



2024:DHC:5381-DB



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

+ LPA 615/2024 & C.M. APPL. 40091-93/2024, CAV. 324/2024

NATIONAL COUNCIL FOR TEACHER EDUCATION
& ANR

.....Appellants

Through: Mr. NK Bhatnagar, Standing
Counsel, NCTE along with Ms.
Pratishtha Majumdar and Kumari
Rupali, Advocates.

versus

DOON VALLEY INSTITUTE OF EDUCATIONRespondent

Through: Mr. Sanjay Sharawat and Ashok
Kumar, Advocates.

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Date of Decision: 19th July, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

MANMOHAN, ACJ : (ORAL)

1. The present appeal has been preferred under Clause X of the Letters Patent Act, 1866, assailing the judgment dated 10th May, 2024, passed by the learned Single Judge of this Court, allowing the W.P.(C) 6277/2024 titled "*Doon Valley Institute of Education vs. National Council for Teacher Education & Anr*" filed by the respondent.

2. The facts germane to the present appeal, shorn of unnecessary details and culled out from the appeal, are as under:

- a) The respondent Trust was formed and registered as a Society under the Societies Registration Act, 1860, on 13th November, 2000. The respondent filed an application with appellant no. 2

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for recognition of a Teacher Training Institute under the name '*Doon Valley Institute of Education*' and also sought permission to conduct B.Ed. Courses with an intake of 100 seats. The said recognition was granted by appellant no. 2, with effect from the year 2004-2005, permitting intake of 100 seats which was subsequently increased to 200 seats from the academic session 2006-2007 onwards.

- b) It is the case of the appellants that the respondent applied to the District Registrar, Firms, and Societies at Karnal, Haryana seeking permission to surrender its registration and requested for the grant of No Objection Certificate (hereinafter referred to as "*NOC*") for permitting its incorporation as a Company. *Vide* a letter dated 15th April, 2011, the permission was granted by the Registrar, and the respondent was duly incorporated as a Private Limited Company. The appellants state that this information was not communicated to them.
- c) The appellant no. 2 observed the said change of constitution of the respondent from a Society to a Company and issued a Show Cause Notice dated 21st March, 2023, to the respondent. The respondent challenged the said Show Cause Notice by filing a writ petition bearing W.P.(C) No. 4853/2023, which was disposed of with a direction to the respondent to submit a response to the Show Cause Notice and the appellants were directed to take a decision. The respondent submitted its reply on 8th May, 2023.
- d) The appellant no. 2 decided to issue a second Show Cause Notice dated 27th June, 2023, which was also challenged by the respondent by filing a writ petition bearing W.P.(C) No.



9752/2023 and this Court disposed of the writ with the same direction as that of W.P.(C) No. 4853/2023. The respondent submitted its reply on 21st August, 2023.

- e) The appellant no. 2 withdrew the recognition granted to the respondent on 15th September, 2023, for running B.Ed. Programme on the ground that the respondent which was earlier registered as a Society, has now been incorporated as a company which is not permissible under the National Council for Teacher Education Regulations, 2014, (hereinafter referred to as “*NCTE Regulations*”). The respondent challenged the same by filing a writ petition bearing W.P.(C) No. 12715/2023 which was disposed of with a liberty to the respondent to prefer a statutory appeal under section 18(1) of the National Council for Teacher Education Act, 1993 (hereinafter referred to as “*NCTE ACT*”). Thus, the respondent filed the statutory appeal before the Appellate Committee as per the NCTE Act and the same was dismissed by the appellants on 12th April, 2024.
- f) The respondent filed the underlying writ petition bearing W.P.(C) No. 6277/2024 assailing the order of the Appellate Committee dated 12th April, 2024 as well as the order withdrawing recognition dated 15th September, 2023. The said underlying writ petition was disposed of vide the impugned judgement directing the appellants to restore the recognition of the respondent under intimation to its affiliating body. Hence the present appeal.

