

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

+ **W.P. (C) No.4244/2008**

% **Judgment Reserved on: 11.07.2008**
Judgment Delivered on: 21.07.2008

Trinity Institute of Higher Education Petitioner
Through Mr. R.K. Saini with Mr. Nikhil
Bhalla, Advocates

versus

Govt. NCT of Delhi & Ors. Respondent
Through Ms. Zubeda Begum for
Respondent Nos.1 & 2.
Mr. G.D. Goel for Respondent No.3

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

VIPIN SANGHI, J.

1. The petitioner is a private institute imparting higher education being run by Kamal Education Society registered under Societies Registration Act 1860 with the object of imparting education. The petitioner is running the Bachelor of Computer Applications (BCA) course for which it has obtained affiliation with Guru Govind Singh Indraprastha University (GGSIP University) i.e. respondent No.3. The

aforesaid society is possessed of a plot of land admeasuring 1.43 acres on which it has set up a senior secondary school which is being run in the name and style of *Kamal Public School* and, in the same plot, in another building it is running the BCA course as aforesaid.

2. The petitioner being desirous of starting the 1 year B.Ed. course approached the Govt. of NCT of Delhi, i.e. respondent No.1 for the purpose of obtaining its No Objection Certificate (NOC) on 9.7.2007. Respondent No.2 is a limb of Govt. of NCT of Delhi, being the Directorate of Higher Education. The said B.Ed. course was proposed to be started with maximum intake of 100 students, in the same building in which it is presently running the BCA course. While the said application was pending consideration the petitioner applied to National Council for Teachers Education (hereinafter referred to as the "Council" or "NCTE") seeking recognition from them in November, 2007. Another application was made to GGSIP University for seeking their affiliation for the B.Ed. Course.

3. On 3.1.2008 the NCTE addressed a communication to respondent No.1 requiring respondent No.1 to consider the grant of No Objection Certificate to the petitioner. The communication specifically made reference to Regulation 7(2)(iv) of the NCTE Regulation 2005, which states that in case the State Government were not to respond to the notice of NCTE within 60 days, it shall be presumed that the State Government has no objection to the grant of recognition by

NCTE. On the same date the NCTE required the petitioner to give its unconditional consent for inspection of the infrastructure and institutional facilities as per NCTE Regulations. On 14.2.2008 an inspection team of NCTE visited the institution and carried out inspection, whereafter vide order dated 14.5.2008 NCTE declared that it was satisfied that the institution satisfies the requirements as per the provisions of the National Council for Teacher Education Act, 1993 (the Act for short) and the regulations made thereunder, including the norms and standards laid down for Secondary Teacher Education Programme (B.Ed.) such as, instructional facilities, infrastructural facilities, library, accommodation, financial resources, laboratory etc. In exercise of power vested by Section 14(3)(a) of the Act, the Northern Regional Committee of NCTE granted recognition to the petitioner for conducting B.Ed. course of one year duration with an annual intake of 100 students as per Clause 7(12) of the Regulation dated 13.1.2006. This was subject to the condition, inter alia, that the institute shall comply with the various other norms and standard prescribed under the NCTE Regulations as amended from time to time. A copy of this communication was sent to respondent Nos.1 to 3.

4. Soon thereafter on 22.5.2008 the Govt of NCT of Delhi vide the impugned communication communicated its decision that the petitioner could not be issued an NOC for starting the B.Ed. course on the ground that total area of the school is 1.43 acres and is not

covered under the policy guidelines. Hence the petitioner was not eligible for issuance of NOC.

5. On account of the non-issuance of the NOC by Government of NCT of Delhi, the petitioner has not been granted affiliation by GGSIP University even though NCTE has granted recognition to it. Aggrieved by the refusal of respondent nos. 1 and 2 to grant NOC to it, and the refusal of respondent No.3 to grant it affiliation for the 1 year B.Ed. Course, the petitioner has preferred the present writ petition seeking a writ of certiorari quashing the impugned communication dated 22.5.2008 issued by respondent no.2 as being illegal, arbitrary, unjust and mindless and as being in violation of the rules, regulations and norms. The petitioner has sought a mandamus to respondent no.3, GGSIP University to forthwith grant affiliation to the petitioner institution for conducting the B.Ed course and to allocate 100 students for the academic session 2008-2009 from the merit list prepared on the basis of the Common Entrance Test, 2008 conducted by it.

6. Mr. R.K. Saini, learned counsel for the petitioner submits that NCTE is a statutory body which has been constituted under the National Council for Teacher Education Act, 1993 with a view to achieve planned and co-ordinated development of the teacher education system throughout the country and for the purpose of regulating and properly maintaining the norms and standards in teacher education system. Mr. Saini has taken me through the Act

and some of the relevant regulations, reference to which shall be made later in the judgment.

