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

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Date of Decision: 20.09.2023% LPA 641/2023 & CM APPL. 48593/2023, CM APPL. 48594/2023,
CM APPL. 48595/2023, CM APPL. 48596/2023

THE CHAIRMAN NOORUL ISLAM TRUST Appellant

Through: Mr. Haris Beeran, Mr. Azhar Assees
and Mr. Ranjay N., Advocates.

versus

THE NATIONAL COUNCIL FOR TEACHERS EDUCATION &
ANR. RespondentsThrough: Mr. Govind Manoharan, Standing
Counsel with Mr. Anchit Singla and
Mr. Nishchaiy Sharma, Advocates.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, C.J. (ORAL)**

1. The present Letters Patent Appeal (the "LPA") arises out of an order dated 27.07.2023, passed by the learned Single Judge in W.P.(C.) No. 14861/2021, titled *The Chairman, Noorul Islam Trust v. The National Council for Teacher Education & Anr.*

2. The facts of the case reveal that the Appellant Trust established AL-Azar Training College in 2005-06 with the due approval from National Council for Teachers Education (NCTE), and the college in question is affiliated to Mahatma Gandhi University. The affiliation was granted on

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23.03.2005 and the permission of the NCTE was for an intake of 100 students for 1 year in respect of B. Ed course.

3. In the year 2014, the seats were reduced from 100 to 50, and the Appellant institution continued to impart B. Ed course with an intake of 50 students.

4. The Appellant Trust, thereafter, made arrangements for the additional batch of 50 students as it wanted to enhance the seat intake and on 19.10.2020, submitted an application to the Government of Kerala to grant no objection certificate. The Government of Kerala through higher education department vide order dated 21.10.2020 granted a no objection certificate to the Appellant. The Appellant trust, thereafter, submitted an application to the University for having one more unit of 50 students, meaning thereby, totaling to 100 students for the academic year 2020.21, and the University finally granted permission on 02.11.2020.

5. The Appellant after getting approval from the University submitted formal application to NCTE in the prescribed format along with the requisite fee on 04.11.2020 and, thereafter, preferred a writ petition before the High Court of Kerala at Ernakulam. The Appellant before the High Court of Kerala at Ernakulam in W.P.(C.) No. 25187/2020 made a prayer for issuance of a writ, appropriate order or direction to Southern Regional Committee of NCTE to consider and to pass appropriate orders in the matter of enhancement of seat and a further prayer was made to issue a mandamus commanding the University to include the 50% of the additional seats for centralized allotment process (total 100 seats). The writ petition preferred



before the Kerala High Court was dismissed as withdrawn on the request of Senior Counsel appearing in the matter. The order passed by the Kerala High Court dated 07.12.2020 is reproduced as under:

“1.The petitioner, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 2nd respondent Southern Regional Committee of the 1st respondent NCTE to consider and pass appropriate orders on Ext.P8, without any further delay; a writ of mandamus commanding the 3rd respondent University to include the 50% of the additional seats that may be sanctioned to the petitioner's College by the NCTE, for Centralised Allotment Process, this year itself; and permit the petitioner to effect admissions to the entire seats for B.Ed. that may be sanctioned to the petitioner's College by the NCTE, this year, in case the University is not prepared to make any further allotments this year.

2. On 17.11.2020, when this writ petition came up for consideration, Dr. Abraham P. Meachinkara, the learned Standing Counsel for NCTE, sought time to get instructions.

3. This Court in Oriental College of Teacher Education v. Regional Director, NCTE [2020 (5) KHC 105] has held that without complying with the norms and procedures under the NCTE (Recognition Norms and Procedure) Regulations, 2014, the petitioner institution cannot seek additional intake in B.Ed course. Paragraph 12 of the said decision reads as follows:

12. Regulation 3 of the NCTE (Recognition Norms and Procedure) Regulations, 2014 deals with its applicability. In view of clause (c) of Regulation 5, the provisions under the Regulations, 2014 shall be applicable to matters relating to permission for additional intake in the existing teacher education programmes duly recognised by the NCTE. Regulation 5 deals with the manner of making application and the time limit; Regulation 6 deals



with processing fees; and Regulation 7 deals with processing of applications. For additional intake in B.Ed Course, the petitioner institution has to make an application in the manner specified in Regulation 5, within the time limit prescribed in the said Regulation. Without complying with the norms and procedures under the Regulations, 2014 the petitioner institution cannot seek additional intake in B.Ed Course, by approaching the NCTE with a request to reinstate the annual intake in Ext.P2 order. (underline supplied)

4. Today, when this writ petition is taken up for consideration, the learned Senior Counsel for the petitioner seeks permission to withdraw this writ petition.

Recording the above submission made by the learned Senior Counsel for the petitioner, this writ petition is dismissed as withdrawn”

6. The undisputed facts of the case reveal that the Appellant thereafter has preferred two writ petitions before the High Court of Delhi, and finally preferred a writ petition i.e. W.P.(C.) No. 14861/2021 without mentioning the fact that it had approached the Kerala High Court in respect of similar reliefs by filing a writ petition i.e. W.P.(C.) No. 25187/2020 which was withdrawn. The Appellant in the writ petition preferred before this Court prayed for the following reliefs:

“(i) To issue a writ of Certiorari or other appropriate order or direction to quash the Exhibit P22 order dated 26.11.2021 passed by the NCTE Appellate Authority.

