

(2004) 04 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 2743 of 2004

Siddivinayank Shikshan Prasarak Mandal

APPELLANT

Vs

National Council for Teacher's Education and Others

RESPONDENT

Date of Decision : 28-04-2004

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14
Prevention of Food Adulteration Rules, 1955 — Rule 9(j)

Citation : (2004) 4 BomCR 696 : (2004) 4 MhLj 508

Hon'ble Judges : C.K. Thakker, C.J;S.A. Bobde, J

Bench : Division Bench

Advocate : A.V. Anturkar, for the Appellant; Uday Warunjikar, for Respondent Nos. 1 to 3, Deepa Chavan, Bhate and Kiran Gandhi, instructed by Little and Co. for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—Rule. Mr. Uday Warunjikar, the learned Counsel, appears and waives service of Rule on behalf of respondent Nos. 1 to 3. Mrs. Deepa Chavan, the learned Counsel, appears and waives service of Rule on behalf of respondent Nos. 4 and 5. In the facts and circumstances, by consent, the matter is taken up for final hearing today.

2. This petition is filed by the petitioner for an appropriate writ, direction or order directing the National Council for Teacher's Education ("NCTE" for short), respondent No. 1 herein to accept the application form from the petitioner herein, for recognition of the institute for the Academic Year 2004-05 u/s 14 of the National Council for Teacher Education Act, 1993 (hereinafter referred to as "the Act") without insisting for the last date of 31st December, 2003, in peculiar facts and circumstances of the case and to decide the same in accordance with law for grant of recognition for the Academic Year 2004-05.

3. The case of the petitioner is that it has applied for "No Objection Certificate" (NOC) from the State of Maharashtra by an application dated 4th

March, 2003. The said application was allowed and NOC was granted by the State Government on 31st December, 2003. Thus, the decision on grant of NOC was taken by the State Government on the last day of the year. It is the case of the petitioner that immediately thereafter, the petitioner approached respondent No. 1 for the purpose of getting recognition by NCTE. No decision, however, was taken by the 1st respondent. In the petition, it was stated that apart from oral representations, requests and prayers, applications were also made by the petitioner. Some of the applications are on record and they are at Exhibits "A-14" to "A-17". They are dated 12th January, 2004, 23rd January, 2004, 5th February, 2004 and 23rd January, 2004 respectively.

4. According to the petitioner, no decision one way or the other has been taken by the respondent No. 1, presumably on the ground that such an application was required to be made in accordance with Regulation 7 of the Regulations known as NCTE (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 or training) Regulations, 2002.

5. Regulation 7 reads as under :

"7. Time limit for making application.-- 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."

Since the application was not made in the prescribed form and within the stipulated period i.e. "on or before 31st December", 2003, it was not considered.

6. The learned Counsel for the petitioner contended that the action of respondent Nos. 1 and 2 in not considering the application is illegal, contrary to law and deserves to be quashed and set aside. It was further submitted by the learned counsel that Regulation 7 does not lay down Law of limitation. It merely prescribe procedure which requires an application to be made on or before 31st December. In peculiar facts and circumstances of the instant case, when NOC was granted to the petitioner by the State Government on 31st December, 2003 for which an application was made in March, 2003, if an application was made by the petitioner to respondent Nos. 1 and 2 within few days, it was obligatory on the respondent Nos. 1 and 2 to consider the same and to take appropriate decision keeping in view the relevant provisions of Law.

7. Our attention has been invited by the learned Counsel to the decisions of the Supreme Court in this regard. In *Topline Shoes Ltd. Vs. Corporation Bank*, , the Supreme Court was called upon to consider the question regarding time limit u/s

13(2)(a) of the Consumer Protection Act, 1986. The said Section provided to refer a copy of the complaint to the opposite party "within a period of thirty days or such extended period" "not exceeding 15 days" as may be granted by the District Forum. Thus, the action was required to be taken initially within thirty days and in any case, within the extended period of fifteen days thereafter. The section provided that such period of extension should not exceed fifteen days, i.e. in all 45 days. It was, therefore, contended that it was a maximum period laid down by the Act. Once that period was over, no application could be entertained.

