

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 11625 of 2021

Renubala College of Education & Anr.

Vs.

The West Bengal Board of Primary Education & Ors.

| | | |
|--------------------------|----|---|
| For the writ petitioners | :- | Mr. Arabinda Chatterjee, Adv. Mr. Arkadipta Sengupta, Adv. |
| For Board | :- | Mr. Subir Sanyal, Adv. Mr. Ratul Biswas, Adv. |
| For State | :- | Mrs. Chama Mookerji, Adv. Mr. Siraj Gooptu, Adv. |
| Heard on | :- | 06.09.2021 |
| Judgment on | :- | 16.09.2021 |

Amrita Sinha, J.:-

The petitioner no. 1 college made an online application for grant of recognition of teacher education programmes before the National Council for Technical Education (NCTE for short) on 31st May, 2016.

According to the NCTE notification dated 28th November, 2014 an eligible institution desirous of running a teacher education programme may apply to the concerned Regional Committee for recognition in prescribed application form along with processing fee and requisite documents. The application shall be submitted online electronically along with processing fee and scanned copies of required documents such as no objection certificate ('NOC' for short) issued by the concerned affiliating body. The affiliating body of the petitioner is the West Bengal Board of Primary Education ('the Board' for short).

The petitioner applied for NOC before the Board. The prayer of the petitioner for grant of NOC was considered by the Board and by a communication dated 24th June, 2021 the Board was of the opinion that the application filed by the petitioner is deficient. The petitioner has been requested to submit copy of the trust/society deed, no encumbrances/litigation certificates, copy of the registered agreement/deed for transfer of the land in the name of the proposed institution within six months from the grant of recognition, land use certificate issued by the BLRO, approved building plan along with photographs of the construction/building as per NCTE norms and a notarised declaration that the proposed institution will be run by NCTE and Government of West Bengal guidelines and the proposed institution is a 'no profit making' institution.

It was further communicated that after verification of the aforesaid documents, if the Board is satisfied, it will take up the next course of action. On being fully satisfied with the norms and standards as per the NCTE Regulations, 2014 the Board will forward the application along with observation of the Board for opinion of the Department of School Education. The Board will dispose of the application finally as per the opinion/recommendation of the Government of West Bengal in the Department of School Education.

The petitioner is aggrieved by the contents of the said communication.

According to the petitioner the NCTE Regulations, 2014 does not give any power to the affiliating body to record his satisfaction. There is also no provision in the said Regulations requiring forwarding of the documents sought for by the affiliating body.

The petitioner contends that the Board being the affiliating body is required to issue NOC in usual course, as and when applications are made before them. It has further been contended that, at best, the Board can only enquire as to whether

there are similar institutions in the vicinity of the proposed institution. Apart from the above, the Board at this stage, being the affiliating body, does not have any other role to play.

The petitioner contends that in the absence of a specific provision mandating an applicant to forward documents to the affiliating body and for recording satisfaction on verification of the same, the affiliating body does not have the jurisdiction to enter into the merits of the documents and record satisfaction thereof.

The learned advocate for the Board submits, upon instruction, that documents which have been sought for from the petitioner are required for the purpose of taking a decision with regard to the application filed by the petitioner praying for issuance of NOC for recognition. It has been submitted that NCTE has laid down the norms to be followed by the affiliating bodies for the session 2016-17. It clearly lays down that the affiliating bodies may develop their own norms and procedures for grant of NOC. Primarily they have to give their consent for the conduct of examination and for certification. Generally, the College Development Council which deals with affiliation, may take it up, based on factors like credentials of the society/management, need for such education programme, institute in that district or locality, university's capacity to handle affiliation etc.

Board for the purpose of grant of NOC is following the guidelines laid down by the Hon'ble Supreme Court in the matter of ***St. Johns Teacher Training Institute -vs- Regional Director, National Council for Teacher Education & Anr.; (2013) 3 SCC 321*** paragraphs 2, 7-10, 14-18.

It has been contended that the documents which have been sought for from the petitioner are strictly in line with the guidelines laid down by the Hon'ble Supreme Court in the aforesaid case.

The learned advocate representing the State of West Bengal relies upon a communication dated 13th February, 2016 made by NCTE to the Secretary, School Education Department, Government of West Bengal. The said communication mentions that the National Council for Teacher Education has been making consistent efforts to regulate and ensure coordinate growth of teacher education in the country. The Council in order to fulfil its mandate given under the National Council for Teacher Education Act, 1983 undertook a study titled “Demand and Supply Estimates of School Teacher and Teacher Educators for 2007-08 to 2016-17”. The document estimates the demand for teachers in various levels. It has been seen that in respect of the State of West Bengal the surplus in the supply for specified teachers education course is beyond reasonable limit and if further courses/programmes/teacher education institutions are allowed to be added in the State, it will result in mushrooming in the teacher education institutions tremendous increase in the supply of trained teachers with resultant social unrest, unemployed trained teachers and deterioration in the standards of the teachers education programmes. The Council felt that where the supply has already exceeded the demand of 50% it cannot be advisable to invite further applications for establishment of new institution/additional intake to the existing institutions. However, in cases whether State Government feels that any particular district or region of the State where the availability of teacher education institution(s)/courses is not adequate and they need to be exempted from the restrictions/they may submit their view for consideration of NCTE with actual data and other details about the region and availability of teacher education institutions in the region.

