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

+ W.P.(C) 8870/2015 & CM No. 19871/2015

MODERN COLLEGE OF EDUCATION Petitioner
Through

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION & ORS Respondents
Through: Mr Anil Soni, Adv. for R-1 & 2
Mr Deepak Thukral, Adv. for R-3 & 4.

+ W.P.(C) 5860/2015 & CM Nos. 10551/2015 & 11731/2015

MODERN COLLEGE OF EDUCATION Petitioner
Through: Mr Sanjay Sharawat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION & ORS. Respondents
Through: Mr Anil Soni, Adv. for R-1 & 2
Mr Deepak Thukral, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
20.10.2015

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1. This is a third round of litigation, in so far as the petitioner is concerned. Presently, the petitioner is only aggrieved by one singular aspect which is the non-grant of affiliation by respondent no.3. There is no dispute that recognition has been granted by respondent no.1 and 2, which is, in effect, the National Council for Teacher Education (in short the NCTE), vide

order dated 31.05.2015. The said order, in effect, permits the petitioner to admit students for D.El.Ed. course, for a duration of two years. The said order approves annual intake of 50 students (i.e. one unit). This order is, however, made subject to the petitioner, inter alia, obtaining affiliation from the examining body in terms of clause 8(10) of the NCTE (Recognition, Norms and Procedure) Regulations, 2014 (in short the 2014 Regulations).

2. I may only note that the recognition order dated 31.05.2015 was issued by NCTE only after order dated 29.05.2015 was passed by my predecessor in WP(C) No. 5860/2015. The said order reads as follows:

“.....The petitioner has filed the present petition, inter alia, praying that the petitioner’s application for recognition be considered without the approval of the faculty by the affiliating body, that is, State Council for Educational Research and Training (SCERT), Gurgaon.

Issue notice.

Learned counsel for respondent Nos. 1 & 2 accepts notice.

On an oral application, SCERT - State Council for Educational Research and Training, Gurgaon is impleaded as respondent No.3. The petitioner shall file an amended memo of parties. Notice shall go to respondent No.3.

This court, by an order dated 15.05.2015, had directed SCERT to examine the list of faculty and take an appropriate decision regarding its approval.

SCERT was further directed to communicate the decision to the petitioner within 10 days from the date of the order i.e. by 25.05.2015. Apparently, this has not been done and the petitioner has preferred a contempt petition (being Cont Cas(C) No. 437/2015) which is now listed on 02.07.2015. The learned counsel for the petitioner points out that the last date for granting recognition is 31.05.2015 and in the event the recognition is not granted on account of the delay by respondent No.3, the petitioner would be unfairly prejudiced.

In the given circumstance, respondent No. 1 is directed not to withhold or decline the grant of recognition on the ground of lack of approval of faculty by SCERT.

It is clarified that if recognition is granted by respondents, the same shall be subject to the outcome of this petition.

Renotify on 02.07.2015.

Dasti under the signature of Court Master....”

3. Counter affidavit in WP(C) No. 8870/2015 has been filed by respondent no.3 i.e. State Council of Educational Research & Training (in short the SCERT), and the State of Haryana i.e. respondent no.4, while in WP(C) No. 5860/2015, counter affidavit has been filed only by SCERT, the State of Haryana not being a party in the said writ petition.

3.1 In so far as respondent no. 1 & 2 are concerned, i.e. NCTE, they have not filed their counter affidavits in either of the two writ petitions. They, in effect, do not oppose the prayers made in the writ petitions having granted recognition to the petitioner.

3.2 Accordingly, I propose to deal with the prayer in WP(C) No. 8870/2015, which envisages a larger relief as compared to other writ petition. In WP(C) no. 8870/2015, the following prayers are made:

“....(a) Issue a writ of mandamus and direct the Respondent No.3 and 4 to grant affiliation to petitioner for D.El.Ed course from academic session 2015-16; and

(b) Issue a writ of mandamus and direct the Respondent No.3 and 4 to permit the petitioner to admit student in D.El.Ed course for academic session 2015-16 and permit it to commence the course from said academic session....”

