

Court No. 22
11.11.2022
(Item No. 15)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 24060 of 2022

Post Graduate Gov. Institute for Physical Education,
Banipur Habra
VS
National Council of Teacher Education & Ors.

Mr. Indranil Roy
Mr. Sunit Kumar Roy
Mr. Debasis Maitra
..... for the petitioner
Mr. Swapan Kumar Datta
Mr. Rajat Datta
..... For the State
Mr. Sauvik Nandy
... for NCTE

The writ petitioner is a College run and managed by the State of West Bengal imparting Physical Education courses both at the Graduate and Post Graduate level. The College was established in 1932.

This is the second round of writ litigation. In the first round of litigation the College challenged the decision of the respondent No. 1 dated September 2, 2019 at **page 83** to the writ petition and the connected show cause notice dated February 21, 2019 at **page 72** to the writ petition. The charges allegedly leveled against the petitioner in the said show cause notice dated February 21, 2019 (for short, the first show cause) were as follows:

“a. Approved faculty list (current) by the concerned affiliating body along with requisite documents.

b. Approved building plan by the concerned competent Govt. Engineer/Authority.

c. Approved building completion certificate by the concerned competent Govt. Engineer/Authority.

d. FDRs towards Endowment fund and Reserve Fund after conversion into joint operation mode as prescribed in the NCTE Regulations, 2014.

e. Confirmation on website updates of the institutions with all details along with affidavit.”

The name of the petitioner in this show cause notice had featured at **page 75** of the writ petition. The said order of the first respondent dated September 2, 2019 was based upon a proceeding held in 272nd meeting of the Eastern Regional Committee (for short, ERC) held on 30th -31st May and 1st June, 2019 at **page 81** to the writ petition.

From the said minute it revealed that the charges leveled against the petitioner were on the two counts, namely, building plan and building completion certificate were not submitted and secondly faculty list not submitted. The reply to the aforesaid show cause was given by its letter dated February 23, 2019 at **page 77** to the writ petition and March 9, 2019 at **page 78** to the writ petition. The

petitioner in its reply also mentioned that, the Principal of the College having had superannuated on retirement on November 30, 2016, the relevant Government authority had taken initiative to fill up the post of Principal and the same was under process.

Challenging the said order dated September 2, 2019 passed by the respondent No. 4 whereby the recognition of the petitioner was withdrawn, the petitioner preferred a statutory appeal. The said statutory appeal was decided by an order dated October 19, 2020 by the relevant appellate authority at **page 97** to the writ petition, where under the said decision of withdrawal of recognition of the petitioner was upheld. This order passed in the statutory appeal was also challenged in the first round of writ petition being **WPA 22441 of 2022** (for short, the first writ petition). An order was passed on September 28, 2022 at **page 145** of the writ petition in the said first writ petition, where under this Court had directed the respondent No. 1 through its competent and appropriate authority to consider the representation of the petitioner dated September 20, 2022. The said first writ petition was disposed of by this Court by a later order dated November 4, 2022, **Annexure 'C'** to this writ petition at **page 164** thereof. The relevant authority of the respondent No. 1 considered the same by its decision dated October 19, 2022, **Annexure 'D'** to this writ petition. From the said decision dated

October 19, 2022 it appears that, the ground for withdrawal of recognition was that **there had been no Principal at the College**. The said decision was taken on the basis of the decision of the meeting of the ERC held on October 11, 2022 at **page 151** to the writ petition and the relevant portions regarding the petitioner institute is available at **page 158** to the writ petition.

From a perusal of the grounds for withdrawal of recognition from the said minute would also show that, the institution had not appointed the Principal then. This minute of ERC dated October 11, 2022 along with impugned decision of the respondent No. 1 dated October 19, 2022 and the show cause notice suffered by the petitioner are impugned in this writ petition filed pursuant to the liberty granted by this Court in its order dated November 4, 2022.

Mr. Indranil Roy, learned counsel appearing for the petitioner submitted that, on a perusal of the said first show cause notice, it would be evident that, the charges mentioned therein never spelt out the charge of unavailability or non-appointment of the Principal, whereas the decision was taken by the respondent No. 1 through out, which was upheld in the statutory appeal for withdrawal of recognition of the petitioner College on the ground of non-availability and/or non-appointment of the Principal. This according to Mr. Roy is a fundamental breach in

conducting a proceeding for withdrawal of recognition against the petitioner. Unless the charges are mentioned in the show cause no decision can be taken on a third charge which was not there in the show cause. Referring to pages 161 and 162 from the writ petition Mr. Roy submitted that, the State has already appointed one Dr. Chandana Chakraborty with full financial and administrative power of the Principal for the petitioner College. He further submitted that, the process for appointment of the Principal at the petitioner College is under serious consideration by the appropriate authority of the State and is in progress. Thereafter, he submitted that, substantial compliance for taking steps for appointment of the Principal has already been taken and for all practical purposes it cannot be contended that no Principal is there or discharging the function of a Principal at the College.

Mr. Roy, further submitted that, pursuant to the direction of this Court the representation was considered by the authority who is subordinate to the appellate authority which ought not to have been done.

