent to the last date, the said application has to be considered for the subsequent year.

20. In the aforesaid Supreme Court Judgment, the Supreme Court noticed that the Notification does not in terms specify the date with effect from which the certificate becomes effective. No time-bound procedure has been provided. In such situation the Supreme Court said the Small Scale Industries should not be deprived of the benefit which would have accrued to it had the application for registration being disposed of immediately. In that context, it was stated in the matter of grant of exemption a liberal approach is permissible if it does no violence to the language of the Notification. In this instant case the entire case is covered by regulations and no benefit could be extended to the petitioners contrary to the specific terms of the regulations as such the said Judgment has no application.

21. He also relied on the Judgment of SHASHIKANTH SINGH v. TARKESHWAR SINGH AND ANR. where the Supreme Court has affirmed the statement of law with reference to interpretation to be placed on an enactment as contained in Craies on Statute law, 7th edition, pages 260-262 where it has been held as under:-

"When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.

Where a statute does not consist merely of one enactment, but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the thing to be done, but others not.

22. The said statement of law also has no application to the facts of this case. In pursuance of the directions issued by the Supreme Court the existing law was amended by the NCTE prescribing time limit in which the NOC has to be granted, how the application has to be considered, the last date for filing applications, removal of deficiencies and consequences of non removal of deficiencies within the stipulated period. The question of interpreting those provisions as directory

to enable consideration of the applications filed by the few applicants, such as the petitioner that too during the transitory period is totally unwarranted.

23. The learned Counsel appearing for the respondent brought to my notice the Judgment of in the case of UNION OF INDIA AND ANR. v. KIRLOSKAR PNEUMATIC COMPANY LIMITED dealing with the power of High Court to issue writs under Article 226, where it has been held that the power conferred by Article 226/227 being designated to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law, it cannot be invoked for directing the authorities to act contrary to law. Similarly the Supreme Court in the case of K.S. BHOIR v. ANUJ SURESH SARAOGI AND ORS. held the compassion and sympathy has no role to play where a rule of law is required to be enforced. Adjusting equities in exercise of extraordinary jurisdiction under Article 226 is one thing, and the High Court assuming the role of the Central Government and the Medical Council u/s 10A of the Act is different thing. The Court cannot direct to waive the mandatory requirement of law in exercise of extraordinary power. Under Article 226, it is not permissible to direct the authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure the State and other statutory authorities to act in accordance with law. It is not that the High Court is power-less in that regard, it could do so only when there was illegality in the order. It is not permissible for the High Court to direct the authority to act contrary to the statutory provisions.

24. In the instant case, the authorities are acting in terms of Regulations. May be for this particular year, because of uncertainty of law and after the matter was settled by the Supreme Court when direction were issued to NCTE to frame regulations, they have framed the Regulations and in turn have directed the State Government to grant NOCs with in the time limit as six month's time was prescribed by the NCTE for grant of NOC to the State Government. Though the State Government has granted the NOC within six months, it has gone beyond the last date prescribed by the NCTE. It is an anomaly only for this year. The petitioners have not challenged any of these Regulations governing the case on hand. Under these circumstances, it cannot be said in the facts of this case, the directions could be issued to the authorities to ignore the Regulations and consider the application of the petitioner for the academic year 2004-2005. As is clear from the Regulations itself and the submissions made by the respondents themselves the application filed by the petitioners would be considered for grant of recognition for the academic year 2005-2006. It cannot be said that the petitioners are in any way seriously affected. This Court while exercising power under Article 226 cannot compel the authority to act illegally and contrary to the Regulations. In this view of the matter, seen from any angle, I do not find any merit in these Writ Petitions. Hence, I pass the following order:-

25. Writ Petitions are rejected.

26. However, the respondents are directed to consider the applications filed by all the petitioners, whether they have filed before 31.12.2003 or thereafter, for grant of recognition to B.Ed course for the academic year 2005-2006. No costs.