8. Negating the contention and holding the provision directory, the Supreme Court observed:

"Thus the intention to provide time-frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply. The provision, however, as framed, does not indicate that it is mandatory in nature. In case the extended time exceeds 15 days, no penal consequences are prescribed therefor. The period of extension of time "not exceeding 15 days", does not prescribe any kind of period of limitation. The provision appear to be directory in nature, which the consumer forums are ordinarily supposed to apply in the proceedings before them. We do not find force in the submission made by the appellant-in-person, that in no event, whatsoever, the reply of the respondent could be taken on record beyond the period of 45 days. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of "desirability" in strong terms. But it falls short of creating any kind of substantive right in favour of the complainant by reason of which the respondent may be debarred from placing his version in defence in any circumstances whatsoever. It is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time-frame to file reply, as a guideline, and then to exercise its discretion as best as it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind the principles of natural justice as well. The forum may refuse to extend time beyond 15 days, in view of Section 13(2)(a) of the Act but exceeding the period of 15 days of extension, would not cause any fatal illegality in the order."

9. Similarly, in *Morvi Municipality Vs. State of Gujarat and others*, , the Supreme Court considered Section 112 of Gujarat Municipalities Act, 1963. The said section provided maximum time limit for preparation and authentication of new, revised and adopted assessment list. Though period was laid down in the section, the Court, considering the scheme of the Act and the intention underlying the said provision, observed that it was directory and not mandatory.

10. Reference was also made to *Dalchand Vs. Municipal Corporation, Bhopal and Another*, , where the provisions of Rule 9(j) of the Prevention of Food Adulteration Rules, 1955 were held to be directory.

11. In the instant case, the submission of the learned Counsel for the petitioner is that if after obtaining NOC from the State of Maharashtra, the petitioner made an application without undue delay, the first respondent was duty bound to consider the same and to take an appropriate decision in accordance with law on such application.

12. The learned Counsel for respondent Nos. 1 and 2, on the other hand, supported the action taken by them. It was submitted that the Regulations are statutory and they provide "time limit for making application". It was urged that the submission of the learned Counsel for the petitioner is not well founded that it is only after the petitioner received NOC from the State of Maharashtra that the institute could make an application. The learned Counsel referred to a decision of the Supreme Court in *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*, . In the said case, the supreme Court held that an application can be made by a person/ Institute even if there is refusal to grant NOC by the State Government. The Supreme Court observed that though an application for "no objection certificate" (NOC) was not decided, it would be deemed to have been refused and in that case, it would be open to the institute to make an application to NCTE and an appropriate order can be passed by NCTE.

13. Even if it is held that the petitioner could have made an application, in the facts of the case when application for "no objection certificate" (NOC) was made by the petitioner on 4th March, 2003 and it was granted on 31st December, 2003 and thereafter immediately, an application was made to respondent Nos. 1 and 2, in our opinion, it was incumbent on the respondent Nos. 1 and 2 to consider the said application and to decide it according to Law.

14. There is one more reason why the respondent Nos. 1 and 2 were required to consider and decide the application. At an earlier stage also, the petitioner had come to this Court. Writ Petition No. 1337 of 2001 was preferred by the petitioner, *Siddhivinayak Shikshan Prasarak Mandal and Ors. v. The State of Maharashtra and Ors.* against an order of rejection of the application by NCTE. Holding the action of NCTE to be illegal and contrary to law, the Division Bench, to which one of us was a party, (S. A. Bobde, J.) observed in the order dated June 21, 2001;

"In case such an application is made, it will be dealt with by the authorities in accordance with law".

15. It is an admitted fact that nobody had challenged the said decision.

16. In our opinion, therefore, it was obligatory on the respondent Nos. 1 and 2 to consider the application of the petitioner. Since it was not done, in our judgment, the petition deserves to be allowed and is, accordingly allowed by directing the respondent Nos. 1 and 2 to consider the application of the petitioner dated 12th January, 2004 along with other applications referred to in the earlier part of the Judgment.

17. It is, however, clarified that if an application is required to be made in the prescribed form and if respondent Nos. 1 and 2 are of the view that such an application would be necessary, the petitioner will make such application in the prescribed form within a period of two weeks from today. The respondent Nos. 1 and 2 will consider the same and take an appropriate decision in accordance with law for the Academic Year 2004-05. Let such a decision be taken on its own merits as expeditiously as possible preferably within a period of four months from today.

18. It is stated by the learned Counsel for the petitioner, under the instructions of the petitioner, that the petitioner Institute has not admitted any student and will not admit students till recognition is granted by the Authorities.

19. For the reasons aforesaid, the petition deserves to be allowed and is, accordingly, allowed. Rule is made absolute in the above terms. Petition stands disposed of accordingly.

20. There shall be no order as to costs.

21. Parties be given copy of this order duly authenticated as true copy by the Sheristadar of this Court.