



2023:DHC:5555

[1]

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7782/2023 & CM APPL 30056/2023**

Date of Decision: **02.08.2023****IN THE MATTERS OF:**

CHAND BI BI COLLEGE OF EDUCATION FOR WOMEN
(KHUSRO CHARITABLE TRUST)

OPP. MOHD. RAFI SCHOOL, MOMINPURA,
GULBARGA - 585104

THROUGH ITS CHIEF TRUSTEE

DR. MD. ASHFAQ CHULBUL

..... PETITIONER

Through: Mr.Gaurav Arora, Advocate.

Versus

NATIONAL COUNSEL FOR TEACHER EDUCATION

G-7, SECTOR-10, DWARKA, DELHI — 110075

..... RESPONDENT NO. 1

SOUTHERN REGIONAL COMMITTEE

NATIONAL COUNCIL FOR TEACHER EDUCATION

G-7, SECTOR-10, DWARKA, DELHI — 110075

(THROUGH ITS REGIONAL DIRECTOR)

..... RESPONDENT NO. 2

Through: Mr.Rahul Madan, Standing Counsel
for NCTE.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The petitioner-institution has filed the instant writ petition against the order dated 07.01.2022 passed by the respondent-Southern Regional

Committee (*hereinafter referred to as 'SRC'*) whereby, the recognition of the petitioner-institution for running B.Ed course has been withdrawn. The petitioner-institution also challenges order dated 21.12.2022 passed by respondent no.1-NCTE in appeal under Section 18 of the National Council for Teacher Education Act, 1993 (*hereinafter referred to as 'NCTE Act'*).

2. The facts of the case show that the petitioner-institution is a Government aided educational institution. The petitioner-institution is running B.Ed course since 1986, even before NCTE Act came into force. After coming into force of the NCTE Act, the petitioner-institution was granted recognition with retrospective effect.

3. The petitioner-institution was granted recognition by the SRC *vide* order dated 14.10.1996 which has been placed on record as (*Annexure P-2*). Thereafter, *vide* recognition order dated 17.01.2002, the SRC also granted permanent recognition to the petitioner-institution for B.Ed course. After coming into force of the 2014 Regulations, the revised recognition order was issued on 18.03.2015.

4. On account of certain deficiencies in the petitioner-institution, a show cause notice (SCN) was issued by respondent no.1 to the petitioner-institution on 05.11.2019.

5. The petitioner-institution claims to have submitted the reply on 29.11.2019. The SRC recorded its satisfaction with respect to some deficiencies, however, it was found that there were several deficiencies, which were not cured by the petitioner-institution and accordingly, final SCN was issued on 07.10.2021. The petitioner-institution further claims to have replied to the final SCN in terms of a reply dated 07.12.2021. The respondent-SRC however, denies the said fact.

6. It is, thus seen, that on 07.01.2022 the respondent-SRC decided to withdraw the recognition of the petitioner-institution, mainly on the ground that no reply to the final SCN was submitted by the petitioner-institution. The order of rejection of the recognition was challenged in an appeal before the Appellate Authority (*hereinafter referred to as 'AA'*) in terms of Section 18 of the NCTE Act which was also dismissed on 12.07.2022 on the ground that the petitioner-institution has failed to submit the reply to the final SCN.

7. The petitioner-institution, thereafter, filed a writ petition bearing no. W.P.(C) 11788/2022 before this court. This court in terms of order dated 08.08.2022 found that the case of the petitioner-institution was not considered appropriately by the AA and accordingly, the same was remitted back to the AA for reconsideration in terms of the directions passed by this court *vide* order dated 08.08.2022. This court also set aside the order passed by the AA.

8. After matter was remanded back by this court, the AA passed the final order on 21.12.2022 rejecting the appeal of the petitioner-institution and affirming the order of withdrawal dated 07.01.2022 passed by the SRC. The petitioner-institution therefore, filed the instant writ petition.

9. Learned counsel appearing on behalf of the petitioner-institution assails the impugned order passed by the original authority i.e. SRC and also the order passed by the AA. According to him, the AA has only considered four deficiencies. He submits that if the four deficiencies as have been pointed out by the AA are carefully perused, the same indicate that they were not the part of the final SCN.

10. Learned counsel has also explained that without prejudice to his argument, there was sufficient explanation against each deficiency which

was already placed on record by the petitioner-institution and the same has not been considered properly. He elucidates that with respect to the built-up area, the petitioner-institution had already placed on record the building plan which is part of Annexure-9 which clearly demonstrates that the petitioner-institution had approx. 3,500 sq. metres of area.

11. He, therefore, submits that in any case the area which the petitioner-institution possesses is more than 2000 sq. metre as per the requirement under the NCTE regulation. He also draws the attention of this court to various documents including an appeal memo to explain the said deficiencies. Learned counsel has also explained the other deficiencies and he submits that the case of the petitioner-institution has not been considered properly.

