

(2013) 06 CAL CK 0062

In the Calcutta High Court

Case No : Writ Petition No. 21752 (W) of 2012

The Governing Body of Eastern Dooars B-Ed Training College
and Another

APPELLANT

Vs

The University of North Bengal and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(3), 14(6), 17, 17(1)

Citation : (2013) 06 CAL CK 0062

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Mr. Pratik Dhar and Mr. Jakir Hossain, for the Appellant; Sampa Sarkar, Advocate for University and Ms. Asha Goursaria Gutgutia, Advocate for State, for the Respondent

Judgement

Sambuddha Chakrabarti, J.—The two issues involved in this writ petition are momentous in their character. Their significance travels far beyond the legalese of a formal litigation, and treads in a field which though apparently concerns itself with an aspect of higher education is not entirely without social ramifications. The occasion for the filing of the present writ petition is an order of disaffiliation of a teachers' training college issued by the University of North Bengal (the University, for short).

2. The case of the petitioners is that the Eastern Dooars B-Ed College (the College, for short) received recognition under the National Council for Teachers Education Act, 1993 (the Act, for short) on October 31, 2006 from the academic session of 2006-07. Initially the National Council for Teachers Education (NCTE, for short) granted recognition for the B-Ed course. Subsequently, however, the said body granted recognition to the M-Ed course also.

3. After the recognition of the B.Ed. course the University also affiliated the College for the B-Ed course from the academic session 2006-07. Subsequently, the University had issued formal orders by which affiliation was continued till the

academic session 2011-12.

4. On March 28, 2012 the Registrar, Officiating, of the University wrote a letter to the Principal of the College inter alia to the effect that the Executive Council of the University in its second meeting had considered the inspection report in connection with serious complaints regarding the activities of the College violating the Rules and Regulations of the University and the norms of NCTE. The Principal was asked to show cause why the College should not be disaffiliated from the 2012-13 session in view of the irregularities detected during inspection. The College gave a reply seeking from the University the details of the alleged irregularities and breach of the University Rules and Regulations and the NCTE norms so as to be able to give a reply within the stipulated time.

5. By a letter dated, May 18, 2012 the University authorities asked the College to apply afresh seeking affiliation for the academic session 2012-13. The College in turn prayed for continuance of the affiliation for the B-Ed course for 2012-13.

6. The petitioners have alleged that on August 6, 2012 the University issued a letter from which the College came to know that it did not enjoy the affiliation for the academic session 2012-13. By the said letter the College was informed that the University had conducted an inspection of the College and the inspection team noted various lacunae in the report on the basis of which the Executive Committee did not recommend continuance of affiliation of the B.Ed. course for the academic session 2012-13. It was noted in the said letter that on the date of inspection the members of the team had found that the College was under lock and key and no work was being done in the College. Outside the gate of the College they met somebody claiming himself to be the President of the Governing Body of the College who had informed that the services of the teaching faculty and the non-teaching staff of the College were temporarily suspended from which it was observed that the College did not adhere to the basic norms of the University, the NCTE and the UGC regarding the duration of working days. The communication further recorded that the minimum infrastructural facilities which a College must possess in terms of the NCTE norms could not be ascertained by the inspection team as the College remained closed. With regard to the staff pattern of the College the report relied on the verbal intimation received outside the College premises from a person claiming himself to be the President of the College and based on that the inspection team observed that in order to ensure the standards in teachers' education they considered it necessary not to accord provisional affiliation to the College from the academic session 2012-13.

7. The College offered its own explanation about the allegations of the report. According to the College after the completion of the B.Ed. examination in the last week of June, 2012 at the request of the employees the College authorities gave them a week's holiday in the first half of July, 2012. The College requested the University to pay a fresh visit to the College.

8. The College has assailed this intimation on various grounds. The College authorities are claiming that they had fulfilled all the conditions for the grant of affiliation for the academic session of 2012-13 as well.

