

Tagore P.G. College vs National Council For Teacher Education ... on 2 August, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~15 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2893/2021

TAGORE P.G. COLLEGE

Through: Mr. Sanjay Sharawat, Adv

versus

NATIONAL COUNCIL FOR

TEACHER EDUCATION & ANR.

..... Respondents

Through: Ms. Kartika Sharma, Advocate

with Mr. Udian Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 02.08.2021 The proceedings in the matter have been conducted through video conferencing.

1. The petitioner challenges a decision taken by the Northern Regional Committee ["NRC"] of the National Council for Teacher Education ["NCTE"] at a meeting held from 05-07.04.2017, by which its application for permission to establish a B.A.B.Ed/B.Sc.B.Ed course was rejected. The petitioner also assails an order dated 13.02.2018, by which the petitioner's appeal under Section 18 of the NCTE Act, 1993 was rejected by the Appellate Committee.

2. The petitioner applied for permission to start the aforesaid course on 31.05.2016. Although the NRC apparently decided at a meeting held on 20-23.02.2017 to issue a show cause notice to the petitioner for non- submission of certain required documents, the petitioner claims not to have received any such show cause notice. The NRC, therefore, at a meeting held on 05-07.04.2017, rejected the petitioner's application for want of reply to the show cause notice. Although the petitioner did not receive the rejection order pursuant to the aforesaid decision, it filed an appeal before the Appellate Committee on 07.06.2017. The appeal was dismissed by the order of the Appellate Committee dated 13.02.2018.

3. The petitioner was called for a hearing before the Appellate Committee on 18.12.2017. At that stage, the petitioner claims that its representative submitted to the Appellate Committee certified copies of the required documents, which had been obtained from the State of Rajasthan on 14.12.2017.

4. The impugned order of the Appellate Committee, however, records as follows:-

"AND WHEREAS this case is another pathetic example of the maintenance of files in the office of N.R.C., Jaipur. Appeal Committee could neither find the impugned order on the regulatory file nor a copy of it has been furnished by the appellant. Appeal has been preferred by the appellant on the basis of minutes of 267th Meeting of N.R.C. against serial no. 135. The meeting of the N.R.C. was held from 05th to 7th April, 2017 (Part - 2). As per recorded minutes, the application seeking recognition for B.A. B.Ed./B.Sc. B.Ed. course was rejected on the ground that the applicant institution has not submitted the reply of S.C.N. dated 24.02.2017. The regulatory file contains copy of S.C.N. dated 24.02.2017 and there is no evidence on record to prove that appellant institution submitted reply to the S.C.N. AND WHEREAS the appellant in its appeal memoranda and oral presentation also did not make any statement with regard to submission of a reply to S.C.N. dated 24.02.2017 which was issued due to non submission of following documents by the appellant institution:-

1. Society bye laws.
2. Evidence to prove composite nature of institution.
3. Certified registered land documents.
4. Non Encumbrance Certificate (N.E.C).
5. Approved building plan containing infrastructural details.

AND WHEREAS Appeal Committee noted that appellant did not submit any evidence of having submitted a reply to the S.C.N. dated 24.02.2017. The documents forwarded by the appellant institution do not include originally certified copy of the land documents and building plan approved by the Competent Civic authority. Certified copy of land ownership documents issued by registering authority is required to be furnished alongwith the application/affidavit as per Clause 8 (5) of the NCTE Regulations, 2014. Appeal Committee, therefore decided to confirm the impugned refusal order against which appeal dated 07/06/2017 has been preferred.

AND WHEREAS after perusal of the Memoranda of Appeal, affidavit, documents on record and oral arguments advanced during the hearing, Appeal Committee concluded to confirm the refusal order."

5. Mr. Sanjay Sharawat, learned counsel for the petitioner, submits that the appeal has been rejected on the ground that the petitioner had not submitted a reply to the show cause notice dated 24.02.2017. The Appellate Committee, however, has not dealt with the petitioner's contention that the show cause notice was never received by it. On the merits of the issue, Mr. Sharawat refers to Regulation 5(4) of the NCTE Regulations, 2014 ["the Regulations"] to submit that the original certified copies of land documents and building plans were not required to be submitted at the stage of application to the NCTE.

6. Ms. Kartika Sharma, learned counsel for the respondents, on the other hand, submits that Regulation 8(5) of the Regulations requires the applicant-institution to furnish an affidavit alongwith the certified copies of the land ownership documents and permission of the competent authorities to use the land for educational purposes. She submits that the aforesaid requirements were not complied with by the petitioner. Ms. Sharma further submits that the present petition was instituted on 01.03.2021, more than three years after the order of the Appellate Committee, and is therefore barred by delay and laches.