7. It is submitted by learned counsel for the petitioner that the aspect of teacher education falls within the domain of NCTE to consider, and that it is for the NCTE to lay down the regulations for the proper maintenance of norms and standards in teacher education system. The examining bodies i.e. universities are obliged to grant affiliation to institutions, who are granted recognition by the Council on the basis of the inspection conducted by them and upon their being satisfied with regard to the fulfillment of the requirements framed by the Council. It is further argued that in respect of specific matters covered under the Act, the rules and the regulations, it is only the Council which has the jurisdiction to lay down norms for grant of recognition to an institution offering or seeking to offer courses and training in teacher education, and that it is not open to the State Government to lay down conditions or norms, in respect of such issues which are specifically addressed by the NCTE, much less to lay down norms or conditions which are in conflict with those laid down by the Council. It is, therefore, argued by learned counsel for the petitioner that the reason given by the respondent Nos.1 & 2 for the refusal of NOC to the petitioner in the impugned communication dated 22.05.2008, that the total plot area of the school of the petitioner is not covered under the policy guidelines, is incompetent and illegal.

8. Mr. Saini further submits that the application for grant of NOC was made by the petitioner to the respondent No.2 as early as on 07.07.2007. Respondent Nos.2 & 3 conducted a joint inspection of the petitioner's institution in response to the petitioner's application on 15.12.2007. The inspection report is prepared in a prescribed proforma, which itself discloses the aspects which these respondents take into account while considering an application for grant of NOC/Affiliation. They took note of the fact that the petitioner was running a BCA three years programme with maximum intake of 60 students. Part-I of the inspection report deals with the aspect of *"Legality of Ownership and Possession of land."* The inspection committee adopted the process of awarding marks, and the petitioner was awarded the maximum 400 marks since it fulfilled the criteria of *"Ownership of land by the Society"*, *"Lawful Physical Possession of Land by the Society"*, *"Availability of Land as per norms in conformity area i.e., the land use is institutional"* and *"Availability of land in rented/temporary, non-conforming school premises where permission of DDA is not available"*. Similarly, the petitioner was awarded the maximum 400 marks under the heading *"Availability of built up area and Sanctioned Building Plan"*. On the aspect of safety measures, out of the maximum marks of 200, the petitioner was awarded 145 marks. Therefore, the petitioner was awarded 945 marks out of 1000 in Part-I of the joint assessment report. Under the criteria *"Status of Faculty"*, the petitioner was awarded 170 of 250 marks and under the criteria

“Computer Centre”, the petitioner was awarded 140 out of 200 marks. The petitioner was awarded 60 out of 200 marks under the heading *“Status of Library”* and was awarded another 90 marks, while examining the *“Status of labs/workshops”*, out of the maximum of 200 marks. On the *“Instructional Facilities/Teaching Aids”* front, the petitioner scored 40 out of 50 Marks and under the heading *“Ancillary and Other Essential Facilities”*, the petitioner scored 60 out of 100 marks. The recommendation made by the Joint Inspection Committee of respondent Nos.2 & 3 was in favour of the petitioner, subject to the following four conditions:

- (i) 2½ floors must be provided for B.Ed. before courses starts;
- (ii) Recognition of NCTE needs to be obtained before starting;
- (iii) Fulfillment of above mentioned suggestions is very essential; and
- (iv) The manager of the petitioner was required to give undertakings in the prescribed form.

9. Mr. Saini submits that the petitioner fulfills all the aforesaid conditions and has never backed out of them. He submits that even though the aforesaid recommendation had been made in its favour by the Joint Inspection Committee of respondent Nos.2 & 3, the respondent No.2 did not favour the petitioner with a “No Objection Certificate” and continued to sit over the matter. In the meantime, the NCTE sent a communication dated 03.01.2008 to respondent No.2

requiring it to furnish its “No Objection Certificate”. In Para 2 of the said communication, the Council stated as follows: -

“2. NCTE has promulgated regulations with regard to recognition norms and procedure. As per the regulations 7(2)(iv), a copy of the application form submitted by an institution shall be sent to the State Govt./UT administration concerned. On receipt of the communication, the State Govt./UT administration concerned shall furnish its recommendations on the applications to the office of the Regional Committee concerned of the NCTE within 60 days from its receipt. If the recommendation is negative, the State Govt./UT administration shall provide detailed reasons/grounds thereof, which could be taken into consideration by the Regional Committee concerned while deciding the application. If no communication is received from the State Govt./UT administration within the stipulated 60 days, it shall be presumed that the State Govt./UT administration concerned has no recommendation to make.”

10. Mr. Saini submits that Regulation 7(2)(iv) and Regulation 7(3) (which have been extracted in the writ petition) provide that while furnishing the application for grant of recognition, the Council shall send a communication alongwith the application submitted by the institution, to the concerned State/UT. On receipt of the communication, the State Government/UT administration is required to furnish its recommendations on the application to the concerned Regional Committee of the Council within 60 days from receipt. Importantly, even if the recommendation is negative, the State Government/UT Administration is obliged to provide the detailed reasons/grounds thereof, and the recommendation, in any event, is not

per se binding on the Council/Regional Committee, which shall take into consideration the said negative recommendation and then give its decision. It further provides that if no communication is received from the State Government/UT Administration within the stipulated 60 days, it shall be presumed that the State Government/UT Administration concerned has no recommendation to make.