(ii) To issue a writ of Certiorari or other appropriate order or direction to quash the Exhibit P20 minutes of the meeting dated



15.06.2021 as far as it denies seat enhancement to the Petitioner's Institution.

(iii) To issue a writ of mandamus or other appropriate order or direction to direct the Respondent No. 1 and 2 to re-consider the application of the Petitioner College on merits.

(iv) To issue a writ of mandamus or other appropriate order or direction to the 1st Respondent to issue an order to increase the seats in the B.Ed programme from 1 unit to 2 units with a total intake of 100 seats.

(v) to grant such other reliefs as are just and proper in the nature of this case”

7. The relief clause reveals that it was in respect of enhancement of seats from 50 to 100 which was the same prayer made before the Kerala High Court and the most shocking aspect of the case that the Appellant did not disclose the factum of filing a writ petition before the Kerala High Court. In those circumstances, the learned Single Judge dismissed the writ petition with costs. The operative paragraphs of the order passed by the learned Single Judge, as contained in paragraphs 7 to 12 read as under:

“7. Surprisingly, there is no whisper about the fact of approaching the High Court of Kerala and the fact of withdrawing the said writ petition.

8. It is well-settled law that a party who comes to the court by concealing facts is not entitled to relief under Article 226 of the Constitution of India. The Hon'ble Supreme Court in its decision in the case of Arunima Baruah v. Union of India, (2007) 6 SCC 120 has observed as under:

"5. In view of gross concealment of fact by the petitioner, it appears that the petitioner is doing nothing more than forum-hunting. Having failed to obtain any injunction in the civil suit, the



petitioner has resorted to filing the present writ petition. In view of the conduct of the petitioner and a material concealment of fact, I am not inclined to entertain the writ petition. The same is, accordingly, dismissed."

9. A similar view has been taken by the Hon'ble Supreme Court in its decision in the case of *K.D. Sharma v. Steel Authority of India Limited and Others*, (2008)12 SCC 481 :

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim."

10. Relying upon the decision in *K.D Sharma (supra)*, the Hon'ble Supreme Court in its decision in the case of *Shri K. Jayaram and Ors. v. Bangalore Development Authority and Ors.*, (2022) 12 SCC 815 has held as under:

"17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief."



11. When the petitioner-institution seeks to impart education, it must maintain utmost fairness in its actions. The petitioner is expected to approach the court with clean hands. In view of the aforesaid facts and the legal position, this court is of the considered opinion that the petitioner has not approached this court with clean hands. There is no sufficient disclosure by the petitioner. The petition, therefore, requires to be dismissed with heavy costs.

12. Accordingly, the petition stands dismissed with costs of Rs.1,00,000/- to be paid by the petitioner within 90 days from today, failing which the same be recovered from the petitioner-institution as arrears of land revenue.”

8. Learned counsel for the Appellant has argued before this Court that the mistake committed is a *bona fide* mistake and the Appellant after the writ petition was withdrawn from Kerala High Court on 07.12.2020 preferred another writ petition before this Court i.e. W.P.(C.) No. 2041/2021 and the factum of litigation before the Kerala High Court was disclosed. The aforesaid writ petition i.e. W.P.(C.) No. 2041/2021 was disposed of by this Court on 16.02.2021 directing the NCTE to take a decision on the application filed by the Appellant Trust dated 04.11.2020.

9. It has been further stated that another writ petition was preferred by the Appellant i.e. W.P.(C.) No. 3786/2021 and this Court by an order dated 22.03.2021 has directed the NCTE to reconsider the Appellant's application dated 04.11.2020 and the factum of filing a writ petition before the Kerala High Court was disclosed in the aforesaid case. However, the fact remains that the Appellant in W.P.(C.) No. 14861/2021 did not disclose the factum of filing a writ petition before the Kerala High Court and its subsequent withdrawal and, in those circumstances, the learned Single Judge was



justified in dismissing the writ petition as there was suppression of material fact of filing a writ petition before the Kerala High Court, praying for the same relief. Undisputedly, the Appellant is guilty of suppression of material fact, he has not come with clean hands and, therefore, the learned Single Judge was justified in dismissing the writ petition with costs keeping in view the judgment delivered in the case of *Arunima Barua v. Union of India*, (2007) 6 SCC 120, *K.D. Sharma v. Steel Authority of India Limited and Others*, (2008) 12 SCC 481 and *Shri K. Jayaram and Ors.v. Bangalore Development Authority and Ors*, (2022) 12 SCC 815.

10. This Court does not find any reason to interfere with the order passed by the learned Single Judge keeping in view the fact that the Appellant is guilty of willful suppression of material facts and the earlier history of litigation involving the same issue. No case for interference is made out in the matter. The LPA stands disposed of accordingly.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 20, 2023

N.Khanna