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

+ LPA 511/2017

OM SAI PRIVATE ITI Appellant
Through Mr. Sanjay Sharawat, Advocate

versus

DIRECTORATE GENERAL OF TRAINING & ANR

..... Respondents
Through Ms. Meghna Rohatgi and Mr. C.M.
Goyal, Advocates for R-1
Mr. Sagar Shivam, Advocate for
Mr. Vikas Chopra, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

01.08.2017

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1. The present appeal is directed against the order dated 24.07.2017 passed by the learned Single Judge in W.P. (C) No.6252 of 2017. The writ petition preferred by the appellant has been dismissed by the impugned order. The writ petition has been preferred by the appellant to seek the quashing of the decision taken by respondent no.2, namely, Quality Council of India (QCI) / National Accreditation Board for Education & Training (NABET) – the assessor on 10.07.2017, by which the petitioner/ appellant's application to seek accreditation and consequent affiliation was rejected. The appellant sought a direction to respondent no.2/ QCI to permit the appellant to upload the certificate issued by the concerned Tehsildar in

respect of Non-Conformities (NCs) raised by respondent no.1. The appellant also sought a direction to respondent no.2 to process and decide its application for grant of accreditation and to forthwith send the same to respondent no.1/ Directorate General of Training (DGT).

2. The background in which the writ petition had been preferred may be noted. On 15.04.2016, the appellant made an application to seek affiliation for 6 (2+2+2) units in “Electrician trade” and 6 (2+2+2) units in “Fitter trade” from respondent No.1 DGT in response to applications invited by the DGT on 13.04.2016. The appellant claims to have completed the Desktop assessment which was accepted by the respondent No.2. The site visit of the appellant was fixed on 22.06.2016. It appears that after the site visit, several NCs were pointed out by the QCI. However, it appears that they were not cleared in time and consequently, the appellant could not secure the affiliation in respect of the academic session 2016-17.

3. The respondent No.1-DGT issued a communication dated 26.05.2017 to the respondent No.2-NABET to take a decision to complete the process of accreditation in respect of pending applications with QCI. The appellant’s case was also one of those which were required to be taken up for consideration. On 27.06.2017 the QCI visited the site of the appellant. Following the site visit, the QCI raised 22 NCs on 29.06.2017 which the appellant was required to remove within three days i.e. by 02.07.2017.

4. The case of the appellant is that since 30.06.2017 was a Friday, the appellant was not able to collect the necessary document for removal of one of the NCs, viz. the certificate from the competent authority, though he had

applied for obtaining the requisite document from the BDO/Tehsildar/SDO/SDM's office on 30.06.2017 itself. However, since 01.07.2017 and 02.07.2017 were Saturday and Sunday, respectively, the requisite certificate could not be obtained by 02.07.2017. The portal of the respondent QCI qua the appellant was open only up to 02.07.2017. Consequently, the appellant uploaded the requisite documents on the portal of the QCI on 02.07.2017 so far as the 21 NCs were concerned. However, in respect of the 22nd NC relating to the Certificate, to be obtained from the BDO/concerned competent Authority - showing that the land is not covered by any master plan, the said certificate could not be made available on 02.07.2017. Thus, the appellant, in its wisdom, gave its own certificate to this effect.

5. The Certificate was eventually issued by the Tehsildar concerned only on 04.07.2017. The appellant states that when it attempted to upload the said Certificate issued by the Tehsildar concerned on the website of QCI on 04.07.2017, the portal was non-functional and was found closed and, consequently, the said document could not be uploaded. On 10.07.2017 the appellant's application was rejected by the respondent QCI due to failure of the appellant to furnish the requisite Certificate from the competent Authority. Consequently, the appellant preferred the writ petition in question.

6. Before the learned Single Judge, the respondent-QCI, which had initially raised two objections, withdrew the first objection which reads as under:-

“1. The declaration regarding name: The declaration regarding name should mention the Full name of the ITI without abbreviation, it's location and should be signed and stamped by the Chairman.”

7. The case of the appellant before the learned Single Judge was that in the case of ***Maharaja Agarsain Private ITI Vs. Directorate General of Training and Anr.***, in WP (C) 6035/2017 this Court had, vide its order dated 18.07.2017, held in similar circumstances that the time for uploading the documents in satisfaction of the NCs should be extended to 04.07.2017, since 01.07.2017 and 02.07.2017 were holidays being Saturday and Sunday respectively. The Court had interpreted the three days' time granted for removal of NCs as three working days. The appellant sought parity with the said order of the Court and claimed that since the Certificate had been issued by the Tehsildar only on 04.07.2017, and the appellant attempted to upload the same on the very same day without success, the time for deposit/uploading of the said document should be extended.

