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

Reserved on: 19th September, 2019

Pronounced on: 1st October, 2019

\+ W.P. (C) 7666/2019 and CM No.31863/2019

LAXMI COLLEGE OF EDUCATION ….Petitioner

Versus

NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR. ….Respondents

\+ W.P. (C) 6417/2019 and CM No.27264/2019
\+ W.P. (C) 6438/2019 and CM No.27341/2019
\+ W.P. (C) 7050/2019 and CM No.29407/2019
\+ W.P. (C) 7354/2019 and CM No.30646/2019
\+ W.P. (C) 7572/2019
\+ W.P. (C) 7664/2019 and CM No.31861/2019
\+ W.P. (C) 7665/2019 and CM No.31862/2019
\+ W.P. (C) 7856/2019 and CM No.32668/2019
\+ W.P. (C) 7858/2019 and CM No.32671/2019
\+ W.P. (C) 7867/2019 and CM No.32684/2019
\+ W.P. (C) 7869/2019 and CM No.32689/2019
\+ W.P. (C) 7870/2019 and CM No.32694/2019
\+ W.P. (C) 7871/2019 and CM No.32695/2019
\+ W.P. (C) 7872/2019 and CM No.32696/2019
\+ W.P. (C) 7873/2019 and CM No.32697/2019
\+ W.P. (C) 7875/2019 and CM No.32704/2019
\+ W.P. (C) 7908/2019 and CM No.32769/2019
\+ W.P. (C) 8244/2019
\+ W.P. (C) 8863/2019
\+ W.P. (C) 9676/2019

Present: Mr. Sanjay Sharawat, Mr. Divyank Rana and Mr. Ashok Kumar, Advs. for petitioners in Item Nos. 66 to83
Mr. Ravi Kant and Mr. Mayank Manish,

Advs. for petitioners in W.P. (C) 8244/2019, 8863/2019

Mr. Neeraj Shekhar, Mr. Animesh Kumar, Mr. Sumit Kumar and Mr. Ashutosh Thakur, Advs. for petitioner in W.P.(C) 9676/2019

Mr. Sanjay Jain, ASG with Mr. Shivam Singh, Ms. Arunima Dwivedi, Ms. Preeti Kumra, Mr. Udian Sharma, Mr. Jaideep Khanna and Mr. Arkaj Kumar, Advs. for R-NCTE

Mr. Ashish Kumar, Addl. Advocate General with

Mr. Rameezuddin Raja, Adv. for R-3/State of Rajasthan in Item No.66

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **J U D G M E NT**

C. HARI SHANKAR, J

1. These writ petitions assail

(i) Clause 1.2 of Appendices 16 and 17 to the National Council for Teachers Education (Recognition Norms and Procedure) Regulations, 2014 (hereinafter referred to as "the 2014 Regulations"), as amended by the National Council for Teachers Education (Recognition Norms and Procedure) Amendment Regulations, 2019 (hereinafter referred to as "the 2019 Amendment Regulations"), and

(ii) Public Notice, dated 20th May, 2019, issued by the National Council for Teachers Education (Respondent No. 1 herein and referred to, hereinafter, as "NCTE").

The statutory scenario

2. The NCTE, as the apex body for teacher education in India, was established by the National Council for Teacher Education Act, 1993 (hereinafter referred to as "the NCTE Act"), which came into effect on 29th December, 1993. The Act was, preambularly, aimed at "establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated 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".

3. The NCTE was established, w.e.f. 1st July, 1995 , under Section 3(1) of the NCTE Act, read with the Notification, issued by the Central Government thereunder. The functions of the NCTE, as delineated in Section 12 of the NCTE Act, include coordination and monitoring of teacher education and its development in the country and laying down of norms, for a specified category of courses or trainings in teacher education. Clauses (c), (f) and (j) of section 12, under which the NCTE purports to have acted in the present case, may be reproduced thus:

"**12. Functions of the Council –**

It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-

ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may –

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(c) co-ordinate and monitor teacher education and its development in the country;

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(f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional Facilities, staffing pattern and staff qualification;

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(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advised the recognised institution;"

4. Sub-sections (1), (3) and (6) of Section 14 of the NCTE Act, which deals with "recognition of institutions offering course or training in teacher education", reads as under:

"**14. Recognition of institutions offering course or training in teacher education –**

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course

or training for a period of 6 months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

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(3) On receipt of an application by the Regional Committee from any institution under sub- section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall –

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, passed an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub- clause (a), passed an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub- clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

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(6) Every examining body shall, on receipt of the order under sub- section (4), –

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused."

5. Section 16 of the NCTE Act proscribes any examining body from granting affiliation, provisional or otherwise, to any teacher education institution, or from holding any examination for a course or training conducted by a recognised teacher education institution, unless the institution has obtained recognition, or permission from the concerned Regional Committee, for the said course or training. Section 18 allows any person, aggrieved by an order passed under Section 14, 15 or 17, to prefer an appeal, thereagainst, to the NCTE, within the prescribed period, and empowers the NCTE to confirm or reverse the order appealed against. Section 20 constitutes four Regional Committees, namely the Eastern Regional Committee (ERC), Western Regional Committee (WRC), Northern Regional Committee (NRC) and Southern Regional Committee (SRC), and sets out the constitution thereof. Section 29(1) binds the NCTE, in the discharge of its functions and duties, by directions, on questions of policy, given, in writing, by the Central Government, to it, from time to time.

6. Section 31 of the NCTE Act empowers the Central Government to frame Rules, and Section 32 empowers the NCTE to make regulations to carry out the provisions of the NCTE Act. Such Rules, or Regulations, are required to be issued by way of notification in the Official Gazette, and are also required, by Section 33, to be laid before each House of Parliament for a total period of 30 days.

7. Of the various Rules and Regulations that have been issued, from time to time, in exercise of the powers conferred by Section 31 and 32 of the NCTE Act, we are concerned, in the present case, only with the 2014 Regulations, before, and after, their amendment by the 2019 Amendment Regulations.

8. The 2014 Regulations, which came into effect on 28th November, 2014, superseded the pre-existing National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009. Regulation 3, of the 2014 Regulations, which set out the applicability thereof, to the extent it is relevant for the present case, read as under:

> "**3. Applicability. –**
>
> These regulations shall be applicable to all matters relating to teacher education programmes for preparing norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in the existing programmes including the following, namely: –
>
> (a) recognition for commencement of new teacher education programmes *which shall be offered in composite institutions*;"
>
> (Emphasis supplied)

9. "Composite institution" was defined, in clause (b) of Regulation 2 of the 2014 Regulations, as meaning "a duly recognised higher education institution offering undergraduate or postgraduate

programmes of study in the field of liberal arts or humanities or social sciences or sciences or commerce or mathematics, as the case may be, at the time of applying for recognition of teacher education programmes, or an institution offering multiple teacher education programmes".

10. Regulation 4 enumerated the categories of institutions which were eligible for consideration of their applications under the 2014 Regulations, and Regulation 5 sets out the manner in which the concerned institution, desirous of running a teacher education programme, was required to apply therefor. Regulation 6 required the applicant to pay the processing fees, the time of submission of the application and Regulation 7 set out the manner in which the applications would be processed. Sub-Regulations (1) and (4) to (6) of Regulation 7, which are of importance to the present case, read thus:

> "**7. Processing of applications. –**
>
> (1) In case an application is not complete, all requisite documents are not attached with the application, the application shall be treated incomplete and rejected, an application fees paid shall be forfeited.
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> *****
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> (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 30 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."

Sub-regulations (7) to (9) of Regulation 7 stipulate the manner in which, consequent to receipt – or non-receipt – of the recommendation of the State Government as contemplated by sub-Regulations (4) to (6) *supra*, the institution is to be inspected by the concerned Regional Committee. Sub-regulation (10) posits that the Regional Committee would decide grant of recognition or permission, to the institution, only after satisfying itself that the institution fulfils all the conditions prescribed by the NCTE under the NCTE Act, Rules

or Regulations, including norms and standards laid down for the relevant teacher education programmes. In the matter of recognition, sub-regulation (11) requires the Regional Committees to strictly act within the ambit of the NCTE Act, and the Regulations including the norms and standards for various teacher education programmes, without allowing any relaxation therein. Sub-regulation (13) requires the concerned institution to 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. It is further stipulated, in the said sub-Regulation (13), that the letter of intent "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 is required to submit the list of faculty, as approved by the affiliating body, to the Regional Committee. Sub-regulation (17) empowers the Regional Committee, in a case in which, after consideration of the report of the visiting team and other facts on record, it is of the opinion that the institution does not fulfil the requirements for starting or conducting the course, to, 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. Such an order is appealable, to the NCTE, under Section 18 of the NCTE Act.

11. Regulation 8 sets out the conditions for grant of recognition, and sub-regulation (1) thereof, on which the petitioners in these writ petitions place reliance, reads thus:

> "New Teacher Education Institutions shall be located in composite institutions and the existing teacher education institutions shall continue to function as stand-alone institutions: and gradually move towards becoming composite institutions."

Sub-regulation (2) of Regulation 8 requires every institution to fulfil all conditions, pertaining to norms and standards for conducting the programme or training in teacher education, which include conditions relating to financial resources, accommodation, library, laboratories, other physical infrastructure, and qualified staff including teaching and non-teaching personnel. Sub-regulation (3) requires the institution, which has been recognised by the NCTE, to obtain accreditation, from an accrediting agency approved by the NCTE, within five years of recognition. Sub-regulation (4) stipulates that no institution shall be granted recognition, under the 2014 Regulations, unless the institution, or the society sponsoring the institution, is in possession of the required land, on the date of application, free from encumbrances. The said sub-regulation further goes on to stipulate the specifications of such land, with which we, in the present case, are not particularly concerned. Sub-regulation (10) of Regulation 8 stipulates that the University, or examining body, shall grant affiliation to the institution only after issuance of a formal recognition order under Regulation 7(16) *supra*, and admissions would be made by the institution only after it has obtained affiliation.

12. Regulation 9 of the 2014 Regulations, which deals with "norms and standards", requires every institution, offering the programmes enlisted and enumerated in the table in the said Regulation, to comply with the norms and standards for various teacher education programmes, as specified in the corresponding Appendix to the Regulations. Prior to 20th November, 2018, the said table enumerated 15 courses, with the norms and standards, therefor, to be found in Appendices 1 to 15 to the Regulations. *Vide* Notification dated 20th November, 2018, however, the National Council for Teacher Education (Recognition Norms and Procedure) Amendment Regulations, 2018 (hereinafter referred to as "the 2018 Amendment Regulations") were notified whereby, *inter alia,* Regulation 9 of the 2014 Regulations was amended to introduce two new courses, at Serial Numbers 16 and 17 in the Table contained therein, with the norms and standards, for these two new courses, to be found in Appendices 16 and 17 to the Regulations. Regulation 9, to the extent it was so amended and is relevant for the purposes of the present controversy, may be reproduced thus:

> "**9. Norms and standards. –**
>
> Every Institution offering the following programmes shown in the Table shall have to comply with the norms and standards for various teacher education programmes as specified in Appendix 1 to Appendix 17:

S. No.	**Norms and Standards**	**Appendix No.**
*****		
16.	Four years Integrated Teacher Education Programme (Pre-Primary to Primary)	Appendix 16

17.	Four years Integrated Teacher Education Programme (Upper-Primary to Secondary)	Appendix 17"

13. Alongside the insertion, in the Table in Regulation 9 of the 2014 Regulations, the 2018 Amendment Regulations also added, correspondingly, Appendices 16 and 17 in the 2014 Regulations, setting out the norms and standards for the aforestated newly introduced 4-year Integrated Teacher Education Programmes (ITEP), for the pre-primary primary, and upper-primary to secondary, levels. Clause 1.2, in both the said Appendices, was identical, and read thus:

> "The programme shall be offered in the institutions which are composite institutions as defined in Clause (b) of regulation 2 of the National Council for Teacher Education (Recognition, Norms and Procedures) Regulation, 2014 (hereafter referred to as the principal regulation in this Appendix), on the date of making an application for this programme."

