Education Secretariat

Notification

No. ED 43 VIVIDA 2005, Bangalore, dated 28th October, 2006

Whereas the draft of the Karnataka Educational Institutions (Taking over of Management, Requisition and Acquisition) Rules, 2005 published as required by Sub-section (1) of Section 145 of the Karnataka Education Act, 1983 (Karnataka Act 1 of 1995) in Notification No.ED 43 VIVIDA 2005 dated 14-10-2005 in part IV-A of the Karnataka Gazette Extra Ordinary dated 14-10-2005 inviting objections and suggestions from the persons likely to be affected thereby.

And objections and suggestions received in this regard duly considered by the State Government.

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 145 of the Karnataka Education Act, 1983 (Karnataka Act 1 of 1995) the Government of Karnataka hereby makes the following rules namely:-

1. Short Title and Commencement : (1) These rules may be called the "Karnataka Educational Institutions (Taking over of Management, Requisitioning and Acquisition) Rules, 2005.

(2) These rules shall come into force at once.

2. Definitions: In these rules unless the context otherwise requires -

(a) 'Act' means the Karnataka Education Act, 1983. (Karnataka Act 1 of 1995).

(b) 'Government' means the Government of Karnataka.

(c) 'Special Officer' means the Special Officer appointed by the Government under sub- section (6) of Section 67 of the Act and includes any other person directed by the Government for the purpose of carrying on the management of the educational institutions; and

(d) 'Section' means Section of the Act.

3. Taking over of Management of Educational Institutions:-

(1) A notice for taking over management of any educational institution under sub-section (1) of Section 67 shall be given to the Governing Council or Educational Agency, if any, in

Form I.

(2) The representation, if any received from the Governing Council or the educational agency in response to the notice, shall be considered by the Government and if they are satisfied that there is no necessity to take over the management of the educational institution, the Government may drop further proceedings in this regard.

(3) Where the Government are of the opinion that the management of the educational institution should be taken over in the public interest (or in order to secure the proper management) they may by, notification in Form II; direct that on and from the date specified therein the management of the institution shall vest in the Government.

(4) The notification under sub-rule (3) of this rule shall also specify the Special Officer for the purpose of carrying on the management of the institution and to whom the possession of educational institution and the properties attached thereto, shall be delivered.

(5) A copy of the notification shall be delivered in person or sent by registered post addressed to the Governing Council or the manager of the educational agency, and shall also be affixed on the notice board or at a conspicuous place within the institution.

4. Preparation of inventory etc:

(1) Immediately after the service of the notification, the manager or governing council of the educational agency shall prepare a detailed inventory in duplicate of all property, movable and immovable including instruments, vehicles and cash balances, reserve funds and book debts and all other rights and interest arising out of such property as were in the ownership / possession / power or control of the management and of all books of accounts, registers and all other documents of whatever nature relating thereto. The inventory shall be attested by the Manager or Governing Council of the Educational Agency and a copy of the same shall be delivered to the Special Officer.

(2) The Governing Council or any other person of the educational agency who prepared the inventory shall be held personally responsible for its correctness, and if it is found that he has willfully omitted to include any item in the inventory or has furnished as true, information which he knows or has reason to believe to be false, he shall be deemed to have contravened this rule and shall be liable for penalty under Section 128.

5. Handing over the Properties:

(1) The Special Officer may, by an order, require every person, under whose possession or custody or under whose control the educational institution or any part thereof any properties attached thereto, may be immediately before the taking over, to deliver to him the possession of such institution or part thereof or any properties attached thereto as the case may be, on the date specified in the order.

(2) If any such person fails to deliver the possession of the properties aforesaid within the time specified in the order or obstructs the Special Officer in taking over possession, the Special Officer shall take possession thereof with police assistance as may be necessary.

6. Payment of Compensations:

(1) As soon may be after the issue of notification under sub-section (1) of Section 67, the Special Officer shall cause statement to be prepared showing the annual income, expenditure and the average net annual surplus income of the educational institution during the period of its existence, or the period of five consecutive accounting years immediately preceding the date of vesting of management, whichever is less.

