

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

Reserved on: 24.03.2022

Date of decision: 20th April, 2022

+ **LPA 238/2021 & CM APPL. 25391/2021**

NATIONAL COUNCIL FOR TEACHER EDUCATION AND
ANR Appellants

Through: Mr.Naveen R. Nath, Sr. Advocate
with Ms.Hetu Arora Sethi,
Ms.Saumya Tandon & Mr.Anirud
Bhat, Advs.

versus

OM COLLEGE OF EDUCATION & ANR Respondents

Through: Mr.Sanjay Sharawat, Mr.Divyank
Rana & Mr.Ashok Kumar, Advs.
for R-1.
Dr. Manish Singhvi, Sr. Adv. with
Mr. D.K.Devesh, Adv. for R-2.

+ **LPA 240/2021 & CM APPL. 25488/2021**

NATIONAL COUNCIL FOR TEACHER EDUCATION AND
ANR Appellants

Through: Mr.Naveen R. Nath, Sr. Advocate
with Ms.Hetu Arora Sethi,
Ms.Saumya Tandon & Mr.Anirud
Bhat, Advs.

versus

SHIV TAJ EDUCATION INSTITUTE & ANR..... Respondents

Through: Mr.Sanjay Sharawat, Mr.Divyank
Rana & Mr.Ashok Kumar, Advs.
for R-1.

Dr. Manish Singhvi, Sr. Adv. with
Mr. D.K.Devesh, Adv. for R-2.

+ **LPA 321/2021 & CM APPL. 31395/2021**

DIRECTORATE OF ELEMENTARY EDUCATION

..... Appellant

Through: Dr. Manish Singhvi, Sr. Adv. with
Mr. D.K.Devesh, Mr.Lalit Mohini
Bhat & Mr.Abhimanyu Verma,
Advs.

versus

SHIV TAJ EDUCATION INSTITUTE & ORS..... Respondents

Through: Mr.Sanjay Sharawat, Mr.Divyank
Rana & Mr.Ashok Kumar, Advs.
for R-1.

Mr.Naveen R. Nath, Sr. Advocate
with Ms.Hetu Arora Sethi,
Ms.Saumya Tandon & Mr.Anirud
Bhat, Advs.

+ **LPA 324/2021 & CM APPL. 31720/2021**

DIRECTORATE OF ELEMENTARY EDUCATION

..... Appellant

Through: Dr. Manish Singhvi, Sr. Adv. with
Mr. D.K.Devesh, Mr.Lalit Mohini
Bhat & Mr.Abhimanyu Verma,
Advs.

versus

OM COLLEGE OF EDUCATION & ORS Respondents

Through: Mr.Sanjay Sharawat, Mr.Divyank Rana & Mr.Ashok Kumar, Advs. for R-1.

Mr.Naveen R. Nath, Sr. Advocate with Ms.Hetu Arora Sethi, Ms.Saumya Tandon & Mr.Anirud Bhat, Advs.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The present batch of appeals have been filed by the appellants –the National Council for Teacher Education (hereinafter referred to as the ‘NCTE’) and the Directorate of Elementary Education, Government of Rajasthan, respectively, challenging the judgment dated 12.04.2021 passed by the learned Single Judge in W.P. (C) 2069/2021 and 2395/2021 filed by the respective respondents no.1 – institutes [hereinafter referred to as ‘Respondent Institutes’]. By the Impugned Judgment, the learned Single Judge has disposed of the two writ petitions with the following directions:

“24. In these circumstances, the petitions are disposed of with the following directions: -

a. The Directorate of Elementary Education, Government of Rajasthan is directed to nominate an expert to participate in the selection committee of the faculty for the petitioner-institutions within a period of one week from today.

b. In the event the State of Rajasthan nominates its expert within the aforesaid period, the expert and

the State of Rajasthan will cooperate in the expeditious conduct of the selection process, so that the process of faculty approval is concluded within a period of four weeks thereafter.

c. In the event the State of Rajasthan does not nominate an expert in terms of the aforesaid direction, the matter be placed before the Chairperson of the NCTE in terms of Regulation 12 of the Regulations. The participation of the representative of the State of Rajasthan in the Selection Committee and the requirement for the approval of the faculty list by the State of Rajasthan will be waived in the facts and circumstances of the case. The Chairperson will take a decision in terms thereof and may impose such conditions as he/she thinks fit, including nomination of an expert by the NCTE itself to participate in the selection process. The Chairperson's decision be taken within two weeks from today. The faculty list will then be formulated in consonance with the directions of the Chairperson under Regulation 12. The process will be completed within four weeks thereafter.