9. A more fundamental and legal objection to the University's decision has been taken in the petition, i.e., the authority of the University to disaffiliate after the recognition had been granted by the NCTE. A lineal extension of the argument is that the for purposes of granting a fresh affiliation there is no provision for any physical inspection of the College and as such the contents of the inspection report are not relevant.

10. With these allegations the College inter alia has prayed for the writ in the nature of Mandamus commanding the respondents to quash and set aside the decision of the University refusing affiliation of the B.Ed. course of the College for the academic session 2012-13.

11. The respondent University authorities have contested the writ petition by filing an affidavit-in-opposition affirmed by its Controller of Examinations. The stand of the University is that by not renewing the affiliation of the College the authorities had acted as per law and on the strength of the power vested in them by the concerned University statutes.

12. The University has relied on Statute 14 of the Statutes which inter alia provides that continuance of affiliation of any affiliated college shall depend upon the fulfillment of all terms and conditions of affiliation laid down in the Statutes and compliance with all the directives which may be issued by the Executive Council from time to time. The conditions of study in the university and the colleges affiliated to it were notified as early as in 1992. These Regulations contained several conditions to which the respondents have made reference.

13. The Regulations relating to the establishment and affiliation of privately managed self-financed colleges with the North Bengal University had come into force with effect from January 1, 2004. It has got the relevant Regulations relating to different requirements which a college must satisfy before it is affiliated.

14. An inspection of the College was carried out on February 7, 2012. The report recorded several deficiencies in the running of the College.

15. On July 13, 2012 an inspection was again carried out at the College by a special team of the University and it was found that the College was under lock and key. After the decision of the University not to recommend affiliation for the academic session 2012-13 of the College the Registrar drew the attention of the Regional Director, Eastern Regional Council about the irregularities and non-compliance of the rules and regulations by the college concerned.

16. The case of the University as it appears from the affidavit is that the College was not conducting B.Ed course according to the norms and standards and on many occasions the University was kept in the dark. Teachers were appointed

quite frequently without any representative of the University on the selection board.

17. The University was not intimidated about the curriculum of the course or anything about the composition of the governing body. Most of the teachers so appointed by the College did not receive any University sanction. The official website of the College relating to the faculty members was misleading and wrong.

18. A further grievance has been made by the University that in spite of being disaffiliated the College had issued advertisement for admission for the session 2012-13.

19. The University authorities had also denied the material allegations in the writ petition. On February 7, 2012 when the inspecting team visited the College the Principal of the College was present and all the irregularities and allied matters were discussed between them. The University authorities had decided to send another inspection team but it found the College under lock and key. The University had denied the allegation that only the letter dated August 6, 2012, and not the report of the said inspection, was served upon the College.

20. The petitioners have filed an affidavit-in-reply to the affidavit-in-opposition of the University largely reiterating the stand of the petitioners in their petition. According to them in terms of Section 14(6) of the Act every examining body shall grant affiliation to the institution where recognition has been granted by the NCTE. According to the petitioner once recognition is granted by the NCTE the University is mandated to grant affiliation to such institution. There is no need for the College to apply for the same year by year. By an application dated March 26, 2009 permanent affiliation was sought from the University. But till date the case remains undecided.

21. A further point taken up by the petitioners is that during the pendency of the application for permanent affiliation the University could not have disaffiliated the College and that too without giving an opportunity of making any representation and as such the impugned decision on the part of the University is against the principle of natural justice. A further point taken by the petitioners is that there is no statutory obligation on the part of the petitioners to make an application seeking affiliation each year.

22. Thus two broad questions fell for consideration. First, whether during the continuance of the recognition granted by the NCTE the University can disaffiliate a college for the breach of the conditions of affiliation. And secondly, if the answer is in the positive, whether the steps taken by the University were justifiable.