4. Mr Thukral, who appears for both SCERT and State of Haryana, says that he has two objections to the reliefs sought for by the petitioner. First,

that, no NOC, has been obtained from the State of Haryana. Second, that requisite faculty /teaching and non-teaching staff are not in position.

4.1 In connection with this objection, it is also stated that the form filed by the petitioner does not bear the signatures of the authorized representative/ competent authority. Furthermore, it is also averred that the details of the non-teaching staff have not been mentioned in the form filed by the petitioner.

4.2 In so far as the first objection is concerned, Mr Thukral says that the State of Haryana vide a communication dated 26.04.2013 had decided not to add to the intake of candidates in institutions, such as those, like the petitioner, for academic years 2013-2014 and 2014-2015. This, policy of the State of Haryana, Mr Thukral says, continues to obtain for academic year 2015-2016, as well. In other words, Mr Thukral says that since, the State of Haryana does not want an increase in the number of teachers, the recognition granted by NCTE, is flawed.

4.2 In so far as other objection is concerned, Mr Thukral has referred me to annexure P-27 at page 132 of WP(C) No. 5860/2015. Mr Thukral, in substance, says that as per the extant regulations i.e. 2014 Regulations, the petitioner was required to have in place one (1) principal and seven (7) lecturers, whereas it has, in position, only one (1) principal and five (5) lecturers. In so far as non-teaching staff is concerned, according to Mr Thukral, there are none in position.

4.4 As noted above, he has also stated that this is discernible from the form filed by the petitioner wherein, no details of the non-teaching staff have been given. Furthermore, he reiterated, the fact that the form filed by the petitioner does not bear the signatures of the authorized representative/

competent authority.

5. Mr Sherawat, on the other hand, has submitted, that in so far as the first objection is concerned, which is that since, the State of Haryana has taken a policy decision not to permit recognition of institutions as there is, in effect, saturation in number of teachers available, that issue is covered by judgement of the Supreme Court in the case of: ***State of Maharashtra vs Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. (2006) 9 SCC 1.***

5.1 As regards the other objection, which pertains to non-availability of requisite number of faculty / teaching and non-teaching staff, Mr Sherawat has placed before me a recent letter dated 16.10.2015, issued by the SCERT. The contents of that letter, being short, are extracted herebelow:

“..... Reference of your letter No. Nil dated 04.07.2015 on the subject cited above.

That the Hon’ble High Court of Delhi at New Delhi vide order dated 05.10.2015 passed in CM No. 11731/2015 (u/s 151 CPC) has directed respondent no.3 to decide the petitioner’s application dated 04.07.2015 before 20.10.2015.

That in compliance of court order dated 05-10-2015, it is stated that the Academic Faculty as required under rule 5.1 and 5.2 (1 Principal + 7 Lecturers) of NCTE Regulations, 2014 submitted vide your letter dated 04-07-2015 to this council is still incomplete because the same has not been signed by you on page 3 of prescribed proforma as would be evident from Annexure P-28 at page 59 attached with WP(C) No. 5860 of 2015 so filed by you in the Hon’ble High Court of Delhi at New Delhi.

That you have not appointed Administrative and Professional Staff as required under rule 5.3 of NTE Regulations, 2014 i.e. one Superintendent, one Computer Operator-cum-Store Keeper, one Computer Lab Assistant and one Librarian (Total 4 staff) and for these reasons your claim

for approval of faculty is again rejected....”

6. As would be evident from the extract culled out above, on 05.10.2015, the SCERT had been directed by me, in an order passed in CM No. 11731/2015, in WP(C) No. 5860/2015, to process the application of the petitioner dated 04.07.2015 for approval of the faculty list.

6.1 Therefore, as on 16.10.2015, the objections got narrowed down to two aspects. One, that the prescribed form had not been signed, which is an objection which has already been taken by Mr Thukral, as indicated above. Rule 5.1 and 5.2 of Appendix-2, which deals with norms and standards for diploma in Elementary Teaching Education Programme leading to Diploma in Elementary Education (D.El.Ed), was invoked in that behalf. Second, that it had not appointed the requisite number of non-teaching staff i.e. Administrative and Professional staff as per rule 5.3 of Appendix-2.

