

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10347/2021**

Date of Decision: 06.03.2023

**IN THE MATTER OF:**

**KHUSBOO SHARMA,**

WIFE OF MR. AJEET SINGH,

FLAT NO. 263, CITY CO-OPERATIVE SOCIETY,

SECTOR -55, GURUGRAM,

HARYANA – 122011.

..... PETITIONER

Through: Mr. Prashant Bhardwaj & Mr. Aditya  
Pratap Singh, Advocates

Versus

**UNION OF INDIA**

THROUGH THE SECRETARY,

MINISTRY OF SKILL DEVELOPMENT AND

ENTREPRENEURSHIP,

GOVERNMENT OF INDIA.

ROOM NO. 524, SHRAM SHAKTI BHAWAN,

RAFI MARG, NEW DELHI-110001. .... RESPONDENT NO.1

**NATIONAL SKILL DEVELOPMENT CORPORATION**

THROUGH ITS CHAIRMAN,

301, 3RD FLOOR, WEST WING, WORLD MARK 1,

ASSET 11, AEROCITY,

NEW DELHI – 110037.

..... RESPONDENT NO. 2

**NATIONAL COUNCIL OF VOCATIONAL EDUCATION  
AND TRAINING**

THROUGH ITS CHAIRPERSON,

KAUSHAL BHAWAN, B-2,

PUSA ROAD, METRO PILLAR NO. 95,

NEAR KAROL BAGH METRO STATION,

NEW DELHI – 110005.

..... RESPONDENT NO. 3

**HEALTHCARE SECTOR SKILL COUNCIL**

THROUGH ITS CEO,

OFFICE NO.: 711, DLF TOWER A,

7TH FLOOR, JASOLA DISTRICT CENTRE,

NEW DELHI – 110025.

..... RESPONDENT NO. 4

**WELLNESS JIVA PRIVATE LIMITED**

THROUGH ITS DIRECTOR,

21 SUNEJA HOUSE, 1ST FLOOR,

COMMUNITY CENTRE, GULMOHAR ENCLAVE,

SHOPPING COMPLEX, SOUTH WEST DELHI,

NEW DELHI-110016.

AND

B-210, OKHLA INDUSTRIAL AREA,

PHASE-1, NEW DELHI – 110020.

..... RESPONDENT NO. 5

Through: Mr. Bhagvan Swarup Shukla, CGSC  
alongwith Mr. Sarvan Kumar & Mr. Vikrant Kumar,  
Advocates for Respondent No. 1

Ms. Priti Verma, Advocate for Respondent No. 4

Mr. Varun Sharma & Ms. Sanchita Chamoli,  
Advocates for Respondent No. 5

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**J U D G M E N T**

**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner seeking the following reliefs:-

*“a. Issue a writ of mandamus or any other writ, order or direction of similar nature thereby directing the Respondent No. 4 and Respondent No. 5 to grant the certificate of ‘Health and Wellness Coach’ to the Petitioner with effect from the date of declaration of results of the final assessment.*

*b. Issue appropriate writ, order or direction thereby directing the Respondent No. 4 to finally decide the complaint of the Petitioner dated 14.05.2021 and the show-cause notice dated 27.05.2021 issued to the Respondent No.5 in pursuance thereof within strict time frame.*

*c. Issue a writ of certiorari, order or direction of similar nature, thereby calling for records from the Respondent No. 4 – HSSC and strike down the retrospective effect accorded vide the subsequent liability agreement dated 25.08.2021 on the batch of August, 2020 who is affected by the said Agreement though not a party.*

*d. Issue order or direction awarding cost to the Petitioner.*

*e. Issue any other writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case”.*

2. The facts of the case are that the petitioner was enrolled in a Certification Programme/course for the grant of certificate of ‘Health and Wellness Coach’, which is jointly conducted by respondent No. 4- Healthcare Sector Skill Council (HSSC) and respondent No.5-Wellness Jiva Private Limited (Institution).

3. Learned counsel appearing on behalf of the petitioner submits that the criteria for evaluation of the petitioner has been changed after grant of admission to the petitioner and, therefore, the entire action of the respondent No.5-Institution is against the original terms and conditions under which the admission was granted and furthermore, the changed criteria cannot be made applicable retrospectively.

4. Learned counsel appearing on behalf of respondent Nos.4 and 5 raised the preliminary objection with respect to the maintainability of the instant petition. They submit that the respondent Nos. 4 and 5 are not

statutory authorities and, therefore, the present petition for enforcement of the private contract is not maintainable.

