

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

Date of decision: 13th August, 2010

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W.P.(C) No.4771/2010

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**GITARATTAN INSTITUTE OF ADVANCED
STUDIES & TRAINING**

..... PETITIONER

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates

Versus

DIRECTOR HIGHER EDUCATION & ANR. RESPONDENTS

Through: Ms. Sana Ansari, Advocate for Ms.
Zubeda Begum, Advocate for R-1.
Mr. Mukul Talwar, Advocate for R-2.
Mr. Ayushya Kumar, Advocate for R-3.

AND

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W.P.(C) 5244/2010

**SURAJMAL MEMORIAL EDUCATION
SOCIETY (REGD.)**

..... PETITIONER

Through: Mr. Naresh Kaushik with Ms. Amita
Kalkal Chaudhary & Mr. Aditya
Vikram, Advocates

Versus

**ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION & ORS**

..... RESPONDENTS

Through: Mr. Mayank Manish, Advocate for Mr.
Amitesh Kumar, Advocate for R-1.
Mr. Mukul Talwar & Mr.
Sradhananda Mohapatra, Advocates
for R-2.
Ms. Sana Ansari, Advocate for Ms.
Zubeda Begum, Advocate for R-3.

AND

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W.P.(C) 5404/2010

**PRADEEP MEMORIAL COMPREHENSIVE
COLLEGE OF EDUCATION & ANR**

..... PETITIONER

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates

Versus

GGSSIP UNIVERSITY & ORS

..... RESPONDENTS

Through: Mr. Mukul Talwar, Advocate for R-1.
Mr. Ayushya Kumar & Ms. Aruna
Tiku, Advocates for R-3.

AND

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W.P.(C) 5415/2010

**GITARATTAN INTERNATIONAL
BUSINESS SCHOOL & ANR**

..... PETITIONERS

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates.

Versus

GGSSIP UNIVERSITY & ORS.

..... RESPONDENTS

Through: Mr. Mukul Talwar, Advocate for R-1.
Mr. Rajiv Nanda & Ms. Rachna
Saxena, Advocates for R-2.
Mr. Mayank Manish, Advocate for Mr.
Amitesh Kumar, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. All these petitions are directed against the refusal of the Guru Gobind
Singh Indraprastha University (hereinafter called the University) to grant

affiliation to the petitioners inspite of the petitioner in each of the cases having been granted recognition either by the All India Council for Technical Education (AICTE) or by the National Council for Teacher Education (NCTE) with respect to the courses for which affiliation is sought. It is the contention of the counsel for the petitioner in each of the cases that upon recognition by AICTE or NCTE, the University is left with no choice in the matter of grant of affiliation and is bound to grant such affiliation. Before considering the legal aspect, it is deemed expedient to narrate the factual controversy in each of the cases.

WP(C) No.4771/2010

2. The petitioner has been imparting education in B.Ed. programme; as per the NCTE Act, 1993, only the Institutes running B.Ed. programme are eligible to offer M.Ed. course; the petitioner applied to NCTE for recognition for imparting education in M.Ed. course from the same campus from where the B.Ed. course was being conducted; the NCTE on 6th July, 2004 granted such recognition to the petitioner for M.Ed. course. The petitioner further pleads that even prior thereto, the respondent no.1 Directorate of Higher Education, Govt. of NCT of Delhi had on 30th December, 2000 granted a “No Objection” to the petitioner for M.Ed. course. It is the case of the petitioner that it had written to the University on 19th August, 2002 enquiring the curriculum for M.Ed. course; that the University on 28th December, 2002 forwarded to the petitioner the Syllabus

& Examination Scheme for M.Ed. course with a copy to the Northern Regional Committee (NRC) of the NCTE. The petitioner on grant of recognition by NCTE on 6th July, 2004, approached the University for affiliation for M.Ed. course; on 10th April, 2008 another application for affiliation was made to the University; that on 16th February, 2009 a third application for affiliation for M.Ed. course was made. The University finally on 23rd March, 2009 informed the petitioner that its request for affiliation for the current academic year could not be considered and the matter had been referred to the Directorate of Higher Education, Govt. of NCT of Delhi. The Directorate of Higher Education, Govt. of NCT of Delhi on 2nd April, 2009 refused “No Objection Certificate” to the petitioner for M.Ed. course on the ground that as per existing policy guidelines, B.Ed. / M.Ed. courses could be allowed to run in school buildings or complex constructed on land admeasuring at least 2.5 acres situated in a conforming area and which requirement is not fulfilled by the petitioner.

