

IN THE HIGH COURT OF DELHI

+W.P.(C) 12154/2009

Date of decision: 22.10.2009

LORD KRISHNA COLLEGE OF EDUCATION Petitioner
Through Mr. Sanjay Sharawat, Adv.
versus

NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR ... Respondents
Through Mr. V.K. Rao, Adv. for NCT

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

GITA MITTAL, J(Oral)

1. Learned counsel for the respondent has placed on record a note received by him from the NCTE headquarters explaining as to how the case of the present petitioner is different from the case of Guru Dronacharya College of Education; H.J. Institute of Education & Technology and Sh. Ganpati Institute of Education & Technology. The same has been taken on record. The petitioner has filed a detailed affidavit in response to the objections pointed by the respondent in this note.

2. Learned counsel for the parties submit that inasmuch as the matter relates to documents of the respondents which are already on record, the matter be taken up for final disposal. Counsels have accordingly been heard for final disposal.

3. The petitioner applied to the National Council for Teacher Education

though the Northern Regional Committee for recommendation of a new B.Ed course for the academic session 2009-09 on 21st July, 2008. The respondent no. 2 issued a letter of intent dated 4th August, 2008 seeking consent from the petitioner which was furnished immediately. By a further letter dated 5th September, 2008, the respondent no. 2 informed the petitioner that the college shall be inspected during the period 6th to 16th September, 2008. The petitioner's college stands admittedly inspected on 7th September, 2008 by the visiting team of the Northern Regional Committee which has submitted a Visiting Team Report ('VTR' for brevity) alongwith videography of the inspection and petitioner's premises and facilities.

4. The matter relating to the petitioner's application has a chequered history thereafter and its consideration has involved several writ petitions which were filed by the petitioner. For the reason that his application was not being further processed and considered, the petitioner filed W.P.(C) No. 8845/2008. In view of the statement made by learned counsel for the respondent that the petitioner's application shall be processed and decided upon within 90 days. The writ petition filed by the petitioner was allowed by an order passed on 15th December, 2008 in terms of this statement.

5. Mr. Sharawat, learned counsel for the petitioner points out that apart from the petitioner, there were almost 40 other similar cases wherein parties had approached courts seeking directions to the respondents to process their applications. These cases were taken up for consideration by the Northern Regional Committee in a meeting held on 28th February, 2009. It is submitted

that the identical objections which were pointed out in this consideration regarding all the institutions related to matters which ought to have been pointed out at the stage of scrutiny of the applications and that these were legally untenable.

6. Strong reliance has been placed on a notice to show cause dated 8th March, 2009 issued to the petitioner pointing out three objections towards grant of recognition. Inasmuch as the entire issued in this writ petition revolves around the only objections taken by the respondents so far as the petitioner's application is concerned, the same deserve to be considered in extenso and read thus :-

“1) State Govt. recommendation is required under clause 7(3) of regulations 2007. The State Govt. Recommendation is negative. State Govt. has provided reasons/grounds and statistics for not granting recognition.

2) The Institute has not submitted permission letter from the competent authority to use the land for educational proposes as required under the clause 8(B) of the regulation 2007.

3) The land is not in the name of institution as required under 8(7) of the regulations 2007”

7. The petitioner had filed a response to these objections which were considered and the matter culminated in a final order of refusal dated 23rd April, 2009. Perusal of this order would show that recognition to the petitioner's institution for the B.Ed. Course was refused for only two grounds i.e. that the petitioner had failed to produce a change of land use certificate by the competent authority in a prescribed format and that the State Government had rejected the prayer for recognition of the opening of the course at the institution.

8. Aggrieved thereby, the petitioner assailed the order dated 23rd April, 2009 by way of an appeal under section 18 of the National Council of Technical Education Act. The challenge by the petitioner was rejected by an order dated 7th August, 2009. The matter was carried by way of W.P.(C) No. 11068/2009 Lord Krishna College of Education vs. NCTE & Anr. to this court. By a judgment passed on 26th August, 2009, the court disposed of the writ with the following directions :-

“9. After considering the aforesaid submissions, we are of the view that the impugned order ought to be set aside and the matter be remanded to the Council for reconsideration. Consequently, we set aside the impugned order dated 07.08.2009 and remand the matter to the Council for consideration afresh particularly in terms of the submissions recorded above. We expect that the Council shall consider the same and pass an order in accordance with law within 10 days from today.”

