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

Reserved on: 02nd, 05th, 06th and 26th September, 2022.
Pronounced on: 15th November, 2022.

\+ **W.P.(C) 7284/2022**.[i]

COLLEGE OF APPLIED EDUCATION AND HEALTH SCIENCES ..... Petitioner

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION & ANR. ..... Respondents

With

W.P.(C) 7287/2022, W.P.(C) 7316-21/2022, W.P.(C) 7332/2022, W.P.(C) 7334-40/2022, W.P.(C) 7342-45/2022, W.P.(C) 7351/2022, W.P.(C) 7353/2022, W.P.(C) 7361/2022, W.P.(C) 7363-64/2022, W.P.(C) 7366/2022, W.P.(C) 7399-7401/2022, W.P.(C) 7404/2022, W.P.(C) 7409-10/2022, W.P.(C) 7414/2022, W.P.(C) 7417-19/2022, W.P.(C) 7427/2022, W.P.(C) 7431/2022, W.P.(C) 7439/2022, W.P.(C) 7440/2022, W.P.(C) 7444/2022, W.P.(C) 7458/2022, W.P.(C) 7461/2022, W.P.(C) 7463/2022, W.P.(C) 7466-67/2022, W.P.(C) 7470/2022, W.P.(C) 7486/2022, W.P.(C) 7491/2022, W.P.(C) 7494-96/2022, W.P.(C) 7498-99/2022, W.P.(C)7501/2022, W.P.(C) 7503/2022, W.P.(C) 7518/2022, W.P.(C) 7560/2022, W.P.(C) 7574/2022, W.P.(C) 7576-77/2022, W.P.(C) 7580-81/2022, W.P.(C) 7584-90, W.P.(C) 7592/2022, W.P.(C) 7594/2022, W.P.(C) 7596-97/2022, W.P.(C) 7600/2022, W.P.(C) 7602/2022, W.P.(C) 7603/2022, W.P.(C) 7606/2022, W.P.(C) 7608/2022, W.P.(C) 7610/2022, W.P.(C) 7613/2022, W.P.(C) 7616-18/2022, W.P.(C) 7620-22/2022, W.P.(C) 7624/2022, W.P.(C) 7626-27/2022, W.P.(C) 7629-33/2022, W.P.(C) 7636/2022, W.P.(C) 7639-40/2022, W.P.(C) 7645/2022, W.P.(C) 7648-49/2022, W.P.(C) 7653/2022, W.P.(C) 7660-63/2022, W.P.(C) 7665-71/2022, W.P.(C) 7682-84/2022, W.P.(C) 7691/2022, W.P.(C) 7693-94/2022, W.P.(C) 7696/2022, W.P.(C) 7699/2022, W.P.(C) 7704-05/2022, W.P.(C) 7707/2022, W.P.(C) 7709/2022, W.P.(C) 7721/2022, W.P.(C) 7723/2022, W.P.(C)

[i] Reserved on 02nd September, 2022.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

7727/2022, W.P.(C) 7731/2022, W.P.(C) 7733/2022, W.P.(C) 7748/2022, W.P.(C) 7754-55/2022, W.P.(C) 7757-58/2022, W.P.(C) 7761-62/2022, W.P.(C) 7766/2022, W.P.(C) 7768/2022, W.P.(C) 7770-71/2022, W.P.(C) 7777/2022, W.P.(C) 7790/2022, 7802/2022, W.P.(C) 7811/2022, W.P.(C) 7814/2022, W.P.(C) 7818/2022, W.P.(C) 7825/2022, W.P.(C) 7840/2022, W.P.(C) 7842-43/2022, W.P.(C) 7845/2022, W.P.(C) 7848/2022, W.P.(C) 7861/2022, W.P.(C) 7863/2022, W.P.(C) 7873/2022, W.P.(C) 7882/2022, W.P.(C) 7886/2022, W.P.(C) 7891/2022, W.P.(C) 7898-7901/2022, W.P.(C) 7903/2022, W.P.(C) 7905-06/2022, W.P.(C) 7908-09/2022, W.P.(C) 7917/2022, W.P.(C) 7921-24/2022, W.P.(C) 7929/2022, W.P.(C) 7932/2022, W.P.(C) 7943/2022, W.P.(C) 7961-64/2022, W.P.(C) 7966/2022, W.P.(C) 7970-76/2022, W.P.(C) 7983/2022, W.P.(C) 7986/2022, W.P.(C) 7989-91/2022, W.P.(C) 7993-97/2022, W.P.(C) 7999/2022, W.P.(C) 8001-03/2022, W.P.(C) 8005/2022, W.P.(C) 8008-10/2022, W.P.(C) 8021-22/2022, W.P.(C) 8024/2022, W.P.(C) 8027/2022, W.P.(C) 8029/2022, W.P.(C) 8032-37/2022, W.P.(C) 8040-41/2022, W.P.(C) 8046/2022, W.P.(C) 8049-50/2022, W.P.(C) 8053/2022, W.P.(C) 8057/2022, W.P.(C) 8064-65/2022, W.P.(C) 8067-68/2022, W.P.(C) 8070-71/2022, W.P.(C) 8073-75/2022,, W.P.(C) 8079-81/2022, W.P.(C) 8083/2022. W.P.(C) 8094/2022, W.P.(C) 8099-8100/2022, W.P.(C) 8103/2022, W.P.(C) 8105/2022, W.P.(C) 8109/2022, W.P.(C) 8110/2022, W.P.(C) 8111/2022, W.P.(C) 8112/2022, W.P.(C) 8113/2022, W.P, (C) 8115/2022, W.P.(C) 8117-18/2022, W.P.(C) 8120-21/2022, W.P.(C) 8122-23/2022, W.P.(C) 8124-8130/2022, W.P.(C) 8131/2022, W.P.(C) 8133/2022, W.P.(C) W.P.(C) 8134-35/2022, W.P.(C) 8136-8141/2022, W.P.(C) 8142/2022, W.P.(C) 8145/2022, W.P.(C) 8148-49/2022, W.P.(C) 8152-53/2022, W.P.(C) 8156-63/2022, W.P.(C) 8166/2022, W.P.(C) 8169-8174/2022, W.P.(C) 8181/2022, W.P.(C) 8191/2022 W.P.(C) 8194/2022, W.P.(C) 8198-99/2022, W.P. (C) 8201/2022, W.P.(C) 8202-03/2022, W.P.(C) 8205-06/2022, W.P.(C) 8209-19/2022, W.P.(C) 8222/2022, W.P.(C) 8223/2022, W.P.(C) 8226/2022, W.P.(C) 8232/2022, W.P.(C) 8248-49/2022, W.P.(C) 8255/2022, W.P.(C) 8258/2022, W.P.(C) 8270-71/2022, W.P.(C) 8281/2022, 8283/2022, W.P.(C) 8290-91/2022, W.P.(C) 8293-94/2022, W.P.(C) 8296-97/2022, W.P.(C) 8299/2022, W.P.(C) 8302/2022, W.P.(C) 8308/2022, W.P.(C) 8320/2022, W.P.(C) 8325-29/2022, W.P.(C) 8335/2022, W.P.(C) 8336-37/2022 & W.P.(C)

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

8339-40/2022, W.P.(C) 8349-50/2022, W.P.(C) 8353-54/2022, W.P.(C) 8367/2022, W.P.(C) 8370/2022, W.P.(C) 8377/2022, W.P.(C) 8390-91/2022, W.P.(C) 8395-96/2022, W.P.(C) 8398/2022, W.P.(C) 8400/2022, W.P.(C) 8415/2022, W.P.(C) 8420/2022, W.P.(C) 8426/2022, W.P.(C) 8434/2022, W.P.(C) 8436/2022, W.P.(C) 8441/2022, W.P.(C) 8444-45/2022, W.P.(C) 8453-54/2022, W.P.(C) 8457/2022, W.P.(C) 8459/2022, W.P.(C) 8461-63/2022, W.P.(C) 8467/2022, W.P.(C) 8470/2022, W.P.(C) 8472/2022, W.P.(C) 8477/2022, W.P.(C) 8485/2022, W.P.(C) 8499-8500/2022, W.P.(C) 8502/2022, W.P.(C) 8503/2022, W.P.(C) 8505-06/2022, W.P.(C) 8510/2022, W.P.(C) 8512-13/2022, W.P.(C) 8516/2022, W.P.(C) 8518/2022, W.P.(C) 8523/2022, W.P.(C) 8524/2022, W.P.(C) 8525/2022, W.P.(C) 8529/2022, W.P.(C) 8536-37/2022, W.P.(C) 8538/2022 W.P.(C) 8540-41/2022, W.P.(C) 8552-53/2022, W.P.(C) 8555/2022, W.P.(C) 8563/2022, W.P.(C) 8576/2022, W.P.(C) 8595/2022, W.P.(C) 8596/2022 & CM APPL. 25882/2022, W.P.(C) 8612-13/2022, W.P.(C) 8620-21/2022, W.P.(C) 8624/2022, W.P.(C) 8630-32/2022, W.P.(C) 8642/2022, W.P.(C) 8644/2022, W.P.(C) 8649/2022, W.P.(C) 8656/2022, W.P.(C) 8660-61/2022, W.P.(C) 8667/2022, W.P.(C) 8678/2022 & CM APPL. 26176/2022, W.P.(C) 8688/2022, W.P.(C) 8690/2022 & CM APPL. 26204/2022, W.P.(C) 8692/2022 & CM APPL. 26207/2022, W.P.(C) 8712/2022 & CM APPL. 26254/2022, W.P.(C) 8716/2022 & CM APPL. 26260/2022, W.P.(C) 8719/2022 & CM APPL. 26263/2022, W.P.(C) 8722/2022 & CM APPL. 26265/2022, W.P.(C) 8724/2022 & CM APPL. 26266/2022, W.P.(C) 8726/2022 & CM APPL. 26267/2022, W.P.(C) 8727/2022 & CM APPL. 26270/2022, W.P.(C) 8732/2022 & CM APPL. 26273/2022, W.P.(C) 8733/2022 & CM APPL. 26274/2022, W.P.(C) 8734/2022 & CM APPL. 26275/2022, W.P.(C) 8735/2022 & CM APPL. 26278/2022, W.P.(C) 8736/2022 & CM APPL. 26279/2022, W.P.(C) 8738/2022 & CM APPL. 26283/2022, W.P.(C) 8739/2022 & CM APPL. 26285/2022, W.P.(C) 8740/2022 & CM APPL. 26291/2022, W.P.(C) 8741/2022 & CM APPL. 26292/2022, W.P.(C) 8742/2022, W.P.(C) 8745/2022, W.P.(C) 8747/2022, W.P.(C) 8748/2022 & CM APPL. 26302/2022, W.P.(C) 8749/2022 & CM APPL. 26306/2022, W.P.(C) 8750/2022 & CM APPL. 26314/2022, W.P.(C) 8751/2022 & CM APPL. 26316/2022, W.P.(C) 8754/2022 & CM APPL. 26338/2022, W.P.(C) 8755/2022 & CM APPL.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

26339/2022, W.P.(C) 8756/2022 & CM APPL. 26340/2022, W.P.(C) 8757/2022 & CM APPL. 26343/2022, W.P.(C) 8759/2022, W.P.(C) 8770/2022 & CM APPL. 26400/2022, W.P.(C) 8775/2022, W.P.(C) 8778/2022 & CM APPL. 26425/2022, W.P.(C) 8780/2022 & CM APPL. 26429/2022, W.P.(C) 8781/2022, W.P.(C) 8802/2022 & CM APPL. 26505/2022, W.P.(C) 8804/2022, W.P.(C) 8806/2022, W.P.(C) 8807/2022 & CM APPL. 26520/2022, W.P.(C) 8817-18/2022, W.P.(C) 8819/2022 & CM APPL. 26573/2022, W.P.(C) 8824/2022, W.P.(C) 8829-30/2022, W.P.(C) 8831/2022 & CM APPL. 26650/2022, W.P.(C) 8832-33/2022, W.P.(C) 8835/2022, W.P.(C) 8840/2022, W.P.(C) 8845-47/2022, W.P.(C) 8849/2022, W.P.(C) 8851-55/2022, W.P.(C) 8857-58/2022, W.P.(C) 8860/2022, W.P.(C) 8868/2022, W.P.(C) 8870-73/2022, W.P.(C) 8875/2022 & CM APPL. 26704/2022, W.P.(C) 8876/2022 & CM APPL. 26708/2022, W.P.(C) 8877/2022 & CM APPL. 26711/2022, W.P.(C) 8880-81/2022, W.P.(C) 8883/2022, W.P.(C) 8885-87/2022, W.P.(C) 8895-97/2022, W.P.(C) 8912-14/2022, W.P.(C) 8917/2022, W.P.(C) 8919-23/2022, W.P.(C) 8925-26/2022, W.P.(C) 8936-37/2022, W.P.(C) 8945/2022, W.P.(C) 8951-52/2022, W.P.(C) 8956/2022, W.P.(C) 8959-60/2022, W.P.(C) 8962/2022, W.P.(C) 8965-67/2022, W.P.(C) 8973/2022, W.P.(C) 8976-77/2022, W.P.(C) 8983/2022, W.P.(C) 8985-86/2022, W.P.(C) 8988/2022, W.P.(C) 8991-93/2022, W.P.(C) 8995/2022, W.P.(C) 8998/2022, W.P.(C) 9000-9002/2022, W.P.(C) 9011/2022, W.P.(C) 9013/2022, W.P.(C) 9016-17/2022, W.P.(C) 9020/2022, W.P.(C) 9030/2022, W.P.(C) 9043-44/2022, W.P.(C) 9047/2022, W.P.(C) 9049/2022, W.P.(C) 9052/2022, W.P.(C) 9054-55/2022, W.P.(C) 9065/2022, W.P.(C) 9069/2022, W.P.(C) 9073/2022, W.P.(C) 9075/2022, W.P.(C) 9078/2022, W.P.(C) 9081/2022, W.P.(C) 9084/2022, W.P.(C) 9156/2022, W.P.(C) 9160-64/2022, W.P.(C) 9166-72/2022, W.P.(C) 9174-75/2022, W.P.(C) 9182/2022, W.P.(C) 9189/2022, W.P.(C) 9238/2022, W.P.(C) 9250/2022, W.P.(C) 9254/2022, W.P.(C) 9257-58/2022, W.P.(C) 9260-64/2022, W.P.(C) 9266/2022, W.P.(C) 9268/2022, W.P.(C) 9271-72/2022, W.P.(C) 9274-76/2022, W.P.(C) 9288/2022, W.P.(C) 9290-92/2022, W.P.(C) 9335-42/2022, W.P.(C) 9345-47/2022, W.P.(C) 9349-9350/2022, W.P.(C) 9360/2022, W.P.(C) 9369/2022, W.P.(C) 9371/2022, W.P.(C) 9374-76/2022, W.P.(C) 9381/2022, W.P.(C) 9386/2022, W.P.(C) 9390/2022, W.P.(C) 9392/2022, W.P.(C) 9397/2022, W.P.(C)