8. The respondent No.2-QCI, on the other hand, sought to distinguish the case of ***Maharaja Agarsain Private ITI*** (supra) by contending that, unlike in the case of ***Maharaja Agarsain Private ITI*** (supra), the appellant had consciously uploaded its own Certificate despite being aware that the said Certificate was not in order. In the case of ***Maharaja Agarsain Private ITI***, the ITI had not uploaded any document since the same was not available. It was in this background that the Court had permitted the uploading of the documents belatedly in the said case.

9. The submission of Mr. Sharawat, learned counsel for the appellant is that the respondent No.2-QCI was granted time till 30.07.2017 by the

respondent No.1-DGT to submit its report after processing all pending applications. Learned counsel submits that in the aforesaid background, no harm or prejudice would have been caused to the respondent No.2-QCI, if it had granted two additional working days to the appellant for submission of the requisite document, namely the Certificate from the competent Authority, which the appellant could not possibly arrange within the time frame fixed by the respondent, for reasons beyond its control. Learned counsel for the appellant has pointed out that in several other cases, the respondents have extended the time in respect of the applicants, who could not submit the documents within the time granted by the respondent No.2-QCI.

10. Learned counsel for the appellant has drawn the attention of the Court to the case of *Shiv Shakti Private Industrial Training Institute* with Permanent Application no.A16000266. It is pointed out that in this case, on-site inspection was done by the DGT on 17.06.2017; the NCs were raised on 22.06.2017 granting three days' time for removal thereof; the applicant Institute could not upload the response to the NCs within the time granted, and therefore, the said Institute vide its e-mail dated 27.06.2017 sought extension of time by stating that it was not aware about "ITI NC reply app" and that nobody told the applicant about the ITI NC reply app. The applicant also stated that it had uploaded its data on the website of NABET which was not running till Sunday, 25.06.2017; on the following day i.e. Monday, 26.06.2017, the respondent "as a special case" granted one last chance to the applicant therein to clear all their NC's by 1:00 p.m. on the same day.

11. Mr. Sharawat, counsel for the appellant has pointed out another instance where time was extended by the respondents in the case of '*Chaman Devi Para Medical Private ITI*'. In this case the inspection of the Institute was conducted on 13.07.2017; the NCs were raised on 17.07.2017; the three days period granted for removing NCs expired on 20.07.2017; Fresh NCs i.e. Re-NCs were generated by the respondent on 25.07.2017 and time was extended by three days for removal of the NCs.

12. Mr. Sharawat, counsel for the appellant therefore submits that there was no impediment for the respondent to extend the time for the appellant, particularly when the ruling in the case of *Maharaja Agrasain Private ITI* (*supra*) had already been rendered by this Court on 18.06.2017, holding that three days time for removal of NCs should be interpreted as three working days.

13. Learned counsel for the respondent No.2-QCI, on the other hand, has argued that time was extended generally in respect of Institutions vide e-mail dated 27.06.2017 since "*some of the ITI applicants were not able to reply to their SV NCs raised in their portal as they were not aware regarding the process involved in replying to the SV NCs in the portal/App.*" and, therefore, submits that this extension of time was not confined to '*Shiv Shakti Private ITI*'. He further submits that in the case of '*Chaman Devi Para-Medical Private ITI*', time was not extended in respect to NCs which had been raised at the initial stage after the site inspection, and it was a case of further NCs being raised. Consequently, time was granted for removing the same. Learned counsel further submits that once response to NCs is received from an applicant, the same are examined before placing the same

in Accreditation Committee meeting. In cases where documents may be dim etc., the applicants are granted time to rectify the defects in the documents.

14. On an inquiry by the Court, the learned counsel for the respondents has not been able to point out any laid down guidelines detailing therein as to in which cases, while processing the applications/cases, the applicants may be granted further time to remove the defects.

