



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5340/2023 & CM APPL 20859/2023**

Date of Decision: **28.08.2023**

IN THE MATTERS OF:

AWDHESH PRATAP SINGH VISHWAVIDYALAYA
DEPARTMENT OF PHYSICAL EDUCATION,
DISTRICT-REWA-486003, MADHYA PRADESH
THROUGH ITS REGISTRAR PETITIONER

Through: Mr. Amitesh Kumar, Advocate.

Versus

NATIONAL COUNCIL FOR TEACHER EDUCATION
G-7, SECTOR-10, DWARKA, NEW DELHI-110075
THROUGH ITS CHAIRPERSON RESPONDENT NO. 1

WESTERN REGIONAL COMMITTEE,
NATIONAL COUNCIL FOR TEACHER EDUCATION, G-7,
SECTOR-10, DWARKA, NEW DELHI-110075
THROUGH ITS REGIONAL DIRECTOR RESPONDENT NO. 2

Through: Mr. Rahul Madan, Standing Counsel

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant petition prays for the following reliefs:-

- a) *issue a writ of certiorari or any other suitable writ or order quashing & setting aside the impugned withdrawal order dated 23.01.2019 issued by WRC and also the Appeal Order dated 26.09.2019 passed by Appellate Authority of NCTE; and*
- b) *issue a writ of mandamus or any other suitable writ, order or direction to the Respondent No.2 to restore the recognition of petitioner university for B.P.Ed. Course with Two Basic Units (100 Seats); and*
- c) *issue a writ of mandamus or any other suitable writ or order or direction to the respondent No.2 to reflect/display the name of petitioner university in the list/category of recognised institutions for conducting B.P.Ed. Course on their website and to inform the Department of Higher Education, Government of Madhya Pradesh regarding recognized status of petitioner university enabling inclusion and participation in the counselling & admission process for admission in B.P.Ed. Course; and*
- d) *pass any such other orders/directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case”.*

2. Learned counsel appearing for the petitioner submits that the petitioner is a State University established and incorporated under the *Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973* (hereinafter referred to as 'Act of 1973'). The petitioner was granted recognition by the Western Regional Committee (hereinafter referred to as 'WRC') on 19.07.1999 for the course of Bachelor of Physical Education (hereinafter referred to as 'B.P.Ed.') with an annual intake of 50 students.

3. Learned counsel for the petitioner, further, submits that after notification of the NCTE Regulations, 2014, the revised recognition order

was also issued to the petitioner on 20.05.2015. For the compliance of the conditions of the said revised order, an initial Show Cause Notice was issued on 01.02.2017, which was duly replied to by the petitioner. It is further submitted that the Final Show Cause Notice was issued to the petitioner for further compliances to be made, however, the same was not received by the petitioner and the impugned decision of withdrawal of recognition dated 23.01.2019 has been taken without verification of the service of the Final Show Cause Notice.

4. He also submits that the petitioner took the categorical stand before the appellate committee of the National Council for Teacher Education (hereinafter referred to as 'NCTE'), that the Final Show Cause Notice was not received by it and without dealing with the said aspect, the appeal has also been dismissed *vide* order dated 26.09.2019.

5. He has placed reliance on the decisions of this court passed in the cases of *Aireen Institution Of Education v. National Council For Teacher Education & Anr.*¹, *Yuva Rashtrasant Bhayyuji Maharaj B.Ed Womens College v. National Council For Teacher Education & Anr.*² and the order dated 19.12.2022 in *Sidh Laharnath Womens S College Of Education v. National Council For Teacher Education & Anr*³ to supplement his stand that a decision cannot be taken in the absence of proof of service of the Show Cause Notice on the institutions.

6. Learned counsel for the petitioner further submits that the appeal of the petitioner was dismissed on the erroneous ground that it does not possess the requisite faculty members on a regular basis. In furtherance of his

¹ 2022:DHC:2708

² W.P.(C) 16576/2022

³ W.P.(C) 16927/2022

argument, he submits that the petitioner had appointed the requisite faculty and had also communicated the said compliance to the respondents *vide* letters dated 18.06.2022 and 21.06.2022, which should have been considered by the respondents.

7. He has also placed reliance on various decisions of this court such as the decision in the case of ***Rambha College Of Education v. National Council For Teacher Education And Anr***⁴ alongwith the order dated 09.08.2017 passed in ***National Council For Teacher Education & Anr v. Rambha College Of Education***⁵ and order passed by the Hon'ble Supreme Court dated 25.01.2018 in ***National Council For Teacher Education & Anr v. Rambha College Of Education***⁶; the order dated 20.12.2019 passed in ***ABC College Of Education And Anr. v. National Council For Teacher Education And Anr.***⁷, order dated 03.12.2020 in ***Asha Devi Mahavidyalaya & Anr v. National Council For Teacher Education And Anr.***⁸, order dated 29.07.2022 in ***Rajiv Gandhi College Of Education v. National Council For Teacher Education & Anr***⁹, order dated 23.08.2022 in ***Rajiv Gandhi College Of Education v. National Council For Teacher Education***¹⁰, order dated 07.10.2022 in ***Smt Prem Lata Maya Devi Agrawal Girls Degree College v. National Council For Teacher Education And Anr.***¹¹, order dated 10.11.2022 in ***Sri Venkateswara College Of Education v. National Council***