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

9402/2022, W.P.(C) 9411/2022, W.P.(C) 9415/2022, W.P.(C) 9418/2022, W.P.(C) 9420/2022, W.P.(C) 9428-29/2022, W.P.(C) 9437/2022, W.P.(C) 9439/2022, W.P.(C) 9444/2022, W.P.(C) 9700/2022, W.P.(C) 9706/2022, W.P.(C) 9755/2022, W.P.(C) 9781/2022, W.P.(C) 9802-803/2022, W.P.(C) 9809-810/2022, W.P.(C) 9819/2022, W.P.(C) 9821/2022, W.P.(C) 9839/2022, W.P.(C) 9858/2022, W.P.(C) 9864/2022, W.P.(C) 9951/2022, W.P.(C) 9959/2022, W.P.(C) 9994/2022, W.P.(C) 10012/2022, W.P.(C) 10261/2022, W.P.(C) 10295/2022, W.P.(C) 10319/2022, W.P.(C) 10341/2022, W.P.(C) 10812/2022, W.P.(C) 10924/2022, W.P.(C) 8544/2022, W.P.(C) 8578/2022, W.P.(C) 8803/2022, W.P.(C) 12547/2022 & W.P.(C) 12585/2022.[ii]

With

\+ **W.P.(C) 12761/2022**.[iii]

SHREE RAM MEMORIAL COLLEGE OF EDUCATION

... Petitioner

versus

NCTE & ANR. ... Respondents

With

W.P.(C) 12767/2022 & CM APPL. 38846/2022, W.P.(C) 12788/2022 & CM APPL. 38911/2022, W.P.(C) 12792/2022 & CM APPL. 38916/2022, W.P.(C) 12793/2022 & CM APPL. 38917/2022, W.P.(C) 12795/2022 & CM APPL. 38920/2022, W.P.(C) 12800/2022 & CM APPL. 38929/2022, W.P.(C) 12803/2022 & CM APPL. 38931/2022, W.P.(C) 12805/2022 & CM APPL. 38932/2022, W.P.(C) 12806/2022 & CM APPL. 38933/2022, W.P.(C) 12839/2022 & CM APPL. 39035/2022.[iv]

With

\+ **W.P.(C) 12888/2022**.[v]

[ii] Reserved on 02nd September, 2022.
[iii] Reserved on 05th September 2022.
[iv] Reserved on 05th September 2022.
[v] Reserved on 06th September 2022.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

DR SAMUEL GEORGE INSTITUTE OF PHYSICAL EDUCATION ... Petitioner

versus

NCTE & ANR. ... Respondents

With

\+ **W.P.(C) 13877/2022 & CM APPL. 42403/2022**.[vi]

MANJAPPARA EDUCATIONAL AND CHARITABLE TRUST TEACHER ... Petitioner

versus

NCTE & ANR. ... Respondents

For Petitioners: Mr. Sanjay Sharawat, Mr. Divyank Rana, Mr. Ashok Rana and Mr. Akash Sahraya, Advocates.
Mr. Ninad Laud, Mr. Gajendra Singh Negi, Mr. Aditya Pratap Swain and Mr. Ivo D'Costa, Advocates.
Mr. Amitesh Kumar, Ms. Binisa Mohanty and Ms. Priti Kumari, Advocates.
Ms. Arunima Dwivedi, Mr. Ved Prakash and Ms. Ashi Sharma and Ms. Swati Jhunjhunwala, Advocates.
Mr. Mayank Manish and Mr. Ravi Kant, Advocates.
Mr. Abhishek Singh, Ms. Priyanka Madavaram, Mr. Ankit Tayal, Mr. Mukesh Kumar Mishra, Mr. Gaurav Arora, Mr. Kunal Jaiman, Ms. Vandana, Mr. Chandrashekhar Singh, Mr. Harsh Chaudhary, Mr. Neeraj Shekhar, Dr. Sumit Kumar, Mr. Ashutosh Thakur and Mr. Keshav Baheti, Advocates.

For Respondents: Mr. Tushar Mehta, Solicitor General, with Ms. Manisha T. Karia, Mr. Rahul Madan, Ms. Nidhi

[vi] Reserved on 25th September 2022.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

Nagpal, Ms. Aakanksha Kaul, Mr. Aman Sahani, Mr. Manek Singh and Ms. Divita Dutta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. This judgment disposes of 672 petitions filed by Petitioner-institutes, challenging, *inter alia*, imposition of penalty by the Respondent, declaring academic session 2022-23 of such institutes as a 'zero academic year' and thereby restricting fresh intake of students. As background facts and the reliefs sought in all the petitions are nearly identical, upon consultation with the counsel for the parties, these matters were heard together. W.P.(C) 7284/2022 was considered as the lead matter and pleadings therein, particularly the counter affidavit of the Respondent, were treated to be common for the entire batch of petitions.

