
(2003) 05 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7753 of 2003

Vimala Educaiton Society

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(3)

Citation : (2003) 05 AP CK 0025

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : K.V.N. Bhupal, for the Appellant; GP, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner assails the orders of the Government of Andhra Pradesh dated 22-2-2003 as illegal and arbitrary. It prays this court to set aside the same and to consequently direct the respondents, namely, the Government of Andhra Pradesh in Education Department, the Commissioner and Director of School Education and the National Council for Teacher Education (NCTE) to grant permission to the petitioner to establish Telugu Pandit Training School ("TPT School" for brevity) at Kakinada. Be it noted that by the impugned proceedings dated 22-2-2003 the 1st respondent rejected the request of the petitioner to establish TPT school/college and Hindi Pandit Training school/college ("HPT school" for brevity).

2. The petitioner's case has a chequered history. Briefly stated, it is as follows: The petitioner is an educational society which is statedly running an upper primary school and high school known as Vimala Convent School in Kurnool since 1983. It claims to have started technical teachers training college - Vimalasree Technical Training Centre in 1992. On 10-10-1997 the petitioner applied to the 2nd respondent for grant of permission to start TPT school and HPT school at Kakinada, East Godavari district. The application was rejected by a letter dated 30-3-1999. A writ petition being W.P. No. 6654 of 1999 was filed before this

Court challenging the rejection order. By that date there was a change of policy and National Council for Teacher Education ("NCTE" for brevity) came to be established to regulate teacher education in the country. Presumably for this reason, this Court disposed of the writ petition giving liberty to the petitioner to make application to the authorities pursuant to the notification dated 28-9-2000 while directing the Government to consider the same in accordance with the rules. The petitioner thereafter filed two applications - one for permission to establish TPT school and another to establish HPT school.

3. As per the rules and guidelines, an education society desiring to establish teacher training school is required to deposit corpus fund of Rs.5,00,000/-, process fee of Rs.15,000/- and own and possess acs.3.75 cents of land. As the petitioner failed to fulfil these conditions, by a letter dated 27-7-2001 the 1st respondent rejected the applications made by the petitioner pursuant to the orders of this Court in writ petition No. 6654 of 1999. A contempt case was filed which was disposed of by this Court giving liberty to the petitioner to challenge the orders of Government dated 27-7-2001.

4. The petitioner again filed writ petition No. 9622 of 2002 praying this Court to declare the action of the Government and the Commissioner in rejecting the petitioner's application as illegal and for a consequential direction to accord permission for establishment of TPT and HPT schools in Kakinada. This Court, by judgment dated 21-11-2002, set aside the orders of Government vide letter dated 27-7-2001. This Court also directed the petitioner to comply with the conditions which are specified by the respondent authorities within ten days from 21-11-2002. The petitioner filed another miscellaneous application - W.P.M.P. No. 30069 of 2002 for extension of the time. By an order dated 29-11-2002 this Court granted ten days from the date of receipt of the said order to comply with the conditions as already directed. The petitioner obtained a fixed deposit receipt in the joint name of the District Educational Officer and the petitioner society for an amount of Rs.5,00,000/-, and sent the same along with a lease deed in respect of acs.8.00 of land and process fee of Rs.15,000/-. The matter was placed before the State Level Committee on 30-12-2002. The said committee did not consider the representation as the petitioner did not fulfil the norms and conditions prescribed for issue of "no objection certificate". Subsequently on 30-1-2003 the correspondent of the petitioner society made a representation to the Government requesting to consider for grant of no objection certificate, duly enclosing the fixed deposit receipt for Rs.5,00,000/- and a registered sale deed for acs.4.00 of land. On considering the representation, the 1st respondent, by impugned order, rejected the request of the petitioner for issue of no objection certificate to start training schools. Be it also noted that when the petitioner society sent application pursuant to the orders of this Court in writ petition No. 9622 of 2002 the corpus fund was not deposited and the leased land was shown as the land for TPT school.