(2) Every such statement may be got verified by an auditor of the department, if the Special Officer considers it to be necessary.

(3) On the basis of the statement so prepared and verified under sub-rules (1) and (2) of these rules and after satisfying that the trust or management under which the educational institution is formed has not made any provision for the running of the institution, the Government shall pass an order determining the amount payable under sub-section (8) of Section 67 of the Act to the person interested, in the educational institution, the amount so determined shall be paid by the Special Officer in cash or in Government bonds within three months from the date of such order, either in a lump sum or in installments, not exceeding three.

(4) If there is any dispute with regard to persons claiming interest or with regard to apportionment of the amount among the persons interested, the amounts shall be deposited in the District Court.

7. Requisitioning of Property of Educational Institutions:

Form III.

(2) After considering the objections if any, received in response to the said show cause notice, if the Government are satisfied that there is no need to requisition the property, they may drop further proceeding in this regard.

(3) If, however the Government consider it necessary to requisition the property, they may, by an order in

Form IV, requisition the property. A copy of the order shall be served on the Governing Council and other persons who are in possession of the property and shall also be affixed on the notice board or at a conspicuous place in the institution.

(4) Where the property is requisitioned, the Governing Council or other person, who is in possession of the property, shall deliver possession of the property to such Officer, person, body or local authority and within such time as the Government may specify.

(5) If any person refuses to deliver possession of the property within the time specified, or any Officer of the Revenue Department not below the rank of a Thasildar may, on a requisition made by the Officer, person, body or local authority referred in the sub-rule (4) of this rule, may summarily dispossess the person of the property in the manner provided in sub-section (1) of the Section 72 of the Act.

(6) Where the possession is taken in pursuance of the powers conferred by this rule or by sub-section (1) of Section 72 of the Act an inventory of the properties taken possession of, shall be prepared in the presence of two witnesses.

8. Release from requisitioning:

(1) Where the Government have decided to release any property requisitioned under Section 72 of the Act they may pass an order in

Form V and specify the person to whom the possession of the property shall be given a copy of the order shall be served on the person to whom possession or property has been ordered to be delivered.

(2) Where any property is released from requisitioning, the property shall, as far as practicable, be given to the person from whom possession was taken at the time of requisition or to the successors in the interest of such person.

9. Release: Release from requisitioning and restoration of possession may be effected in the manner provided for delivery of possession of property under a decree of the Civil Court.

Form VI.

11. Acquisition of Property:

Form No. VIII. A copy of the notice shall be served on the Governing Council or the other persons interested.

(3) The notice under sub-rule (2) shall also specify the Special Officer or any other person for the purpose of acquiring the property and within such time as the Government may deem fit.

12. Claims:

(1) The Special Officer or any other authority specially authorized by the Government in this behalf shall as soon as may be, after the issue of an order of requisitioning under sub-section (1) Section 71 of the Act or notice of acquisition under sub-section (1) of Section 74 of the Act, as the case may be, serve on the Governing Council of the educational institution and other person interested in the property requisitioned or acquired requiring them to state in writing the nature of the respective interests in the property requisitioned or acquired and particularly of their respective claims on the amount payable therefore.

(2) After considering the representations if any, received in response to above notice, the Special Officer or the authority referred to in sub-rule (1) of this rule shall, after making such enquiries as deemed necessary, recommend to the Government the amount payable to the person interested in the manner provided in these rules.

13. Rent: In determining the rent which would have been payable for the use and occupation of the immovable property, if it had been taken on lease, the following matters shall also be considered for the purpose of sub-section (2) of Section 75 of the Act namely;

(1) In the case of immovable property other than buildings:

(a) if reliable evidence is produced, the average of the rent fetched during the three preceding years ; or

(b) the net income from the property where property accounts have been maintained; or

(c) the amount of net income recognized by the relevant authority for the purpose of levy of agricultural income to, if any; or

(d) where no proper accounts are maintained, the net income as ascertained having regard to the income of similar property, after making local inspection.

