

CASE NO.:
Appeal (civil) 1776 of 2005

PETITIONER:
Krishnasamy Reddiar Educational Trust

RESPONDENT:
Member Secy., National Council for Teachers Education & Anr.

DATE OF JUDGMENT: 16/03/2005

BENCH:
Ruma Pal & C.K. Thakker

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (c) No. 2911/2005)
WITH

CIVIL APPEAL No. 1777 2005
(Arising out of Special Leave Petition (c) No. 3290/2005)

Dr. Anbu Paul College of Education \005 Appellant

Versus

Member Secretary, National Council
for Teachers Education & Anr. \005. Respondents

WITH

CIVIL APPEAL No. 1778 2005
(Arising out of Special Leave Petition (c) No. 3203/2005)

Paul Teacher Training Institute \005. Appellant

Versus

Member Secretary, National Council
for Teachers Education & Anr. \005. Respondents

Thakker, J.

Leave granted.

In all these matters, orders passed by a Division Bench of the High Court of Madras dated December 13, 2004, have been challenged. By the said orders, the Division Bench allowed the appeals filed by the respondent\026Regional Director, Southern Regional Committee, National Council for Teacher Education, (NCTE) Bangalore, set aside the orders passed by the learned Single Judge and upheld the condition imposed on the appellants to start new course in teacher-training education and admit students from the academic year 2005-06.

In all the three cases, the facts are more or less similar. We, therefore, refer to the first matter (Krishnasamy Reddiar Educational Trust vs. Member Secretary, N.C.T.E. & Anr., SLP (c) No. 2911 of 2005). The appellant-trust made an application for recognition on 30th December, 2003 to the respondent for offering training in teacher education and for starting Elementary Teachers Training Course for the academic year 2004-2005. The application was submitted on December 30, 2004 in accordance with Section 14 of the National

Council for Teachers Education Act, 1993 (hereinafter referred to as "the Act") and the National Council for Teacher Education (Form of application for recognition, the time limit 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 (hereinafter referred to as 'the Regulations'). The application, however was submitted without "No Objection Certificate" ("NOC" for short) from the State Government. It was the case of the appellant that it applied for NOC on October 31, 2003. The Government, however, did not take any decision for sufficient long time. Only on December 26, 2003 the decision was taken by the Cabinet to grant NOC to the appellant. NOC was, however, actually granted as late as on January 30, 2004. NOC was submitted to the respondent on 2nd February, 2004, 31st January, 2004 and 1st February, 2004 being public holidays. It is the case of the appellant that no action was taken by the respondent on the application of the appellant. The appellant, therefore, was constrained to file a petition being Writ Petition No. 18107 of 2004 and an order was passed by the High Court on 13th June, 2004 to carry out inspection. Inspection was accordingly carried out on September 20, 2004 and by an order dated October 28, 2004, recognition was granted by the respondent under Section 14 of the Act on the terms and conditions mentioned in the said order.

Condition No.3 of the order is material and reads thus:

"Further SRC also noted that the institution has submitted the NOC belatedly on 2nd February, 2004 i.e. after 31st December, 2003 the cut off date for submission of applications. As per NCTE regulations, only completed applications submitted before 31st December will be considered for recognition for the ensuing academic year. The application of Krishnasamy Teacher Training Institute was incomplete as on 31st December 2003 and hence recognition is being granted from the session 2005-2006." (emphasis supplied)

Condition No.3 was clear and stated that the application of the appellant institution for recognition was granted by NCTE from the academic session 2005-06. The appellant was aggrieved by the said condition and hence it instituted a petition being Writ Petition No. 31913 of 2004. The learned single Judge, by an order dated November 08, 2004, allowed the petition and directed the respondent to consider the claim of the appellant-petitioner 'positively' and 'permit' the students in the academic year 2004-05 and thus allowed the petition. For passing the said order, the learned single Judge observed that the appellant-petitioner had submitted the application prior to the cut-off date. It was also observed that a similar order was passed in Writ Petition No. 28280 of 2004 on 5th October, 2004 and the respondents were directed to permit the students for the academic year 2004-05 and against that order, no appeal had been filed by the respondents.