11. Mr. Saini submits that despite the communication dated 03.01.2008 sent by the Council to respondent No.2, particularly highlighting Regulation 7(2)(iv) and 7(3) and expressly stating that in case no communication is received from respondent No.2, it shall be presumed that respondent No.2 has no recommendation to make, and despite the fact that respondent No.2 was sitting over a positive recommendation made by the Joint Inspection Committee of respondent Nos.2 & 3, respondent No.2 chose not to communicate its no objection to the Council/respondent No.4. He submits that consequently Regulation 7(3) came into effect and the Council justifiably granted recognition under Section 14(3) of the Act to the petitioner vide its communication dated 14.05.2008. Mr. Saini submits that only after the issuance of the recognition order dated 14.05.2008, respondent No.2 rushed to issue the impugned communication on 22.05.2008.

12. The petitioner further submits that the impugned communication is based on non statutory guidelines issued by

respondent No.2 on 19.05.2008 for issue/revalidation of NOC to self-financed institutions for the academic year 2008-09 onwards. These guidelines have been placed on record by the petitioner. Mr. Saini submits that contrary to the norms laid down by the Council in Clause 5.1.1 of the Appendix to the Regulations, which states that the institution must have at least 2500 sq. meters land, whereupon built up area consisting of classrooms etc. shall not be less than 1500 sq. meters, the respondent in its aforesaid guidelines dated 19.05.2008 have laid down the requirement that B.Ed. courses will be allowed to run in a school building or complex that has been constructed on at least 2.5 acre plot situated in a conforming area. The submission of Mr. Saini is that firstly, the said guidelines are incompetent, inasmuch as, the regulations framed by the Council specifically provided for the area that an institution is required to have, both open and built up, to run the teacher training institution. Therefore, respondent No.2 had no authority or jurisdiction to lay down any guidelines in that respect. He further submits that the guidelines laid down by the respondent No.2 being contrary to those laid down by the NCTE, it is the norms laid down by the NCTE which would prevail since it is statutory in character, as opposed to the guidelines which are non-statutory in characters and have been issued by a State Government. Moreover, the NCTE is a body created under a Central enactment framed under Entry 66 of List I of the Seventh Schedule and the State Government is therefore not empowered to legislative or take any policy decision in

respect of matters covered by the said entry. He further submits that the said guidelines, in any event, could not be made applicable in respect of the petitioner, since they have been framed only on 19.03.2008, whereas the petitioner's application to respondent No.2 was pending since July 2007, in respect of which joint inspection had been conducted by respondent Nos.2 & 3 in December 2007. He submits that even the period of 60 days within which respondent No.2 was obliged to respond in terms of Regulation 7(3) got over on or about 03.03.2008 i.e. well before the framing of the said guidelines on 19.03.2008. Upto 03.03.2008, there was no guideline framed by respondent Nos.1 & 2.

13. Mr. Saini also submits that the conduct of the respondent No.2 is also highly discriminatory. It is pointed out that in respect of another institution, namely, Guru Ramdas College of Education, the respondent Nos.2 & 3 had conducted a joint inspection and prepared a report on the same prescribed form as in the case of the petitioners institution. This inspection was conducted on 26.06.2007. The marks awarded to Guru Ramdas College of Education under Part-I were only 400 as opposed to the petitioner's 945. In Part-II, Guru Ramdas College of Education was awarded an aggregate of 460 marks as opposed to the petitioner's 560 marks. Yet the case of Guru Ramdas College of Education was favourably considered and "No Objection Certificate" was issued by respondent No.2 with the result that the said

college started its session in the year 2007 itself and admitted students for the academic session 2007-08. He submits that the petitioner's request for grant of NOC by respondent No.2 was made at around the same time as Guru Ramdas College of Education, but the joint inspection was unduly delayed by respondent Nos.2 & 3 to December 2007 with the result that the petitioner could not start its course with the academic session 2007-08.

14. Learned counsel for the petitioner has also placed reliance on two decisions of the Supreme Court in **State of TN & Anr. v. Adhiyaman Education and Research Institute and Ors.** (1995) 4 SCC 104 and **Jaya Gokul Educational Trust V. Commissioner & Secretary to government High Education Dept. Thiruvananthapuram & Anr.,** AIR 2000 SC 1614. Mr. Saini submits that the petitioner institution has open land of about 3000 sq. meters as opposed to a minimum requirement of 2500 sq. meters and built up area of 2575.79 sq. meters for classrooms etc. as opposed to a minimum of 1500 sq. meters. He submits that in para 1 of the writ petition there was a typographical error, which has been corrected by filing an additional affidavit on behalf of the petitioner.