7. A perusal of the impugned order of the Appellate Committee shows that the substantive issue upon which the petitioner's appeal has been rejected is that the original certified copies of the land documents and building plan were not furnished by it. The provisions of the Regulations, insofar as they relate to submission of these documents, are contained in Regulations 5, 7 and 8. Regulation 5, entitled "Manner of making application and time limit" provides inter alia as follows:-

"(4) While submitting the application online a copy of the registered land document issued by the competent authority, indicating that the society or institution applying for the programme possesses land on the date of application, shall be attached along with the application."

(Emphasis supplied.)

8. Regulation 7 deals with "Processing of applications". Regulations 7(1) and (2) provide as follows:-

"(1) In case an application is not complete, or requisite documents are not attached with the application, the application shall be treated: incomplete and rejected, and application fees paid shall be forfeited.

(2) The application shall be summarily rejected under one or more of the following circumstance:-

(a) failure to furnish the application fee, as prescribed under rule 9 of the National Council for Teacher Education Rules, 1997 on or before the date of submission of online application;

(b) failure to submit print out of the applications 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."

(Emphasis supplied.)

9. The conditions of grant of recognition are stipulated by Regulation 8. Regulation 8(5) relied upon by Ms. Sharma is in the following terms:-

"(5) The institution or society shall furnish an affidavit on Rs. 100 stamp paper duly attested, by Oath Commissioner or Notary Public stating the precise location of the land (Khasra number, village, district, state, etc.), the total area in possession and the permission of the competent authority to use the land for educational purposes and mode of possession, i.e., ownership or lease. In case of Government institutions, the said affidavit shall be furnished by the Principal or the Head of the Institution or any other higher authority. The affidavit shall be accompanied with the certified copy of land ownership or lease documents issued by the registering authority or civil authority, permission of the competent authority to use the land for educational purposes (and approved building plan) as per provision contained in sub-regulation (4) of the Regulation 5."

(Emphasis supplied.)

10. Upon a conjoint reading of the aforesaid provisions, it appears that the original certified copies of the land documents are not required to be submitted at the stage of making the application, but at a subsequent stage prior to the grant of permission. Regulation 5(4) is clear in requiring a "copy of the registered land document" to be submitted at the stage of online application. This interpretation is also supported by a reference to Regulation 7(2)(b). The summary rejection of the application at this stage is contemplated in circumstances where the land documents are not furnished in terms of Regulation 5(4). Upon furnishing of the copy of the land documents and the other documents, the NCTE is required to process the application in terms of Regulation 7. Regulation 8(5), upon which Ms. Sharma relies, is a condition for the grant of recognition but cannot be enforced at the stage of making the application, which is expressly governed by Regulation 5(4).

11. In these circumstances, the approach of the Appellate Committee in rejecting the petitioner's application for want of the original certified copies of the land documents and building plan is in error.

12. The Appellate Committee has also noticed that the petitioner did not submit any evidence of submitting a reply to the show cause notice dated 24.02.2017. However, the Appellate Committee has not examined whether the show cause notice was, in fact, served upon the petitioner, which was a necessary issue in view of the petitioner's contention that it had not received the show cause notice at all. The observations of the Appellate Committee regarding the unsatisfactory maintenance of files in the NRC Office are also relevant in this regard. In such a context, it was all the more important for the Appellate Committee to satisfy itself that the show cause notice had been duly served, before proceeding on the basis that the petitioner had not filed a response thereto.

13. Having regard to the overall prospectus of the facts as aforesaid, it would be appropriate to set aside the impugned decisions of the respondent-authorities and remand the matter to the Western Regional Committee ["WRC"] of the NCTE, which now has jurisdiction over institutions in the State of Rajasthan, for fresh consideration in accordance with law. The WRC may call upon the petitioner to submit any clarifications and further documents which it may require. The aforesaid application of the petitioner be processed and necessary orders be passed by the WRC within three months from

today.

14. While allowing the petition in these terms, I find that Ms. Sharma's contention regarding the delay in filing of the present petition is merited. Having regard to the overall facts of the case, the aforesaid order is passed subject to the petitioner paying costs of Rs. 50,000 to the NCTE within four weeks from today.

15. The writ petition is disposed of in these terms.

PRATEEK JALAN, J AUGUST 2, 2021 'j'