

\$~31

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

+ **W.P.(C) 3959/2015**

HARI OM SHARAN DWIVEDI Petitioner
Through: Mr Yash Mishra & Mr Shashwat
Tripathi, Advs.

versus

**NATIONAL ACCREDITATION BOARD FOR
EDUCATION AND TRAINING & ORS** Respondents
Through: Mr Vikas Chopra, Adv. for R- 1 & 2.
Mr Kirtiman Singh, CGSC for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **22.04.2015**

CM No. 7073/2015 (Exemption)

1. Allowed subject to just exceptions.

WP(C) 3959/2015 & CM No. 7072/2015 (Stay)

2. In the present writ petition, in effect, challenge is laid to communication dated 28.01.2015.

2.1 This challenge is, broadly made, in the background of the judgement of a Single Judge of this court dated 07.11.2013, passed in a batch of writ petitions, the lead petition being WP(C) No. 3141/2012, titled: ***Mahendra Pandey & Anr. vs Secretary, Ministry of Environment & Forests & Ors.***

2.2 Learned counsel for the petitioner says that the petitioners in that matter succeeded, albeit partially, to the extent, that the court had struck down that part of clause 3.1 of the eligibility conditions which stipulated that the accreditation scheme will not be applicable to the individuals as EIA

consultants.

2.1 In support of the aforementioned contentions, learned counsel for the petitioner has relied upon paragraph 13, as also, the conclusion reached in operative part of paragraph 18 of the said judgement. For the sake of convenience, said parts of the judgement are extracted hereinbelow:

“....13. The Scheme of empanelment has been assailed by the petitioner on the ground that it debars individuals from being empanelled with QCI/NABET. Clause 3.1 of the Scheme is relevant and reads as under:

“3.1 Eligibility Only organizations will be considered for accreditation. These can be government, public sector or private organizations which could be proprietary firms, partnership firms or companies (Pvt. & Public Limited), bodies registered under Society Acts, under Section 25 of Companies Act, Research Institutes and the like. Universities including IITs, CSIR labs, other labs and/or research based organizations conducting EIA studies can also apply for accreditation. Accreditation will not be applicable for individuals as EIA consultants.”

It would, thus, be seen that while providing for accreditation of proprietorship firms the Scheme also excludes the individual consultants from its ambit. A proprietorship firm is nothing but a trade name/professional name adopted by an individual. In fact, a proprietorship firm is not a legal entity and it is the individual, whose proprietorship concern it is who can sue and be sued as a legal person. W.P.(C) No.3141 of 2012 & connected matters Page 15 of 19 Since the intention of the Scheme is not to exclude proprietorship firms, clause 3.1 to the extent it excludes individuals as EIA consultants needs to be struck down being in conflict with the main clause which enables accreditation of proprietary firms.....

..... It is further directed that an application submitted by an individual seeking empanelment even in his personal

name, shall not be rejected on the ground that the applicant is an individual.....”

(emphasis is mine)

3. Mr Chopra, who appears on advance notice on behalf of respondent no. 1 and 2, on the other hand, has referred to the observations made in the very same judgement by the learned Single Judge in paragraphs 5 & 16.

3.1 A perusal of the said paragraphs would show that the court was considering the plea of a proprietorship concern, in paragraph 5, and in regard to the same, made the following observations in paragraph 16 of the judgement:

“.....5. In its meeting held on 10.1.2012, the Accreditation Committee rejected the application of Shri Environmental Technology Institute, a proprietorship concern of Rani Gupta, petitioner in WP (C) No.7034/2012, for accreditation on the ground that only one in-house expert was recommended by the assessors and, therefore, the organization does not meet the requirement of the Scheme which stipulates having three in-house experts. The petitioner in the aforesaid writ petition is assailing the aforesaid decision of the Accreditation Committee.....

..... 16. As regards rejection of the application of Shri Environmental Technology Institute, clause 7.1 of the Scheme provides that the W.P.(C) No.3141 of 2012 & connected matters Page 17 of 19 applicant must have, at least, three in-house experts – one eligible EIA Coordinator who together with another two eligible FAEs should cover the core functional areas. The Scheme also prescribes the qualifications and experience of the experts in Appendix-1 to the Scheme. The decision of the Accreditation Committee would show that only one in house expert was recommended by the assessor meaning thereby that only one of them fulfilled the norms prescribed in the Scheme. Since it was obligatory for the applicant to have, at least, three in-house

experts, the applicant in this case was clearly ineligible for empanelment under the Scheme. However, before rejecting the application, an opportunity ought to have been given to the applicant to engage experts in prescribed number, and only in the event of her failure to do so, the application could have been rejected. In my view, rejecting an application, without giving an opportunity to the applicant to remove the deficiency/meet the shortfall, if any, will not be a fair approach to the matter on the part of the State....”

3.2 It is stated that it is in the background of these observations that the impugned communication has been sent to the petitioner.

3.3 Furthermore, learned counsel for respondent no.1 and 2 says, that no final view has been taken, therefore, the petition in any case is pre-mature.

4. On the other hand, it is the case of the petitioner that the Accreditation Scheme requires to be amended in view of the directions issued by the learned Single Judge in the judgement dated 07.11.2013. For this purpose, reliance is also placed on the order passed by the Division Bench in : LPA No. 222/2014, titled: ***Dr. Yash Paul Sharma vs Ministry of Environment and Forest & Ors.***

5. According to me, a holistic reading of the judgement dated 07.11.2013 does indicate, that while the learned Single Judge struck down clause 3.1 of the scheme to the extent it applied to individuals, he did not agree with the views of individuals that other conditions such as the need to have three in-house experts should be done away with.

5.1 Therefore, at the moment, I do not find anything wrong with the steps taken by the respondents to process the application filed by the petitioner.

6. Nevertheless, as is indicated by the learned counsel for the petitioner, the challenge to the entire judgement dated 07.11.2013 is pending

consideration before DB-I, in a batch of petitions, the lead petition being: LPA No. 108/2014, titled: *Epsilon Projects Pvt. Ltd. vs Ministry of Environment & Forest & Ors.*

7. In these circumstances, the writ petition and the application are disposed of with a direction to respondent no. 1 and 2 to process the application of the petitioner and pass a final order. Needless to say, any decision reached by the said respondents will abide by the final orders of the Division Bench in LPA No. 108/2014.

8. Needless to say, this exercise will be done with expedition.

RAJIV SHAKDHER, J

APRIL 22, 2015

kk