

Dvm College Of Education vs National Council For Teacher Education ... on 14 May, 2019

Author: C.Hari Shankar

Bench: C.Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5230/2019
DVM COLLEGE OF EDUCATION Petitioner
Through: Mr. Sanjay Sharawat, Adv.
with Mr. Divyank Rana and Mr. Ashok
Kumar, Advs.

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION AND ANR. Respondents
Through: Ms. Arunima Dwivedi, SC for
NCTE/Respondents

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
ORDER

% 14.05.2019

1. I had, on 27th March, 2019, passed the following judgment in W.P.(C) 2726/2019:

"1. On 26th November, 2012, the National Council for Teachers Education issued a public notice, inviting applications from institutions who wanted to start new courses for the academic session 2013-2014. In response thereto, the petitioner also applied. Regulation 5(3) of the National Council for Teachers Education (Recognition, Norms and Procedure) Regulations, 2009 (hereinafter referred to as the „2009 Regulations) required the application to be submitted „electronically through online mode available on the website of the National Council for Teachers Education (NCTE) alongwith the processing fee. The said sub-regulation also required the application, alongwith requisite documents in triplicate to be separately sent, by registered post, to the office of the Regional Committee concerned (in the present case, the Northern Regional Committee i.e. NRC), immediately thereafter. For ready reference, Regulation 5 of the 2009 Regulation is reproduced thus :

"5. Manner of making application and Time Limit.-

(1) An institution eligible under Regulation 4, desirous of running a teacher education programme may apply to the concerned Regional Committee of National Council for Teacher Education for recognition in the prescribed form in triplicate along with processing fee and requisite documents.

(2) The prescribed form may be downloaded from the website of the National Council for Teacher Education namely www.ncte-india.org.

(3) The application may be essentially submitted electronically through online mode available on the website of National Council for Teacher Education along with the processing fee. However, while submitting the application through on-line mode, the application and requisite documents in triplicate shall have to be submitted or send by registered post separately to the office of the Regional Committee concerned, immediately after on-line submission of the application.

(4) Duly completed applications in all respect may be submitted to the Regional Committee concerned during the period from the 1st day of September till 31st day of October of the preceding year to the academic session for which recognition has been sought.

Provided further that the condition of last date for submission of application shall not apply to any innovative programme of teacher education, for which separate guidelines have been issued by National Council for Teacher Education. (5) All applications received on-line on or before the 31st day of October of the year shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated to the applicant on or before the 15th day of May of the succeeding year."

2. The case of the petitioner is that, as per the procedure to be adopted while submitting the applications online, the institution concerned was required to first fill in the application and thereafter, submit it online by clicking the online submit application column on the online application form. However, para 6 of the writ petition contends, „being the last date for submission of applications, there appeared a technical snag in the NCTE web portal due to which, the last step of pressing the said button could not take place and thus the application number could not be generated . This averment obviously, is somewhat confusing, as it does not really disclose whether the snag took place at the end of the petitioner's system or at the end of the website of the NCTE.

3. Be that as it may, the petitioner did submit, thereafter a hard copy of the application, under cover of letter dated 4th January, 2013. The fact that the NRC had received the application, albeit in the form of a hard copy, is therefore not disputable.

4. The application of the petitioner was returned by the NRC under cover of a letter dated 15 th October, 2013, on the ground that a ban, by the Government of Haryana, had intervened, against opening of new institutions. Many such applications were returned, resulting in a spate of litigations before this Court, one of which was W.P.(C) 7669/2018, was filed by the petitioner.

5. The said W.P.(C) 7669/2018 was disposed of, by this Court, vide the following order dated 25th July, 2018:

"The present petition instituted on behalf of the petitioner under Article 226 of the Constitution of India, prays as follows:

"a Pass an appropriate order and permit the petitioner to resubmit its application for D.El.Ed course with the respondent No. 2 which was returned by the said respondent vide its letter dated 15.10.2013; and b Consequentially issue a writ of mandamus and direct the respondent No. 2 to decide application of the petitioner for grant of recognition for D.El.Ed course strictly in accordance with the procedure prescribed under the NCTE Act, 1993 read with NCTE Regulations, 2014."

Issue notice.

Ms. Arunima Dwivedi, learned Standing Counsel appearing on behalf of the official respondents, accepts notice.

