

In the High Court of Judicature at Madras

Dated : 20.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.467 of 2019

Sri Shanmugha Educational Charitable  
Trust, rep.by its Chairman Mr.K.  
Shanmugham, Tiruchengode, Namakkal  
District established and administering  
Sri Shanmugha College of Engineering  
and Technology, Morur Post, Sankari  
Taluk, Salem District. ... Appellant

Vs

- 1.The Member Secretary, National  
Board of Accreditation, 4<sup>th</sup> Floor,  
East Tower, NBCC Place,  
Bhisham Pitamah Marg, Pragati  
Vihar, New Delhi-3.
- 2.The Member Secretary, All India  
Council for Technical Education,  
Nelson Mandela Marg, Vasantkunj,  
New Delhi-70. ... Respondents

APPEAL under Clause 15 of the Letters Patent against the  
order dated 29.1.2019 made in W.P.No.2486 of 2019.

Prayer in W.P.No.2486 of 2019:-

Writ Petition filed under Article 226 of the Constitution of  
India, to Issue a Writ of Mandamus directing the 1st respondent  
to consider the representation dated 03.01.2018 for grant of NBA  
accreditation to Electronics and Communication Engineering and  
Mechanical Engineer Departments of the petitioner college (Sri  
Shanmugha College of Engineering and Technology) in the light of  
the records available and in accordance with law.

For Appellant : Mr.Prabhu Mukunth Arunkumar

For Respondents : Mr.B.Rabu Manohar, SCGPC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.D.Prabhu Mukunth Arunkumar, learned counsel for the appellant and Mr.B.Rabu Manohar, learned Senior Central Government Panel Counsel accepting notice for the respondents.

2. This appeal is directed against the order dated 29.1.2019 in W.P.No. 2486 of 2019.

3. The appellant filed the said writ petition seeking a direction to the first respondent to consider the representation dated 03.1.2018 for grant of NBA accreditation to the Electronics and Communication Engineering and the Mechanical Engineering Departments of the appellant college by taking into consideration the relevant records available with the appellant.

4. The Expert Team constituted by the National Board of Accreditation (NBA) conducted an on-site evaluation of the programs conducted by the appellant institution namely the Mechanical Engineering and the Electronics and Communication Engineering on 27.7.2018 and 29.7.2018. The report submitted by the Expert Team was stated to have been considered by the concerned Committees constituted for that purpose in the NBA. The first respondent, by communication dated 18.10.2018, informed the appellant that the Competent Authority in the NBA had not accredited the Mechanical Engineering program as well as the Electronics and Communication Engineering program.

5. So far as the Electronics and Communication Engineering program is concerned, it is stated that this has not been accredited though the appellant secured 628 marks in pursuance of the visit by the Expert Team, which was reduced to 590 marks as per the observations made and indicated in the annexure to the letter dated 18.10.2018. In the annexure, the reason for non accreditation of the Electronics and Communication Engineering program had been stated to be based on the inconsistency in the marks awarded in parameters 1, 2 and 7 vis-a-vis the comments/observations made by the Experts and the Chairman of the visiting team and the concerned Committees in the NBA had moderated the marks in alignment with the comments/observations of the experts. The communication dated 18.10.2018 further stated that the copies of the reports of the Chairman of the visiting team and the Evaluators' reports in respect of the two programs were annexed and that if the appellant is not satisfied with the decision of the NBA, they may appeal within 30 days of the receipt of the said communication giving reasons for the

same and paying requisite fees.

6. The appellant sent a representation dated 29.11.2018 to the first respondent, in which, apart from stating other things, the appellant stated that they had not decided to go in for appeal, as certain mistakes had been committed based on assumptions and therefore, requested to consider the appellant's queries and make necessary measures to constitute a new Moderation Committee.

7. It appears that there was no response to the said representation. Hence, the appellant sent a representation to the Hon'ble Minister for Human Resources Development, Government of India on 29.11.2018, pursuant to which, the first respondent, by communication dated 17.12.2018, informed the appellant that if the appellant is not satisfied with the decision of the NBA, they may appeal within 30 days of the receipt of the communication giving reasons for the same and paying the requisite fees. Thereafter, the appellant sent another representation dated 03.1.2019 stated to have been presented in person in the office of the first respondent on 04.1.2019. Immediately thereafter, the appellant filed the said writ petition.

8. The learned Single Judge, by order dated 29.1.2019, disposed of the said writ petition directing the appellant to approach the Appellate Authority within a time frame. It was also made clear that if the appeal is filed, the Appellate Authority was directed to consider the same in accordance with law.

9. The learned counsel for the appellant has pointed out various discrepancies in the manner, in which, the assessment was made and submitted that the first respondent should be directed to consider their representation and redo the entire exercise once again or at least to consider the representation taking note of the facts mentioned therein and take a fresh decision in the matter.