FACTUAL BACKGROUND

Who are the parties?:

2. National Council for Teacher Education Act, 1993 ['***Act***'] provides for establishment of two statutory authorities *viz.* National Council for Teacher Education [Respondent No. 1 / '***NCTE***'] under Section 3, and Regional Committees [Respondent No. 2] under Section 20, with a view to achieve planned and co-coordinated development of teacher education system throughout the country, and for regulation and proper maintenance of norms and standards in the teacher education system, etc. The Petitioners are

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

unaided, self-financed teacher-education institutes ['***TEIs***'] established and sponsored by registered societies. These TEIs are duly recognised by the Regional Committees of NCTE under Section 14 of the Act, and have been running their respective courses under its aegis for many years.

What is PAR?:

3. On 22nd September, 2019, Member Secretary of NCTE issued a Public Notice, calling upon all TEIs across the country to file an annual Performance Appraisal Report ['***PAR***'], along with fee of Rs. 15,000/-, every year ['***Public Notice-2019***'], and specifically for academic session 2018-19. The purpose of this was informed to be "*required for regulatory examination of the physical infrastructure, teaching faculty and other stipulations as per NCTE rules, regulation or the NCTE Act*". In essence, information sought thereunder was to help NCTE ensure compliance of standards / guidelines / directions issued by it to recognized TEIs in order to maintain quality of teacher education. Public Notice-2019 further stipulated that non-submission of PAR would attract action under Section 17(1) of the Act. Section 17 empowers Regional Committees to withdraw recognition of TEIs in case of breach of any provision of the Act, Rules or Regulations thereunder, or of any condition subject to which recognition was granted.

Litigation History:

4. Aggrieved from Public Notice-2019, a national-level 'Association of NCTE Approved Colleges Trust' ['***Association***'] launched a challenge by filing W.P.(C) No. 11304/2019 before this Court. An interim relief was granted *vide* order dated 02nd December 2019 therein, directing NCTE to not

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

take coercive measures against non-submission of PAR. The same relief was also granted to many TEIs which approached the court in similar petitions.[1] Subsequently, W.P.(C) 11304/2019 was dismissed by this Court, *vide* common judgment dated 27th May 2021, upholding the validity of Public Notice-2019.

5. Thereafter, NCTE issued a second public notice on 29th September 2021 ['***Public Notice-2021***'], requiring all TEIs to submit PAR for academic session 2020-21, latest by 29th January 2022, which was later extended to 15th March 2022 *vide* notice dated 24th January 2022.

6. *Division Bench*: In the meantime, Judgment dated 27th May 2021 of the Single Bench was challenged by the Association before the Division Bench in LPA 190/2021, wherein the Division Bench, *vide* order dated 25th February, 2022 extended time to submit PAR for academic session 2020-21 till 31st March, 2022, but refused to grant any interim stay of Public Notice-2019. This LPA is next listed for final hearing on 28th November 2022. However, as the issue pending consideration before the Division Bench in this LPA is distinct, there is no impediment in deciding the present petitions.

7. *Supreme Court*: The Association challenged the aforenoted order dated 25th February 2022 of the Division Bench, before the Supreme Court, by filing SLP (C) 5372/2022. The same was dismissed by way of order dated 01st April 2022, wherein an extension of time till 02nd April 2022 to file PAR was

[1] Order dated 08th January 2020 in W.P.(C) 95/2020 & connected matters.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

granted, and further, since NCTE had deactivated the portal on 31st March 2022, the Supreme court also directed its reactivation till 02nd April 2022.

8. Thereafter, another request for extension of time by some of TEIs was made before the Supreme Court, which, through a speaking order dated 25th April 2022, was rejected on the reasoning that the alleged grounds of technical difficulties cannot come to their benefit to prolong the already extended deadline.[2]

9. Some of the Petitioners herein are still putting forward their grievances regarding difficulties faced by them in submission of PAR and contend that the portal was activated only in the evening of 02nd April 2022, when the time available was only until midnight of the same day. Their case is that, given such paucity of time, there was heavy web traffic, due to which the portal witnessed several glitches, and thus approximately 50% of the TEIs interested in filing PAR could not do so within the given time. At the same time, some of the Petitioner-TEIs admit to not even attempting to file PAR, but rationalize this inaction on the hope of succeeding in the challenge to Public Notice-2021.

10. Irrespective of their reasons, none of the Petitioner-TEIs before us have filed PAR by 02nd April 2022, which was the last extended deadline by the Supreme Court. That said, it must be noted here itself that the present batch of petitions pertain not to the delay or non-filing of PAR, but are founded on more fundamental issues, which are detailed and analysed hereinafter.

---

[2] MA No. 701/2022 in SLP (C) No. 5479/2022 titled *Ashaskiya Mahavidyalaya Sangh v. NCTE.*

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

Impugned Decision:

11. The issue of non submission of PAR by TEIs was considered on 27th April 2022 by NCTE in its 54th General Body Meeting, as Agenda Item No. 02 ['**GBM *Resolution***']. Thereafter, on 03rd May 2022, NCTE conveyed its action taken to all concerned authorities and affiliating bodies, requesting them to take necessary action for declaring the academic session of 2022-23 as a "zero academic year for fresh intake", in respect of TEIs falling under their jurisdiction, which had not filed their PAR by 02nd April 2022 ['***Impugned Decision***'/'***Impugned Action***']. This forms the subject matter of challenge in the present batch of petitions on the common ground that regardless of non-filing within timelines fixed, the Impugned Decision is liable to be quashed being misconceived, arbitrary and without the sanction of law.

12. ***Previous orders in this batch of petitions***: ***Present Status***

(i) *Interim order dated 27th May 2022* – Interim applications filed in a large number of petitions herein were decided and disposed of by this Court on 27th May 2022, by staying the effect of the GBM Resolution dated on 27th April, 2022 and also the Impugned Decision. This order had an *in-rem* effect. Petitioner-TEIs were free to admit students for respective courses for academic session 2022-23. It was however clarified that NCTE was free to take recourse to measures as are provided under the Act for non-compliance of filing PAR.

(ii) Thereafter, final arguments were heard on 24th August, 31st August, and finally on 2nd September, when judgment was reserved. Subsequently, W.P.(C) 13877/2022, W.P.(C) 12888/2022 and W.P.(C) 12761/2022,

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

were listed before the Court, which too were reserved upon respective counsel's avowal of parity with the reserved petitions. All reserved cases are now being decided together.

(iii) As of now, students have been admitted for the academic year 2022-23 and the classes have commenced.

