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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1177/2013 & CM 2216/2013

% **Order dated 22.02.2013**

AMRAPALI INSTITUTE TECHNOLOGY AND ANR Petitioners

Through : Mr.Sandeep Sethi, Sr. Adv. with
Mr.S.Udaya Kr.Sagar, Ms.Bina
Madhavan and Ms.Praseena Elizabeth
Josephy, Advs.

versus

UNION OF INDIA AND ORS Respondents

Through : Mr.Amitesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioners under Article 226 of the Constitution of India seeking a writ of certiorari for setting aside the communication dated 6.2.2013 issued by respondent no.2 to the petitioner. The petitioners also seek a writ of mandamus directing respondent no.2 to inspect petitioner no.1 institute to verify the compliance.
2. With the consent of learned senior counsel for the petitioners and counsel for respondent no.2 the writ petition is being disposed of at the stage of notice itself in view of the fact that respondent no.2 has entered appearance on an advance copy.
3. The necessary facts, to be noticed for disposal of the present writ petition, are that in the year 2009 the petitioner no.1 institute was established.

Balika Vidyapith, Lakhisarai, is a registered charitable trust under the Societies Act, 1860. In the year 2009, Balika Vidyapith, Lakhisarai, had applied to respondent no.2, AICTE, for establishment of petitioner no.1 engineer institute. Respondent no.2 vide its letter dated 30.6.2009 accorded its approval to establish petitioner no.1 institute initially for a period of two years subject to fulfillment of terms and conditions as stated in the said letter. The initial approval was accorded for intake of 240 seats in four different streams. It is stated that for the year 2010-2011 a general approval was granted to all the institutions. The approval extended to the petitioner for the session 2011-2012 and 2010-2011 are disputed by respondent no.2. Meanwhile inspections were carried out at the petitioner institute. On 25.12.2011 petitioner no.1 submitted its application to respondent no.2 for extension of the approval granted to the petitioner. Pursuant to the request made by petitioner no.1, the expert committee appointed by respondent no.2 inspected petitioner no.1 institute and after satisfying itself of the pre-requisite conditions, respondent no.2 had accepted the fee for the same.

4. Learned senior counsel for the petitioner submits that despite the premises of the petitioner institute having been inspected for almost on eight occasions there was no communication to the petitioners from respondent no.2 as to whether the extension of approval had been granted or not. Senior counsel further submits that on 7.12.2012 petitioner no.2 received a show cause notice dated 29.11.2012 from respondent no.2, wherein certain deficiencies were pointed out by respondent no.2. Petitioner no.1 vide letter dated 9.12.2012 submitted its reply to the said show cause notice to respondent no.2 on 10.12.2012. In the evening of 7.1.2013 petitioner no.1 received a fax from respondent no.2 for appearing before the Standing Complaint Committee on the very next day i.e. 8.1.2013.

Senior counsel further submits that sufficient time was not granted by the respondent no.2 to enable the petitioners to collect and produce the required information, however, petitioner no.2 made himself available but he could not produce all the relevant material/document due to paucity of time. On the same date i.e. 8.1.2013 petitioner no.1 received a communication from respondent no.2 by email by which petitioner no.1 was informed that they are enabling 'Add Program' button in the Program form for the Institute and advised petitioner no.1 to add only the existing programme that is for the academic year 2012-2013. Petitioner no.1 was also requested not to add any new programme in the application, any new programme not running in the institute and the corresponding courses in that programme would not be processed for the year 2013-14.

5. Learned senior counsel for the petitioner submits that the petitioner was shocked to receive the communication dated 6.2.2013 by which the approval granted to petitioner no.1 for the academic session 2009-2010 was withdrawn and no extension of approval for the sessions 2010-2011, 2011-2012 and 2012-2013 was granted to petitioner no.1. Senior counsel further submits that as far as the approval for the year 2010-2011 is concerned, the same was granted to all the institutions on 5.7.2012, which is disputed by counsel for respondent no.2. Senior counsel contends that a request has been made to the Director of Technical Education, Patna, for shifting of all the students of the college to other approved colleges, which will have far reaching consequences on the students who are studying in the petitioner institute as supplementary examinations are in progress and the final examinations are scheduled to be held from 1.3.2013.
6. Learned senior counsel for the petitioner submits that respondent no.2 has failed to take into consideration the reply to the show cause notice and the

impugned order is devoid of any reason. Senior counsel further submits that while passing the impugned order, the respondent no.2 has failed to deal with the clarifications rendered by the petitioners in reply to the show cause notice and, thus, on this ground alone the impugned order is liable to be set aside. In support of this submission, reliance is placed by learned senior counsel for the petitioner in the case of *Mekaster Trading Corporation v. Union of India and Others*, reported at 106 (2003) DLT 573. Relevant portion reads as under:

“20. After making recital of the aforesaid events in the order, thereafter order proceeds to record as under:-

"I have examined the case and heard the presentation made by the DGS&D representatives and submissions made by M/S Mekaster Trading Corporation, New Delhi in their letters dated 18.8.2001 and 6.2.2002 and oral presentations on 4.3.2002. The sum and substance of the allegations against the firm is that M/s Mekaster Trading Corporation, New Delhi could not fulfill their contractual obligations as an Indian agent of foreign supplier M/s Barin SPA, Italy. The reply submitted by them vide their letter dated 18.8.2001 and 6.2.2002 and oral presentations made by them during hearing of the case on 4.3.2002 have not been found convincing. The available evidence does not reveal that the firm has fulfilled its contractual obligations.

