

GAHC010264922023



2024:GAU-AS:9871

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6975/2023

SHIKSHA VALLEY SCHOOL
A UNIT OF VIDYA SAGAR FOUNDATION
REPRESENTED BY ITS CHAIRMAN
SRI BASANT KUMAR AGARWALLA,
AGED ABOUT 54 YEARS,
S/O- LATE NOWRANG LAL AGARWALLA,
R/O- CENTRAL CHOWKIDINGEE ROAD,
P.O.- MILAN NAGAR, P.S.- MILAN NAGAR OUTPOST,
DISTRICT- DIBRUGARH, ASSAM,
PIN- 786001.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER,
DEPARTMENT OF INDUSTRIES AND COMMERCE,
GOVT. OF ASSAM, UDYOG BHAWAN,
BAMUNIMAIDAM, GUWAHATI-21.

2:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF COMMERCE AND INDUSTRY
GOVT. OF INDIA
NEW DELHI.

3:UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE
UDYOG BHAWAN
NEW DELHI-11.

4:SENIOR ECONOMIC ADVISER
INTEGRATED FINANCE WING DPIIT
MINISTRY OF COMMERCE AND INDUSTRY

DEPARTMENT OF PROMOTION OF INDUSTRY AND INTERNAL TRADE
UDYOG BHAWAN
NEW DELHI-11.

5:THE GENERAL MANAGER
DISTRICT INDUSTRIES AND COMMERCE DEPARTMENT
DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM

Advocate for the Petitioner : MS N SAIKIA,

Advocate for the Respondent : SC, INDUSTRIES AND COMMERCE, MR. A K DUTTA,DY.S.G.I.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Ms. N. Saikia

Advocate for the respondents : Shri AK Dutta, CGC
Shri A. Kalita, SC-Industries
& Commerce Department

Date of hearing : **19.09.2024**

Date of Judgment : **01.10.2024**

JUDGMENT & ORDER

The rejection of the prayer of the petitioner for registration under the North East Industrial Development Scheme (NEIDS), 2017 vide the impugned order dated 25.09.2023 is the subject matter of challenge in this petition. The petitioner herein is a School and unit of a Trust.

2. As per the facts projected, the petitioner School was opened by keeping in view a notification by the Central Government announcing a Scheme named

NEIDS 2017. As per the petitioner, it fulfills all the terms and condition for getting the benefit under the said Scheme. It is averred that the unit was physically verified by the General Manager, D.I. & C.C., Dibrugarh which had recommended for its registration. However, the Committee in its 57th meeting held on 31.09.2019 had rejected the application for registration by holding that the School is an entity which is not permissible for commercial purpose. It has also been held that the School cannot be an Industrial Unit. Thereafter, the petitioner had submitted representation for a fresh consideration which was also rejected in the second SLC meeting. The petitioner had approached this Court earlier by filing writ petition WP(C)/224/2021 which was disposed of vide order dated 17.05.2023 directing a reconsideration of the case of the petitioner. However, vide the impugned order dated 25.09.2023, the prayer of the petitioner for registration has been rejected. It is this action which is the subject matter of challenge in this writ petition.

3. I have heard Ms. N. Saikia, learned counsel for the petitioner. I have also heard Shri AK Dutta, learned CGC and Shri A. Kalita, learned Standing Counsel, Industries & Commerce Department.

4. Ms. Saikia, the learned counsel for the petitioner has, at the outset referred to the relief sought for in this petition which is mainly to set aside the rejection order dated 25.09.2023. It is submitted that the petitioner is not in the Negative List of the Scheme and there was a clear direction of this Court on 17.05.2023 while disposing of the earlier WP(C)/224/2021 to consider the case of the petitioner. However, without taking into consideration the relevant factors, the rejection order has been passed. By referring to a communication dated

10.09.2020 issued by the Commissioner, Industries & Commerce Department, Assam to the Ministry of Industries & Commerce, Government of India, the learned counsel has contended that the decision of the Empowered Committee in its meeting dated 30.01.2019 observing that the School is an entity which is not permissible for commercial purposes and cannot be an Industrial Unit is erroneous. By referring to the affidavit-in-opposition filed by the respondent nos. 2, 3 and 4 on 01.04.2024, more particularly, the averments made in paragraph 6 thereof, the learned counsel has submitted that there is an admission that there is no straitjacket formula to decide on the eligibility and various factors are required to be taken into consideration.

