IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

W.P.O. 2897 of 2022

Sanjoy Das

vs

The Union of India & Ors.

For the petitioner	:	Mr. Rupak Ghosh, Adv. Mr. Bidish Ghosh, Adv. Mr. Arindam Paul, Adv.
For the respondents	:	Mr. Mohit Gupta, Adv. Mr. Souvik Biswas, Adv. Mr. Vikash Chopra, Adv. Mr. Sumeet Chowdhury, Adv.
Last Heard on	:	01.02.2023.
Delivered on	:	03.02.2023.

Moushumi Bhattacharya, J.

1. The petitioner seeks a mandamus commanding the respondents to withdraw a decision of the National Accreditation Board for Testing and Calibration Laboratories (NABL) communicated to the petitioner by mail on 18th

June, 2022 by which NABL withdrew the accreditation given to Industrial Quality Controllers (Testing Laboratory). The petitioner is the Chief Executive Officer of the said laboratory and carries on business in the name and style of the said laboratory. The respondent no. 2/NABL is the Constituent Board of the respondent no. 5 (Quality Council of India - QCI). The respondent nos. 3 and 4 serve under NABL. The respondent nos. 2-5 are governed under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

2. The respondent nos. 2-5 say that the writ petition is not maintainable. The respondents take the point of the maintainability on the ground that the NABL offers voluntary accreditation service and was established for providing Government, Industry Associations and Industry in general with a scheme of Conformity Assessment Body's Accreditation which involves third-party assessment of technical competence. It is further said, through learned counsel, that QCI is an autonomous body registered as a society under the Societies Registration Act, 1860 which was set up by the Ministry of Commerce and the Indian Industries represented by CII, ASSOCHAM and FICCI to operate as a National Accreditation Body. Counsel submits that NABL does not have any regulatory authority and the accreditation is only a voluntary act. It is further submitted that obtaining accreditation is not a statutory requirement. Counsel submits that grant of accreditation is not a fundamental right and withdrawal of the same would hence not constitute violation of the fundamental rights guaranteed under Part III of the Constitution. Counsel

further submits that NABL, while granting accreditation, is not discharging any statutory duties.

3. Learned counsel appearing for the petitioner relies on several documents to show that the respondent nos. 2-5 discharge public functions. Counsel submits that QCI was formed by a Cabinet decision and has its own by-laws which in turn controls the Boards, including NABL, which are substantially run from funds from the Union of India. Counsel submits that the respondents owe a positive obligation of public duty in controlling quality standards in every sphere and are hence amenable to the writ jurisdiction of this Court.

4. The documents shown on behalf of the petitioner are relevant for deciding the issue of maintainability of the writ petition. First, the extract of Minutes of Meetings of Cabinet held on 9th February, 1996 shows that the Ministry of Industry, Department of Industrial Development approved setting up of QCI (respondent no. 5) as an autonomous body registered under the Societies Registration Act. The Minutes further show that the Chairman of QCI is to be nominated by the Prime Minister and the Chairman of QCI would in turn nominate the Chairmen of the three Accreditation Boards in consultation with the Board of QCI. The Minutes also record that a contribution of 50% of the seed capital required for setting up of QCI will be made by the Government and an additional Rs. 75 lakhs will be provided in the budget of the Department of Industrial Development. The other clauses in the Minutes record the financial contribution of the Government to QCI. The administrative control

of the Central Government in the affairs of the respondent nos. 2-5 would also appear from the Minutes.

5. Second, the Rules and Regulations of QCI dated 20th January, 1997 shows that winding-up or dissolution of QCI and determination of its debts and liabilities will be dealt with as determined by the Central Government.

6. Third, the General Information Brochure of NABL as amended on 5th July, 2021 also bears testimony to fact that the NABL was set up by the Department of Science and Technology in 1982 and derived its authority from the Government. NABL was merged with QCI in 2016 and was envisaged as a Constituent Board of QCI which derives its authority from the Government and Indian Industry bodies. Further, the main objective of QCI as mentioned in the Memorandum of Association of QCI and amended on 17th June, 2014 is to play a pivotal role in propagating quality standards in all important spheres of activities including education, healthcare, environment protection, governance, social and infrastructure sectors and to lead a nationwide quality movement in the country. The "Key Objectives" of QCI also reflects a similar nationwide leadership role in quality control.

7. The above material leaves little doubt that the respondent nos. 2-5, more specifically NABL and QCI, perform functions which are expressly and necessarily public in nature. These are the repositories of ensuring and adhering to quality control measures in all sectors of governance, industry and environment which is evident from the Memorandum of Association of QCI. These activities have a significant bearing in improving the quality of life and

well being of citizens of India. There is hence a clear public element in the duties and obligations of respondent nos. 2 and 5 namely NABL and QCI respectively.

8. Besides the above, the financial control and administrative presence of the Central Government in both the answering respondents is clear from the Minutes of Cabinet Meeting as well as the Memorandum. The Chairman of QCI being nominated by the Prime Minister is a reflection of the administrative control exercised by the concerned Ministry of the Central Government upon the said respondents.

9. From the material shown to the Court, this Court is convinced and accordingly holds the writ petition to be maintainable.