9. After the remand, the matter was reconsidered and decided by an order dated 4th September, 2009 by the NCTE. The appellate authority has noted that a certificate of the gram panchayat and a letter dated 6th April, 2009 addressed by the District Town Planner Enforcement to the President of the petitioner society was available with the Northern Regional Committee. The order dated 28th May, 2009 was set aside. Instead of passing the consequential orders, the appellate authority remanded the matter to the Northern Regional Committee with the direction that the institution should be inspected afresh to ascertain availability of necessary infrastructure, institutional and other facilities in accordance with the prescribed norms and thereafter to issue the order.

10. Aggrieved by this order, the present writ petition has been filed inter alia assailing the order dated 4th September, 2009 on the ground that the appellate authority has grossly exceeded the limited jurisdiction conferred on it by this court by the order of remand by the Division Bench of this court dated 26th August, 2009. It has been vehemently asserted that the appellate authority has relegated the petitioner to the first stage of consideration of its application and has completely ignored the fact that the inspection of the petitioner's institution stands completed. Mr. Sharawat learned counsel has urged at length that the notice to show cause dated 8th March, 2009 was issued to the petitioner limited to three grounds, one out of which stood abandoned even at the stage of passing of the final order dated 23rd April, 2009. Learned counsel further contends that this court had passed a limited order of remand and it was not open to the NCTE to lay open matters which stood considered and finally decided by the Northern Regional Committee as well as by the council.

11. It has been vehemently urged that the petitioner has been singled out for such treatment merely because it has sought legal redressal for its grievance. My attention is drawn to the orders passed in respect of three other institutions noted hereinabove whose cases had been rejected by the Regional Committee. Learned counsel has pointed out that while allowing the appeals of these three colleges, they have not been relegated to the position as the petitioner. On the contrary while allowing their appeals, specific directions have been issued to the Regional Committee to grant the recognition.

12. In support of his submissions, learned counsel has taken me through the

note placed in these proceedings as well as the affidavit filed by the petitioner. It is urged that the the three objections which have been pointed out to differentiate the petitioner's case from those to whom the appellate authority has directed grant of recognition and the explanation rendered by the respondents are factually and legally untenable. In support of his submission reliance is placed on the pronouncement reported at AIR 1988 Kar. 312 Tower House Building Co-operative Society Ltd. vs. Special Deputy Commissioner; 1999 (30) DRJ 323 Kartar Singh vs. Smt. Rameshwari Kela (deceased through LRs) ; AIR 1979 Kar 40 K. Veerabasappa vs. The Court of District Judge at Dwaradurga & Ors. and 151 (2008) DLT 61 Jai Singh and Ors. v. Secretary, Law and Judicial and Ors..

13. Appearing for the respondent, Mr. V.K. Rao has vehemently urged that no fault can be found with the impugned order dated 4th September, 2009 which has considered the entire matter and that the Northern Regional Committee is empowered under the statute and regulations to conduct an inspection of any institute before consideration of an application for grant of recognition to a proposed course. It is submitted that such an inspection is justified in public interest and also to ensure that standards of education are maintained in the country.

14. I have considered the rival contentions. In fact this writ petition would have deserved to be allowed on two legal grounds alone. However grave urgency has been expressed by learned counsel for the petitioner submitting that the petitioner has been deprived of the opportunity to commence a course

for training of teachers which is badly needed and that, inasmuch all objections have been raised, the same may also be considered and decided. For this reason both counsels have been heard on the factual issues raised in the note explaining the order dated 4th September, 2009 as well.

15. I find that the order dated 4th September, 2009 of the appellate authority remanding the case to the Northern Regional Committee contains a bald direction to it for inspection. The order is bereft of any reason at all for the directions which have been issued. There is not even a whisper of an explanation as to why a fresh inspection is necessary. Despite recording the clear conclusion that “there was enough ground to accept the appeal and set aside the Northern Region Committee's order dated 28th of May, 2009”, the matter has been remanded to the Northern Regional Committee with a direction that the institution should be inspected afresh.

16. According to Mr. Rao, learned counsel for the respondent, the reasons for justifying this order are contained in the note which has been handed over in court. This is an unsigned note which states that “there was enough indication available that the Northern Regional Committee took a decision without consideration of the VTR”. The note further mentions the following three grounds for requiring a re-inspection of the petitioner's institutioun :-

(i) the visiting team had observed that a number of faculty members were not qualified as per the NCTE norms and that this fact was not quoted as a reason for rejection by the committee. The recommendation of the visiting team in this case was conditional upon the deficiency being removed before

granting recommendation.