15. Respondent no.3, GGSIP University have in their counter affidavit relied upon Notification No.F-1(6)(4)/99-2000/Estt. issued under sub-section (2) of Section 26 of the Guru Govind Singh Indraprastha University Act, 1998 relating to the conditions under

which colleges and institutions may be admitted to the privileges of the University and the conditions under which such privileges may be withdrawn. Under Clause 3(ii)(b), no college or institution can be admitted to the privileges of the University, unless it has been granted a No Objection Certificate by the concerned State Government and recognized by the appropriate statutory authority wherever applicable, for the subjects and courses of study for which affiliation is sought. It is, therefore, argued that the requirement of an institution being issued a No Objection Certificate by the concerned state Government is a mandatory statutory requirement for the respondent university to grant affiliation. Reliance is also placed on a decision of this Court in ***Rahul Dhaka Vikas Society & Anr Vs. Guru Gobind Singh Indraprastha University & Ors.***, 89(2001) DLT 337(DB) wherein this Court has held that there cannot be automatic affiliation sought from the respondent University by an institution which has been recognized by the NCTE. The University can still exercise its discretion in granting or refusing to grant the affiliation. The words “shall” appearing in Section 14 of the Act has to be read as “may” giving discretion to the examining body to grant affiliation to the institution which has to be accorded recognition by the respondent Council.

16. Respondent no.4, the NCTE has produced the original record relating to the application made by the petitioner to seek recommendation and the consideration of that application by the

Northern Regional Committee of NCTE. Mr. V.K.Rao, learned counsel for NCTE supports the contention of the petitioner with regard to the power of NCTE to grant recognition to an institution and the competence, or rather lack of it, of the State Government to lay down and enforce guidelines which are contrary to the standards and norms for recognition laid down by the Council. He relies on ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors***, JT 2006(4) SC 201 in support of his submissions.

17. Ms. Zubeda Begum, who appears for respondents 1 and 2 has produced a copy of the reply filed by these respondents by way of an affidavit in LPA 303/2008 (minus the annexures), and seeks to rely on the averments made therein. The stand of respondents 1 and 2 is that it is the Government of NCT of Delhi which lays down the policy guidelines for establishment of educational institutions in the National Capital Territory of Delhi and the University implements the policy of the Government of NCT of Delhi. The institution is bound to abide all the rules enforced in Delhi by the Government of India, by the Government of NCT of Delhi, other local authorities and the affiliating university. It is further submitted that it is the responsibility of the Directorate of higher education to inspect the institution seeking affiliation with respondent no.3 university every year and revalidate the No Objection Certificate every year after taking into consideration

all aspects i.e the quality of infrastructure, both physical and academic, the faculty and financial strength, and status of the institute. It is argued that respondent no.3 is a prestigious university and the reputation of the university has to be safeguarded. The respondent nos. 1 and 2 submits that respondent no.3 university has been established and funded by the Government of NCT of Delhi. The State government is required to grant No Objection Certificate for running the institute, and if the requirement for obtaining No Objection Certificate by the institutes is waived, the institutes would be free from the control that the government exercises to ensure that they follow the prescribed norms for running the institutes. Reliance is also placed on clause 4 of a notification dated 1.11.1999 bearing no.F.18(88)/92/CB/Edn./PF/2171 (Annexure R-3/4) to say that the affiliation granted shall be provisional in nature and shall be renewed on yearly basis. It is submitted that the grant of provisional affiliation implies that the institute fulfills all the requirements with regard to the existing area needed for class rooms with requisite strength of teachers and other equipment needed for imparting quality education in the courses for which affiliation is sought. For ascertaining whether the institutes fulfill the requirement for imparting quality education to the students, inspection of the institute is carried out to confirm whether they fulfill the conditions laid down in the guidelines or not. The purpose of laying down guidelines and for carrying out inspections by the Government of NCT of Delhi is to ensure that no student suffers

on account of lack of adequate physical and academic infrastructure. Ms. Zubeda Begum has emphasized that the land allotted to the petitioner by the DDA admeasuring 1.43 acres is for running a middle school out of which 2893.605 sq.mt is for setting up the school building and 2893.605 is for a play field. The petitioner in violation of the said norms now wants to run a B.Ed course from the very same building which is used to impart education to secondary and senior secondary pupils. The petitioner is also running a BCA course from the same building. As per the policy guidelines, B.Ed course could be allowed to be run in a school building complex, that has been constructed on at least a 2.5 acres plot situated in a conforming area. It is also argued that as per the building norms the petitioner can legally build only 4340 sq.mts covered area by adopting FAR of 150. The petitioner could not be granted no objection certificate unless it has an additional covered are of 1500 sq.mt. For the BCA three year degree course with intake of 60 students, the petitioner has had to dedicate 810 sq.mt covered area.

