

(2020) 12 PAT CK 0369

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8286 Of 2020

Solanki B.Ed. Teachers Training College

APPELLANT

Vs

National Council For Teachers Education (Ncte) And Ors

RESPONDENT

Date of Decision : 14-12-2020

Acts Referred:

National Council For Teacher Education Act, 1993 — Section 17(1), 18, 32(2)
Constitution Of India, 1950 — Article 226

Citation : (2020) 12 PAT CK 0369

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : S.N. Pathak, Ashish, Sunil Kumar Singh, Nagendra Kumar Singh

Final Decision : Dismissed

Judgement

1. Heard Mr. Shri Nath Pathak, learned counsel appearing on behalf of the petitioner and Mr. Sunil Kumar Singh, learned counsel appearing on behalf of the National Council for Teachers Education (N.C.T.E.).

2. Facts of the present case are not at all in dispute, which are being narrated at the outset before referring to the relief, which the petitioner has sought for in the present writ application filed under Article 226 of the Constitution of India.

3. The petitioner is an Institution, which offers courses/training in teacher education and the present writ application has been filed through its

Secretary. The Institution was granted recognition on 30.01.2010 for conducting B.Ed. Course for the academic session 2009-10 under Clause 7(II) of

the National Council For Teacher Education (Recognition, Norms and Procedure) Regulations 2007. After coming into force of National Council For

Teacher Education (Recognition, Norms and Procedure) Regulations 2014, framed

in exercise of powers conferred by sub-section (2) of Section 32

of the National Council For Teacher Education Act, 1993 (hereinafter to be referred to as "the Act"), the Institution was granted revised

recognition by an order dated 30.05.2015 issued by the National Council For Teacher Education (Eastern Regional Committee), Bhubaneswar [for

short "NCTE (ERC)"] subject to fulfillment of certain conditions mentioned in the order itself. The Institution was put to show cause notice on

17.05.2018, for it was noticed in 255th meeting the NCTE (ERC) held on 30.04.2018 to 02.05.2018 that the Institution was lacking on certain counts,

namely : -

(i) Faculty list duly approved by the concerned affiliating body not submitted.

(ii) FDRs towards Endowment and Reserve fund after conversion into joint mode not submitted.

(iii) Converted FDRs in joint operation mode is required to be uploaded on institution website.

(iv) Blue print of building plan in original duly approved by the Govt. Engineer is not submitted.

(v) Building completion certificate duly approved by the Govt. Engineer is not submitted.

(vi) Website not maintained and updated.

4. It is evident from the show cause notice issued under Section 17(1) of the Act that the Committee was of the prima facie opinion that the Institution

did not fulfill the requirements, the norms and the standards as laid down by the NCTE in accordance with the provisions of the Act. It is evincible that

one of the deficiencies, pointed in the notice dated 17.05.2018, was non-submission of faculty list duly approved by the concerned affiliating body. The

Institution had submitted its reply dated 14.06.2018 in response to the said show cause notice dated 17.05.2018, which was received by the NCTE

(ERC) on 18.06.2018. The matter was placed before the ERC of the NCTE in its 278th meeting held on 16-18th January, 2020, when the Committee

again made the following observations : -

(i) Latest original list of teaching faculty duly approved by the affiliating body to be submitted.

(ii) Teaching faculty mentioned at Sl. No.2, 3, 4 & 14 is mismatched when compared with the website uploaded by the institution.

(iii) Original FDRs of Rs. 5 lakh and Rs.7 lakh to be submitted.

(iv) Certified copy of Fire Safety Certificate duly signed by the Govt. competent Authority to be submitted.

(v) Requisite information of the institutional website has not updated as per clause 7(14)(i) of the NCTE Regulation, 2014.â??

5. Thereafter, a final show cause notice was issued to the Institution on 28.01.2020 under Section 17(1) of the Act asking the Institution to submit

reply. Complying with the said show cause notice dated 28.01.2020, the Secretary of the Institution submitted its reply dated 04.02.2020. A copy of

the said reply has been brought on record by way of Annexure-4 to the writ application, which is equivalent to Annexure-E to the counter affidavit

filed on behalf of the NCTE.

6. It is evident from Annexure-4 to the writ application that the Institution submitted â??Latest original faculty list duly approved by the Registrar Jai

Prakash University, Chapraâ?. Further, it was pointed out by the NCTE (ERC) in its show cause notice that the teaching faculty, as mentioned at Sl.