15. It is clear that the Officers of the respondent QCI are functioning without any laid down guidelines and there is no clarity in respect of grant of extension. It remains within the discretion of the Authority examining the cases as to whether or not to grant another opportunity to make up for the deficiency in the documents. In our view, this is bound to lead to discrimination and arbitrariness. Since the respondent-QCI is acting as a delegate of the DGT in the matter of accreditation, it is equally bound by the principle of equality as enshrined in Article 14 of the Constitution of India. The respondent-QCI cannot resort to 'pick and choose' in the matter of grant of further time for removal of NCs by some of the applicants while denying such facilities to others.

16. The argument of learned counsel for the respondent/ QCI that the case of the appellant is distinguishable from that dealt with by the Court in *Maharaja Agarsain Private ITI* (supra) also has no merit. The distinction sought to be drawn by learned counsel for the respondent is that in the case of *Maharaja Agarsain Private ITI* (supra), the applicant had not uploaded the documents to remove the NC within the time granted for the said

purpose i.e. by 02.07.2017, since the relevant documents were not available with the applicant. However, the appellant in the present case, consciously uploaded the self certificate to remove the NC rather than furnish the certificate issued by the competent authority, namely, the Tehsildar. We fail to appreciate as to how an applicant who has not furnished any document to remove the NC can be better placed than an applicant who has furnished his self certification, when the reason for non submission of the certificate issued by the competent authority in both the cases is the same, namely, the fact that 1st and 2nd July being holidays, the certificate could not have been obtained and uploaded by the close of 02.07.2017. The respondent/ QCI did not put the appellant to notice that it should not upload its own self certificate and should seek extension of time for submission of the certificate issued by the competent authority. There is no pre-declared procedure or course of action formulated by the respondent/ QCI to guide the applicants in such like situations. If the appellant in its wisdom submitted a self certification while awaiting the certificate issued by the competent authority in view of the fact that the time granted for uploading the documents to remove the NCs was expiring on the evening of 02.07.2017, the same cannot be to its detriment.

17. We are also anguished with the approach displayed by the respondents, in dealing with the applications seeking accreditation/ affiliation. The respondents appear to have failed to keep in mind the fact that it is the policy of the Government to encourage the setting up of ITIs all over the country. The approach of the respondents has to be reasonable and encouraging towards such Institutes, and their endeavour should be to

encourage the setting up of the Institutions, rather than to act with a rigid, obstructive, uncooperative and whimsical approach. These Institutions are set up by the entrepreneurs with large amounts of investments, and to reject the applications on account of the deadline set by the respondents not being met (which does not appear to be of essence, considering the fact that the respondent/ QCI was required to submit its report to the DGT by 30.07.2017, and the respondent/ QCI, admittedly, *suo moto* also extends the said deadline in some undefined cases), would be unreasonable, and can lead to ruination of the enterprise, since the Institutions would not be able to admit trainees at least for a year.

18. We may make it clear that the aforesaid observations made by us should not be understood to mean that we expect the respondents to relax their standards or to overlook the NCs which they find upon inspection of the institutions. The respondents should strictly enforce the norms and ensure removal of all NCs to their satisfaction. However, the approach of the respondents while dealing with the applications should be reasonable, keeping in view the realities of life. Once the appellant had been granted three days time to remove the NCs, including the NC in relation to submission of the certificate from the competent authority, the appellant was entitled to at least a reasonable time to procure the relevant documents from the competent authority. If public holidays intervened in the period granted for removing of the NCs, the respondents ought to have extended the time appropriately.

19. In these circumstances, we are of the view that the respondents should have granted at least two additional days' time to the appellant to submit the

requisite Certificate from the competent Authority, which admittedly, had been obtained by the appellant on 04.07.2017 i.e. well before the close of the last date i.e. 30.07.2017. The appeal is accordingly allowed and the impugned order is set aside.

20. Learned counsel for the respondent No.2-QCI submits that the QCI has already submitted its report in respect of 1955 Institutions on 31.07.2017 as required by the respondent No.1-DGT. In these circumstances, the DGT shall take requisite steps in compliance of this order within 24 hours of receipt of this order, by sending appropriate communication to the respondent No.2-QCI to call for a fresh report qua the appellant. The DGT is directed to allow the respondent No.2-QCI to submit its fresh report in relation to the appellant within five (05) days of receipt of this order, as sought for by the learned counsel for the QCI. The report shall be prepared by the QCI by taking into account the Certificate obtained by the appellant from the competent Authority on 04.07.2017. The appeal, accordingly, stands disposed of.

21. A copy of the order be given *dasti*.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 01, 2017

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