(ii) the visiting team report had given a total built up area as 1500 sq. mtr. For the reason that such figure was a mere reproduction of the prescribed norm in the NCTE regulation, it is always 'seen sceptically'. In support of this objection, it is mentioned in the note that the building plan submitted by the institution indicated that the covered area was 16140 sq. ft which is less than the prescribed norm of 1500 sq. mtr. It is submitted that there is tampering of the figure to read as '16140' where as the institution had indicated the same as 15140 sq. ft.

(iii) The institution did not submit the building completion certificate which is required to be submitted latest by the time of inspection. The note records that "the competent civil authority invariably gives the built up area of the constructed building. Non-availability of this certificate demanded the inspection was defective and made another inspection indispensable".

The third objection noted above may be considered at the outset as it brings out the non-application of mind to the material available with the respondents as well as the fact that the orders in the previous petitions have completely ignored.

17. It requires to be noted right at the outset that at the time of passing of the judgment dated 26th August, 2009, in W.P.(C) 11068/2009, the Division Bench has considered the explanation given by the petitioner on these observations. The Division Bench has noted that the petitioner had stated that it had submitted a document dated 6th April, 2009 to manifest compliance of

the requirement of submitting the change of land use certificate. The Division Bench has further noted that this was a communication from the District Town Planner Enforcement Hissar indicating that the site of the petitioner's college was located in khasra no. 53/5/2, 54/1 in the revenue state of village Siwani District, Hissar which did not fall within the controlled areas and urban areas of the said district.

18. My attention is also drawn to a communication dated 3rd of October, 1996 from the Director, Town and Country Planning, Haryana, Chandigarh clarifying that no objection certificates are insisted upon only for sites which fall within controlled or urban areas. Counsel for the petitioner has also relied on the provision of Section 2(5) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 which would indicate that no completion certificate is required or issued on land beyond the controlled area.

In any case, in the given facts, there was no requirement of obtaining the change of land use certificate or the building completion certificate.

19. In this background, the observations in the note in support of the order dated 4th September, 2009 are certainly not supported by the legal provisions which govern construction in areas which are beyond the controlled area. Even otherwise there is nothing on record that this aspect was even considered by the appellate authority when it had passed the impugned order.

20. The petitioner has placed a copy of a letter dated 5th of September, 2008 received from the Northern Regional Committee on record which sets out the

information which was required to be supplied to the Visiting Team at the time of inspection. The requirement indicated at serial no. (iv) of Para 5 of this communication reads as follows :-

“5(iv) Approved Building Plan, in case of the rural area the building plan should be submitted only with the resolution and approval letter by the Panchayat i.e. in the meeting in which in resolution for the purpose has passed the Building Plan of the Institution/society/college alongwith Building completion certificate.”

Mr. Sharawat had submitted that there is no legal basis for this requirement. Yet, a no objection certificate was obtained from the Sarpanch of the Gram Panchayat which was also placed before the Northern Regional Committee. These documents have been considered in the order dated 26th of August, 2009.

21. It is pertinent to note that as per Regulation 7(4) of the NCTE Regulations 2007, a letter of intent is issued when its application is complete in all respects as contemplated under regulation 7(1). Regulation 5 and 7 mandate a 'complete application' which would include all essential documents. The fact that not only was such letter issued on 4th August, 2008 but even the inspection was conducted on 7th September, 2008 would indicate that all necessary and relevant documents stood considered by the Northern Regional Committee.

22. The first reason cited in the note placed by the respondent before this court is non-availability of faculty in accordance with the prescribed norms. In this behalf, learned counsels have taken me through the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007

which provides the manner in which an application for recognition is to be processed. Regulation 7 thereof provides that an application shall be scrutinised at the initial stage. In clause 6 of the regulation 7, it is provided that after the removal of deficiencies, if any, to the satisfaction of the Regional Committee concerned, a visiting team shall conduct an inspection of the infrastructure, equipment, institutional facilities etc of an institute which has applied for recognition of the course.

The inspection is conducted with a view to assessing the level of preparedness of the institution to commence the course.