14. The 2014 Regulations were amended, once again, by the 2019 Amendment Regulations, which replaced, in their entirety, Appendices 16 and 17 to the Regulations. The petitioners are aggrieved by Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations, as thus replaced by the 2019 Amendment Regulations, which read thus:

> "The Integrated Teacher Education Programme (ITEP) shall be located in interdisciplinary academic environment which means a duly recognised higher education institution offering undergraduate or postgraduate programmes of study in the field of Liberal arts or humanities or social sciences or sciences of commerce or mathematics as the case may be."

The impugned Public Notice

15. On 20th May, 2019, the NCTE issued a Public Notice, inviting applications for grant of recognition/permission for the aforesaid two new Integrated Teacher Education Programmes (referred to, hereinafter, as "ITEP"). This Public Notice, which is, chiefly, the subject matter of challenge in these writ petitions, is required to be reproduced, *in extenso*, thus:

> "**NATIONAL COUNCIL FOR TEACHER EDUCATION (A STATUTORY BODY OF GOVERNMENT OF INDIA)**
>
> Hans Bhawan Wing-II, 1 Bahadur Shah Zafar Marg, New Delhi-110002
> Website: www.ncte-india.org
>
> 20th May, 2019
>
> **PUBLIC NOTICE**
>
> NCTE is mandated to effect planned and co-ordinated development of teacher education in the country (except the State of Jammu & Kashmir). NCTE proposes to launch two 4 Years Integrated Teacher Education Programmes (ITEP).
>
> 2. In pursuance to the order of the Hon'ble Supreme Court of India dated 15th May 2019 in M. A. No. 982/2019 in Writ Petition Civil No. 276/2012 titled Maa Vaishno Devi Mahila Mahavidyalaya vs. State of U.P. and others, the NCTE, in consultation with State Governments/UTs, has decided to invite online applications from the existing Central/ State Universities and established private Universities, along-with degree colleges, between 03rd June 2019 to 31 July 2019, for grant of recognition/permission for the following programmes for the academic session 2020-2021 in the States/UTs as indicated below: –

Name of the Course		Name of the State/UT from which applications will be accepted online
a.	4 Years Integrated Teacher Education Programme (Pre-Primary to Primary)	Haryana, Sikkim, Tripura, Assam, Andhra Pradesh, Karnataka, Meghalaya, Arunachal Pradesh, Uttarakhand, Tamilnadu, Maharashtra, Andaman & Nicobar Islands, Bihar, Delhi, Rajasthan (in 64 Tehsils as per Annexure-'A')
b.	4 years integrated Teacher Education Programme (Upper-Primary to Secondary)	Telangana, Sikkim, Tripura, Assam, Karnataka, Meghalaya, Arunachal Pradesh, Uttarakhand, Tamil Nadu, Maharashtra, Bihar, Delhi, Rajasthan (in 64 Tehsils as per Annexure-'A')

3. The applicant institution/University must submit the application to the concerned Regional Committee along with the requisite documents and also with a formal **Recommendation of the Concerned State Government/UT administration**.

4. It may be noted that only those institutions as defined under clause 1.2 of Appendixes 16 and Appendixes 17 of National Council for Teacher Education (Recognition, Norms and Procedure) Amendment Regulations, 2019 on the date of making the application shall be eligible for this programme. **Accordingly, only Universities and Degree colleges are eligible to apply for the courses mentioned above.**

MEMBER SECRETARY
National Council for Teacher Education"

16. The petitioners in these writ petitions take exception to the afore-extracted Public Notice, dated 20th May, 2019, issued by the NCTE, on two counts. Firstly, they submit that, by limiting the

eligibility, for applying for the two ITEPs, to institutions covered by Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations, as amended by the 2019 Amendment Regulations, teacher education institutions, such as the petitioners, despite being "composite institutions", have been debarred from applying for grant of recognition/permission to conduct the two new ITEPs. Secondly, they object to the exclusion of institutions located in certain states – and, in the case of the State of Rajasthan, certain *tehsils* – from being able to apply for the said two courses.

17. It may be noted, at this juncture itself, that, regarding the exclusion, of certain states – and, in the case of the State of Rajasthan, certain *tehsils* - from the impugned Public Notice dated 20th May, 2019, the NCTE has explained that, prior to inviting applications by way of the impugned Public Notice, they had entered into communications with the various States and Union Territories, seeking their concurrence to the conducting of the two new ITEP courses, in their territories, and that applications had been invited only for commencement of the courses in States which unequivocally acquiesced thereto. Where any State, or Union Territory, either rejected the proposal for commencing the two new ITEP courses, within its boundaries, or exhibited ambivalence, the NCTE chose not to invite applications, for conducting the courses in such States or Union Territories. The NCTE has placed, on record, the correspondence entered into, by it, with the various States and Union Territories, and the response, if any, received thereto, which, according to the NCTE, would rationalise its decision to limit the

invitation, *vide* the impugned Public Notice, to apply for starting the two new ITEP courses, to certain specific States or *tehsils*. The responses of the States or Union Territories, in which applications were not invited, or were invited only for one of the two ITEPs, or for selected areas or *tehsils*, may be enumerated thus:

(i) Applications were invited, from institutions located in the Andaman & Nicobar Islands, only for the pre-primary to primary ITEP, and not for the upper-primary to secondary ITEP. The response, dated 25th April, 2019, from the Andaman and Nicobar Administration, to the NCTE, conveyed in-principle consent to introduction of the pre-primary to primary ITEP, from the academic session 2021-22, in the Tagore Government College of Education (TGCE). However, the said communication informed that the TGCE was already running a four-year ITEP (Upper primary to Secondary), which was similar to the upper-primary to secondary ITEP newly introduced by the NCTE. It would be seen, therefore, that, in the case of the Andaman and Nicobar Islands, though the Administration had conveyed its consent for introduction of the pre-primary to primary ITEP only from the 2021-2022 academic session, applications were invited, by the impugned Public Notice, for the said programme, for the 2020-2021 academic session.

(ii) In the case of Andhra Pradesh, applications were invited only for the pre-primary to primary ITEP. This was in

consonance with the response, dated 16th February, 2019, from the Government of Andhra Pradesh to the NCTE, which stated that the Government of Andhra Pradesh was desirous to have ITEP exclusively for pre-primary as the Government intended to recognise pre-primary education sponsored schools.

(iii) No applications were invited from any institution located in the Union Territories of Chandigarh, Dadra & Nagar Haveli, Lakshadweep, Puducherry or Daman and Diu, or the States of Chhattisgarh, Goa, Kerala and Himachal Pradesh, as no responses were received, from these States/Union Territories, to the communication, dated 14th January, 2019, from the NCTE, seeking their concurrence for introduction of the two new ITEPs in their territories.

(iv) In the case of the state of Gujarat, the Education Department of the State, *vide* its communication dated 20th June, 2019, addressed to the NCTE, conveyed the concurrence, of the State Government to be included "in the list of states to be given permission for the integrated B.Ed. Programme and to start new integrated B.Ed. (*shiksha shastri*)" programme. As this programme was different from the two new ITEPs, being started by the NCTE, the NCTE responded, to the Government of Gujarat, *vide* letter dated 10th July, 2019, regretting that the request of the Government of Gujarat could not be considered as applications had been invited only for the ITEPs covered by Appendices 16 and 17, and there was no clarity, regarding the courses proposed, vis-à-vis these Appendices.

(v) In respect of the state of Haryana, the response, from the Additional Director (Admission) in the Directorate of School Education, the NCTE, suggested that the "4 years Integrated Teacher Education Programme (Pre-Primary to Primary) (Appendix 16 as per NCTE Amendment Regulation 2018)" could be introduced. Accordingly, the impugned Public Notice, dated 20th May, 2019, invited applications, from institutions located in the state of Haryana, only for the pre-primary to primary ITEP.

(vi) The State of Jharkhand responded, *vide* its letter dated 21st February, 2019, by opining that, while the two new ITEPs were useful for quality teacher training, it was desirable that such courses be opted by Universities and Degree Colleges. Having so opined, the letter requested the NCTE to "take appropriate action and furnish comment to NCTE as requested." The learned Additional Solicitor General, appearing on behalf of the respondents, submitted that such communications could not be treated as unequivocal, and were, therefore, considered to be rejections, by the NCTE.

(vii) The State of Madhya Pradesh, *vide* its communication dated 5th July, 2019, conveyed its consent for conducting of the two new ITEPs in Science and Humanities in those Universities and private colleges in the State, where NCTE programmes were already being run. However, the NCTE wrote back, on 10th July, 2019, regretting that there was little time left for

appropriate institutions to apply and, therefore, requesting the State Government to give consent, for conducting the ITEPs, the next year.

(viii) The State of Manipur, in response to the communication dated 14th January, 2019 from the NCTE, responded by forwarding an internal communication, dated 16th January, 2018, from the Director, State Council of Educational Research and Training in the State of Manipur to the Principal Secretary, SCERT, notifying the intention to start two new courses. This communication was, obviously, irrelevant to the request of the NCTE, as contained in its letter dated 14th January, 2019. No applications were, therefore, invited, for the two new ITEPs, from institutions located in the State of Manipur.

(ix) The States of Mizoram, Nagaland and West Bengal communicated, *vide* their letters dated 27th February, 2019, 31st January, 2019 and 5th March, 2019, addressed to the NCTE, conveying their regret in being unable to agree to introduction of the two new ITEPs in the State. No applications were, therefore, invited from institutions in these states, for the two new ITEPs.

(x) The State of Odisha, *vide* its undated response, to the NCTE, enlisted four colleges which had applied, in the Department of Higher Education in the state, and requested the NCTE "to take appropriate course of action at its end". It is seen that, on the face of the said communication, there is a

handwritten endorsement, apparently by an officer of the NCTE, to the effect that the concerned official in the Government of Odisha had informed, telephonically, only to include Appendix 17 to the 2014 Regulations, and that the requisite information would be sent, in writing, on 17th May, 2019. There is, however, nothing further, to indicate whether any such "information" was, or was not, sent by the Government of Odisha; be that as it may, no applications were invited, from any institution located in the state of Odisha, for starting either of the two new ITEPs.

(xi) The State of Punjab, in its response dated 26th April, 2019, stated that at least a month's time was required, in order to take a decision on the request of the NCTE, in view of the existing model code of conduct, which had been enforced preceding elections. The learned ASG submits that this, too, could not be treated as consent, on the part of the state of Punjab, to the introduction of the two new ITEPs in the State. Accordingly, no applications were invited, for introduction of the two new ITEPs, in the State of Punjab.

(xii) The State of Rajasthan responded to the communication, dated 14th January, 2019, from the NCTE, by way of an Order, dated 6th February, 2019, submitting that the two new ITEPs would be sanctioned only in the 64 *tehsils* enlisted in the tabular statement attached with the said letter. Accordingly, the impugned Public Notice dated 20th May, 2019 invited applications, for commencing the two new ITEPs, only from

institutions located in the said 64 *tehsils*, in the State of Rajasthan.

(xiii) The State of Telangana conveyed its consent, *vide* letter dated 30th January, 2019 addressed to the NCTE, only for invitation of applications for the Upper Primary to Secondary ITEP, governed by Appendix 17 to the 2014 Regulations. Accordingly, the impugned Public Notice, dated 20th May, 2019 invited applications from institutions located in the State of Telangana only for the Upper Primary to Secondary ITEP.

(xiv) In the case of the State of Uttar Pradesh, while the Higher Education Section in the State government conveyed, *vide* its letter dated 1st June, 2019, its agreement to adopt the two new ITEPs, the record reveals that, prior thereto, on 3rd May, 2019, the same authority had conveyed that the power to grant of NOC for affiliation of new courses vested in the Executive Council of the State Universities, established under the Uttar Pradesh State Universities Act, 1973 and that the said State Universities were autonomous institutions, so that there was no role of the State Government in the matter. This somewhat ambiguous stand, as adopted by the State of Uttar Pradesh was, apparently, not treated as sufficient to warrant invitation of applications, from institutions located in the said State, for starting the two new ITEPs. The impugned Public Notice, dated 20th May, 2019, therefore, does not invite applications from any institution located in the State of Uttar Pradesh, for commencing either of the said two new courses.