5. The learned counsel has also relied upon the case of the Hon'ble Supreme Court in the case of ***Bangalore Water Supply Vs. A. Rajappa*** reported in ***AIR 1978 SC 548*** and has submitted that School would be included in the definition of "Industry" under the Industrial Disputes Act, 1947.

6. It is submitted that the petitioner is registered under the Goods and Services Tax Act in the year 2018 and that under paragraph 4.1 of the Scheme of 2017 service sector has been included. Reference has also been made to the definitions under the notification dated 12.04.2018 and under Clause 5 (d) and (f) "Industrial Unit" and "Eligible Service Sector Unit" have been defined and the petitioner unit falls under the same. She has reiterated that there is a Negative List and the services of the nature rendered by the petitioner are not there in such list.

7. By referring to the Cabinet approval dated 28.02.2018, the learned counsel

for the petitioner submits that Education Services are clearly covered. It is also submitted that so far as the Office Memorandum of February, 2019 is concerned, a copy of the same has been marked to the Higher Education Department, Government of India, which would imply that Education Service is a part of the Scheme. She has submitted that in the earlier judgment rendered by this Court, there are observations made regarding the inclusion of service sector under the Scheme. She accordingly submits that the impugned order of rejection dated 25.9.2023 is liable to be set aside.

8. Shri A. K. Dutta, learned CGC has, at the outset, submitted that the Cabinet decision which has been sought to be relied upon by the petitioner is not connected with the Scheme in hand. It is submitted that the Cabinet decision dated 28.02.2018 pertains to Champion Sectors whereas the Scheme involved with the present case is the NEIDS 2017. It is verified that there is a vast difference of the two Schemes and for the Champion Sectors, a dedicated fund of Rs.5000/- crores has been proposed which is not connected with the Scheme in question wherein there is a separate fund of Rs.3000/- crores. He has drawn the attention of this Court to the Gazette notification dated 12.04.2018, more particularly, Clause 7.3 thereof which is with regard to the requirement of the approval for final grant of registration. He submits that such grant of registration will be decided by the Committee to consider the *prima facie* eligibility of the Industrial Unit and no Industrial Unit will have the right to register under the NEIDS 2017 or claim any benefits unless the same is specifically approved by the Central Government.

9. By drawing the attention of this Court to the affidavit-in-opposition filed on

01.04.2024, the learned CGC has submitted that on 12.04.2018, the NEIDS 2017 Scheme was announced and under the same, a School would not come under its purview. He has also placed before this Court a copy of the Note for the Cabinet dated 05.01.2018 wherein under Clause 7 only Vocational Education Centres were amongst the establishment which were the encourage by the Scheme at hand. He submits that the petitioner School does not impart Vocational Course and is different and distinct from a Vocational Centre. By referring to the averments made in paragraph 9 of the affidavit-in-opposition, he has submitted that the petitioner is an educational institution with no vocational employment objective and therefore, not an eligible unit. The learned CGC accordingly submits that no relief can be granted to the petitioner and the writ petition is liable to be dismissed.

10. Endorsing the submission of the learned CGC, Shri A. Kalita, learned Standing Counsel, Industries & Commerce Department, Government of Assam has submitted that the objective of the Scheme of NEIDS 2017 is mainly for industrial development. By dealing with the submission made that Clause 4 includes Service Sector, it is submitted that Service Sector would not mean Educational Institutions. He has cited examples of hotels, restaurants, etc. which may fall within the Service Sector but it would not include a School. He has drawn the attention of the Scheme, more particularly, the definition under Clause 5 wherein under 5(a) "Commencement of Commercial Production" and under Clause 5(c) "Finished Goods" have been defined. It is submitted that by necessary implications a School is not within the ambit of the Scheme. He has also drawn the attention of this Court to Clause 6.1 on the aspect of Empowered Committee which is vested with the powers for granting registration after

examination of the proposals. He has also referred to Clause 7.3 which has also been referred by the learned CGC.