23. Learned counsel for the petitioner has submitted that clause 9 of this regulation 7 governs the stage at which an institution is required to have the faculty members in place. In view of the objection taken by the respondents, this regulation deserves to be considered in extenso and reads thus :-

“7(6) The application and the report alongwith the video tapes/CDs etc of the Visiting Team shall be placed before the Regional Committee concerned for consideration and appropriate decision.

(7) The Regional Committee shall decide grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the NCTE under the NCTE Act, Rules or Regulations, including, *inter alia*, the norms and standards laid down for the relevant teacher education programme/course.

7(9) The institution concerned shall be informed, through a letter, of the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter issued under this clause shall not be notified in the Gazette. The faculty shall be appointed on the recommendations of the Selection Committee duly constituted as per the policy of the State Govt/Central Govt/University/UGC or the concerned affiliating body, as the case may be. The applicant institution shall submit an affidavit in the prescribed form that the Selection Committee

has been constituted as stated above. A separate staff list with the details would be submitted in the prescribed form. The Regional Committee would rely on the above affidavit and the staff list before processing the case for grant of formal recognition.”

24. From a bare reading of the above clauses of regulation 7, it would appear that as per the scheme laid down, the Regional Committee is required to scrutinise the appointment and qualifications of the faculty members before processing the grant of formal recognition after the grant of conditional recognition in accordance with law. I am informed that at the stage of consideration under clause 7, the respondents issue a conditional recommendation only. The formal recognition is granted under clause 9 of the regulation 7.

25. There is no dispute that the stage of consideration of the petitioner's application under clause 9 of regulation 7 has not reached so far. Therefore certainly the objection that the petitioner did not have the requisite number of duly qualified faculty in place is not legally tenable.

26. So far as the second objection with regard to extent of covered/building area is concerned, learned counsel for the petitioner has vehemently urged that the institution of the petitioner has built up area of 1500 sq. mtr., which is as per the prescribed norm. It is further submitted that the petitioner has applied for running of the course in an existing building. The petitioner had given a clear demarcation plan to the respondent of the building which defines every room in terms of its specific measurements. It is submitted that this plan was fully scrutinised by the Northern Regional Committee as well as by

the visiting team during their inspection on 7th September, 2008. After being fully satisfied that the petitioner had met these land and building norms, the show cause notice was issued to the petitioner on 8th March, 20-09 raising no objection to the covered/built up area only three objections have been reproduced hereinabove were raised therein. Learned counsel has contended at length that the very fact that no objection at all was raised with regard to the either the land or the built up area of the institution by itself would show that the visiting team was fully satisfied with the fact that the petitioner met the requisite conditions.

27. Lastly, the respondents have suggested that the Northern Regional Committee took the decision without consideration of the VTR. It is to be noted that the visiting teams report was accompanied by CDs prepared and videography undertaken by it during the inspection. The petitioner has placed before this court an extract of the minutes of the 137th meeting of the Northern Regional Committee held on the 28th February and 1st March, 2009. In this meeting, the cases of several institutions including the petitioner were considered. The petitioner's case was considered as agenda item no. HR 36. The extract of these minutes shows that the committee has considered the "original file relating to the petitioner, VTR, other related documents, VCD, Act of NCTE, 1993 Regulations and guidelines of NCTE published from time to time". The show cause notice dated 8th March, 2009 also records that the Northern Regional Committee had constituted the visiting team whose report was considered by the committee alongwith videography and other materials

furnished by the institution. The order dated 23rd April, 2009 also clearly reflects that the committee has considered the application and representation of the petitioner, "documents and material submitted by the institution alongwith the VTR and videography". This order also shows that these materials were again considered in the 139th meeting of the committee held on 10 to 12th April, 2009. In this background, the reasons to justify the direction in the impugned order dated 4th September, 2009 which have been pointed out in this note handed over in court are not supported by the record which has been considered by the Northern Regional Committee at all or by the applicable rules and regulations. The note has been prepared without application of mind or examination of the available record.

28. The issues raised in the explanatory note of the respondents in fact deserve to be noted for the sake of rejection on a basic legal issue. It has been urged at length by learned counsel for the petitioner that the order which has been passed by the respondents can be supported only for the reasons and grounds which have been stated therein. In support thereto, reliance has been placed on the pronouncement of the Apex Court reported at Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405. Learned counsel has also drawn my attention to a decision dated 14th September, 2009 passed in W.P.(C) No. 8290/08 entitled Dr. Rajya Lakshmi National Trust vs. Principal Secretary, NCTE in similar circumstances. It is submitted that the order passed cannot be supported by reasons or explanations rendered subsequent to the making of the order.