5. Learned counsel for respondent No. 5-Institution has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *State of Bihar v. Jain Plastic and Chemical Ltd*<sup>1</sup>, *Arya Vyas Sabha v. Commissioner of Hind*<sup>2</sup> and *D.L.F. Housing Construction Pvt. Ltd. v. Delhi Municipal Corporation and Ors.*<sup>3</sup>, the decision of the Hon'ble Allahabad High Court in *Bio Tech System v. State of U.P.*<sup>4</sup> and the decision of the Hon'ble Guwahati High Court in *State of Manipur and Ors. v. Moirangthem Chaoba Singh*<sup>5</sup>.

6. Learned counsel for respondent No. 4-HSSC has also placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *Kulchhinder Singh & Ors. v. Hardayal Singh Brar & Ors.*<sup>6</sup>, and *Binny Ltd. & Anr v. V. Sadasivan & Ors*<sup>7</sup> and the Hon'ble Bombay High Court in the case of *Shrinivas Vasant Shukla v. College of Physicians and Surgeons, Bombay*<sup>8</sup> and various notifications issued by the Department of Economics Affairs, Ministry of Finance and Ministry of Skill Development and Entrepreneurship, Govt. of India.

7. Learned counsel appearing on behalf of the petitioner in response to the objection made by the respondents relied on the decisions in the cases of *Zee Telefilms Ltd. and Anr. v. Union of India & Ors.*<sup>9</sup>, *Ramesh Ahluwalia v. State of Punjab and Ors.*<sup>10</sup>, *Janet Jeyapaul v.*

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<sup>1</sup> (2002) 1 SCC 216

<sup>2</sup> (1976) 1 SCC 292

<sup>3</sup> (1976) 3 SCC 160

<sup>4</sup> 2020 SCC OnLine Allah 1361

<sup>5</sup> 2005 SCC OnLine Gau 369

<sup>6</sup> (1976) 3 SCC 828

<sup>7</sup> (2005) 6 SCC 657

<sup>8</sup> 1988 SCC OnLine Bom 321

<sup>9</sup> (2005) 4 SCC 649

<sup>10</sup> (2012) 12 SCC 331

*SRM University & Ors.*<sup>11</sup>, *X v. Govt. of NCT of Delhi & Ors.*<sup>12</sup>, *Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. & Ors.*<sup>13</sup>, *Binny Ltd. & Anr. v. V. Sadasivan & Ors.*<sup>14</sup>, *Shanti Construction v. Aavantika Gas Ltd. & Ors.*<sup>15</sup> to show that the Respondent Nos. 4 and 5 perform a public function as private bodies, in as much as they impart education and hence are amenable to this court's writ jurisdiction.

8. I have heard learned counsel for the parties and perused the record.

9. The facts of the case show that respondent No. 4-HSSC is a Society registered under the Societies Registration Act, 1860. The respondent No. 4-HSSC entered into a Memorandum of Understanding ('MoU') dated 20.01.2020 with respondent No. 5-Institution to offer and implement private courses labelled 'Health and Wellness Coach basic and advanced'. As per the aforesaid MoU, the respondent No.5-Institution is stated to be responsible for developing the training content/curriculum and guidelines for the Health and Wellness Module in consultation with respondent No. 4-HSSC. The scope of the MoU is set out in its clauses, which are reproduced as under:

*"Scope*

*1. WJPL to work in collaboration with Health Sector Skill Council (HSSC) to conduct pilot trainings in area of health and wellness as per industry requirements.*

*2. Health and Wellness Coach basic and advanced is the first project identified for implementation.*

*3. WJPL shall be responsible to develop the training content/curriculum and guidelines for the Health and Wellness module in consultation with HSSC.*

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<sup>11</sup> (2015) 16 SCC 530

<sup>12</sup> 2021 SCC OnLine Del 3233

<sup>13</sup> (1991) 1 SCC 212

<sup>14</sup> (2005) 6 SCC 657

<sup>15</sup> AIR 2021 MP 183

*4. The parties shall jointly decide upon yearly training calendar before launch of the program.*

*5. WJPL shall be responsible for conduct of the program including financial and logistics requirements. HSSC shall not be liable for any administrative and financial resources required for conducting the training programs*

*6. WJPL shall conduct minimally 2 batches in a year.*

*7. HSSC shall be responsible to conduct assessment of the learners post training completion*

