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

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Date of Decision: May 30th, 2013

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W.P.(C) 6853/2010

RATTAN SINGH GIRLS COLLEGE OF EDUCATION Petitioner

Through : Mr.Rakesh Tiku, Sr. Adv. with.Abhinav
Bajaj, Adv.

versus

**NATIONAL COUNCIL OF TEACHER
EDUCATION AND ANR**

..... Respondents

Through : Mr.Amitesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India seeking a writ of certiorari to set aside the impugned order dated 27.9.2010 passed by the Appellate Committee of National Council for Teacher Education (NCTE) in Appeal No.89-979/2010 whereby the appeal filed by the petitioner herein was rejected and the NRC's decision to withdraw recognition of the petitioner institute was confirmed. The petitioner also seeks directions to the NCTE to restore the recognition of the petitioner institute for M.Ed course and direct M.D.U. to restore affiliation of the petitioner for M.Ed course.
2. As per the petition, respondent no.1, NCTE, after having satisfied that all the norms are complied with granted recognition to the petitioner institute for running M.Ed course on 22.9.2008. In the month of October, 2009, the Northern Regional Committee (NRC) of respondent no.1, NCTE, conducted an inspection of the petitioner college. Pursuant to the said

inspection, the NRC in its meeting held from 26.5.2010 to 29.5.2010, on the basis of various observations showing certain shortcomings, issued a show cause notice to the petitioner on 11.6.2010. The petitioner was given thirty days time to submit its reply. Reply to the show cause notice was submitted by the petitioner to the respondent, however, since the reply was not found satisfactory, the NRC withdrew the recognition granted to the petitioner in its meeting held from 29.7.2010 to 31.7.2010.

3. Learned senior counsel for the petitioner submits that against the impugned order whereby the recognition granted to the petitioner was withdrawn by the NRC an appeal was filed by the petitioner before the Appellate Committee of respondent no.1, which was dismissed by an order dated 27.9.2010. Senior counsel next submits that the NRC had inspected the petitioner institute without issuing a prior notice to the petitioner, which is mandatory as per Section 13(2) of the NCTE Act. Senior counsel further submits that the deficiencies, pointed out by the NRC in the show cause notice issued to the petitioner, were imaginary as the petitioner had fulfilled all the criteria as laid down by respondent no.1 for M.Ed course. Senior counsel also submits that the show cause notice was issued to the petitioner institution on the following grounds

- (i) Internet facility and college website did not exist.
- (ii) In the land area of 5.5 acres an Engineering College, a School and Rattan Singh Girls College of Education were being run, which was not as per norms of B.Ed. and M.Ed courses.
- (iii) Lab. Facilities for 200 B.Ed and 25 M.Ed students were not adequate.
- (iv) There were only 25 computers for 200 B.Ed students and 25 M.Ed students.

- (v) Psychology lab and language learning lab were ill-equipped.
- (vi) Books and Journals available in the library were of poor quality.
- (vii) Number of titles of books, encyclopedia was not as per NCTE norms.
- (viii) Practice teaching for 200 students was being done in their own school which was not appropriate and rooms were in poor conditions with broken doors.

4. Mr.Tiku, learned senior counsel for the petitioner, contends that with respect to first deficiency that internet facility and college website did not exist the petitioner had submitted copies of the invoices of the service provider of the Internet i.e. Airtel with the respondent to show that an internet facility is being availed at the petitioner institute and the website of the petitioner being www.rsgce.ratangroup.org is in existence. With respect to the second objection that in the land area of 5.5 acres an Engineering College, a School and Rattan Singh Girls College of Education were being run, which was not as per norms of B.Ed. and M.Ed courses, Mr.Tiku clarifies that the norms of the NCTE is that the institution must have at least 3000 sq. mts. of exclusive well demarcated land. Mr.Tiku further submits that the girls' college is being run in an area, which is beyond 3000 sq mts. and the petitioner institute, which is stated to be run in the same complex is factually incorrect, as the petitioner institute is not only situated on a different land but is situated at a different District.