d. The cut-off date for approval for institutions for the academic year 2021-22 has already passed. The aforesaid directions will therefore enure to the benefit of the petitioners for establishment of their courses for the year 2022-23. However, Mr. Sharawat states that proceedings are pending before the Supreme Court for extension of the last date for approval for the year 2021-22. In the event the process of faculty approval is concluded in accordance with the aforesaid directions within the extended time, if any, granted by the Supreme Court, the NCTE will consider the petitioners' case for approval for the year 2021-22 as well. However, this will be strictly subject to the extension of the time period granted by the Supreme Court, if any."

2. The appellant - NCTE further challenges the order dated 16.07.2021, by which the Review Petitions filed by it, seeking review of

the judgment dated 12.04.2021, were dismissed by the learned Single Judge.

3. The facts leading up to the filing of the writ petitions have been succinctly set-out by the learned Single Judge in paragraphs 3 and 4 of the Impugned Judgment, which are quoted hereinbelow:

“3. The petitioner applied to the Northern Regional Committee [“NRC”] of the NCTE on 29.10.2008 for recognition of its course. The application was rejected on the ground of a prohibition imposed by the State of Rajasthan to the establishment of new courses in the State. By an order dated 22.03.2018, the Rajasthan High Court disposed of a writ petition filed by the petitioner directing the NRC to reconsider the application. The NRC thereafter conducted an inspection of the petitioner’s premises on 03.11.2018. The petitioner’s application was not processed further, which compelled the petitioner to approach this Court by way of W.P.(C) 2262/2020. The petitioner’s writ petition was decided alongwith other similarly placed writ petitions by an order dated 28.02.2020, and the Western Regional Committee [“WRC”] of the NCTE – which had, in the meantime, assumed jurisdiction over institutions in the State of Rajasthan – was directed to take necessary steps in the matter. Proceedings in contempt and further writ petitions were filed, the proceedings of which are not wholly germane to the present petition. Suffice it to say that on 07.12.2020, the WRC issued an LOI to the petitioner for recognition of its course. The conditions imposed therein inter alia required the institution to submit the list of faculty duly approved by the affiliating body/University within two months thereafter.

4. The petitioner’s application being for recognition of a diploma course, the affiliating body was the State of Rajasthan. The petitioner

therefore addressed a communication dated 08.12.2020 to the State of Rajasthan, requesting it to nominate an expert to participate in the selection committee for appointment of faculty. In the said communication, the petitioner also referred to a No Objection Certificate [“NOC”] dated 26.02.2019 which had been issued by the State of Rajasthan. By a communication dated 03.02.2021, the State of Rajasthan returned the petitioner’s request stating that the State would not nominate anyone as the Government policy is against the establishment of D.El.Ed. courses in the State. As a result of the aforesaid stand of the State of Rajasthan, the petitioners have been unable to submit the approved faculty list to the NCTE in accordance with the LOI.”

4. Mr.Naveen R. Nath, the learned senior counsel for the NCTE challenges the Impugned Judgment to a limited extent, whereby the learned Single Judge has directed that in case the State of Rajasthan does not nominate an expert to participate in the Selection Committee for the appointment of the faculty within a period of one week from the date of the judgment, the matter be placed before the Chairperson of the NCTE in terms of the Regulation 12 of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 [hereinafter referred to as the ‘Regulations’], who shall waive the participation of the representatives of the State of Rajasthan in the Selection Committee, and the requirement for the approval of the faculty list by the State of Rajasthan, subject to such conditions as he/she may think fit, including the nomination of an expert by the NCTE itself to participate in the selection process.

5. Mr.Nath, the learned senior counsel for the appellant - NCTE submits that the power under Regulation 12 of the Regulations can be

exercised only in larger public interest and is not intended to be exercised at the instance of an individual institution. He further submits that in terms of Section 16 of the National Council for Teacher Education Act, 1993 (hereinafter referred to as the 'Act') read with Regulation 9 and Appendix-2 of the Regulations, the entire process of selection of faculty and staff is within the exclusive domain of the State Government/affiliating agencies. The NCTE, in these circumstances, cannot be vested with the power to relax those conditions and/or invoke Regulation 12 of the Regulations. He further submits that the learned Single Judge, having directed the State of Rajasthan to nominate an expert to participate in the Selection Committee, could not have given an escape-route to the State Government, by simultaneously directing the NCTE to exercise powers under Regulation 12 of the Regulations. He submits that in doing so, the learned Single Judge has clearly erred in not appreciating the vast power of a Writ of Mandamus granted to the High Court under Article 226 of the Constitution of India, as also the power to have such Writ enforced.