29. The principles laid down by the Apex Court in **(1978) 1 SCC 405**

Mohinder Singh Gill vs. Chief Election Commissioner lay down the principles on this basic legal issue and read as follows :-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* AIR 1952 SC 16 :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not ;like old wine becoming better as they grow older.”

30. Placing reliance on these well settled principles, this court allowed **W.P.(C) No. 8290/2008 entitled Dr. Rajya Lakshmi vs. Principal Secretary NCTE** by a judgment dated **14th September, 2009**. The court held that denial of recognition on grounds which were not stated in the show cause notice, for instance as to whether the hall was adequate or not, will also be denial of the principles of natural justice as the petitioner was not given adequate opportunity to represent or show regarding the adequacy of the hall.

It is to be noted that a similar objection with regard to built up area was propounded by the appellate authority which was never stated in the notice to show cause. The reasoning of the appellate authority was also not supported by the report of the inspection committee. In these circumstances, this court

held as follows :-

“Apparently, the appeal was decided ignoring all the relevant documents and with a view to reject the application for grant of recognition somehow. The reasons given in the appellate order are also not justifiable in the facts and circumstances and on the basis of the record of the respondents. The report of the inspection Committee is that multipurpose hall is adequate whereas the respondents have held that this is not adequate. The norms produced by the respondents also do not justify their own inferences. In any case, reasons given in show cause notice are not in consonance with the reasons on the basis of which Regional Director rejected the application and the reasons for rejection relied on by the respondent/National Council for Teacher Education. When the respondents as statutory body had asked the petitioner to show cause for declining recognition on certain grounds, the recognition could not be denied later on the grounds other than what were stipulated in the show cause notice.”

31. As observed hereinabove, the objections cited in the note which has been placed on behalf of the respondent before this court are not even remotely mentioned in the notice to show cause dated 8th March, 2009 or the final order dated 23rd April, 2009 of the Northern Regional Committee. These objections were not even suggested in the order dated 7th August, 2009 which was passed by the NCTE and was set aside in the previous round of litigation.

32. This brings me to the last and most material contention raised on behalf of the petitioner. It is pointed out that so far as the objections raised in the notice to show cause dated 8th March, 2009 are concerned, the same had attained finality by virtue of the order of the Division Bench dated 26th August, 2009 and that all issues on fact had stood finally closed. It is further pointed out that while disposing of the writ petition by this order, the Division Bench in fact could itself have exercised the jurisdiction and directed grant of the

recognition in accordance with regulation 7 of the NCTE regulation.

Mr. Sharawat, learned counsel points out that in the above background, the order of remand was in the nature of a limited remand order and was not an order of open remand and that the parties as well as the court stood precluded from widening the scope of the order.

33. The scope of the order has to be read in the light of the challenge which was laid before this court. The proceedings arose from the notice to show cause dated 8th March, 2009 raising only three objections so far as the application of the petitioner was concerned. One objection stood abandoned by the respondents themselves. The challenge before the court was confined to these objections alone and nothing beyond. The order of the Division Bench dated 26th August, 2009 remanded the issue to the NCTE and not for fresh consideration by the Northern Regional Committee.

34. My attention has been drawn to the pronouncement of the Karnataka High Court reported at **AIR 1979 Karnataka 40 K. Veerabasappa vs. The court of District Judge at Chitradurga & Ors.** wherein the court had occasion to consider the remand order of the High court on one and only issue and question. The order before the court related to a remand for the consideration of the suitability of the accommodation possessed by the landlord in proceedings relating to eviction. The principles which would govern consideration of a matter upon a limited remand have been succinctly set out in this judicial pronouncement which reads as follows :-