23. Mr. Partha Sarathi Sengupta, the learned Advocate for the petitioners has strongly argued in favour of a negative answer to the first point. According to him, once recognition is granted by the NCTE it is obligatory on the part of the examining body to grant affiliation. The examining body has no discretion and

cannot refuse affiliation. An alternative argument of Mr. Sengupta is this that even if the examining body has any discretion in the matter it cannot be exercised in respect of matters which have already been gone into by the NCTE while granting recognition.

24. Mr. Sengupta has relied on Section 14(6) of the Act for this purpose. The word "shall" appearing in Section 14(6) cannot be watered down to "may" which, Mr. Sengupta submitted, will have the effect of frustrating the whole purpose behind the enactment of 1993. He has interpreted this provision as relevant both in terms of the sequence of events indicated by the word "on receipt of the order under sub-Section (4)" as well as the mandatory character evinced by the word "shall".

25. Mr. Sengupta in turn has referred to the Regulations the NCTE authorities which are to be satisfied before granting recognition and submits that the area wholly cover the possible areas of inspection by the University. As such a separate inspection by the examining body is not only meaningless without any sanction of law. A major chunk of his submission was on the effect of the use of the "shall" as a mandate upon the University to grant affiliation once recognition has been granted by the NCTE. For example he has taken a hypothetical case of the effect of not granting affiliation by an examining body even after it has been granted recognition by the NCTE. According to him that would render the NCTE recognition subordinate to the exercise which may be done by the affiliating body.

26. In connection therewith Mr. Sengupta has relied upon the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, . Relying on the observations made by the Supreme Court Mr. Sengupta argued that once recognition has been granted every university is obliged to grant affiliation to such an institution and the relevant provisions of the concerned University Act do not apply to such cases.

27. A learned single judge of this court relying on the said Supreme Court judgment has held in the case of Gopsai Avinandan Sangha and Others Vs. State of West Bengal and Others, that the statute on which the university was relying being a creature of the state legislation must make way for the 1993 Act.

28. Mr. Joydeep Kar, the learned Advocate for the respondents while refuting the submissions of the petitioners had taken the court through certain violations committed by the College. According to Mr. Kar in the first inspection report severe violations of the NCTE norms were noted by the University viz., class rooms were inadequate, there was no librarian for more than a year, attendance registers were not signed by teachers, some teachers were not teaching in the College although their names were included in the register etc.

29. Mr. Kar submitted that the University being a regulatory and affiliating body has the power to monitor various aspects relating to admission, affiliation of fulfillment of the relevant conditions etc. The Regulations of admission and affiliation are not repugnant to the NCTE Act, inasmuch as Entry 25 of the List III

of Schedule VII to the Constitution of India permits the University to promulgate its own laws. According to the University, the NCTE Act as well as the University of North Bengal Act (the University Act, for short) do not occupy two mutually different fields for different purposes and there is no conflict between the two Acts. The stand of the University is that even after recognition is granted by the NCTE an examining body is not mandated u/s 14(6) of the Act to grant affiliation when the college does not comply with any of the norms of the NCTE or the University's regulations.

30. The respondents have filed a supplementary affidavit inter alia stating therein that after the affirmation of the affidavit-in-opposition the respondents have received a copy of a letter from the Regional Director, Eastern Regional Committee of the NCTE whereby the Regional Director nominated two experts to carry out an inspection in the College u/s 17 of the Act. The University was also asked to nominate their representative in the said team. It appears from the said letter that the Eastern Regional Committee of the NCTE had considered the case of the petitioner College and decided that a visiting team should be sent to verify the infrastructure, instructional facilities etc. of the College.

31. In reply the College says that the Regional Director, NCTE had informed the Secretary of the College that an inspection would be conducted to verify the facilities as directed by the Court. The College was directed to deposit the fees. All the formalities were duly complied with by the College.

32. The over emphasized submission of the petitioners about the mandatory character of Section 14(6) of the Act cannot obfuscate consideration of yet another aspect of the said provision. Section 14(6) of the Act simultaneously says that on receipt of the order under sub-Section (4) of Section 14 the examining body shall grant affiliation where recognition has been granted. This "shall" more refers to the chronology i.e., sequence of events than meaning only a mandatory character.