(2) In the case of building

(a) the annual rental value assessed for the purpose of rates or taxes levied by a local authority.

(b) where there is no such assessment, the rent fixed in accordance with the principles followed for fixing fair rent by a rent controller under the law relating to rent control for the time being in force.

(3) In the case of movable property:

(a) if the movable property requisitioned is a vehicle, the amount as determined at the rates provided for each kind and class of vehicle by notification published by the Government, from time to time, having regard to the prevailing market rates excluding depreciation under the Motor Vehicles Act ;

(b) in any other cases the amount as determined in accordance with the rates prevailing in the open market excluding depreciation on the date of requisitioning or acquisition.

(4) While recommending the amount payable, the Special Officer or other authority as the case may be shall take into account the Government aid or grant, if any given to the educational institution and deduct the entire value of such aid or grant along with interest at bank rates thereon.

(5) After examining the recommendation of the Special Officer or other authority the Government shall finally determine the amount payable to each person interested in the property and communicate to the persons each concerned.

(6) Every person interested may within thirty days of the service of the notice under sub-rule (5), communicate his acceptance in writing to the Government of the amount fixed, if he accepts the amount. The Government (Special Officer) or other authorised officer shall enter into an agreement with him in

Form IX with such modifications as the nature of the case may require and shall within thirty days from the date of execution of the agreement pay to such person the amount as per agreement.

(7) If the person interested does not accept the amount fixed by the Government he may within thirty days of the service of the notice under Rule 13 (6) make an application to the Government to refer the matter to an Arbitrator, stating clearly the reasons for his disagreement with the amount fixed by the Government and that according to him, the fair amount he claims and the grounds on which such claim is based, showing also his interest in the property.

14. Arbitrator:

(1) If the Government are satisfied that the grounds on which the claim is based are valid, they may settle the amount and enter into an agreement with the person to whom the amount is payable. Otherwise there shall be appointed an arbitrator under clause (b) of sub-section (1) of Section 75 of the Act.

(2) As soon as practicable, after an arbitrator is appointed, the Government shall, refer the application to the arbitrator together with a reportsetting forth the full facts of the case, particularly regarding the nature and extent of disagreement between the Government and the persons interested, and submit all papers connected with the application.

(3) Where the person interested in the amount payable for the property requisitioned or acquired is not found or if there is no person competent to allocate the property, or if there is any dispute as to the title to receive the amount, the Government shall make a reference to the arbitrator, appointed by the Government under clause (b) of sub-section (1) of Section 75 of the Act with all records connected with the case.

(4) If no arbitrator has been appointed, the amount shall be deposited in the court of the District Judge having jurisdiction.

(5) The arbitrator shall make his award in writing setting forth the grounds for his decision and sign it. A copy of the award shall be sent to all parties to the reference.

(6) When an arbitrator is succeeded by another arbitrator before making an award, the new arbitrator may deal with the evidence taken by his predecessor as if such evidence has been taken by him and may proceed from stage at which his predecessor left it:

Provided that it shall be open to the new arbitrator, after recording the reasons therefore, to conduct the proceedings de novo.

(7) The decision as to cost of proceedings before an arbitrator and appointment thereof shall be in the discretion of the arbitrator.

(8) As soon as the arbitrator makes an award under section 75 of the Act, the Government, shall pay the amount awarded by the arbitrator to the persons interested thereto, according to the award unless the Government or the persons interested proposes to appeal to the High Court.

(9) Where the costs have ordered to be paid by the person interested, the Government shall deduct the amount of costs from the amount payable to that person.

15. General:

(1) Service of notice or order under these rules shall be made by delivering or tendering a copy thereof to the person on whom it is to be served or to his authorized agent. When such person cannot be found service may be made on any adult member of his family residing with him and if no such adult member can be found, service may be effected by affixing a copy of the notice on the outer door or some conspicuous part of the house in which the person to be served ordinarily resides or carries on business.