CONTENTIONS

13. The submissions put forth by Mr. Sanjay Sharawat, Mr. Amitesh Kumar and Mr. Ninad Laud, Counsel for the Petitioners, are summarised as under:

(i) The Impugned Decision, which bears grave penal consequences, is issued without authority, jurisdiction and sanction of law, and is liable to be struck down.[3]

(ii) Under the scheme of the Act, NCTE is not vested with any authority to take any adverse action against recognized TEIs.

(iii) Except for the consequence envisaged under Section 17 (i.e., withdrawal of recognition by Regional Committee), the Act does not provide for any other penal action.[4]

(iv) Impugned Decision is executive in character, and penalties or penal provisions cannot be created by executive decision.

---

[3] Reliance was placed on: *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale*, (2012) 2 SCC 425 at paragraphs 87 (vii) to (x), and *NCTE v. Vaishnav Institute of Technology & Management*, (2012) 5 SCC 139 at paragraphs 18-29 and 35.

[4] Reliance was placed on: *Vijay Singh v. State of U.P. & Ors.*, (2012) 5 SCC 242 at paragraphs 21-22.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

(v) It is settled principle of law that in the absence of an express provision in the parent statute, without of legislative sanction or authority of law, a delegated authority cannot impose penalties.

(vi) It is impermissible for such authorities to invoke the doctrine of necessary implication or implied powers in the matter of exercising punitive power.

(vii) Evidently, the penalty of declaring 'zero year' has been created and prescribed by way of the GBM Resolution, and imposed by way of the Impugned Decision. Imposition of a new measure could only have been done by modifying the rules, which requires such modification to have been laid before each House of Parliament, as contemplated under Section 33 of the Act. Even if a rule or regulation is made under the Act, the same is required to be put for parliamentary scrutiny under Section 33. Supreme Court has, while considering a *pari materia* provision contained in Section 24 of the All India Council For Technical Education, Act, 1987 ['***AICTE Act***'] extended the same principle and held that not placing a new regulation on the floor of the Houses of the Parliament is liable to be struck down.

(viii) It is well settled principle of law that if a power is conferred to do a certain thing in a certain way, the thing must be done in that way or not at all; and that other methods of performance are necessarily prohibited. Whole aim and object of the Legislature would be plainly defeated if same is not followed.

(ix) The "*right to establish & administer an educational institution*" is a fundamental right under Article 19(1)(g) of the Constitution which

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

comprises of the right "to admit students".[5] In the instant case, neither the Impugned Action nor the procedure adopted therefor meets the sanction of law,[6] which is required to lawfully curtain a fundamental right. The right to establish and administer an educational institute – which includes the right to admit students – is kept at the highest pedestal of fundamental rights and is protected under Article 19(1)(g) of the Constitution.[7]

(x) The Impugned Action is violative of principles of natural justice on account of non-consideration of Petitioner-TEIs' grievances.

14. Ms. Manisha T. Karia and Mr. Rahul Madan, Advocates appearing for NCTE, made the following submissions:

(i) Impugned Decision was within NCTE's jurisdiction and statutory powers prescribed under the Act. NCTE has the power to issue public notices, which has repeatedly been upheld by courts.[8]

(ii) The object and purpose of the Act is indicated in its preamble, which specifically states that the Act has been enacted to achieve planned and coordinated development of the teacher education system. The avowed function of NCTE is to take steps to prevent commercialization of teacher education and to enforce accountability on recognised TEIs, as provided under Section 12(j), (k) and (m) of Act.

---

[5] Reliance was placed on: *TMA Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 at paragraph 50.
[6] Reliance was placed on: *State of UP v. Singhara Singh*, (1964) 4 SCR 485 at paragraphs 7-8, *Ramchandra Keshav Adke v. Govind Jyoti Chavare*, (1973) 1 SCC 559 at paragraphs 24-25, *Babu Verghese v. Bar Council of Kerala*, (1999) 3 SCC 422 at paragraphs 31-32, *Association of Management of Private Colleges v. AICTE & Ors.*, (2013) 8 SCC 271 at paragraphs 66-67.
[7] Reliance was placed on: *TMA Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 at paragraph 18-26 & (Q. 10 and 11).
[8] Reliance was placed on: *Laxmi College of Education v. NCTE & Anr.*, 2019 SCC Online Del 10357.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

(iii) Annual PAR filing was introduced to enable NCTE to enforce accountability on recognized TEIs and preventing any violation of the objective behind the Act, without the hassle of renewing recognition of TEIs every year. It is a thus a necessary requirement for recognised TEIs to submit PAR annually. In fact, other regulatory bodies (e.g., AICTE and UGC) also take action against TEIs which fail to comply with similar requirements. PAR system is thus necessary for transparency and accountability.

(iv) In order to not render PAR a toothless exercise, certain consequential actions are necessary against non-compliant TEIs. Section 17 of the Act effectively empowers NCTE to determine the consequences that will fall upon recognised TEIs in case of non-compliance of provisions of the Act. This includes compliance with Section 12 (j), (k) and (m) of the Act, through which, NCTE executed its functions provided thereunder and issued the aforementioned Public Notices wherein maximum consequence of non-compliance was pre-informed to TEIs.

(v) Consequence of non-submission of PAR must be read into Section 12 of the Act, through doctrine of necessary implication and proportionality. The whole mechanism of PAR and its enforceability has evolved within the purview of Section 12 of the Act. Hence, non-compliance is also to be dealt with under the same section, and not only under Section 17, which provides for derecognition as the last resort.

(vi) The Impugned Decision is a corrective measure to maintain discipline. It is purely regulatory and administrative in nature; and well within the scheme and scope of the Act. As such, the Act fully empowers the council to frame regulations and issue notifications for smooth

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

functioning. It also provides for implementation of necessary mechanism to regulate TEIs under Section 12, and thus the imposition of the Impugned Action is directly covered under the Act.

(vii) De-recognition of TEIs under Section 17 is the last resort. The Impugned Action has been taken, bearing in mind that the consequence of non-submission of PAR stands on a lower footing than de-recognition. Petitioner-Institutes have ignored the fact that consequence of de-recognition is perpetual, whereas any consequence of non-submission of PAR is limited to a single academic year.

(viii) The absence of a minimum or lesser deterrence in the Act should not stop the authority from imposing proportionate deterrence against any violation or non-compliance of the Act, especially when NCTE is already deriving power to prevent commercialization of teachers' education and take necessary steps as per Section 12(j), (k), and (m) of the Act. It is pertinent to note that the imposition of a harsh penalty includes within it the power to take a less harsh consequential action. Even though no minimum sentence is prescribed, the lack of a deterrence mechanism will create a domino effect of violations. Extreme deterrence will create unnecessary harm. Thus, proportionate consequences/punishment should be given, based on the nature and degree of non-compliance. In fact, principle of proportionality is key for deciding consequences of non-compliance or inaction, in not just in the context of the violations of the Act but even in the criminal justice

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

system. Even though Supreme Court rulings on the said principle are entrenched in criminal law cases,[9] the principle therein still applies.