33. The crux of the present problem lies somewhere else. Notwithstanding the language employed in Section 14(6) of the Act this is not a case where the University declined to grant affiliation even after NCTE had recognized the concerned College. The University after an inspection granted affiliation undoubtedly and this affiliation continued for quite some time, though granted on an annual basis. The more important aspect is to consider whether an affiliation once granted has to continue throughout the period of subsistence of the recognition by the NCTE.

34. Mr. Kar submitted that complaints about the infrastructural facilities of the College were being received by the University for quite sometime and a dissatisfaction was brewing gradually that the College did not possess the same infrastructural facilities necessary for the University to continue with the affiliation. On February 7, 2012 a surprise visit was paid to the College and it noted certain major deficiencies of the College from which the inspecting team

made certain inferences.

35. In the affidavit certain aspects have been mentioned which the University considered as major violations of their rules. For example, appointment of the teachers without the representatives of the University, violation of the centralized admission system, etc. On March 28, 2012 the College was asked to show cause why it should not be disaffiliated after the inspection. It cannot be gainsaid that the College had applied for fresh affiliation after the University had asked all the Colleges to apply afresh for affiliation. The language of the letter dated May 23, 2012 written by the Principal of the College to the Inspector of Colleges of the University is worth noting. The Principal requested for "continuance of affiliation" to the B.Ed. course for 2012-13 and it was further given out that the College authorities were prepared and waiting for the inspecting committee to come to the College at any time, preferably with prior intimation.

36. Thus the College had accepted the University's right of inspection for the continuance of the affiliation. The petitioners now cannot be heard to say that during the subsistence of the recognition the University has no right to make an inspection and to decide the question of continuance of the affiliation on the basis of the report of the inspection. Mr. Sengupta's reply that there is no estoppel against a statue overlooks the settled position of law that the College did not raise that issue when the University proposed to make an inspection and it was because of this request and explicit acceptance of the proposal that the University paid a visit.

37. One more aspect cannot be ignored. The Act nowhere says explicitly or even impliedly that once affiliation is granted the examining body must be obliged to continue it for ever. What was submitted by the petitioner is an inferential extension of the reading of the Statute and an interpretation of Section 17 of the Act to which we shall make reference later.

38. There are obvious problems in accepting the submission of the petitioner as an absolute proposition, even if one literally interprets the provisions of the Act. The effect of such an interpretation would lead to a complete destruction of the University's right to have any kind of superintendence over the Colleges affiliated to it. Mr. Sengupta has very strenuously relied on the provisions of Section 17 of the Act which deals with the contravention of the norms set by the NCTE and its procedure. All that Section 17 says is that where the Regional Committee either on its own motion or on a representation received from any person is satisfied that a recognized institution has contravened any of the provisions of the Act or the rules or regulations or orders or any condition subject to which recognition u/s 14(3) was granted it may withdraw recognition of such institution after giving the institution a reasonable opportunity of representation against the proposed order. The precondition for withdrawal of recognition u/s 17 of the Act is thus violation of the norms of the NCTE in any of its forms.

39. Mr. Sengupta has laid great stress on Section 17(3) of the Act which says

that once the recognition is withdrawn the institution shall discontinue the course and the concerned university shall cancel affiliation of the institution in accordance with the order passed under sub-Section (1) with effect from the end of the academic session next following the date of the communication of the said order. The inference drawn by Mr. Sengupta is that before the withdrawal of the recognition by the NCTE a university cannot cancel the affiliation.