5. Mr.Tiku, learned senior counsel for the petitioner, submits that with regard to the next objection, which has been raised in the show cause notice, that the laboratory facilities for 200 B.Ed students and 25 M.Ed students were not adequate, the supporting photographs were produced

before the Appellate Committee to show that the laboratory facilities were adequate for both - B.Ed and M.Ed courses and the petitioner institute fulfills the necessary norms. With respect to the fourth objection raised by NRC that only 25 computers are available for 200 B.Ed and 25 M.Ed students, which are not adequate, Mr.Tiku submits that as per the norms there is no specific number which has been mentioned, and neither the show cause notice clarifies as to how the computers are inadequate and as to what would be the specific number of computers required, as the petitioner is willing to increase the number of computers if directed by respondent no.1. With regard to psychology laboratory and language learning laboratory being ill equipped, it is submitted by Mr.Tiku that this objection is vague as a psychology laboratory is available in the petitioner's premises and in case a specific deficiency is pointed out the same would be met by the petitioner. As far as the objection with regard to language laboratory is concerned, it is submitted that the requirement as per the AICTE norms for a language laboratory the respondent has failed to point out the provision under which a language laboratory is a necessary requirement. Further with regard to the objections raised pertaining to books, journals and encyclopedia available in the library of the petitioner being of poor quality, it is submitted by Mr.Tiku that as per the norms the requirement is of 2000 books whereas the library of the petitioner comprises of 7000 books, 15 journals and 11 encyclopedia and if respondent no.1 gives a specific direction to the petitioner to add further books, journals and encyclopedia the petitioner would have no objection to comply with the same. With regard to the next objection raised by NRC that 200 B.Ed students are being taught in the school of the petitioner, learned senior counsel for the petitioner submits that there is no specific bar in carrying out teaching activities in the school of the petitioner

institute. The objection with regard to rooms being in a poor condition with broken doors is not accepted by the petitioner, however, Mr.Tiku submits that in case any particular room is found wanting in any manner the same has already been repaired since the date of inspection, which was carried out. It is disputed by Mr.Tiku that the swimming pool and the play ground are not functional as it is submitted that the swimming pool is used depending on the weather conditions and at the option made by the student.

6. Mr.Tiku contends that in the appeal, which has been filed by the petitioner, the Appellate Committee has taken a diametrically opposite stand and decided issues on which the petitioner was not put to notice, which is against the law laid down by the Apex Court. It is further contended that in the appeal the Appellate Committee has noticed that the petitioner had submitted a copy of the lease deed dated 24.09.2004 for thirty years, which is not a proper document, however, the petitioner was never put to any notice with regard to this objection. Similar submission is made with regard to the second finding of the Appellate Committee that the application was not properly filled up and against the column for indicating available built up area (unusable area) a wrong information was filled up. The Appellate Committee has also noticed that no proper building plan was submitted, different affidavits were submitted at different points of time and the claims of available land and built-up area are contradictory in nature. It is further submitted by Mr.Tiku that since no show cause notice was issued on this aspect of the matter the petitioner could not have rendered any explanation with regard to the same to the Appellate Authority. Mr.Tiku submits that the Appellate Committee has also given a finding that the petitioner has got recognition by misleading the NRC by producing false documents, which is a serious allegation and

without any show cause notice having been issued to the petitioner, the petitioner was put to serious prejudice as he was not in a position to meet this objection of the respondent. Strong reliance has been placed by Mr.Tiku on *Shyama Prasad Mukherji College (For Women) v. National Council for Teacher Education & Anr.*, reported at 171 (2010) DLT 459 more particularly paras 11, 12 and 19, which read as under:

11. What strikes one as odd in the present case is the flip flop attitude of the respondents. The respondent NCTE has been constituted by a Central Act intended to achieve planned and coordinated development of the teacher education system throughout the country and for regulation and proper maintenance of norms and standards in the teacher education system. The respondent NCTE has been entrusted with the important task of granting recognition to Institutes / Colleges entitled to offering course or training in teacher education. The Act, Regulations and the Rules framed thereunder lay down an elaborate process for the same. The nature of enquiry which respondent NCTE is required to conduct before granting recognition is quite evident from the application of the petitioner for recognition in the present case itself having remained pending for nearly two years. The NCTE and the Regional Committees are manned by persons whose qualifications are prescribed in the Act and the Rules and who are supposedly experts in assessing the capabilities of any Institute / College to offer a course or training in teacher education. The Colleges / Institutes granted recognition by the respondent NCTE have the important task of igniting and guiding the minds of youngsters who constitute the future generation. The entire conduct of the respondent NCTE in the present case however appears to indicate that the NCTE or NRC are not sure of their own decision. Else, it does not make sense as to why recognition once granted would, within a few months thereafter, be kept in abeyance on receipt of a complaint and then again within a few days re-validated. The complaint for the reason whereof recognition granted was ordered to be kept in abeyance, was not relating to matters not visible to the naked eye or capable of being kept under wraps; there was no complaint of deliberate concealment. The complaint

was of lack of infrastructure. For inspecting the said infrastructure and for satisfying as to whether the said infrastructure is available or not, not only is the applicant required to submit various particulars but a Visiting Team of independent qualified persons is appointed to survey, inspect physically and otherwise the Institution and its records. The said Visiting Team submits its report in a detailed prescribed form which contains separate columns regarding the existence of the required infrastructure. Once such inspection has been conducted, its report examined and on the basis thereof the Regional Committee satisfied of the existence of the infrastructure, entertaining complaints in that respect is not understandable. The question of entertaining such complaints would arise only if NCTE and the NRC are not sure of themselves and in the name of inspection and decision making a superficial exercise is done, in dereliction of statutory mandate. This Court desists from presuming so. However the NCTE needs to seriously introspect in the matter.

12. Undoubtedly, the Act has conferred a power on the respondents to withdraw the recognition. However, such an order can be made under Section 17(1) of the Act, only on being satisfied that an Institution has contravened any of the provisions of the Act, Rules, Regulations, Orders or any conditions subject to which recognition was granted. There is no power to, under the guise of Section 17, review the order granting recognition. Power to review a decision is a creation of statute and no inherent power of review can be said to be vested with an authority unless the statute confers such power upon such authority.

19. The show cause notice is the foundation on which the noticee builds up its case. If the allegations in the show cause notice are not specific, and are on the contrary vague, lack details and / or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. (see *Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd.* (2007) 5 SCC 388).

7. Counter affidavit has been filed by respondent No.1. Counsel for respondent No.1 submits that Section 13 of the NCTE Act authorizes the respondent to ascertain whether the recognized institutions are functioning in accordance with the provisions of the NCTE Act and it is open for the Council to cause inspection of any such institution. Counsel also contends that Section 17 of the Act provides that the original committee on its own motion or on the basis of any representation received from any person if satisfied that a recognized institution has contravened any of the provisions of the Act, Rules or Regulations or any other conditions subject to which recognition was granted may withdraw such recognition by a reasoned order and after giving a reasonable opportunity of representation to such recognized institutions against the proposed order.
8. Counsel contends that in order to ascertain whether the institution was functioning in accordance with the provisions of the Act an inspection was conducted. The visiting team pointed out a number of deficiencies and reported that the institution was not running as per the NCTE norms and recommended closure of the teacher training course. It is also submitted that the report of the visiting team was forwarded by the Council to the NRC for initiating action under Section 17 of the NCTE Act and accordingly a show cause notice dated 14.6.2010 was issued wherein the deficiencies were pointed out. It is pointed out that the reply of the institute was considered by the NRC and the NRC decided to withdraw the recognition of the respondents for the following reasons:-
- “i) The college has not developed it’s website as required by NCTE norms for M.Ed.
 - ii) From the submitted documents, it is evident that an Engineering College, a School and Girl’s College of Education is having total land area of 5.5 acres which is not as per the NCTE norms.

iii) From the list of equipments submitted, it is evident that the Language Lab does not exist.

iv) From the submitted list of books and journals it is evident that these are of poor quality and their number is not as per the NCTE norms for M.Ed.

v) From the submitted photographs, it is evident that the room are in poor condition with broken doors.”