(ix) Even otherwise, the contention of the Petitioner as regards to the challenge to the notification is not maintainable in facts and circumstances.

ANALYSIS

15. On the basis of the submissions advanced by the counsel, issues arising for consideration are summarized hereinbelow:

a) Does the Impugned Action of NCTE fall within the ambit of Section 17 of the Act?

b) Is there any other provision in the Act which vests with NCTE the authority to impose penalty under the Impugned Decision?

c) Whether NCTE has any inherent power, akin to powers of a court of law, to take the Impugned Decision?

d) Whether Impugned Action is permissible under the doctrine of necessary implication and proportionality?

e) Whether the Impugned Action is violative of fundamental rights of TEIs under Article 19(1)(g) of the Constitution of India?

f) Whether the Impugned Action is violative of principles of natural justice?

16. Before analysing submissions advanced by counsel, a quick recap of the provisions of the Act referred to by the parties would be apposite. The same are extracted below:

> *"**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*

[9] Reliance was placed on: *Union of India v. Kuldeep Singh*, (2004) 2 SCC 590, and *Dhananjay Chatterjee alias Dhana v. State of West Bengal*, (1994) 2 SCC 220.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

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 —

(a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;

(b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;

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

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in recognised institutions;

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

(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;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

(h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

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

(k) evolve suitable performance appraisal system, norms and mechanisms for enforcing accountability on recognised institutions;

(l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialisation of teacher education; and (n) perform such other functions as may be entrusted to it by the Central Government

12A. Power of Council to determine minimum standards of education of school teachers. *—*

For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary,

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).

13. Inspection.

(1) For the purpose of ascertaining whether the recognised institutions are functioning in accordance with the provisions of this Act, the Council may cause inspection of any such institution, to be made by such persons as it may direct, and in such manner as may be prescribed.

(2) The Council shall communicate to the institution the date on which inspection under sub-section (1) is to be made and the institution shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the said institution, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that institution, recommend to that institution the action to be taken as a result of such inspection.

(4) All communications to the institution under this section shall be made to the executive authority thereof, and the executive authority of the institution shall report to the Council the action, if any, which is proposed to be taken for the purpose of implementing any such recommendation as is referred to in sub-section (3).

14. Recognition of institutions offering course of 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 six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(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, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

(b) *if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass 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.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(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.

***15. Permission for a new course or training by recognised institution**.—*

(1) Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) to (4) xx ... xx ... xx

***17. Contravention of provisions of the Act and consequences thereof**.—*

(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under sub-section (1), –

(a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

(b) shall be published in the Official Gazette for general information.

(3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

18. Appeals.

(1) Any person aggrieved by an order made under section 14 or section 15 or section 17 of the Act may prefer an appeal to the Council within such period as may be prescribed.

(2) to (5) xx ... xx ... xx."

17. A plain reading of Section 17 – under which the Impugned Action has been taken by NCTE – shows that the legislation envisages that the consequences for violation of provisions of the Act have to be meted out by the Regional Committee, and not the NCTE. In fact, the scheme of the Act expressly demarcates exclusive powers of NCTE and Regional Committee under Chapter III and IV respectively. It provides for two separate authorities to deal with: *(i)* recognition of TEIs, permission for new courses, and withdrawal of recognition of TEIs under Sections 14, 15 & 17 respectively of Chapter IV of the Act; and *(ii)* inspection of TEIs under Chapter III, and appeals arising out of Sections 14, 15 & 17, under section 18 of Chapter IV of the Act. So far as *(i)* is concerned, jurisdiction and power vests exclusively with the Regional Committees, and NCTE is neither vested with any power

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

to grant recognition nor sanctioned/empowered/ to take any adverse/penal action against a recognized TEI. As regards *(ii)*, in terms of provisions contained in Section 13 of the Act, NCTE is only empowered to inspect the recognized TEIs, communicate its views to them based on inspection for ascertaining its opinion, and recommend to the TEI the action to be taken as a result of such inspection. Even after inspection under Section 13, if a recognized TEI does not comply with recommendation of NCTE, then NCTE by itself cannot taken any action against it. On the basis of information/report provided by NCTE, it is the Regional Committee alone that can initiate adverse/penal action under Section 17 of the Act.

18. Additionally, in terms of Section 18 of the Act, NCTE is an appellate authority for deciding the statutory appeal against an order made by the Regional Committee under Section 14, 15 and 17 of the Act. Thus, undisputedly, having appellate powers over the Regional Committee, NCTE is hierarchically superior to it. Even the title of Chapter IV – whereunder Regional Committee is constituted under Section 20 – makes it clear that Regional Committee is one of the lower bodies of the NCTE, along with Executive Committee. It has been time and again held by the Supreme Court that a superior authority with appellate powers cannot exercise the function of the body cast with the duty to render the appealable order.[10] It has also been

---

[10] ***Manohar Lal v. Ugrasen***, (2010) 11 SCC 557, at paragraph no. 22, which reads as under:

> "*Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional Authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act."*

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

held by the apex court that a superior authority charged with policy making cannot assume specific statutory powers and functions of another body.[11] Thus, NCTE's superior position does not allow it to usurp and exercise a function which has been statutorily and expressly conferred upon the Regional Committee, that is to say, the NCTE could not have exercised Regional Committee's function under Section 17.

19. The ambit and scope of powers of NCTE can be gleaned by looking at the preamble to the Act,[12] read with functions of NCTE as laid down in Section 12 and 12A of the Act, which have been extracted earlier. Section 12 of the Act and the subsections therein, although strongly relied upon by counsel for NCTE, does not advance their case. It only stipulates the functions of NCTE, and does not vest the power on it to prescribe, impose or enforce penalties. In fact, none of the above extracted provisions sanction NCTE to take the Impugned Action. It emerges, upon a plain perusal of the provisions of the Act, that except for initiation of penal action of withdrawal of recognition under Section 17, there is no other express penal provision specified in the Act. Thus, the penalty of "*zero academic year"* is a concept which is foreign to the scheme of the Act.

20. The above discussion then lends itself to the question of whether there exists an implied provision or inherent power which could vest in NCTE the authority to pass the Impugned Action. On this aspect, it is crystal clear than

---

[11] ***Rakesh Ranjan Verma v. State of Bihar***, 1992 Supp (2) SCC 343 at paragraphs 6 and 11.