18. Section 2(c) defines the "*Council*" to mean the National Council of Teacher Education established under Section 3(1) of the Act. "*Examining body*" means a university, agency or authority to which an institution is affiliated for conducting examinations in teacher examination qualifications. "*Institution*" under Section 2(e) is defined to mean an institution which offers courses or training in teacher

education. "*Recognised institution*" is defined under Section 2(i) to mean an institution recognized by the Council under Section 14. Section 2(l) defines "*teacher education*" to, inter alia, mean programmes of education research or training of persons for equipping them to teach pre-primary, primary, secondary and senior secondary stages in schools. Section 2(m) defines "*teacher education qualification*" to mean a degree, diploma or certificate in teacher education awarded by a university or examining body in accordance with the provisions of the Act. The Council has a wide representation from all concerned institutions, including from the University Grants Commission, and the States and the Union Territories by virtue of Section 3(4) of the Act. Section 12 defines the functions of the Council. Under Section 20 of the Act, Regional Committees are constituted for each region in the country, including the Northern Regional Committee, which has considered the case of the petitioner. These Regional Committees have representatives of the States/Union Territories of the region by virtue of Section 20(3). Amongst the various functions that the Council is obliged to perform the following are specifically enumerated:

- (i) Under Section 12(b) to make recommendations to the Central and State Government, Universities, University Grants Commission and recognized institutions in the

matter of preparation of suitable plans and programmes in the field of teacher education;

- (ii) Under Section 12(e), to 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;
- (iii) Under Section 12(f), lay down guidelines for compliance by recognized institutions, for starting new courses or training, and for providing **physical and institutional facilities**, staffing pattern and staff qualification.

19. Section 13 of the Act empowers the Council to cause inspection of any institution for the purposes of the Act. Section 14 deals with the aspect of recognition of institutions offering courses or training in the teacher education. Every institution offering or intending to offer a course in teacher education is obliged to make an application to the concerned Regional Committee of the Council for obtaining recognition from the Council. On receipt of an application, the Regional Committee shall, if it is satisfied that such institution has adequate financial resources, **accommodation**, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of an institution for a course or training in teacher

education as may be determined by the regulations, grant recognition to such institution, subject to conditions that may be determined by the regulations. However, if the regional committee is of the opinion that such institution does not fulfil the aforesaid requirements, it can refuse recognition for reasons to be recorded in writing. Section 14(6) states that every examining body shall, on receipt of the order granting recognition, grant affiliation to the institution and where the recognition has been refused, cancel the affiliation of the institution. Section 32 of the Act confers on the Council, the power to make regulations not inconsistent with the provisions of the Act and the Rules made thereunder for the purpose of carrying out the provisions of the Act. Clause 2(f) of Section 32, particularly empowers the Council to make regulations laying down conditions required to be fulfilled for the proper functioning of the institution and conditions for granting recognition under Section 14(3)(a) of the Act.

20. The NCTE has framed regulations titled as “**The National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005**” in exercise of its power under Section 32(2)(f) of the Act. Clauses 1, 5 and 8 of Regulation are relevant and the same read as follows:-

“(1) An institution must fulfill all the prescribed conditions related to norms and standards as prescribed by the NCTE for conducting the course or training in teacher education. These norms, inter alia, cover conditions relating to financial

resources, **accommodation**, library, laboratory, **other physical infrastructure**, qualified staff including teaching and non-teaching personnel, etc.” (**emphasis supplied**)

“(5) **No institution shall be granted recognition under these regulations unless it is in possession of require land on the date of application.** The land free from all encumbrances could be either on ownership basis or on lease for a period of not less than 30 years. In cases where under relevant State/UT laws the maximum permissible lese period is less than 30 years, the State Government/UT Administration shall prevail.” (**emphasis supplied**)

“(8) **At the time of inspection, the building of the institution shall be complete in the form of a permanent structure** on the land possessed by the institution in terms of Regulation 8(5), equipped with all necessary amenities and fulfilling all such requirements as prescribed in the norms and standards.” (**emphasis supplied**)

21. NCTE has laid down further detailed norms and standards for programme leading to the B.Ed degree in Appendix 4 to these Regulations. Para 5 of Appendix 4, inter alia, lays down the facilities that an institution should provide and should be possessed of, if it is to be considered for grant of recognition for running a Secondary Teacher Education Programme leading to the B.Ed degree. Clause 5.1.1, in so far as it is relevant, reads as follows:-

“5.1.1 The institution must have at least 2500 sq.mts. land whereupon built-up area consisting of classrooms etc shall not be less than 1500 sq.mts. Space in each institutional room shall be 10 sq.ft. per student.”

From the aforesaid, it is clear that the issue as to what should be the standard with regard to the requirement of land and building for setting up an institution to run the Secondary Teacher Education Programme leading to the B.Ed. degree has been considered by the Council, by laying down the norms therefor in the Regulations.