“6. A remand was necessitated on only one issue viz., the suitability or unsuitability of the upstairs portion as the Courts

below had decided that issue contrary to the principles of natural justice and without evidence on record. If the Courts below on the earlier occasion had not committed such a mistake and there was evidence to finally decide the case, this court would have finally decided the matter one way or the other and that disability of this Court on that occasion cannot be made a ground to defeat the just claim of the petitioner as has happened now on altogether a new ground. We should also remember that it was open to the respondent to urge for an open remand and for this Court to make an open remand so as not to tie the hands of the learned Munsiff. In the absence of any other legal proceeding by the respondent, the restricted order of remand of this Court has become final, binding and conclusive and it is not open to any of the parties or for any Court to enlarge the scope of the remand order that too by a side wind (window) as has happened in this case. In my considered opinion, if such a course is permitted, it is destructive of all judicial discipline and will strike at the every root of the efficacy and binding nature of an order of a superior court on the parties to a dispute and the necessity of a subordinate Court to faithfully implement an order of the superior Court. By this I should not be understood as stating that in a remanded case, a subordinate Court cannot allow an application for amendment at all or that an order of remand should be implemented even without reference to any change in law or any other valid circumstances which can neither be predicted nor exhaustively catalogued. In my opinion, this was not one such and therefore the restricted order of remand should have been faithfully implemented by the learned Munsiff."

(Underlying supplied)

35. An issue relating to the nature of an order of remand arose before this court in the pronouncement reported at **151 (2008) DLT 61 Jai Singh & Anr. vs. Secretary Law, Judicial & Ors.** In an earlier writ petition, an issue relating to 11 bighas and 12 biswas of land was in issue and the matter was remanded restricted to the subject matter of the writ petition. Instead the entire matter was reopened by the Chief Commissioner and the private respondents were permitted to re-urge their claim in respect of 54 bighas 14 biswas of land. These respondents had not questioned the earlier order which

was against them on this issue. However upon consideration, on remand, the Law Secretary passed orders with regard to the entire land of 66 bighas and 6 biswas. This order was assailed by way of the writ petition which culminated in the said judgment.

On the question as to whether on a limited remand to it, an authority can reopen the entire matter, this court placed reliance on pronouncements of the Apex Court and held as follows :-

“14. On the question of open and limited or restricted remand, it will be appropriate to refer to Paper Products Ltd. v. Commissioner of Central Excise reported in (2007) 7 SCC 352. The Supreme Court noticed the remand order passed by the Tribunal and held that as the subject matter of the appeal before the Tribunal was relating to a particular plea/issue, the case was one of limited remand in respect of the said issue or plea. The Supreme Court quoted with approval an earlier decision in the case of Mohan Lal v. Anandibai reported in (1971) 1 SCC 813 : MANU/SC/0578/1971 : [1971]3SCR929 in which it was observed as under:

“9. Lastly, counsel urged that now that the suit has been remanded to the trial court for reconsidering the plea of rest judicata, the appellant should have been given an opportunity to amend the written statement so as to include pleadings in respect of the fraudulent nature and antedating of the gift deed Exhibit P-3. These questions having been decided by the High Court could not appropriately be made the subject-matter of a fresh trial. Further, as pointed out by the High Court, any suit on such pleas is already time-barred and it would be unfair to the plaintiff-respondents to allow these pleas to be raised by amendment of the written statement at this late stage. In the order, the High Court has stated that the judgments and decrees and findings of both the lower courts were being set aside and the case was being remanded to the trial court for a fresh decision on merits with advertence to the remarks in the judgment of the High Court. It was argued by learned Counsel that, in making this order, the High Court has set aside all findings recorded on all issues by the trial court and the first appellate court. This is not a correct interpretation of the order. Obviously, in directing that findings of both courts are set aside, the High Court was referring to the points which

the High Court considered and on which the High Court differed from the lower courts. Findings on other issues, which the High Court was not called upon to consider, cannot be deemed to be set aside by this order. Similarly, in permitting amendments, the High Court has given liberty to the present appellant to amend his written statement by setting out all the requisite particulars and details of his plea of res judicata, and has added that the trial court may also consider his prayer for allowing any other amendments. On the face of it, those other amendments, which could be allowed, must relate to this very plea of res judicata. It cannot be interpreted as giving liberty to the appellant to raise new pleas altogether which were not raised at the initial stage. The other amendments have to be those which are consequential to the amendment in respect of the plea of res judicata."

36. Learned counsel for the petitioner has contended that in the present case the adjudication emanates from orders which have decided the case of the petitioner on merits. Objections were pointed out in the notice to show cause which were decided. Such final order stood assailed by the petitioner by way of the writ petition which resulted in the order dated 26th August, 2009 remanding the case to the NCTE. It is submitted that in a case like this, when such order on merits is set aside, it is not open to the NCTE to remand the matter to the Northern Regional Committee and it had to take a final view in the matter. In support of this submission, reliance is placed on the pronouncement of this court reported at **1994 (30) DRJ 323 Kartar Singh vs. Smt. Rameshwari Kela (deceased) through L.R.s** wherein this court had held thus :-

"(10) Even otherwise, the order of remand cannot be sustained as it remits the case for retrial which was totally uncalled for.

