

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.22567 of 2014
Decided on :12.07.2016**

Puran Education Society

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present : Mr. J.S. Dahiya, Advocate
for the petitioner.

Mr. J.S. Bedi, Addl. AG, Haryana.

Mr. Ashish Rawal, Advocate
for respondents No.2 to 4.

G.S. Sandhawalia, J. (Oral)

Vide the amended writ petition, the petitioner-society challenges the order dated 29.07.2015 (Annexure P-25) whereby its request for grant of recognition/permission to set up the MA Durga Puran College of Education for the course of B.Ed two years duration with an intake of 100 students has been declined by the respondent No.2-Northern Regional Committee (for short 'NRC').

Challenge has also been raised to the show cause notices dated 08.10.2013 (Annexure P-23) and 07.01.2015 (Annexure P-24) on the ground that they had not been served upon the petitioner and, therefore, there was no opportunity to reply and, thus, the order of refusal is also bad in law. Counsel for the petitioner has given up the other challenges to the denial of permission to the M.Ed course.

The reason for refusal by respondent No.2-NRC is on the

ground that there was no proof that the petitioner had dispatched the hard copy within 7 days from the date of the online application, which had been made on 27.12.2012, as required under the NCTE Regulations, 2009. The hard copy had been received only on 31.01.2013. Resultantly, on account of the not replying to the show cause notice dated 08.10.2013 (Annexure P-23), the permission was declined under Section 14/15 (3) (b) of the NCTE Act, 1993. Liberty was granted to file an appeal under Section 18 of the NCTE Act, 1993 within 60 days from the date of the order.

Counsel for the petitioner has vehemently argued that the petitioner was already before this Court by filing the present writ petition on 29.10.2014 and at that point of time the relief sought was for consideration of his application. The petitioner was not aware that any show cause notice was issued to it, otherwise the necessary proof whether the hard copy had been dispatched within the required period of 7 days would have been filed. Accordingly, reference is made to Annexure P-22 to show that the dispatch was done by way of registered post on 03.01.2013 to the respondent No.2 and the necessary requirement had been complied with. In case there was delay in the receipt of the hard copy on 31.01.2013, it was not the fault of the petitioner, as he had applied within the required period.

Counsel for the respondent-NCTE on the other hand has submitted that there was an efficacious remedy by way of filing an appeal under Section 18 of the NCTE Act and there is no need for this Court to

exercise its extra-ordinary jurisdiction. It is further submitted that on account of the non-receipt of the reply to the show cause notice, the respondent No.2 was justified in denying the approval.

After hearing counsel for the parties, this Court is of the opinion that the issue of alternative remedy would not stand in the way of this Court, as substantial justice has to be done to the petitioner, who is aggrieved on account of the non consideration of his case, even though period of more than 3 years has passed, since the alleged dispatch of the hard copy. It is a matter of record that the petitioner had applied on 27.12.2012 by way of online application.

In its 218th meeting held between 27.08.2013 to 31.08.2013, respondent No.2, after a period of 8 months, noticed the deficiency, as such and decided to issue the show cause notice dated 08.10.2013 (Annexure P-23). Thereafter, on 27.11.2014 in its 229th meeting, the respondent No.2 had decided to issue show cause notice to all such minority institutions, whose applications for recognition of B.Ed and Diploma in Elementary Education were still pending. Resultantly, the second notice dated 07.01.2015 (Annexure P-24) was also issued.

In the written statement filed by respondent No.2, the plea taken was that show cause notices have been issued, but reply has not been received.

Vide order dated 01.06.2015 passed by this Court, respondents were directed to place on record the show cause notices and other relevant documents. Eventually record was called for in order to

ascertain whether the show cause notices had been sent or not. On 14.10.2015, this Court noticed the stand of the petitioner that neither two show cause notices nor the order whereby the recognition has been denied, had been received by him and prayer was made by the petitioner for grant of time to amend the writ petition. Resultantly, the amendment was allowed on 15.12.2015 to challenge the show cause notices also. Specific averment has been made in Paragraph 6-A of the amended writ petition that the show cause notice dated 08.10.2013 was never served upon the petitioner.

In the short reply to the amended writ petition, this specific averment has not been controverted.

In such circumstances, this Court comes to the conclusion that the show cause notices were never effectively served upon the petitioner and the averment made has substance. It is not disputed that as per Regulation-7 of the NCTE Regulations, 2009, which at that point of time, governed the petitioner, respondent No.2 was to point out the deficiencies within 45 days of the receipt of the applications, which the petitioner was to remove within 60 days from the date of receipt of communication of deficiencies. The said regulation reads as under:-

“7. Processing of Applications.-

(1) The applicant institutions shall ensure on-line submission of applications complete in all respects along with hard copy of the application and other documents specified below. However, in case of any inadvertent omissions or deficiencies in the documents submitted, the office of the Regional Committee shall point out the deficiencies within 45 days of the receipt of the

applications, which the applicants shall remove within 60 days from the date of receipt of 4 communication of deficiencies, if any. The on-line application with separate submission of the following documents only, shall be considered as complete application.”

A perusal of the above regulations would go on to show that, the deficiencies have to be pointed out within 45 days of the receipt of the application. It is the case of the respondents themselves that the hard copy was received on 31.01.2013. The show cause notice was not issued within 45 days, but was only issued on 08.10.2013, which is beyond the prescribed period of 45 days. Thus, it is apparent that no reasonable opportunity had been given to the petitioner to remove the deficiencies for approval of the application for recognition and the prescribed procedure has been violated by the respondent No.2-NRC. Thus, in the facts and circumstances, the alternative remedy of appeal under the Act does not make out a case for absolute bar for this Court to entertain this writ petition under Article 226 of the Constitution of India, since there is a patent violation of the statutory provisions of the Act by the respondent No.2-NRC. The Apex Court in ***United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110*** has noticed the principles of alternative remedy. It was observed that it was a self imposed restraint and the alternative remedy was a rule of discretion and not one of compulsion. The relevant observations read as under:-

“44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs

including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of selfimposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

Similarly, the Apex Court in ***General Manager, Sh. Siddheshwara Cooperative Bank Ltd. and another Vs. Ikbal and others, 2013 (10) SCC 83*** has held that an alternative remedy was not an absolute bar to the exercise of the extra ordinary jurisdiction under Article 226 of the Constitution of India.

In such circumstances, petitioner has been seriously prejudiced and his application has not thus been considered on merits and in the facts and circumstances of the case, it is a case where the extra-ordinary jurisdiction is liable to be entertained. Resultantly, the order dated 29.07.2015 (Annexure P-25) declining the approval is quashed. The petitioner will be at liberty to give a detailed reply to the show cause notices dated 08.10.2013 and 07.01.2015 within a period of two weeks from today and on the receipt of the said replies, the respondent No.2 will proceed in accordance with law.

Counsel for the respondent-NCTE has submitted that in view of the 2014 Regulations coming in force, the petitioner will have to fulfill the criteria prescribed under the Regulations.

Needless to say that if a fresh show cause notice is to be issued by the respondent No.2-NRC to point out the deficiencies, it will be open to the said respondents to do the same and on the receipt of the same, the petitioner shall reply to the same.

With the abovesaid observations, the present writ petition stands allowed.

JULY 12, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE