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W.P.(MD)NO.16319 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16319 of 2021 and
W.M.P.(MD)Nos.13174 & 13176 of 2021

Good Shepherd College of Education,
Holy Cross College Road,
Nagercoil,
Kanyakumari District,
Rep. by its Secretary,
P.George.

... Petitioner

Vs.

1. The Regional Director,
Southern Regional Committee,
National Council for Teacher Education,
G-7, Sector-10 (Near Sector-10 Metro Station),
Dwarka, New Delhi – 110 075.
2. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Higher Education Department,
Secretariat, Chennai – 9.
3. The Registrar,
Tamil Nadu Teachers Education University,
Adjacent to Government High School,
Gangaiamman Koil Street,
Karapakkam, Chennai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the record relating to the impugned order passed by the first respondent in his proceedings in



F.SRO/NCTE/APSO3681/B.Ed./TN/2021 dated 02.09.2021 and quash the same as illegal.

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For Petitioner : Mr.M.Ajmal Khan,
Senior counsel,
for M/s.Ajmal Associates.

For R-2 : Mr.T.Amjad Khan,
Government Advocate.

For R-3 : Mr.F.Deepak,
Standing Counsel.

For R-1 : Mr.Su.Srinivasan

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Standing counsel appearing for the first respondent and the learned Government Advocate appearing for the second respondent and the learned Standing counsel appearing for the third respondent.

2. The petitioner is an institution imparting education in B.Ed. degree course. It challenges the impugned order dated 02.09.2021 passed by the first respondent withdrawing the recognition earlier granted to the petitioner for



conducting B.Ed. programme of two years duration. Even though very many grounds were urged by the learned Senior counsel appearing for the writ petitioner, the issue can be resolved on one short point. The impugned order reads that the institution was issued with final show cause notice on 04.08.2020 and that it failed to submit reply to the final show cause notice and hence, the committee decided to withdraw the recognition.

3. My attention is drawn to the reply sent on 24.10.2020. It was sent through registered post. I wanted to know if the said reply dated 15.10.2020 was received by the first respondent. The learned Senior counsel drew my attention to the averment made in paragraph No.9 in the affidavit filed in support of the writ petition. It has been stated categorically that the reply sent by the petitioner on 24.10.2020 was duly acknowledged by the first respondent. It is further stated in the said paragraph that 401st meeting was held on 11.08.2021 and 12.08.2021 through virtual teleconferencing. The reply dated 24.10.2020 was also placed before the committee. In any event Section 27 of the General



Clauses Act, 1897 can be applied in favour of the petitioner.

Section 27 of the Act reads as follows:-

“ 27. Meaning of service by post.—

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. ”

4. In this case the reply was sent to the proper address and it was also duly registered. Therefore, the



presumption is that it was duly received by the first respondent. The purpose of issuing show cause notice is that it should elicit response and final order should be passed by considering the response. In the final show cause notice, the petitioner was given 21 days time to respond. It is true that the reply was sent after the said period was elapsed. However, this cannot be put against the petitioner.

5. The assertion made by the writ petitioner in the affidavit has not been rebutted by the first respondent by filing counter affidavit. The rule of non-traverse will definitely come into play in favour of the writ petitioner. The learned Standing counsel appearing for the first respondent would contend that this writ petition is not maintainable because the petitioner has not availed the alternative remedy of appeal. I reject this contention. The writ Court always has the authority and power to interfere if violation of principles of natural justice is made out. In the instant case, such violation is too apparent on the face of record.

6. I take judicial notice of the fact that during the



relevant time, the nation was struck by Covid-19 pandemic.

The Hon'ble Supreme Court extended limitation by a general order that was passed on 23.03.2020. In any event, the final order was not passed before the submission of the reply. The final order was passed only on 02.09.2021. If according to the first respondent, the reply was submitted after the lapse of the prescribed period would not be considered, then the order should have been first passed to that effect. Before passing final order, if the noticee seeks adjournment and the request is refused, then the authority must pass an independent order rejecting the request for adjournment before passing final order. Likewise an independent order must have been passed holding that the reply belatedly sent will not be considered; this order must be served on the noticee before the final order is passed. These are elementary principles of administrative law and they have not been taken into account by the first respondent. There is violation of principles of natural justice because the relevant material was not taken into account.

7. In this view of the matter, the impugned order is quashed. It is however open to the first respondent to pass



order afresh on merits after issuing fresh notice to the writ petitioner. With this liberty to the first respondent, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

Index : Yes / No

Internet : Yes/ No

PMU

To:

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G.R.SWAMINATHAN,J.

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