3. Mr. N.K. Bhatnagar, learned counsel for the appellants refers to page 24 of the impugned judgement and reiterates the submissions made therein. In addition to that, he submits that the appellants are the



Education System Regulator and are a statutory body conferred with the task of granting recognition to numerous educational institutions. He submits that in case the institutions are permitted to convert their constitution from a Trust registered as a Society under the Societies Registration Act, 1860, to a Company registered under the Companies Act, 2013, all by themselves and without obtaining requisite permission from the appellants, it would end up in rampant commercialization of education. He further submits that there is no provision in the NCTE Act that permits any institution to change its constitution without obtaining recognition from the appellants.

4. To a specific query by this Court, learned counsel for the appellants submits that though the NCTE Act permits either a society or a company to seek recognition of their institutions from the appellants, yet, the institutions are obligated to inform the appellants and duly obtain an appropriate NOC, if there is any proposal to change their constitution, post recognition. He further contends that if this practice is permitted to continue, it would become a precedent for any institution to change its constitution without informing the appellants thereby rendering the regulatory mechanism, nugatory.

5. He submits that the NCTE Act neither allows nor disallows such practice, rather it is silent about informing or taking permission from the appellants before changing their constitution. This, according to learned counsel, implies that either the respondent should have apprised the appellants prior in time and sought prior approval or ought to have re-applied for the recognition after such change. He submits that as the respondent has done neither, its recognition was rightly withdrawn.

6. *Per contra*, Mr. Sanjay Sharawat, learned counsel for the respondent submits that the NCTE Regulations were initially framed in



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the year 1996 and, thereafter, replaced by fresh Regulations in the years 2002, 2005, 2007, 2009, and lastly in the year 2014. Of all, it was only clause (11) of Regulation 8 titled '*Conditions for grant of Recognition*' of the NCTE Regulations, 2007, which required prior approval of the Regional Committee to be taken in the case of a change of management/society/trust etc. He further submits that this was omitted from the subsequent Regulations of the years 2009 and 2014. He further submits that since the respondent changed its constitution in the year 2011, the prohibition/bar would not apply, post its omission.

7. To the aforesaid argument, Mr. Bhatnagar, learned counsel for the appellants submits that Regulation 8 of the NCTE Regulations, 2007, was consciously omitted from the subsequent NCTE Regulations of 2009 & 2014 because the appellants found it essential to curb the practice of institutions changing their constitution. He further submits that there is an internal communication/letter dated 26th December, 2016, issued by the Headquarters of the appellant no. 1 to all the Regional Committees that no such request for change of constitution be permitted. He submits that in pursuance of such communication, the appellants took the action which was challenged by the respondent by way of the underlying writ petition.

8. Mr. Sharawat opposes the aforesaid submission made by the learned counsel for the appellants on the ground that the respondent underwent a change in its constitution in 2011, whereas the internal communication/letter was issued on 26th December, 2016. He submits that the said communication, neither being a statutory provision nor a regulation cannot have retrospective effect. On this, Mr. Bhatnagar, learned counsel for the appellants submits that though this letter is of the year 2016, the appellant no. 2 while examining the documents of the



respondent in the year 2023, has come to know about the change in the constitution of the respondent and thus, it would apply to them.

9. This Court has heard the arguments of Mr. NK Bhatnagar, learned counsel for the appellants and Mr. Sanjay Sharawat, learned counsel for the respondent and has perused the documents on record.

10. Learned counsel for the appellant, at the outset, had addressed arguments which were raised before the learned Single Judge. Additionally, he submits that the respondent, in converting its legal status from one as a trust registered under the Societies Registration Act to a trust registered under the Companies Act, 2013, has violated the NCTE Regulations, 2014. He submits that the respondent has also violated the directions contained in the communication dated 26th December, 2016, issued by the Headquarters of the appellant no.1 to all the Regional Committees whereby the Headquarters had prohibited conversion of the institution, post its recognition. He thus submits that the withdrawal of recognition of the respondent's institution was in accordance with the Regulations as also the aforementioned communication.