7. In this connection, Mr Sherawat has indicated that in so far as the aspect of signatures are concerned, the form itself would show that at the foot of the page it has been signed by the chairman of the petitioner. He says, by oversight, the signature which was required to be appended by an authorized representative/ competent authority in the top left hand side corner of the form, had not been appended. He says that this defect could have been rectified by issuing necessary intimation to the petitioner. In any event, Mr Sherawat says that he has a fresh form available with him with signatures of the authorized representative as also that of the chairman of the petitioner.

7.1 As regards the objection taken with regard to deficiency in non-teaching staff is concerned, Mr Sherawat, has taken me through the minutes of the selection committee dated 27.04.2015, which are appended as

annexures P-22 at page 123 of the paper book in WP(C) 5860/2015. I may only note, minutes appended at page 122 deal with faculty / teaching staff which, apparently, ceased to be an issue after 16.10.2015. He says that these minutes (which pertain to faculty/ teaching and non-teaching staff), along with relevant documents, were placed before the NCTE, which has examined the documents and granted recognition after coming to the conclusion that the requisite faculty / teaching and non-teaching staff are in position.

8. I must only note that Mr Thukral had also raised an objection with regard to the nature of the advertisement issued by the petitioner. It was the contention of Mr Thukral that the advertisement dated 10.02.2015, taken out by the petitioner, did not prescribe qualifications either for the faculty / teaching staff or the non-teaching staff.

9. Mr Sherawat, to my mind, has rightly contended that a close perusal of the advertisement would show that it has been clearly indicated that the qualification and the pay-scale will be as per NCTE, SCERT and State Government norms. Therefore, the applicants, according to Mr Sherawat, were put through the rigours, which are prescribed by all three agencies i.e. NCTE, SCERT and the State Government. In any event, it is Mr Sherawat's submission that these are aspects, which were looked at by the NCTE, while issuing the recognition order.

10. Mr Thukral, however, insists that in so far as SCERT is concerned, by virtue of clause 4 of the recognition order, the scrutiny with regard to the faculty /teaching and non-teaching staff is also within its domain as it is charged with the responsibility to, inter alia, verify the authenticity of their appointment.

11. Before, I proceed further I must, therefore, clearly rule on one aspect of the matter, which is that, the NCTE, is the final authority with regard to the aspect of grant of recognition to an institute and this right cannot be denied merely on the stated policy considerations of the State Government. The NCTE is a central body, which is charged with the responsibility of issuing a recognition order. Implicit in this power is the authority vested in NCTE, to glean information, from the concerned state agency as to the requirement of number of teachers in a State. Therefore, once a recognition order has been issued, it has to be presumed that this factor has been taken into consideration by the NCTE. Nothing has been shown to me which would have me come to a contrary view.

11.1 The primacy of NCTE qua this aspect of the matter comes through upon a perusal of the observations of the Supreme Court in *State of Maharashtra vs Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors* in the following paragraphs:

“.....13. The High Court, therefore, was called upon to consider the role played by the State Government in the process of consideration of application by the institutions seeking recommendation of opening B.Ed. colleges by NCTE in the light of the provisions of the Act in juxtaposition to the extent of trained manpower required by the State and to take policy decision on the basis of output of teachers by such colleges. The Court was also called upon to consider whether in the absence of any material being made available by the State Government to NCTE whether the latter can process the application and take a decision contrary to the decision of the State Government. A question had also arisen as to whether the State Government can refuse permission to an institution which had been granted permission to start B.Ed. college by NCTE under the Act and whether policy decision of the

State Government not to grant NOC would bind NCTE in the light of the provisions of the Act.....

..... 62. From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on 'policy consideration'.

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that no permission could be refused by the

State Government on 'policy consideration'. As already observed earlier, policy consideration was negated by this Court in Thirumuruga Kirupananda Trust, as also in Jaya Gokul Educational Trust....

.....68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of No Objection Certificate by the State Government/ Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.....

