

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

Date of decision: 23rd September, 2010.

+ W.P.(C) 6472/2010 & CM No.12806/2010 (for stay).

**CH HET RAM JOHARI LAL MEMORIAL
COLLEGE OF EDUCATION**

..... PETITIONER

Through: Mr. Sanjay Sharawat, Advocate.

versus

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

..... RESPONDENTS

Through: Mr. Ayushya Kumar & Mr. Vaibhav
Kalra, Advocates.

AND

+ W.P.(C) 6473/2010 & CM No.12807/2010 (for stay).

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AND

+ W.P.(C) 6474/2010 & CM No.12808/2010 (for stay)

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COLLEGE OF EDUCATION**

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Through: Mr. Sanjay Sharawat, Advocate.

versus

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

..... RESPONDENTS

Through: Mr. Ayushya Kumar & Mr. Vaibhav
Kalra, Advocates.

AND

+ W.P.(C) 13683/2009 & CM No.15387/2009 (for stay).

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COLLEGE OF EDUCATION**

..... PETITIONER

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versus

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..... RESPONDENTS

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Kalra, Advocates.

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. W.P.(C) No. 6472, 6473 & 6474/2010 have been preferred seeking stay of the order dated 22nd June, 2010 of the Northern Regional Committee (NRC) of the National Council for Teacher Education (NCTE), made in exercise of powers under Section 17 of the NCTE Act, 1993 de-recognizing the petitioner for B.Ed., D.Ed. and additional seats for B.Ed. (B.Ed. (Addl.)) courses.

2. The petitioner had earlier preferred WP(C) No.13683/2009 challenging the show cause notice preceding the order dated 22nd June, 2010 of de-recognition. The said WP(C) No.13683/2009 is stated to be listed next on 8th November, 2010. It is pleaded in each of the petitions and also stated by counsel for the petitioner at the outset that the petitioner while filing the

fresh petitions withdraws the earlier petition. The file of WP(C) No.13683/2009 was accordingly called for and the said petition is dismissed as withdrawn.

3. The petitioner in the fresh writ petitions has *inter alia* impugned the power of NRC to, in exercise of the powers under Section 17 of the Act inspect the Institute/College. Order on the said legal aspect have been reserved in another petition being W.P.(C) No.6409/2010 titled ***LNT College of Education Vs. NCTE*** argued by the same counsel. The counsel for the petitioner states that for the purposes of the present petitions, owing to expediency, he is not challenging the power of NRC to, in exercise of powers under Section 17 of the Act inspect the Institute and bases his case on other averments in the petition. The counsels have been heard on these petitions.

4. The NRC issued a letter dated 14th August, 2009 to the petitioner informing the petitioner that it had decided to, in exercise of power under Section 17 of the Act between 20th August, 2009 to 30th August, 2009 conduct inspection of the Institute of the petitioner for B.Ed., D.Ed. and B.Ed. (Addl.) courses. The petitioner was asked to submit the documents mentioned in the said communication and was also informed that the Visiting Team as part of the inspection shall verify whether various infrastructural/instructional facilities had been created by the petitioner as per the norms and standards of NCTE. The Visiting Inspection Team of the NRC however instead of inspecting the Institute of the petitioner between 20th August, 2009 to 30th August, 2009 visited the petitioner Institute on 3rd September, 2009. It is the case of the NRC that the Managing Committee of the petitioner did not allow the Visiting Team members to inspect the infrastructural/instructional and other facilities in the courses being run by

the petitioner. Accordingly, a show cause notice dated 4th November, 2009 was issued to the petitioner under Section 17 of the Act.

5. It is the said show cause notice dated 4th November, 2009 which was challenged by the petitioner in W.P.(C) no.13683/2009 earlier preferred and which has been withdrawn as aforesaid today. The petitioner in the said writ petition also, challenged the power of NRC to inspect under Section 17 of the Act. The said earlier writ petition came up before this Court first on 8th December, 2009 when the counsel for the respondent NCTE appearing on advance notice opposed the territorial jurisdiction of this Court to entertain the petition, the show cause notice challenged wherein was of NRC situated at Jaipur. Keeping the said objection open, notice of the petition was issued. It was also observed that “inspection as well as any further action carried out by the respondents pursuant to the impugned communications dated 3rd November, 2009 and 7th November, 2009 shall be subject to the outcome of the writ petition.” The counsel for the petitioner states that the dates of 3rd November, 2009 and 7th November, 2009 mentioned in the order are typographical error, the challenge being to show cause notice dated 4th November, 2009. The interim relief claimed by the petitioner in the earlier writ petition of restraining NRC from proceeding further with the show cause notice was not granted.

6. The petitioner filed a reply dated 23rd November, 2009 to the show cause notice. Though the copy of the said reply filed before this Court contains reply on several other aspects which were not subject matter of the show cause notice but the counsel for the petitioner on enquiry states that the same is a mistake on account of cut and paste.

7. The petitioner in its reply to the show cause notice stated that it had called all its faculty members for inspection between 20th August, 2009 to

30th August, 2009 but the inspection was not carried out; that on 3rd September, 2009 when the inspection team visited, all the staff members were on tour on the occasion of Purnima at Jambh Sarovar Dham, Rajasthan and the record and all necessary documents were in the custody of the Principal and the staff and the Management was thus not able to show the relevant documents.

8. The NRC vide order dated 22nd June, 2010, not finding the response to the show cause notice satisfactory, withdrew the recognition of the petitioner for the Academic Year 2010-2011.