11. We have perused the Regulations of 2014, and do not find any such prohibition/bar in the said Regulations. That apart, it is not disputed by the learned counsel for the appellants that institutions which are registered either as a society under the Societies Registration Act, 1860, or as a Company under the Companies Act, 2013, are entitled to seek such recognition subject to fulfillment of other requisite essential conditions. Thus, independent of conversion during the interregnum when the recognition has already been granted, the institutions, whether societies, trusts or companies are entitled to apply for recognition.

12. Though learned counsel for the appellants contends that the regulations bar or prohibit such conversion once recognition has been



granted, yet was unable to show any such regulation or rule having force of law in that regard. In the absence of an enabling provision in such circumstances, it cannot be readily inferred that the regulatory authority would read into the regulations, the power to prohibit the conversion of an institution from a society to a company. It may be altogether another thing to say that the absence of the provision would lead to the commercialization of education, yet, unless the regulations contain such prohibition, it would do violence to read such prohibition in the absence of a specific regulation. Moreover, the circular dated 26th December, 2016, is a mere instruction or a guideline issued by an administratively superior authority which cannot be stated to be having any statutory backing or force of law. Seen in that context, the communication dated 26th December, 2016, would not bind the respondent or institutions similarly circumstanced like the respondent.

13. It is also brought to our notice that clause (11) of Regulation 8 of the NCTE Regulation, 2007 respecting '*Conditions for Grant of Recognition*' contained a stipulation by virtue whereof prior approval of the regional committee would be necessitated in case of change of management / society / trust etc. Apparently, the said regulation was omitted in the NCTE Regulations, 2014. In order to appreciate the impact of the aforesaid regulation and the effect of its omission, it would be apposite to extract the said regulation hereunder:-

Clause (11) of Regulation 8 of the NCTE Regulation, 2007 –

"(11) In case of change of premises, prior approval of the Regional Committee concerned shall be necessary, which could be accorded after due inspection of the institution at the new site. The change can be permitted to a site which, if applied initially, could have qualified for establishment of an institution as per prescribed norms of NCTE. The change shall be displayed on website thereafter. The application for change of premises shall be accompanied by a demand draft of Rs. 40,000/- of a Nationalized Bank drawn in favour of the Member



Secretary, NCTE and payable at the city where the Regional Committee is located. Similar procedure would be applicable in case of change of management/society/trust etc. excluding change of Management Committee as per registered by-laws of the management/society/trust.”

(emphasis supplied)

The effect of omission of aforesaid regulation in the NCTE Regulations, 2014 need not be over-emphasized. In that, a prohibition which was hitherto before found to be relevant has been, apparently after due deliberations, omitted from the subsequent regulations. This only indicates the intention of the framer of the regulation. *Ex facie*, the framers of the regulation thought it fit in their wisdom to remove the condition of seeking prior approval of the Regional Committee before any institution would introduce any change in its constitution. This deliberate omission in our opinion demolishes the submissions of the appellants.

14. So far as the submission of the appellants that the non-adherence to the communication dated 26th December, 2016 would lead to the commercialization of education is concerned, there is no impediment, legal or otherwise, which prevents the framer of the regulation to engraft and insert or reinsert a regulation which would stipulate such condition. So long as such an amendment or insertion in the NCTE Regulations, 2014, is not carried out, no such prior approval or prohibition can either be read into or readily inferred in those regulations. Thus, there appears to be no merit in this submission either.

15. In view of the aforesaid analysis and findings, we find no reason, much less any cogent reason to interfere with the impugned judgment passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs.



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16. Pending applications also stand disposed of.
17. Since the time given to the appellants for the implementation of the impugned judgement by the learned Single Judge has expired, we deem it fit to extend the same by another two weeks to implement the directions contained in the impugned judgment dated 10th May, 2024.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J.

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