

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

+ **W.P.(C) 3293/2010 & CM No.6611/2010 (u/S 151 CPC for stay)**

% **Date of decision : 5th August, 2010.**

AMITY UNIVERSITY UTTAR PRADESH Petitioner
Through: Mr. Vinay Garg with Mr. Rajesh
Yadav & Mr. A.P. Singh, Advocates

Versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION AND ANR** Respondents
Through: Mr. Ayushya Kumar & Mr.
Vaibhav Kalra, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner by this writ petition has impugned the order dated 1st December, 2009 of the Northern Regional Committee (NRC) of the National Council for Teacher Education (NCTE) withdrawing the “conditional recognition” accorded to the petitioner vide order dated 14th November, 2006.

2. The petitioner had applied to the NRC on 9th November, 2005 for recognition for imparting education in Bachelor of Physical Education (B.P.Ed.) course. The NRC issued a common order dated 14th November,

2006 with respect to as many as 19 applications for recognition by different Colleges/Institutes including that of the petitioner. It was mentioned in the said order that NRC in its 109th & 110th meeting held from 10th to 12th November, 2006 had considered the said 19 applications and after carefully examining the documents, Visiting Team Report (VTR), video recording and other records had found the said 19 institutions “fit for grant of recognition for the courses mentioned against their names”. The said order also required the said 19 institutions to ensure fulfillment of the conditions mentioned therein. One of the said conditions was that the institutions shall maintain the teaching staff strength as mentioned therein and adhere to the other regulations and guidelines as framed by NCTE from time to time.

3. It is the case of the petitioner that pursuant to the aforesaid, the petitioner, considering itself to have been granted the recognition, started conducting the course and admitted students in the years 2006, 2007, 2008 as well as 2009.

4. It is the case of the petitioner that it was surprised to receive the “refusal order” dated 9th July, 2009 from the NRC. It was mentioned in the said refusal order that only a “Letter of Intent prior to recognition” was issued as aforesaid on 14th November, 2006 to the petitioner; that the petitioner had not submitted any reply thereto and thus the NRC in its 141st meeting held from 22nd to 24th May, 2009, for the reason of the petitioner having not submitted the list of appointed faculty as per NCTE norms till then, refused recognition to the petitioner. It is the case of the petitioner that

no show cause notice prior to the said refusal order dated 9th July, 2009 was issued.

5. The respondents in their counter affidavit have stated that a notice dated 9th July, 2007 was issued to the petitioner informing the petitioner that recognition granted to it on 14th November, 2006 was subject to appointment of qualified staff by a duly constituted Selection Committee and asking the petitioner to submit the documents in that regard and further informing that if the documents were not received, action will be initiated as per the provisions of the NCTE Act, 1993. The petitioner controverts that any such letter was received. The respondents have been unable to file any proof of dispatch or delivery of the said letter. The counsel for the petitioner also points out that the refusal order dated 9th July, 2009 does not make any mention of the notice dated 9th July, 2007 having been issued.

6. The petitioner preferred an appeal to the Appeal Committee of the NCTE against the order dated 9th July, 2009 (supra). The said appeal was disposed of vide order dated 8th October, 2009. The Appeal Committee observed that only conditional recognition subject to appointment of qualified staff had been granted to the petitioner on 14th November, 2006 and no unconditional recognition order had been issued to the petitioner. The Appeal Committee, from the admissions of the petitioner also held that the petitioner, without unconditional recognition had admitted students to B.P.Ed. course from the year 2006 onwards. It was also observed that in list

of staff submitted by the petitioner, some teachers were found to have been appointed in the years 2003 & 2005 when the B.P.Ed. course was not existing in the petitioner ; it was observed that the same raises doubt about the genuineness of the list of staff submitted by the petitioner. The Appeal Committee remanded the matter back to the NRC for issuing a revised order specifying the session from which the withdrawal of conditional recognition would be effective so that the interest of the students already admitted does not suffer.