18. In respect of all other States or Union Territories, which had, in the opinion of the NCTE, expressed unequivocal assent, to commencement of the said two new ITEPs within their territories, the impugned Public Notice dated 20th May, 2019 invites applications.

19. We have taken pains to deal with the situation, as it prevailed in respect of each of the States, or Union Territories, from institutions located wherein no applications had been invited by the impugned Public Notice, in view of a grievance, voiced by Mr. Sanjay Sharawat, learned counsel appearing for the petitioners, that, in assessing the responses received from the various States and Union Territories, to the communiqué, dated 14th January, 2019, sent by it, the NCTE had acted arbitrarily. Having carefully analysed the responses from the various States and Union Territories – which we have attempted, hereinabove, to paraphrase – we are unable to subscribe to the submission, of Mr. Sharawat, that the NCTE did not properly appreciate, or act on the basis of, the communications received from the various States and Union Territories. Whether the NCTE was, or was not, justified in inviting such communications, before issuing the impugned Public Notice dated 20th May, 2019, is an aspect which we shall examine by and by; suffice it to state, at this stage, however, that we do not find substance in the grievance, of Mr. Sharawat, regarding the manner in which the responses, received from the States and Union Territories, to the communication dated 14th January, 2019, addressed by it, was evaluated and assessed by the NCTE.

Rival Submissions

20. We proceed, now, to record the rival stances, as taken before us by the petitioners, represented by Mr. Sanjay Sharawat and the NCTE, represented by Mr. Sanjay Jain, learned ASG.

Petitioners' submissions

21. Two distinct challenges have been ventilated, by the petitioners, with respect to the two new ITEPs, and invitation of applications from institutions thereagainst. The first challenge is directed against Clause 1.2 of Appendix 16, and Appendix 17, to the 2014 Regulations, as amended by the 2019 Amendment Regulations, i.e. to the limiting, of the right to introduce the said courses/programmes, to universities and higher education institutions, thereby denying, to all other composite institutions, the right to apply for introducing the said courses. The second challenge is with respect to the impugned Public Notice, dated 20th May, 2019, on various grounds. The submissions, advanced by Mr. Sharawat, learned counsel appearing for the petitioners may also, therefore, be conveniently segregated, as relatable to the first, or the second, challenge.

22. With respect to the confining of the right, to apply for starting the two new ITEPs, to universities and higher educational institutions, Mr. Sharawat submits thus:

(i) A conjoint reading of Regulations 8(1), 2(b) and 3, of the 2014 Regulations, revealed that composite institutions were permitted, thereunder, to apply for starting new courses, and teacher education institutions also fell within the ambit of the expression "composite institution", as defined therein. The limitation, engrafted by Clause 1.2 in Appendices 16 and 17 to the 2014 Regulations, whereby the right to apply for starting the two new ITEPs was restricted to Universities and higher education institutions, therefore, was contrary to the dispensation as contained in the main Regulations. Mr. Sharawat submitted that the law did not permit engrafting, in an Appendix to a statutory Regulation, a limitation which was not contained in the Regulation itself. An Appendix to the Regulation, he would submit, cannot dilute the effect of the Regulation itself.

(ii) "Micro-classification", of "composite institutions", by carving out, from the said class, "universities and higher education institutions", was violative of Article 14 of the Constitution of India.

(iii) Appendices 16 and 17 to the 2014 Regulations, as introduced by the 2019 Amendment Regulations, expressly stipulated that institutions, desirous of running the two new ITEPs, were required to have a separate faculty therefor. Once this requirement had specifically been engrafted in the norms and standards governing institutions, who wished to conduct the

said ITEPs, there was no reasonable justification for excluding, therefrom, teacher education institutions, and restricting the entitlement, for conducting such courses, to Universities and Higher Education Institutions.

(iv) Mr. Sharawat also pointed out, in this context, that when, by way of Appendix 13 to the 2014 Regulations, similar four year B.A. B.Ed/B.Sc. B.Ed. courses were introduced, teacher education institutions were also made eligible to apply for running the said courses.

23. Insofar as the grievance of the petitioners, with respect to the impugned Public Notice, dated 20th May, 2019, is concerned, Mr. Sharawat advances the following submissions:

(i) The decision, of the NCTE, to seek the view of State Governments, and Governments of Union Territories, prior to inviting applications by the impugned Public Notice dated 20th May, 2019, was contrary to Regulation 7 of the 2014 Regulations, which contemplated seeking of the recommendations, from the State Governments, after submission of application by the interested institutions. In fact, Regulation 7 went on to stipulate that, if recommendations, from the State Governments, as invited, were not received in time, the Regional Committee would proceed to process the applications. The decision to limit invitation of applications, by an *a priori* communication with the State Governments,

therefore, amounted to amendment of the statutory Regulations by executive fiat, which, obviously, is impermissible in law.

(ii) For the same reason, the requirement, in the impugned Public Notice dated 20th May, 2019, of the submission of application by the institutions in response thereto, having necessarily to be accompanied by a formal recommendation from the State Government, was contrary to Regulation 7 of the NCTE Regulations *supra*, which contemplated communication, which the State Governments, *by the NCTE, after receiving applications from institutions* interested in commencing the concerned courses.

(iii) The NCTE had acted in excess of the power vested in it by the NCTE Act and the Regulations framed thereunder, in issuing the impugned Public Notice dated 20th May, 2019, inasmuch as these statutory instruments did not confer, on the NCTE, any power to issue such a Public Notice.

(iv) The impugned Public Notice amounted to placing restrictions, on the fundamental right of the petitioners to run their institutions, or start any particular courses therein, vested by Article 19(1)(g) of the Constitution of India. Such restrictions, which could only be justified under Article 19(2), could not be introduced by way of executive instructions.

(v) The limiting of the right to apply to start the two new ITEPs, from institutions located in the State of Rajasthan, to

those in 64 specified *tehsils*, amounted to denying, to the institutions located outside these 64 *tehsils*, a level playing field. It was submitted that a similar dispensation, as introduced *vide* an earlier Public Notice, dated 27th February, 2015, was challenged, before this Court, in a batch of writ petitions, which were allowed *vide* judgment dated 2nd February, 2016, of a learned Single Judge, the lead matter being ***W.P. (C) 775/2016*** (***Vidha Sudha Welfare Foundation Samiti v. National Council for Teacher Education***[1]). The same Public Notice, dated 27th February, 2015, it was pointed out, was also challenged before the High Court of Madhya Pradesh, in ***W.P. 19819/2015 (Ambition College of Education v. National Council for Teacher Education*** [2]***)***, which was allowed *vide* judgment dated 28th January, 2016, the Special Leave Petition against which decision was also dismissed by the Supreme Court, *vide* order dated 8th April, 2019. Reliance was also placed, by Mr. Sharawat, on the judgment, of a learned Single Judge of the High Court of Madras in ***W.P. 3236/2010*** (***Senthil Education Society v. Member Secretary, NCTE***), which, too, challenged a similar Public Notice, dated 28th July, 2009, which restricted invitation of applications on the basis of ban imposed by certain State Governments, and was allowed by the High Court of Madras, *vide* judgment dated 4th March, 2011.

(vi) The power to seek recommendations, from the State Government was, under the 2014 Regulations, with the

[1]2016 SCC OnLine Del 639
[2]2016 SCC OnLine MP 9159

Regional Committees. The NCTE could not, therefore, exercise such power.

(vii) Applying the doctrine *facit cessare tacitum*, once Regulation 7 of the 2014 Regulations contained an express provision for consultation, with the concerned State Governments after receipt of applications, such consultation, prior to inviting applications, necessarily stood foreclosed.

(viii) The right of the petitioners, to submit applications to commence the two new ITEPs, in their respective institutions, emanated from the provisions of the NCTE Act and the applicable Rules and Regulations, and could not be divested by means of the impugned Public Notice.

(ix) As held by the Supreme Court in ***State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3], the NCTE Act was referable to Entry 66 in List I of the 7th Schedule to the Constitution of India. In applying and implementing the provisions of the NCTE Act or the Regulations framed thereunder, therefore, the Central Government could not allow itself to be inhibited by the views expressed by the respective State Governments.

(x) Reliance was also placed, by Mr. Sharawat, on para 62 of the report in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3] to contend that the right of his clients could not

[3](2006) 9 SCC 1

be curtailed by the impugned Public Notice, contrary to the provisions of the NCTE Act and Regulations.

(xi) Mr. Sharawat also pointed out that, had Regulation 7 of the 2014 Regulations, and the provisions thereof, been scrupulously followed by the NCTE, the petitioners would have had an opportunity to challenge any adverse recommendation, of the State Government, by way of appeal to the appellate authority. The act of the NCTE in not inviting applications, from States or Union Territories, effectively eviscerated the right of institutions, located in "excluded" States, or *tehsils*, from challenging the decision to exclude them. By way of illustration of the prejudice caused on this count, Mr. Sharawat refers to the Order, dated 6th February, 2019, issued by the Department of Higher Education, Government of Rajasthan, on the basis whereof, in the impugned Public Notice dated 20th May, 2019, applications were invited only from institutions located in 64 *tehsils*. In order to understand Mr. Sharawat's contention, it is necessary to reproduce the relevant portion of the aforesaid Order, dated 6th February, 2019, issued by the Department of Higher Education, Government of Rajasthan, thus:

"**Government of Rajasthan**
Department of Higher Education

F. 10 (4) Edu-4/2008 Part Date: 06 Feb 2019

Order

State Government's policy for granting NOC/recommendation to NCTE for establishing new teacher education colleges/opening new programme/increase in seats in the ongoing approved programmes for session 2020-21 shall be as under: –

S. No.	Programme	Policy
1	B.Ed.	NOC/recommendation shall not be made for opening any of these programme/course in session 2020-21
2	B.El.Ed. Bachelor of Education	
3	(B.Ed.) through ODL Mode	
4	B.P.Ed.	
5	M.Ed.	
6	M.P.Ed.	
7	B.Ed. (part-time) programme of 3 years' duration	
8	*B.A.-B.Ed./BSc.-B.Ed. integrated programme of 4 Years duration*	*State NOC/recommendation for Four-year integrated B.A.-B.Ed./B.Sc.-B.Ed. programme shall be made only for those existing institutions which are already running B.A./B.Sc. Programme in 64 tehsils. List of such tehsils is given at Annexure-1.*
9	Integrated B.Ed.-M.Ed. programme of 3 Years duration	NOC/recommendation shall be made only for those colleges which are already running B.Ed. & M.Ed. programme as per NCTE Regulations, 2014.
(*Excluding Shiksha Shastry and Shiksha Acharya and related integrated courses)		

Note: if NCTE introduces the new teacher training programme ITEP (Integrated Teacher Education

Programme) and bands the B.Ed. and foyers integrated programme, then the new ITEP Programme would be sanctioned in the aforesaid 64 tehsils only."

(Emphasis supplied)

Pointing out that the course/programme referred to at S. No. 8 of the table in the afore-extracted Order dated 6th February, 2019, was the pre-existing course, commenced in 2014, Mr. Sharawat submits that, had the aforesaid decision of the Department of Higher Education, Government of Rajasthan been obtained in accordance with the procedure prescribed in Regulation 7 of the 2014 Regulations, his client would have had an opportunity to point out that he had, in fact, been running the BA-B.Ed. course since 2018, thereby resulting in the inclusion, in the list of *tehsils* from which applications were invited, of the *tehsil* in which his client was located. Mr. Sharawat points out that, therefore, as a result of the skewed procedure, followed by the NCTE, in communicating with the State Government before inviting applications *vide* the impugned Public Notice, the NCTE acted on the basis of flawed data, which the affected institutions had no opportunity to controvert. In this context, Mr. Sharawat placed reliance on paras 13, 62, 63 and 66 of the judgment of the Supreme Court in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3].