28. However, the replies of the petitioner are equally elaborate and petitioner sought to explain its version in an attempt to meet each others allegation contained in the show cause notice and thereby contending that petitioner was not at fault and proposed action was not warranted. Whether the contention raised by the petitioners in their replies are considered and addressed, is the main question? Perusal of the impugned order shows that after making recital of the events which transpired after the show cause notice, i.e. filing of replies by the petitioner, giving of hearings to both parties who explained their respective cases, the penultimate para records that case has been examined and heard and the sum and substance of the allegation made against the petitioner was that petitioner could not fulfill its contractual obligation as Indian agent

and replies submitted by the petitioner as well as oral representation made by them during hearing of the case have not been found convincing. All the arguments of the petitioners are brushed aside by the following utterances "the reply submitted by them vide their letters dated 18.8.2001 and 6.2.2002 and oral representation by them during hearing of the case on 4.3.2002 have not been found convincing. The available evidence does not reveal that the firm has fulfilled its contractual obligations."

29. Passing the order in such a slip shod manner which has the serious effect of blacklisting the petitioner for a long period of 5 years is certainly not act of good administration.

7. Senior counsel has further relied upon *Prakash Atlanta JV & ORS. V. National Highways Authority of India & Ors.*, reported at 169 (2010) DLT 664, more particularly para 33, which reads as under:

33. At best the above statements can be termed as conclusions and not reasons. As pointed out by this Court in Mekaster Trading Corp., the above order does not indicate that "the decision maker successfully came to grips with the main contention advanced by the parties". It also fails to disclose "how the mind is applied to the subject matter; whether done relevantly or rationally". There are no reasons to indicate the application of mind and the mental process leading to the conclusion. Further as pointed out by the Division Bench of this Court in Indian Oil Corporation v. SPS Engineering Ltd. (supra) (DLT, p.425), "reasons must be contained in the order under challenge, and mere existence of reasons in the show cause notice, or any material referred to in the show cause notice, is not sufficient....the authority concerned must, at least in brief, deal in the impugned order with the explanation given in the reply, and give its reasons for holding that the explanation is not satisfactory."

8. Present petition has been opposed by Mr.Amitesh Kumar, learned counsel for respondent no.2. Mr.Kumar while drawing the attention of the Court to the show cause notice issued to petitioner no.1 on 29.11.2012 submits that various deficiencies were pointed out to petitioner no.1 including that

as against the requirement of 16 classrooms only 07 class rooms were available and as against the requirement of 64 faculty members only 31 faculty members were available at petitioner no.1 at the time of inspection. Counsel contends that in the absence of classroom and faculty members the petitioner no.1 institute cannot be allowed to admit students.

9. Reliance is placed by learned senior counsel for respondent no.2 in the case of *Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM BE.D College v. National Council for Teachers' Education and Others*, reported at (2012) 2 SCC 16, and in the case of *Adarsh Shiksha Mahavidyalaya and Others v. Subhash Rahangdale and Others*, reported at (2012) 2 SCC 425, in support of his submission that the students should not be allowed to continue in an unrecognized institute. Paras 16 and 17 of *Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM BE.D College* (supra) read as under:

16. We do not think so, firstly, because the recognition of the institution stood withdrawn on 20-7-2011 which meant that while it had no effect qua admissions for the academic session 2010-2011 it was certainly operative qua admissions made for the academic session 2011-12 which commenced from 1-8-2011 onwards. The fact that there was a modification of the said order of withdrawal on 24-8-2011 did not obliterate the earlier order dated 20-7-2011. The modifying order would in our opinion relate back and be effective from 20-7-2011 when the recognition was first withdrawn. Such being the position admissions made for the academic session 2011-2012 were not protected under the statute.

13. Secondly, because this Court has in a long line of decisions rendered from time to time disapproved of students being allowed to continue in unrecognised institutions only on sympathetic considerations. In *N.M. Nageshwaramma* (supra) this Court while dealing with the prayer for grant of permission to the students admitted to unrecognised institution observed:

“3. ... We are unable to accede to these requests. These institutions were established and the students were admitted

into these institutes despite a series of press notes issued by the Government. If by a fiat of the court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose. The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched. We have no hesitation in dismissing the writ petitions with costs.