9. Learned counsel for respondent No.1 has justified the withdrawal of the recognition for the reasons stated above.

10.I have heard counsel for the parties and also considered their rival submissions. The show cause notice dated 14.06.2010 pointed out various deficiencies in the running of the petitioner institute which have been extracted in para 3 aforegoing. Mr.Tiku, learned counsel for the petitioner has also pointed out that in the reply to the show cause notice the institute had clarified that either the deficiencies do not exist or the same have been cured. The main thrust of argument of learned counsel for the petitioner is that in the final order which has been passed by the Appellate Committee and the findings which have been rendered for which no show cause notice was issued. As per the order of the Appellate Committee dated 27.09.2010 the Committee has noticed deficiencies including that the lease deed dated 24.09.2004 was for 30 years which was not a proper document, the application was not properly filled in against the column for indicating the built up area (unusable area) instead of indicating the built up area, total area was mentioned. No building plans were submitted. Affidavits filed at different points of time raised contradictory claims of availability of land and built up area. The Appellate Committee has also gone into the question of built up area,

open area, available land, whether the institute has been properly demarcated or not, and have rejected the appeal of the petitioner. It may also be noticed that although the deficiencies pointed out in the show cause notice dated 14.06.2010 have been noticed in the order but there is no discussion about the same, neither the reply to the show cause notice dated 14.06.2010 of the petitioner nor the grounds of appeal have been taken into consideration. The counter affidavit is also bereft of any explanation with respect to the submissions made by counsel for the petitioner that the order passed by the Appellate Committee has not dealt with the reply filed by the petitioner wherein explanation was rendered with respect to the deficiencies which had been pointed out.

11. The short question, which comes up for consideration before this Court is as to whether a final order declining permission to the petitioner could have been passed on the grounds mentioned in the final order for which no show cause notice was issued to the petitioner.
12. In the case of *Tarlochan Dev Sharma v. State of Punjab*, reported at (2001) 6 Supreme Court Cases 260, the Supreme Court of India has held that there is a clear violation of the principles of natural justice where the impugned order was founded on the grounds which were at variance from the one in the show cause notice. Para 13 of the judgment reads as under:

“13. The show-cause notice alleged only this much that the Municipal Council had purchased a fogging machine of which payment was to be made but the appellant (as President of the Municipality) instructed the Executive Officer not to make the payment and this resulted in the working of the Municipal Council having been obstructed. The finding arrived at in the impugned order dated 1.10.1999 is different. There is no finding arrived at that the working of the Municipal Council was in any manner obstructed by the appellant having instructed the Executive Officer not to make the payment. The specific stand taken by the appellant in his

reply was that the machine had certain inherent defects and was not working properly and hence it was on the advice of the Municipal Council that the appellant had desired the payment not to be made. The finding as to abuse of power is based mainly on the fact that the Executive Officer had prepared a cheque and signed the same on 20.11.1998 and yet the cheque was not presented to the bank resulting in delayed payment to the supplier of the fogging machine. The impugned order also states that the cheque was kept by the appellant in his custody for over two months. These events are subsequent to the date of the show cause notice, i.e. 19.8.1998 as also to the date of appellants reply i.e. 8.9.1998. Thus, briefly stated, the content of abuse of power, as stated in the notice dated 19.8.1998 was-asking the Executive Officer not to make payment while the order dated 1.10.1999 is founded on a subsequent event that in spite of the Executive Officer having prepared and signed the cheque on 20.11.1998, the appellant detained the cheque in his custody for about two months resulting payment being delayed and this amounted to abuse of power. There is no finding recorded in the impugned order that the explanation furnished by the appellant was factually incorrect. A President is supposed to act in the best interests of the Municipality which he is heading. In spite of fogging machine worth lakhs having been found by the Executive Officer to be okay in its trial run, if the President was informed of the machine having certain inherent defects, there was nothing wrong in his asking the Executive Officer not to make the payment unless he was satisfied that the machine was fit for the purpose for which it was being purchased, all the more, when the funds for purchasing the machine were made available to the Municipality by the District Planning Board. Even accepting the allegations made against the appellant, as contained in the show cause notice, to be correct, his decision to withhold the payment may be said to be an erroneous or unjust decision. For this reason alone the appellant cannot be said to be guilty of an abuse of his powers. If any one suffered by delay in payment it was the supplier and not the Municipality. There is nothing in the show cause notice or the ultimate order to hold how the act of appellant had obstructed the working of Municipal Council or was against the interest of council. We are,

therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which the appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of the President. The High Court was not right in forming an opinion that the appellant was persuading the High Court to judicially review like an appellate court the finding arrived at by the competent authority. The present one is a case where the impugned order is vitiated by perversity. A conclusion of abuse of powers has been drawn from such facts wherefrom such conclusion does not even prima facie flow. The impugned order is based on non-existent grounds. It is vitiated by colourable exercise of power and hence liable to be struck down within the well settled parameters of judicial review of administrative action.”

13. Further in the case of *Saci Allied Products Ltd. U.P. V. Commissioner of Central Excise, Meerut*, reported at (2005) 7 Supreme Court Cases 159,

The Apex Court has held in paras 16 an 17 as under:

“16. Thus according to the appellate Tribunal, since the dealers in Uttar Pradesh who purchased the goods from Syndet, and independent dealers in other parts of the country to whom the appellants directly sold the goods are different class of buyers, the appellants' price to the independent dealers cannot be taken as the basis for assessing the appellants' sales to Syndet in Uttar Pradesh. This finding of the appellate Tribunal is based on first proviso to Section 4(1)(a) of the Act. While the show cause notice and the order of the Collector proceeded on the basis of the invocation of third proviso to Section 4(1)(a) of the Act, the appellate Tribunal for the first time in the impugned order has sustained the proceedings on the basis of first proviso to Section 4(1)(a) of the Act. It was argued that the first proviso to Section 4(1)(a) of the Act was never invoked by the Department either in the show cause notice or in the impugned order and it was for the first time that the appellate

Tribunal in the impugned order has sought to sustain the impugned order by invoking the first proviso to Section 4(1)(a) of the Act. It is thus seen that the Tribunal has gone totally beyond the show cause notice and the order of the Collector, which is impermissible. The appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show cause notice or in the order.

17. In this context, we may usefully refer to the judgment of this Court in the case of *Reckitt & Colman of India Ltd. vs. CCE, 1996 (88) ELT 641(SC)*. This Court held that it is beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.”

14. Learned counsel for respondent no.1, however, has failed to show as to whether any show cause notice was issued to the petitioner with regard to the deficiencies pointed out in the final order and whether an opportunity of hearing was granted to the petitioner with regard to the deficiency as mentioned in the order. In the absence of any show cause notice the petitioner could not have been condemned unheard.
15. It has repeatedly been held by the Apex Court that complying with the principles of natural justice is a mandatory requirement under Article 14 of the Constitution of India. In the present case, when the respondents found that the petitioner had not fulfilled certain other criteria, they should have issued a show cause notice to the petitioner with regard to other deficiencies, to enable the petitioner to rectify the same and/or explain its stand.
16. In my considered opinion, declining the permission to the petitioner without affording an opportunity of hearing and without issuing a show cause notice, amounts to arbitrariness on the part of the respondents and the same is violative of Article 14 of the Constitution of India.

17. Accordingly the writ petition is allowed. The impugned orders dated 31.7.2010, whereby the recognition granted to the petitioner for M.Ed. course for the session 2010-21011 was withdrawn, and the order dated 27.9.2010, whereby the NCTE dismissed the appeal filed by the petitioner, are set aside. Matter is remanded back to the Regional Committee. A fresh show cause notice will be issued to the petitioner in accordance with law, time will be granted to the petitioner to file reply, personal hearing will be granted and thereafter a final order will be passed expeditiously.
18. With these observations writ petition is disposed of.

(G.S.SISTANI)
JUDGE

MAY 30, 2013
msr //dk