(xii) Section 12 of the NCTE Act set out the "Functions" of the NCTE, whereas Section 14 specifically deals with recognition of Institutions, offering course or training in teacher

education. Sub-section (1) of Section 14 required every institution, intending to offer a course or training in teacher education to, for grant of recognition under the NCTE Act, make an application to the concerned Regional Committee, and sub-section (3) requires the concerned Regional Committee to, on receipt of such application, and after obtaining necessary particulars from the institution, pass an order granting recognition to the institution, if it was satisfied that the institution had adequate financial resources, accommodation, library, qualified staff, laboratory and fulfilled such other conditions as were required for proper functioning of the institution for a course or training in teacher education. This was made subject only to conditions to be determined by the Regulations to be framed under the NCTE Act. Mr. Sharawat contended that, applying the principle *generalia specialibus non derogant*, the scope and ambit of Section 14 of the NCTE Act could not be whittled down by a premature recourse to obtaining of the views of the respective State Governments, which exercise would be relatable to Section 12. To bring home the contention that specialised provisions, under the NCTE Act, had to give way to general provisions, Mr. Sharawat sought to place reliance on paragraphs 4, 5 and 32 of the report in ***National Council for Teacher Education v. Vaishnav Institute of Technology and Management***[4].

[4] (2012) 5 SCC 139

24. Mr. Sharawat conceded, however, that he was not seeking to challenge the merits of the decisions of the Governments of the individual States or Union Territories.

25. Mr. Sharawat placed reliance on the following decisions, apart from those already mentioned herein above:

(i) ***Government of Andhra Pradesh v. P. Laxmi Devi***[5] (paras 33 to 35),

(ii) ***Ramchandra Keshav Adke v. Govind Joti Chavare, (1975) 1 SCC 559***[6](para 25),

(iii) ***Babu Verghese v. Bar Council of Kerala***[7](paras 31 and 32),

(iv) ***Captain Ganpati Singhji v. State of Ajmer***[8],

(v) ***Shrimati Hira Devi v. District Board, Shahjahanpur***[9]**,**

(vi) ***Sub-Divisional Officer, Sadar v. ShambhooNarain Singh***[10]**,**

(vii) ***Birla Higher Secondary School v. Lt Governor***[11]**,**

(viii) ***Chief Settlement Commissioner, Rehabilitation Department, Punjab v. Om Prakash***[12]**,**

(ix) ***Patna Improvement Trust v. Smt. Lakshmi Devi***[13]**,**

(x) ***State of Rajasthan v. LBS B.Ed. College***[14] ***and***

[5] (2008) 4 SCC 720
[6] (1975) 1 SCC 559
[7] (1999) 3 SCC 422
[8] 1955 (1) SCR 1065
[9] 1952 SCR 1122 at 1130
[10] (1969) 1 SCC 825
[11] ILR 1973 (1) Del 634
[12] 1968 (3) SCR 655
[13] 1963 Supp (2) SCR 812
[14] (2016) 16 SCC 110

(xi) ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust v. State of Tamil Nadu***[15]**.**

NCTE's Submissions

26. Arguing *per contra*, Mr. Sanjay Jain, learned ASG, advances the following contentions:

(i) Re. Challenge to Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations:

(a) All composite institutions were not universities, or degree colleges. These institutions could not be treated at par. The decision, of the NCTE, to restrict entitlement, in the manner of conducting the two new ITEPs, to Universities and higher education colleges, was based on the perception that these institutions would be better equipped to handle the two new courses.

(b) This decision was also based on Clause 4 of Chapter 7, containing the "Summary of Recommendations" of the Justice J. S. Verma Commission, the recommendations whereof had been made binding, on the NCTE, by virtue of the orders passed by the Supreme Court in ***Rashtrasant T. M. S. &***

[15] (1996) 3 SCC 15

S. B. V. M. C. A. Vid. v. Gangadar Nilkant Shende[16], which read thus:

> "It is desirable that new Teacher Education Institutions are located in multi-and inter-disciplinary academic environment. This will have significant implications for the redesigning of norms and standards of various Teacher Education courses specified by the NCTE. This will also have implications for employment and career progression of prospective teachers. Existing teacher education institutions may be encouraged to take necessary steps towards attaining academic parity with the new institutions."

(c) Regulation 9 of the 2014 Regulations required every institution, offering the programme as shown in the Table thereunder, to comply with the norms and standards prescribed in Appendices 1 to 17 to the said Regulations. Inasmuch as the petitioners did not fulfill the criteria specified in Clause 1.2 of Appendices 16 and 17, they were not entitled to apply for permission to start the two new ITEPs.

(d) Section 32 of the NCTE Act conferred unfettered power, to the NCTE, to make or amend Regulations.

(e) Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations constituted reasonable restrictions, under Article 19(6) of the Constitution of India, which had a rational nexus to the object sought to be achieved

[16] SLP (C) 4247-4248/2009

thereby, which was safeguarding of the interests of the students, teachers and the educational institution itself.

(ii) Re. Challenge to Public Notice dated 20th May, 2019:

(a) The States and Union Territories being vital stakeholders in the exercise of starting of the two new ITEPs, within their respective geographical territories, the NCTE did not deem it appropriate to invite applications, for starting the said two new ITEPs, from institutions located in the states, or in the regions, where the concerned State Governments were unwilling to commence the said courses. Reliance has been placed, for this proposition, on ***Modern Dental College and Research Centre v. State of Madhya Pradesh***[17].

(b) Excluding certain States, or certain districts, from the ambit of the impugned Public Notice dated 20th May, 2019, was founded on the logic that it was inadvisable to allow mushrooming of teacher educational institutions in one particular *tehsil* or in one particular State. The State Government being the best judge in that regard, a conscious decision, to keep the respective State Governments in the loop, before inviting applications for starting the said courses, was taken.

[17] (2016) 7 SCC 353

(c) The Supreme Court had, in its judgment in ***Jawaharlal Nehru Technological University Registrar v. Sangam Laxmi Bai Vidyapeet***[18] , held that the State Government/University had the power to refuse grant of NOC to start a course in Pharmacy in the city of Hyderabad. The rationale for the said decision, which was that there were already several institutions imparting education in the area, was found to be justified, by the Supreme Court.

(d) The contention, of the petitioner, that the direction, in the impugned Public Notice, to applicant institutions, to submit, with their applications, a formal recommendation of the concerned State Government, was *ultra vires* to the 2014 Regulations, was also misconceived. Regulation 5 of the 2014 Regulations never restricted the documents, which could be required to be submitted, along with the online application.

(e) Requiring the formal recommendation, from the concerned State Government was akin to the requirement, of the Medical Council of India, for an "Essentiality Certificate" from the concerned State Government, from applicants intending to open medical colleges. The insistence, of the MCI, on the production of such an "essentiality certificate", had been upheld by the Supreme Court in ***Chintpurni Medical College and***

[18] 2018 SCC Online SC 2277

Hospital v. State of Punjab[19]. Moreover, this requirement, too, was based on the perceived inadvisability of allowing mushrooming of educational institutions in a particular State or area.

(f) Section 12 of the NCTE Act obligated the NCTE to take all steps, as it thought fit, for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education, as well as for the purposes of performing its functions under the NCTE Act. Clause (f), in the said Section required the NCTE to "lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification". If, therefore, before inviting applications from institutions which desired to start the two new ITEPs, the NCTE thought it appropriate to solicit the views of the concerned Governments of the States and Union Territories, it was only acting in furtherance of Section 12 of the NCTE Act, and in exercise of the duty cast on it thereby.

(g) Education was a State subject and, therefore, the decision of the State Government, regarding the advisability, or otherwise, of opening an institution of

[19] (2018) 5 SCC 1

higher education, within its territory, had to be accorded primacy.

(h) The NCTE was only a regulator. The two new ITEPs had necessarily to be at a place where it was possible to have multidisciplinary teaching. The petitioner institutions were conducting teacher training courses with bare minimum facilities, and it was doubtful whether they would be in a position to conduct a course of the magnitude of the two new ITEPs. The decision to restrict the States, or areas, from which applications were invited, for commencing the said two new ITEPs was, therefore, a conscious policy decision, which was not vitiated by arbitrariness of any kind, and was based on the inputs received from the concerned State Governments. Reliance was placed, by the learned ASG, in this context, on ***Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale***[20], and an order, dated 10th September, 2013, of the Supreme Court in ***Rashtrasant T. M. S. & S. B. V. M. C. A. Vid. v. GangadarNilkant Shende***[16].

(i) Section 12 of the NCTE Act empowered the NCTE to make recommendations to the Central and State governments, in the matter of programmes for teacher education. The exercise of obtaining the prior concurrence, of the respective State Governments, or

[20] (2012) 2 SCC 425

Union Territories, before inviting applications for the two new ITEPs, as well as the issuance of the impugned Public Notice dated 20th May, 2019, itself, were relatable to the power vested in the NCTE by clauses (c), (f) and (j) of Section 12 of the NCTE Act.

(j) The NCTE was not required to be vested with any specific power, in order to be competent to issue the impugned Public Notice dated 20th May, 2019. Issuance of Public Notices were an integral part of any regulatory regime, and did not require any specific enabling provision. By issuing such Public Notice, transparency, and outreach to the maximum number of persons, was achieved. Moreover, the power to issue the impugned Public Notice could also be related to the power to prescribe norms and standards, which was, in any case, statutorily vested in the NCTE.

(k) The reference, by the petitioners, to the fact that the NCTE Act had been enacted under Entry 66 of List I of the 7th Schedule to the Constitution of India, could not advance the case of the petitioner to any extent, as the distribution of subjects, amongst the various lists in the 7th Schedule was relatable to Article 246 of the Constitution of India, which merely enabled the Parliament to legislate in any field in respect of which the State could also legislate. Moreover, in ***Rai Sahib Ram***

Jawaya Kapur v. State of Punjab[21], it had been held that the executive power of the state was co-extensive with its legislative power. Merely, therefore, because the NCTE Act had been enacted by Parliament, State Governments were not denuded of the power to exercise executive functions, with respect to the subject matter of the NCTE Act. Ultimately, education was the responsibility of the State Government which was, therefore, an indispensable stakeholder in the exercise. Reference was also invited, in this context, to para 149 in ***Modern Dental College***[17].

27. Consequently, argues the learned ASG, the submissions of the petitioners, being devoid of merit, deserved to be rejected.

Analysis

28. We proceed to deal with the two challenges, as ventilated in these writ petitions by the petitioners, individually and seriatim.

Re. Challenge to Clause 1.2 of Appendices 16 and 17 of the 2014 Regulations

29. In order to appreciate this challenge, it is necessary to chart, first, the genesis of the 2014 Regulations, which owe their origin, in a manner, to the Verma Commission Report.

[21] 1955 (2) SCR 225

30. The pre-existing National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 were replaced by the 2014 Regulations, which came into effect on 28th November, 2014. The genesis of the dispute, which led to the necessity for replacing the 2009 Regulations, is to be found in a decision, taken by the Western Regional Committee (WRC) of the NCTE, during its 104th to 109th meetings, held in 2008, in which the WRC granted recognition to 291 colleges, situated in the State of Maharashtra, for starting the Diploma in Education (D.Ed.) programme, despite the recommendations, of the Government of Maharashtra, to the contrary. The Government of Maharashtra had clearly stated that it did not require more D.Ed. institutions, owing to want of job opportunities for students who graduated from such institutions. The decision of the WRC was challenged, by way of a public interest litigation, which came up before the Nagpur bench of the High Court of Bombay which, *vide* its order dated 7th January 2009, quashed the decision of the WRC. The matter was carried, by the Colleges, before the Supreme Court by way of ***SLP (C) 4247-4248/2009*** (***Rashtrasant T. M. S. & S. B. V. M. C. A. Vid. v. Gangadar Nilkant Shende***[16]). During the said proceedings, *vide* order dated 13th May, 2011, the Supreme Court approved the Constitution of a Commission, headed by Hon'ble Mr. Justice J. S. Verma, former Chief Justice of India (hereinafter referred to as "the Verma Commission"), to examine the various contentious issues arising in the context of teacher education, especially in the context of the Right of Children to Free and Compulsory Education Act, 2009. Among the terms of reference of

the Verma Commission, as approved by the Supreme Court on 13th May, 2011, were the following:

> "a) Whether in the context of the provisions of the Right of Children to Free and Compulsory Education Act, 2009, the Regulations on Recognition Norms and Procedure that lay down the norms and procedure for various teacher education courses which are adopted by the NCTE are adequate or need review.
>
> b) Whether further reforms are necessary to improve quality of teacher training and in-surface training.
>
> c) To review whether the Regulations on Recognition Norms and Procedure, currently in force as laid down by the NCTE are being properly enforced. If not, how to evolve a fair and transparent manner in which these norms and standards may be enforced.
>
> *****
>
> g) To determine what the methodology should be to examine/enforce quality in teacher training institutions."

