

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

**Date of decision: 19<sup>th</sup> July, 2010.**

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**W.P.(C) No.4089/2010**

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**SHYAMA PRASAD MUKHERJI COLLEGE  
(FOR WOMEN)**

..... Petitioner

Through: Mr. V.P. Singh, Sr. Advocate with Mr.  
Ajoy B. Kalia & Mr. Mohinder J.S.  
Rupal, Advocates

Versus

**NATIONAL COUNCIL FOR  
TEACHER EDUCATION & ANR.**

..... Respondents

Through: Mr. Raju Ramachandran, Sr. Advocate  
with Mr. Amitesh Kumar, Advocate for  
respondent no.1.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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|----|--------------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may<br>be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                   | Yes |
| 3. | Whether the judgment should be reported<br>in the Digest?                | Yes |

**RAJIV SAHAI ENDLAW, J.**

1. The petitioner by this writ petition impugns the order dated 14<sup>th</sup> May, 2010 of the Appeal Committee of the National Council for Teacher Education (NCTE) dismissing the appeal of the petitioner against the order dated 11/16<sup>th</sup> March, 2010 of the Northern Regional Committee (NRC) withdrawing the recognition given to the petitioner for imparting education

in B.Ed. course. Notice of the petition was issued by the Division Bench of this Court on 4<sup>th</sup> June, 2010. Vide order dated 14<sup>th</sup> July, 2010, the Division Bench directed the petition to be listed before Single Bench for today. The petition is accompanied with an application for interim relief. The senior counsel for the petitioner informed that the University of Delhi while inviting applications for admission to the B.Ed. programme commencing in the year 2010 in Institutions affiliated to the University had mentioned the name of the petitioner also as an Institution where the said programme is offered, subject to the outcome of the present proceedings. It was thus contended that if the present petition was to succeed and the orders withdrawing recognition of the petitioner are to be set aside / quashed, the petitioner would be entitled to admit students for the B.Ed. course for the year 2010-11 also. It was contended that any delay in hearing of the petition will make the petition infructuous. In the circumstances, though the counter affidavit stated to be filed by the respondents was not on record, a copy of the same was handed over in the Court and taken on record and the senior counsels for the parties heard.

2. The petitioner is a multidisciplinary Constituent College of the University of Delhi imparting education in 12 courses and having a strength of nearly 2500 students in the year 2009-10. One of the courses in which the petitioner College has been imparting education is Bachelor of Elementary

Education (B. El.Ed.). The petitioner in or about June, 2007 applied to the NCTE (NRC) constituted under the National Council for Teacher Education Act, 1993 for recognition for imparting education in B.Ed. The NCTE vide its order dated 21<sup>st</sup> March, 2009 granted recognition / permission to the petitioner for conducting B.Ed. course of Secondary (level) of one year duration with an annual intake of 100 students, from the academic session 2009-10. The NCTE however vide its order dated 19<sup>th</sup> June, 2009 stating that a complaint had been received on 3<sup>rd</sup> June, 2009, that the petitioner's institution was not having adequate infrastructure facilities for running the B.Ed. course separately, directed the effect of the recognition order dated 21<sup>st</sup> March, 2009 (supra) to be kept in abeyance. The petitioner was directed not to admit students for the academic session 2009-10 until further orders. It is the case of the petitioner that the matter was again considered in detail and whereupon the respondents were satisfied of the complaint made being baseless and vide order dated 3<sup>rd</sup> July, 2009 revoked the earlier order dated 19<sup>th</sup> June, 2009 (keeping the recognition granted in abeyance). It is the case of the petitioner and not controverted by the respondents that the petitioner admitted 100 students in the said course in the academic session 2009-10.