(2) If service cannot be effected in any of the methods aforesaid, or if the authority ordering the service thinks fit, the notice be served by sending a copy thereof by registered post to his last known address.

(3) The moneys deposited in the Court under these rules shall be dealt within the manner laid down in Sections 32 and 33 of the Act and Land Acquisition Act, 1894.

16. Furnishing information regarding property:

(1) The Special Officer or any other authority by order, require the Governing Council or any person in possession or custody of the properties of educational institution which is taken over or intended to be taken over which is requisitioned or acquired or intended to be requisitioned of further such information as may be required by him for performing the functions under these rules.

(2) Whoever being required to furnish information willfully omits furnishing such information or furnished as true, information which he knows or has reason to believe to be false, he shall be deemed to have contravened the provisions of these rules and shall be liable to be punished under Section 128 of the Act.

FORM I

[See rule 3 (1)]

(Notice under sub-section (1) of Section 67)

To

Whereas the Government for the reasons mentioned in the Schedule below consider that

(name of the institution _____ Village Taluk District, is not being properly managed

And whereas, the Government are of opinion that for more effective management of the said institution in public interest it is necessary to take over its management.

Now, therefore you are hereby required to show cause within one month from the date of this notice why the management to the aforesaid institution should not be taken over by the Government.

Station:

Date : Secretary to Government.

SCHEDULE

(Detailed reasons for taking over the management)

FORM II

[See rule 3 (3)]

(Notification under sub-section (1) of Section 67)

Whereas, the Government are of the opinion that in public interest and in order to secure the proper management of _____ in _____ Village _____ Taluk _____ District _____ the management of the said institution shall be taken over;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 67 of the Karnataka Education Act, 1983, the Government of Karnataka hereby notifies that the management of the said institution and all the properties attaches thereto shall vest in the Government on and from _____ (date) until the said institution is acquired.

Under sub-section (6) of Section 67 of the said Act the Government of Karnataka hereby appoints _____ as Special Officer for the purpose of carrying on the management of the said institution for and on behalf of the Government.

Bangalore:

Date : Secretary to Government

FORM III

[See rule 7 (1)]

(Notice of Requisition under sub-section (2) of Section 71)

Whereas the recognition permission granted to school in Village Taluk District has been withdrawn by the Government by their Order No dated

OR

Whereas the educational institution has been closed on .

And whereas the Government are of opinion that the said educational institution Village Taluk District and the property mentioned in the schedule below should be requisitioned for (1) the purpose of running the institution in public interest.

Now, therefore, under clause (a) of sub-section (2) of Section 71 of the Karnataka Education Act, 1983, you are called upon to show cause within 15 days from the date of service of this notice why the property should not be requisitioned.

The Government further direct that neither the Governing Council of the institution nor any other person shall, without permission from the Government, dispose of or structurally alter, lease or in any other manner deal with the property until the expiry of three months from the date of service of this notice.

Secretary to Government.

SCHEDULE

To

FORM IV

[See rule 7 (3)]

(Order of Requisition under sub-section (1) of Section 71)

Whereas the Government, after making due enquiries, consider it necessary to requisition the (Name of the institution) Village Taluk District and the properties attached thereto for (1) purpose of running the said institution in public interest;

Now, therefore, under sub-section (1) of Section 71 of the Karnataka Education Act, 1983, the Government requisition the said institution.

The Government further order the Governing Council or the person, who is in possession or custody of the properties mentioned in the schedule, shall deliver possession thereof to within fifteen days of service of this notice.

Secretary to Government

To

FORM V

[See rule 8 (1)]

(Release from Requisition under sub-section (1) of Section 73)

Whereas the educational institution and its property specified in the schedule below was requisitioned in Notification No. dated

And whereas the Government have now decided that the said property be released from requisition with effect from

Now, therefore under sub-section (1) of Section 73 of the Karnataka Education Act, 1983 the Government hereby release the property from requisition and hereby direct that the property shall be delivered to (Name)

Secretary to Government.

