

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 01, 2016

Judgment delivered on: December 22, 2016

+ W.P.(C) 10754/2016

CHANDERKANTA PRIVATE ITI

..... Petitioner

Through: Mr. Sanjay Sharawat & Mr. Ratish Kumar,
Advs.

Versus

DIRECTORATE GENERAL OF TRAINING AND ANR

..... Respondents

Through: Ms. Meera Bhatia, Adv. for DGT/R-1
Mr. Vikas Chopra, Adv. for R-2/QCI

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present writ petition has been filed by the petitioner with the following prayers:
 - (a) Issue a writ of mandamus and direct the Respondent no.2 to grant accreditation and sent the application of the petitioner along with accreditation report to the respondent no.1; and
 - (b) Consequently issue a writ of mandamus and direct the Respondent no. 1 to grant affiliation to the petitioner for academic session 2016-2017; and
 - (c) Pass an appropriate order and permit the petitioner to admit students and commence the course from academic session 2016-2017; and

(d) Pass any order and further order (s) as may be deemed fit.

2. It is the case of the petitioner that it is an existing ITI having been granted affiliation by the respondents in the year 2014 in Electrician and Fitter trades.

3. It is the case of the petitioner that the respondent no.1 had invited applications from the Institutions desirous of seeking affiliation for various Skill Development Trades for the academic session 2016-2017 for which the last date for submission of the applications was April 15, 2016. Pursuant thereto, the petitioner submitted an application on March 14, 2016 with the respondents for seeking affiliation for 16 units in Electrician Trade for the academic session 2016-2017. It is the case of the petitioner that respondent no.2 / QCI processed the application and the petitioner cleared all the Non-Conformities (NC's) raised at the time of desktop assessment. Thereafter respondent no.2 conducted a site visit on September 9, 2016 and informed the petitioner to reply to the pending Non-Conformities of site visit. It is the case of the petitioner that on September 15, 2016, the petitioner desired to upload the compliance of the Non-Conformities on the web portal of the respondent no.2, but could not do the needful as the web portal of the respondent no.2 showed an error and was not operational. This error was informed by the petitioner to respondent no.2 /QCI vide e-mail dated September 15, 2016. It is also the case of the petitioner that, it continued its efforts to upload the compliance on the web portal of the respondent no.2 / QCI on

September 16, 2016, September 17, 2016 and several subsequent dates on daily basis. Despite, the request made by the petitioner on several dates, respondent no.2 did not respond to the same. Vide e-mail dated October 2, 2016, respondent no. 2 required the petitioner to submit reply to the two Non-Conformities. It is the case of the petitioner that on October 4, 2016, the petitioner complied with the said requirements. Thereafter, the petitioner kept visiting the office of the respondents almost daily basis, but the respondents did not take any step in processing the application. On October 27, 2016, respondent no.2 sent an e-mail to the petitioner and required it to submit four documents within two days failing which it was stated the application shall not be considered for the academic session 2016-2017. It is the case of the petitioner that it complied with the said requirements on the same day. That apart the response was also submitted in person in the office of the QCI on October 28, 2016 and the application having not been processed, the petitioner has to approach this Court.

4. Respondent no.2 has filed its reply. It is the stand of respondent no.2 that the petitioner's application is presently at the stage of 3A, i.e., the petitioner has not closed its site visit Non-Conformities. Hence the application of the petitioner could not be processed further, i.e., checking of the online documents submitted by the petitioner in its portal; checking of the site visit CD and noting the timings of vital activities for placing it before NABET Accreditation Committee. It is also the stand of the respondent no. 2 that presently

the portal is closed and the petitioner cannot make changes on its online application. As and when the directions are received from respondent no.1 for the same, the petitioner would be allowed to upload the relevant documents against the Non-Conformities raised by the concerned assessor. If the assessor is satisfied with the reply of the petitioner, the Non-Conformities will be closed and the application will be considered further or the petitioner will have to submit its reply till the assessor closes all the Non-Conformities.

5. Mr. Sanjay Sharawat, learned counsel appearing on behalf of the petitioner would submit that on September 9, 2016 pursuant to the site visit the Non-Conformities were generated, and between September 15 to 18, 2016, the petitioner did make an attempt to submit the reply to Non-Conformities on the portal. Regrettably, because of the error in the portal, despite many attempts, the reply to the Non-Conformities could not be transmitted. In that regard, he had drawn my attention to pages 14, 15 and 16 of the writ petition. He states the non submission of reply to the Non-Conformities could not be attributable to the petitioner. He had drawn my attention to page 17 of the paper book which has the heading “Improvement of NC w.r.t site visit and submission of documents (only Registered Post / Speed Post / 1-Day Courier)” to contend that this itself signify that the reply to the NC’s was not being uploaded on the portal and the respondent no.2 had asked for the same through Registered Post / Speed Post / Courier. According to him, on October 2, 2016, the petitioner was in receipt of e-mail wherein the respondents had asked for certain documents

only by post. The documents as asked for were duly submitted by the petitioner vide its letter dated October 4, 2016. No response was received till October 27, 2016 when the petitioner was further in receipt of e-mail dated October 27, 2016 wherein they had asked for the following documents:

- 1) Land document not uploaded.
- 2) Technical staff document not uploaded.
- 3) Load mentioned in Meter sealing report and affidavit is 10 KW but 20 KW mentioned in Electricity Bill.
- 4) Bills of Tools above 10 k not uploaded.