40. Such extended interpretation of Section 17(3) of the Act is not consistent with the legislative intent. If the legislature had really meant that, there was nothing preventing them from legislating the same. The legislature did not enact that. On the contrary Section 17(3) says what it had to as a necessary corollary of the effect of the order of withdrawal of recognition. A careful reading of Section 14(6) of the Act itself will make it clear. It says that the examining body shall cancel affiliation of an institution where recognition has been refused. Section 17(3) speaks of an institution which was once granted recognition, but subsequently withdrawn. It is only in such cases that Section 17(3) steps in and mandates an examining body to cancel the affiliation. But this argument cannot be applied in a reverse manner to take away from the university of all its powers to disaffiliate a college once a recognition has been granted. The petitioners have thus tried to base the argument as an absolute truth when the statute has recognized only the half of it.

41. All that Section 17(3) of the Act says is that once NCTE withdraws the recognition cancellation of affiliation is an unavoidable adjunct. It does not say, for it cannot say, that it is only in the eventuality of withdrawal of recognition that a university is empowered to disaffiliate the college. The university may have its own norms and requirements to be fulfilled as an affiliating body which has not been touched by any legislation. Mr. Sengupta's submission that the NCTE Act has taken everything into consideration before granting recognition is perhaps not the whole of it. Laying stress on Section 14(3) Mr. Sengupta says that before granting recognition the Regional Committee of the NCTE must be satisfied that the institution has adequate financial resources, accommodation, library, qualified staff and fulfillment of other conditions as may be determined by the regulation and it is only then that it shall pass an order granting recognition. Thus it is argued by Mr. Sengupta that these cover all the required parameters to be maintained by an institution seeking to conduct a B.Ed. course and beyond this the university cannot have any area where the infrastructural lacunae may be made an excuse for disaffiliating an institution.

42. It is true that NCTE takes into consideration certain infrastructural facilities that an institution must have in order to get the recognition and these are determined by various regulations of the NCTE as will be clear from the language of Section 14(3) of the Act itself.

43. It cannot be lost sight of that these infrastructural facilities apart a college once affiliated must have to fulfill all the essential requirements of affiliation of a university and if there is any violation of the same to render the university a

mute spectator to the continuance of those violations will be to pay too high a premium on the recognition of the college. For example, the Act speaks of qualified staff as an essential precondition for grant of recognition. How the staff is to be appointed has not been touched by the Act. An affiliating body will have to comply with the rules and procedure of the university in the matter of appointment of the staff. We may take another instance. To say that if a governing body is not properly constituted as per the statutes of the University it cannot take any step against the College and has to refer the matter to the NCTE lacks logic.

44. Again Section 17(1) of the Act cannot be pressed into service by the College. Section 17(1) of the Act is concerned with all the provisions of the Act or rules or regulations or of any condition subject to which the recognition was granted. It does not speak of the rules and norms of the University. It does not follow that those rules and norms merely because they have not been mentioned in the Act, must not be respected or the recognition of the NCTE cloaks a College with immunity from the compliance of the rules and statutes of an examining body.

45. Even if Section 14(3) of the Act largely overlaps with the requirements of the University in the matter of granting affiliation, the two sets of pre-conditions are not identical. For example, Statute 7 of the Statutes relating to Affiliation of Colleges of the University lay down what a college applying for affiliation must satisfy the Executive Council. Some of them are: a) that the college is to be managed by a Governing Body which has been duly constituted in accordance with the relevant statutes; b) the qualification of the teaching staff and the conditions of their services are such as laid down in the Statutes; c) suitability of the building; d) library; e) financial resources; f) the affiliation will not be injurious to the interest of education or discipline; g) Principal and teaching staff, etc. Statute 14 says that continuance of affiliation depends upon the fulfillment of all terms and conditions of affiliation laid down in the Statutes and compliance of all such directives as may be issued by the Executive Council. Thus it cannot be doubted that the requirements as laid down in two Acts for a college to obtain recognition or affiliation as the case may be are not exactly the same. The two sets of requirements being different in quite discernibly from each other the petitioners' submission to the contrary must be held to be not a very sound one.