3. One Ms. Shubha Parmar, a lecturer in the Department of History in the petitioner College filed WP(C) No.10150/2009 in this Court averring lack of necessary accommodation and infrastructural facilities and funds in

the petitioner College to conduct B.Ed. classes and seeking directions to the respondents herein to ensure that the B.Ed. classes were not commenced in the College. The said writ petition was disposed of on 2<sup>nd</sup> December, 2009. While it was the case of the College that the classes had already commenced and there was no shortage of accommodation and infrastructure, the counsel for the respondents herein submitted that the premises of the petitioner had been re-inspected and a communication dated 20<sup>th</sup> October, 2009 had been issued to the College in that regard and reply to which had been received on 17<sup>th</sup> November, 2009 and which was under consideration. This Court disposed of the writ petition holding that if the said Ms. Shubha Parmar remains aggrieved by the decision to be taken by the respondents as a result of re-inspection, she would be entitled to her remedies in law.

4. The NRC, pursuant to the above, issued a show cause notice dated 20<sup>th</sup> January, 2010 to the petitioner enumerating / pointing out the following deficiencies:

- (i) The physical infrastructure for B.Ed. course is not as per NCTE Norms for B.Ed.
- (ii) The appointed staff is not qualified and has not been appointed through duly constituted Selection Committee.
- (iii) Library, laboratories and computer facility are being shared with other courses.

5. The petitioner on receipt of the said show cause notice demanded from the respondents the reports of the first Inspection Committee constituted before the grant of recognition as also the report of the two fact finding Committees who visited the College subsequent to the recognition. It was stated that the said documents were required to respond to the show cause notice. Upon the documents being not made available, the Right to Information Act was also invoked. The petitioner ultimately replied to the show cause notice on 9<sup>th</sup> February, 2010. Needless to state, the petitioner refuted the observations on the basis whereof the show cause notice was issued.

6. The NRC vide its communication dated 11/16<sup>th</sup> March, 2010 to the petitioner withdrew the recognition granted to the petitioner to conduct B.Ed. courses from the academic session 2010-11 on the following grounds:

- i. Associate Professors, viz., Dr. Suman Kalia, Dr. Sudipta Ghose and Dr. Veena Kapoor have not been selected through duly constituted selection committee as per NCTE Norms for B.Ed.
- ii. HOD has not been appointed till date.
- iii. One lecturer has been appointed on adhoc basis which is not as per NCTE Norms for B.Ed.

- iv. Different physical facilities are still being shared with students of other courses being run by the College.
- v. The deficiencies related to physical infrastructure required for B.Ed. course still exist.

The University of Delhi to which the petitioner College was affiliated was also informed of the decision. It is the case of the petitioner that it was for this reason only that the University of Delhi while inviting applications for admission to B.Ed. course for the year 2010 made the admissions to the petitioner College subject to approval of the appropriate authorities.

7. The petitioner preferred an appeal to the Appeal Committee of the NCTE. The same was dismissed vide order dated 14<sup>th</sup> May, 2010 (supra) holding that NRC was justified in withdrawing recognition.

8. The senior counsel for the petitioner has contended that:

- (i) Recognition was granted to the petitioner just one year back, after the respondents had fully satisfied themselves of the petitioner being equipped to conduct the course.
- (ii) Attention is invited to the report of September, 2009 of the Visiting Team (Inspection Team) in which the said team had

expressed satisfaction as to the compliance by the petitioner of all pre-requisites for conducting the said course. It is pointed out that the petitioner had prior to grant of recognition, vide its letter dated 3<sup>rd</sup> October, 2008 to the respondents, informed that it had already appointed five new faculty members for B.Ed.; that Dr. Suman Kalia, Dr. Sudipta Ghose & Dr. Veena Kapoor till then teaching faculty of B.El.Ed., had been appointed for B.Ed. course and the senior most amongst them Dr. Suman Kalia was to be the Co-ordinator and that immediately on getting recognition, the said teachers would be taking the B.Ed. classes only and additional teaching faculty in lieu of the said teachers had been appointed for the B.El.Ed. course. It is thus contended that the appointment of the three teachers which *inter alia* forms the ground for de-recognition was in the knowledge of the respondents since prior to grant of recognition and the respondents, who had on the said premise granted recognition cannot turn turtle and de-recognize the petitioner College.

- (iii) Attention is again invited to the Inspection Report of September, 2009 where the Visiting Team (Inspection Team) had reported satisfaction as to the staff position including the

said three teachers and of their having been selected by the Selection Committee of which University representative was a member. Attention is also invited to the Visiting Team Report (VTR) expressing satisfaction of selection of the faculty as per the procedure / norms laid down by the NCTE.