3. On 9th April, 2009, the University informed the petitioner that the High Powered Committee of Experts constituted by the University had not recommended M.Ed. programme at affiliated Institutions. The petitioner continued to correspond with the respondents. The petitioner ultimately on 16th April, 2010, applied for affiliation for M.Ed. course for the fourth time. The said application of the petitioner was however returned pointing out certain deficiencies therein. The petitioner claims to have rectified the

deficiencies. However, the petitioner was again informed that M.Ed. programme was presently being offered by the University School of Education only and not in any of the affiliated Institutes / Colleges and asking the petitioner to submit an undertaking that if its request was considered further by the University, it shall be bound by the said decision of the University. The petitioner then filed this petition for issuance of mandamus directing the University to grant affiliation and for quashing of the letters aforesaid of the Directorate of Higher Education, Govt. of NCT of Delhi and the University refusing “No Objection Certificate” and affiliation respectively to the petitioner. Notice of the petition was issued but the application of the petitioner for interim relief was dismissed. NCTE was subsequently added as a respondent in the petition.

WP(C) No.5244/2010

4. The petitioner has been imparting education in some Degree Courses after obtaining approval from the respondent no.1 AICTE. The AICTE for the period 2008-10 approved intake of 360 students in the College of the petitioner in various courses; the AICTE in the year 2008 issued notification / advertisement inviting applications for running second shift in the existing technical institutions; the petitioner applied to AICTE for approval for running the second shift with 180 seats, being 50% of the 360 seats approved in the first shift. AICTE vide its letter dated 30th June, 2009 approved intake of 120 students only in the second shift in the courses of

Computer Science & Engineering and in Information Technology with 60 seats in each; the University also granted affiliation for second shift with 120 seats. The petitioner in 2010-11 sought approval from AICTE for 360 seats in first shift and 180 seats in the second shift and which was approved on 13th July, 2010. The petitioner on 19th July, 2010 applied to the University for affiliation for current year with seats aforesaid. The University and the Govt. of NCT of Delhi however approved intake of 240 seats in the first shift and 120 seats in the second shift. The petitioner preferred an appeal to the University and where after the University and the State on 2nd August, 2010 approved intake of 360 seats in the first shift (i.e. same as permitted by AICTE) but intake of only 120 seats in the second shift as against 180 permitted by AICTE.

5. The petitioner impugns the refusal of affiliation for 180 seats in the second shift as arbitrary. It is contended that once the infrastructure for 360 students is deemed sufficient for the first shift, there is no basis whatsoever for confining the intake in the second shift to 120 only instead of 180 as approved by AICTE. The petitioner thus seeks a writ commanding the University and the State to grant approval to the petitioner for 180 seats instead of 120 seats in the second shift.

6. Though no counter affidavit has been filed but the counsel for the University on the basis of the Minutes of the Forty Fifth (Emergent) Meeting of the Board of Affiliation of the University contended that the

built up area available with the petitioner is 9811 sq. mtrs. instead of 11232 sq. mtrs.; it is contended that as per AICTE handbook also the requirement is of 100% fulfilment of condition relating to built up area for approval of second shift; that though the petitioner was not entitled to affiliation for second shift for the current year but since the said discrepancy had not come to light in the previous year and the petitioner had been permitted to admit 360 students in the first shift and 120 students in the second shift, the same was decided to be continued for the current academic year also. It is stated that until the built up area is brought as per the norm, the petitioner cannot be permitted to enhance the strength of the second shift from 120 to 180 seats.

WP(C) No.5404/2010

7. The petitioner has been recognized for B.Ed. programme by the NCTE since the year 2001 and has been affiliated to the University for the said programme. The NCTE on 29th October, 2009 granted recognition to the petitioner to run M.Ed. course of one year duration with annual intake of 25 students and subject to obtaining affiliation thereof; the petitioner applied to the University for affiliation for M.Ed. course for the academic session 2010-11. The University however following its policy aforesaid of imparting education in M.Ed. course from its own Institute only and not from any of its affiliates, declined. In the meanwhile, NCTE taking note of the acute shortage of trained Post Graduate Teachers (PGT) has allowed

enhancement of intake capacity of petitioner for M.Ed. course from 25 to 35 students with effect from the academic year 2010. The petitioner seeks mandamus against the University to grant affiliation to the petitioner for M.Ed. course.

8. Again, though no counter affidavit has been filed but the counsel for the University has contended that the university has valid reasons for not granting affiliation to any private Institute for M.Ed. course. It is contended that the University at present has no infrastructure to regulate the M.Ed. course and to hold examination therefor in the affiliated Colleges. Minutes of the Meeting of the University held on 1st April, 2009 are handed over in this regard. It is contended that the grant of affiliation is in the discretion of the University and no mandamus to exercise discretion in a particular manner can be issued. Reliance in this regard is placed on *M/s Chingleput Bottlers Vs. Majestic Bottling Company* AIR 1984 SC 1030. It is further stated that it is not as if University is discriminating against the petitioner; the affiliation for M.Ed. course is not being granted to any Institute. It is further stated that the affiliation is not being refused for all times to come but for this year only and if the University is able to regulate and build up infrastructure for M.Ed. course, the applications for affiliation in the coming years shall be considered.