[12] The preamble of the Act reads as under:

> "*An Act to provide for the 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 including qualifications of school teachers and for matters connected therewith.*"

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

NCTE is a creation of statute. It is a well-settled proposition of law that powers and functions of statutory bodies are derived, controlled and restricted by the statutes which create them.[13] Thus, every action or decision taken by NCTE must relate back to or derive from some or the other provision of the Act. Statutory authorities also cannot constrict or widen the scope of the Act to bring into existence substantive rights or obligations or disabilities not contemplated thereunder. Any such action by such bodies, in excess of their power, or in violation of restrictions placed on their powers, is wholly *ultra vires*.[14] Statutory authorities have no trappings of a court of law, and thus lack prerogative of inherent judicial powers.[15] Being a creation of the Legislature, statutory bodies cannot justify their action by invoking the doctrine of inherent power, which are plenary powers enjoyed by a court of law. When express power has been given to the Regional Committee under the Act, it is impermissible for NCTE to resort to any general or implied powers under the law. Having considered the above, as regards its status as a statutory body, in

---

[13] *Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr.*, AIR 1975 SC 1331, at page 433 paragraph 15, which reads as follows:

> "*15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.*"

[14] *Ibid.,* at paragraph 18, which reads as follows:

> "*18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature.*"

[15] *Ibid*.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

the opinion of the Court, NCTE cannot claim or assert the existence or exercise of any implied, inherent or plenary powers. The case laws relied upon by the Respondents in this regard, based upon the criminal justice system, are also not relevant.

21. It is the case of NCTE that even in the absence of a statutory provision, the said power is implied in the Act, and places reliance on the judgment of the Supreme Court in ***Bidi, Bidi Leaves and Tobacco Merchants' Association v. State of Bombay***,[16] wherein the doctrines of necessary implication and proportionality haf been utilized. It needs no reiteration that the power to levy penalty is essentially a legislative function.[17] The court is not convinced that in absence of the Impugned Decision, PAR would be rendered a toothless exercise and hence is necessary to allow NCTE to impose the Impugned Action. It is not a case where the Act has provided no penal measures whatsoever. Penal action under Section 17 is available, and can be enforced against non-compliant TEIs. No doubt, where an Act confers jurisdiction, it impliedly also grants certain powers to do all such acts or employ such means which are necessary for its execution. However, before implying the existence of such power, the Court must be satisfied that existence of that power is absolutely essential for discharge of the power

---

[16] AIR 1962 SC 486, at paragraph 20, which reads as follows:

> *"20. "One of the first principles of law with regard to the effect of an enabling act", observes Craies, "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view [Craies on Statute Law, p. 239]". The principle on which this doctrine is based is contained in the legal maxim "Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa ease non potest". This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect" (...)."*

[17] *Bihar Motor Transport Federation v. State of Bihar,* AIR 1995 Pat. 188, at paragraph 20.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

conferred and it is not a case where it is merely convenient to have such a power.[18] In the instant case, as we have seen from the above analysis, powers of NCTE are defined and circumscribed by the provisions of the Act, and express power has been given to regional committees under Section 17 of the Act. It is therefore impermissible for NCTE to resort to doctrine of necessary implication and proportionality, to justify imposition of penal consequences. To underscore, in view of express provision, *viz*. Section 17, power of imposing new penalties, beyond the provisions of the Act, cannot be permitted under the exercise of power by way of necessary implication. In other words, power to impose the condition of filing of PAR under Section 12 of the Act, does not necessarily mean or imply that NCTE is also vested with the power to impose penal consequence. Since the Act prescribes a particular body (Regional Committees) to exercise a specific power, it is to be exercised by that body alone, and cannot be exercised by NCTE, in absence of any delegation of such powers to it.

22. We must also take note of NCTE's own understanding on the issue of non-submission of PAR, spelt out in paragraph number 6 of Public Notice-2019, which stipulated that "*non-submission of PAR will attract action under Section 17(1) of the Act*". At that juncture, it was entirely possible for NCTE to act within the contours of the Act by reporting errant TEIs to the Regional Committees, which would then, in turn, take action under Section 17 of the Act. However, NCTE instead took the matter in its own hands, by issuing the Impugned Decision, to declare the academic session of 2022-23 as a "zero

[18] *Sub Divisional Officer, Sadar, Faizabad v. Shambhoo Narain Singh*, 1970 AIR 140.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

academic year for fresh intake". The adverse/penal action contemplated under Notice-2019 was given a complete go-by, and instead a new penalty, not prescribed under the provisions of the Act, was imposed.

23. Respondents justify the penalty of 'zero academic year for fresh intake' – a concept alien to the Act – by emphasising on its benevolent effect. Their defence is that filing of PAR is an annual requirement, and NCTE has considered that non-submission in one year does not bar a TEI from submitting PAR in a subsequent academic session; therefore, the harsher penalty of de-recognition is not warranted. They argue that the Impugned Action is a far lenient consequence imposed upon the TEIs, as it stands on a much lower footing than the higher-degree punishment of de-recognition.

24. This rationale, on the face of it merciful and benign, actually ails from a deeper infirmity, which will be dealt with in the following paragraphs, and is certainly not a permissible excuse in law.

25. The main body of Section 17 of the Act employs the words: *"the Regional Committee (…) may withdraw recognition of such recognised institution, for reasons to be recorded in writing*." The first proviso to this section uses the phrase "*no such order*" which takes its meaning from the main body of the provision. Most importantly, second proviso employs the expression "*the order withdrawing or refusing recognition passed by the Regional Committee"*. Thus, reading of the aforesaid provision leaves no manner of doubt that no punitive action short of de-recognition is contemplated under Section 17 and a binary course has been contemplated under the section:- (*i*) of either withdrawing the recognition of an already

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

recognised TEI, or, (*ii*) of refusing recognition to one seeking it for first time. In other words, for an already recognised TEI, there is a singular course contemplated under this provision, that of de-recognition. For this reason, considering the ramifications of de-recognition, the Act mandates that a TEI must be individually allowed to make a representation, before issuance of any such direction, and not by way of a general order/public notice as has been done by the NCTE in the instant case.

26. Undoubtedly, on a surface level, the effect of the Impugned Decision, in juxtaposition with de-recognition, seems rather mild, but that is a misleading proposition, and rather, the consequence of the Impugned Action are far more severe. The reason for it is this – the action of withdrawal of recognition under Section 17, as a consequence for contravention of provisions of the Act, has been envisaged by the Legislature to contain an in-built safeguard mechanism which adheres to principles of natural justice. Even when withdrawal of recognition is ordered by a Regional Committee under Section 17, the recognized TEI enjoys the right to admit students during the current academic session in which the withdrawal order is communicated as well as the next academic year, in terms of second proviso to Section 17(1). Thus, the withdrawal of recognition comes into effect only at the end of academic session, next following the date of such order. No power is conferred upon the Regional Committee, or any other body under the Act, to prevent/prohibit a recognized TEI from admitting students against its sanctioned strength in the sessions before that. This allows TEIs the time and leeway to exercise their substantive right to appeal under Section 18 of the Act against such withdrawal, without pausing their daily functioning.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

27. However, in stark contrast, the penal consequence imposed by way of Impugned Decision has been passed to become operative instantaneously. It thereby denies TEIs the benefit of second proviso to sub-section 1 of Section 17, and is not appealable.