⁴ 2017:DHC:1084

⁵ LPA No.535/2017

⁶ SLP Civil (Diary) No.42238/2017

⁷ W.P.(C) No.13542/2019

⁸ W.P.(C) No.9744/2020

⁹ W.P.(C) No.11282/2022

¹⁰ W.P.(C) No.12189/2022

¹¹ W.P.(C) No.8188/2020

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KUMAR RAURAV

*For Teacher Education & Ors*¹² and the decision in the case of *Sana College Of Education v. National Council For Teacher Education*¹³. to emphasise that it is the settled principle of law that subsequent compliances by the institutions have to be considered by the Regional Committees as well as NCTE.

8. In addition to the aforesaid contentions, learned counsel submits that the impugned orders are in violation of the Standard Operating Procedure (hereinafter referred to as 'SOP') of the NCTE as the same mandates issuance of two Show Cause Notices to institutions. Owing to the non-receipt of the Final Show Cause Notice by the petitioner, the SOP has not been followed by the respondents. He buttresses his stand by submitting that the said principle has been reiterated by this court in the order dated 21.12.2021 passed in *Late Madhavrao Tidke Sharirik Shikshan Mahavidyala v. National Council For Teacher Education & Anr.*¹⁴ order dated 16.08.2022 passed in *Shahuraje College Of Education v. National Council For Teacher Education & Anr.*¹⁵ and the decision in *Maryada Purushotam College Of Education v. National Council For Teacher Education & Anr.*¹⁶.

9. Learned counsel for the petitioner submits that even otherwise, the first Show Cause Notice dated 01.02.2017 merely called for certain information from the petitioner and the same cannot be termed as proceeding under Section 17 of the NCTE Act, 1993 leading to issuance of a Final Show Cause Notice. He places reliance on a decision of this court in the case of

¹² W.P.(C) No.15438/2022

¹³ 2023:DHC:466

¹⁴ W.P.(C) 10742/2019

¹⁵ W.P.(C) 13844/2021

¹⁶ 2023:DHC:2369

B.R.T.T College Vs National Council For Teacher Education & Anr.¹⁷ to reinforce his submission that mere calling of information does not amount to initiation of final action under Section 17 of the Act and the subsequent impugned orders passed by the respondents, cannot be sustained.

10. Learned Standing Counsel appearing on behalf of the respondents opposes the submissions and submits that in the instant case, the petitioner did not appoint the required number of faculty on a regular basis and only appointed faculty on contract basis. He, further, explains that even the appellate committee has noted the aforesaid aspect and has held that even on the date of appeal i.e. 25.03.2019, the petitioner had not nominated the required number of faculty on regular basis. He, therefore, submits that under the facts of the present case, since the petitioner does not fulfil the necessary requirements, no interference is called for.

11. I have considered the submissions made by learned counsel for the parties and have perused the record.

12. The order dated 23.01.2019, whereby the recognition of the petitioner for B.P.Ed. course was decided to be withdrawn reads as under:

"WITHDRAWAL ORDER

“WHEREAS, recognition was granted to the institution namely, Awdhesh Pratap Singh University, Department of Physical Education, Rewa-486003, Madhya Pradesh under section 14 of NCTE Act, 1993 for conducting B.P.Ed, course with an annual intake of 50 students vide order dated 19.07.1999.

AND WHEREAS, NCTE promulgated the National Council for Teacher Education, 2014 and issued guidelines for sending letter to the recognized institutions for submission of affidavits for compliance of NCTE Regulations, 2014.

¹⁷ W.P.(C) 8635/2020

AND WHEREAS, an Explanatory Note on implications of the New Regulations for the existing Teacher Education Institutions was forwarded to the institution vide letter dated 23.01.2015 and was advised to take the required action at the earliest and intimate the same to the office within 21 days from the date of receipt of this letter alongwith the affidavit in the prescribed format, failing which the revised order of recognition will not be issued and the recognition granted earlier will become invalid.

AND WHEREAS, the affidavit for compliance of NCTE Regulations, 2014 has been submitted by the institution. Hence, Revised order was issued to the institution on 20.05.2015 for 100 seats.

AND WHEREAS, the matter regarding compliance by the institution of the conditions of the revised recognition order was placed before the WRC in its 255th meeting held on June, 22-24, 2016 and the Committee decided that show cause notice be issued to all such institutions which have submitted affidavits, but have not fulfilled the conditions as required under NCTE Regulations, 2014. Accordingly, Show Cause notice was issued to the institution on 01.02.2017 on the following grounds: -

- 1. Original Staff Profile (1-- Principal/HOD+ 15-Faculties) from the session 2016-17 duly approved by the affiliating body.*
- 2. Originally notarized (not xerox), CLU, NEC, Building Plan and Building Completion Certificate.*

AND WHEREAS, reply submitted by the institution on 10.03.2017 and the matter was placed in 296 a' WRC meeting held on August 28-29, 2018 and the Committee observed that "...Show Cause Notice was issued to the University on 01.02.2017 for appointment of staff as per Appendix-VII of NCTE Regulations, 2014. The University replied on 10.03.2017. The University has submitted a list of five faculty members who are on contract basis. It should appoint regular staff as required under Appendix-VU of NCTE Regulations, 2014. Compliance should be submitted by the University within one month, failing which Recognition will be withdrawn." Accordingly, compliance letter was issued to the institution on 30.08.2018.

