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

+ W.P.(C) 4375/2015 and CM No. 21344/2017

VEER BAHADUR SINGH DEGREE COLLEGE Petitioner

Through: Mr Amitesh Kumar and Mr Shashank
Shekhar, Advs

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION & ANR.

..... Respondents

Through: Ms Arunima Dwivedi, Adv for R-1 &
2

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **12.09.2017**

1 Petitioner institute is situated in District Gorukhpur. He has applied to respondents (NCTE) seeking recognition for a B.Ed course. This recognition was granted to the petitioner on 28.07.2005. The annual intake of student permitted was 100. Contention is that on 27.01.2006 the Vice Chancellor of the Deen Dayal Upadhyay, Gorakhpur University had informed the petitioner about this affiliation. In the academic session 2005-06 the petitioner institute had admitted 100 students. 49 seats remained vacant and this was informed to the Vice Chancellor. The Vice Chancellor granted permission for taking admission against these 49 vacant seats. As such the petitioner admitted 100 seats in the said course.

2 That between 05.03.2006 to 19.03.2006 apart from the
aforenoted 100 students 49 more students were admitted in the
institute with an order of the then Vice Chancellor. The final B.Ed
examination was also conducted. However, when the result was
declared by the University it was only of 100 students and the result
of 49 students who were admitted over and above 100 students was
withheld.

3 The petitioner institute had by its communication informed the
State Government that the petitioner institute had not admitted
students in excess of 100. The excess of 49 students who had been
included and granted admit cards were not of the petitioner college
and the petitioner had nothing to do with them.

4 These 49 students whose result had been withheld by the
Gorakhpur University filed a writ petition being 14587/2007 before
the Allahabad High Court praying for a direction that the Deen Dayal
Upadhaya Gorakhpur University be directed to declare their result.
On 23.05.2007 an interim order was passed in the writ petition. The
Single Judge of the Allahabad High Court was of the view that
student who had appeared in the University beyond the sanctioned
strength of 100 are not entitled to any relief; these students having
been admitted over and above the permitted intake of 100. The Single
Judge had also directed the respondent to cancel the affiliation of the
B.Ed course of the aforenoted institute. Along with the aforenoted
institute four other colleges were also affected and their recognition
also stood cancelled.

5 Being aggrieved by the order passed by a Single Judge of the Allahabad High Court, an appeal was preferred before the Division Bench. The Division Bench of the Allahabad High Court on 04.10.2007 disposed of the appeal. No relief was granted to the aforementioned 49 students whose results had been withheld; however, the University was directed to refund the fee which had been paid by these 49 students. The order of the Single Judge cancelling the recognition granted to the petitioner college (along with four other colleges) was set aside. The matter was remanded back to respondent No. 1 for necessary action.

6 The State of Uttar Pradesh issued notice to the petitioner college as to why their recognition be not cancelled. Pursuant thereto on 11.04.2008 respondent No. 2 refused affiliation to all the aforementioned colleges. This was vide order dated 08.08.2014. Respondent No. 2 was of the view that since these institutions had taken students beyond the intake which was permitted, their recognition needs to be cancelled. It was, accordingly, cancelled. An appeal was preferred before the appellate authority under Section 18 of the NCTE Act, 1993. The appellate authority of respondent No. 2 endorsed the finding returned on 08.08.2014. The appeal stood dismissed on 25.11.2014. The counsel concluded that the NCTE was justified in refusing the recognition.

7 This court has been informed that four of those institutes (apart from the petitioner) had approached the Allahabad High Court against these orders dated 08.08.2014 and 25.11.2014. The petitioner,

however, has chosen to approach the Delhi High Court.

8 This court has further been informed that the Allahabad High Court vide order dated 05.05.2017 set aside the orders dated 08.08.2014 and 25.11.2014. The matter was remanded back to the Regional Committee of the NCTE to decide the matter afresh in accordance with law after affording an opportunity of hearing to the parties. Learned counsel for the petitioner additionally points out that after the matter had been remanded back to the Regional Committee the aforementioned four institutes have been granted recognition. Counsel for the petitioner submits that his facts are similar. He should also in the principle of parity be granted a re-hearing and his matter should also be remanded back to the Regional Committee of NCTE.