It is an admitted position that in the facts and circumstances of the case, the relief prayed for, is covered by an order dated 22.05.2018, in W.P. (C) 5454/2018, titled as „Roa Deena Ram Vidya Vihar Shiksha Samiti Haluhara and Anr. vs. National Council For Teacher Education And Anr. , passed by a learned Single Judge of this Court.

A perusal of the averments made on behalf of the petitioner reflects that the application submitted on behalf of the petitioner for grant of recognition of the D.El.Ed course was returned without consideration by the official respondents, in view of a ban imposed by the State of Haryana in relation to the opening of such institutes.

This Court vide the said order dated 22.05.2018 in „Roa Deena Ram Vidya Vihar Shiksha Samiti Haluhara and Anr. , (supra) directed as follows:

"Subject to the petitioner meeting all other prescribed eligibility criteria, the respondents are directed to reconsider the petitioner's application dated 26.12.2012 and dispose of the same by passing a reasoned and speaking order within twelve weeks from today.

It is made clear that the petitioner's application would not be rejected on the ground of subsequent ban imposed by the State of Haryana on opening of such educational Institutions."

The above directions were predicated on the admitted position that the official respondents had, prior to the imposition of the State ban, taken a decision to process the applications of institutes, who had submitted the same before the imposition of the said State ban.

In view of the foregoing, the writ petition is allowed and the impugned letter dated 15th October, 2013 of the Regional Director, Northern Regional Committee is quashed and the same is disposed of with a direction to the official respondents to reconsider the petitioner's application dated 31st December, 2012 and dispose of the same by passing a reasoned and speaking order within twelve weeks from today. It is also made clear that the petitioner's application would not be rejected on the ground of subsequent ban imposed by the State of Haryana on opening of such educational Institutions.

The petitioner is, however, directed to deposit Rs.75,000/- with the Delhi High Court Advocates Welfare Trust."

6. The tenor of the operative portion of the above- extracted order by this Court, disposing of WP (C) 7669/2018, is unmistakeable. The respondent was required to reconsider the petitioner's application, dated 31st December, 2012 and dispose of the same by passing a reasoned and speaking order within 12 weeks. The order also records the fact that the application had, in fact, been submitted by the petitioner, and had been returned by the NRC, in view of the said ban.

7. The de novo exercise as directed by this Court vide the above order culminated in the passing of the above refusal order dated 28th February, 2019, by the NRC. Prior thereto, a show cause notice was issued to the petitioner but the impugned order cites only one reason for rejecting the petitioner's application, which was the non-submission, by the petitioner, of a valid printout of the online application bearing NRCAPP number .

8. Notice was issued on this writ petition on the last date of hearing. However, no counter affidavit has been filed, in response thereto.

9. Learned counsel appearing for the respondents seeks to defend the impugned order on the ground that in the absence of NRCAPP number, which would be generated on the petitioner submitting the application online, the application of the petitioner could not be considered.

10. This submission, in my view, is completely unavailable to the respondent at this stage of the proceedings.

11. Regulation 5 of the 2009 Regulations, which already stands reproduced hereinabove, provides for submission of the application, by the concerned institution, twice; first online, and, later, by way of a hard copy. No doubt, the petitioner had not submitted the application online. The parties before me, needless to say, join issue on whether this was owing to the fault of the petitioner or owing to the defect in the website of the NRC. Be that as it may, it is not in dispute that a hard copy of the application had, in fact, been submitted by the petitioner as the said copy was returned by the respondent, and this Court had also been moved thereagainst by way of W.P.(C) 7669/2018. The order dated 25th July, 2018, of this Court in the aforementioned W.P.(C) 7669/2018 directs the respondent to reconsider the petitioner's application and pass a reasoned and speaking order thereon.

12. In my view, the decision of the respondent, to reject the petitioner's application, consequent to this de novo exercise, on the hypertechnical ground of non-submission of the NRCAPP number - which was admittedly owing to the petitioner having been unable to submit the application online - borders on perversity and may also tantamount, to an extent, to contempt of the direction contained in the order dated 25th July, 2018, passed by this Court in W.P.(C) 7669/2018.

13. In view thereof, it is clear that the petitioner would be entitled to have its application considered on merits by the respondents, as a hard copy of the application stands submitted by the petitioner.