***8. The parties shall jointly certify learners who successfully qualify in the aforesaid examination and assessment carried out by HSSC. However, it shall be made clear that such certifications does not relate to the certification done by HSSC under National Skills Qualification on Framework.”***

*[Emphasis supplied]*

10. On 13.08.2020, respondent No. 5-Institution commenced the training of the first batch of 11 students for the Certification Programme. It appears that in December, 2020 a request was received by respondent No.4-HSSC from respondent No. 5-Institution for revision of the eligibility criteria for trainees, which was approved by respondent No.4-HSSC on 02.03.2021. It is also seen that on 27.03.2021, upon the completion of training, the respondent No.4-HSSC conducted the final assessment of the first batch of the Certification Programme, including that of the Petitioner. On 07.04.2021, the result of the assessment was declared by the respondent No.4-HSSC. The petitioner failed alongwith all other students of the first batch. As per the criteria evolved by respondent No.4-HSSC on the recommendations of respondent No.5-Institution, all students of first batch were declared failed. A minimum of 70% was required to pass the assessment and it is stated that the

petitioner herein scored 68% out of 100 and was accordingly found not entitled to a 'Certificate of Participation'.

11. The counter affidavit filed by respondent No.5-Institution, besides the objection with respect to the maintainability of the petition as stated above, also states that the petitioner did not fulfill the eligibility criteria and therefore, he was declared as having failed. He further submits that the reassessment opportunity was provided to the petitioner which has not been availed by the petitioner.

12. A perusal of the facts would clearly indicate that the petitioner has registered himself for grant of certificate with respondent No.5-Institution and respondent No.5-Institution in turn was affiliated to respondent No.4-HSSC. The relevant paragraphs of the student declaration signed by the petitioner while enrolling are reproduced hereunder:

*"7. The Institute has the full discretion to grant or deny admission in the courses that it offers.*

*8. The Institute can change; modify the dates of the certification program without prior notice.*

*9. I understand that admission does not guarantee the certificate. Certificate will be provided only after passing the certification program, with the cumulative score of 80% including the following:*

- i. **Case Study**-Coaching a client (from personal network) for 4-6 weeks and put together a case study demonstrating the application of the knowledge gained in the program*
- ii. **Audio Recording**- Submission of audio recording of any one of the session (except the first and the last) from the above mentioned coaching sessions.*
- iii. **Attendance**- Attendance will be calculated on the basis of all the live training that I shall attend.*

- iv. ***Final Assessment/ Exam-*** *The final exam will be available on the last day of the certification, which is mandatory to attempt. Healthcare Sector Skills Council shall do this assessment. The grading system is completely shared with me and I understand that Attendance has 10% of weightage and Case study, Audio Recording, and Examination has 90% of weightage. Once the final grading is completed, the Institute will send me an announcement and before that the grades may keep changing."*

13. The MoU entered into between respondent No. 4-HSSC and respondent No.5-Institution is not statutory in nature. The same has been incorporated with an object to impart instructions with respect to the concerned field.

14. The concerned course is neither prescribed under any statute nor under any law. The private society, with an object to achieve excellence, has evolved a particular course without any approval or recognition of any authority. It is to be seen that the rights which the petitioner is claiming are flowing from two private contracts i.e. the MoU entered into between respondent No.4-HSSC and respondent No.5-Institution and the agreement between the petitioner and respondent No.5-Institution. The petitioner has prayed for issuance of the certificate. The respondents have stated that the certificate in question cannot be issued as the petitioner does not fulfill the criteria concerned. The evaluation of the petitioner has been conducted by respondent Nos.4 and 5 as per the applicable policy, which is not under challenge.

15. It is seen that normally, the remedy under Article 226 of the Constitution of India is unavailable to enforce a private contract. The writ court in exercise of power under Article 226 of the Constitution of India cannot issue a mandamus to a private society for issuance of a particular certificate, when the certificate is not required to be issued under any statute or in discharge of a public function or as a part of any

public duty. The High Court is not the appropriate forum to entertain such a grievance essentially emanating from a private contract.

16. Under the aforesaid facts, this court is not inclined to accept the prayer made by the petitioner to issue the Certificate of Health and Wellness Coach. Various disputed facts including interpretation of contractual terms between the parties are involved in the instant petition. The petition is accordingly dismissed.

17. The petitioner is, however, at liberty to take up appropriate proceedings in accordance with law before the appropriate forum. Needless to state that this court has not expressed any opinion on the merits of the case.

**PURUSHAINDRA KUMAR KAURAV, J**

**MARCH 06, 2023**

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