Being aggrieved by the order passed by the learned single Judge directing the NCTE to grant permission and admit students for the academic year 2004-05, the NCTE filed an intra-court appeal, being Writ Appeal No. 4112 of 2004. The Division Bench allowed the appeal, set aside the order of the learned single Judge and restored the order passed by the respondent herein upholding the condition No.3 extracted hereinabove. In other words, the condition which was imposed by the respondent on the appellant institution that the recognition had been granted from the year 2005-06 has been retained. The Division Bench considered the relevant provisions of the Act and the Regulations as amended from time to time. The Division Bench stated that the Regulations, 2002 were clear on the

point. As per Regulation 3 read with Appendices 1A, 1B, 1C and 1D, applications were required to be made in the manner provided therein. Since the appellant and other institutions had not submitted their applications within time and there was delay on their part in making such applications, the condition imposed by the respondent and recognition granted for academic year 2005-06 could not be said to be illegal, contrary to law or otherwise unlawful.

Dealing with the contention of the appellant that the action was discriminatory inasmuch as in respect of other institutions, such permission was granted from academic year 2004-05 and the orders passed by the respondent granting permission from 2005-06 had been set aside by the High Court and such condition was held invalid, the Division Bench observed that when the action was legal and valid, it could not be interfered with by the Court. It also noted that the validity of those orders was challenged by the NCTE and, hence, the appellant could not claim benefit of Article 14 of the Constitution. The appeal was accordingly allowed and the order passed by the learned single Judge was set aside. It is that order which is challenged in the present appeal.

We may state that in the other two cases also, the facts are almost similar. In both the cases, orders have been passed by the respondent granting recognition from 2005-06. In both the cases, the learned single Judge quashed the condition and directed the respondent to grant permission from 2004-05. In both the matters, Writ Appeals filed by the respondent herein were allowed and hence both the institutes have also approached this Court.

We have heard learned counsel for the parties. The learned counsel for the appellants contended that applications were made by the appellants within the time prescribed. It is no doubt true that the applications were made without NOC from the State Government but it was not the fault of the appellants in not submitting NOC. The appellants did everything what was required to be done by them. They had applied to the State Government for grant of NOC. In the first matter, such application was made on 31st October, 2003. The delay was on the part of the State Government in taking a decision one way or the other. It was also submitted that the Cabinet took a decision on December 28, 2003 but NOC was granted on January 30, 2004. Immediately thereafter an action was taken by the appellant in moving the respondent NCTE. It was stated that NOC was granted on January 30, 2004, and it was submitted to the respondent on 2nd February, 2004. 31st January, 2004 and 1st February, 2004 were public holidays and, therefore, NOC was submitted immediately on the next working day. It was, therefore, urged that the respondent was wholly wrong in imposing condition No.3. The counsel also urged that submission of NOC is not strictly necessary. Even if NOC is not granted by the State Government, an application could be made by the applicant and it was obligatory on NCTE to consider such application and take appropriate decision on merits. It was, hence, not open to NCTE to insist on NOC by the State Government or not to consider the application till then. Finally, it was submitted that in a similar situation, an order was passed by the respondent in favour of one Sabari Education Society. There also, NCTE granted recognition from 2005-06 but a Writ Petition was filed against the said condition and the petition was allowed and the institution was granted recognition from 2004-05. An appeal against said order was dismissed by the Division Bench. Even SLP (c) No. 2512 of 2005 has been dismissed by this Court recently on 14th February, 2005. A copy of the order passed by this Court has also been produced by the appellant. It was submitted that the case of the appellant is similar to Sabari Education Society and similar treatment ought to have been shown to the appellant institute. By not doing so, the respondent has acted arbitrarily as well as unreasonably. The action is violative of Articles 14 and 19 of the Constitution and deserves to be set aside.

