

6046,6039 & 6049/2001)

(C.A. 6043 & 6048/2001) Mr. Naresh Kumar,Adv.

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UPON hearing counsel the Court made the following
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C.A. No.6037/2001: Mr. M.N. Krishnamani,Sr.Adv.@@
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for the appellants commenced his arguments at 10.55 a.m. and
concluded at 11.25. Thereafter Mr. G.L.Sanghi,Sr.Adv. for
the respondent started and concluded at 11.35 p.m. The
appeal stands disposed of in terms of the signed order.

Rest of the appeals: After hearing the learned@@
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Solicitor General and learned counsel for near about twenty
minutes, the Court reserved the judgment.

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(Y.P.Dhamija) (Suneet Bala Sharma)
Court Master Court Master

Signed order is placed on the file.

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6037/2001@@
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National Council for
Teacher Edu. & Anr. ...Appellants

Vs.

Shah Goverdhan Lal Kabra & Anr. ...Respondents

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National Council for Teachers Education is the appellant before us assailing the judgment of the Division Bench of Rajasthan High Court at Jodhpur, setting aside the order of derecognition of the institution so far as it relates to imparting vocational course, and further directing by way of issuance of a Mandamus that the NCTE shall issue the certificate of recognition to the B.Ed.(Vacation Course) to the institution. It is not disputed before us that this institution has been imparting B.Ed. education both for regular students called 'regular course' as well as for 'vacational course' ever since 1964. The Parliament having enacted the National Council for Teachers Education Act, 1993 with the object of achieving planned and coordinated development of the teacher education system throughout the country and for proper maintenance of norms and standards in the teachers education system and a Council having been constituted under the said Act to oversee the objectives of the Act and norms and standards for those education, the same being published on 24th February, 1996, the institution in question applied for recognition of both the courses to the

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Council. The Council after taking such steps in accordance with the provisions of the Act and the norms as stated above, regularised recognition so far as the regular course is concerned. But it withdraws recognition so far as vocational course. The grounds stated in the order withdrawing recognition to the vocational course from 1999-2000 are indicated as below:

- (1) As per norms of the Council, only B.Ed. Regular and B.Ed.Distance/Correspondence courses could be conducted.
- (2) Staff engaged in regular course is diverted to attend to this course. According to rules, there should be separate staff for the purpose.
- (3) The fee recovered from the students is not fully spent which gives rise to commercialisation.
- (4) The course does not fall vacant within the norms prescribed by the Council and hence recognition can not be granted under section 14 of the Act.

Against this order, the institution approached the High Court and the High Court by the impugned judgment came to the conclusion that the order derecognising the institution is not tenable on merits, and that the same deserves to be quashed. Having said so, and having quashed the order, the High Court also further directed that the NCTE

must recognise the B.Ed. vacation course of the institution.

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While issuing the Mandamus, as stated above, the Court has also held that when the regulation provides for recognition of 'correspondence course', non-recognition of B.Ed. (Vacation Course) must be held to be discriminatory. Mr. Krishnamani appearing for the appellant contends that the judgment quashing the derecognition issued by the council is unsustainable in law, particularly when the council has provided for only two courses, namely the 'regular course' and the 'correspondence course'. According to the learned counsel, the grounds on which the council has passed the order of derecognition are germane for deciding the issue in accordance with the provisions of the Act and the regulation made thereunder, and therefore the High Court was in error in quashing the said order of derecognition. The learned counsel further urged that in any view of the matter the subsequent direction of issuance of Mandamus cannot be sustained inasmuch as the Court could have only remitted the matter to the council for reconsideration in accordance with the observations made in the judgment and could not have itself directed grant of certificate of recognition for the vocational course. Mr. Sanghi, the learned senior counsel appearing for the institution, on the other hand, contended that having regard to the facts that the institution has provided the necessary infrastructure and standard for imparting the vocational course, there would be no justification for the council not to recognise the same. According to him the institution having imparted such course

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right from the year 1964 till the order of derecognition and the council having recognised the regular course, which is being imparted from the institution ought not to have derecognised the institution so far as the vocational course is concerned. According to Mr. Sanghi, though the nomenclature is for the vocational course, but it imparts training to the teachers for necessary period that is required under the Act and the regulation framed thereunder, and when the Council permits recognition of correspondence course within the five years, there is no rhyme or reason not to recognise the 'vocational course', which is being imparted by the institution. The application filed by the institution for recognition of the vocational course is not there on record. Mr. Krishnamani appearing for the Council stated before us that the application of the institution for recognising vocational course has not been considered by the Council, in accordance with norms and standards prescribed for the correspondence course, on the other hand, it has been considered only in accordance with the norms and standards provided for the regular course. We find sufficient force in the submission of Mr. Sanghi appearing for the respondent that merely because a course is nomenclatured as vocational course, if the course has provided for the necessary training period and the institution offers the regular standard of education therein, there should not be any justification for the Council not to grant recognition, particularly when it does provide for a correspondence course which is required to

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be completed within five years. Since the Council has never considered the case of recognition of the vocational course, which is imparted by the respondent institution in the premise of regulation meant for the correspondence course, it would be appropriate for us to direct the Council to consider the case of the institution providing the vocational course as to whether recognition can be granted to the same, which is being imparted as vocational course. Apart from the

duration of the course, which the institution is imparting, there are several other factors on which the Council should be satisfied as to the norms and standards, which the institution is maintaining for imparting the vocational course and it is necessary therefore, they should have heard the institution before passing any final order and should not have only considered the written representations of the institution. Since we are remitting the matter to the Council for reconsideration of the case of the institution with regard to their application for recognition of the vocational course, the Council would do well in giving an opportunity of hearing to the institution in question.

We find sufficient force in the arguments of Mr. Krishnamani that the High Court committed error in issuing the second part of the direction directing the grant of certificate of recognition to the vocational course of the institution by the Council. If a Court is satisfied that an order of derecognition is vitiated on some grounds or other, the appropriate course would be to strike down the said order

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and remit the matter to the appropriate authority for reconsideration of the matter and a fresh decision in accordance with observations made in the judgment. In the aforesaid premises, we set aside the impugned judgment of the Division Bench of the High Court in so far as it directs by issuance of a Mandamus, and we also call upon the Council to consider the case of the respondents' institution as to whether the Council can recognise the vocational course, which is being imparted by the institution in question. Since by an interim order of this Court, the institution has been prevented from taking any admission to the vocational course from 1999, the Council would do well in taking a final decision in the matter within three months from today after hearing the institution in accordance with law.

This appeal stands disposed of with above said observations.

The Council has also assailed the conclusion of the High Court striking down section 17(4) of the Act. This question has been heard in the appeal by the Union of India and would govern by the conclusion therein.

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(G.B. PATTANAİK)@@
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New Delhi,
September 10, 2002

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