10. *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology; (2002) 5 SCC 111*, held that the definition of 'State' in Article 12 had undergone a radical change in recent years. The Supreme Court held that a body which has public or statutory duties to perform for the benefit of the public and not for private profit would come within the fold of Article 226 (Ref. *Rajasthan State Electricity Board, Jaipur vs. Mohan Lal; AIR 1967 SC 1857*). Paragraph 40 of the Report also expressed the opinion of the Supreme Court that the tests formulated in *Ajay Hasia vs. Khalid Mujib Sehravardi; (1981) 1 SCC 722*, have undergone a change and the question in each case would be whether in the light of the cumulative facts, the body is financially, functionally and administratively dominated by or under the control of the Government. The control must be particular to the body and must be pervasive. In *Ramkrishna*

Mission vs. Kago Kunya; (2019) 16 SCC 303, the Supreme Court summarised the jurisprudence on the subject and held that the function of an organisation must be of a character which is closely related to the functions which are performed by the State in its sovereign capacity and even a private body can be amenable to writ jurisdiction if it performs public functions which are normally expected to be performed by the State or its authorities.

11. The decisions relied on by counsel appearing for the respondents namely *Ajay Hasia* and *Ramana Dayaram Shetty vs. International Airport Authority of India; (1979) 3 SCC 489* were considered in *Pradeep Kumar Biswas* and found to have considerably been expanded by later decisions on the question of amenability to writ jurisdiction. The Supreme Court held that functional tests were necessary to assess whether the obligations and duties exercised by the entity are of public importance and fundamental to the life of the people.

12. *Chander Mohan Khanna vs. National Council of Educational Research and Training; (1991) 4 SCC 578* is factually distinguishable from the present case since the Supreme Court was of the view that the activities of the NCERT were not related to governmental functions and were conducted by educationists. *Lieutenant Governor of Delhi vs. V.K. Sodhi; (2007) 15 SCC 136,* is also distinguishable on facts and the Supreme Court was of the view that issuing a direction against the State Council of Educational Research and Training (SCERT) would frustrate the very objective with which a society like SCERT is created. The Supreme Court also found that SCERT was not financially or administratively dominated by the Government.

13. In view of the above discussion, the respondent nos. 2-5 are accordingly held to be amenable to the writ jurisdiction of this Court. WPO 2897 of 2022 is therefore found to be maintainable and will be tested on merits.

14. On the merits, the petitioner is aggrieved by a mail of 18.6.2022 from NABL whereby the accreditation of the petitioner's Testing Laboratory was put under the withdrawal category. The reason for the impugned action/ threat was that the petitioner's Conformity Assessment Body (CAB) having used a false accreditation certification. Counsel appearing for the petitioner submits that the impugned decision was taken in violation of the principles of natural justice. Counsel submits that NABL did not serve copies of the report / documents relied on by NABL in coming to the impugned decision. Counsel urges that the petitioner had a right to be put on notice of the complaint and the charges alleged before the impugned action taken by NABL.

15. Counsel appearing for NABL places documents to show that the petitioner's company was using a Certificate/ Logo during the period when the petitioner did not have NABL's accreditation. Counsel further submits that NABL did not have any role in the complaint made against the petitioner with reference to the questionable accreditation logo.

16. The documents in the writ petition show that petitioner had written to NABL on 14.1.2022 with regard to the complaint bearing no. 97 of 2021 wherein the petitioner denied the basis of the complaint and that the petitioner was keen to know the source of the complaint. The petitioner accordingly requested NABL to share a copy of the Report and complaint to enable the

petitioner to determine the veracity of the same. The subsequent mails exchanged between the parties reveal that NABL did not share the complaint or the Report and instead asked the petitioner to attend a personal hearing for NABL to take a decision in the matter. The petitioner continued to request for the documents including the complaints and Report by way of a letter to the Officer In-charge, Burtolla Police Station on 28.7.2022 and to NABL on 12.9.2022. The writ petition was thereafter filed on 7.11.2022.

17. The Supreme Court in *T. Takano vs. Securities and Exchange Board of India; (2022) 8 SCC 162* dwelt upon the key objectives of disclosure of information namely reliability, fair trial, transparency and accountability. The Supreme Court held that the purpose of disclosure of information is not only to prevent errors in the verdict but also to fulfill the larger institutional purpose of fair trial and transparency and proceeded to hold that there is a duty to disclose documents which have been relied on by the Investigating Officer even if the Investigating authority denies placing reliance on certain documents. In essence, the entire material which may have a bearing on the decision of a quasi-judicial authority or may influence the outcome of an adjudication leading to award of a penalty must be disclosed to a delinquent.

18. In the present case, NABL has admittedly failed and refused to disclose the relevant materials including the complaint and the Report to the petitioner. This failure preceded the impugned decision to withdraw accreditation to the petitioner's new laboratory. Therefore, the petitioner was kept in the dark at the time of the impugned decision as to the documentary/factual basis thereof.

This means that the petitioner did not have the relevant material at his disposal to effectively rebut the contents of the complaint and the Report which were used against the petitioner. This was all the more necessary since NABL came to certain unilateral findings with regard to the petitioner's alleged fraudulent activities. The fact of a few documents being shown to the petitioner in the personal hearing will not detract from NABL's duty to disclose all the documents relied upon before the impugned decision was taken. *T. Takano* makes it clear that the authority cannot selectively choose to suppress documents which would have a bearing on fair trial. NABL in this case has not disclosed relevant documents to the petitioner before issuing the impugned mail of 18.6.2022. The failure to supply the material assumes significance by reason of the withdrawal of accreditation facilities to the petitioner. NABL has used its monopoly in the field to the detriment of the petitioner.

19. This Court is hence of the view that the impugned communication cannot withstand the test and criteria laid down by the Supreme Court to preserve the principles of natural justice. WPO 2897 of 2022 is accordingly allowed and disposed of by quashing the impugned communication dated 18.6.2022 and directing the respondent National Accreditation Board for Testing and Calibration Laboratories (NABL) to furnish all relevant materials to the petitioner with regard to the impugned decision and to call the petitioner for a fresh hearing in the matter after serving of the documents to the petitioner. The entire exercise shall be completed within a period of 4 weeks from the date of this judgment.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)