(emphasis supplied)”

10. Mr.Kumar contends that in the reply to the show cause notice petitioner no.1 has not disputed that there is any shortfall in the number of classrooms and the faculty members, and in view thereof no further reasons were required to be furnished to the petitioner in the impugned order and, thus, the judgments, sought to be relied upon by learned senior counsel for the petitioner, are not applicable to the facts of the present case.
11. Learned senior counsel for the petitioner submits that the number of classes and faculty members are sufficient to teach the number of students, which have been admitted in the petitioner institute and, thus, it cannot be said that the college lacks the number of classrooms or faculty members.
12. I have heard learned counsel for the parties, considered their rival contentions, perused the documents placed on record including the

annexures, show cause notice, reply thereof, and the impugned order. The show cause notice, which was issued to the petitioner had pointed out eight deficiencies. The most important amongst those deficiencies were the non-availability of classrooms and the faculty members. As per the show cause notice, as against the requirement of 16 classrooms only 07 classrooms were available and as per the requirement of 64 faculty members only 31 members were available. The following reply to the show cause notice was issued by the respondent on 9.12.2012:

“With reference to the letter of AICTE Vide F.No.NRO/1-625637921-EOA/2011, November 29, 2012, that the following statement is being made.

1. As per Sl.No.1 for class room not ready under chapter IV read with Appendix 4.

Total number of class room (16) as per – AICTE norms shall be ready within 6 months after getting the approval for the academic session-2012-13. Presently having total number of students in AIR (260 students) as year wise detail-73 students in 2009 batch, 125 students in 2010 batch & 62 students in 2011 batch -at present we are having 12 numbers of class room in AIT, Lakhisarai.

2. As per Sl.No.2 for faculty related issues under –5.1 Chapter IV:

Presently AIT Lakhisarai is having now 47 number of faculty in place of 64 faculty, the shortfall number of faculty shall be appointed within one month.

3. As per the Sl.No.4 for other facilities under Chapter IV read with Appendix 6.

Whatever the deficiencies, shall fulfill within 90 days after getting the approval for the academic session 2012-13 & whatever existing facilities available, have been provided before the AICTE, New Delhi.

4. As per the S.No.8 for Funds related issue under appendix 17 clause 2.5 Chapter I.

Presently, AIT-Lakhisarai is having 2.35 Crores (Two crores thrity five lacs) Rupees as fixed deposit. Apart from this, an account in local S.B.I. Lakhisarai Branch for recurring/emergency vide A/c No.30845518676.”

13. A reading of the reply to the show cause notice would show that petitioner no.1 has not disputed the deficiencies with respect to the classrooms and the faculty members and in fact time was sought by petitioner no.1 to make up the deficiencies. In view of this, it cannot be said that the order is devoid of any reasons as petitioners have admitted the deficiencies, which were pointed out to them in the show cause notice. Further as far as the submission made by learned senior counsel for petitioner that the classrooms and the faculty members are sufficient having regard to the number of students, which have been admitted, is concerned, this ground was not raised by petitioners in the reply to the show cause notice and, thus, the same could not have been dealt with by respondent no.2 in the impugned notice. Should there be any force in this submission then it is really for the respondents to consider the case of the petitioner afresh.
14. I find force in the submission made by learned counsel for respondent no.2 that the judgments, sought to be relied upon by senior counsel for the petitioners, are not applicable to the facts of this case on account of the admissions of the petitioners that they do not have adequate classrooms and faculty members.

15. I find no infirmity in the order passed by respondent no.2 on 6.2.2013, however, the matter is remanded back to the Standing Complaint Committee to enable the petitioners to raise the ground that having regard to the number of students admitted there are sufficient classrooms and teachers. The respondent no.2 will issue a notice to the petitioner to appear along with all the relevant documents before the Standing Complaint Committee within fifteen days from today. The Standing Complaint Committee after granting a hearing to petitioner no.2 and or his representative, take all other steps, which will be required to satisfy themselves.
16. There is also force in the submission made by counsel for respondent no.2 that the petitioners cannot be allowed to continue in an unrecognized institute, however, keeping in view the peculiar facts of this case, that the supplementary examinations are in progress, the students will be permitted to appear only in the supplementary examination, and the final examinations, which are scheduled to be held from 1.3.2013 onwards in case the students have not already been transferred pursuant to the order dated 6.2.2013. This direction has been issued keeping in view the peculiar facts of this case so that the studies of the students are not disrupted and it may not be possible to transfer the student to any other approved college in such a short span of time. The students shall however be transferred after the examinations are concluded to any other approved college. It is made clear that the students will be informed by the petitioners about the orders passed by this Court today and the students should also be informed that in case the petitioners do not succeed what would be their fate, so that there is no false hope to the students. Let a copy of this order be sent to all the respondents herein.
17. Writ petition and application stand disposed of.

18. DASTI under the signature of Court Master to counsel for the parties.

G.S.SISTANI, J

FEBRUARY 22, 2013

msr