

(2015) 02 MP CK 0077
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6758/2011

S.D.A.M. College

APPELLANT

Vs

National Council for Teacher Education

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 02 MP CK 0077

Hon'ble Judges : C.V. Sirpurkar, J.;Rajendra Menon, J.

Bench : Division Bench

Advocate : Manoj Sharma, Learned Counsel and Deepak Raghuvanshi, for the Appellant; Shobha Menon, Learned Senior Counsel and K.K. Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Challenging the orders Annexure P/1 and P/2 dated 13.8.2009 and 31.3.2009 passed by the NCTE rejecting and refusing approval for starting B.Ed course in the petitioner's institute so also rejecting the appeal filed by the petitioner, this writ petition has been filed under Article 226 and 227 of the Constitution.

2. Facts in brief goes to show that petitioner is a private unaided institute functioning under the aegis of Abhilashi Sanskrit Avam Shaikshanik Society, a society registered under the M.P. Society Registrickaran Adhiniyam, 1973. It is imparting education in various courses including B.Ed and D.Ed.

3. The institution was established in the year 2004 and it was granted recognition by the National Council for Teachers Education initially in the year 2004 for conducting B.Ed Course for an annual intake of 100 students from the academic session 2005-2006. Documents Annexure P/4 and P/5 are the orders in this regard passed by the National Council for Teachers Education in the matter of grant of approval. However, in this approval granted a condition stipulated vide clause 3(d) of Annexure P/5 was to the effect that the institute shall shift to its

own premises within three years from the date of recognition. It was also stated that in case the institute is running in a rented premises it has to fulfill this condition. Grievance of the petitioner seems to be that as they could not shift to their own premises and as they do not have adequate land area, proceedings were initiated and finally vide order Annexure P/1 on the ground that the land area of the institute is inadequate, on 31.3.2009, further recognition/approval was refused to the institute. The appeal filed was also dismissed and therefore, this writ petition is filed challenging the refusal of permission. When the matter was pending, the petitioner pointed out to this Court that they have now fulfilled all the requirements and have obtained adequate land and the premises of the institute is now functioning in a property owned by the institute/society in question. It seems that in pursuance to the aforesaid prayer made by the petitioner, this Court directed the respondents for inspection of the institute and thereafter, to consider the question of grant of approval. As directed, inspection of the institute was undertaken and after such an inspection, even though, it was found that the institute has complied with the directions for having premises and land of their own, in this inspection it was found that there are various other discrepancies, like non-availability of proper faculty, non payment of salary to the staff and certain other deficiencies as were indicated in the inspection report. When this inspection reports were brought to notice, the institute again filed a detailed affidavit indicating that all these deficiencies have now been cured and the institute is willing to have further inspection so that the claim of the institute for grant of recognition/approval can be considered. On 16.1.2015 this Court directed the institute to file an affidavit indicating all these factors and accordingly, an affidavit of Shri Tanveer Alam, Secretary of the Society has been filed, to say that all the subsequent deficiencies pointed out by the Council has now been rectified and there are no deficiencies, respondents were directed to give their say on this affidavit and they have reiterated the same stand which was taken by them earlier as per the inspection report to say that institute cannot be granted recognition as they do not fulfill the requirement for grant of recognition in accordance to provisions of NCTE Regulation 2009.

4. Shri Manoj Sharma, learned counsel for the petitioner submitted that now as the institute has come out with a case that it fulfills all the requirement as per the required regulation the Council be directed to inspect the institute and consider the case of the institute for grant of approval for the academic session 2015-2016 so that the institute, if eligible for imparting the course of education in B.Ed. may proceed so in accordance with law from the next academic session.

5. However, it was vehemently argued by Smt. Shobha Menon to say that if the institute so wishes they should not file a fresh application as per the statutory regulation of 2009 and if that is done, their cases can be considered. In support of the aforesaid contention, learned counsel invited our attention to the order passed by the Coordinate Bench of this Court in the matter of Director, Maharishi Centre for Educational Excellence Vs. The National Council for Teacher Education - W.P No. 10551/2012 decided on 11.9.2013 to say that the institute should now

apply for fresh recognition in accordance to the Regulation of 2009 and then only, their claim can be processed.

6. We have considered the rival contentions advanced and we have gone through the record and now we find that initially when the cause of action for filing this writ petition arose the only deficiency which was pointed and which disentitled it from grant of recognition was that the land owned was inadequate, or that ownership of the land was not with the society. When the petitioner institute complied with the aforesaid deficiency, rectified the same and came out with a case that they are now entitled to grant of recognition as they have purchased adequate land and the institute is functioning in a premises owned by the society, this Court directed the Council to conduct inspection and submit a report. The inspection was conducted and the report submitted goes to show that now the institute has fulfilled the requirement of having adequate land in their name and even though the institute is functioning in its own premises but now certain new deficiencies with regard to recruitment of faculty and payment of salary is pointed out in the report submitted. Shri Manoj Sharma argued that the institute has not been granted recognition since 2009, no students were admitted since then and, therefore, there may be some deficiencies in the matter of faculty facility available at the time of inspection and now an affidavit of the Secretary of the Institute Shri Tanveer Alam has been filed in support thereof to say that as on date, all the deficiencies have been rectified. That being so, the only question now is as to whether this Court can issue a mandamus to the Council to proceed and consider the case for recognition after due inspection as per rules or the petitioner should be relegated to the remedy of filing a fresh application in accordance to the regulations of 2009 and thereafter, the matter proceeded with.

7. We are unable to understand as to what is the difficulty for the respondent council in conducting the inspection as per the applicable regulation now and proceed to consider the claim for approval/recognition for the next session i.e. 2015-2016. This is a case where the institute was already having a recognition and the same was withdrawn because of some deficiencies. During the pendency of the matter due to changed circumstances, this Court directed the Council to conduct inspection and on such inspection fresh deficiencies have been pointed out and reasons for those deficiencies has been explained by the petitioner and now they say that this is also rectified. Admittedly, if the institute was not admitting the students since 2009, the faculty Members would have left the institute and there may have been some deficiencies on this count but now institute has come out with a case that these deficiencies have already been corrected and are willing to have a fresh inspection in accordance to the statutory regulations applicable. In view of in the peculiar facts and circumstances particularly, which is pending since 2011 we see no reason to direct the petitioner to file a fresh application for grant of recognition afresh in accordance to the Regulations 2009, instead, interest of justice would be met if the respondents are directed to conduct the inspection before the coming academic session 2015-2016 commences and to take action as per law. We are

not inclined to accede to the objection raised by learned Senior Counsel and relegate the petitioner to file fresh application for recognition. This is not required in the facts and circumstances of the case because the petitioner was already enjoying the recognition and was conducting the course from 2004 to 2009 when the recognition was withdrawn.

8. Taking note of all these circumstances, we dispose of this petition with the following directions:-

On the petitioner's filing a certified copy of this order along with detailed affidavit indicating that all the deficiencies are cured, the Council should notify a date for inspection to be conducted by the Council as per the statutory regulation and on the date so notified, the inspection in accordance to statutory regulations as may be applicable shall be carried out and thereafter, a decision taken for grant of recognition or otherwise much before the academic session 2015-16. The petitioner institute, if granted the recognition should be permitted to admit the students for the coming academic session 2015-2016 in accordance to the Rules and Regulations applicable. 9. It may be taken note of that the institute of the petitioner is imparting courses of study in D.Ed and recognition is to be granted only with regard to B.Ed Course which has been withdrawn.

10. With the aforesaid, this petition allowed and stands disposed of.