FORM VI

[See rule 10]

(Notice under sub-section (2) of Section 73)

Whereas the Government by their Order No. dated have released from requisition the educational institution (Name) and the properties attached thereto mentioned in the schedule below; And whereas the Government have directed that the properties shall be delivered to (Name)

And whereas the said Sri cannot be found and has no agent or the person empowered to accept delivery on his behalf.

Now, therefore under sub-section (2) of Section 73 of the Karnataka Education Act, 1983, it is hereby declared that the said property is released from requisition.

Secretary to Government

SCHEDULE

FORM VII

[See rule 11 (1)]

(Notice under the proviso to sub-section (1) of Section 74)

Whereas the Government are of the opinion that it is necessary to acquire the property for public purpose connected with education, the educational institution (Name) the management of which was taken over by them, which is subject to requisition as per the notification, dated published at pages

Now therefore under the proviso to sub-section (1) of Section 74 of the Karnataka Education Act, 1983, you are called upon to show cause within fifteen days from the date of receipt of this notice why the said institution and the property attached thereto and mentioned in the schedule below should not be acquired.

Bangalore:
Date: Secretary to Government To

FORM VIII

[See rule 11 (2)]

(Notice of Acquisition under sub-section (1) of Section 74)

Whereas a notice under the proviso to sub-section (1) of Section 74 of the Karnataka Education Act, 1983, was issued to the persons interested calling upon them to show cause within the period of fifteen days why the educational institution and the property attached thereto specified in the schedule below should not be acquired.

And whereas the said period has expired and no cause has been shown against the said notice the causes shown against the said notice have been considered and rejected.

Now therefore, under sub-section (1) of Section 74 of the Karnataka Education Act, 1983, the Government, having been satisfied that it is necessary to do so, have decided to acquire the said property in pursuance of the said section.

The Government further order that the Governing Council or other person, who is in possession or custody of the properties shall deliver possession thereof to
within fifteen days of service of this notice.

Secretary to Government

FORM IX

[See rule 13 (6)]

Between Sri son of occupation residing at (hereinafter referred to as the person interested) on the part and the Governor of Karnataka of other part.

Whereas the educational institution and the properties attached thereto mentioned in the schedule below has been requisitioned / acquired under section 71/74 of the Karnataka Education Act, 1983.

Whereas the said property has been taken possession by the Government on the day of

Whereas the person interested and Government have mutually agreed to settle the amount of compensation payable in respect of the said requisition / acquisition.

Now this agreement witnessed as follows:

1) The Government shall pay and the party interested shall accept and receive a sum of Rs. compensation for the properties. in full settlement of the

2) The Government shall pay and the person interested shall accept and received payment of Rs. per month / quarterly / half-yearly/yearly to the said requisitioned property by way of compensation with effect from day of so long as the Government remain in possession thereof.

3) The person interested shall meet and pay the revenue, rent, municipal taxes and all other dues relating to the said property.

4) The person interested shall indemnify the Government against any loss or damage caused due to payment of compensation to the party interested who is not entitled or exclusively entitled to the compensation in respect of any property.

5) Should any dispute or difference arise out of or concerning the subject matter, these presents or any covenant, cause or thing therein contained or otherwise arising out of the requisition / acquisition aforesaid, the same shall be referred to the arbitrator appointed under clause (b) of sub- section (1) of Section 75 of the Karnataka Education Act, 1983, and the decision of the arbitrator shall be conclusive and binding on the parties hereto.

6) All sums found due to the Government under or by virtue of these presents shall be recoverable from the parties interested jointly or severally as arrears of land revenue under the Karnataka Land Revenue Act, 1964, or in such other manner as the Government may deem fit. In witness thereof party interested and on behalf of the Governor of Karnataka, have hereunto set their hands on this the day of

7)

SCHEDULE

In the presence of witnesses:

1. Signed by

2.

In the presence of witnesses;

1. Signed by

2.

By order and in the name the of Governor of Karnataka,

B.S.JAPALI

Under Secretary to Government

Education Department (General)