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**(2012) 09 MP CK 0072**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 2108 of 2012**

Institute of Allied Science and Computer Application

APPELLANT

Vs

National Council for Teacher Education and Another

RESPONDENT

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**Date of Decision : 05-09-2012**

**Acts Referred:**

National Council for Teacher Education Act, 1993 — Section 13, 13(3), 14, 15, 17

**Citation : AIR 2013 MP 43 : (2012) 3 JLI 303**

**Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J**

**Bench : Division Bench**

**Advocate : K.N. Gupta with Ms. Shweta Bothra, for the Appellant; Tapan Trivedi, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.K. Gangele, J.—The petitioner has filed this petition against the orders dated 2.2.2011 and 4.1.2012 (Annexures P-1 and P-2 respectively). The petitioner institution was granted recognition to conduct D.Ed. course with intake of 50 students for the academic session 2004-05 vide order dated 8th July, 2004. Further, an additional intake of 50 students was approved vide order dated 26th September, 2005 for the academic session 2005-06.

2. The respondent No. 2 Regional Director, WRC, issued a show cause notice dated 28.12.2009 (Annexure P-5) to the petitioner u/s 17(1) of the National Council for Teacher Education Act, 1993 (hereinafter shall be referred to as the "Act of 1993") to show cause as to why the recognition of the institution be not withdrawn under sub-section (1) of section 17 of the Act of 1993. It was mentioned in the show cause notice that a letter dated 31st October, 2009 for the purpose of inspection of the institute was issued to ascertain the compliance of sub-clause (13) of clause 8 of the NCTE (Recognition, Norms and Procedure) Regulations 2007 (hereinafter shall be referred to as the Regulations of 2007). The visiting team visited the institution on 13th November 2009, but nobody was there at the spot to allow the team to conduct the inspection. Thereafter, the

team submitted the report and it was considered by the respondent No. 2 in its meeting held on 29-30 November, 2009 and the committee found the following deficiencies:

The WRC considered (i) that the institution refused to allow the inspection without any just and sufficient cause and (ii) that the institution was conducting D.Ed. (Two units) and B.Ed. courses from the same premises and (iii) that the institution did not fulfil clause 5.0 of the norms and standards for D.Ed. and B.Ed. courses and (iv) that there was nothing on record to establish the grant of permission by the Government of Madhya Pradesh to use the institutional land for educational purposes and (v) that there was nothing on record to establish that the competent local authority lawfully granted the building permission and the permission to occupy the building and (vi) that the institution had never submitted the copy of University/ SCERT approved teaching staff for D.Ed. (Two units) and B.Ed. courses.

3. Thereafter, the respondents formed an opinion that the recognition of the institution deserves to be withdrawn on the ground that the institution had contravened the provisions of Regulations 2007. The institution was directed to submit written representation supported by following documents:

Your written representation, if any, must be supported with the certified true copies of (i) the registered land documents and (ii) the permission of Government of Madhya Pradesh to use the land for educational purposes and (iii) the building permission of the local authority along with approved building plan and (iv) the permission of local authority to occupy the building and (v) the University/SCERT approved teaching staff for D.Ed. (Two units) and B.Ed. courses.

4. The institution submitted reply on 4th January 2008. It is mentioned in the reply by the petitioner institution that the committee had been given full cooperation in conducting the inspection and the committee was satisfied with the infrastructure and other facilities and this fact could be verified from the CD prepared at the time of inspection. Thereafter, the respondent No. 2 considered the matter in its 130th meeting held on 22-23 January, 2010 and the committee had taken a decision to withdraw the recognition. Consequently, the withdrawal order dated 18.3.2010 (Annexure P-7) was passed.

5. Against the aforesaid order, the petitioner preferred an appeal and the appellate authority vide order dated 23.8.2010 set aside the withdrawal order dated 18.3.2010 and remanded the case back to the respondent No. 2 for reconsideration and for passing an appropriate revised speaking order. The appellate authority passed the following order:

And whereas after perusal of documents, memorandum of appeal, affidavit, VI Report and after considering oral arguments advanced during the hearing, the Council reached the conclusion that WRC's order dated 18.2.2010 should be set aside and the case remanded back to the WRC for reconsideration and issue of

appropriate revised speaking order. Accordingly, the order of WRC dated 18.3.2010 was set aside and the case was remanded back to WRC for reconsideration and issue of revised speaking order, taking into account the recognition granted by WRC for 2 units of D.Ed. course.