9. The counsel for the petitioner on enquiry states that the statutory appeal against the said order to the Appeal Committee of the NCTE, though intended to be filed yesterday could not be filed and has been filed today.

10. The petitioner by way of present petitions seeks stay of the order of the NRC contending that it has a good chance of succeeding in the appeal; that the counseling by the University to which the petitioner is affiliated, for admission to the current Academic Year has commenced from 21st September, 2010 and is to continue till 14th October, 2010 and because the petitioner has been de-recognized, it will not be considered for admission, causing loss to the petitioner even if succeeds in the appeal before the Appeal Committee of the NCTE.

11. The petitioner has in the petition stated that the inspection on 3rd September, 2009 could not be given because the staff of the College was not available “due to some prior schedule fixed”. It is also pleaded that in the absence of the staff the inspection team was of the view that no effective inspection would take place and thus the inspection team did not conduct the inspection though could have. The counsel for the NRC/NCTE appearing on

advance notice points out that no such plea was taken in the reply to the show cause notice and is an afterthought.

12. The fact remains that the inspection was not offered. I am not satisfied with the explanation given for inspection having not been carried out. It is highly unbelievable that the entire faculty had “a prior schedule fixed” for a religious excursion as pleaded. Even if the visiting team had not inspected between 20th August, 2009 to 30th August, 2009 as intimated, nothing prevented the petitioner from enquiring from the NRC as to when the inspection was scheduled thereafter. The relief claimed in the present petitions is in the nature of interim relief during the pendency of statutory appeal against the order of de-recognition. This Court, in the face of the petitioner having admittedly not given inspection, is not inclined to grant any interim relief as sought by the petitioner. The obvious conclusion is that the petitioner had something to hide; that the infrastructure and faculty did not exist and was collected only for the scheduled inspection between 20th August, 2009 and 30th August, 2009 and upon being caught off guard, the petitioner had nothing to offer.

13. The counsel for the petitioner has contended that power under Section 17 of the Act can be exercised only when the Institution is found to be in contravention of any of the provisions of the Act, Rules, Regulations or other conditions and it is contended that in the present case the petitioner has been de-recognized in exercise of powers under Section 17 without any finding of being in breach of provisions of the Act, Rules Regulations or other conditions.

14. The said contention of the petitioner is also not acceptable. Without the petitioner giving inspection, the NRC could not have gauged whether the petitioner is complying with the Act, Rules, Regulations etc. or not. Any

person who avoids inspection in the present days of transparency runs the risk of it being presumed against him that he has something to hide. I have no material before me not to draw the said presumption. Even today nothing has been placed before this Court to satisfy this Court that the faculty had gone on religious excursion as aforesaid or had sought any leave for the same. It is highly unlikely that the entire faculty would be granted leave. Nothing to show that leave was so granted has been shown. The counsel for the petitioner has sought to meet the said observation by contending that the academic session was not running at that time. However no such plea has been taken in the petition and rather the plea that the faculty “had a prior schedule fixed” indicates to the contrary.

15. It is also inexplicable as to why the petitioner did not then seek the relief of having the Institute inspected. The petitioner instead filed the earlier writ petition challenging the very power to inspect and has now approached this Court at the last minute. The counsel for the petitioner contends that the petitioner had in reply to the show cause notice also offered inspection. However the fact remains that immediately after the reply the earlier writ petition was preferred and in which no such relief was claimed.

16. The counsel for the petitioner has referred to an earlier order dated 1st July, 2010 of this Court in W.P.(C) No.4327/2010 titled ***LNT College of Education Vs. NCTE***. However in that case the admissions were still far away and as such pending the decision of the appeal and only to retain the name of the petitioner in that case in the list of recognized institutions, the relief was granted.

17. I have also weighed the option of directing the expeditious disposal of the appeal. However it *prima facie* appears that in appeal also the order which can be made is of re-inspection only and all of which is not likely to

be completed before 14th October, 2010.

18. The interim order sought by the petitioner if granted is likely to affect the students who would be admitted to the petitioner Institute in pursuance thereto. Ultimately if it is found that the petitioner is not equipped or does not satisfy the norms of recognition, the fate of the said students would be in jeopardy. The Supreme Court also in ***Union of India Vs. Era Educational Trust*** (2000) 5 SCC 57 has deprecated the practice of the High Court in exercise of writ jurisdiction granting interim orders permitting students to be admitted.

19. The counsel for the petitioner at this stage states that the petitioner has already admitted students to D.Ed. course with respect to which WP(C) No.6473/2010 has been preferred. On enquiry how, it is stated that the petitioner had represented to the State of Haryana which makes admission to D.Ed. course as well as to the University which makes admissions to B.Ed. that since WP(C) No.13683/2009 was pending, the matter of its de-recognition was sub judice; while the State accepted the said plea, the University did not. He seeks relief at least qua D.Ed. course.

20. The petitioner has itself to blame for admissions to D.Ed. course. WP(C) No.13683/2009 was preferred even before the order of de-recognition. No interim relief was granted to the petitioner in that writ petition. The petitioner upon de-recognition was not entitled to admit students. It is better that the said students are adjusted now only in other Institutes / Colleges rather than suffering later.

21. The petitioner is not found entitled from its conduct of refusing inspection and making admissions without being entitled, to any equitable relief.

22. There is no merit in the petitions. The same are dismissed.

Copy of this order be given *dasti* under the signatures of court master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

23rd September, 2010
pp