31. The report of the Verma Commission was filed, before the Supreme Court, in ***SLP (C) 4247-4248/2009*** *supra* which, *vide* its order dated 10th October, 2012, noted that it had carefully gone through the recommendations of the Verma Commission and were "of the view that the same deserves to be accepted". The following passages, from the order, dated 10th October, 2012, of the Supreme Court, merit reproduction:

> "The learned Solicitor General pointed out that the High-Powered Commission appointed pursuant to the directions given by the Court has submitted its report in three volumes. The report of the Commission has been taken on record.

We have carefully gone through the recommendations made by the Commission and are of the view that the same deserves to be accepted.

With a view to enable the Government of India and NCTE to indicate the steps proposed to be taken for implementation of the recommendations made by the Commission, we deem it proper to adjourn the case for two months within which affidavits of the competent authorities be filed on the issue of implementation of the recommendations of the Commission."

(Emphasis supplied)

32. In its subsequent order, dated 29th January, 2013, the Supreme Court opined that it was "in the interest of the society in general and the students community in particular that a time bound schedule is framed by the Government and the NCTE for implementation of the recommendations made by the Committee headed by Hon'ble Sh. Justice J. S. Verma (Former Chief Justice of India)." Again, in order dated 28th February, 2013, the Supreme Court required the Central Government to file another affidavit, clearly specifying the concrete steps already taken for implementation of the recommendations made by the Verma Commission. Thereafter, on 3rd May, 2013, the Supreme Court opined that a small group, from the members of the Verma Commission, could be requested to supervise the implementation of the recommendations of the Commission. Acting on the said direction, the Central Government constituted a sub-group, comprising four members of the Verma Commission, to monitor the progress, in the matter of implementation of the recommendations of the Verma Commission and to report, to the Supreme Court, with

respect thereto. This action was appreciated by the Supreme Court, in its order dated 6th August, 2013, which went on to direct thus:

> "In order to facilitate further implementation of the report of the Verma Commission, we direct that the recommendations which may be made by the sub-Group shall be binding on the Government of India and the Governments of all the States and Union Territories as also NCTE and University Grants Commission and all of them shall implement the same without any objection and without modifying the same."

33. The aforesaid sub-Group was designated, by the Supreme Court, *vide* its subsequent order dated 10th September, 2013 – wherewith the proceedings in ***SLP (C) 4247-4248/2009*** were closed – as the "Implementation Committee". The Supreme Court reiterated, in the said order, its earlier mandate that the recommendations of the Implementation Committee would be binding on all States, Union Territories, the Central Government, the NCTE and the UGC, who would be bound to implement the same without reservation or modification. The following passages, from the order dated 10th September, 2013, are relevant:

> " One of the recommendations made by the Implementation Committee is the revision of the regulations framed by NCTE.
>
> With a view to ensure that there is no further complication in the matter of grant of recognition for establishment of new Teacher Training Colleges/Institutions and permission to the existing Colleges/Institutions to run the Teacher Training Courses, we direct the concerned authorities including the NCTE to notify the new regulations latest by 30.11.2013.
>
> We also reiterate the direction given earlier and make it clear that all the recommendations made by the Implementation Committee shall be binding on the

> Government of India, the Governments of all the States and the administration of Union Territories as also NCTE and University Grants Commission and all of them shall implement the same without any objection and without modifying the same.
>
> With the above direction, the proceedings of these petitions are closed and the special leave petitions are disposed of."

34. Consequent on the above directions of the Supreme Court, the 2014 Regulations came to be promulgated, superseding the existing 2009 Regulations.

35. Clearly, it would not be open to any Court to question the wisdom of any provision, in the 2014 Regulations, or in any amendment effected to the said Regulations, which is in line with, or furthers, any of the recommendations of the Verma Commission. The recommendations of the Verma Commission, having been sanctified by the imprimatur of the Supreme Court, were binding on the NCTE, and are also binding on every judicial authority, hierarchically below the Supreme Court.

36. Among the recommendations of the Verma Commission, was the recommendation (already extracted in para 33 *ibid*) that new Teacher Education Institutions ought to be located in multi-and inter-disciplinary academic environments. This recommendation, *inter alia*, has been held, by the Supreme Court, to be worthy of implicit acceptance and implementation. In that view of the matter, the wisdom of the decision, to introduce, by the 2019 Amendment

Regulations, the said requirement, as one of the norms and standards to be followed, by institutions seeking to run the two new ITEPs, is not open to examination by this Court.

37. It has been sought to be contended by the petitioners, through Mr. Sharawat, that this requirement, as contained in Clause 1.2 in Appendices 16 and 17 to the 2014 Regulations, divested composite institutions, such as the petitioners, of the right to apply for starting the two new ITEPs, which right was, otherwise, available to them under the 2014 Regulations. Juxtaposed with this submission, Mr. Sharawat would contend that an Appendix to a Regulation could not divest a right vested by the Regulation itself.

38. The submission, needless to say, proceeds on a presumption that the 2014 Regulations conferred, on every composite institution, a right to run every course, or programme, governed by the Regulations.

39. The petitioners base this submission on clause (a) of Regulation 3, and on Regulation 8(1) of the 2014 Regulations. Regulation 3, with clause (a) thereof, may be reproduced, once again, as under:

> "**3. Applicability. –**
>
> These regulations shall be applicable to all matters relating to teacher education programmes for preparing norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in the existing programmes including the following, namely: –

> (a) recognition for commencement of new teacher education programmes *which shall be offered in composite institutions*;"
>
> (Emphasis supplied)

40. Having carefully read Regulation 3, and clause (a) therein, we are not persuaded to accept the submission, of Mr. Sharawat, that this clause conferred any absolute right, on every composite institution, to be entitled to run every course enumerated in Regulation 9. Regulation 3 is a provision which delineates the applicability of the 2014 Regulations. In other words, it charts the boundaries and parameters, within which the 2014 Regulations would apply. A bare reading of Regulation 3 reveals that the 2014 Regulations are, by means of the said Regulation 3, made applicable to all matters relating to teacher education programmes for preparing norms and standards and procedures for regulation of institutions, commencement of new programmes and addition to sanctioned intake in existing programmes, *including* the situations contemplated by clauses (a) to (e) thereunder, i.e. (a) recognition for commencement of new teacher education programmes which shall be offered in composite institutions, (b) permission for introduction of new programmes in existing teacher in education institutions duly recognised by the NCTE, (c) permission for additional intake in existing teacher education programmes duly recognised by the NCTE, (d) permission for shifting or relocating of premises of existing teacher education institutions and (e) permission for closure or discontinuation of recognised teacher education programmes or institutions, as the case may be. These five clauses (a) to (e) merely set out five aspects, to

which the 2014 Regulations would apply. One of the said aspects is, undoubtedly, recognition for commencement of new teacher education programmes which shall be offered in composite institutions. This, however, only means that new teacher education programmes, offered in composite institutions, *would be one of the aspects to which the 2014 Regulations would apply*. It cannot be extrapolated to mean that *every* composite institution is entitled to conduct, or run, every new teacher education programme.

41. Adverting, now, to Regulation 8 (1) of the 2014 Regulations, it is seen that the said sub-Regulation reads thus:

> "New Teacher Education Institutions shall be located in composite institutions and the existing teacher education institutions shall continue to function as stand-alone institutions; and gradually move towards becoming composite institutions."

42. We are unable to understand how the petitioners seek to derive any right, qua the cause of action ventilated in these proceedings, from this sub-Regulation. Regulation 8(1) deals, in the first place, with "new teacher education institutions". None of the petitioners is a "new teacher education institution". Nor is Clause 1.2, in Appendices 16, and 17, to the 2014 Regulations, restricted to "new teacher education institutions". The Public Notice, dated 20th May, 2019, too, does not invite applications only from "new teacher education institutions". As such, Regulation 8(1) of the 2014 Regulations, which stipulates that new teacher education institutions shall be located in composite institutions, does not carry the case of the petitioner further, to any appreciable degree.

43. Moreover, "composite institution" is defined, in clause (b) of Regulation 2 of the 2014 Regulations as meaning "a duly recognised higher education institution offering undergraduate or postgraduate programmes of study in the field of liberal arts or humanities or social sciences or sciences, commerce or mathematics, as the case may be, at the time of applying for recognition of teacher education programmes, or an institution offering multiple teacher education programmes". The petitioners, quite obviously, seek to come within the ambit of this definition by means of the latter part thereof, which covers "institutions offering multiple teacher education programmes". The respondents, to be fair, do not dispute the fact that the petitioner-institutions are, indeed, "composite institutions". That fact, in our view, cannot, in any case, be disputed, as it is a matter of record that the petitioner-institutions do, indeed, offer multiple teacher education programmes.

44. Institutions offering multiple teacher education programmes are, however, not the only categories of institutions, which are eligible to be treated as "composite institutions", within the meaning of clause (b) of Regulation 2. *Any* duly recognised higher education institution, offering undergraduate or postgraduate programmes of study in the field of liberal arts of humanities or social sciences or sciences or commerce or mathematics, is, by definition, a "composite institution". The impugned Clause 1.2, in Appendices 16 and 17 to the 2014 Regulations refers to "duly recognised higher education institutions offering undergraduate or postgraduate programmes of study in the

field of liberal arts of humanities or social sciences or sciences or commerce or mathematics as the case may be". The Clause, therefore, merely borrows the words of Regulation 2(b), which defines "composite institution". All institutions, which conform to the stipulations contained in Clause 1.2 of Appendices 16 and 17 would, therefore, be "composite institutions", within the meaning of clause (b) of Regulation 2 of the 2014 Regulations. Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations, as introduced by the 2014 Amendment Regulations, therefore, also invites applications only from composite institutions, though they are composite institutions which fall within the first part of the definition of "composite institution", as contained in Regulation 2(b), and not institutions, such as the petitioners, who fall within the second part of the said definition. So long as the institutions, which conform to Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations, are "composite institutions", it cannot be said that Clause 1.2 of the said Appendices detracts, in any manner, from Regulation 8(1). Regulation 8(1) merely states that new teacher education institutions would be located in composite institutions. Clause 1.2, too, invites applications only from composite institutions. The contention, of Mr. Sharawat, that Clause 1.2 of Appendices 16 and 17, falls foul of Regulation 8(1) is, therefore, devoid of substance.

45. The basic premise, of Mr. Sharawat, that, merely by virtue of their being "composite institutions", as defined in Regulation 2(b) of the 2014 Regulations, a right vested, in his clients, to run, or conduct, that new ITEPs, is, therefore, itself fundamentally misconceived. In

our view, no right vests, in any "composite institution", merely by virtue of its being one, to conduct, or run, any particular teacher education course. If, therefore, additional requirements are incorporated, in the norms and standards applicable to any one, or more, of such courses, which may result in any *particular* composite institution, not being in a position to conduct such course or courses, it cannot be said that, thereby, any vested right has been divested. Nor can it be said that, by doing so, the norms and standards, as contained in the Appendices to the 2014 Regulations, fall foul of any provision in the Regulations themselves.