- (iv) Attention is next invited to the affidavit dated 27<sup>th</sup> November, 2008 stated to have been obtained by the respondents from the Principal of the petitioner College and in which the particulars of the three faculty members aforesaid and their qualifications are given and on whose ground the petitioner has now been de-recognized. It is stated that the facts on which petitioner has been derecognized were well within the knowledge of respondents since prior to grant of recognition.
- (v) Attention is again invited to the letter dated 9<sup>th</sup> October, 2008 of appointment of Dr. Suman Kalia being the senior most Reader in the Department of Education as the Head of the Department (B.Ed. Programme). It is thus contended that the ground in the order of de-recognition of there being no Head of the Department and all the three faculty members having not been validly appointed are erroneous and contrary to the satisfaction earlier reached by the respondents.

- (vi) With respect to the ground of one of the Lecturers having been appointed on ad-hoc basis, it is urged that the same was necessitated owing to a sudden vacancy and the process of permanent appointment by advertisement and inviting applications as per the norms has already been completed.
- (vii) With respect to the ground of sharing of various facilities with students of other courses and deficiencies related to physical infrastructure for B.Ed. course, it is contended that satisfaction in this regard had been duly recorded prior to grant of recognition and no change was alleged. Attention is invited to the Visiting Team Report to the effect that there were over 10,000 books in the library of the petitioner with nearly 60% being on education. It is further urged that the petitioner is an eminent College of University of Delhi and the action of de-recognition is motivated to help other Institutes / Colleges recognized by the respondents for conducting the said course.
- (viii) The senior counsel for the petitioner on the aspect of sharing of facilities has also invited attention to Regulation 7(a) in Appendix 4 (Norms & Standards for B.Ed. Degree) in the NCTE (Recognition Norms & Procedure) Regulations 2009 which is as under:

“If more than one courses in teacher education are run by the same institution in the same campus, the facilities of playground, multipurpose hall, library and laboratory (with proportionate addition of books and equipments) and instructional space can be shared. The institution shall have only one Principal of the entire institution and Heads for different teacher education programmes offered in the institution.”

It is thus contended that sharing of facilities, on which ground the petitioner has been de-recognized is permitted.

9. The senior counsel for the respondents has contended that the argument of the respondents having earlier recognized the petitioner for this course cannot be invoked; it is urged that the NCTE Act provides for de-recognition and if it is found that an Institute has been wrongly recognized, it can be de-recognized. Attention is invited to the order of the Appeal Committee where it is recorded that Dr. Suman Kalia, Head of the Department did not have five years of teaching experience in a Secondary Teacher Training Institution to qualify for appointment as HOD for the B.Ed. course. The senior counsel for the petitioner is however quick to point out that it is not controverted in the said order itself that the said Dr. Suman Kalia had four years experience in the Department of Education, Delhi University and has also worked as an ad-hoc guest lecturer for one year in the College besides 12 years in B.El.Ed.; he urges that there is a provision for relaxation of the said norm and Dr. Suman Kalia is eligible for such relaxation.

10. The senior counsel for the respondents further contends that sharing of facilities is permitted with another course in teacher education only and cannot be with other disciplines in which the petitioner College is imparting education. The senior counsel for the respondents contends that the infrastructural facilities such as Library, Laboratory, Multipurpose Hall, Psychology Lab, E.T. Lab etc. are being shared as per the Visiting Team Report also. Attention is also invited to the Annexure to the counter affidavit listing out the various Norms concerned. The senior counsel for the petitioner in rejoinder has contended that the labs etc. are being shared with the B.El.Ed. course only and not with the other courses.