Now therefore the Council hereby remands back the case of Institute of Allied Sciences and Computer Application, Gwalior, Madhya Pradesh to the WRC, NCTE for necessary action as indicated above.

Thereafter, on remand, the respondent No. 2 again passed the order of withdrawal of recognition on the following grounds:

That the institute has contravened sub-clause (13) of clause 8 of the NCTE Regulations 2007. Institution has not completed the Norms and Standards 2007 before the date of commencement of next academic session by contravening 5.2h of Norms and Standards 2007.

That the institution has contravened clause 5.2h of Appendix 2 of the NCTE Regulations 2007 as the institution is not having required number of journals and title of books according to the two units of course.

6. Against the aforesaid order, an appeal was filed and the appellate authority vide order dated 4.1.2012 dismissed the appeal with the following observations:

And whereas the Council perused the above documents and noted that (a) as per the sale-deeds dated 26.8.2005 and dated 19.1.2006 the trust was in possession of 1.208 hectare of agricultural land at Khasra Nos. 466 and 468. But the appellant submitted a different land document to the WRC and it was for an area of 0.941 hectare at Survey No. 500/1 and 500/2 in village Bhatkadi. (b) The building plan now shown was in the name of Trust. It was for four floors and each floor was for an area of 1195 and total area of all four floors was 4780 units of measurement of area was not mentioned after the numerical figures of area. It also did not mention the Khasra No./Survey No., so, it could not be ascertained as to where exactly this four storey building was constructed. The appellant for grant of recognition submitted altogether a different building map. This plan was titled for Institute of Information Technology and Management located at opposite to Sitholi Railway Station, Gwalior and it was for 3 floors. Even this plan did not mention Khasra/Survey number. (c) The building completion certificate issued by Municipal Corporation, Gwalior mentioned that a No. of institutions were offering varied courses like law, computer application courses, nursing, dental, management, B.Ed. etc. This certificate also did not mention the total built-up area as well as specific area available for each institution/course. (d) From the land documents, building plans and building completion certificates submitted by the appellant, it could not be ascertained as to on which piece of land the teacher education course was being run and what was the exact area allocated for the said course. (e) The appellant in response to the show cause notice of WRC, dated 28.12.2009 submitted its reply on 4.10.2010. Even in the reply, he merely stated that the inspection team was satisfied with the

infrastructure and instructional facilities available with the institution, and did not submit any explanation for the show cause notice grounds, rather requested to withdraw the show cause notice. (f) From all these it was clear that the appellant had been furnishing different sets of documents on different occasions and also did not submit proper explanation with supporting documents to the queries of WRC. And the documents submitted did not prove that the institution possessed requisite infrastructure for running B.Ed. course.

7. The learned senior counsel submitted that the inspection was conducted by the respondent No. 2 in accordance with the provisions of section 13 of the Act of 1993, however, the provisions of the National Council for Teacher Education Rules, 1997 (hereinafter shall be referred to as the "Rules of 1997") have not been followed. It is further submitted by the learned senior counsel that the respondents had not given notice to the petitioner institution to cure the deficiencies and no categorical findings have been given by the respondents in regard to violation of provisions of Regulations 2007, hence, the impugned orders are contrary to law. In support of his contentions the learned senior counsel relied on the judgments of the Hon"ble Supreme Court in the case of National Council for Technical Education and another v. Vaishnav Institution of Technology and Management AIR 2010 SC 2232 , Commissioner of Central Excise, Chandigarh Vs. Shital International, , and Sunderlal Shrivastava Vs. National Council for the Teachers Education, Contrary to this, the learned counsel appearing on behalf of the respondents has contended that the respondents have passed the order in accordance with the provisions of Act of 1993 and Regulations of 2007. The petitioner had been given ample opportunities to cure the defects, in spite of that the defects have not been cured. He further submitted that the petitioner submitted evasive reply and the petitioner has no infrastructure to run B.Ed. course, hence, the recognition has rightly been withdrawn. In support of his contentions, the learned counsel relied on the judgment of the Hon"ble Supreme Court in the case of Shri Morvi Sarvajani Kelavni Mandal Sanchalit MSKM B.Ed. College Vs. National Council for Teachers Education and Others,

8. The question for consideration before this Court is that whether in withdrawing the recognition the respondents have followed the provisions of sections 13 and 17 of the Act of 1993 and the provisions of Rules of 1997 as interpreted by the Hon"ble Supreme Court in the case of National Council for Technical Education (supra). The provisions of sections 13 and 17 of the Act of 1993 and also the provisions of Rules of 1997 have been considered by the Hon"ble Supreme Court elaborately in National Council for Technical Education (supra). There was a conflict of opinions between this Court and Delhi High Court in regard to powers of the WRC and NCTE in regard to withdrawal of recognition. This Court was of the view that without taking recourse of section 13 of the Act of 2003, the WRC had no power to withdraw the recognition. Delhi High Court had a different view to the effect that the WRC and NCTE has ample power to withdraw the recognition u/s 17 of the Act of 2003 without taking recourse of the section of 13

of the Act of 2003.

