

(2014) 11 MP CK 0111

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4790 of 2014 (S)

Shramdham Arts and Commerce College

APPELLANT

Vs

National Council for Teachers Education

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2014) 11 MP CK 0111

Hon'ble Judges : Rajendra Menon, J;N.K. Gupta, J

Bench : Division Bench

Advocate : Siddharth Gulatee, Advocate for the Appellant; K.K. Singh, Advocate and D.K. Bohre, Penal Lawyer, Advocate for the Respondent

Judgement

1. Challenging the orders passed by respondent nos. 1 and 2 in the matter of withdrawing the approval granted to the petitioner institute for conducting the course of studies in B.Ed. and the order passed dismissing the appeal as contained in Annexures P-1 and P-2 dated 13-08-2009 and 13-04-2009, this writ petition has been filed by the institute in question.

2. Petitioner institute was granted approval for conducting a course for B.Ed. with an annual intake of hundred students on 26- 09-2005 vide Annexure P-3. The approval even though indicates that it is for a period of one year, it is not in dispute that upto the year 2009 the approval continued and the petitioner institute continued to admit the students to the course in question. The students were admitted to the course in question right from the academic session 2005-06 till the action impugned in this appeal was taken vide Annexure P-2 dated 13-04-2009.

3. The approval and recognition of the petitioner institute was cancelled as is evident from Annexure P-2 on the ground that the institute does not have adequate land as contemplated under NCTE Regulation 2007 and Science lab, library and sports facilities are shared with other decree course. The appeal filed by the appellant was also dismissed but the appellate authority held that the

institute having been permitted to conduct course by the NCTE Regulation 2005, the approval is deemed to have been continued upto to the year 2009. The petitioner has filed this writ petition and only ground that warrants consideration in this writ petition is as to whether the petitioner who were granted approval in accordance to the Regulation that was existing in the year 2005 as the approval was granted on 26-09-2005, the same could be cancelled on the ground that the institute was not fulfilling requirement in accordance to the provisions of Regulation 2007 which came into force subsequently.

4. Shri Gulatee, learned counsel for the petitioner invites our attention to an order dated 19-04-2012 passed a Coordinate Bench of this court in W.P.No.14743/2010 and submitted that the matter should be remanded back to the competent authority with a direction to re-examine the claim of the petitioner in the backdrop of the new Regulation 2005 applicable after coming into force of the Regulation 2007 and take a fresh decision, based on the infrastructural facilities available, accordingly , on the ground that the provision of the Regulation of 2007 are not complied with, the recognition cannot be withdrawn, this petition is filed and It is said that the appellate authority also did not take note of these factors.

5. Shri K.K.Singh, learned counsel appearing for respondents raise two fold submissions, it was argued by him that when the recognition was withdrawn and cancelled in the year 2009, Regulations 2007 came into force and therefore, if the petitioner did not fulfill the norms in the year 2009 then no interference can be made . That apart, it is pointed out that the petitioner has already challenged the action by filing Special Leave Petition (C) No.21012/2009 and as the claims of the petitioners have already been rejected by the Supreme Court now no further indulgence into the matter is called for.

6. We have considered the rival contentions of the parties and we have taken note of the facts and circumstances of the case. At the very out set we would examine the question as to whether the claim made by the petitioner has already been considered and rejected by the Supreme Court as canvassed by Shri K.K.Singh, vide order passed in Special Leave Petition (C) No.21012/2009 .

7. If the facts pertaining to filing of this SLP are taken note of, it would be seen that a Public Interest Litigation was filed before this court wherein it was stated that the Western Regional Committee of NCTE has been granting recognition to various institute in discriminatory without taking legal principles of law and therefore, action be taken for cancellation of all these recognition granted. The Division Bench of this court took note of all the aforesaid grievances that was made in W.P.No.6113/08, WP No.8936/08 and W.P. No.11360/08 and in pursuance to the same this court disposed of the Public Interest Litigation with a direction that recognition granted to each of the institute be re-examined, a show cause notice was issued to them and action taken. When this order was passed in the Public Interest Litigation by a Coordinate Bench of this court, the matter travelled to the Supreme Court at the instance of many other institutes

and petitioner institute was also one such institute which filed SLP(C) No.21012/09 and the said SLP was dismissed. That being so the order passed in the SLP is pertaining to the tenability and legality of the order passed in the public interest litigation pertaining to the direction issue to the NCTE for reexamination of the approval and recognition granted in the State of M.P. by the Wester Regional Committee of NCTE and does not go into the merit of the matter with regard to the examination of individual cases and approval granted to each of them, That being so, we are unable to accept the preliminary objection raised by Shri K.K.Singh with regard to tenability of the writ petition in the light of the order passed in the SLP as indicated herein above, this objection is also misconceived and is accordingly rejected as what is now challenged is the subsequent action taken after orders passed in W.P.No.6113/08 and W.P.No.11360/2008.

