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

+ W.P.(C) 7124/2016, CM No. 45217/2016

JAWAHAR LAL NEHRU COLLEGE OF
EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION
& ANR

..... Respondents

Through: Ms. Arunima Dwivedi and
Ms. Shayed Lamba, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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24.01.2017

CM No. 45217/2016

This is an application filed by the respondents seeking condonation of delay of 26 days in filing the counter-affidavit.

For the reasons stated in the application, the delay of 26 days in filing the counter-affidavit is condoned. Counter-affidavit is taken on record. Application stands disposed of.

W.P.(C) 7124/2016

1. The challenge in the writ petition is to the orders dated (i) December 21, 2015 whereby the respondent No.2 has refused the recognition to the

petitioner Institute for conducting the D.El.Ed course on the ground that the Institution did not submit reply to the deficiencies as communicated on 16th August, 2013 and to the show-cause notice dated 7th August, 2015 issued to the petitioner and (ii) to the order dated June 9, 2016 whereby the respondent No.1 has confirmed the refusal order dated December 21, 2015 of the respondent No.2 by observing as under:-

“AND WHEREAS appellant during the course of appeal presentation on 29.04.2016 stated that the institution has not received the deficiency letter dated 16.08.2013 and S.C.N. dated 07.08.2015. After going through the relevant records Appeal Committee, noticed that appellant institution never made any effort to know the status of its application till recognition was refused on 21.12.2015. In between N.R.C. has addressed three communications to the appellant institution on 16.08.2013, 5.1.2015 and 7.8.2015 and all three communications have remained unreplied to. Appeal Committee, therefore, decided to confirm the refusal order dated 21.12.2015 as the plea that appellant had not received the deficiency letter and S.C.N. is not convincing.”

2. The only submission made by Mr. Sanjay Sharawat, learned counsel appearing for the petitioner is that the ground on which the Authorities refused the application for recognition and upheld the same are totally untenable, inasmuch as the letter pointing out deficiencies and the show

cause notice having not been received, there was no occasion to reply the same. Further, the ground that the appellant Institution had not made any effort to know the status of the application till recognition was refused, is also untenable. According to him, the Regulations mandate deficiencies need to be communicated and a show cause notice also need to be issued before refusing the recognition. He also states, it is important that the Authorities must satisfy themselves the receipt of the relevant communication before any adverse order is passed. He would rely upon an order dated August 8, 2016 passed by the NCTE respondent No.1 in the case of B.M. College of Education, Gohana, Sonapat, Haryana wherein the Appellate Committee while deciding the appeal, remanded back the matter to the NRC, Jaipur for re-issuance of show cause notice by observing as under:-

“AND WHEREAS Appellant appeared before the Appeal Committee on 25.6.2016 and submitted an affidavit affirming that applicant institution did not receive the Show Cause Notice (S.C.N.) otherwise same could have been replied. Appeal Committee took note of the submission made by appellant and decided to remand back the case to N.R.C. for reissue of the S.C.N. Appeal Committee observed that in many cases appellants plead that they could not submit reply to Show Cause Notice because of non-receipt of the communication at their

end. Appeal Committee, therefore, desires that in future wherever refusal order is issued on the ground of non-submission of reply to S.C.N., Regional Committee must substantiate the delivery of the S.C.N. to the appellant by obtaining and placing on file a copy of the 'Track Report' concerning the speed post letter issued by the Regional Office."

3. He also relies upon the order / Judgment of this Court of January 3, 2017 when three writ petitions were decided including ***Chaudhary Raghunath Singh Mahavidyalaya v. NCTE and Anr.*** wherein this Court had set aside the appellate order in that case and remanded back the matter to the Appellate Authority to consider the appeal of the petitioner.

4. On the other hand, learned counsel for the respondents would reiterate the stand taken by the respondents in their counter-affidavit. On the order dated August 8, 2016 relatable to B.M. College of Education, Gohana, Sonapat, Haryana, wherein the Appellate Authority has decided that Regional Committee, before issuing refusal order on the ground of non-submission of reply to the show cause notice must substantiate the delivery of the show cause notice by placing on file, the copy of the track report concerning the speed post letter issued by the Regional Office is primarily a change of thinking and justifiable.

5. Having heard the learned counsel for the parties, suffice to state that

the respondents have not placed on record any document or evidence to substantiate the delivery of the letter highlighting the deficiencies or the show cause notice. Even there is no finding in both the impugned orders that the said communications have been received by the petitioner herein, based on some tangible evidence. The ground, that the petitioner has not followed up the status of the application is untenable. If the deficiencies need to be communicated and a show cause notice need to be issued, the Authorities must have ensured themselves that the same have been issued and received by the petitioner. That apart, the fact, that, the respondents have taken a stand that the said communications have been sent, pre-supposes, the sending of the same is mandatory.

6. Mr. Sharawat is justified in relying upon an order dated August 8, 2016 in the case of B.M. College of Education, Gohana, Sonapat, Haryana, wherein the Appellate Committee has directed Regional Committee to confirm through the track report that a show cause notice having been delivered with the Institute concerned. Even in the judgment in the case of *Chaudhary Raghunath Singh Mahavidyalaya (and connected petitions) (supra)*, this Court on the ground that the show cause notice was not received by the Institute concerned, has set aside the appellate order and

remanded the matter to the Appellate Authority.

7. In view of order dated August 8, 2016 of the respondent No.1 in the case of B.M. College of Education, Gohana, Sonapat, Haryana and in view of this Court's conclusion in the case of *Chaudhary Raghunath Singh Mahavidyalaya (and connected petitions) (supra)*, the appellate order dated 9th June, 2016 needs to be set aside. Ordered accordingly. I remand the matter back to the Appellate Authority i.e the respondent No.1, which would re-consider the appeal filed by the petitioner, in view of the conclusion above as expeditiously as possible and preferably in its next meeting and pass appropriate orders in accordance with law. This is for the reason, as according to Mr. Sharawat, the last date for granting recognition is 3rd March, 2017.

8. The writ petition is disposed of as allowed on the aforesaid terms. No costs.

V. KAMESWAR RAO, J

JANUARY 24, 2017/ak