11. What strikes one as odd in the present case is the flip flop attitude of the respondents. The respondent NCTE has been constituted by a Central Act intended to achieve planned and coordinated development of the teacher education system throughout the country and for regulation and proper maintenance of norms and standards in the teacher education system. The respondent NCTE has been entrusted with the important task of granting recognition to Institutes / Colleges entitled to offering course or training in teacher education. The Act, Regulations and the Rules framed thereunder lay down an elaborate process for the same. The nature of enquiry which respondent NCTE is required to conduct before granting recognition is quite evident from the application of the petitioner for recognition in the present

case itself having remained pending for nearly two years. The NCTE and the Regional Committees are manned by persons whose qualifications are prescribed in the Act and the Rules and who are supposedly experts in assessing the capabilities of any Institute / College to offer a course or training in teacher education. The Colleges / Institutes granted recognition by the respondent NCTE have the important task of igniting and guiding the minds of youngsters who constitute the future generation. The entire conduct of the respondent NCTE in the present case however appears to indicate that the NCTE or NRC are not sure of their own decision. Else, it does not make sense as to why recognition once granted would, within a few months thereafter, be kept in abeyance on receipt of a complaint and then again within a few days re-validated. The complaint for the reason whereof recognition granted was ordered to be kept in abeyance, was not relating to matters not visible to the naked eye or capable of being kept under wraps; there was no complaint of deliberate concealment. The complaint was of lack of infrastructure. For inspecting the said infrastructure and for satisfying as to whether the said infrastructure is available or not, not only is the applicant required to submit various particulars but a Visiting Team of independent qualified persons is appointed to survey, inspect physically and otherwise the Institution and its records. The said Visiting Team submits its report in a detailed prescribed form which contains separate columns regarding the existence of the required infrastructure. Once such inspection

has been conducted, its report examined and on the basis thereof the Regional Committee satisfied of the existence of the infrastructure, entertaining complaints in that respect is not understandable. The question of entertaining such complaints would arise only if NCTE and the NRC are not sure of themselves and in the name of inspection and decision making a superficial exercise is done, in dereliction of statutory mandate. This Court desists from presuming so. However the NCTE needs to seriously introspect in the matter.

12. Undoubtedly, the Act has conferred a power on the respondents to withdraw the recognition. However, such an order can be made under Section 17(1) of the Act, only on being satisfied that an Institution has contravened any of the provisions of the Act, Rules, Regulations, Orders or any conditions subject to which recognition was granted. There is no power to, under the guise of Section 17, review the order granting recognition. Power to review a decision is a creation of statute and no inherent power of review can be said to be vested with an authority unless the statute confers such power upon such authority.

13. There is no other option but to read Section 17 in this manner. Of course in a given case if it is established that fraud had been practiced on the Regional Committee in obtaining recognition and owing to which fraud the Regional Committee was misled into believing the existence of a certain

state of affairs and which in fact did not exist, the Institute can be de-recognized. However, the provision of Section 17 cannot be permitted to be used as a provision in the hands of the Regional Committee to review their orders and / or different officials from time to time taking different view on a given state of affairs. If that were to be permitted it would lead to being governed by rule of men instead of law. There is no obligation on the Regional Committee / NCTE to grant recognition to every Institute/College that applies for the same. It has been vested with the power to grant or refuse. Regulation 7(7) of NCTE (Recognition Norms & Procedure) Regulations, 2009 provides that the Regional Committee shall decide grant of recognition or permission to an Institute “ONLY AFTER satisfying itself”. Once such satisfaction has been reached, a different person or the same person at a different time cannot on the same parameters take a different view. In spite of universal acceptance of human fallibility, the law leans strongly in favour of finality of decision.

14. The language of Section 17 permits de-recognition on grounds which have accrued post recognition. The remedy of any person aggrieved by the order of recognition is by way of an appeal under Section 18 and not by way of Section 17(1). In my opinion the NRC in exercise of powers under Section 17 is not entitled to say that the recognition granted was wrong. It is however entitled to state that owing to subsequent events, the Institution

ceases to meet the parameters on basis whereof recognition was granted. The present is not a case of any subsequent event. Neither is it the case of the respondents nor has it been urged by the senior counsel for the respondents that there is a change in the infrastructural facilities from that when the recognition was granted and that owing to the said change the infrastructural facilities are not as per the Norms.

15. In the present case, from the report of the September, 2009 of the Visiting Team, it is quite clear that each and every matter now constituting a ground for de-recognition was in the knowledge of the Regional Committee at the time of grant of recognition. The Regional Committee having earlier found the same to be as per the norms, cannot turn around and take a different view.