No. 2, 3, 4 and 14, mismatched when compared with the website uploaded by the Institution. In response to the said aspect, the Institution took a plea

that teaching faculty mentioned at Sl. No. 2, 3, 4 and 14 did match compared with the same uploaded on the website of the Institution. Other defects,

as pointed out by the NCTE, were shown to have been removed.

7. Upon considering the list of teaching faculty, as submitted on behalf of the Institution, the ERC, NCTE, Bhubneswar, has withdrawn the recognition

of the Institution exercising power under Section 17(1) of the Act from the academic session 2020-21 on following grounds : -

â??(i) Teaching faculty mentioned at Sl. No. 10, 12, & 13 do not possess NET/Ph.D. qualification as per amendment Gazette Notification dated

09.06.2017.

(ii) Music and Fine Arts members of Teaching faculty have not appointed as prescribed in Appendix-4 of NCTE Regulation, 2014.â??

8. The said order dated 06.03.2020 is under challenge in the present writ application, which has been filed nearly six and half months after passing of

the order impugned. The petitioner has not disputed in the writ application the fact recorded in the impugned order that teaching faculty, mentioned at

Sl. No. 10,12 and 13, do not possess NET/Ph.D. qualification, as prescribed in

the Regulations as amended by National Council For Teacher

Education (Recognition, Norms and Procedure) (Amendment) Regulations 2017, which came into force with effect from 09.06.2017. The Institution

also does not dispute the other ground mentioned in the order for withdrawal of recognition that Music and Fine Arts members of teaching faculty

have not been appointed, which is a mandatory requirement in appendix-4 of NCTE Regulations, 2014.

9. It is noteworthy that Section 18 of the Act permits an Institution to prefer an appeal before the appellate authority within 60 days from the date of

the issue of the order in the on-line mode. The petitioner, admittedly, did not invoke the said appellate provision. There is no explanation in the writ

application as to why no statutory appeal was preferred against the impugned order dated 06.03.2020. Nationwide lock down consequent upon

outbreak of pandemic COVID-19 could not be a ground, which could have reasonably prevented the petitioner from preferring an appeal as the

statutory provision itself requires submission of appeal in the on-line mode, which was indicated in the impugned order also.

10. In this background, a preliminary objection has been taken by Mr. Sunil Kumar Singh, learned counsel representing the NCTE, to contend that this

writ application is not maintainable in view of alternative statutory remedy available to the petitioner, which it failed to avail. There is absolutely no

explanation in the writ application as to why the Institution failed to prefer appeal and what were the circumstances, which prevented the Institution

from preferring statutory appeal.

11. Mr. S.N.Pathak, learned counsel appearing on behalf of the petitioner, has very vehemently argued that the grounds, for which the recognition has

been withdrawn, as noted in the impugned order, were not mentioned in the show cause notice issued to the Institution and, therefore, the order has

been passed in breach of principles of natural justice. On this ground alone, he has assailed the validity of the impugned order. He has submitted,

referring to the impugned order itself, that the five grounds mentioned in the show cause notice, based on which the recognition was proposed to be

withdrawn, were duly complied with by the petitioner-Institution. The original list of teaching faculty duly approved by the affiliating body was

submitted. The impugned order, according to him, has been passed on a new

grounds to the effect that the teaching faculty do not possess the requisite qualification and Music and Fine Arts members of teaching faculty were not appointed. He has submitted that if the NCTE intended to withdraw recognition on these two grounds, the same ought to have been disclosed in the show cause notice so as to give the petitioner an opportunity to deal with the same.

12. Mr. Sunil Kumar Singh, learned counsel representing the NCTE, on the other hand, has submitted that with the amendment in appendix-13 of the

Regulations following clauses have been added after 5.2D, namely : -

â??E. Besides fulfilling the above qualification the candidate shall have cleared the National Eligibility Test (NET) conducted by University Grants

Commission. Provided candidates, who are, or have been awarded Ph.D. degree in Education in accordance with the University Grants Commission

(Minimum Standard and Procedure for Award of Ph.D. Degree) Regulation, 2009, shall be exempted from the requirement of the clearing of NET for

appointment as Assistant Professor or equivalent position in Universities or college or institutions.â??