The appeal deserves to be allowed and the order passed by the Division Bench is liable to be set aside restoring the order of learned single Judge.

The learned counsel for the respondent, on the other hand, supported the order passed by the Division Bench. A counter affidavit has been filed by the Regional Director of NCTE, Southern Region Committee, Bangalore, wherein it was stated that considering the application filed by the appellant and keeping in view the relevant provisions of law, recognition had been granted to the appellant but since the institution had submitted NOC belatedly on 2nd February, 2004 i.e. after 31st December, 2003 which was the cut-off date for submission of application under the Regulations, the recognition was granted for the ensuing academic year 2005-06. The action was strictly in accordance with law and could not be objected. It was also submitted that the point has been finally concluded by a decision of this Court in *St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and Another*, (2003) 3 SCC 321, and as per the law laid down, an action has been taken. The case of *Sabari Education Society* is sought to be distinguished on the ground that in that case, as per the order of the High Court, the inspection of the institution had ordered by the High Court and the Division Bench extended the time to carry out inspection on the request made by the counsel of NCTE and that action was taken as "constructive res judicata" by the Court. Regarding dismissal of SLP by this Court, it was submitted that such dismissal would not constitute final decision on merits or the law declared by the Supreme Court under Article 141 of the Constitution. Moreover, NCTE has filed application to recall/clarify the order passed by this Court. It was, therefore, submitted that there is no substance in the appeal and since the order passed by the Division Bench is in conformity with law, the appeals deserve to be dismissed.

Having heard the learned counsel for the parties, we are of the opinion that orders passed by the Division Bench of the High Court of Madras are in consonance with law and no interference is called for. In our view, the learned counsel for the respondent is right in relying on the decision of this Court in *St. Johns Teachers Training Institute*. In that case, constitutional validity and vires of certain Regulations were challenged. The Court after considering the scheme of the Act and the Regulations held that the power conferred on NCTE to recognize institutions could not be held arbitrary or unchannelled. It also held that the guidelines issued to the State Government by NCTE for issuance of NOC dealt with the matters to be taken into consideration under Section 14(3) of the Act and they had direct nexus with the object sought to be achieved by the Act. The Court also stated that refusal to grant NOC may entitle the institution to challenge such decision but the provision as to requirement of NOC would not vitiate the Regulations. The Court emphasized that the purpose of the Act is to achieve planned and coordinated development of teacher education system and regulation and proper maintenance of norms and standards in such education. According to the Court, the role of State Government is indeed important for supplying the requisite data essential for formation of opinion by the Regional Committee in taking an appropriate decision and no objection can be taken against such action.

Referring to Sections 14, 15 and 32 of the Act and the Regulations, the Court observed;
"A perusal of the guidelines would show that while considering an application for grant of an NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of

teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media etc. and also for speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated developments of teach 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."

Strong reliance was placed by the learned counsel for the appellant on the following observations;

"Regulation 6(ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the State Government or Union Territory concerned and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of an NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(e)

and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite date which is essential for formation of opinion by the Regional Committee while taking a decision under sub-section (3) of Section 14 of the Act. Therefore no exception can be taken to such a course of action."

At the same time, however, the Court proceeded to state that the State Government must take a decision on the application by an institution for grant of NOC within a "reasonable time". If the State Government does not take a decision within reasonable time, it would defeat the right of the institution. The Court, in the light of the fact that there was no provision in the Regulations regarding time-limit, observed that it would be appropriate that the Council frames regulations fixing the time limit within which such a decision is taken by the State Government on the application moved by an institution for grant of NOC. When St. Johns Teachers Training Institute came to be decided by this Court, there was no such provision and the Court stated that till such regulations are made, the decision should be taken by the State Government within four months from the date of the application failing which it would be deemed that NOC had been granted.