46. The following passages, from ***All India Council for Technical Education v. Surinder Kumar Dhawan***[22]– which involved a challenge to the denial, by the All India Council for Technical Education (AICTE), to the YMCA Institute of Engineering, Faridabad, of permission to start a bridge course – guide us, in the view we are taking:

> "14. There is considerable force in the submission of the appellant. Having regard to clauses (*i*) and (*k*) of Section 10 of the All India Council for Technical Education Act, 1987 ("the Act", for short), *it is the function of AICTE to consider and grant approval for introduction of any new course or programme in consultation with the agencies concerned, and to lay down the norms and standards for any course including curricula, instructions, assessment and examinations.*
>
> **15.** *The decision whether a bridge course should be permitted as a programme for enabling diploma-holders to secure engineering degree, and if permitted, what should be the norms and standards in regard to entry qualification, content of course instructions and manner of assessing the performance by examinations, are all decisions in academic*

[22] (2009) 11 SCC 726

matters of technical nature. AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.

16. *The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.*

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. *If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in.* In ***J.P. Kulshrestha (Dr.) v. Allahabad University,(1980) 3 SCC 418*** this Court observed: (SCC pp. 424 & 426, paras 11 & 17)

> "11. … Judges must not rush in where even educationists fear to tread. …
>
> ***
>
> 17. … While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

*****

22. The decision of AICTE not to permit bridge courses for diploma-holders and its decision not to permit those who have passed 10+1 examinations (instead of 10+2 examination) to take the bridge course relate to technical education policy which falls within their exclusive jurisdiction. *Courts will not interfere in matters of policy.*

23. This Court in ***Directorate of Film Festivals v. Gaurav Ashwin Jain, (2007) 4 SCC 737*** pointed out: (SCC p. 746, para 16)

> "16. … Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review…."

The above observations will apply with added vigour to the field of education.

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31. These being educational issues, they cannot be interfered with, merely because the court thought otherwise. If AICTE was of the view that only those diploma-holders with 10+2 (with PCM subjects) should be permitted to upgrade their qualification by an ad hoc bridge course or that such bridge course should not be a regular or permanent feature, there is no reason to interfere with such a decision. *The courts cannot by their orders create courses, nor permit continuance of courses which were not created in accordance with law,* or lower the minimum qualifications prescribed for admissions. The High Court's decision to permit candidates who have completed 10+1 plus four-years' post diploma course to take the bridge course cannot be sustained.

32. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. *Granting approval for a new course or programme requires examination of various*

> *academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts*. In this case, for example, by a mandamus of the court, a bridge course was permitted for four-year advance diploma-holders who had passed the entry-level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one-time measure was extended for several years and was also extended to post diploma-holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education."
>
> (Emphasis supplied)

47. The challenge, of the petitioners, to the impugned Clauses 1.2 in Appendices 16 and 17 to the 2014 Regulations, as introduced by the 2019 Amendment Regulations, therefore, fails.

Re. challenge to Public Notice dated 20th May, 2019

48. We advert, now, to the second challenge of the petitioner, which is directed against the Public Notice, dated 20th May, 2019, issued by the NCTE.

49. The main contention of Mr. Sharawat, in impugning the said Public Notice, is that the obtaining of comments from the individual State Governments/Union Territories, by the NCTE, before inviting applications for the two new ITEPs, and, on the basis thereof, limiting

such invitation to institutions located in certain specified States or, in the case of the State of Rajasthan, certain specific *tehsils*, infracted Regulation 7 of the 2000 Regulations, and the scheme contained therein. Mr. Sharawat points out that a very clear, and self-contained, scheme is to be found in Regulation 7, which, read with Regulation 5 contemplates,

> (i) in the first instance, application, by an institution desirous of running a teacher education programme, to the concerned Regional Committee, along with processing fee and requisite documents [Regulation 5(1)],
>
> (ii) rejection, by the NCTE, of applications which are incomplete, along with forfeiture of the application fee [Regulation 7(1)],
>
> (iii) summary rejection of the application, in the case of (a) failure to furnish the application fee or (b) failure to submit print out of the applications made online along with the required land documents, within 15 days of submission of the online application [Regulation 7(2)],
>
> (iv) passing of an order of refusal of recognition, after issuing show cause notice to the institution, in any case in which the application is found to contain false information or to conceal any facts, which may have bearing on the decision-making process [Regulation 7(3)],

(v) sending, of a written communication, along with a copy of the application forms submitted by the institution, by the concerned Regional Committee to the State Government or administration of Union Territory, as well as the affiliating body concerned, within 30 days of receipt of the application, in chronological order of such receipt [Regulation 7(4)],

(vi) furnishing, by the concerned State Government or Union Territory administration, of its recommendations or comments to the concerned Regional Committee, within 45 days of the date of issue of the aforesaid letter, to the State Government or Union territory, as the case may be, with the specific rider that, 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 concerned Regional Committee while disposing of the application [Regulation 7(5)],

(vii) in case the recommendation of the State Government is not received within the aforesaid period, sending, of a reminder, providing further time of 30 days, to the State Government, to furnish their comments on the proposal [Regulation 7 (6)],

(viii) in case no reply, from the State Government is received even thereafter, sending, of a second reminder, to the State Government for furnishing its recommendation, within 15 days [Regulation 7(6)], and

(ix) in case no reply is received from the State Government even within the said extended period, processing and deciding of the application of the institution, by the Regional Committee on merits, without waiting, any further, for comments or recommendation of the State Government [Regulation 7 (7)].

50. This, Mr. Sharawat submits, is the sanctified statutory scheme, and the NCTE could not depart therefrom. By communicating, in advance, with the State Governments and Union Territories, the petitioners complained that the NCTE effectively jettisoned the procedure prescribed in sub-regulations (4) to (7) of Regulation 7 of the 2014 Regulations or, at any event, reduced the application of the said sub-regulations to a formality. Mr. Sharawat submits that the 2014 Regulations did not contemplate limiting invitation of applications, for the new ITEPs – or, for that matter, for any new course – from institutions which otherwise satisfied the norms and standards stipulated in the Appendices to the 2014 Regulations, merely on account of their geographical location. Succinctly stated, the submission of Mr. Sharawat is that the 2014 Regulations do not contemplate the geographical location of any particular institution as an inhibiting factor, insofar as application, by such institution, for starting any new course – which would include the two new ITEPs – was concerned. Rather, he submits, applications were required to be invited from all institutions, which fulfill the norms and standards stipulated in the Appendices relating to that course and, thereafter, after screening the applications, the concerned Regional Committees were to get in touch with the State Governments or Union Territories. Even at that stage, the State Governments, or Union Territories, could

not blankly refuse to permit starting of the new course/courses, but had to justify the decision with cogent reasons, backed by relevant statistical data. The decision of the State Government, and the material and data furnished by it, would be considered by the Regional Committee, while disposing of the application of the institution concerned. Non-receipt, from the State Government, or Union Territory Administration, of any response to the communication of the Regional Committee, within the periods stipulated in Clauses (4) and (5) of Regulation 7, would entitle the Regional Committee to proceed with consideration of the application, of the institution concerned, for permission to start the course/courses, on merits, without waiting any further.

51. It is clear that, while, undoubtedly, the State governments, or governments of Union Territories, within which the institutions, or courses, are to be commenced, are stakeholders in the matter, primacy is accorded, by the statute, to the necessity of starting the course/courses/institutions, rather than to any indefensible objection, by the concerned State/Union Territory, thereto. The statute contemplates that, ultimately, it is the decision of the Regional Committee which is to prevail, rather than the objection of the concerned State Government or Union Territory. Quite obviously, this is in the interests of furthering of education, and in ensuring, as far as possible, the reach, of the educational arm of the state, to all corners of the country.

52. Mr. Sharawat submits that, once Regulation 7 – specifically sub-regulation (4) thereof – contemplates communication, by the Regional Committee, with the government of the concerned State or Union Territory, only after the applications were submitted, and prescribed, thereafter, in detail, the manner in which the request was to be examined by the concerned State/Union Territory, the manner in which it was to respond, and the action to be taken on the basis of the response received, the NCTE acted with marked illegality in corresponding with the governments of the concerned States/Union Territories even before inviting applications and, acting on the responses from the States/Union Territories thereto, limiting applications to institutions located in certain select states, Union Territories, or *tehsils*. To our mind, this proposition is unexceptionable, and we are not required, in order to arrive at this conclusion, to refer to any abstruse Latin maxims, or enter into any involved exercise of constitutional interpretation. ***Taylor v. Taylor***[23], as notably followed in ***Nazir Ahmed v. King Emperor***[24] and a plethora of judgments of the Supreme Court, the most well-known being, perhaps**, *State of Uttar Pradesh v. Singhara Singh***[25], conclude the issue, in law, in favour of the petitioners. The legal principle, fossilised over a period of time, is thus enunciated, in ***Singhara Singh***[25]:

> "8. In ***Nazir Ahmed's case L.R. 63 IndAp 372*** the Judicial Committee observed that the principle applied in ***Taylor v. Taylor [1875] 1 Ch. D. 426*** a Court, namely, that *where a power is given to do a certain thing in a certain way, the thing must be done in that or nor at all and that other methods of*

[23] (1875) 1 Ch D 426
[24] AIR 1936 PC 523
[25] AIR 1964 SC 358

performance are necessarily forbidden, applied to judicial officers making records under s. 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to record under s. 164 of the Code. It was said that otherwise all the precautions and safe guards laid down in Sections 164 and 364, both which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than which is laid down with such minute particularity in the section themselves."

9. The rule adopted in ***Taylor v. Taylor [1875] 1 Ch. D. 426*** is well recognised and is founded on sound principle. Its result is that *if a statue has conferred a power to do an act and has laid down the method in which power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.*"

(Emphasis supplied)

53. In the present case, the manner in which the State Government is to be involved in the process of invitation and processing of applications, for commencing new teacher education courses, is specifically set out in Regulations 5 and 7 of the 2014 Regulations. Regulation 5 does not contemplate involvement of the State government at the time of inviting applications, or prior thereto. Involvement of the State government is specifically contemplated, by sub-regulation (4) of Regulation 7, *after applications have been received, scanned and screened*. It is only *thereafter*, that a written communication, along with the application form submitted by the institution is to be sent, by the Regional Committee, to the government of the concerned State or Union Territory. The

importance of adhering to this scheme is underscored by the detailed procedure prescribed, even thereafter, for consideration of the application by the concerned State Government, its response thereto, fixation of specific time schedules, grant of two, and no more, opportunities, to the State Government to respond within such fixed time schedules, and the manner in which the response of the State Government is to be considered by the Regional Committees as well as the manner in which the Regional Committee is to proceed, in case no response is received from the State Government. This entire procedure has, clearly, been reduced to a nullity, by the impugned decision, of the NCTE, to invite the views of the State Governments, or the governments of the Union Territories, behind the back of the aspiring institutions, even before inviting applications.

54. Abiding by the mandate of sub-regulation (4) of Regulation 7, after applications are invited, can possibly offer no panacea. In the first place, a large number of institutions, located outside the States, Union Territories, or regions specified in the impugned Public Notice dated 20th May, 2019, have been prevented even from applying for starting the two new ITEPs. It is important to note, at this point, that sub-regulation (4) of Regulation 7 does not contemplate an abstract query being made, from the State government, as to whether it was desirous of commencing the two new ITEPs within its territory, or not, but contemplates, rather, *communication, to the State Government, with copies of the application forms submitted by the institutions located within its territory*. In other words, the State Governments are required to answer keeping in view the application

forms submitted by the institutions located within their territories. The requirement, in Regulation 7(4), of forwarding of the written applications of the institutions, to the State Government, cannot be treated as a mere formality. Quite obviously, the State Government would have, before it, not only an abstract request, for its view as to whether it would be feasible for it to allow commencing of the two new ITEPs, within its territory, or not, but would also have the applications submitted by the institutions located within its territory available for its perusal. It is quite possible that an otherwise recalcitrant State Government may, after perusing the applications submitted by the institutions located within its territory, be of the view that commencing the two new ITEPs would, in fact, be a viable option. The manner in which the NCTE has acted in the present case, has irretrievably foreclosed this option, to the governments of those States and Union Territories, who did not "satisfactorily" respond to the communication, dated 14th January, 2019, by the NCTE. Neither would any institution, located within such "excluded" States, Union Territories, or *tehsils*, have an opportunity to apply for starting the two new ITEPs nor, consequently, would the concerned States or Union Territories have an opportunity to peruse such applications. *This opportunity, which is statutorily conferred, on the States and Union Territories, by the scheme set out in Regulation 7 of the 2014 Regulations, could not have been eviscerated by the NCTE, by communicating, in advance, with the governments of the States and Union Territories and, thereby, eliminating some of them from the reckoning altogether. This decision, of the NCTE, does complete violence to the scheme of Regulation 7 of the NCTE Regulations, and*

forecloses the "excluded" States and Union Territories from expressing their views, in the manner contemplated by Regulation 7 (4), and the sub-regulations that follow.