AND WHEREAS, reply not submitted by the institution and the matter was placed in 301st WRC meeting held on January 17-18, 2019 and the Committee observed that "...Show Cause Notice was issued to the institution on 01.02.2017 followed by a compliance letter dated 30.08.2018 to which reply has not been received till date. Hence, Recognition is withdrawn from the academic session 2019- 2020. FDRs, if any, be returned.

NOW THEREFORE, the recognition granted to AWADHESH PRATAP SINGH UNIVERSITY, DEPARTMENT OF PHYSICAL EDUCATION, REWA-486003, MADHYA PRADESH, for conducting B.P.Ed. course vide Recognition order dated 19.07.1999 and Revised Recognition order dated 20.05.2015 is hereby withdrawn from the academic session 2019-2020 under section 17(1) of the NCTE Act, 1993.

Further, if the institution is not satisfied by the order, it can prefer an appeal online to the National Council for Teacher Education, Hans Bhawan, Wing- II, 1, Bahadur Shah Zafar Marg, Near nO, New Delhi – 110002 against the order under section 18 of the NCFE Act, 1993, within 60 days of the issued of this order. The guidelines for filing of appeal may be seen on NCTE website."

[Emphasis supplied]

13. The petitioner had taken a categorical stand in the appeal before the appellate committee that the final Show Cause Notice was not served upon the petitioner. The said stand is reflected from the appeal report (*Annexure P-12*) which categorically states as under:-

"The said compliance letter dated 30.08.2018 was not received to us. We were not aware about any such compliance letter was sent to us...."

14. If the order of dismissal passed by the appellate committee is perused, the same indicates that the appellate committee did not consider the aforesaid aspect as to whether the Final Show Cause Notice was actually served upon the petitioner. The appellate committee, however, noted the fact that the faculty were not regularly appointed even on the date of appeal i.e. 25.03.2019.

15. This court has previously dealt with cases involving almost similar controversy and has passed decisions in the cases of *Aireen Institution Of Education (supra)*, *Yuva Rashtrasant Bhayyuji Maharaj B.Ed Womens College (supra)* and *Sidh Laharnath Womens S College Of Education (supra)* holding that the issuance of Show Cause Notice alone is not sufficient, unless there is a proof of service of the notice upon the institution.

The importance of a Show Cause Notice and proof of service thereof, has been succinctly observed in paragraph No.13 of the decision in the case of *Aireen Institution Of Education (supra)*, which reads as under:-

"13.Further as regards the controversy regarding service of the show cause notice dated 29th September, 2020, the Court would lean in favour of Petitioner-institute. Service of show-cause notice is a vital communication for an institute as it affords an opportunity to them to put forth their stand qua the alleged deficiencies, failing which adverse consequences are bound to follow. This opportunity is thus, crucial for the institutes whose recognition and operation are at stake. To prove the service, Respondents have relied upon a dispatch report, but failed to annex any proof of dispatch therewith. The show-cause notice dated 29th September, 2020 mentions the mode of dispatch as "by Speed Post/ Regd. Post" but no speed post receipt or tracking report has been brought on record which can convince the Court that a show-notice was indeed served on Petitioner-institute."

[Emphasis supplied]

16. The same principles have been reiterated in the decisions in *Yuva Rashtrasant Bhayyuji Maharaj B.Ed Womens College (supra)* and *Sidh Laharnath Womens S College Of Education (supra)*.

17. In the instant case, at the outset, it is thus seen that the respondents have not furnished any proof of service of the Final Show Cause Notice on the petitioner, therefore, the impugned decision dated 23.01.2019 is, violative of the principles of natural justice and is also against the mandate of the NCTE Act, 1993. Consequently, the impugned decision dated 23.01.2019 is set aside.

18. As a natural corollary, the order passed by the appellate committee dated 26.09.2019 also deserves to be set aside. Accordingly, the same is set aside. The other aspects of the matter do not require consideration, at this stage.

19. The case of the petitioner is required to be considered by the WRC afresh, within a period of eight weeks. Accordingly, instead of remitting the matter back to the appellate committee, let the fresh consideration be made by the WRC.

20. The WRC would be at liberty to take into consideration the existing infrastructure in the petitioner-institution, keeping in mind the fact that the petitioner is a State University and has been operating the concerned course from the year 1999.

21. Needless to state that the aforesaid directions are passed in view of the peculiar facts and circumstances of the case, specifically the fact that the petitioner is a State University established under a State Act.

22. In view of the aforesaid, the instant petition is disposed of alongwith the pending application.

23. Needless to state that the issuance of restoration order would depend upon the decision to be taken by the WRC on the basis of the exercise to be conducted as directed hereinabove.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 28, 2023

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