Mr. Souvik Nandy, learned counsel appearing for the respondent No. 1 in course of the hearing had placed a second show cause notice dated June 17, 2019 and submitted that, the second show cause notice was also served upon the petitioner and the

petitioner did not purposefully disclose the same. He further submitted that, while replying to the first show cause notice and on repeated occasions from time to time, even in writing, the petitioner admitted that there is no Principal in the College. He submitted that this admission is sufficient to take cognizance of the violation of the statutory provision under the **National Counsel for Teacher Education Act, 1993** (for short, the said Act). Referring to the relevant provisions from the said Act, Mr. Nandy submitted that, the recognition of the petitioner was granted under Section 14 of the Act and the recognition was withdrawn under Section 17 of the Act. By virtue of such provisions the respondent No. 1 is sufficiently armed with power to withdraw the recognition of the petitioner, when there is a statutory violation namely the absence of the Principal at the College and no appointment is there for the said post till now. Mr. Nandy submits that, the points argued by Mr. Roy that, the charges not being mentioned in the show cause for withdrawal of the recognition was done on a third charge at the whims of the respondent No. 1 is not pleaded in the writ petition nor any ground has been taken, therefore, this Court should not take cognizance of the same. He further submitted that, since the issues involved regarding withdrawal of recognition which was granted by the ERC, the ERC is the appropriate jurisdictional authority to withdraw

the same. He further submitted that, pursuant to the direction of this Court the representation of the petitioner was considered by the appropriate authority, which is the ERC under the statute. He further submitted that, Section 18 of the said Act provided for a statutory appeal and the entire impugned action including the issuance of the said show cause notice and the decision for withdrawal of recognition of the petitioner can be challenged before the appellate authority.

Mr. Swapan Kumar Datta, learned senior State counsel has also relied upon the documents at pages 161 and 162 of the writ petition and submitted that, about 50 numbers of students are pursuing the Bachelor Degree in the Physical Education at the said petitioner College. He submitted that, the State has already under taken the steps for appointment of the Principal at the College and he further submitted on instruction that, such appointment process has progressed substantially. Mr. Datta further submitted that, the nature of allegation petitioner has made in this writ petition basically goes at the root of the jurisdiction and violation of natural justice. He submitted that, if the charges were not mentioned in the show cause, the delinquent had no opportunity to deal with it and the decision came on a third charge, which was not there in the show cause, amounts to

violation of natural justice and the writ petition is maintainable, statutory appeal will not be a bar.

After considering the rival contentions of the parties and upon considering the materials on records it appears to this Court that, even if the second show cause notice dated June 17, 2019 is taken into account then there would be two show cause notices, namely, the first one dated February 21, 2019 and the other one June 17, 2019. On a close scrutiny of both the said two show cause notices, it appears to this Court that, absence of Principal or non-appointment of Principal was not a ground in either of the said two show cause notices. A show cause notice is the foundation of a proceeding as initiated in the facts of this case. If a charge which is not disclosed in the show cause, it is not possible for the delinquent to know the same and to deal with the same in its reply, nor can it take any defence thereto, to counter the same. Thus a valuable right of the delinquent to take its defence stands vitiated and defeated. From the reply dated March 9, 2019 submitted by the petitioner in reply to the first show cause, it would appear that, the petitioner replied to the charges mentioned in the show cause and additionally stated and admitted the fact that Principal was not there in the College. This statement of the petitioner cannot be construed as a reply to the charges mentioned in the show cause. It is merely the correct fact that was stated by the

petitioner and was informed to the respondent No. 1. On the basis of such statement or even if the same is taken to be an admission of a fact, the respondent authority cannot and could not have taken any step for withdrawal of the recognition of the petitioner College, in absence of the charge in the show cause that Principal was not there in the College.

In absence of a specific charge on this count not being mentioned in the relevant show cause notice the respondent No. 1 ought not to have penalized the petitioner on such alleged charge. Unless the charge is mentioned in the show cause notice the delinquent would not get any opportunity to deal with it or to explain the said charge. This would amount to violation of the elementary principle of natural justice. It is equally trite that when there is a gross violation of principles of natural justice that amounts to an act without jurisdiction, when an authority proceeds on such basis writ petition is certainly maintainable.

In addition, this Court is also of the view that, the appointment of Principal is not depended on the College authority of the petitioner College. The petitioner College is an independent entity from that of the State Executive, who is authorized to appoint the Principal. There is no fault or latches on the part of the College authority for the reason that the Principal is not there or not appointed. From the records it appears that, the State Executive has

already taken steps and has progressed substantially for appointment of the Principal at the College. The relevant authority for appointment of the Principal is the West Bengal Public Service Commission, over which the College has no control with the withdrawal of recognition of the College the interest of the students shall be prejudiced severely for no fault on their part or on the part of the College.

In view of the foregoing discussions and reasons the **impugned order of withdrawal of recognition dated October 19, 2022, Annexure 'D' to this writ petition along with the relevant decision in connection thereto of the respondent No. 1 as appearing from the minute of the meeting of the respondent No. 1 dated October 11, 2022 regarding the withdrawal of the recognition of the petitioner College stand set aside and quashed. Any other decision or decisions for withdrawal of recognition of the petitioner College including the decision of the appellate authority, on this issue, stands set aside and quashed.**

It is made clear that this order shall not preclude the respondent No. 1 from taking any step or further steps in accordance with law.

In view of the submissions made on behalf of the State, this Court expects that the State shall complete the process and appoint the Principal at the petitioner College preferably within a period of three

months from date subject to compliance of all the formalities strictly in accordance with law.

On the above terms, this writ petition being **WPA 24060 of 2022** stands allowed and disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)