46. In support of the contention serious emphasis has been laid down on the judgment of State of Maharashtra-Vs-Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others. It is true that a three judge bench of the Supreme Court had held that after the coming into operation of the Central Act the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It is also equally true that the Supreme Court has held that a complete and exhaustive provision covering the entire field for establishment of the technical colleges was provided in the Act. No further scope is left for the operation of the state legislation in the said field. The Supreme Court had held that the object with which the NCTE had been established clearly

shows that the field was completely occupied by an Act of the Parliament and covered by Entry 66 of List I of Schedule VII of the Constitution of India and, therefore, the state legislature could not encroach upon the said field. The Supreme Court had declared Sections 82 and 83 of the Maharashtra University Act would not apply to an institution covered by the NCTE Act.

47. A decision is after all an authority on what it decides. A decision rendered by a judgment is to be read in the context in which it is delivered. The occasion for deciding the case was that the said college filed a writ petition for quashing an order of the State of Maharashtra by which the writ petitioner college was informed that the state of Maharashtra had taken a policy decision not to grant no-objection certificate to any institution for starting B.Ed college from the academic year 2005-06. It was in this context that the Supreme Court had held that as per the scheme of the Act once recognition has been granted by the NCTE every university is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases. This again is with regard to the grant of affiliation after recognition by the NCTE, This is no authority that once an affiliation has been granted the same has to continue for an indefinite period regardless of an institution's violations of norms of the examining body.

48. Rather the judgment cited by Mr. Kar in the case of Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, seems far more applicable to the present case. A Public Interest Litigation was filed in the High Court praying for certain directions for ensuring proper maintenance of norms and standards in the teacher education system. High Court issued various direction regarding several aspects of the system. This was appealed against. The appeal was dismissed. In the said judgment the Supreme Court has taken note of the judgment cited by Mr. Sengupta and held that while granting affiliation the examining body shall be free to demand rigid compliance with the conditions contained in the statute like the University Act or the State Education Board Act under which it was established or the guidelines or norms which may have been laid down by the examining body concerned. This clearly answers the question. Mr. Sengupta has taken a serious exception to the applicability of this judgment which was delivered by a division bench as against the one relied by him which is a three judge bench judgment. I have held that the said judgment cited by the petitioners is inapplicable to the facts of the present case and as such the strength of the bench delivering the judgment is not material.

49. Thus one thing stands out clearly. A college even if recognized by the NCTE, is nevertheless a college affiliated to a University and it has to comply with all the norms and requirements laid down by the affiliating university. An affiliated college merely because it enjoys the recognition of a central body is not immune to the rules of the university and does not have the freedom to violate the norms and the rules at its own pleasure and then take a defence that so long the recognition continues the university must have to suffer the violations thereof.

50. The petitioners have relied on Section 17 of the Act which may not entirely clinch the issue. Section 17 empowers anybody to make a complaint to NCTE for the withdrawal of the recognition. The university may also make such complaint. But when the norms and the conditions for affiliation have been violated by a college a university must have all the rights to take decision according to its own Statutes, even if the recognition continues.

51. It is one thing to say that an examining body shall grant affiliation and it is another, if not entirely different thing, to suggest that it shall continue with the affiliation so long as the recognition subsists, irrespective of the institution's complying with the statutory requirements.

52. Mr. Sengupta has referred to the definition of the word "examining body" in the Act to mean a university or any other authority to which an institution is affiliated for conducting examinations in teacher education qualifications. For the petitioners, examining body is thus concerned with nothing else other than conducting an examination and beyond that it cannot enter into any area relating to the grant of the affiliation.

53. This argument in turn overlooks a very cardinal aspect that ultimately every affiliating university is an authority for conducting examinations. But at the same time in order to perform that duty effectively it has also to discharge and take upon itself certain other obligations, like setting the standards of education, curriculum and to ensure that the objective requirements and requisite facilities for the conferment of degree exist in a college. Conducting the examination brings in its trail a host of other obligations to ensure that this prime responsibility is properly discharged and a certain standard of education is in its turn properly maintained. This really empowers an examining body to monitor the standard of education imparted by an institution. This is a right which has not been taken away by any legislation. The submission of the petitioners that NCTE itself is required to consider those infrastructural facilities of a college is no answer to a university's assertion of its basic rights in academic matters.