28. At this juncture, it will bode well to reiterate a well recognized principle of law which forms part of administrative jurisprudence and is squarely applicable to the circumstances – *where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*.[19] From the foregoing discussion, it is clear that considering that the only remedy available was de-recognition, it was not open to NCTE to have taken any other penal measure as it deemed fit. Above all, non-adherence to the timelines given in Section 17 and instantaneous implementation of penalty prejudices not only the Petitioner-TEIs, but also the students pursuing a course with them. In ***Maharishi Dayanand Educational Society v. NCTE***,[20] it was held that Regional Committee is duty bound to accord an opportunity of hearing before passing order under Section 17 of the Act, in view of the fact that such an order would certainly affect the students, if not the Petitioners-TEIs. From the foregoing discussion it emerges that the Impugned Action cannot be called

---

[19] *Ramchandra Keshav Adke v. Govind Jyoti Chavare*, (1973) 1 SCC 559 at paragraph 25, which reads as follows:

> "*A century ago, in Taylor v. Taylor (1876) 1 Ch D 426, Jassel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. (…)*"

[20] 2020 SCC OnLine Del 254.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

a lesser penalty which can be covered under the umbrella of a larger penalty envisaged by the Legislature.

29. Petitioner's invocation of Article 19(1)(g) of the Constitution also has considerable merit. Any control (or reasonable restrictions) upon the fundamental right of a TEI (which includes the right to admit students) under Article 19(1)(g) can be imposed only by "law" as contemplated under Article 13. The issue of interplay of fundamental right under Article 19(1)(g) and the requirement of law under Article 19(6) of the Constitution of India has been conclusively settled by the Supreme Court to this effect. It has been held that the requirement of law for the purpose of Article 19(6) of the Constitution can, by no stretch of imagination, be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution, or otherwise. Such a law must be enacted by the Legislature. Restriction under Article 19(6) cannot be placed by means of executive instructions/resolutions.[21] In the present case, there is no law enacted /framed /notified which meets the aforesaid requirement, and thus, in the absence thereof, it can be said that the Impugned Decision of NCTE curtails the fundamental right of recognised TEIs to admit students.

30. Lastly, the court also finds the Impugned Decision to be violative of basic tenets of natural justice. There are several explanations given by TEIs for non-submission of PAR, as elaborated in their respective petitions. They argue that after passing of the order dated 01st April 2022 by the Supreme

[21] See: *Modern School v. Union of India and Ors.*, (2004) 5 SCC 538 at paragraphs 41, and *State of Bihar v. Project Uchcha Vidya, Shikshak Sangh*, (2006) 2 SCC 545 at paragraph 69.

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

Court, NCTE consumed substantial time on 01st April 2022 in issuing the Impugned Decision and informing the stakeholders regarding extension of time upto midnight of 02nd April 2022 for submission of online PAR. It is further contended that PAR Portal was activated around late evening on the said day i.e., 01st April 2022 and thus practically Petitioner-TEIs got much lesser time than what was granted by Supreme Court. It is further pointed out that there are approximately 24,000 recognized TEIs in the country and most of them had not submitted PAR for the academic session 2020-21, in view of the pendency of the proceedings (LPAs) before the Division Bench of this Court and filing of SLPs by various Associations before Supreme Court. In view of the limited time available for submission of online PAR, and in view of attempts being made by thousands of recognized TEIs in the country to register /login on NCTE web portal simultaneously, there was an extremely heavy load on the web portal and server, which suffered from glitches and slow speed. The situation was further worsened as many TEIs are situated in remote areas of the country where internet speed is as high as metro cities. Large number of recognized TEIs throughout the country faced continued technical lapses, slowed functioning of portal, and high lag in uploading and saving of data on NCTE web portal. It is thus plausible that large number of recognized TEIs (which is almost 50%) could not submit online PAR for the academic year 2020-21 within the time extended by the Supreme Court, for factors beyond their reasonable control. The Court is conscious of the fact that request for extension of further time was declined by the Supreme Court, NCTE took the Impugned Decision – which has grave civil consequences for the Petitioner-TEIs – without providing any opportunity of hearing/ representation to explain the aforementioned situation. It is entirely plausible

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

that there can be reasons which merit consideration on a case-to-case basis. Such TEIs should have been afforded an opportunity to give a satisfactory explanation for not adhering to provisions of the Act. In deserving cases, NCTE could perhaps have condoned the contravention. Therefore, non-adherence of safeguard provided under Section 17 of the Act has caused prejudice to Petitioners by not affording them an opportunity to put forth their stand and thus, the Impugned Action is also violative of principles of natural justice.

CONCLUSION

31. A penalty is a statutory liability, which must be provided in the legislation itself. The power to levy penalty is a legislative function. The Impugned Action taken by NCTE is purely administrative in character, which, as discussed above, does not emanate from any provision of the Act, rules or regulations. In absence of any express provision in the parent statute, a statutory authority cannot impose penalties without sanction or authority of law. Delegating authority must act strictly within the parameters of the Act. NCTE's quest to ensure compliance under the cover of assumed implied powers, cannot be a lawful basis to relax the rigours of the statute. The Impugned Decision of declaring academic session as a "*zero academic year for fresh intake*" is beyond the ambit of Section 17 or any other provision of the Act. By circumventing Section 17 of the Act, NCTE has denied benefit of second proviso to Sub-Section (1) of said provision, and therefore, the Impugned Decision also runs foul of the principles of natural justice. Hence,

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29

the Impugned Decision is without any authority, jurisdiction or sanction of law.

DIRECTIONS

32. In view of the above, the Petitions are allowed and the decision of the NCTE at Agenda Item No. 2 in the 54th General Body Meeting held on 27th April, 2022, as well as Public Notice dated 03rd May 2022 issued by NCTE, are quashed.

33. Respondents are free to take action for non-compliance of submission of PAR by TEIs, if so advised, in accordance with law, by taking reference to remedies provided under Section 17 of the Act.

34. With the above directions, all the above petitions are disposed of along with pending applications.

SANJEEV NARULA, J

NOVEMBER 15, 2022/*nk*

Signature Not Verified
Digitally Signed
By:SAPNA SETHI
Signing Date:15.11.2022
18:15:29