55. We are required, at all times, to be mindful, in such cases, of the fact that maximising the reach of education, within the country has, over time, metamorphosed into a sanctified constitutional goal, with education being one of the most solemn of the fundamental rights guaranteed by Part III of the Constitution of India.

56. Laudable motives, and lofty ideals, cannot justify departure, of any authority which sports the insignia of Article 12 of the Constitution of India, from the strict letter of the law. We do not doubt the *bona fides* of the NCTE, in acting in the manner it did, by entering into "advance correspondence" with the States and Union Territories. The NCTE was, in doing so, probably acting *ex abundant cautela*, with the objective of causing minimum inconvenience to the maximum number of "aspiring" institutions. That, however, is not the manner in which the letter of the law, as embodied in the 2014 Regulations, required the NCTE to act. If law must rule, the rule of law must prevail. The Regulations have been framed by the NCTE itself. If the NCTE decides to depart from the scheme set out in the Regulations, it can do so, but only by amending the Regulations, and not by executive fiat. Regulation, of the exercise of invitation, evaluation and consideration of applications, from teacher education institutions desirous of commencing the two new ITEPs, cannot be in a manner foreign to the Regulations themselves.

57. We find substance, therefore, in the grievance, voiced by Mr. Sharawat, at the NCTE having entered into "advance correspondence", with the States and Union Territories and, on the basis of the responses received, or not received, thereto, having excluded, altogether, certain States, or, in the case of the State of Rajasthan, certain *tehsils*, from the impugned Public Notice dated 20th May, 2019 *supra*.

58. We deem it appropriate to refer, at this point, to certain judicial pronouncements, which appear, to us, to underscore the legal position postulated by us hereinabove.

Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust[15]

59. In the context of our discussion, and conclusions, hereinabove, the judgment in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15], on which Mr. Sharawat placed reliance, assumes considerable significance. A brief glance at the facts of the said case is necessary. On 2nd December, 1987, the Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust (hereinafter referred to as "the Trust") applied, to the Tamil Nadu Medical University, for affiliation, of a medical college which the Trust desired to start, as per the Dr. M. G. R. Medical University, Tamil Nadu Act, 1987 (hereinafter referred to as "the Medical University Act"). The University, however, desired the Trust to obtain

an NOC from the Government of Tamil Nadu, without which the application could not be considered. The Trust challenged this decision, before the High Court of Madras. A learned Single Judge of the High Court, *vide* order dated 13th April, 1989, by consent of parties, directed that the University would not insist on the prior permission of the Government and would consider the application, for affiliation, submitted by the Trust, on merits. *Vide* order dated 18th December, 1989, the University rejected the application on the ground that it had been submitted late. This order, too, was set aside by a learned Single Judge of the High Court, holding that the application had been sent, by post, before the prescribed date and was not, therefore, barred by time. The University was yet again, directed to consider the application on merits.

60. In the interregnum, the Medical University Act was amended by the Dr. M. G. R. Medical University, Tamil Nadu (Amendment and Validation) Act, 1989, which inserted sub-section (5) in Section 5 of the Medical University Act. The newly inserted proviso required every college, seeking affiliation to the University, to obtain, *a priori*, permission of the Government to establish the college, as well as to establish that the conditions of such permission stood complied with.

61. On 16th August, 1991, a joint inspection of the medical college, sought to be opened by the Trust was conducted by the University, pursuant whereto, by order dated 16th August, 1991, the application, for affiliation, submitted by the Trust, was rejected on the ground of certain deficiencies in infrastructure. This motivated the Trust to file a

third writ petition, which was also allowed, by a learned Single Judge of the High Court, *vide* judgment dated 7th February, 1992, who held that the University had taken irrelevant and extraneous considerations into account, while rejecting the application, for Trust, for affiliation. Writ appeals were preferred, thereagainst, before the Division Bench of the High Court.

62. During the pendency of the said writ appeals, the Indian Medical Council (Amendment) Act, 1993 came into effect on 27th August, 1992. The said Act inserted Sections 10-A, 10-B and 10-C in the Indian Medical Council Act, 1956 (hereinafter referred to as "the IMC Act"). Section 10-A specifically ordained that the establishment of a new medical College, opening of a new or higher course of study or training, could be done only with the previous permission of the Central Government obtained in accordance with the provisions of that section. In view of the enactment of these provisions, the Central Government contended, before the Division Bench which was hearing the writ appeals against the judgment, dated 7th February, 1992 *supra*, of the learned Single Judge, that, with the introduction of Section 10-A in the IMC Act, the entire field came to be occupied thereby, and that the Medical University Act, to the extent it occupied the same field, had been rendered inoperative. Consequently, it was submitted, it was no longer necessary, for the establishment of a medical college, to obtain prior approval of the State Government.

63. The submission was not, however, favourably received by the Division Bench of the High Court which, *vide* judgment dated 30th

April, 1993, allowed the writ appeal filed by the State Government and dismissed the writ appeal filed by the Trust, against the judgment, dated 7th February, 1992 (*supra*) of the learned Single Judge. The Division Bench held that the amendment introduced in Section 5(5) of the Medical University Act was not, in any way, affected by the provisions of the IMC Act and that, even after insertion of Section 10-A in the IMC Act, prior permission of the State Government was necessary for establishing a medical college. This decision, of the Division Bench of the High Court was carried, in appeal, by the Trust, before the Supreme Court, and was decided by the judgment under discussion.

64. *Ad interim* directions were issued, by the Supreme Court, during the pendency of the aforesaid appeal, of the Trust, before it, directing the Trust to apply to the State Government for the requisite permission. Pursuant thereto, the Trust applied to the Government of Tamil Nadu, for grant of permission, submitting, in the application, that it fulfilled all necessary criteria, including infrastructural facilities, therefor. However, by order dated 9th March, 1994, the Government of Tamil Nadu rejected the application, essentially on the ground that the number of medical colleges available in the State were sufficient to cater to the prevalent educational requirements and that, therefore, there was "no need for starting any more medical colleges in the State". Despite this order, the Supreme Court directed the Medical Council of India (MCI) to inspect the medical College of the Trust and submit a report, regarding the infrastructure available with it. The MCI submitted a favourable report, recommending grant of

permission to start teaching in the said college. The University also inspected the college and submitted a favourable report.

65. The Trust, thereafter, applied, under Section 10-A of the IMC Act, to the Central Government, which directed issuance of a letter of intent, to the Trust, for starting the new medical College. Armed with these recommendations, the Trust represented, to the Government of Tamil Nadu, on 6th January, 1996, for issuance of an essentiality/no objection certificate, so that it could establish its medical college. *Vide* communication dated 10th January, 1996, however, the Government of Tamil Nadu rejected the said request, pointing out that it had not changed its existing policy, of not permitting any private trust or management to start a medical/dental college.

66. The Supreme Court observed that, in these circumstances, the only impediment to the establishment of the medical college, by the Trust, was the stand, adopted by the State Government, that permission could not be granted, to a private trust, to establish a medical college. This, pointed out the Supreme Court, threw up, for consideration, the question of the role of the State Government in the matter of establishment of a medical college. Needless to say, the Government of Tamil Nadu asserted its right on the basis of the proviso to Section 5(5) of the Medical University Act, which was sought to be disputed, by the Trust, relying on Section 10-A of the IMC Act. The Trust contended that Section 10-A of the IMC Act would prevail over Section 5(5) of the Medical University Act

67. After subjecting Article 254 of the Constitution of India, which deals with inconsistency between laws made by the Parliament and laws made by State legislators, to a searching analysis, the Supreme Court held, in the following terms (contained in para 26 of the report) that there was repugnancy, between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the IMC Act:

> "It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country."

68. Having thus adumbrated the issue before it, the Supreme Court proceeded to hold thus (in paras 31 and 34 of the report):

> "**31.** *It would thus appear that in Section 10-A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State Legislation in the said field which is fully covered by the law made by Parliament. Applying the tests laid down by this Court, it must be held that the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college is repugnant to Section 10-A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country.* The said repugnancy is, however, confined to the field covered by Section 10-A, viz.,

establishment of a new medical college and would not extend to establishment of other colleges.

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34. It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the State Government. The said condition about obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University Act. For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. *The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone.*"

(Emphasis supplied)

69. Mr. Jain, learned ASG, attempted to distinguish the judgment in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15], by contending that, firstly, the said decision dealt with competing Central and State enactments, whereas no such competing enactments existed in the present case and, secondly, that the Central Government had, in that case, opposed the involvement of the State Government, in the matter of establishment of the new medical College by the Trust whereas, in the present case, he, appearing on behalf of the Central Government, was contending that the State Governments *had* the right to refuse,

even in advance of invitation of applications, permission to establish the two new ITEPs within their respective territories.

70. Neither of these submissions, in our view, detract from the impact of the judgment, in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15], on the present case. Adverting, first, to the second submission, of Mr. Jain, we, as interpreters of law, are required to accord precedence to the position in law, as it emerges from the provisions of the statute and binding precedents, over the stand adopted by either party before us. The stand being adopted by the Central Government, or the NCTE in the present case, as vocalised by Mr. Jain, therefore, cannot have any bearing on the applicability, or otherwise, of the decision in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15]. Regarding the first submission of Mr. Jain, it is correct that while, in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15], the Supreme Court was confronted with two competing, and apparently conflicting, legislations, we are not faced with any such conflicting statutes. What we have before us is, however, executive action, by the State Government – albeit at the behest of the NCTE – which would reduce, to a redundancy, Regulations 5 and 7 of the 2014 Regulations. The 2014 Regulations, having been framed by the NCTE in exercise of the powers conferred by Section 32 of the NCTE Act, partakes, in a manner, of the character of Central legislation even if, in a sense, subordinate. Analogising the situation to that which arose in

Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust[15], and applying the law laid down in the said judgment, we are in agreement with the submission, of Mr. Sharawat, that the obtaining of "advance opinions" from the concerned States and Union Territories, for the commencement of the two new ITEPs, before inviting applications under Regulation 5, and, on the basis thereof, restricting the field of applications, in the impugned Public Notice dated 20th May, 2019, violated Regulations 5 and 7 of the 2014 Regulations and could not, therefore, sustain the scrutiny of law. It was not permissible to, by an executive decision, violate the statutory mandamus enshrined in Regulations 5 and 7 of the 2014 Regulations, and render the provisions of sub-regulation (4) to (7) of the latter Regulation, otiose.

Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya[3]

71. In conjunction with the judgment in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15], the decision in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3] also assumes significance.

72. The appellant, in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3], applied to the NCTE, on 31st December, 2003, for grant of permission to start a B.Ed. College for women, in accordance with the provisions of the NCTE Act and the National Council for Teacher Education (Norms and Conditions for Recognition of Bachelor of Elementary Education) Regulations, 1995 (hereinafter

referred to as "the 1995 Regulations"). The Expert Committee of the NCTE visited the appellant's campus on 6th June, 2005, and verified the adequacy of infrastructure, staff and other norms. A report, accordingly, was submitted by the Inspection Committee to the NCTE which approved, and granted recognition, for conducting of the B.Ed. course by the appellant, with an intake capacity of 100 students, from the 2005-2006 academic session. The appellant, thereafter, applied, to the Government of Maharashtra, on 4th July, 2005, for grant of permission to start the College, as was required by the Maharashtra Universities Act, 1994 (hereinafter referred to as "the University Act"). No response being forthcoming, to the said application, from the Government of Maharashtra, the appellant approached the High Court, by way of a writ petition.