12. Learned counsel who appears on behalf of respondent-NCT opposes the submission. He states that the petitioner-institution has failed to submit the proper explanation of the final SCN. According to him, since there was no reply to the final SCN, therefore, the concerned authority has considered the case on the basis of material available before it. He justifies that each of the deficiencies persists and therefore, no relaxation should be given to the petitioner-institution. According to the learned counsel, the AA has passed the impugned order strictly in accordance with the directions given by this court in W.P.(C) 11788/2022.

13. I have heard the submission made by the learned counsel appearing for the parties and perused the record.

14. The AA has noted the following 4 deficiencies, which are reproduced as under:-

"(i) The built-up area shown in the building plan is only 3120 sq. ft.

which is not adequate. As per provisions of the NCTE Regulations, 2014 and norms and standards made thereunder, the minimum required built up area required is 2000 Sq. Meters for running 2 units of B.Ed. programme.

(ii) The institution submitted a notarised copy of land documents dated 26th June, 1989 which is in favour of Md. Ashfaq Ahmed Chulbul. It is neither in the name of society/institution as per provisions 8 (4) (iii) of NCTE Regulation 2014. However, the institution has submitted another land documents as Memorandum of Gift dated 19th January, 2006 in the name of the Trust of the institution whereas the recognition was granted in 2002.

(iii) The Non-Encumbrance certificate dated 20.06.2016 is in favour of Md. Ashfaq Chulbul which is not acceptable.

(iv) The submitted staff list shows that the all the faculty Members was appointment before 9th June, 2017 and the same was approved on 20.11.2021. The proof regarding disbursement of salary of the teaching and non-teaching staff, whether it is being paid through cheque/online payment has also not been submitted."

15. With respect to deficiency number (i) a perusal of appeal memo indicates that the petitioner-institution had submitted the copy of the building plan with sizes as per NCTE norms approved by the Secretary, Gram Panchayat at Kapnoor, which is the competent authority. The building plan placed on record would also demonstrate that the total area of land was 20841 sq.meters. The ground floor built up area is mentioned to be about 15222 sq feet and the first floor built up area is 12186 sq. feet. That apart, the second floor built up area is 10347 sq. ft. It is thus seen that in any case, the same is more than 2000 sq. metres.

16. The second deficiency relates to land document in the name of Dr. Mohammad Ashfaq Ahmad Chulbul. Learned counsel for the petitioner-institution explains that the gift deed was also submitted in the name of the trust and Dr. Mohammad Ashfaq Ahmad Chulbul was one of the Chief

Trustees of the petitioner trust. He, therefore, submits that the petitioner-institution is in operation since 1986 and the NCTE Act came into force in 1993. According to him, the only requirement at the relevant point of time was the sufficient land area with the concerned petitioner-institution. He, therefore, submits that if there was any requirement of land in favour of the society or the trust, the same ought to have been specifically indicated to the petitioner-institution. The petitioner-institution would have justified the same by way of an appropriate explanation. It is thus seen that deficiency number (ii) was not specifically indicated in the final SCN.

17. So far as the non-encumbrance certificate dated 20.06.2016 is concerned, the same is found to be in the name of Dr. Mohammad Ashfaque Chulbul. The same relates to deficiency number (iii). If there was no requirement of having the land in the name of the society for the institutions which are operating before coming into force of the Act of 1993, in that case, such a certificate in the name of Dr. Mohammad Ashfaque Chulbul cannot be rejected. Learned counsel for the petitioner-institution also explains that the land is already in the name of the trust since 2006 and those documents should have been considered in view of the fact that the petitioner-institution is in operation since 1986.

18. With respect to the deficiency number (iv), learned counsel for the petitioner-institution states that since the petitioner is an aided institution, the salary etc. is being paid through Government and more importantly this was not the ground in the final SCN. He, therefore, states that had the same been the part of the final SCN, he would have explained to the concerned authority.

19. In view of the aforesaid, this court finds that the AA has not

considered all relevant aspects while passing the final order. The AA should have considered as to which were the issues pointed out in the final SCN and what was the material already placed on record by the petitioner-institution.

20. In view of the aforesaid, this court finds that the case of the petitioner-institution requires reconsideration.

21. Accordingly, the following directions are issued:

- (i) The order passed by the AA dated 21.12.2022 and of the SRC dated 07.01.2022 are hereby set aside.
- (ii) The recognition of petitioner-institution is restored.
- (iii) Necessary orders are also to be passed by the NCTE. The petitioner-institution is permitted to participate in the counselling and to grant admissions.
- (iv) The matter is remitted back to SRC for fresh consideration. The SRC is directed to conduct a fresh inspection of the petitioner-institution, if necessary, and to issue the proper SCN, pointing out the deficiency, granting sufficient time to the petitioner-institution to submit its reply.
- (v) Depending upon the reply, the SRC would be at liberty to pass appropriate order, as fresh in accordance with law.

22. Accordingly, the instant petition stands allowed. Pending application

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 02, 2023/MJ/SS