9. Section 17 of the Act of 1993 gives power to the Regional Committee to withdraw the recognition. The relevant provision is as under:

17. Contravention of provisions of the Act and consequences thereof.--(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the Rules, Regulations, Orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

Section 13 of the Act of 1993 gives power of inspection. The relevant provision is as under:

13. Inspection.--(1) For the purposes of ascertaining whether the recognised institutions are functioning in accordance with the provision of this Act, the Council may cause inspection of any such institution, to be made by such persons as it may direct, and in such manner as may be prescribed.

(2) The Council shall communicate to the institution the date on which inspection under sub-section (1) is to be made and the institution shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the said institution, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that institution, recommend to that institution the action to be taken as a result of such inspection.

(4) All communications to the institution under this section shall be made to the executive authority thereof, and the executive authority of the institution shall report to the Council the action, if any, which is proposed to be taken for the purpose of implementing any such recommendation as is referred to in sub-section (3).

10. In exercise of powers conferred u/s 31, the Central Government has framed the rules named as National Council for Teacher Education Rules, 1997. Rule 8 of the Rules of 1997 prescribes procedure of inspection. The relevant rule is as under:

8. Inspection.--(1) The Council may inspect the recognised institutions in the manner prescribed in sub-rules (2) to (8).

(2) The Council shall approve a panel of names of experts in teacher education or educational administration who may be able to inspect the recognised institutions. The Chairman shall nominate at least two person out of the panel of experts to a inspection team.

(3) The Council shall give a notice of its intention to the institution along with a questionnaire in Form "IV" seeking information within fifteen days on all relevant matters relating to the institution.

(4) On receipt of the completed questionnaire, the Council shall communicate the names of the members of inspection team and the date of inspection to the institution.

(5) The institution to be inspected shall nominate its one officer or employee, to be associated with the inspection team.

(6) The inspection team shall ascertain as to whether the institution is functioning in accordance with the provisions of the Act and the rules and regulations made thereunder.

(7) The members of the inspection team may, if deem necessary, interact with the faculty members and other employees of the institution.

(8) The inspection team shall submit its report to the Council within a period of fifteen days from the last day of the inspection.

11. Hon"ble Supreme Court considered both the sections 17 and 13 of the Act in National Council for Technical Education (supra), and held as under:

28. Sections 17 and 13 must be harmoniously construed. In exercise of its powers u/s 17, the Regional Committee may feel that inspection of a recognised institution is necessary before it can arrive at the satisfaction as to whether such recognised institution has contravened any of the provisions of the 1993 Act or the Rules or the Regulations or the orders made thereunder or breached the terms of the recognition. In that event, the route of inspection as provided u/s 13 has to be followed. If the Regional Committee has been authorised by the Council to perform its function of inspection, the Regional Committee may cause the inspection of recognition institution to be made as provided in section 13 and prescribed in rule 8. Where, however, the Regional Committee feels that the inspection of a recognised institution is not necessary for the proposed action u/s 17, obviously it can proceed in accordance with the law without following the route of inspection as provided u/s 13.

Hon"ble Supreme Court further held as under;

30. In view of the above, the view of the Delhi High Court does not commend us and we set aside the judgment of the Delhi High Court. The view of the Madhya

Pradesh High Court to the extent it runs contrary to what we have noted above does not hold good. In other words, the view of the Madhya Pradesh High Court that before proceeding u/s 17 of the 1993 Act, the course of inspection provided in section 13 has to be necessarily followed in all situations is set aside. If satisfaction u/s 17 can be arrived at without inspection of a recognition institution, the Regional Committee is not required to follow the route of section 13. However, where the Regional Committee forms an opinion that for its proper satisfaction as to whether a recognised institution has contravened the provisions of the 1993 Act or the Rules or the Regulations or the Orders made or issued thereunder or the conditions of recognition, an inspection is necessary, then necessarily the inspection and follow up action u/s 13 has to be followed. We answer the question accordingly.