5. The learned counsel for the petitioner Sri K.V.N. Bhoopal submits that the

Government issued G.O.Ms. No. 398 Education (Training I) Department, dated 4-12-1997 wherein "no objection certificate" is required to be given by the State Government before an educational institution applies to NCTE seeking recognition for starting a training school/college. As the petitioner made an application prior to coming into force of G.O.Ms. No. 398 the petitioner's school should be treated as governed by the earlier rules and not subsequent rules. Secondly, he would submit that as the petitioner complied with all the conditions and approached the Government, they ought to have considered for grant of no objection certificate. Thirdly, he places reliance on the judgment of this Court in St. Mary's Educational Society, Giddalur, Prakasam Dist. Vs. Government of A.P. and another, and submits that owning and possession of acs.3.75 cents of land is not a mandatory condition before applying to NCTE. It is for the NCTE who has to consider the application u/s 14 of the National Council for Teacher Education Act ("NCTE Act" for brevity) and reject the application after issuing notice to the petitioner. Therefore, he submits that the rejection of the petitioner's application is illegal.

6. This Court heard the learned counsel for the petitioner at length. All the material placed before this Court has been perused thoroughly. After giving anxious consideration, this Court is of the opinion that none of the submissions made by the learned counsel for the petitioner is sustainable and they are liable to be rejected.

7. In so far as the submission that the petitioner made an application prior to coming into force of G.O.Ms. No. 398, dated 4-12-1997 is concerned, the same must be held to be barred by constructive res judicata. The petitioner filed two writ petitions earlier being W.P. No. 6654 of 1999 and W.P. No. 9622 of 2002. In none of the writ petitions, this contention was raised. What was contended in earlier writ proceedings was that the petitioner society was discriminated by the respondents and that in respect of other institutions the Government granted permission though there was no proper compliance. Further, as held by this Court in ST.MARY'S EDUCATIONAL SOCIETY's case, (1 supra), after enactment of NCTE Act by Parliament the subject of teacher education is in the occupied field and, therefore, it is only the NCTE which is competent to recognize a teacher training school/college. The limited power vested in the State Government is to scrutinize the applications at preliminary stage and issue no objection certificate having regard to the need and requirement for such college in an area. In view of this, petitioner's application made in October, 1997 is of little or no consequence.

8. The second submission of the learned counsel for the petitioner with regard to due compliance cannot be accepted. Admittedly the petitioner did not produce any documentary evidence to show that the society owns and possesses acs.3.75 cents when the State Level Committee met on 30-12-2002. It only produced a lease deed for acs.8.00 for TPT school and not for HPT school. Therefore, the State Level Committee considered and reported that petitioner's application is

not considered due to non-compliance with the guidelines and rules. The petitioner thereafter sent representation on 30-1-2003 to the Government enclosing a sale deed for acs.4.00. By that time the State Level Committee had already reported to the State Government about non-compliance of the conditions by the petitioner society. Further, this Court in its judgment dated 21-11-2002, while disposing of writ petition No. 9622 of 2002, directed the petitioner to comply with all the conditions within ten days from the date of receipt of the said order. The petitioner approached this Court again and obtained extension of time by ten days by reason of the orders dated 29-11-2002 in W.P.M.P. No. 30069 of 2002. In spite of the same and having approached this Court and obtained directions the petitioner did not comply with the directions. A sale deed was enclosed to the application made to the State Government on 30-1-2003. Therefore, as rightly observed by the 1st respondent, the petitioner society has registered acs.4.00 36 days after the due date for compliance report by the society. The impugned letter contains the following observations in this regard:

... The petitioner has deposited Rs.5.00 lakhs on 8-12-2002 towards corpus fund in the joint account of DEO Kakinada and the correspondent in respect of Telugu Pandit Training College at Kakinada. He has also paid Rs.15,000/- towards processing fee. On 12-12-2001 he has produced lease deed for 8 acres of land and subsequently on 17-1-2003, has registered 4 acres of land in the name of the society. The actual date of receipt of orders by the petitioner is not known. But the correspondent, on 12-12-2001 has represented to Commissioner and Director of School Education Hyderabad that he has fulfilled the conditions. As such he has registered 4 acres of land in the name of the Society, i.e., after 36 days from the 1st compliance report by him and much after the expiry of time given by Hon'ble High Court. ...

