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

Date of Decision: 13th May, 2021

+ W.P.(C) 5303/2021

AMBIKA COLLEGE OF EDUCATION Petitioner

Through: Mr. Sanjay Sharawat,
Advocate.

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR. Respondents

Through: Mr. Akshay Chandra, Standing
Counsel with Mr. Akshay
Shrivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 16316/2021 (exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5303/2021

1. Issue notice. Mr. Akshay Chandra, learned Standing Counsel, accepts notice on behalf of the respondents. The petition is taken up for disposal with the consent of learned counsel for the parties.
2. The petitioner has approached this Court against a decision of the Northern Regional Committee ["NRC"] of the National Council

for Teacher Education [“NCTE”] dated 29.07.2016 by which the petitioner’s application for recognition of its integrated B.A.B.Ed./B.Sc.B.Ed. programme was rejected. The petitioner also seeks a direction upon the respondents to process its application in terms of the judgment of this Court dated 18.10.2019 in W.P.(C) 8820/2019 [*Sir Chhotu Ram Jat College of Education vs. National Council for Teacher Education and Anr.*] and connected matters.

3. Pursuant to the petitioner’s application, the NRC issued a show cause notice dated 01.03.2016 pointing out the following deficiencies in the petitioner’s application:-

- *“The applicant institution has not submitted any proof/evidence that it is already running BA/B.Sc. courses as per the norms of NCTE Regulations, 2014.*
- *Certified copies of registered land documents issued by the competent authority have not been submitted.*
- *Non-encumbrance certificate has not been submitted.”*

4. The petitioner replied to the aforesaid show cause notice on 21.03.2016. The NRC considered the matter and issued a further show cause notice dated 21.06.2016 in respect of the following deficiencies:-

- *“The building completion certificate indicates that the institution has total constructed area of 5017 sq.mtr, which is less than the required built-up area for four units of B.Ed., one unit D.El.Ed. and proposed one unit each for BA.B.Ed. and BSc. B.Ed. (6000 sq.mtr.). The Regulation of BA/BSc. B.Ed. mentions that the Departments total built-up area for BA/BSc. B.Ed. and existing programmes are 4500 sq.mtr. + 1500 sq.mtr. = 6000 sq.mtr.*

- *The CLU has not been issued by the Competent Authority.*
- *There is no evidence that the Institution runs BA and B.Sc. programmes as approved by the affiliating university.*
- *A letter from Additional Chief Secretary to Government of Haryana, Higher Education Department, Chandigarh dt. 12.03.2016 reads as "Hence, you are requested not to entertain the application the applications of the Societies/Trusts seeking recognition for 4 year Integrated course BA B.Ed./B.Sc.B.Ed. and opening of new B.Ed. colleges in the State henceforth and during the years 2016-17 and 2017-18."*

(Emphasis supplied.)

5. The petitioner admittedly did not respond to this show cause notice. In fact, the contention of the petitioner in the writ petition is that the show cause notice dated 21.06.2016 was not received by it at all. Consequently, the NRC, by the impugned order dated 29.07.2016, rejected the petitioner's application for recognition.

6. Mr. Sanjay Sharawat, learned counsel for the petitioner, contends that one of the grounds taken in the show cause notice dated 21.06.2016 pertains to a communication dated 12.03.2016 from the Government of Haryana to the NCTE, requesting the NCTE not to entertain applications of societies/trusts seeking recognition for their integrated programmes and opening of new B.Ed. colleges in the State of Haryana. According to Mr. Sharawat, the reliance of the NCTE upon the said recommendation of the State Government to impose a ban on the opening of new colleges cannot be applied to the petitioner's application, which was prior to the aforesaid communication of the Government of Haryana. For this purpose, Mr.

Sharawat places reliance upon the judgment of this Court dated 18.10.2019 in *Sir Chhotu Ram [supra]*.

7. In the aforesaid judgment, this Court was concerned with the question as to whether the applications for recognition of courses filed by institutions in the States of Rajasthan and Haryana prior to the imposition of bans by the concerned State Governments would be covered by the recommendations of the State Governments. Relying upon the order of the Supreme Court dated 18.07.2018 in M.A. No. 1175/2018 in W.P.(C) 276/2012 [*Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh & Ors.*] and order dated 29.07.2019 in Civil Appeal No. 5923-5924/2019 [*Saraswati Deep College of Education vs. National Council for Teacher Education and Anr.*], the Court came to the conclusion that the institutions whose applications were pending prior to imposition of the bans by the State Governments would not be covered by the ban, and their applications would have to be reconsidered by the NCTE. The Court, therefore, passed the following directions:-

“14. Thus, for foregoing reasons, the captioned writ petitions will have to be allowed. The concerned Regional Committees will reconsider the applications of the petitioners in the captioned matters without being burdened by the fact that various State Governments have imposed a ban on setting up of new institutions and granting recognition to new courses.

15. Needless to add, the applications will be considered by the NCTE on their own their merit as expeditiously as possible, though, not later than twelve (12) weeks from the date of receipt of a copy of the order.

16. The petitioners will render all assistance so that the timeline fixed by the Court is adhered to.

17. Since this is an order in rem, the concerned Regional Committees will consider on merit the applications of even those who are similarly circumstanced and have filed their respective applications before the ban kicked-in as per the extant provisions of law.