16. There is another aspect of the matter. The show cause notice was on three grounds only and that too vague. It was not stated as to what physical infrastructure was not as per which norm. Similarly, it was not stated as to which appointed staff was not found qualified and / or not appointed through duly constituted Selection Committee. The objection regarding Library, laboratories and computer facilities being shared with other courses was equally vague. The senior counsel for the respondents has been unable to show any prohibition against sharing. The sharing *per se* is also not found to be detrimental to the interest of the Institution and its students. Sharing

would be a ground for refusing recognition if it is found that owing to such sharing, the students are deprived of the use of the facilities. Else, in the present times of dearth of space, nothing *per se* wrong is found in sharing of facilities such as library, laboratories and computers. It is not as if the students of B.Ed. course are required to be in the library or in the laboratories or in use of computer facilities at all times. If the said facilities in the interregnum are permitted to be used by students of other discipline, no harm can be seen therein.

17. Section 17 envisages grant of an opportunity to the Institution sought to be de-recognized. Such grant of opportunity cannot be reduced to a mere formality. If the notice to show cause is in such vague terms as aforesaid, the noticee Institution which has been granted recognition a few months earlier only would be at loss to explain. In the present case also though Dr. Suman Kalia, Dr. Sudipta Ghose and Dr. Veena Kapoor having not been selected through duly constituted Selection Committees as per NCTE norms has been made a ground for de-recognition but there was no reference to them by name in the show cause notice. Similarly, though another ground of de-recognition is taken that HOD has not been appointed but the same did not form part of the show cause notice. Upon the same being put to the senior counsel for the respondents, he contends that the same would be part of “the appointed staff being not qualified”. However such guess work

cannot be permitted. The Appeal Committee in the order impugned admits that the Head of the Department existed but has held the said Head of the Department being short of one year of experience. This again was neither a ground in the show cause notice nor in the decision of the NRC. The senior counsel for the respondents has fairly not urged anything with respect to the ground of appointment of an ad-hoc teacher. With respect to library it may be stated that it is not controverted that 10000 books reported by the Visiting Team existed. As per the prescribed norms the books for the B.Ed. course are much lesser in number. Again upon the same being put, the senior counsel contended that the books are for other disciplines and not for B.Ed. However neither the NRC order nor the order of the Appeal Committee of de-recognition take the said ground.

18. With respect to the sharing of the space also it may be stated that the norms provide for minimum of 10 square feet per student. Thus the requirement is of 1000 square feet for 100 students. The orders impugned are vague as to whether the said space was found available or not.

19. The show cause notice is the foundation on which the noticee builds up its case. If the allegations in the show cause notice are not specific, and are on the contrary vague, lack details and / or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. (see *Commissioner of*

***Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd.*** (2007) 5 SCC 388).

20. The Supreme Court in ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji*** AIR 1952 SC 16 held that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do; public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

21. The orders impugned therefore do not inspire confidence. The respondents cannot play with Institutions and trivialize the sanctity of the elaborate procedure laid down for grant of recognition. The respondents seem to forget that considerable effort and expense is entailed in setting up an Institution and all of which is wasted if recognition is refused or withdrawn in such frivolous manner. An Institution like wine matures with the years and if de-recognized frequently as is being done would never mature. It is not only the Institution but also the faculty and the students who suffer by such conduct of the respondents. The senior counsel for the respondents pointed out that students already admitted will not suffer.

However, the said argument ignores that the students passing from an institute which has been de-recognized will carry a stigma with them and their market value for placements shall be adversely affected. Similarly, the petitioner College cannot be expected to employ and de-employ the faculty as per the orders of recognition and de-recognition of the respondents from time to time.

22. During the hearing, it was informed that the classes in the University are to commence from tomorrow and unless the orders are immediately pronounced, the University will not refer students for admission to the petitioner College. In the circumstances, the order allowing the petition was announced in the Court with reasons as herein contained to follow.

23. The petition is allowed. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**19<sup>TH</sup> JULY, 2010**  
gsr