22. The Council has been entrusted the task of laying down uniform standards for application to all institutions nationwide to achieve planned and coordinated development of the teacher education system. The issue that arises for consideration is, whether the State Government can lay down its own standards or norms even in respect of matters, which fall for consideration within the Domain of the Council, and on which the Council has laid down standards and norms for uniform application.

23. The Parliament has enacted The All India Council for Technical Education Act, 1987 whereunder All India Council for Technical Education (AICTE) has been established as a statutory body for co-ordinated and integrated development of technical education system at all levels throughout the country which is enjoined with the duty to promote qualitative improvement of such education in relation to planned quantitative growth. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. AICTE evolves suitable performance appraisal system incorporating such norms and mechanisms in enforcing their

accountability. It also provides guidelines for admission of students, apart from having the power to withhold or discontinue grants and derecognize institutions where norms and standards laid down by it are not followed. Therefore it would be seen that the constitution of AICTE, the scope of its powers, functions and responsibilities is similarly structured as in the case of NCTE. In ***Adhiyaman Educational and Research Institute*** (supra), the Supreme Court was dealing with the issue relating to the conflict between the powers and functions of AICTE on the one hand and a state legislation, namely, Tamil Nadu Private College (Regulation) Act on the other hand. The Supreme Court in paras 22, 27 and 30 of the said decision held as follows:-

“22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is, further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to derecognize the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the

technical education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well-known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiencies but for want of opportunities to develop and contribute to the total good of the country. **Unnecessarily high norms or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council**

for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the Constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the Constitution and functions of these Committees as well. What is further important to note is the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before the Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-Second Amendment nor can it make a law under Entry 25 of List III after the Forty-Second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution. (**emphasis supplied**)

27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality instruction assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions and for

introduction of new courses or programmes, taking steps to prevent commercialisation of technical education, inspection of technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring the compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receive grants, the Constitution of the Council and its executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government on questions of policy etc. which matters are covered by the Central Act. **What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable.** It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court. **(emphasis supplied)**

30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of

the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or derecognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering Colleges. As has been pointed out earlier, the Central Act has been enacted by the Parliament under Entry 66 of the List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. **The provisions of the University Act regarding affiliation of technical colleges like the Engineering Colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.” (emphasis supplied)**

24. The aforesaid observations of the Supreme Court in respect of the scope of powers and functions of AICTE apply with equal force to the scope and power of NCTE. As noticed herein above the NCTE has representation of all the States and even the Regional Committees have representation from the States/Union Territories in the region. The Rules and Regulations framed under the Act are required to be placed before the Parliament under Section 33 of the Act. Even if it were to be granted that the Respondent Nos.1 & 2 had the legislative competence to frame the guidelines by reference to Entry 25 of List III of the Seventh Schedule, since the field stands occupied by the Act, the Rules and the Regulations, the same would, in any case have overriding effect over the States guidelines. In **Jaya Gokul Educational Trust** (supra), the appellant was desirous of establishing a self financing engineering college and submitted its application to the University of Kerala as well as to the AICTE. An inspection team of the university recommended favorably the case of the appellant. AICTE also granted conditional approval for establishment of engineering and technical college. The appellant applied to the State Government for grant of its permission, which was refused by the Government. The same was challenged before the Court. The Supreme Court relied upon **Adhiyaman Educational and Research Institute** (supra) and in paras 22 and 23 of the said judgment held as follows:-

“22. As held in the Tamil Nadu case (1995 AIR SCW 2179), the Central Act of 1987 and in particular, Section 10(K) occupied the field relating the 'grant of approvals' for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the 'views' of the State Government. That could not be characterized as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(K) of the AICTE Act, 1987 and would again be void. As pointed out in the Tamil Nadu case there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in the Tamil Nadu case, it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for 'approval' of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University statute 9(7) merely required that the 'views' of the State Government be obtained before granting affiliation and this did not

amount to obtaining 'approval'. **If the University statute required 'approval', it would have been repugnant to the AICTE Act."** (emphasis supplied)

25. As noticed hereinabove, the aspect of extent and kind of accommodation that the institution should have, to be able to gain recognition for running the B.Ed. Course for Secondary Teacher Education has specifically been provided by the Council. Therefore, the prescription of respondent Nos.1 & 2 in that regard, contrary to the norms of NTCE is illegal and unenforceable by respondent No.1 to 3.

26. In ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*** (supra), which is a case relating to the NCTE and which relies on ***Adhiyaman Educational & Research Institute and Others*** (supra) and ***Jaya Gokul Educational Trust*** (supra), the Supreme Court in paragraphs 57 and 59 held as follows:-

"57. It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System "throughout the country". **NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to**

hereinabove, State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.