18. Consequently, the impugned orders in each, of the captioned writ petitions shall stand set aside.”

8. Mr. Chandra points out that the impugned order dated 27.09.2016 is based not only upon the question of a State ban, but also upon three other grounds which were taken in the show cause notice dated 21.03.2016. To this extent, he submits that the impugned order is not covered by *Sir Chhotu Ram*. Mr. Chandra also submits that the petitioner ought to have availed its statutory remedy of appeal under Section 18 of the National Council for Teacher Education Act, 1993, rather than approaching this Court directly under Article 226 of the Constitution.

9. In rejoinder, Mr. Sharawat refers to various orders of the NCTE rejecting applications for recognition relying upon various grounds, including the ground of a State ban. He submits that against those orders, the concerned institutions had approached this Court and this Court had remanded the matters for reconsideration following the judgment in *Sir Chhotu Ram*. Copies of four such orders of the NCTE and the orders passed in writ petitions arising therefrom have been annexed to the present writ petition as Annexures P-5 to P-8.

10. A perusal of the orders of this Court dated 23.11.2020 in W.P.(C) 9227/2020, 23.11.2020 in W.P.(C) 9233/2020, 24.11.2020 in

W.P.(C) 9262/2020 and 22.01.2021 in W.P.(C) 833/2021, read with the orders of the NCTE which were impugned in those cases, shows that even where the recommendation of the State Governments regarding the ban on establishment of colleges was one of several grounds taken by the NCTE in its rejection orders, before this Court, the NCTE itself accepted that the matters are covered by the judgment in *Sir Chhotu Ram*.

11. To the extent that the State ban was one of the issues which had influenced the NCTE in rejecting/returning the applications of the petitioner institutions, I am of the view that the stand taken in those cases was correct. As a general proposition, a statutory authority is entitled to be guided only by relevant factors, and where irrelevant factors have been considered by the statutory authority, the order is vulnerable to correction under Article 226 of the Constitution. In the present case also, it is clear that the recommendation of the State government was one of the factors considered by the NCTE in arriving at the impugned decision. To the extent that the judgment in *Sir Chhotu Ram* lays down that this was not permissible, it renders the impugned decision bad in law.

12. In the facts and circumstances of this case, I am also of the view that the existence of the alternative remedy of appeal will not come in the way of this Court exercising jurisdiction under Article 226 of the Constitution. The petitioner was faced with an order which proceeded not just on the facts of its own case, but on the general policy recommendation of the State Government. The decision of the petitioner not to challenge the order in such circumstances cannot be

faulted. The subsequent decision of the Court in *Sir Chhotu Ram*, expressly stated to be *in rem*, confers a right upon the petitioner also for reconsideration. Several similar writ petitions before this Court have succeeded. In the facts outlined above, I do not consider it appropriate to decline jurisdiction, despite the undisputed general principle that the writ court will be very restrained in its approach where alternative remedies are available.

13. The position which emerges is that the petitioner in the present case is also entitled to reconsideration of its case, keeping in mind the judgment in *Sir Chhotu Ram*. The writ petition is, therefore, allowed and the impugned order dated 27.09.2016 is set aside. The directions contained in paragraphs 14 to 17 of *Sir Chhotu Ram* will apply *mutatis mutandis* to the case of the petitioner as well.

14. In view of the fact that the NCTE has filed an appeal before the Division Bench of this Court against the judgment in *Sir Chhotu Ram* [LPA 126/2020], in which the Division Bench has issued notice but no interim relief has been granted, it is made clear that the relief granted in the present petition is subject to result in the said appeal.

15. Mr. Chandra submits that several institutions have approached this Court for directions following the judgment in *Sir Chhotu Ram* without approaching the NCTE first. He states that although the judgment in *Sir Chhotu Ram* requires the NCTE to take steps to process the applications, several applications had been returned, and the details of all the applications returned on the basis of State bans are not readily available with the NCTE. In order to obviate the necessity of parties approaching this Court for compliance with the

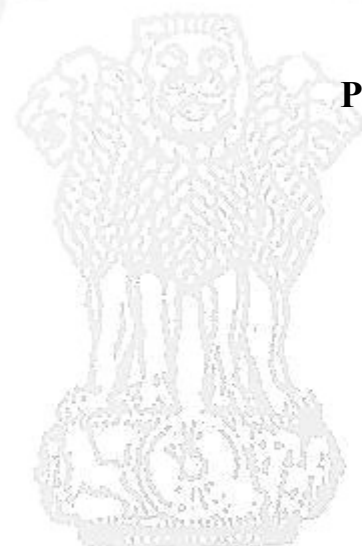
judgment in *Sir Chhotu Ram*, Mr. Chandra suggests that any institution whose application has been returned on account of a State ban, and which claims to be covered by the judgment in *Sir Chhotu Ram*, may furnish a copy of the said application to the NCTE directly alongwith its representation in this regard. The NCTE is directed to issue a public notice on its website to this effect to enable the affected institutions to approach it in accordance with this direction.

16. The writ petition stands disposed of in these terms.

MAY 13, 2021

'j'

PRATEEK JALAN, J.



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