73. The SNDT Women's University, in its capacity as affiliating University, submitted, before the High Court, that it did not recommend the case of the appellant to the State as, in the prospective plan for 2002-2007, only one college was allocated to the Pune district. The Government of Maharashtra, in its affidavit, contended that it had an important role to play, in the matter of grant of permission by the NCTE, which stood recognised by the Supreme Court in ***St John's Teachers Training Institute v. Regional Director, NCTE***[26]. It was emphasised, by the Government of Maharashtra, that it was a vital stakeholder in the establishment of professional courses within the State, and was in the best position to correctly assess and know the extent of requirement of trained manpower and supply of

[26] (2003) 3 SCC 321

trained teachers. Thus, it was contended, the input of the State of Maharashtra, by way of grant of NOC, was vital for enabling the NCTE to exercise its powers, and the NCTE could not grant permission, therefor, in the absence of such NOC. On the ground that there were sufficient colleges, conferring the B.Ed. qualification, in the State, it was contended that a policy decision had been taken, by the Cabinet Sub-Committee in the State, not to grant approval, or issue NOC, for starting any new institution, imparting the said qualification. The NCTE contended, *per contra*, that it was the final authority for granting permission to start the B.Ed. course, and its decision, to do so, was required to be respected by the affiliating University as well as by the State Government. The issue that arose for consideration, before the High Court, was thus delineated by the Supreme Court, in para 13 of the report:

> "The High Court, therefore, was called upon to consider the role played by the State Government in the process of consideration of application by the institutions seeking recommendation of opening B.Ed. colleges by NCTE in the light of the provisions of the Act in juxtaposition to the extent of trained manpower required by the State and to take policy decision on the basis of output of teachers by such colleges. The Court was also called upon to consider whether in the absence of any material being made available by the State Government to NCTE the latter can process the application and take a decision contrary to the decision of the State Government. A question had also arisen as to whether the State Government can refuse permission to an institution which had been granted permission to start B.Ed. college by NCTE under the Act and whether policy decision of the State Government not to grant NOC would bind NCTE in the light of the provisions of the Act."

74. In contrast to the statutory position that obtains in the present case, sub-regulations (e) and (f), of Regulation 5 of the 1995 Regulations, which applied in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3], specifically required every institution, intending to offer a course or training in teacher education, which was not functioning before 17th August, 1995, to submit an application for recognition with an NOC from the State or Union territory in which it was located.

75. The validity of these clauses had been sought to be called into question, in ***St John's Teachers Training Institute***[26]. It was sought to be contended, in the said case, that the provision for submitting an application for recognition, with the NOC issued by the State Government or Union Territory, in which the institution was located, was invalid and *ultra vires*, and that the State Government/Union Territory was an alien, insofar as recognition of the institution was concerned. By insisting on NOC from the State Government/Union Territory, it was contended, the NCTE had created a parallel body unknown to the law. For these reasons, it was submitted that clauses (e) and (f) of Regulation 5 of the 1997 Regulations were liable to be struck down. The Supreme Court, however, repelled the challenge, holding that the power conferred on the State Government, or Union Territory, while considering an application for grant of NOC, was not arbitrary or uncanalized, and had to be restricted by the guidelines issued by the NCTE in that regard. Further, it was observed, the grant, or refusal of NOC, by the State Government or Union Territory was not conclusive or binding, and was only required to be taken into

consideration by the Regional Committee of the NCTE, while taking a decision on the application, of the institution, for grant of recognition. In that view of the matter, the Supreme Court was, in ***St John's Teachers Training Institute***[26], of the view that no occasion, for striking down clauses (e) and (f) of Regulation 5 of the 1997 Regulations, arose. We may observe, here, that, unlike the statutory position which obtained in ***St John's Teachers Training Institute***[26], we do not have, before us, any provision, either in the NCTE Act or in the 2014 Regulations, or elsewhere in any other statutory instrument brought to our notice, requiring institutions, applying for permission to run any teacher education course, to furnish, with the application submitted in that regard, a formal recommendation of the State Government. This requirement figures, for the first time, in para 3 of the impugned Public Notice, dated 20th May, 2019. The decision in ***St John's Teachers Training Institute***[26], therefore, does not apply to the facts of the case before us.

76. Having noticed the decision in ***St John's Teachers Training Institute***[26], the Supreme Court, in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3], held that, the field relating to regulation and proper maintenance of norms and standards in the teacher education system, and matters connected therewith, was fully and completely occupied by the NCTE Act, which was relatable to Entry 66 of List I of the VIIth Schedule to the Constitution of India and that the State was, therefore, proscribed from refusing permission, on any consideration of policy. This position of law, it was noted, had already been enunciated, by the Supreme Court, earlier, in ***Thirumuruga***

Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust[15]and ***Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department***[27]. Para 75 of the report is particularly significant, especially when viewed in the backdrop of the law enunciated in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust***[15]:

> "The decision relied on by ***Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra***[28] has no application to the facts of the case. In that case, the power was with the State Government to grant or refuse permission to open BEd college. Considering the fact that if permission would be granted, there would be large-scale unemployment, it was decided by the State Government not to allow new BEd colleges to be opened. It was held by this Court that such policy decision could not be said to be arbitrary or otherwise unreasonable. The Court in that case was not concerned with the power or authority of the State Government vis-à-vis the Central Government and the Act of Parliament. In the present case, as the field was fully occupied by Entry 66 of List I of Schedule VII to the Constitution and Parliament has enacted the 1993 Act, it was not open to the State Legislature to exercise power by making an enactment. Such enactment, as per the decisions of this Court, would be void and inoperative. *It would be unthinkable that if the State Legislature could not have encroached upon a field occupied by Parliament, it could still exercise power by executive fiat by refusing permission under the "policy consideration".* The contention of the State Government, therefore, has to be negatived."
>
> (Emphasis supplied)

77. The italicised words from the above-extracted passage from ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***[3] are

[27] (2000) 5 SCC 231
[28] (1986) 4 SCC 361

significant , as they hold, categorically, that it is impermissible, even by executive fiat, to incorporate, as a condition for application, for permission to start a teacher education course, any requirement which is alien to the Regulations framed under the NCTE Act .

78. Considerable reliance was placed, by the learned ASG, on the judgment in ***Adarsh Shiksha Mahavidyalaya***[19], to justify the decision of the NCTE to seek, in advance of invitation of applications by the impugned Public Notice dated 20th May, 2019, the views of the concerned States and Union Territories, regarding the introduction of the two new ITEPs. Having carefully read the said decision, we are of the view that it does not advance the case propounded by the learned ASJ, to any appreciable extent. The Supreme Court, in the said case, does not, even indirectly, approve limiting the areas from which applications could be submitted, on the basis of advance correspondence with the States and Union Territories. The Supreme Court was concerned with the exercise of power, by the State, or Union Territory, *after submission of applications*, under clauses (2) and (3) of the applicable Regulations in that case – which, more or less, were similar to clauses (4) and (5) of Regulation 7 of the 2014 regulations. We have yet to reach that stage, and are concerned with the issue of whether the NCTE was justified in excluding certain States/Union Territories, and certain *tehsils* in the State of Rajasthan, on the basis of advance correspondence, entered into, with the said States and Union Territories. ***Adarsh Shiksha Mahavidyalaya***[19] does not address this issue and is, therefore, of no help to the NCTE.

79. The decisions in ***LBS B.Ed. College***[14] and ***Chintpurni Medical College and Hospital***[18] deal with the power of the State Government, after submission of application, and with admission to Medical and Dental Colleges, respectively, and we do not deem it necessary, therefore, to allude, in any detail, to these decisions. Similarly, the recent decision in ***Jawaharlal Nehru Technological University Registrar***[18], deals with the obligation, or the affiliating University, to grant NOC for opening an educational institution, irrespective of the educational needs of the locality, and does not, therefore, impact the controversy in the present case.

80. Mr. Sharawat has also referred us to judgments of various High Courts, including this Court. In our view, the legal position that obtains, from the decisions cited and digested hereinabove, is clear and unequivocal. We do not, therefore, desire to burden this judgment by referring to the said decisions, though the reliance, by Mr. Sharawat, thereon, has been noted hereinbefore.

A clarificatory caveat

81. We may enter, here, a word of clarification. We are not holding, and do not intend to hold, that the scheme of things, as contained in sub-Regulations (4) to (6) of Regulation 7 of the 2014 Regulations, proscribed, absolutely, the NCTE from corresponding with any State, or Union territory, before inviting applications from institutions interested in conducting the two new ITEPs. There can, quite obviously, be no embargo on one governmental authority writing to another, or even eliciting the views of the second authority. Inter

governmental communication cannot be interdicted by a Court. It cannot, therefore, be held that the 2014 Regulations completely prohibited all correspondence, between the NCTE and the States and Union Territories, prior to inviting of applications for the two new ITEPs. Where the NCTE fell in error was *in "excluding" certain States, and Union Territories, from the impugned Public Notice, dated 20th May, 2019,on the basis of the "advance correspondence" entered into, by it, with the States and Union Territories*. Neither in Appendices 16 and 17 to the 2014 Regulations (as introduced *vide* the 2019 Amendment Regulations), nor elsewhere in the 2014 Regulations, is there to be found any justification for restricting, on the basis of its geographical location, any institution, from applying for conducting a Teacher Education Course, among those enumerated in Regulation 9. By eliminating certain institutions, from the opportunity even to apply for the two new ITEPs, merely because they happened to be located, geographically, outside the States, or Union Territories mentioned in the impugned Public Notice, the NCTE introduced, artificially, an additional restriction, based on the geographical location of the institution, which is not to be found either in Appendices 16 and 17, or elsewhere in the 2014 Regulations. We cannot subscribe to the extreme submission, advanced by Mr. Sharawat, that the NCTE was entirely incompetent to issue a Public Notice, and we agree with the learned ASG, to the extent of his submission that issuance of a Public Notice does not require any enabling statutory provision. Having said that, however, it was certainly not open to the NCTE to, by such Public Notice, introduce an additional "handicap", not to be found in the 2014 Regulations,

which would disentitle certain institutions from applying for conducting the two new ITEPs. This amounts to amendment of the statutory Regulations by executive fiat, for which no sanction is available, either in the NCTE Act, or in any Rule or Regulation framed thereunder, including the 2014 Regulations.

Conclusion

82. These writ petitions are, therefore, disposed of, in the following terms:

(i) The challenge, by the petitioners, to Clause 1.2 in Appendices 16 and 17 to the 2014 Regulations, as introduced by the 2019 Amendment Regulations, is without merit, and fails. The validity of the impugned Clauses 1.2 in Appendices 16 and 17 is, consequently, upheld.

(ii) Consequently, all institutions and colleges, which conform to Clause 1.2 of Appendices 16 and 17 to the 2014 Regulations, would be entitled to apply for grant of recognition/permission for starting the two new ITEPs. Clause 4 of the impugned Public Notice, dated 20th May, 2019, shall stand modified accordingly.

(iii) Clause 3 of the impugned Public Notice, dated 20th May, 2019, which requires that the applications, submitted by applicant institutions/Universities, pursuant to the Public Notice, have to be accompanied by a formal recommendation

from the concerned State Governments/UT Administration, is quashed and set aside.

(iv) Para 2 of the impugned Public Notice, dated 20th May, 2019, is also declared to be illegal, and is accordingly quashed and set aside, to the extent it limits the States, Union Territories and *tehsils*, from which applications may be submitted, to those specified in the table contained therein. Institutions, located in *all* States and Union Territories, which conform to the norms and standards contained in Appendices 16 and 17 to the 2014 Regulations would, therefore, be entitled to apply, pursuant to the impugned Public Notice dated 20th May, 2019.

83. We are sanguine that, in directing thus, we are not violating any stipulated cut-off date as the Supreme Court has, *vide* order dated 15th May, 2019, passed in ***Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.***[29], permitted the admission process to be completed by 30th April, 2020.

84. The writ petitions stand disposed of, in the above terms, with no orders as to costs.

C. HARI SHANKAR, J.

CHIEF JUSTICE

OCTOBER 01, 2019
HJ

[29] MA 982/2019 with IA 75288/2019 in WP (C) 276/2012