6. They had called upon the petitioner to upload the documents as sought for within 2 days. He states that on the same day itself, the documents as sought for, were sent to the respondent No.2 by way of attachments. Unfortunately, nothing has been heard from the respondent no.2, which resulted in the filing of the petition.

7. Mr. Vikas Chopra, leaned counsel appearing for respondent no.2 would submit that the portal of the respondent no. 2 was working. He states that, till such time the petitioner closes the NCs, application cannot be processed for the next stage. It is his case that the error in the portal on which the petitioner is relying upon is itself a warning to the applicant to respond to the NCs but the petitioner ignored the same. In the absence of any response to the NCs so raised by the assessor on September 9, 2016, the application could not be processed further. It is also his submission that the mails dated October 2, 2016 and October 27, 2016 are simultaneous action initiated by the respondent no.2 in order to cure

other deficiencies and prepare file, so that once the site visit NC's are responded by the petitioner and closed by the assessor, the file may be sent to Accreditation Committee for further consideration.

8. It may be noted here that during the course of the arguments, an issue arose whether the portal of the respondent no.2 was working or not during the period in question as contended by Mr. Sharawat. On this aspect, this Court had directed respondent no.2 to file an affidavit along with the screen shots of the portal of September 15, 2016 and for the dates thereafter. The affidavit was filed by Mr. Chopra, wherein it is the stand of the respondent no.2 that the portal for petitioner was working on September 15, 2016 and September 18, 2016. A further stand has been taken that the portal of other applicants was also open and working efficiently during those days. It is stated that the error message on which the petitioner was relying upon is itself a warning to the petitioner to respond to the NCs, but the petitioner ignored the same. Vide additional affidavit Mr. Chopra has filed on record the screen shots of other applicants, who responded during those days. Suffice to state no response to the additional affidavit has been filed.

9. Having heard the learned counsel for the parties, on the aspect of the portal not being working, Mr. Sharawat, who relied upon pages 14 to 16 to submit that despite efforts, the reply to the NCs could not be uploaded, whereas Mr. Chopra's contention was that the portal was working and had relied upon the screen shorts of other applicants who had

actually uploaded the reply to the NC's during that period. From the screen shots, it does appear that other applicants had uploaded the reply to the NCs during that period. In fact, I find in the case of Lord Private ITI, Makoda Gwalior, reply was submitted by the ITI on September 15, 2016. Similarly another applicant has uploaded on September 16, 2016. It must be inferred that the portal was working between the period September 15, 2016 to September 18, 2016. The submission of Mr. Chopra that the reply on the NCs could only be submitted on the portal to enable the assessor to clear the NCs is appealing. In the absence of any reply to the NCs the applicant could not move to the next stage is also appealing. The plea that e-mails dated October 2, 2016 and October 27, 2016 were not related to the NCs but were an asimultaneous action initiated by the respondent no.2 in order to cure other deficiencies would become relevant in view of the fact that NCs pursuant to the site visit pointed out by the assessor need to be uploaded only on the portal and not otherwise. Even though during the course of submissions, Mr. Sharawat pointed out that vide communications dated October 4, 2016 and October 27, 2017, the petitioner has submitted to the respondent no.2 all the documents relatable to the Non-Conformities raised by the respondent no.2 / assessor pursuant to the site visit, the fact remains that the reply to the NCs pursuant to the site visit could only be uploaded and could not be sent through e-mail has relevance. Even otherwise, noting the prayers as made in the writ petition, the question would arose whether the petitioner can be given the relief as prayed for. It is a matter of record that the First Semester Examination for the academic year 2016-2017 is to

start from February, 2, 2017 and noting the minimum period of 90 days of training required for a trainee to sit in the First Semester Examination cannot be met becomes relevant. Recently this Court decided two writ petitions wherein relief sought was that the time for making admission be extended. This Court rejecting the prayer has held as under:

22. Having heard the learned counsel for the parties, the only question, which arises for consideration is whether the petitioners are entitled to extension of time for admitting the students. There is no denial to the fact that the petitioners in these petitions were given effectively two days for affecting admission of the trainees. During the course of the submission, Mr. Sharawat also conceded to the fact that the petitioner in W.P.(C) No. 9444/2016 had also made admission of 16 students on October 1, 2016 and October 3, 2016. This was despite the fact that there was no extension of time for admitting the trainees. No doubt, Mr. Sharawat would submit that the said admissions would be treated as illegal. Regrettably, it may be stated here the aspect of admitting the students both on October 29, 2016 and October 30, 2016 in W.P.(C) No. 9444/2016 and on October 8, 2016 and October 9, 2016 in W.P.(C) No. 9711/2016 has not been mentioned in the writ petition. An impression has been given in the petitions as if pursuant to the affiliation, no admissions have been made. Be that as it may, the prayer in the writ petitions is for seeking extension of time for making admissions. Whether such a relief can be granted when the course having commenced on October 10, 2016 and when the instruction stipulates 90 days as the minimum training to be undertaken by a trainee for sitting in the exam to be held on February 02, 2017. The answer must necessarily be "No". This I say so for the reason that today's date being December 06, 2016 and the exam to be conducted on February 2, 2017, an Institution is left with 58 days of training, out of which 15/20 days need to be excluded for calling applications and admitting students, which shall be around 43 days."

10. Today being 22nd December, 2016, the petitioner does not have the accreditation nor the affiliation, the petitioner cannot make any admission, and the period of 90 days also

cannot be met. This Court is of the view that the petitioner is not entitled to the relief's prayed for. The petition is dismissed.

No costs.

V. KAMESWAR RAO, J

DECEMBER 22, 2016

jg

