

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

+ **W.P.(C) 4397/2010 & CM No.8726/2010 (for interim stay)**

% **Date of decision : 6th July, 2010**

BASANT LAL MEMORIAL COLLEGE OF
EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat, Advocate.

Versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION AND ANR

..... Respondents

Through: Mr. Vaibhav Kalra, Advocate.

WITH

+ **W.P.(C) 4398/2010 & CM No.8727/2010 (for interim stay)**

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EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat, Advocate.

Versus

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..... Respondents

Through: Mr. Vaibhav Kalra, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 these two writ petitions seeks stay of the operation of the orders (contained in the minutes of the 160th meeting held from 18th May to 20th May, 2010) of the Northern Regional Committee (NRC) of the National Council for Teacher Education (NCTE), derecognizing the B.Ed. and D.Ed. courses for imparting education in which the petitioner had earlier been recognized. The petitioner has preferred statutory appeals to the NCTE (under Section 18 of NCTE Act, 1993) against the orders of the NRC and which are pending. The counsel for the respondent no.2 who appears on advance notice states that NCTE, while exercising the appellate jurisdiction has no power to grant interim relief or to stay the operation of the order appealed before it. This Court, in several other cases, in this view of the legal matter has been entertaining writ petitions for stay of operation of orders of Regional Committees appeals whereagainst are pending before NCTE.

2. The counsel for the petitioner contends that unless such stay of operation of the orders of the NRC is granted, even if the petitioner succeeds in the appeals, would not be entitled to conduct the course for the academic session 2010-11 inasmuch as the prospectus of the University with which the

petitioner is affiliated with respect to the said courses is likely to be published soon and if the petitioner remains derecognized in terms of the order of the NRC, the name of the petitioner would not be shown in the prospectus so published by the University. It is further the contention of the counsel for the petitioner that even though the appeals were filed in the month of June, 2010 but have not been listed for hearing as yet.

3. In view of the urgency expressed and not finding any thing requiring counter affidavit the counsels have been heard fully.

4. The counsel for the petitioner further informs that the prospective students, at the time of filling up the forms for admission pursuant to the prospectus are also required to give their preferences of the Institute; that the counseling of the students normally takes place in the end of August/September, 2010 and if the appeals of the petitioner are not decided by then and/or dismissed resulting in the petitioner remaining derecognized, the students, who may have opted for the Institute of the petitioner will still have an option to join the Institute of their next preference and would not suffer any prejudice.

5. The counsel for the petitioner contends that it has a *prima facie* case for success in the appeals, for the reason that it has been derecognized for reasons other than those pointed out in the deficiency notices earlier issued to it. It is further contended that the deficiencies as pointed out were in any case vague.

6. With respect to the B.Ed. course, the petitioner has been derecognized for three reasons i.e. (i) The labs of the petitioner being ill equipped (ii) The multipurpose Hall being small in size, and (iii) the letter of nomination of experts on the selection committee having not been submitted.

7. As far as first of the aforesaid three reasons is concerned, in the show cause notice it was only stated that “in the language lab, there are only two Headphones which are not adequate”. No deficiency with respect to the multipurpose Hall was pointed out in the show cause notice. Similarly, there was no show cause notice with respect to the letter of nomination of experts.

8. The scheme of the Act and the Regulations framed thereafter envisage an opportunity to be given to the Institute to remove/explain the deficiency/deficiencies on which recognition is sought to be denied/revoked. It is found at least qua the case of B.Ed. course that the grounds on which the

petitioner has been derecognized did not form a part of the show cause notice. *Prima facie*, therefore there is a chance for the petitioner succeeding in the appeal. The petitioner will suffer irreparable loss if inspite of success in the appeal it is rendered unable to conduct the course in the academic session 2010-11.

9. This Court in ***Guru Nanak Khalsa College Vs. National Council for Teacher Education*** being W.P.(C) No.4218/2010 decided on 2nd July, 2010 has taken a view that deficiencies which do not require any further investigation, if removed before the decision of the appeal can be considered and the NCTE in appeal, can take note of subsequent events and act in terms thereof. *Prima facie* the grounds on which the petitioner has been derecognized for B.Ed. course are found to be such which even if correct, are capable of rectification and may not require any long drawn investigation and as such it will be open to the petitioner to, without prejudice to its rights and contentions, remedy the grounds even before the decision of the appeal and submit the additional documents to the NCTE in appeal in this regard.

10. Accordingly, till the decision of the appeal of the petitioner qua derecognition of B.Ed. course, the operation of the order of the NRC shall

remain stayed. The NCTE is also directed to decide the appeal of the petitioner qua the B.Ed. course on or before the first week of August, 2010.

11. Qua the D.Ed. course, the counsel for the respondent has pointed out that derecognition is inter alia on the ground of the Head of the Department (HOD) for the said course having not been selected through duly constituted selection committee. He contends that without the HOD, the petitioner cannot be permitted to conduct the D.Ed. course. The counsel for the petitioner on the contrary has urged that the said ground did not form part of the show cause notice; in the show cause notice it was merely stated that there was no separate Principal/HOD for D.Ed. course. He thus contends that derecognition on this ground, is also contrary to the Act and the Regulations.

12. The petitioner in reply to the show cause notice while admitting that there was no HOD for the D.Ed. course had stated that the senior most Lecturer who had already worked as HOD, in another Institute, imparting education in such course, was officiating as the HOD and after the show cause notice had been appointed as the HOD. It was in view of the said reply of the petitioner that the ground on which the petitioner has been derecognized for the D.Ed. course has been changed from that of, no HOD to

that of the HOD appointed having not been selected by the duly constituted selection committee. It thus cannot be said that there was no show cause notice with respect to this ground of derecognition.

13. There is merit in the contention of the counsel for the respondent that the petitioner cannot run D.Ed. course for the academic session 2010-11 without the HOD selected by a duly constituted selection committee. This Court is of the opinion that when existence of a HOD appointed by a duly constituted selection committee is a requirement, such deficiency is enough to refuse/revoke recognition. A Head of Department is necessary to steer and without him/her the course would be rudderless.

14. The counsel for the petitioner at this stage states that the petitioner undertakes to this Court to have a duly appointed Head of the Department for the D.Ed. course and after complying with the requisite formalities before the academic session 2010-11 commencing in or about September, 2010.

15. In view of the said undertaking of the petitioner and subject to the consideration of the same by the NCTE in appeal and subject to the petitioner satisfying the NCTE in appeal either that HOD was appointed by a duly

constituted selection committee or that it has taken steps for appointment of the HOD and /or that the HOD would be appointed before the commencement of the academic session and/or before the decision of the appeal, the order of the NRC derecognizing the petitioner for the D.Ed. course is also stayed till the decision of the appeal by the NCTE.

16. It may be noticed that the position with respect to the two other grounds on which also the petitioner has been derecognized for the D.Ed. course is the same as with respect to the B.Ed. course mentioned hereinabove.

17. The NCTE is however directed to dispose of the appeal of the petitioner with respect to the D.Ed. course also on or before the first week of August, 2010.

18. The respondent NCTE to also within three days hereof communicate to the University with which the petitioner is affiliated of the stay of the order of derecognition so that the said University can include the name of petitioner in the prospectus to be published.

19. With the aforesaid directions, the petitions stand disposed of. No order as to costs.

The order be given Dasti to the counsel for the parties.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 06, 2010
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