

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7925/2011**

Date of Decision: 16th December, 2011.

IN THE MATTER OF:-

RAO UDMI RAM MEMORIAL COLLEGE OF EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER THROUGH CHAIRMAN

EDUCATION AND ANR

..... Respondents

Through: Mr. Amitesh Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

: HIMA KOHLI, J. (ORAL)

1. The petitioner is aggrieved by the Order dated 28.10.2011 passed by the Appellate Authority, i.e., respondent No.1/NCTE as also the decision taken by respondent No.2/NRC in its 160th meeting held from 18th to 20th May, 2010 whereby the recognition of the petitioner/College for conducting the D.Ed. Course was withdrawn.

2. Counsel for the petitioner states that while passing the impugned order dated 18th-20th May, 2010, respondent No.2/NRC has mixed up

the cases and documents of the petitioner college with that of another college, which has the same name as was the petitioner's erstwhile name. He further submits that a perusal of the aforesaid order shows that it is unclear whether the withdrawal of recognition pertains to the B.Ed. course or the D.Ed. course. To fortify the aforesaid submission, he relies on the show cause notice dated 11.08.2009 issued by respondent No.2/NRC addressed to the petitioner/College, wherein mention was made at the top, under the heading, "Sub.: The application of the petitioner for seeking grant of recognition for B.Ed. Course". Similarly, even in the body of the said notice to show cause, in para-3 thereof, mention had been made of the proposal for withdrawal of recognition of "B.Ed. Course" being run by the petitioner on account of deficiencies indicated therein.

3. Learned counsel goes on to point out the minutes of the 160th meeting of respondent No.2/NRC held from 18th-20th May, 2010, a perusal of which shows that against serial No.108, which relates to the petitioner/College, the course mentioned is "B.Ed." instead of "D.Ed.". He further submits that in the 5th Column of the aforesaid minutes of meeting, the relevant file is shown as "HR 730" which relates to the B.Ed Course. However, it is stated that subsequently, respondent No.2/NRC in its 162nd Meeting held on 24th-27th June, 2010 issued a

clarification that "HR 730- B.Ed." may be read as "HR 730 - D.Ed." and hence the decision in HR-730 – D.Ed. was to be kept in abeyance. Counsel for the petitioner submits that after all the aforesaid confusion at the end of the respondents, eventually, the impugned order dated 28.10.2011, which came to be passed by respondent No.1/NCTE, is for withdrawal of recognition for the D.Ed. course in the petitioner/College.

4. It is relevant to note that the aforesaid directions of respondent No.2/NRC to keep HR-730 in abeyance was on account of certain Court proceedings initiated by the petitioner and pending in the High Court, subject matter of **W.P.(C) No.9741/2009** which petition was finally decided on 28.02.2011 and which decision was challenged by the petitioner in an intra-court appeal decided by the Division Bench on 20.04.2011.

5. The second ground urged by counsel for the petitioner for seeking quashing of the impugned order is that the aforesaid show cause notice issued by the respondents sets out 17 deficiencies stated to have been noticed in the college whereas, in the order dated 18th-20th May, 2010 passed by respondent No.2/NRC recommending withdrawal of B.Ed. recognition, it is quite obvious that respondent

No.2 did not consider the reply submitted by the petitioner to the show cause notice and instead, proceeded to withdraw the recognition of the petitioner college on entirely different grounds. It is submitted that only a passing reference was made in the order that deficiencies indicated to the petitioner on 11.08.2009 still existed.

6. Furthermore, it is contended that even the Appellate Authority i.e. respondent No.1/NCTE, before which the petitioner had filed an appeal, instead of considering the deficiencies pointed out in the show cause notice dated 11.08.2009, passed the impugned order dated 28.10.2011 by proceeding on completely new grounds and finally decided to withdraw recognition granted to the petitioner. In other words, it is the submission of the counsel for the petitioner that the grounds taken as deficiencies by the respondents in their show cause notice, which should have been considered before any decision on withdrawal of recognition was taken, were not dealt with at all either by respondent No.2/NRC in its decision dated 18th-20th May, 2010, nor by the Appellate Authority in the impugned order dated 28.10.2011. He submits that in rejecting the appeal of the petitioner, the Appellate Authority has only dealt with those grounds, which were introduced for the first time by respondent No.2/NRC. He seeks to elucidate the aforesaid submission by referring to the grounds of rejection of the

appeal filed by the petitioner, as set out in the impugned decision which is on following four counts:-