(11) To order retrial of a case is a serious matter and may mean considerable waste of public time. Such an order can be passed only in exceptional cases as, for example, where there had been no real trial of the dispute and no complete or effectual

adjudication of the proceeding and the party complaining has suffered material prejudice on that account. Remand is not meant to provide fresh opportunity to a party to litigate.

(12) Here is a case where Issues 2 and 3 are practically the same. In any case, the learned Additional District Judge had sufficient evidence on record to enable him to a just and satisfactory conclusion on the point in controversy. Consequently there was no ground whatever for making an order of remand more so, when such a plea had not even been taken in the grounds of appeal nor canvassed. The order of remand was also unwarranted as the decision of the issue in question one way or the other would not have made any difference to the substance of the matter or the nature of the controversy."

37. A similar issue had arisen before the Full Bench of the Karnataka High Court in ***AIR 1988 Karnataka 312 Tour House Building Co-operative Society Ltd. vs. Special Deputy Commissioner***, the question which was referred to the Full Bench was in the following terms:-

"Whether a Division Bench hearing Writ Appeal against an order of single Judge has power to remand the case to the single Judge concerned or not?"

After a detailed consideration of all issues, the Full Bench had answered the issues in the following terms :-

"As a result of the aforesaid discussion the answers to the questions referred to us may be stated as follows:

(1) That there is an inherent power in the Division Bench hearing writ appeal against an order of a learned single Judge, to remand the case to be decided afresh by a learned single Judge;

(2) That a remand order maybe passed in cases where a Writ Petition has been dismissed for non-prosecution or in limine or on, the ground of delay or maintainability or on some question of law without. going into merits, etc.

However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are the ones in which the Appellate Bench may exercise its power of remand and.

iii) That where a Writ Petition has been disposed of on merits by an order made by a learned Single Judge, a Division Bench on Appeal would have no jurisdiction to remand such a case to a learned single Judge for fresh decision on merits and the appeal has to be 'disposed of on merits by the Division Bench Itself.'

38. Mr. Sharawat, learned counsel for the petitioner has vehemently urged that the present case is probably the only case where such a course of action has been adopted by the NCTE. He places reliance on a host of orders which have been passed by the NCTE setting aside orders by the Regional Committee rejecting the application for recognition made by other institutions. It has been pointed out that as a consequence of setting aside the order of the regional councils, the NCTE has invariably passed the consequential orders granting recognition under regulation 7.

In view of my findings on the other grounds urged by the petitioner, I do not think it is necessary to dwell any further on this issue. However, the explanation given and reasons propounded in the note are clearly devoid of factual and legal merit.

39. There is no dispute that so far as adjudication on the issues raised in the notice to show cause dated 8th March, 2009 are concerned the same had attained finality by the orders in the earlier writ petition.

I have held above that this notice dated 8th March, 2009 and the earlier order dated 23rd April, 2009 were passed on consideration of the petitioner's application on merits. The order rejecting the petitioner's application was set

aside by the Division Bench. In this background, in the light of the principles laid down in the aforementioned judgments, it is clearly impermissible for the NCTE to have remanded the matter to the Northern Regional Committee with such directions as relegate the petitioner to initial stages of consideration. The NCTE was bound to have passed the same order as it did in the other cases.

40. In view of the above, it is directed that the order dated 4th September, 2009 passed by the respondent no. 1 to the extent that it remands the matter for a fresh inspection by the respondent no. 2 is hereby set aside and quashed. The respondents are directed to grant recognition to the petitioner for the B.Ed. Course forthwith.

The matter however cannot end here. The present case is a fit case for imposing punitive costs upon the respondents who have clearly proceeded in the matter without application of mind, ignoring the record, applicable legal provisions and well settled principles.

The petitioner has been constrained to come to this court for the third time without any justification. Valuable judicial time has also been wasted. In this background, the petitioner is entitled to costs which are quantified at Rs.50,000/- Costs shall be paid within a period of three weeks from today.

Dasti to parties.

GITA MITTAL,J

OCTOBER 22, 2009

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