The question framed by the Hon’ble Supreme Court in St. Johns case (supra) was whether Regulations 5(e) and (f) framed by the National Council for Teacher Education are ultra vires the provisions of the National Council for Teacher Education Act, 1993?

The provisions of National Council for Teacher Education (Form of Application for Recognition, the Time 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 and the National Council for Teacher Education (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permission to Start New Course or Training) Regulations, 1995 were under consideration before the Hon'ble Supreme Court.

Regulations 5(e) and (f) read as follows:

5(e) – every institution intending to offer a course or training in teacher education but was not functioning immediately before 17th August, 1995 shall submit application for recognition with a no objection certificate from the State or Union Territory in which the institution is located.

(f) – application for permission to start new course or training and/or to increase intake by recognized institutions under Regulation 4 above shall be submitted to the Regional Committee concerned with no objection certificate from the State or Union Territory in which the institution is located.

The provision in the Regulations for submitting the application for recognition with a no objection certificate from the State Government or Union Territory was challenged as ultra vires and invalid.

The Hon'ble Supreme Court noted that the preamble of the Act mentions that the main object for enacting the Act is to achieve planned and coordinated development of the Teacher Education System and also the Regulation and proper maintenance of norms and standards therein. The Act casts a duty upon the Regional Committee to be satisfied with regard to a large number of matters before passing an order granting recognition to an institution. The factors that are to be

taken into consideration are whether the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and it fulfils such other conditions required for proper functioning of the institution. The Regional Committee has to deal with applications for grant of recognition from several States and the Committee has to necessarily depend upon some agency or body for obtaining necessary information. It is for this reason that the assistance of the State Government or Union Territory in which the institution is located is taken by the Regional Committee and accordingly the provision has been made in the Regulation for obtaining the no objection certificate from the State or Union Territory for grant of recognition. The details that are required to be verified for the purpose of issuance of no objection certificate facilitate the job of the Regional Committees in discharging their responsibilities. Guidelines have been issued by NCTE for issuance of NOC. The Court held that the power conferred on the State Government or Union Territory while considering an application for grant of NOC cannot be said to be arbitrary or an un-channelled power. The guidelines issued by NCTE have to be followed while considering the application for grant of NOC.

It is the specific contention of the petitioner that in the NCTE Regulations, 2002 there was a provision for production of NOC from the State Government/Union Territory. The NCTE Regulations, 2002 has since been repealed and presently NCTE Regulations, 2014 are in force. In the present Regulation the criteria for issuance of NOC by the affiliating body have not been mentioned. The petitioner submits that as there is no specific guideline for issuance of NOC by the affiliating body, accordingly, it is the duty of the affiliating body to grant NOC in favour of an applicant as and when asked for. The affiliating body is not empowered by law to look into the documents which have been sought for by the impugned communication.

The Court cannot accept the aforesaid submission made by the petitioner that the affiliating body has to grant NOC as a matter of course. NCTE has formed their own guidelines regarding the norms that are to be followed for issuance of NOC. It mentions that the affiliating body may develop their own norms and procedures for grant of NOC. Factors like credentials of the society/management, need for such Teacher Education Programme/Institute in that district or locality, university's capacity to handle affiliation etc. may be looked into for the purpose of grant of NOC. The Board follows the practice of looking into documents prior to issuance of NOC.

In the NOC the affiliating body has to certify that the proposed institution is under their jurisdiction and will be responsible for conducting the examination for students, if NCTE grants permission for a particular course. To issue a certificate mentioning that the affiliating body does not have any objection for grant of recognition, the affiliating body is certainly required to satisfy itself prior to issuance of the certificate as to whether they have an objection or not. To take a decision as to whether they really have an objection or not, the affiliating body is required to look into the factors as has been mentioned in the guidelines of NCTE in the form of Frequently Asked Questions published by NCTE. The object of the Act being planned and coordinated development of the Teacher Education System, the affiliating body is required to act in a manner so that the object of the Act can be achieved. The documents which have been sought for from the petitioner are all required for the purpose of taking a decision as to whether the management has the credentials to conduct the course applied for and the ability of the management to handle the same.

It is not the case of the petitioner that the documents are irrelevant for the purpose of taking a decision with regard to recognition, but the only issue that has been raised is the authority of the affiliating body to seek for and verify the same.

There are a whole lot of paraphernalia that are to be complied for recognition of an institute and obtaining NOC is one of them. It is not expected that the Board will act as a mere post office and without application of mind will just put in the stamp of NOC. The Board has a vital role to play. It is on the basis of the said NOC that NCTE will take its next step. Each and every step is equally important and it is not proper to bypass or ignore a step. If one wrong step is taken the subsequent step is bound to fail.

The decision passed by the Hon'ble Supreme Court in the matter of St. Johns (supra) is a complete answer to the issue raised by the petitioner.

Whether or not the NOC will be granted in favour of the petitioner by the affiliating body is a different question altogether and the said stage is yet to come.

The Court is of the opinion that there is no illegality on the part of the affiliating body in seeking for the documents for the purpose of issuance of NOC. No interference is called for in the present case.

The writ petition stands dismissed.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)