6. Dr. Singhvi, the learned senior counsel for the State of Rajasthan submits that the State of Rajasthan has taken a conscious uniform policy decision in the year 2008 to not grant any new affiliation to any teachers' training institute as the State was unable to accommodate approximately 20,000 teachers per annum in schools/institutions, and there was a surplus of trained teachers. This decision was communicated to the NCTE as well, requesting the NCTE to not issue any communication to grant recommendation to a new institute or for increasing the intake

capacity of existing institutes, in light of the policy decision of the State. Only for the Academic Session 2019-20, a relaxation in the policy was made and a No Objection Certificate [hereinafter referred to as 'NOC'] was issued to 58 colleges, including the respondent-institutes. The said NOC was restricted to the Academic Session 2019-20. The communication dated 09.07.2019 was also addressed to the NCTE, stating that the State Government is not willing to issue any further NOCs/recommendation to new institutions and rejected all applications sent by the Regional Committee. He submits that, in spite of these clear communications, the Regional Committee went ahead and issued a Letter of Intent [hereinafter referred to as 'LOI'] under Regulation 7(13) of the Regulations in favour of the respondent-institutes. It is in these circumstances that the State of Rajasthan refused to nominate any member for the Selection Committee for the purpose of making appointments of the faculty in response to the LOI. He submits that the grant of an LOI to the respondent-institutes in the absence of an NOC from the concerned affiliating bodies, itself is illegal. He submits that the NCTE should have given due consideration to the objections of the State Government before issuing the LOI to the respondent-institutes. He submits that, in fact, the State Government was not even called for consultation by the Western Regional Committee, which issued the LOI to the respondent-institutes. He submits that, therefore, the learned Single Judge has erred in issuing a direction to the State Government to nominate an expert to participate in the Selection Committee of the faculty.

7. On the other hand, the learned counsel for the respondent-institutes submits that in view of the judgment of the Supreme Court in *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Others*, (2006) 9 SCC 1, the State Government cannot object to the grant of recognition or create any impediment in such process. He submits that, therefore, the alleged policy decision of the State of Rajasthan cannot act as an impediment on the NCTE to grant recognition. He submits that, therefore, the learned Single Judge has rightly issued a direction to the State of Rajasthan to appoint an expert in the Selection Committee for the faculty of the respondent-institutes.

8. Countering the submissions of the learned senior counsel for the NCTE, the learned counsel for the Respondent Institutes submits that due to the inaction and refusal of the State of Rajasthan, the respondent-institutes have already lost out on the Academic Sessions for 2019-20, 2020-21, and 2021-22. As it is the primary function of the NCTE to grant recognition, the learned Single Judge, to safeguard the interest of the respondent-institutes, who would have otherwise suffered from any further delay, has rightly directed the Chairperson of the NCTE to exercise its powers under Regulation 12 of the Regulations and grant relaxation to the respondent-institutes from having an expert appointed by the State Government in the Selection Committee for the appointment of the faculty.

9. We have considered the submissions made by the learned counsels for the parties.

10. The Act has been promulgated by the Parliament for establishing the NCTE with a view to achieve a planned and coordinated development for the teacher education system throughout the country, and for the regulation and proper maintenance of norms and standards in the teacher education system, including qualifications of school teachers. Section 14 of the Act requires every institution intending to offer a course or training in teachers' education to apply for grant of recognition to the Regional Committee of the NCTE. The said application is to be considered in such manner as may be determined by the Regulations. In terms of sub-Section 3 of Section 14 of the Act, the Regional Committee may pass an order granting recognition to such institutions, or refuse recognition to such institutions. In terms of sub-Section 6 of Section 14 of the Act, every examining body, on receipt of the order granting recognition, shall either grant affiliation to such institution or, where the recognition has been refused, cancel the affiliation of the institution. A similar process is prescribed to start any new course or training in teacher education under Section 15 of the Act. Section 16 of the Act prohibits grant of affiliation or holding of any examination, unless the institution concerned has obtained recognition from the concerned Regional Committee under Section 14 of the Act, or obtained permission for a course/training under Section 15 of the Act.