The learned counsel for the respondent stated that after the above decision, the respondent considered the matter and issued a notification on June 06, 2003. In the notification, it was stated that in exercise of powers conferred under Clauses (f) and (g) of sub-section (2) of Section 32 of the Act, NCTE has amended the Regulations prescribing the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training.

Regulation 6 was accordingly substituted. Clause (ii) thereof reads as under:

"Every State Government/UT Administration shall endeavour to dispose of the application of the Institution seeking NOC for starting a course or training in teacher education or seeking permission to start a new course or training and/or increase in intake, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government/UT."

Our attention was also invited by the learned counsel for the respondent to a notification dated 1st January, 2004 and particularly, Clauses (x) and (xi) which have been inserted after Clause (ix) of Regulation 6. The amended part reads thus: \027

"(i) In the NCTE (Form of application for recognition, the time limit 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 dated 13th November, 2002 as amended by Regulations dated 6th June, 2003 after sub-clause (ix) of Para 6 the following sub-clauses shall be added:

(x) The requirement of NOC shall not apply to institutions already recognized by NCTE for running a B.Ed. course and seeking recognition to start a course or training in Elementary Teacher Education or from an existing elementary teacher education institution seeking permission to increase in intake in such a course for a period of three

years from the date of notification of these regulations in the Official Gazette.

(xi) The requirement of NOC shall not apply to institution seeking recognition to start a course or training in Pre-School Teacher Education/Nursery Teacher Education or from an existing institution seeking permission to increase in intake in such a course, for a period of three years from the date of notification of these regulations in the Official Gazette.

(ii) In accordance with the revised provisions relating to requirement of NOC prescribed at (i) above, the last date for submission of application prescribed in para 7 of NCTE (Form of application for recognition, the time limit 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 dated 13th November, 2002 shall be the 31st January, 2004 only for the academic session 2004-2005."

It was submitted that in the present matters, all the appellants were applying for the first time and as such they were required to follow the Regulations in force, operative and applicable to fresh applications. In such cases, Notes (1) and (2) of Appendix 1B (List of essential documents) will apply.

Notes (1) and (2) read thus;

"(1) If the application is found incomplete i.e. with all the essential documents, the institution may be asked to make good deficiencies in the application on or before the last date prescribed in the regulations.

(2) In the event when deficiencies in an application get removed only after the last date, the application of institution shall be carried forward by the Regional Committee for consideration for the subsequent academic year i.e. for the course that would be offered one year later."

In our view, the respondents are right in submitting that there was delay on the part of the appellants. In all the three cases, applications were submitted without NOC from the State Government. It has come on record that NOC was applied belatedly. The State Government could not be blamed for not taking a decision on the applications of the appellants as under Regulation 6 as amended in 2003, it was required to dispose of such applications within six months of the last date of receipt of applications. Even prior to the amended Regulation 6, it was expected to take decision within "reasonable time" (four months) as held in St. Johns Teacher Training Institute. As the appellants applied for NOC in the last week of October, 2003, they cannot make complaint that the State Government delayed the matter. Admittedly, NOCs were submitted to the respondent after the last date of application. If in the above facts and circumstances, recognition has been granted by the respondent on October 28, 2004 by imposing a condition that it would be operative from academic year 2005-06, it cannot be said that the

respondent had acted illegally, arbitrarily or otherwise unreasonably.

Regarding the order passed in Sabari Education Society, apart from distinguishing features as pointed out by the learned counsel for the respondent, a review application has also been filed and is pending, as stated by the learned counsel for NCTE. Moreover, once it is held that the action of the respondent in imposing condition is legal and valid, even if an order is passed in favour of any other institution, the appellant cannot invoke Article 14. In our considered opinion, that is not the sweep of Article 14 of the Constitution.

For the foregoing reasons, all the three appeals deserve to be dismissed and are accordingly dismissed, however without any order as to costs.