59. In accordance with the provisions of 1993 Act, final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all authorities in the light of the provisions of the Act and the law declared by this Court. It has been so held in **St. John Teachers training Institute."**

27. Keeping in view the aforesaid judicial pronouncements, I am of the view that the guidelines prescribed by respondent nos.1 and 2 dated 19.3.2008 for issue/revalidation of NOC to privately managed self financed institutions, in so far as they are in conflict with the requirements framed by the Council under the Act, are unenforceable. The requirement of infrastructure as laid down by the Council in Appendix 4 of the Regulations would prevail over guidelines laid down by respondents 1 and 2. In fact, respondent no.2 has no jurisdiction to lay down such like guidelines since the field already stands occupied by the Regulations framed by NCTE. Consequently the requirement laid down by respondents 1 and 2 in the guidelines to the effect that B.Ed course will be allowed to be run in a school building or complex that has been constructed on at least 2.5 acre plot situated in a conforming area cannot be enforced, and the petitioner cannot be denied the issuance of a No Objection Certificate merely on that ground. Under the Act, it is for the NCTE and its Regional Committee

to carry out inspection and to be satisfied with regard to the fulfillment of the conditions laid down in the regulations, and once the Regional Committee of the Council is satisfied with regard to the fulfillment of those conditions, it is not for the State Government to lay down or enforce its own guidelines in regard to those very matters which have already been considered and examined by the Council and its Regional Committee.

28. I also find force in the petitioners' submission that the conduct of the respondents 1 and 2 has been discriminatory qua the petitioner. No explanation has been offered by the respondent as to why Guru Ramdas College of Education, which had secured only 860 marks as opposed to the petitioner's 1505 marks, was granted a No Objection Certificate, while the petitioner was denied the same. There is also no explanation offered as to why the petitioner's application, which was made in July 2007 was kept pending and the refusal to issue the No Objection Certificate itself was issued after the grant of recognition by the Council on 14th May, 2008. There is also no explanation offered as to why respondents 1 and 2 did not raise their objections within sixty days of the receipt of the communication dated 3rd January, 2008 issued by the Northern Regional Committee to the said respondents.

29. Much of the argument of Ms. Zubeda Begum was focused on the fact that the plot area allotted by the DDA to the petitioner was

1.43 acres only, for the purpose of setting up a middle school on which the petitioner was in fact running the Senior Secondary School, apart from the BCA three years course with a maximum intake of 60 students. The argument is that the petitioner appears to be short of space, both open and covered and therefore, is not in a position to provide proper facilities for the purpose of running the B.Ed programme. In this regard the submission of learned counsel for the petitioner is that for the purpose of running the proposed institute it has set up a separate building with covered area on 2575.79 sq.mt over land having an area of 3184.23 sq.mt. The covered area earmarked for B.Ed institute is 1500 sq. mt., and even after providing 810 sq.mt for the BCA course, there is still a surplus covered area of 265 sq.mt.

30. The aforesaid submission of Ms. Zubeda Begum appears to be misplaced and cannot be accepted for various reasons. Firstly, there is no dispute that the respondents have permitted various other schools to set up private self financed institutions to run the B. Ed. course in affiliation with respondent no.3 university. In fact, even the guidelines dated 19.3.2008 specifically permit the same under para C(2). That is how even Guru Ram Das College of Technical Education has been permitted to set up its institute. Learned counsel for the petitioners have drawn my attention to the joint inspection report in respect of Guru Ram Das College of Education which specifically states

the fact that the institution for running the B.Ed course is proposed to be set up within the same complex in which Guru Harkishan Public School is running.

31. Secondly, the inspection report in respect of the petitioner's institution also leaves no manner of doubt that respondent Nos.1 & 2, at the time of recording their recommendation in favour of the petitioner were conscious and aware of the fact that within the same complex, Kamal Educational Welfare Society was running a Senior Secondary School. Had the said fact been the reason to object to the setting up of the institute in question, there would have been no question of the joint assessment committee recommending the case of the petitioner.

32. Thirdly, a perusal of the record of the Northern Regional Committee of NCTE shows that even the said Committee was fully aware of and conscious of the fact that in the same complex, in a separate building, the petitioner is running its Senior Secondary School and that some of the facilities would be shared by the proposed institute with the institution running the BCA course, while others would be shared with the senior secondary school. The relevant noting on the records of the Northern Regional Committee of NCTE read as follows:-

“The institution at present is running BCA course in the same premises and constructed building. It has

created separate infrastructural facilities (for running B.Ed classes. A few of the facilities like reception room, toilets, drinking water, library, computer lab etc are planned to be shared for both the courses. It has appointed staff for the B.Ed. course and it will be joining after getting course. For the instructional facilities, they have arranged for the spacious, well furnished rooms including laboratories (science, integrated psychological lab, technological-cum-language lab, computer lab). In addition they have an audio visual room. The common room facilities drinking water and toilets are in proper condition. The institution has arranged for indoor game facilities. For the outdoor games facilities it is shared with school run by the same society. It has also an extra provision for the utilization of science lab, swimming pool and fitness campus belonging to neighbouring school owned by the society. It has created library facilities as per NCTE norm. The land is in possession of the society and DDA has permitted to run the B.Ed. course (copy of the minutes attached)."