11. For discharge of functions under Section 15 and 16 of the Act, and in exercise of powers under Section 32 of the Act, the NCTE has framed the above-mentioned Regulations. We are concerned herein with Regulation 7 of the said Regulations, which is reproduced hereinbelow:

“7. Processing of applications.—

(1) In case an application is not complete, or requisite documents are not attached with the application, the application shall be treated: incomplete and rejected, and application fees paid shall be forfeited.

(2) The application shall be summarily rejected under one or more of the following circumstance--

(a) failure to furnish the application fee, as prescribed under rule 9 of the National Council for Teacher Education Rules, 1997 on or before the date of submission of online application;

(b) failure to submit print out of the applications made online alongwith the land documents as required under sub-regulation (4) of Regulation 5 within fifteen days of the submission of the online application.

(3) Furnishing any false information or concealment of facts in the application, which may have bearing on the decision making process or the decision pertaining to grant of recognition, shall result in refusal of recognition of the institution besides other legal action against its management. The order of refusal of recognition shall be passed after giving reasonable opportunity through a show cause notice to the institution.

(4) A written communication alongwith a copy of the application form submitted by the institution shall be sent by the office of Regional Committee to the State Government or the Union territory administration and the affiliating body

concerned within thirty days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

(5) On receipt of the communication, the State Government or the Union territory administration concerned shall furnish its recommendations or comments to the Regional Committee concerned within forty five days from the date of issue of the letter to the State Government or Union territory, as the case may be. In case, the State Government or Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application.

(6) If the recommendation of the State Government is not received within the aforesaid period, the Regional Committee concerned shall send a reminder to the State Government providing further time of another thirty days to furnish their comments on the proposal. In case no reply is received, a second reminder shall be given for furnishing recommendation within fifteen days from the issue of such second reminder. In case no reply is received from the State Government within aforesaid period the Regional Committee shall process and decide the case on merits and placing the application before the Regional Committee shall not be deferred on account of non-receipt of comments or recommendation of the State Government.

(7) After consideration of the recommendation of the State Government or on its own merits, the Regional Committee concerned shall decide that

institution shall be inspected by a team of experts called visiting team with a view to assess the level of preparedness of the institution to commence the course. In case of open and distance learning programmes, sampled study centres shall be inspected. Inspection shall not be subject to the consent of the institution, rather the decision of the Regional Committee to cause the inspection shall be communicated to the institution with the direction that the inspection shall be caused on any day after ten days from the date of communication by the Regional Office. The Regional Committee shall ensure that inspection is conducted ordinarily within thirty days from the date of its communication to the institution. The institution shall be required to provide details about the infrastructure and other preparedness on the specified proforma available on the website of the Council to the visiting team at the time of inspection along with building completion certificate issued by the competent civil authority, if not submitted earlier:

Provided that the Regional Committee shall organise such inspections strictly in chronological order of the receipt of application for the cases to be approved by it:

Provided further that the members of the visiting team for inspection shall be decided by the Regional Committee out of the panel of experts approved by the Council and in accordance with the visiting team policy of the Council.

(8) At the time of the visit of the team of experts to an institution, the institution concerned shall arrange for the inspection to be videographed in a manner that all important infrastructural and instructional

facilities are videographed along with interaction with the management and the faculty, if available at the time of such visit. The visiting teams, as far as possible, shall finalise and courier their reports alongwith the video recordings on the same day:

Provided that the videography should clearly establish the outer view of the building, its surroundings, access road and important infrastructure including classrooms, labs, resource rooms, multipurpose hall, library and others. The visiting team shall ensure that the videography is done in a continuous manner, the final unedited copy of the videography is handed over to them immediately after its recording and its conversion to a CD should be done in the presence of visiting team members:

Provided further that at the time of inspection for new courses or enhancement of intake of the existing course, the visiting team shall verify the facilities for existing recognized teacher education courses and ascertain the fulfillment and maintenance of regulations and norms and standards for the existing courses as well.

(9) The application and the report alongwith the video recordings or CDs of the visiting team shall be placed before the Regional Committee concerned for consideration and appropriate decision.