"AND WHEREAS the Council noted that

- a) the "patta deed" dt. 06/02/2007 is in the name of Smt. Sunil Kumari and the land was for school purpose. The same pattadar "Smt. Sunil Kumari" gifted the land to the college on 12/08/2009. It is observed that the same land piece is meant for school purpose by way of patta deed and for college purpose by way of gift deed which can not be acceptable ;
- b) the building plan is for both school and college. The plan mentioned 1096.74 sq.mt. of built up area for school and 3513 sq.mt of built up area for college;
- c) building completion certificate dated nil issued by Sarpanch do not mention the Khasra No., built up area and land/plot area details and also purpose of the building. Hence, building completion certificate is not a valid document. From all these three documents it is clear that the same premises are used for school as well as college.
- d) The committee further noted from inspection report dt. 22/06/2009 that it was a school building. There is no separate block/building for D.Ed and B.Ed courses. In one acre of land Sardar Patel School, D.Ed and B.Ed courses and technical college were being run. Even the staff was same and they were teaching in school as well, salary register showed only one page and that also for June 2009 only and the figures were tempered. The team was denied access to many of the original documents. In view of the above the Council came to conclusion that there is no justification in accepting appeal and hence it should be rejected.

AND WHEREAS after perusal of documents, memorandum of appeal, VT report, affidavit and after considering oral arguments advanced during hearing, the Council reached the conclusion that there was no ground to accept the appeal and hence it should be rejected. Accordingly, the appeal is rejected and NRC's order dated 21/06/2010 is confirmed.

NOW THEREFORE, the Council hereby confirms the Order appealed against."

7. Lastly, counsel for the petitioner submits that the petitioner/College has inducted 50 students to the D.Ed. course for the academic years 2011-13, whose academic future would be jeopardized if the impugned order of respondent No.1/NCTE is upheld and recognition of the petitioner/college for conducting D.Ed. course is withdrawn.

8. Counsel for the respondents refutes the aforesaid submissions made by the petitioner and states that the basis of issuance of the notice to show cause dated 11.8.2009 was an inspection of the petitioner/College conducted on 22.6.2009, and vide notice dated 19.06.2009 addressed by the respondent No.1/NCTE, the petitioner had been duly intimated that an inspection would be conducted for the D.Ed. Course. It is further submitted that the confusion, if any, between the B.Ed. course and the D.Ed. course that has been pointed out in the notice to show cause issued to the petitioner as also in the

order passed by the respondent No.2/NRC in its 160th meeting, was subsequently clarified by the NRC in its 162nd Meeting as admitted by the petitioner and subsequently, the impugned order passed by the Appellate Authority also specifically dealt with the D.Ed. Course, hence the same cannot be treated as an infirmity in the impugned order. It is argued that the inspection notice of 19.06.2009 was within the knowledge of the petitioner and the petitioner was well aware of the fact that the visiting team would ask for relevant documents during the inspection, which would be required to be made available by the petitioner at that time. He lays emphasis on the fact that the findings returned by the visiting team are findings of fact, which have concurrently been upheld by two forums and if disputed questions of facts are to be raised by the petitioner, the same cannot be examined in writ proceedings. In support of the aforesaid submissions, reliance is placed on the following judgments:

- i. *The University of Mysore & Anr. Vs. C.D. Govinda Rao & Anr.* (1964) 4 SCR 575
- ii. *Medical Council of India Vs. Sarang & Ors.* (2001) 8 SCC 427
- iii. *P.M. Bhargava & Ors. Vs. University Grants Commission & Anr.* (2004) 5 Scale 551
- iv. *All India Council for Technical Education Vs. Surinder Kumar Dhawan & Ors.* (2009) 11 SCC 726

9. It is further canvassed by the counsel for the respondents that on 22.06.2009, two sets of inspections were conducted, one for B.Ed. Course and the other for D.Ed. Course and that a perusal of the records reveals that the petitioner had tried to take advantage of the existing facilities and infrastructure shown for conducting the B.Ed course, by using the same facilities and infrastructure for the subsequent D.Ed course as well. He states that as for the grievance of the petitioner that it was not served with a copy of the inspection report submitted by the visiting team for it to respond effectively thereto, the proviso to Section 17(i) of NCTE Act itself states that the recognized institution shall be given "a reasonable opportunity of making representation against the 'proposed order'..." and, therefore, it is submitted that once the proposed order was conveyed to the petitioner, there was no requirement for respondent No.2/NRC to have served the petitioner separately with a copy of the inspection report. It is also sought to be urged on behalf of the respondents that the respondents are technical bodies and aspects, like, notice prior to conducting an inspection are merely technical objections and once such a body has pointed out certain deficiencies to a particular Institution/College, it is for the Institution/College to satisfy the NRC

or in turn, the Appellate Authority that it meets the NCTE norms and standards in that regard. However, in the absence of necessary compliances and in the event of failure on the part of the Institution/College to prove the existence of the declared facilities including infrastructure, the respondents are under an obligation to withdraw the recognition granted to such an Institution.