33. Mr. Saini has also argued that respondents 1 and 2 cannot seek to take a defence which is contrary to the reasons contained in the impugned order dated 22.5.2008. The only reason contained in the order dated 22.5.2008 for the refusal to grant NOC to the petitioner is that total area of the petitioner's school is 1.43 acres which is not covered under the policy guidelines. Mr. Saini has argued that the grounds taken by respondents 1 and 2 in their reply/affidavit are in fact an afterthought and it is not permissible for the respondents to take such grounds. This submission of the petitioner appears to be well founded and is supported by the decision of the Supreme Court in ***Hindustan Petroleum Corporation Ltd Vs. Darius Shapur Chennai & Ors***, JT 2005 (8) Supreme Court 470. The Supreme Court

while dealing with a similar argument in this decision has held as follows:-

“28. Submission of Mr. Chaudhari to the effect that the circumstances pointed out in the counter-affidavit filed in WPMP No.27633 of 2003 should be held to be substituted for the reasons which the State must be held to have arrived at a decision, cannot be countenanced. When an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or the grounds available therefore in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit de’hors the order or for that matter de’hors the records.

29. In Commissioner of Police, Bombay v. Gordhandas Bhanji, it is stated: -

“.....We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer marking the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

30. Yet again in Mohinder Singh Gill (supra), this Court observed:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later

brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji.”

31. Referring to Gordhandas Bhanji (supra), it was further observed:

“Orders are not like old wine becoming better as they grow older.”

34. The submission of the respondent No.3 GGSIP University that it is not bound to grant affiliation to the petitioner institution despite the recognition granted by Council does not appear to hold water, particularly in the facts of this case. In ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*** (supra), the Supreme Court has dealt with this aspect of the matter in paragraphs 62 & 63, which read as follows: -

“62. Before parting with the matter, we may state that at one stage, the High Court has observed that "in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted under Section 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted under Section 82 of the Maharashtra University Act. **To that extent the provisions of Section 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void**". (emphasis supplied)

63. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by

NCTE under Section 14(6) of the Act, every university ('examining body') is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases."

35. Even otherwise, the only reason cited by GGSIP University for not granting affiliation to the petitioner for the said B.Ed. 1 year Course is the lack of NOC from the Govt. of NCT of Delhi. No other reasons have been disclosed by the said University for non-grant of its affiliation to the petitioner institution. Since I have held that respondent Nos.1 & 2 are not entitled to enforce the guidelines dated 19.03.2008 against the petitioner, and have no power to refuse the issuance of NOC to the petitioner once recognition has been granted to it by the Council, I reject the argument of GGSIP University that it is open to it not to grant its affiliation, particularly in the facts of this case.

36. I must also comment on the mind set of respondents 1 and 2 as is evident from their reply produced before me. The stand of the respondent as disclosed from their reply shows their continued affliction with, if I may say, the disease of "*licence raj*". Respondents 1 and 2 purport to arrogate themselves the power to carry out inspections on a *yearly basis* so that the affiliation granted by respondent no.3 university has to be got renewed each year after an inspection. Such a policy can only lead to corruption and put unnecessary burden on institutions which have been found eligible for recognition by the NCTE and are granted affiliation by the respondent

university. In respect of matters which fall within the domain of NCTE to consider, for the purpose of grant of recognition, and for the continuance of the same, the State Government in my view would have no jurisdiction to, of its own, undertake the exercise of inspection on a yearly basis. However, if in a given case the State Government were to become aware of any circumstance which would disentitle the institution to continue, with either its recognition or affiliation with the University, it may be open to the State Government to take up the issue with the Council, its Regional Committee or the University, as the case may be. As noticed hereinabove, the State has ample representation in the Council and the Regional Committee.

37. For the aforesaid reasons, the writ petition is allowed and the Rule is made absolute. The impugned communication dated 22.5.2008 issued by respondents 1 and 2 is hereby quashed. I further direct respondent no.3 GGSIP University to grant of affiliation to the petitioner institute for the 1 year Secondary Teacher Education Programme leading to the B.Ed. degree without insisting upon the issuance of a No Objection Certificate by respondents 1 and 2 with maximum intake of 100 students. Respondent No.3 university shall without delay allocate students to the petitioner's institution from the merit list prepared by it on the basis of the Common Entrance Test, 2008 for the academic session 2008-2009. Considering the fact that the respondent Nos.1 & 2 have issued the impugned communication

dated 22.5.2008 in the face of the Supreme Court's pronouncement in ***Sant Dnyaneshwar*** (supra), the petitioner shall also be entitled to costs quantified at Rs.10,000/- to be paid by respondents 1 and 2.

**VIPIN SANGHI
JUDGE**

JULY 21, 2008
as/aj/rsk