(10) The Regional Committee shall decide grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the National Council under the Act, rules or regulations, including, the

norms and standards laid down for the relevant teacher education programmes.

(11) In the matter of grant of recognition, the Regional Committees shall strictly act within the ambit of the Act, the regulations made thereunder including the norms and standards for various teacher education programmes, and shall not make any relaxation thereto.

(12) The Regional Director, who is the convener of the Regional Committee, while putting up the proposals to the Regional Committee, shall ensure that the correct provisions in the Act, rules or regulations including norms and standards for various teacher education programmes are brought to the notice of the Regional Committee so as to enable the Committee to take appropriate decisions.

(13) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per the norms of the Council within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

(14) (i) All the applicant institutions shall launch their own website with hyperlink to

the Council and corresponding Regional Office websites soon after the receipt of the letter of intent from the Regional Committee, covering, inter alia, the details of the institution, its location, name of the programme applied for with intake; availability of physical infrastructure, such as land, building, office, classrooms, and other facilities or amenities; instructional facilities, such as laboratory and library and the particulars of their proposed teaching faculty and non-teaching staff with photographs, for information of all concerned. The information with regard to the following shall also be made available on the website, namely:-

(a) sanctioned programmes along with annual intake in the institution;

(b) name of faculty and staff in full as mentioned in school certificate along with their qualifications, scale of pay and photograph;

(c) name of faculty members who left or joined during the last quarter;

(d) names of students admitted during the current session along with qualification, percentage of marks in the qualifying examination and in the entrance test, if any, date of admission and such other information;

(e) fee charged from students;

(f) available infrastructural facilities;

(g) facilities added during the last quarter;

(h) number of books in the library, refereed journals subscribed to, and additions, if any, in the last quarter.

(ii) The institution shall be free to post additional relevant information, if it so desires.

(iii) Any false or incomplete information on its website shall render the institution liable for withdrawal of recognition.

(15) The institution concerned, after appointing the requisite faculty or staff as per the provisions of norms and standards of respective programmes, and after fulfilling the conditions under regulation 8, shall formally inform about such appointments to the Regional Committee concerned.

(16) The letter granting approval for the selection or appointment of faculty shall also be provided by the institution to the Regional Committee with the document establishing that the Fixed Deposit Receipts of Endowment Fund and Reserve Fund have been converted into a joint account and after receipt of the said details, the Regional Committee concerned shall issue a formal order of recognition which shall be notified as provided under the Act.

(17) In cases, where the Regional Committee, after consideration of the report of the visiting team and other facts on record, is of the opinion that the institution does not fulfill the requirements for starting or conducting the course or for enhancement of intake, after giving an opportunity of being heard to the institution pass an order refusing to allow any further opportunity for removal of deficiencies or inspection for reasons to be recorded in writing: provided that against the order

passed by the Regional Committee, an appeal to the Council may be preferred as provided under section 18 of the Act.

(18) The reports of inspection of the institutions along with the names of the visiting team experts shall be made available on the official website of the Regional Committee concerned after the same have been considered by the Regional Committee.

(19) The Regional Committee shall process the application for closure in the manner prescribed for the processing of applications for new programmes or additional programmes or additional intake.”

12. A reading of the above Regulation would show that the processing of an application made by an institute for the grant of recognition passes through various stages, which can be summarised as under:

- a) Where the application is incomplete, the same is rejected at the outset. One of the documents to be accompanied with the application is the ‘No Objection Certificate’ issued by the concerned affiliating body in terms of Regulation 5(3) of the Regulations;
- b) If the application is complete, the same is forwarded by the Regional Committee to the State Government and the affiliating body concerned for furnishing their recommendation or comments.
- c) In terms of Regulation 7(5) of the Regulations, in case the State Government or the Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into

consideration by the Regional Committee concerned while disposing of the application. In case, in spite of reminders, the State Government fails to furnish its comments, the Regional Committee shall process and decide the application on merits without waiting for the State Government to comment or recommend on the application;

d) After considering the recommendation of the State Government or on its own merits, the Regional Committee shall decide that the institution shall be inspected by a team of experts (known as Visiting Team) with a view to assess the level of preparedness of the institution to commence the course;

e) The Regional Committee shall decide on the grant of recognition after considering the report of the Visiting Team;

f) In case the Regional Committee takes a decision to grant recognition to the institution, the concerned institution shall be informed, through the Letter of Intent, regarding the decision of grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The Letter of Intent shall also be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff, as per policy of the State Government or the University Grants Commission or the University, may be initiated, and the institution be provided all assistance to ensure that the staff or faculty is appointed as per the norms of the Council within two months;

g) The institution, upon selection, shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee. The institution shall also launch its own website with a hyperlink to the Council and the corresponding Regional Office's website;

h) The Regional Committee concerned, on being satisfied with the institution having fulfilled the requisite norms and standards and the required deposits, shall issue a formal order of recognition.