10. Thus, the impugned order is sought to be justified on the ground that it is within the domain of the respondents to satisfy themselves as to the availability of adequate facilities and infrastructure for imparting education in all the existing courses being run by the Institute, instead of any one particular course run by an Institution/College as in the present case, wherein the D.Ed course run by the petitioner was found to be woefully lacking in infrastructure and facilities. In this regard, reference is made to the notice to show cause, which as per learned counsel for the respondent, points out all the deficiencies in the infrastructure and facilities in the petitioner/College, as regards which the petitioner had been unable to satisfy both, the NRC and the Appellate Authority.

11. The sheet anchor of the arguments addressed by the counsel for the petitioner is that an ambiguous and poorly articulated show cause notice was issued by respondent No.2/NRC, wherein deficiencies in

respect of the petitioner/College were set out, and although, in its reply to the show cause notice, the petitioner had duly responded to all the 17 deficiencies as pointed out, respondent No.2/NRC had ignored all the submissions made by the petitioner in its reply and had not only reiterated the earlier deficiencies pointed out in the show cause notice dated 11.08.2009, but on top of that, also added 6 other deficiencies in the decision taken in its 160th Meeting, which deficiencies were never a part of the show cause notice and further, that the Appellate Authority did not deal with the grounds of appeal urged by the petitioner and instead predicated the impugned rejection order dated 28.10.2011 on four grounds noted in its order, which had also not formed a part of the notice to show cause, for the petitioner to have met them in the reply submitted by it or in the grounds taken by it in the appeal, as set out from (a) to (f) in the impugned order.

12. There is no gainsaying the fact that when the report submitted the visiting team, which conducted the inspection of the petitioner/College on 22.06.2009, is perused in juxtaposition to the show cause notice dated 11.08.2009, it does appear that the drafting of the notice to show cause and the manner in which the deficiencies in the petitioner/College have been set down therein, leaves much to be desired, both in terms of the language used which is quite inchoate

and unclear and in terms of the descriptions of the facilities/infrastructure available or lacking therein. Similarly, the decision taken by respondent No.2/NRC in its 160th Meeting does not appear to have been set out and structured in a proper format. It does not give any reasons for rejecting the submissions made by the petitioner in its reply. In the appeal proceedings, even though the grounds articulated by the petitioner in its appeal have been duly set out in the impugned order, yet the decision taken is largely confined to the aspect of the land on which the institution is situated, besides stressing lack of adequate infrastructure and facilities within the petitioner/College.

13. In view of the ambiguous and poorly drafted show cause notice dated 11.08.2009, which is woefully lacking in articulation and considering the inadequate manner in which respondent No.2/NRC has dealt with the submissions made by the petitioner in its reply to the show cause and further in view of the assertion of the counsel for the petitioner that even though it had in its possession the relevant documents in respect of the land on which the petitioner/College was constructed as also the documents to establish that there was sufficient infrastructure and facilities available with the petitioner to run the subject Course, i.e., D.Ed Course, the same could not be

placed before the Appellate Authority, due to the poor articulation of reasons for withdrawal of recognition by respondent No.2/NRC in the decision taken in the 160th Meeting, which has resulted in grave injustice being caused to the petitioner, it is deemed appropriate to quash and set aside the impugned order dated 28.10.2011 and remand the matter back to respondent No.1/NCTE, with the following directions:-

- i. In view of the fact that the counsel for the petitioner submits that all relevant documents with regard to the land in question as also the infrastructure available with the petitioner/College were submitted by the petitioner along with the grounds of appeal filed by it before respondent No.1/NCTE, the said documents along with the inspection report of the visiting team as also the photographs taken, if any shall be taken into consideration by respondent No.1/NCTE.
- ii. After taking into consideration the aforesaid documents/submissions made in the grounds of appeal by the petitioner, respondent No.1 shall pass a reasoned order in the very next meeting of the Appellate Authority.

14. It may be noted that the Court has deemed it expedient to remand the matter back to the Appellate Authority instead of the NRC, which is the next below authority so as to ensure that the future of the

50 students, who are stated to have been inducted by the petitioner/College to the D.Ed. Court for the academic years 2011-13, is not jeopardized due to any delay taken in the decision making process. It is further clarified that the Court has not made any observations with regard to the induction of the aforesaid students by the petitioner/College, in the teeth of the impugned order dated 28.10.2011 passed by respondent No.1/NCTE, withdrawing recognition in respect of the said Course. As a result, the decision taken on remand by the Appellate Authority shall govern the fate of these students inducted by the petitioner/College. This position shall be duly intimated by the petitioner in writing to all the aforesaid students.

15. Immediately upon taking a decision in the matter on remand, as indicated above, respondent No.1/NCTE shall duly intimate the said decision to the petitioner as expeditiously as possible and preferably within a period of ten days from the date of taking such a decision.

16. The petition is disposed of.

Dasti to the parties.

HIMA KOHLI,J

DECEMBER 16, 2011
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