10. The learned counsel for the appellant has drawn the attention of this Court to Clause 3.2 of the Policy framed by the NBA and submitted that the appellant institution would fall within Tier II and that while making an assessment, the focus for outcome based criteria has been reduced significantly thereby enhancing the focus on the output based criteria. Thus, the submission of the learned counsel is that if such parameters were adopted, then the error, which has crept in in the process of accreditation, could have been avoided and that the programs of the appellant would have been accredited.

11. It is the further submission of the learned counsel for

the appellant that the outcome parameters, which are to be applied to Tier I institutions have been applied, which should not have been done because the appellant institution is an affiliated institution to Anna University and that the syllabus and the entire course program are as framed by the Anna University and that therefore, the assessment should have been done on output based criteria.

12. In our considered view, these issues are technical in nature to be considered by the appropriate Authorities and we would not be justified in rendering any opinion at this stage of the matter since the first respondent is yet to take a decision on the representation given by the appellant.

13. The learned counsel for the appellant is fair enough in his submissions that the arguments, which were made before us with regard to output based assessment or outcome based assessment, were not mentioned in the affidavit filed in support of the said writ petition, but have been raised in the said writ petition as well as in this writ appeal.

14. Clause 9 of the Policy deals with Grievance Redressal Mechanism. Clause 9.1 speaks about Grievance Redressal Cell, to be headed by a person, who possesses considerable experience of not less than 20 years in teaching/ industry/administration with an experience of heading a unit/department. The Grievance Redressal Committee is empowered to examine the grievances and record the same and it consists of three members and the qualification required to be possessed by the members to be eligible to be appointed to the Grievance Redressal Committee is also mentioned in Clause 9.1 of the Policy.

15. Clause 9.2 of the Policy deals with appeal and it states that any institution, which does not agree with any of the decisions of the NBA, may appeal to the first respondent and that any matter related to the process of accreditation will be referred to the Appellate Committee, which will be constituted by the NBA. In terms of Clause 9.3, the Appellate Committee will give an opportunity to the concerned party in the presence of the concerned Chairperson of the Evaluation Team, which conducted the visit. It further states that the institution should present the case with sufficient evidence, as the case stands on the day of visit and based on the information furnished by the institution on the day of the visit, that any additions or modifications made to the information/institution, which will alter the facts of the day of visit, will not be considered for the decision making and that after hearing the case, the Appellate Committee will give recommendation to the General Council, which, in turn, will decide the matter.

16. According to the learned counsel for the appellant, the

communication dated 18.10.2018 states that if the appellant is not satisfied with the decision of the NBA, they may appeal within 30 days of the receipt of the said communication giving reasons for the same and paying the requisite fees.

17. As pointed out by us earlier, even the first representation given by the appellant, they clearly stated that they did not intend to file any appeal, but they requested to reconsider the matter on the available records at the time of visit. This is evident from the representation dated 29.11.2018 and this appear to be the consistent stand taken by the institution in the other representations as well.

18. Mr.Rabu Manohar, learned Senior Central Government Panel Counsel appearing for the respondents, on instructions, would submit that the respondents are willing to consider the representations and take a decision in the matter.

19. In our considered view, the representations can be considered by exercising the power under Clause 9.1 of the Policy, which is a Grievance Redressal Mechanism and this mechanism is in contra distinction with the mechanism provided for an appeal in terms of Clauses 9.2 and 9.3 of the Policy. In such view of the matter, we are inclined to dispose of the writ appeal giving liberty to the appellant.

20. Accordingly, the writ appeal is disposed of giving liberty to the appellant to submit a fresh and comprehensive representation setting out all the facts, which are relevant at the time when the Expert Committee visited the institution. On receipt of such a representation, the Competent Authority shall afford an opportunity of personal hearing to the authorized representative of the appellant and take a reasoned decision on merits and in accordance with law. The appellant shall submit a fresh representation to the first respondent within a period of three weeks from the date of receipt of a copy of this judgment. On receipt of such a representation, the Competent Authority of the first respondent shall consider the same on merits and pass appropriate orders in accordance with law after affording an opportunity of personal hearing within a period of six weeks there from. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Member Secretary, National Board of Accreditation,  
4<sup>th</sup> Floor, East Tower, NBCC Place,  
Bhisham Pitamah Marg, Pragati Vihar, New Delhi-3.

2.The Member Secretary,  
All India Council for Technical Education,  
Nelson Mandela Marg, Vasantkunj,  
New Delhi-70.

+2 cc's to Mr.B.Babu Manohar, Advocate SR.No.15355

+1 cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate SR.No.15647

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RK(CO)  
CSL/20.03.2019



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