13. A reading of the above process would show that there has to be coordination and cooperation between the NCTE, the State Government, and the affiliating body, in the process for grant of recognition. However, it is the sole discretion and function of the NCTE to grant or refuse to grant recognition. The State Government and/or the affiliating body are merely to assist the decision making process of the NCTE however, the State Government cannot arrogate to itself such decision making power, or gain primacy in the process.

14. How far the State Government can interfere in the grant of recognition to the institutions was considered by the Supreme Court in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Others*** (supra), wherein it was held as under:

“62. From the above decisions, in our judgment, the law appears to be very well settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the

legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on "policy consideration". As already observed earlier, policy consideration was negated by this Court in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N., (1996) 3 SCC 15 : JT (1996) 2 SC 692 as also in Jaya Gokul Educational Trust v. Commr. & Secy. to Govt. Higher Education Deptt., (2000) 5 SCC 231 : JT (2000) 5 SC 118.

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68. *In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of no-objection certificate by the State Government/Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.*

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74. *It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system “throughout the country”. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new BEd colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply “State policy” to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.”*

(emphasis supplied)

15. In *Chairman, Bhartia Education Society and Anr. vs. State of Himachal Pradesh and Ors.*, (2011) 4 SCC 527, the Supreme Court on examination of the scheme of the Act, held that the purpose of ‘recognition’ and ‘affiliation’ is different. The examining body does not

have any discretion to refuse affiliation with reference to any of the factors which may be considered by the NCTE while granting recognition, including the adequacy of financial resources, accommodation, library, qualified staff, etc. However, this does not mean that the examining body cannot require compliance with its own requirements, in regard to eligibility of candidates for admissions to courses, or manner of admission of students, or other areas falling within the sphere of the State Government and/or the examining body.

16. In *Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh and Ors.*, (2013) 2 SCC 617, the Supreme Court again emphasized that the NCTE Act is a special act and has to receive precedence over other laws in relation to the field of teacher training education. The role of other bodies is consequential upon grant and/or refusal of recognition of institution by the NCTE. The NCTE is the supreme body and is vested with wide powers to be exercised with the aid of its expertise, in granting or refusing to grant recognition to an educational institution. It is the paramount body for granting the approval/recognition. It was further held that while grant of recognition is a basic requirement for grant of affiliation, it cannot be said that affiliation is insignificant or a mere formality on the part of the examining body. A balance has to be struck between the role played by the NCTE, on the one hand, and the affiliating body and the State Government, on the other. The affiliating body, however, has to act within the fundamentals of Section 14 of the Act, and cannot overreach the NCTE. The Supreme Court held that, “*the opinion of the State, therefore, has to be read and construed to mean that it would keep the*

factors determined by the NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the university to determine the grant or refusal of affiliation and role of the State should be the bare minimum, non-interfering and non-infringing”.

17. From the reading of the above judgment it is apparent that though there is difference between ‘recognition’ and ‘affiliation’, with the role of grant of recognition being assigned to NCTE, while the role of affiliation being assigned to the affiliating body, the power of the State Government and the affiliating body is always subordinate to that of NCTE. Even at the stage of grant of ‘affiliation’, the State Government/affiliating body cannot undermine the position of the NCTE, and refuse to grant affiliation to the institution on the very same grounds, that have already been scrutinized by, and otherwise fall within the domain of NCTE.

18. From the reading of the above judgments, it is clear that the State Government cannot cause hindrance to the grant of recognition to the institutions on ‘policy consideration’. Therefore, the submission of Dr.Singhvi, the learned senior counsel, that the State of Rajasthan has taken a policy decision not to grant any new affiliation to the institutions cannot be accepted to defeat the right of the Respondent Institutes to grant of recognition by the NCTE. It is for the NCTE to grant, or refuse, recognition to the respondent-institutes upon satisfaction of all the norms laid down for this purpose. The State Government, though is to be consulted, cannot cause an impediment in such process. The State Government can place for its consideration, before the NCTE its

concerns, but the ultimate decision after consideration of all such concerned lies with the NCTE.