9. In the facts and circumstances and having regard to the chequered history of the petitioner's case, the observations made by the Government and the rejection of its application are justified.

10. The last contention is based on the judgment delivered by me in ST.MARY'S EDUCATIONAL SOCIETY's case, (1 supra). When the said judgment was delivered the guidelines issued in G.O.Ms. No. 398 were in force. At the relevant time the National Council for Teacher Education (Application for recognition, the manner of submission, determination of conditions for recognition of institutions and permission to start new course or training) Regulations, 1995 ("Recognition Regulations" for brevity) were in force. Regulation 5 (e) provides that every institution intending to offer teacher training course shall submit an application for recognition to NCTE with no objection certificate from the State or the Union Territory in which the institution is located. Regulation 5 (f) provides that application for permission to start a new course should also be made to the regional committee with a no objection certificate from the State Government. Regulations 5 (e) and (f) have been upheld by the Apex Court in a recent

judgment in St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, . As seen from the judgment of the Apex Court, NCTE also issued guidelines to the State Government on 2-2-1996 for issuance of no objection certificate. Considering these guidelines in the background of regulations 5 (e) and (f), the Apex Court observed thus:

... The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary or unchannelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are ultra vires or invalid.

11. The relevant observations relied on by the learned counsel for the petitioner in paragraphs 15 and 16 of ST.MARY'S EDUCATIONAL SOCIETY's case, (1 supra) have to be necessarily read in the light of the observations made by the Apex Court in paragraph 17 in ST.JOHNS TEACHERS TRAINING INSTITUTE's case, (4 supra) which are quoted above. Further, the judgment relied on by the learned counsel for the petitioner was considered by a Division Bench of this Court to which I was a member in Manair Educational Academy, Karimnagar Vs. Govt. of Andhra Pradesh and Others, . In the light of the judgment of the Division Bench in the writ appeal which was filed against the decision in ST.MARY'S EDUCATIONAL SOCIETY's case, (1 supra), the Division Bench noticed the following directions issued by the earlier Division Bench as under:

(i) The NCTE alone is entitled to assess the relevant merits of the applicants for recognition and it is not permissible for the State Government to assess relevant merits of the applicants for "no objection certificate" at the stage of consideration of the applications for grant of no objection certificates. The State Government is bound to grant no objection certificate to those applicants who fulfil the norms and conditions specified in G.O.Ms. No. 398 Education, dated 4-12-1997.

(ii) The NCTE, Southern Region, Bangalore, while granting recognition u/s 14(3) (a) of the NCTE Act, shall grant recognition only to such number of institutions which the State Government of Andhra Pradesh has fixed.

(iii) In the facts and circumstances of the case, the parties shall bear their own costs both in writ appeal and writ petition.

(iv) The judgment and order of the learned single Judge dated 17-4-2000 made in writ petition No. 4548 of 2000 accordingly shall stand modified in terms of the above directions and in all other respects the order of the learned single Judge shall remain unaltered.

12. Therefore, the observations made by me as a single Judge have to be read and understood in the light of the observations made by the Division Bench as well as the Apex Court in ST.JOHNS TEACHERS TRAINING INSTITUTE's case, (4 supra). Therefore, the petitioner's contention that even if there is no strict compliance of the norms laid down by NCTE but still a no objection certificate should be issued by the State Government, cannot be accepted.

13. In the result, for the above reasons, writ petition is devoid of any merits and it is accordingly dismissed.