

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.2471 of 2015(O&M)

Date of decision: 26.8.2015

Society for Modern Education

...Petitioner

Versus

The National Council for Teachers Education and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Pratap Atma Ram, Advocate for the petitioner.

Mr. Ashish Rawal, Advocate for respondent no.1 and 2.

Mr. Amit Rao, Advocate for
Mr. Anurag Goel, Advocate for respondent no.3.

Mr. P.K.Jangra, Addl. Advocate General, Haryana
for respondent no.4.

G.S.SANDHAWALIA, J, (Oral)

Challenge in the present writ petition is to the order dated 10.6.2015 (Annexure P/25) whereby the Northern Regional Committee of NCTE has declined the application for recognition for the B.Ed. Course of two years duration with an intake of 100 students which was filed on 31.12.2012.

“The reasons for declining the recognition read as under:-

“Reply to the show cause notice is not satisfactory on the following points:-

- . Plot no. and building plan does not match with mentioned on hardcopy of online application submitted by the institution.
- . Total built-up area as mentioned in the hard copy of online application is 2000 sq. mts. whereas the VT report mentions the total area of 1669 sq. mt. The map of existing plan submitted by the institution shows the covered area 3009 sq. mts. The building plan submitted with signed application does not match with submitted to VT.”

Admittedly the said order is appealable under Section 18 of the National Council for Teachers Education Act, 1993.

Counsel for the petitioner submitted that the alternative remedy is not an absolute bar.

It has time and again been held that jurisdiction under Article 226 of the Constitution of India should not be exercised once there is an alternate remedy available under the Statute. In view of the specific alternative remedy available, it would be more appropriate for the petitioner to avail alternate remedy.

The Apex Court in **City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others, (2009) 1 SCC 168** laid down the principles whereby, this Court would exercise its remedy under Article 226 of the Constitution of India. It was specifically held that this Court had to consider whether the petitioner has an alternative and efficacious remedy for the resolution of the dispute. Paragraphs 29 and 30 of the judgment reads as under:-

“29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors. The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

The issue which is now sought to be raised can be effectively raised in the appeal which is provided under the NCTE Act.

In such circumstances, this Court is of the opinion that the present writ petition is not maintainable and accordingly, the present writ petition is dismissed with liberty to the petitioner to seek its alternative remedy as provided under the Act.

Needless to say that since the matter concerns admissions, in case the petitioners file an appeal within two weeks from today, it would be appropriate if the Appellate Authority decides the same at the earliest preferably within two months from the date of receipt of the said appeal.

August 26, 2015
Pka

(G.S.SANDHAWALIA)
Judge