54. The petitioners' submissions on this aspect thus fail and it cannot be said that in the absence of any rules to the contrary the University is a helpless bystander once NCTE has granted recognition.

55. The second part of the petitioners' submission, however, has more substance. It is undoubtedly true that the members of the inspecting team gave a surprise visit and it found the College to be under lock and key. They met somebody outside the College premises who claimed himself to be the President of the Governing Body of the College. In course of their discussion outside the College they gathered certain information which, they say, were not conducive to the continuance of affiliation.

56. By a letter dated August 6, 2012 the University informed the Principal of the College that the inspection team had visited the College and found several lacunae as a result of which it did not recommend affiliation of the College for the

academic session 2012-13. It was very specifically mentioned in the said letter that inspection team did not get any evidence of any work being done in the College, the office of the College was not functioning and Mr. Kishore Das who claimed to be the President of the Governing Body of the College had allegedly given out that services of the teaching faculty and the non-teaching staff of the College were temporarily suspended by the College for which no valid reasons were furnished by him. They came to the conclusion that the College did not adhere to the basic norms laid down by the University, the NCTE and UGC.

57. So far as the infrastructure and instructional facilities are concerned the communication clearly recorded that as no access was available inspection team was unable to submit any observation as to those facilities. So far as the staff pattern, both academic and non-academic is concerned the inspecting team relied on the verbal information received from the President of the Governing Body of the College that the College had suspended the services of the teaching and non-teaching members and no single teaching and non-teaching staff was available in the College during the working hours. The inspection team noted that based on the observations and the mandatory parameters laid down by the NCTE, UGC and the Act, Statutes, Ordinances, Rules and Regulations laid down by the University in order to ensure and maintain standard in teacher education and to prevent proliferation of sub-standard teachers" education has considered it necessary not to accord provisional affiliation to the College from the academic session 2012-13 onwards. The Executive Council of the University resolved to approve the said recommendation of inspection team and the College was informed it did not have the affiliation for the academic session 2012-13.

58. The reply given by the Principal of the College is very interesting. By a letter dated September 3, 2012 the Principal of the College had replied that the President of the Governing Body had expressed that he did not remember whether the inspection team had come on that date as neither the members of the inspecting team recognized him nor he could recognize them. This is not a stand one expects from a college. The President of the Governing Body had affirmed the petition and has nowhere mentioned anything about it. In fitness of things it was only expected that the President would deny it in his petition, if nothing had happened on that day. It was only in affidavit-in-reply that the President had denied in paragraph 14 thereof any visit by the inspecting team. Thus the President has taken different stands at different points of time. I cannot appreciate this from the President of the governing body of an academic institution.

59. Be that as it may, the Principal of the College requested the University to pay a visit once again under prior intimation.

60. The University in its turn had informed the Regional Director of the NCTE about the steps they had taken with regard to the complaints they have been receiving about the College and their decision not to extend further affiliation to the B.Ed course for the reasons mentioned in the letter. The University requested

the NCTE to reconsider and review whether to continue with the NCTE recognition of the College and to take action in this regard.

61. But while I accept the submission of the University about its competence to independently conduct an enquiry which flows from the right to disaffiliate a college at the same time I have to hold that in the process the University has violated its own Statutes. The College authorities in their affidavit-in-reply have taken a point that the University has violated Statute 6 as no opportunity of hearing was given to it before it had taken a decision to disaffiliate the College. The relevant Statute of the University clearly says that no affiliation shall be suspended or withdrawn without affording the College an opportunity to make such representation as it might desire to make. In this very important aspect the University has violated its own Statutes and in the process has grossly trampled the principles of natural justice.

