

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

+ **W.P.(C) 5561/2010 & CM No.10935/2010 (u/S 151 CPC for stay)**

% **Date of decision : 17th August, 2010.**

SHYAM COLLEGE OF EDUCATION Petitioner
Through: Mr. Sanjay Sarawat, Advocate.

Versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION AND ANR** Respondents
Through: Mr. Ayushya Kumar, 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 this writ petition seeks stay of operation of the order dated 31st July, 2010 of the Northern Regional Committee (NRC) of the National Council for Teacher Education (NCTE) de-recognizing the petitioner for Bachelor of Education (B.Ed.) course, during the pendency of the statutory appeal preferred by the petitioner before the Appeal Committee of the NCTE. The writ petition has been filed contending that since the Appeal Committee has no power to stay the operation of the order appealed against, unless the stay is granted, the petitioner even if successful in the appeal, would mis-out on the admissions for the current academic session.

2. The petitioner was granted recognition for imparting education in B.Ed. course on 28th September, 2007. The institute of the petitioner was then being run from tenanted premise. It is the case of the petitioner that since as per the new Regulations of NCTE, the petitioner was required to shift to its own premises, it shifted to the new premises and intimated NRC of the same on 15th July, 2008.

3. The NRC issued a show cause notice dated 5th February, 2010 under Section 17 of the Act for de-recognizing the petitioner qua B.Ed. course. The NRC in the said show cause notice averred as many as 12 deficiencies in the petitioner including of the land being not in the name of the institution, only two rooms being available which are insufficient, multipurpose hall being small in size, Science and ET Labs being ill equipped, furniture in classrooms and labs being inadequate etc. The petitioner submitted a reply to the said show cause notice. A second show cause notice dated 22nd June, 2010 was issued to the petitioner in which without expressing any opinion as to whether the explanation in the reply given by the petitioner to the 12 deficiencies in the earlier show cause notice was satisfactory or not, 4 deficiencies were pointed out including of the Building Plan approved by the competent authority for the new site as well as the Building Completion Certificate for the new site having not been submitted. The petitioner again submitted a reply contending that there were no deficiencies.

4. The NRC however in its 163rd Meeting held from 29th to 31st July, 2010 held as under:-

“The original file of the Institution, reply of the Institution along with all other related documents, act of NCTE, 1993, Regulations and Guidelines of NCTE published from time to time were considered by the committee and the committee observes the following:

- The deficiencies communicated through letter number NRC / NCTE / F-3 / HR-729 / 161 Meeting / 2010/23953 dated 22 June 2010 still exist.
- The land is disputed as the matter is pending in the civil court.

Hence the committee decides to withdraw the recognition of B.Ed. programme from 2010-2011 academic session.”

5. As aforesaid the petitioner has preferred an appeal which is pending.

6. The counsel for the petitioner has contended that the order is without any reason, does not deal with reply of the petitioner and is liable to be set aside on that ground alone. Reliance is place on (i) order dated 26th May, 2010 of the Division Bench of this Court in W.P.(C) No.3707/2010 (ii) *NIMT Mahila B.Ed. College Vs. UOI* AIR 2010 Raj. 9 (iii) *Janta Travels Vs. UOI* 1990 RLR 210 (iv) *IOC Vs. SPS Engineering Ltd.* 128 (2006) DLT 417 (v) *Mekaster Trading Corp. Vs. UOI* 106 (2003) DLT 573 and (vi) *Assistant Commissioner Vs. Shukla* (2010) 4 SCC 785.

7. It is also contended that the second ground given in the order of de-recognition is at variance with the show cause notice and no show cause notice with respect thereto was given. Reliance in this regard is placed on (i)

Inderjit Singh Pathak Vs. UOI 115 (2004) DLT 375 (ii) *Tarlochan Dev Sharma Vs. State of Punjab* (2001) 6 SCC 260 (iii) *Nasir Ahmed Vs. Assistant Custodian* (1980) 1 SCC 1 (iv) *Rama Pandey Vs. UOI* 162 (2009) DLT 202 (v) *Commissioner of Customs Vs. Toyo Engineering India Ltd.* (2006) 7 SCC 592 (vi) *ATS Infrastructure Vs. Commissioner of Income Tax* (2009) 318 ITR 299 Delhi and (vii) *Ramchander Vs. UOI* 38 (1989) DLT 402.

8. Considering the nature of the controversy and the counsel for the respondents having appeared on advance notice, the matter was heard finally.