11. By referring to the Cabinet Note dated 05.01.2018 which has been placed on record, Shri Kalita has drawn the attention of this Court to the Office Memorandum dated 06.12.2016 which is a part of the said Cabinet Note. He has highlighted that amongst the 12 members who constitute the Committee, there is no representative from the Education Sector. He accordingly submits that Education was never envisaged to be within the purview of the Scheme. He has also referred to the provision of Clause 6.1 of the said Note which specifically mentions a number of Departments and there is no reference to the Education Department which would clearly reflect that Education was not incorporated to be a part of the Scheme.

12. On the aspect of the submission made on behalf of the petitioner that copy of the OM of February, 2019 was marked to the Higher Education Department, he has submitted that there was a clear resolution in the minutes of the Empowered Committee dated 30.01.2019 which was forwarded by the said OM that School cannot be held to be an Industrial Unit and therefore to communicate the said decision it was marked to the Education Department.

13. Shri Kalita, the learned Standing Counsel has also referred to the application of the petitioner filed for registration under the said Scheme and has highlighted that the business has been stated to be "Trust and Society" and the name of the products / services has been stated to be "School fees". He has accordingly submitted that such aspects do not fulfill the requirement of the

Scheme and therefore the rejection has been properly done. By referring to the order of rejection order dated 25.09.2023, has submitted that the Committee had taken into consideration the Cabinet Note on the NEIDS 2017 Scheme and has reiterated that the Scheme did not envisage Education to be a part thereof.

14. With regard to the citation of **Bangalore Water Supply** (supra) relied upon by the petitioner, he has submitted that the pronouncement of the said decision was on the aspect of the welfare of the labourers under the Industrial Disputes Act wherein a broad meaning was given to the definition of "Industry" to include a School. In this regard, he has referred to the decision of **Ruth Soren Vs. Managing Committee, EAST ISSDA** reported in **(2001) 2 SCC 115** wherein the earlier case of **Bangalore Water Supply** (supra) has been distinguished.

15. Ms. Saikia, the learned counsel for the petitioner has submitted that the petitioner is not only registered under the GST but is also registered as an MSME. She accordingly submits that there should not be any dispute that the petitioner falls under the Service Sector Unit of the present Scheme. She has also highlighted that significant capital expenditure has been made and there has been employment generation by the unit in hand. She has also referred to a decision of the Hon'ble Supreme Court in the case of **Undersecretary, Ministry of Industries and Ors. Vs. Marchon Textile Inds. (P) Ltd. and Anr.** reported in **(2005) 10 SCC 554** wherein it has been held that exemption Schemes should be construed liberally.

16. The rival contentions advanced by learned counsel for the parties have

been duly considered and the materials placed before this Court have been carefully perused.

17. The principal basis of the present challenge is on use of the expression Services Sector in the Scheme of 2017 and also that School is not in the Negative List. It has also been argued that the Cabinet decision was marked to the Higher Education Department which would indicate that School would be covered under the said Scheme. The challenge is also based that a Scheme of the Government has clearly included School to be an eligible unit.

18. To examine the said grounds vis-à-vis the defence taken, it would be required to have a close look into the NEIDS 2017 and also the earlier order of this Court passed on 17.05.2023. This Court, vide the aforesaid order dated 17.05.2023 had directed consideration of the case of the petitioner which resulted in the rejection order dated 25.09.2023. The NEIDS 2017 Scheme uses the expression Service Sector. However, on an overall reading of the Scheme, it appears that it is mainly for industrial development wherein incentive would be given to eligible units. The service sector can mean units providing service like a hotel, restaurant and similar services but the same cannot be extended to a School imparting education.