9 In the counter affidavit filed by the respondent, the first and foremost submission of the learned counsel for the respondent is that this court does not have jurisdiction to entertain this petition. Learned counsel for the respondent points out that the order dated 08.08.2014 has been passed by the Northern Regional Committee pursuant to which inquiry had been directed by the Allahabad High Court. The parties had chosen the fora of the Allahabad High Court and only the petitioner having excluded himself from the other four petitioners and having come to the Delhi High Court is clearly a forum shopping which is not permitted. Learned counsel for the respondent points out that in similar circumstances a Bench of this court in W.P.(C) 8152/2014 titled **Jaya College of Education vs NCTE** dated

24.11.2014 had rejected the petition noting that in view of the judgment of this court in **M/s Sterling Agro Industries vs UOI AIR 2011 Delhi 174**, the petitioner should approach the same High Court where initial proceedings had been initiated. This court notes with approval this arguments of learned counsel for respondent. This court notes that the petitioner before this court was admittedly a respondent in those petitions before the Allahabad High Court where the order dated 23.05.2007 of the Single Judge as also the order passed by the Division Bench dated 04.10.2007 had been passed. The initial proceedings having taken place at the Allahabad High Court, the petitioner has chosen the fora at the Delhi High Court. This court, however, notes that this petition is pending before this court since 2015 and if this court is inclined to dismiss the petition on the question of territorial jurisdiction, it may not be able to return any finding on merit. Submission of the petitioner that respondent No. 2 has its office in Delhi and has passed the last impugned order in Delhi, makes out a cause of action in his favour is thus read in favour of the petitioner and this court while rejecting this objection of the respondent proceeds to deal with the case on merits.

10 This court is of the view that on merits, the petitioner has no case. Admittedly, the petitioner had taken an intake of 49 students over and above the permissible limit of 100. The only reason which had been disclosed for the aforementioned flouting of this condition was that the Vice Chancellor of the Gorakhpur University

had asked the petitioner institute to do so. This cannot be a reason to flout the essential condition which had been laid down by respondent No. 2 to admit only 100 students for this B.Ed Course. Petitioner really has no answer on this score. The submission of respondent on this count as is reflected in the counter affidavit reads as under:-

“6. It is respectfully submitted that even Clause 2(f) of recognition order dated 28.07.2005 itself states that non compliance of the conditions mentioned in the said order will invite action under Section 17(1) of the NCTE Act, 1993. Clause 2(f) very clearly states that in case the college contravene any provision of this order, NCTE has full authority to withdraw the recognition and in this case the petitioner college committed breach of a very material condition i.e., excess intake of students than the permitted limit.

7. Clause No. (6) of recognition order dated 28.07.2005 also states that if college contravenes any of the conditions or any of the provisions of the NCTE Act, rules, regulations and/or order made or issued there under, the Regional Committee may withdraw the recognition under the provision of Section 17(1) of NCTE Act, 1993.”

11 Admittedly an excess of 49 students over and above 100 students had been taken by the petitioner institute. This position is not disputed. There is no explanation for this excess intake. The submission of the petitioner that he should be granted parity in terms of the order of the Single Judge of the Allahabad High Court dated 05.05.2017 does not have any binding force on this court. This court is not bound by the view taken by the Allahabad High

Court. Learned counsel for the respondent has rightly relied upon the judgment of the Apex Court delivered in (200) 7 SCC 238 *Mallikarjuna Mudhagal Nagappa and Ors vs State of Karnataka & Ors* to make a submission that a wrong once permitted should not be allowed to be perpetrated; this was a case relating to medical admissions where illegal admissions which had been sought to be ratified had been declined. The observations of the Apex Court in this contention read as under:-

“State of Punjab v. Renuka Singla

8. The admission in medical course throughout India is governed by different statutory provisions, including regulations framed under different Acts. During last several year efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter-attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ petitions and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. (SCC p. 178, para 8)

State of Maharashtra v. Vikas Sahebrao Roundale

Slackening the standard and judicial fiat to control the mode of

education and examining system are detrimental to the efficient management of the education. The directions to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Consitution, directing ther appellants to permit the students to appear for the examination etc. (SCC p.439, para 12)”

12. This Court endorses this submission of the respondent. This court is, accordingly, not inclined to grant any relief to the present petitioner. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 12, 2017
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