8. As far as as merit of the case is concerned, we find that while dealing with similar question a coordinate Bench of this court in W.P.No.14743/2010 vide Annexure P-5 dated 19-04-2012 it was found that Regulation framed under NCTE Act contemplating norms and criteria for grant of approval and recognition was changed consistently and it was found that Regulations were amended from time to time and various changes were made in the Regulation which came into force from 1993 onwards, they were amended in the years 2001, 2002, 2005, 2007 and finally in the year 2009, accordingly the writ court found that in pursuance to the particular regulation applicable at the giving point of time when the recognition of the petitioner is sought for the matter has to be examined. If the recognition is issued finding the institute to be fulfilling infrastructural facilities and other criteria laid down at that point of time then if the Regulations are amended, then after the amendment is made, merely on the ground that the institute is lacking in infrastructural facilities as per the amended provision the approval of the petitioner institute should not be cancelled without giving them reasonable opportunity to the institute to comply with the requirement due to change in the Regulation. The matter was dealt with by the learned Division Bench from paras 9 onwards in the following manner :

9. Thus from perusal of the relevant provisions of Regulations of 2002, 2005 and 2007 it is apparent that periodically the CTE has been prescribing norms and standards for granting applications for starting educational institutes and granting recognition to such institutions. The question of grant of recognition is well within the right of NCTE which has to scrutinize whether the institution fulfills the requirement of staff, infrastructure, financial stability etc. There have been frequent changes in the requirement for starting new institution for the teachers training. Such changes in the norms and standards in the course of training in teaching education must be understood in proper context. The norms and standards which are prescribed in the Regulations have to be interpreted in such a manner which would advance the object of framing such regulations and not defeat the purpose for which they are framed. An institution has certain alterable characteristics such as financial stability, financial resources of the institution,

requirement of adequate qualifying teaching and non-teaching staff, appointment of full time member principal, staff approved by the affiliating university, requirement of library, laboratory, requirement of sufficient number of books etc. whereas non- alterable characteristics would include the area of land, the building, dimensions of classrooms, etc. On the basis of revised norms if the institution is required to fulfill non-alterable characteristics it would defeat the object of the regulations and would lead to absurdity as it would not be possible for any institution to fulfil the frequently changing requirements with regard to land, building and area of classrooms etc.

10. Therefore, in our considered opinion, changes in the regulations with regard to physical infrastructure i.e. land, building and size of classrooms cannot be applied to existing institution which have been granted recognition after due verification, with retrospective effect. Any change in the Regulation with regard to teaching and non-teaching staff also cannot be given retrospective effect. The changes in the norms as prescribed by regulations with regard to non alterable characteristics of institution can be given only prospective effect. However, changes in the norms as prescribed by regulations can be applied to the alterable characteristics of an institution and if the institution is found lacking in any of the alterable characteristics the same should be given reasonable opportunity to comply with the requirement of alterable characteristics as laid down in the regulations.

9. Thereafter in para 11 the orders impugned identical in nature have been quashed and in para-11 the following directions have been made in para-11.

?11. For the aforementioned reasons, the orders dated 31-03- 2009 and 13-08-2009 of the Western Regional Committee and the Appeal Committee respectively are hereby quashed and the matter is remanded to the Western Regional Committee to reconsider the question whether the institution complies with the requirement as laid down in 2002 Norms. The Appeal Committee shall also consider whether the Regulations of 2005 and 2007 which have come into existence after the grant of recognition to the institution would apply to the institution. If the Western Regional Committee for the reasons to be recorded, comes to the conclusion that revised norms as laid down in 2005 and 2007 Regulations apply to the institution, it shall separately examine whether the institution in question lacks in alterable characteristics or in non alterable characteristics. If the institution lacs in any of alterable characteristics, reasonable time would be granted to the institution to comply with the same. However, if the institution lacks in any of the non alterable characteristics. The Western Regional Committee would consider the question of grant of recognition to the institution by taking into account the fact whether recognition can still be granted to the institution by reducing the intake capacity of the students or such relevant factors as may be prescribed in the Regulations. The aforesaid exercise shall be carried out by the Western Regional Committee expeditiously.?

10. Keeping in view the facts and circumstances of the case , it would be clear

that the case in hand is identical in nature, the petitioner institute was fulfilling all the norms in the year 2005 and therefore recognition and approval was granted, this recognition continued upto the year 2009 and now in the year the approval is cancelled on the ground that the institute did not fulfill the criteria laid down in Regulation 2007. That being so for the reasons indicated a Coordinate Bench of this court in WP No.14743/10 as reproduced hereinabove, the relief granted to the said petitioner has to be granted to the petitioner institute also as both cases are identical in nature. Accordingly we have no hesitation to allow this petition to that extent inspite of the fact that Shri K.K.Singh tried to point out before us that the petitioner should file fresh application seeking grant of approval under Regulation 2009. We are of the considered view that as the impugned action was taken based on a subsequent Regulation which came into force in the year 2007, the action of the respondents in cancelling the approval without granting opportunities to the petitioner to rectify the defect if any found taking is unsustainable. Accordingly this petition is allowed. Orders impugned annexures P-1 and P-2 are quashed and the matter is remanded back to the appellate committee to reconsider the matter in the light of the observations made by the Coordinate Bench of this court in W.P. No.14743/10 as reproduced in para-11. The action be taken by the respondents appellate authority well in time before next commencing session 2015-16 .

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