19. So far as the reliance on the Cabinet decision, the same clearly is an Action Plan for Champion Sector in Services. It has been clarified by the learned CGC that there is a huge difference between NEIDS 2017 and Champion Sector. It is clear that while the present Scheme envisages incentive of an amount of Rs.3,000/- crore, under the Champion Scheme, the amount

earmarked is Rs.5,000/- crore. The services sector, as observed above, has been explained in the Cabinet Note that Vocational Institute may be given such benefits. However, there is a vast difference between a Vocational Institute and a School like that of the petitioner. The Cabinet Note dated 05.01.2018, which has been placed on record, clarifies under Clause 7 that Vocational Educational Centers would get the benefit, but not a School of the present nature.

20. This Court also finds force in the contention of the learned Standing Counsel of Industries and Commerce Department, who has referred to the Scheme of 2017, more particularly those relating to commencement of commercial production and finished products. There is also a provision for constitution of an Empowered Committee, which would take the decision on the aspect of registration. The Cabinet Note which has been placed on record, would show in clear terms that the Committee which was constituted on 06.12.2016, did not have any representative from the Education Sector, which means that Education was never within the purview of the Scheme. As regards the marking of the Office Memorandum to the Higher Education Department, this Court is inclined to accept the submission of the learned Standing Counsel that since a decision was taken that School would not come within the meaning of an Industrial Unit, it was marked to the Education Department.

21. This Court has also noted that in the application filed for registration, the unit has been said to be "Trust and Society", and so far as the products / services are concerned, "School Fees" has been stated. Such particulars cannot bring the unit under the eligibility Clause to get benefit under the Scheme.

22. This Court has also found force in the argument of Shri Kalita, learned Standing Counsel of the Department that the Scheme being floated by the Central Government, which itself envisages an Empowered Committee to take a decision on registration, the decision of such Committee to hold a unit not to be eligible cannot be interfered with in a routine manner, as it is the said Committee, which would be the best judge to take a decision on the eligibility factor. As regards the definition of "Industry", to include a School, as held by the Hon'ble Supreme Court in the case of **Bangalore Water Supply** (supra), this Court has noted that, that was in the context of giving a broad meaning to the definition of "Industry" to give maximum benefit to the workmen. In any case, in the subsequent decision of **Ruth Soren** (supra), the decision of **Bangalore Water Supply** (supra) has been distinguished. For ready reference, the relevant paragraph is extracted hereinbelow:

“5. In Corpn. of City of Nagpur v. Employees, this Court held the Education Department of the Corporation to be an industry. The reason given is that imparting education amounts to service and can be done by a private person also. In University of Delhi v. Ram Nath this Court held that imparting education is not an industry as the work of the University cannot be assimilated to the position of trade, calling, business or service and hence cannot be an industry. The majority view in Bangalore Water Supply & Sewerage Board v. A. Rajappa a decision of seven-Judge Bench, is that in the case of an educational institution, the nature of activity is "exhypothesi" and imparting education being service to community is an industry. Various other activities of the institution such as printing press, transport department, clerical, etc. can be severed from teaching

activities and these operations either cumulatively or separately form an industry. Even so, the question for consideration is whether educational institution falls within the definition of "establishment" carrying business, trade or profession or incidental activities thereto. "Establishment", as defined under the Act, is not as wide as "industry" as defined under the Industrial Disputes Act. Hence reliance on Bangalore Water Supply & Sewerage Board v. A. Rajappa for the appellant is not of any help."

23. From the discussions made above and from the materials on record, this Court is of the considered opinion that the impugned order of rejection dated 25.09.2023 has taken into consideration the relevant factors and the decision to reject is based on cogent materials including an interpretation of the NEIDS 2017. The powers of judicial review under Article 226 of the Constitution of India is only to examine the decision making process and in the instant case, such process appears to be based on relevant materials. There is also no allegation of any *mala fide* or taking into consideration extraneous factors.

24. In view of the above, this Court is of the opinion that no case for interference has been able to be made out by the petitioner and accordingly the writ petition is dismissed.

JUDGE

Comparing Assistant