.....80. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Section 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act , every university ('examining body') is obliged to grant affiliation to such institution and Section 82 and 83 of the University Act do not apply to such cases....."

(emphasis is mine)

11.1 I must indicate herein that Mr Thukral has cited a judgement of the Supreme Court in the case of *National Council for Teacher Education and Ors. vs Shyam Shiksha Prashikshan Sansthan & Ors. 2011 (3) SCC 238*, to buttress his submission, that the view taken in this judgement is contrary to the view taken in *State of Maharashtra vs Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.* First and foremost, it is to be noted that this submission of Mr Thukral is clearly misconceived as a perusal of paragraph 40 at page 267 of the judgement clearly shows that the court has reiterated

the view taken in *State of Maharashtra vs Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.* Second, in any case, the judgement of the Supreme Court in *State of Maharashtra vs Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors* is a judgement of a Bench comprising of Three-Judges, whereas the *National Council for Teacher Education and Ors. vs Shyam Shiksha Prashikshan Sansthan & Ors* is a judgement of a bench comprising of two Judges. The judgement of a larger bench is binding on this court as the same has not been distinguished by the latter judgement.

12. Therefore, the aspect of recognition cannot be re-visited on stated policy consideration, which Mr Thukral, has put forth as one of the objections.

13. The other aspects of the matter, which are factual in nature pertain to the following: (i) whether the prescribed form has been signed as required; (ii) whether the requisite faculty / teaching staff is in place; and lastly, (iii) as to whether non-teaching staff is in place.

13.1 Having heard arguments and perused documents, in my view, the SCERT would be required to re-visit these aspects. The reason for this is that in so far as the first aspect is concerned, the absence of signatures on one part of the form, in my opinion, is not a material irregularity, especially, in the circumstance, that at the foot of the prescribed form, the chairman's signature stand appended. Furthermore, in so far as the second aspect is concerned, which is as to whether or not requisite faculty/ teaching staff was in place, was an issue which, evidently, stood resolved. This aspect is discernible on a perusal of letter dated 16.10.2015, issued by the SCERT. As regards the third aspect, which is as to whether or not the non-teaching

staff were in place, the record shows that information with regard to the same was supplied to NCTE. Besides, the argument of Mr Thukral that this information was not supplied in the prescribed format, is untenable as the prescribed, form which is appended at page 135 of WP(C) No. 5860/2015, does not elicit information vis-a-vis non-teaching staff. However, having regard to the fact that in clause 4 of the recognition order, SCERT is also charged with the duty to ascertain authenticity of the claims made by the institution with regard to placement of faculty/ teaching and non-teaching staff, these aspects will require a confirmation by the SCERT.

13.2 Therefore, having regard to overall circumstances, the only way forward, in my opinion, is as follows:

- (i) The petitioner will be given an opportunity by the SCERT either to file a fresh form “Format for Particulars of Staff to be submitted to the NRC, NCTE, Jaipur”, or be given opportunity to sign the existing form.
- (ii) The petitioner will present physically faculty/ teaching and the non-teaching staff before the concerned officer of SCERT alongwith requisite documents, which would include, inter alia, the appointment letters, original certificates with regard to their qualification etc., and any other document which SCERT, seeks in this behalf. SCERT will send its officers to the office of the petitioner for conducting an inspection in that regard. This inspection will be conducted not later than 23.10.2015.
- (iii) In case the SCERT comes to a conclusion that the faculty / teaching staff and the non-teaching staff, as required under the prescribed norms, is in position, they will proceed to grant an affiliation to the petitioner, no later than 26.10.2015.
- (iv) If, affiliation is granted, the petitioner will be permitted to admit

students by 27.10.2015.

13.3 Mr Sherawat concedes that the deadline for the said purpose expires on 27.10.2015.

13.4 Therefore, no admission will take place after 27.10.2015. Mr Thukral affirms this position as regards the deadline for admission.

14. With the aforesaid directions in place, the captioned writ petitions, along with the pending applications, are disposed of.

RAJIV SHAKDHER, J

OCTOBER 20, 2015

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