13. He has contended that list of the faculty was submitted by the Institution in response to the show cause notice issued by the NCTE for withdrawal

of recognition. From the Institutionâ??s reply itself, it emerged that three out of 16 faculty members, as stipulated under appendix-13 of the

Regulations, did not fulfill the eligibility requirement of being a teaching faculty as they did not have NET/Ph.D. qualification, as stipulated in appendix-

13 of the Regulations. He has accordingly submitted that there is no violation of principles of natural justice inasmuch as the petitioner was asked to

inform the NCTE whether the Institution was fulfilling the mandatory requirements for continuance of recognition or not. As the Institution itself

disclosed in its reply that three of its teaching faculty did not have the basic qualification, the impugned decision and consequent order withdrawing

recognition do not warrant interference by this Court in a judicial review proceeding. He has also argued that the Institution has admitted that despite

statutory requirement, Music and Fine Arts members of teaching faculty have not been appointed, as prescribed in appendix-4 of the Regulations and

for the said reason also, the challenge to impugned order is untenable.

14. As has been noted, at the very outset, three of the 16 faculty members of

the Institution do not possess the qualification as stipulated under appendix-13 of the Regulations, as amended in 2017. There is clear requirement in Clause 5.1 of appendix-13 of the Regulations that for intake of two basic units of 50 students each, i.e. total strength of 200, there shall be 16 fulltime faculty members. The distribution of faculty across different curricular areas has been provided thereunder. Evidently, out of 16, two faculty members, one each in Fine Arts and Performing Arts have, admittedly, not been appointed and three, out of rest 13, admittedly, do not have the basic qualification for being appointed as faculty members.

15. I must point out that this is an admitted fact that the teaching faculty, mentioned at Sl. No. 10, 12 and 13 in the list of teaching faculty submitted by the Institution, were appointed after coming into force of National Council For Teacher Education (Recognition, Norms and Procedure) Regulations (Amendment) 2017. The illegality in their appointed is writ large. In the background of the above noted admitted facts, I do not find force in submission made on behalf of the petitioner that the impugned order requires interference in a proceeding under Article 226 of the Constitution of India on the ground of breach of principles of natural justice. The Institution was asked to submit list of its faculty members, while issuing show cause notice for withdrawal of recognition under Section 17(1) of the Act. Mere submission of the list of faculty members cannot be said to be complying with the terms and conditions of recognition, rather the Institution was required to establish that (i) faculty members had been appointed in accordance with the mandatory statutory provisions; and (ii) the teaching faculty did possess the requisite qualification as prescribed in the Regulations. As the Institution itself admitted that teaching faculty members were not appointed and some of them did not possess the minimum eligibility condition for appointment, the decision of the NCTE to withdraw recognition cannot be faulted with on the ground that this aspect was not mentioned in the show cause notice. This aspect of absence of teaching faculty members and teaching faculty members not having the qualification could not have been there in the show cause notice issued by the NCTE as the NCTE learnt about these deficiencies only after it was shown to it by the Institution itself.

16. In any event, even if the submission made by Mr. Pathak is accepted that the petitioner should have been given an opportunity to deal with the

grounds, which have been made the basis for withdrawal of recognition in the impugned order, in view of the admitted facts, which have been noted

and discussed above, in the Court's opinion, it would have been an empty formality. The petitioner has not at all been able to satisfy this Court that

had these grounds been mentioned in show cause notice, the same could have been dealt with and defended successfully by the Institution.

17. The Supreme Court in case of *Canara Bank vs. Debashish Das*, reported in (2003) 4 SCC 557, (para 12) dealing extensively with the principles of

natural justice taken note of the fact that if mere grant of opportunity in terms of principles of natural justice does not improve the situation, a "useless

formality theory" can be pressed into service.

18. In my opinion, interference with the impugned decision on this technical plea shall promote illegality inasmuch as that will amount to sustaining the

petitioner's claim to continue with the status of a recognized Institution under the Act despite acting in clear violation of mandatory statutory

requirements.

19. Failure on the part of the petitioner to prefer appeal and approaching this Court more than six months after passing of the impugned order without

any explanation also dissuades this Court from entertaining the petitioner's challenge to the impugned order in the present proceeding under

Article 226 of the Constitution of India.

20. This writ application, for the aforesaid reasons, stands dismissed.

21. There shall be no order as to costs.