

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

% *Date of Decision : July 08, 2013*

+ **W.P.(C) 3560/2013**

B.K.KAPOOR .....Petitioner  
Represented by: Mr.K.D.Gupta, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. .... Respondents  
Represented by: Ms.Avnish Ahlawat, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**PRADEEP NANDRAJOG, J.**

1. State Council of Educational Research and Training Delhi (SCERT) is a society registered under the Delhi Societies Registration Act.

2. As per Rule 25 of the Memorandum of Association the Executive Committee of SCERT acts as the Governing Body of SCERT. As per Rule 26, the Executive Committee consists of : (i) Secretary (Education) Government of NCT Delhi who acts as the Chairperson of the Executive Committee, (ii) Secretary (Finance), (iii) Director of Education, (iv) Additional Director of Education (Schools), (v) Director NCERT or his nominee, (vi) Director, SCERT, (vii) Director NIEPA or his nominee, (viii) Joint Secretary (Education), Ministry of HRD or his nominee, and (ix) Education Officer, MCD; all of whom are the Members of the Executive Committee.

3. Rule 64 reads as under:-

*“Subject to the provisions of Delhi Societies Registration Act (XXI of 1860) the Council may alter or amend its Rules and objects with the previous concurrence of the Admn. of Delhi/Government of Delhi State.”*

4. As originally enacted, Rule 67 of the Memorandum of Association of NCERT, which deals with the terms and tenure of service of Academic staff of the Council, read as under:-

*“The terms and tenure of service of the Academic staff at the Council shall remain the same as available for the Academic staff of the National Council of Educational Research and Training.”*

5. The Executive Committee of SCERT, at a meeting held on December 01, 1999, resolved to amend Rule 67, being empowered to do so since under Rule 43. The amendment replaced existing Rule 67 as under:-

*“The terms and tenure of service of Academic and other staff of Council should remain the same as available for the Academic and other staff of the Directorate of Education, GNCT of Delhi with such modifications that may be specifically adopted by the Executive Committee from time to time.”*

6. The age of superannuation of Academic staff under the Government of NCT Delhi being 60 years and that of the Academic staff working in NCERT being 62 years, the Academic staff of SCERT raised issues pertaining to the amendment of Rule 67 resulting in the Executive Committee of the Council passing a resolution in October 13, 2008 to restore Rule 67 as originally enacted. But, the Lt. Governor of Delhi, exercising the executive power of the Government of NCT Delhi, did not accord approval to the resolution dated October 13, 2008 passed by the Executive Committee of the Council.

7. A Division Bench of this Court opined that SCERT is a State within the meaning of Article 12 of the Constitution of India and the Lt. Governor of Delhi is bound to implement the resolutions passed by SCERT. Accordingly, the Division Bench directed that the Academic staff of the SCERT would superannuate on attaining the age of 62 years. The decision is reported as 82 (1999) DLT 289 (DB) T.C.Sharma Vs. Lt. Governor & Ors. Petition seeking Special Leave to Appeal against the decision of the Division Bench of this Court was dismissed by the Supreme Court on February 04, 2000. But, in a reasoned decision in Civil Appeal No.3272/2003 Lt. Governor of Delhi & Ors. Vs. V.K.Sodhi & Ors. delivered by the Supreme Court on August 14, 2007, it was opined to the contrary; holding that since entire finances of SCERT are provided by the Government of NCT Delhi any decision pertaining to the finances of SCERT must be with the approval of the Government of NCT Delhi. In the said decision apart from other issues the Supreme Court was concerned with Rule 67 on the subject of the Advanced Career Promotion Scheme.

8. The petitioner, a Senior Lecturer i.e. a member of the Academic staff of SCERT, who was due to superannuate on March 31, 2013 approached the Tribunal against he being superannuated on attaining the age of 60 years and relied upon the resolution passed by the Executive Committee on October 13, 2008 to restore Rule 67 as it stood originally enacted by further highlighting that the Academic staff in NCERT superannuates at the age of 62 years. He relied upon the Division Bench decision of this Court.

9. Vide impugned decision dated April 15, 2013 dismissing OA No.598/2013 filed by the petitioner the Tribunal has held that in view of the decision of the Supreme Court in V.K.Sodhi's case (supra), since the

Government of NCT Delhi did not approve the resolution passed by the Executive Committee on October 13, 2008, the Rule as amended on December 07, 1999 would be applicable and since Academic staff under the Government of NCT Delhi superannuates on attaining the age of 60 years, the petitioner was rightly retired on March 31, 2013.

10. We note that the Tribunal, probably for the reason nobody drew attention of the Tribunal to Rule 64, has not referred to the same.

11. It is settled law that a Juristic Entity, such as a society registered under the Societies Registration Act, breaths and lives in terms of its charter of incorporation i.e. the Memorandum of its incorporation and Rules framed. Thus, notwithstanding the Executive Committee of SCERT being empowered to amend the Rules as per power conferred by Rule 43 it must additionally abide by Rule 64 which requires amendment to the Rules with the previous concurrence of the Government of Delhi; and we do not find any approval accorded by the Government of Delhi to the resolution passed by the Executive Council on October 13, 2008. Further, as observed by the Supreme Court in V.K.Sodhi's case (supra) since entire finances of SCERT are met by the Government of NCT Delhi, any resolution passed by the Council having financial impact must be as per the finances made available by the Government of NCT Delhi.

12. We concur with the view taken by the Tribunal.

13. The submission advanced that Rule 26 shows complete representation of the Government of NCT Delhi including the Secretary Finance on the Executive Council of SCERT and that since the resolution dated October 13, 2008 was passed when the Secretary Finance was present it has to be treated as a resolution with the approval of the Government of NCT Delhi is noted and rejected for the reason the Secretary Finance has not been shown to us as having any power to act on

behalf of the Government of NCT Delhi with reference to the allocation of business rules to conduct the affairs of the Government of NCT Delhi. A person can wear two hats. The Lt. Governor of Delhi exercises the executive powers on behalf of the Government of NCT Delhi and he alone could have approved the resolution in question.

14. The second argument advanced by relying upon certain observations of the Supreme Court in V.K.Sodhi's case where the Supreme Court held that there is no deep and pervasive control of the State over SCERT and hence SCERT is not a State. It was urged that said observations of the Supreme Court would reveal that the management of the affairs of SCERT is the concern of the Executive Committee alone without any governmental interference.

15. We fail to understand the applicability of the logic of the argument. That the Government does not exercise deep and pervasive control over the affairs of SCERT has nothing to do with Rule 64 of the Memorandum of Association of SCERT which mandates that any amendment to the Rules must be with the previous concurrence of the Government of Delhi.

16. The writ petition is dismissed but without any orders as to costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(V.KAMESWAR RAO)**  
**JUDGE**

**JULY 08, 2013**

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