14. The writ petition is accordingly allowed.

15. The respondent is once again directed to pass a speaking order, on the application of the petitioner within a period of four weeks from today, and communicate the said decision to the petitioner immediately thereafter. Needless to say, if the petitioner continues to remain aggrieved by the decision of the respondent, all remedies available in law to the petitioner would stand reserved.

16. No costs."

2. Following the above directions, the NRC has in its 300th Meeting held on 15th -16th April, 2019, taken the following decisions, qua the petitioner:

"The original file of the institution alongwith other related documents, NCTE Act, 1993, Regulations and Guidelines issued by NCTE from time to time, were carefully considered by NRC and the following observation was made:-

The matter was considered in the light of Order dated 27.03.2019 passed by Hon'ble High Court of Delhi in W.P(C) 2726/2019 and following observation was made:-

The institution had applied for D.El.Ed. Course on 31.12.2012 alongwith the processing fees.

The NRC in its 214th Meeting considered the case of the institution in the light of letter No-49-7/2012/NCTE/N&S dated 20.3.2013 containing instructions in respect of consideration/ processing of applications for recognition of Teacher Education programmes viz-a-viz recommendations of the State Govt. of Haryana and the Demand and Supply Study of Teachers conducted by the NCTE, and also the following judgements of the Hon'ble Supreme Court:-

The Hon'ble Supreme Court vide its judgement dated 31.01.2011 in SLP no. 17165/2009, has held that the provisions contained in Section 14 of the NCTE Act, 1993 and the Regulations framed for grant of recognition including the requirement of recommendation of the State Government/ Union Territory Administration are mandatory and an institution is not entitled to recognition unless it fulfils the conditions specified in various clauses of the Regulations.

Further, the Hon'ble Supreme Court in its judgment dated 06.01.2012 in SLP (C) No. 14020/2009, has held that the State Government/QT Administration, to whom a copy of the application made by an institution for grant for recognition, is sent in terms of Regulation 7(2) of the NCTE, is under an obligation to make its recommendation within the time specified in the Regulation 7(3) of the Regulations.

The NRC noted that the NCTE Committee vide letter dated 20.3.2013 made it clear that the general recommendations of the State Government were applicable in each individual case, since in view of the Hon'ble Supreme Court's order, it is mandatory to obtain the recommendation of the State Government.

In view of the above judgment of the Hon'ble Supreme Court and the decision taken by the NCTE Committee, the NRC decided that the recommendations of the State Govt. of Haryana i.e. not to allow setting up of new D.El.Ed. Institutions in the State be accepted and the applications so received be returned to the respective institutions. Also the application fees be refunded to the applicants.

Based on the above discussion the NRC rejected the file of the institution alongwith many other files without considering other deficiencies / merits of the files.

That in the light of the Order dt. 25.07.18 in W.P(C) 7669/2018, the case of the institute was considered by NRC in its 288th meeting wherein the Committee decided to issue SCN, wherein one of the deficiency was "Valid Print Out of Online Application not submitted", as specified in Regulation 7(2)(b) of Regulations, 2014.

The Regulation 7 (2) is extracted hereunder:-

2. The application shall be summarily rejected under one or more of the following circumstances:-

a).....

b) failure to submit print out of the application made online alongwith the land documents as required under sub-regulation (4) of Regulation 5 within fifteen days of the submission of the online application.

The institution failed to submit the same and the Committee in its 295th Meeting had decided to issue Refusal Order on the above mentioned point.

Further, it is stated that the Clause 7 of Regulation 2014, is mandatory and is to be followed in all cases. The Committee is not incumbent upon processing the file without the valid print out as the online submission of the application which generates a respective valid application number by which the file is processed and record is maintained thereof.

Hence, in the light of the above, the committee decided that the Refusal Order dt. 28.02.19 is lawful and is within the ambit of the Act & Regulations of NCTE."

3. Prima facie, the impugned decision of the NRC discloses complete disregard of my judgment dated 27th March, 2019 and is ex- facie contemptuous thereof.

4. In view thereof, issue notice to the respondents to show cause as to why rule nisi be not issued.

5. Counter affidavit be filed within four weeks with advance copy to the petitioner, who may file rejoinder thereto, if any, within two weeks thereof.

6. Notice is accepted by Ms. Arunima Dwivedi, learned SC for the respondents/NCTE.

7. Renotify on 26th July, 2019.

8. The counter affidavit shall also answer why the proceedings for contempt should not be initiated against the respondents.

C.HARI SHANKAR, J MAY 14, 2019 dsn