7. Pursuant thereto, the NRC made the order dated 1st December, 2009 (supra) specifying that the withdrawal of conditional recognition would be effective from the academic session 2010-11 only.

8. The counsel for the respondents has contended that what was issued on 14th November, 2006 to the petitioner was not an order of recognition. Attention is invited to the Section 14 of the NCTE Act, 1993 and to the Regulations of the year 2005 stated to be in force at the time of issuance of the order dated 14th November, 2006. It is contended that as per Regulation 7(11), first the Institution has to be informed of the decision for grant of recognition subject to appointment of qualified faculty members and thereafter under Regulation 7(12), the unconditional order of recognition is to be issued. Reference is also made to Regulation 8(10) providing that admissions of students are to be made only after obtaining the unconditional letter of recognition. On enquiry, it is informed that the position is the same

in the Regulations of the year 2007, in Regulations 7(9), 7(11) & 8(12) respectively.

9. The counsel for the respondents has also relied upon the judgment dated 30th July, 2009 of the Single Judge of this Court in W.P.(C) No.10524/2009 titled *Himalaya College of Education Vs. NCTE*, with reference to the aforesaid Regulations and holding that on the basis of conditional recognition, no students could have been admitted. It is further informed that appeal being LPA No.397/2009 preferred to the Division Bench against the said judgment was dismissed on 18th August, 2009 and SLP being SLP No.21786/2009 preferred thereagainst to the Apex Court dismissed on 7th September, 2009.

10. The counsel for the petitioner has contended that the Regulations of the year 2005 came into force only with effect from 13th January, 2006 and at the time when the petitioner had made the application on 9th November, 2005, the Regulations of the year 2002 were in force and which were materially different. It is further contended that the respondents themselves have been treating the petitioner to have been recognized pursuant to the order dated 14th November, 2006 (supra) and proceeding on the said premise only, in January, 2007 notice in exercise of powers under Section 12(j) of the Act was issued to the petitioner. It is contended that if the petitioner did not stand recognized on 14th November, 2006 and was yet to comply with any conditions, the question of exercising any power under Section 12(j) did

not arise. Attention is also invited to the order dated 14th November, 2006 which proceeds on the premise that the same is an order of recognition inasmuch as it is stated therein that upon the failure to comply with the provisions of the Act and the Rules & Regulations, action under Section 17(1) (which could be taken only against a recognized Institute) shall be taken. Reference is also made to other conditions in the said letter dated 14th November, 2006 and which could apply only by treating the same as an order of recognition and not otherwise. Yet further, it is contended that the petitioner treating itself as recognized made application under Section 15 for permission for additional courses and which application was entertained and a Letter of Intent dated 3rd January, 2008 issued. Attention is also invited to the said Letter of Intent dated 3rd January, 2008 which is in a language much different from the order dated 14th January, 2006 and clarifies that the same is merely a Letter of Intent and not an order of recognition. It is further demonstrated that pursuant to the said Letter of Intent permission for additional courses under Section 15 was granted.

11. The counsel for the respondents has no reply to the issuance of the notice to the petitioner under Section 12 (j) and to the grant of permission to the petitioner for new course, both treating the petitioner to be recognized. From the said facts it can definitely be said that not only the petitioner but even the respondents were treating the petitioner to be a recognized Institution and the letter/order dated 14th November, 2006 (supra) to be an order of recognition and not merely a Letter of Intent for grant of

recognition.

12. A comparison of Regulations of 2002 and the amended Regulations of 2005 also shows a definite shift in the procedure for grant of recognition. In the Regulations of 2005, for the first time the Regulation 7 regarding “Processing of Applications” was inserted. Regulation 7(11) also for the first time introduced the procedure of informing the applicant of the decision for grant of recognition or permission “subject to appointment of qualified faculty members before the commencement of the academic session” and after satisfying itself in that regard issuing the formal unconditional recognition order. Till prior to Regulations of 2005, the Regulations provided only for issuance of recognition order and not for issuance of Letter of Intent and unconditional recognition order separately.