12. From the aforesaid judgment of the Hon"ble Supreme Court, it is clear that if satisfaction u/s 17 can be arrived at without inspection of a recognition institution, the WRC is not required to follow the route of section 13. However, if an inspection is necessary, then inspection u/s 13 has to be conducted as prescribed under rule 8 to find out whether such recognised institution is or is not functioning in accordance with the provisions of the Act of 1993.

13. In the present case, as mentioned in the show cause notice 28.12.2009 (Annexure P-5), a letter was issued on 31st October, 2009 for the inspection of the petitioner institution by the WRC and thereafter it is mentioned that the visiting team visited the institution on 13th November, 2009. It means that within 13 days from the date of issuance of the order, the visiting team conducted the inspection. However, as per rule 8(3) of the Rules of 1997 quoted above, it is obligatory on the part of the Council to give a notice of its intention to the institution along with a questionnaire in Form "IV" seeking information within fifteen days on all relevant matters relating to the institution and in accordance with sub-rule (4), on receipt of the completed questionnaire, the Council shall communicate the names of the members of inspection team and the date of inspection to the institution. From the show cause notice (Annexure P-5), it is clear that the procedure prescribed in rule 8 of the Rules of 1997 has not been followed by the respondent No. 2 in causing the inspection. Section 13(3) of the Act of 1993 further casts a statutory duty on the respondents that the Council shall communicate the result of the inspection and after ascertaining the information of that institution recommend to that institution the action to be taken as a result of such inspection. It means that it is obligatory on the part of the Council to give an opportunity to the institution to take remedial steps or action based on the deficiencies found in the inspection. This procedure has not been adopted in the present case.

14. Withdrawal of recognition is a drastic measure as observed by the Hon"ble Supreme Court in paras 24 and 27 of the judgment in the case of National Council for Technical Education (supra). The relevant paras 24 and 27 are as under:

24. What is clear from the provisions of the 1993 Act is that post recognition, an institution acquires a different position. On recognition by the Regional Committee u/s 14 and on affiliation being granted by the Examining Body, once the recognised institution starts functioning, the interest of teachers, employees and the students intervene. In order to ensure that the recognised institutions function in accordance with the 1993 Act, the 1997 Rules, regulations and the conditions of recognition and, at the same time, functioning of such recognised institutions is not disturbed unnecessarily, the provision for inspection and follow-up action pursuant thereto has been made in section 13. By section 13, as a matter of law, it is intended that the Council ascertains whether the recognised institutions are functioning in accordance with the provisions of the 1993 Act or not. For that purpose, it empowers the Council to cause inspection of any such institution to be made by such persons as it may direct, and in such manner as may be prescribed. The Council may authorise the Regional Committee to carry out its function of inspection. But such inspection has to be made as prescribed in rule 8 to find out whether such recognised institution is or is not functioning in accordance with the provisions of the 1993 Act.

27. Derecognition or withdrawal of recognition of a recognised institution is a drastic measure. It results in dislocating the students, teachers and the staff. That is why, the Council has been empowered u/s 13 to have a constant vigil on the functioning of a recognised institution. On recommendation of the Council after inspection, if a recognised institution does not rectify the deficiencies and continues to function in contravention of the provisions of the 1993 Act or the Rules or the Regulations, the Regional Committee u/s 17 has full power to proceed for withdrawal of recognition in accordance with the procedure prescribed therein.

15. In our opinion, in the case of withdrawal of recognition, it is obligatory on the part of the Council to follow the provisions of statutory Rules of 1997 and the provisions of Act of 1993. In the present case, the aforesaid provisions have not been followed. Apart from this, the Council has passed the order of withdrawal of recognition on the ground that the petitioner had no requisite infrastructure and books. However, the claim of the petitioner is otherwise. As per the petitioner, it has sufficient infrastructure and library and that has also been certified by the authorities. In such circumstances, in our opinion, it was obligatory on the part of the respondents to follow the provisions of Act of 1993 and Rules of 1997 in letter and spirit. Because there is contravention of the aforesaid provisions, hence, the impugned orders dated 2.2.2011 and 4.1.2012 (Annexures P-1 and P-2) are contrary to law. Consequently, the petition of the petitioner is allowed and the impugned orders dated 2.2.2011 and 4.1.2012 (Annexures P-1 and P-2) are hereby quashed. It is hereby clarified that the respondents are at liberty to take action in accordance with the provisions of Act of 1993 and Rules of 1997. No order as to costs.