9. The counsel for the respondents has contended that the petitioner Institute could not have shifted from the site on which it was granted recognition without prior approval of the respondents. Attention in this regard is invited to Regulation 8(11) of the NCTE Recognition Norms & Procedure Regulations 2007. It is stated that the petitioner shifted to the new location without any prior inspection thereof and is thus in any case, in violation of the Regulations and not entitled to recognition on this ground alone. It is also contended that the petitioner in the writ petition itself has admitted that a dispute does exist with respect to the land underneath the new site of the Institute of the petitioner. Reference is also made to Regulation 8(7) requiring the land to be free from encumbrances. It is stated that for the new premises/site of the petitioner, in any case there is no order of recognition.

10. The counsel for the petitioner in rejoinder has contended that *post facto* approval of the new site/premises to which the petitioner has shifted, can also be given. Reliance in this regard is place on ***Supreme Court Monitoring Committee Vs. Mussoorie, Dehradun Development Authority*** (1997) 11 SCC 605 and on ***M.P. Purushothaman Vs. Govt. of A.P.*** (2004) 11 SCC 547. It is also contended that the order of de-recognition cannot be justified on grounds other than those mentioned therein. It is further contended that the representations of the petitioner to the respondents with respect to change of location have not been dealt with.

11. Though the counsel for the petitioner is correct in contending that the order of the NRC de-recognizing the petitioner does not give any reason and does not deal with the reply to the deficiency notice earlier submitted but in my view, the said flaw in the order would not automatically entitle the petitioner to the relief claimed. The immediate effect of granting stay of order of NRC of de-recognition would be to entitle the petitioner Institute to admit students for the B.Ed. course in the current academic year. Before allowing the same, it is bounden duty of this Court to satisfy that the order of the NRC de-recognizing the petitioner besides for the reason of technicalities, is *prima facie* erroneous on merits also, in as much as the fate of the students who would be so admitted to the petitioner Institute depends thereon. If the petitioner so admits students without having requisite infrastructure to educate them, the future of the students would be affected.

12. It was enquired from the counsel for the petitioner whether the Institute of the petitioner was inspected before de-recognition, inasmuch as no Visiting Team Report, if any were placed along with the paper book. The counsel for the petitioner has in Court handed over the Visiting Team Report of the inspection on 13th September, 2009 as also of inspection on 15th June, 2009. The Visiting Team in the visit on 13th September, 2009 has stated that there are a number of claimants to the land where the Institute of the petitioner is now situated and the said claimants had come to the site at the time of visit also and had also submitted letters with respect to their claims. Though the Visiting Team Report states that the said letters are attached to the Report but in the copy of the Report handed over, the said letters are not attached and thus the claims of such persons cannot be gauged. The Visiting Team has *inter alia* reported that the science lab does not have multiple set of apparatus/instruments, boys and girls common rooms did not have furniture, art room does not exist and W.E. room does not have requisite material and no provision has been made for teaching work experience, music, arts, health & physical education.

13. The counsel for the petitioner after the hearing has handed over the Norms and Standards for Secondary Teacher Education Programme leading to B.Ed. degree to show that the Institute imparting education in B.Ed. course are required to provide only two classrooms. The petitioner in the paper book has also filed various documents including photographs to justify that the Institute's building at the new site complies with all the norms. The counsel for the petitioner on the basis of a site plan filed at page

37 annexure no.P-4 of the paper book has also contended that the land on which the building is constructed belongs only to the society and the land on which others are staking claim is contiguous thereto.

14. The fact remains that though the petitioner was granted recognition upon the NRC satisfying itself as to the existence of the infrastructure but with respect to the site where the Institute earlier existed. There has never been any recognition qua infrastructure with respect to the present site. The NRC which is an expert body to decide whether the petitioner has the requisite infrastructure or not, has expressed dissatisfaction with respect to the present site of the petitioner. In spite of the irregularities in the order of the NRC, the deficiencies pointed out in the Inspection Report are not such which can be taken lightly; unless the experts constituted for the said purposes are satisfied, the petitioner cannot claim a right to continue admitting the students and whose career may be affected owing to the deficiencies, if any in the petitioner Institute. I however at this stage refrain from delving into the matter further as it may influence the decision of the Appeal Committee of the NCTE which is seized of the appeal.

15. The only relief which can be granted to the petitioner, thus is to expedite the hearing of the appeal so that in the event of the petitioner being able to satisfy the Appeal Committee of the NCTE, it does not miss out on the admissions for the current academic session.

16. The writ petition is therefore disposed of only with the direction to the Appeal Committee of the NCTE to decide the appeal preferred by the petitioner as soon as possible and to enable the petitioner to, if succeeding in the appeal, admit students in the current academic session.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

17th August, 2010
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