13. Besides the reasons urged by the counsel for the petitioner, the letter/order dated 14th November, 2006 issued to the petitioner can by no stretch of imagination be considered as Letter of Intent only also on the ground that the first notice thereafter according to the respondents also, is of 9th July, 2007 only. If the letter dated 14 November, 2006 was to be a Letter of Intent only, the enquiry with respect to the appointment of qualified faculty members ought to have been made before the commencement of the academic session 2006 only. Not only so, even after the alleged notice of 9th July, 2007, the respondents did not take any action for that academic session also and woke up thereafter only on 9th July, 2009.

14. The format of order of recognition/Letter of Intent followed by the respondents pursuant to the Regulations of 2005 is entirely different from the format in which the letter dated 14th November, 2006 was issued. The letter/order dated 14th November, 2006 is clearly an order of recognition and only required the institutions mentioned therein including the petitioner “to ensure the fulfillment” of the conditions mentioned therein and is not “subject to the conditions mentioned therein”. Again, the conditions to be fulfilled are not such which can be said to be a precondition for the coming into force of the said order. Undoubtedly, paragraph 4 of the said order states that “the formal order of recognition for every institution shall follow separately” but it is not the same as saying that “unconditional order of recognition shall follow separately”. Paragraph 4 of the said order can only be read as intimating that a separate order of recognition with respect to each institution was to follow separately but the same as per the letter itself was only a formality and thus non receipt of such an order of recognition could not be tantamount to the petitioner not having recognition. Also paragraph 5 of the order dated 14th November, 2006 itself provides that contravention of any of the conditions mentioned therein would invite “withdrawal of recognition” under Section 17(1) of the Act. The same also indicates that notwithstanding the terms and conditions mentioned therein, the Institute stood recognized and breach of the said terms and conditions could only lead to withdrawal of recognition.

15. Once it is held that the order dated 14th November, 2006 was an order of recognition, it was not open to the respondents to on 9th July, 2009 refuse recognition to the petitioner. The only option available to the respondents, if of the view that the petitioner had contravened any of the terms and conditions on which recognition was granted, was to proceed under Section 17 of the Act and which has admittedly not been done. The orders dated 9th July, 2009, 8th October, 2009 and 1st December, 2009, are thus liable to be quashed.

16. I am also of the view that the respondents after long lapse of time from 14th November, 2006 could not have on 9th July, 2009 suddenly refused recognition. The action of the respondents is also in violation of the principles of natural justice. Even if the version of the respondents of having issued the notice dated 9th July, 2007 were to be believed, the fact remains that no action was taken by the respondents thereon also. The respondents appear to have waived the said notice and in 2009 certainly did not proceed on the premise thereof. The respondents before 9th July, 2009 even if of the view that the petitioner had not complied with the conditions of the order dated 14th November, 2006, were required to call upon the petitioner to explain. The same has not been done.

17. To satisfy the conscience of this Court, I have also enquired about the observations in the order dated 8th October, 2009 of the Appeal Committee of the NCTE to the effect that the list of staff submitted by the petitioner did not inspire confidence. The counsel for the petitioner has explained that the

petitioner has been imparting education in the said course since the year 2003 with affiliation from Chaudhary Charan Singh University and upon coming into being of the petitioner University, need was felt to obtain recognition under the NCTE Act and it is for this reason only that the appointment of some of the staff is from prior to the year 2006.

18. The writ petition is therefore allowed. The orders of the NRC and the NCTE refusing recognition to the petitioner, are quashed/set aside. The order dated 14th November, 2006 is declared to be an order granting recognition to the petitioner. This shall however not prejudice the right of the respondents to, if of the opinion that action under Section 17 of the Act is warranted against the petitioner, proceeding thereunder.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th August, 2010
gsr/bs

(checked & released on 26th August, 2010)