62. In view of the forgoing discussion while the right of a university to inspect a College and to decide against continuance of its affiliation is allowed, it must be preceded by a pre-decisional opportunity being given to the College to make a representation to the proposed decision. The University had sent some members of an inspecting team. They met somebody who claimed to be the President of the Governing Body of the College and on the basis of the information collected from him they had submitted the report and the Executive Council resolved to approve the recommendation of the inspecting team and simply informed the College that it did not have the affiliation for the academic session 2012-13.

63. The University does not appear to be conforming to the standards set by themselves. In the communication, dated August 6, 2012 to the Principal of the College the Registrar (Officiating) of the University mentioned the name of Sri Kishore Das who "claimed" to be the President of the Governing Body of the College. This shows that the University till then was not very sure about the identity of the one whom they met outside the College premises. That subsequently he affirmed an affidavit and had taken different stands is a separate matter. But when the letter was written in August, 2012 the University was not very sure about the identity of the person from whom they had collected the information.

64. Again when the main items of inspection relating to the infrastructural facilities and instructional provisions could not be assessed by the inspecting team it was all the more imperative on the part of the University to either make a fresh visit to the concerned College or at any rate to give an opportunity to the College to make a representation. Statute 6 of the First Statutes of the University is very clear: a College must be given an opportunity to make such representation as it may desire to make. But no such opportunity was given to the College. The Executive Council had unilaterally decided to withdraw the affiliation merely on the basis of the information collected from outside the College premises.

65. In the past also the University did almost the same thing. By a letter, dated March 28, 2012, the University informed the College that the Executive Council of the University had considered the Inspection Report in connection with some serious complaints against the College. The College was asked to show cause why it should not be disaffiliated from the 2012-13 session. Since no copy of the report was forwarded to the College it wanted to know from the University about the details of the irregularities and the violations alleged to have been committed by the College in order to be able to submit a reply to the show-cause notice.

66. Thus the University was consistent in its dealings with the College. The only difference is that on the previous occasion it sent a show-cause notice, but on this occasion it communicated the final decision taken behind the back of the College.

67. This was not exactly what was expected of a University. The College was more over not given a copy of the inspection report on which it could make any representation and as such the basic principles of natural justice have been violated. Thus when it is held that a University has every right to take a decision with regard to the continuance of affiliation of a college such right must be exercised in accordance with law upon compliance of all the formalities. Instead, what the University did was to make a post-decisional communication after the Executive Council had resolved to disaffiliate the College. The University occupies the position of an adjudicatory authority and no evidence in any form can be relied on by it unless the College is given an opportunity to rebut it. Here the College was not even given an opportunity to respond to the same. Thus the College was not given any opportunity of being heard and to meet the allegations. This is a blatant example of the violation of the principle of natural justice.

68. Mr. Kar drew my attention to the fact that the petitioners had prayed for a Mandamus for continuance of affiliation for the academic session 2012-13 only. Since the academic session starts in the month of July and continues till the month of June, of the next year Mr. Kar submits that the writ petition has become virtually infructuous. The College had in turn replied that what was prayed for in 2012-13 could be granted for the next academic sessions as well. But then that is a separate matter.

69. In view of what has been held earlier I give liberty to the University to make a fresh inspection for the purposes of the relevant Acts, Statute etc. and the University shall be at liberty to conduct an enquiry independent of the one that may be carried out by the NCTE authorities. This court has been informed that the NCTE inspection has not yet been taken place. But the University most certainly can conduct its own inspection. It shall take a decision after giving the College an opportunity of being heard and to make a representation as provided in the Statute. The University shall comply with all the requirements of law. But the entire exercise is to be completed within four weeks from the date of the communication of the order.

70. The impugned decision taken by the University as communicated by its letter dated August 6, 2012 is hereby set aside.

71. The writ petition is allowed to the extent indicated above.

72. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.