19. The NCTE under Regulation 7(13) of the Regulations requests the institution and the affiliating body to grant assistance to the institutions to ensure that the faculty is appointed as per the policy of the State Government, or the University Grants Commission, or the University that grants affiliation. The State Government cannot refuse to appoint an expert in the Selection Committee for appointment of such faculty, thereby causing an hindrance in the consideration of the application of the Institutions for grant of recognition. To accede such liberty to the State Government, would bestow upon them a veto power which the above referred judgments of the Supreme Court have clearly rejected.

20. We cannot also agree with the challenge laid by the NCTE to the Impugned Judgment. As noted hereinabove, it is the function of the NCTE to grant or refuse grant of recognition to the applicant-institutions. For processing the applications of the institutions for grant of such recognition, the NCTE has laid down the process which, *inter alia*, includes making a request to the State Government and the affiliating University to appoint an expert to the Selection Committee for the appointment of staff and faculty by the applicant-institutions. In case the State Government or the affiliating University refuses to appoint such expert, NCTE cannot be left helpless, nor can such a situation act to the detriment of the respondent-institutes. Just like-in absence of an NOC from the State Government, as is required under Regulation 5(3) of the Regulations, the NCTE must process the application of the applicant-institute, in case of the refusal of the State Government to appoint an

expert in the Selection Committee for the faculty, the NCTE must proceed with the process of grant of recognition, and cannot *raise its hands* and/or claim helplessness on the refusal of the State Government to discharge its functions under the Regulations. The learned Single Judge has, therefore, rightly held that in case the State of Rajasthan refuses to perform its functions, in spite of the direction of the Court, the NCTE must proceed with the application of the respondent institutions, even if this requires the NCTE to exercise its powers of granting relaxation to the Regulations in terms of Regulations 12 of the Regulations.

21. Regulation 12 of the Regulations is reproduced hereinunder:

“12. Power to relax.--

(1) On the recommendations of the Central Government, or State Government, or Union territory Administration concerned, or in cases for removal of any hardship caused in adhering to the provisions in these regulations, keeping in view the circumstances peculiar to the said Governments or Union territory, it shall be open to the Chairperson, for reasons to be recorded in writing, to relax any of the provisions of these regulations, in respect of any class or category of institutions, in the concerned State or Union Territory, or of Central Government institutions to such an extent and subject to such conditions, as may be specified in the order and decisions shall be brought to the notice of the Council in the next meeting. In exceptional cases and for reasons to be recorded in writing, the Chairperson, shall be competent to relax any of the provisions of these regulations and the related norms and standards subject to its ratification by the Council.”

22. The power to relax the rigors of the Regulations can, therefore, be exercised on the recommendation of the Central Government/State Government/Union Territory Administration or “*in cases for removal of any hardship caused in adhering to the provisions in these regulations, keeping in view the circumstances peculiar to the said Governments or Union territory*”. It can also be exercised “*in exceptional cases*”. The failure or refusal of the State of Rajasthan to adhere to and perform functions bestowed upon it under the Regulations would certainly be one of such circumstance in which the Chairperson of the NCTE would be justified to, and rather bound to exercise the power to relax adherence to the provision of the Regulations. It would also be a case of “*exceptional cases*” wherein the Chairperson shall exercise the powers to relax the provisions of these Regulations, and the related norms and standards.

23. The above finding, however, would not give an excuse to the State Government not to comply with the direction issued by the learned Single Judge, and/or act as an excuse not to perform the functions bestowed upon it under the Regulations. The State Government or its officers would remain liable to be proceeded against, in case it refuses to comply with the directions issued by the learned Single Judge and as affirmed by this Court. We clarify that the directions issued by the learned Single Judge to the State of Rajasthan are mandatory, and do not leave the State with the option of not complying with the same. Non compliance of the same shall be at the pain of prosecution for contempt of Court-not only of the judgment of the learned Single Judge, but also of this judgment.

24. In view of the above, we find no merit in the present set of appeals. The same are, accordingly, dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

VIPIN SANGHI, ACJ

APRIL 20, 2022/rv/U/AB.

HIGH COURT OF DELHI



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