9. The counsel for the petitioner has controverted by contending that the University having commenced the M.Ed. course itself now has a syllabus

for the M.Ed. course and the examinations are to be conducted by the respective Colleges and there is no basis for the University to refuse affiliation for M.Ed. course. It is also urged that the University has to act by Ordinances only and no Ordinance refusing affiliation has been issued.

WP(C) No.5415/2010

10. The petitioner obtained recognition from AICTE for MBA course of two years duration with an intake of 60 students in the morning shift in the year 2004. Subsequently, the intake was permitted by AICTE to be increased to 120. The University has also affiliated the petitioner for the said course and the said affiliation has been continued from time to time.

11. The petitioner for the academic session 2010 applied to the University for increase in intake for the morning shift from 120 to 180 and also for starting a second shift. AICTE on 19th July, 2010 granted permission to the petitioner for increase of intake for the morning shift from 120 to 180 and also to start the second shift with an intake of 60 students. The petitioner approached the University for affiliation accordingly. Upon the University failing to respond, the present petition has been filed.

12. The counsel for the petitioner has contended that AICTE before granting approval also seeks the approval of the University and if the University has any objection, it ought to object then and cannot now have any ground for objection.

13. Again though no counter affidavit has been filed but the counsel for the University has informed that prayer of the petitioner for increase of seats from 120 to 180 is under consideration. It was however informed that the application for affiliation for a second shift with an intake of 60 students has been rejected for the reason of MBA being a full time course and being not permitted to be done as a part time second shift course.

14. The counsel for the petitioner rejoins by contending that it is for the AICTE to determine whether two shifts of MBA programme are to be permitted or not and the University cannot sit in judgment over the decision of the AICTE.

15. The counsels for the petitioners have based their cases on the following judgments:

(i) ***State of Tamil Nadu Vs. Adhiyaman Educational & Research Institute*** 1995 (4) SCC 104.

(ii) ***Jaya Gokul Educational Trust Vs. Commissioner & Secretary, Higher Education Department, Kerala*** (2000) 5 SCC 231.

(iii) ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya*** (2006) 9 SCC 1.

(iv) Judgment dated 21st July, 2008 of this Court in WP(C) No.4244/2008 titled ***Trinity Institute of Higher Education Vs.***

Govt. of NCT of Delhi and appeal of the University where-
against being LPA No.542/2008 is informed to have been
withdrawn.

16. Per contra, the counsel for the University relies on the full bench judgment of the Madras High Court in *Rukmani College of Education Vs. State of Tamil Nadu* AIR 2008 Madras 127 holding that if the University were to be held to be bound to grant affiliation even if a particular Institution does not conform to the standards or does not meet the requirements of the Act, Statutes, Ordinances and Regulations of the University, it may have the effect of destroying the very autonomy of the University. It was held that NCTE and AICTE constituted under Central Statutes and the Universities constituted under local Statutes are required to act harmoniously. It was further held that the University is entitled to independently satisfy itself of the fulfilment of its criteria.

17. Though the petitions concern two different central bodies constituted for granting recognition for different courses i.e. AICTE and NCTE, governed by separate Statutes but the matters have nevertheless been taken up together, finding the issue involved to be same and to analyse the matter in the conspectus of myriad reasons for which a University may deny affiliation.

18. The University was established under the Guru Gobind Singh Indraprastha University Act, 1998 enacted by the Legislative Assembly of

NCT of Delhi. Section 4(2) of the said Act provides that no College or Institution situated within the jurisdiction of the University (i.e. the National Capital Region) shall be “compulsorily affiliated” to the University and “affiliation shall be granted by the University” only to such College or Institution as may agree to accept the Statutes and Ordinances of the University. Section 16 of the Act constitutes the “Board of Affiliation” as an authority of the University. Section 21 makes the said Board of Affiliation responsible for admitting Colleges and Institutions to privileges of the University. Section 28 empowers the authorities of the University (and of which Board of Affiliation is one) to make Regulations for conduct of their business. Statute 24 of the University relates to the conditions under which Colleges & Institutions may be admitted to the privileges of the University. One of such conditions is that it has been granted a No Objection Certificate by the concerned State Government and recognition by the appropriate statutory authority wherever applicable, for the subjects and courses of study for which affiliation is sought. Other conditions relate *inter alia* to i) suitable and adequate physical facilities in terms of space, accommodation, laboratories, workshops, equipments, library, furniture, infrastructural facilities etc; ii) existence of teachers and other employees having qualification and eligibility criteria and in such numbers as per norms laid down by the University; iii) the College / Institution agreeing not to admit students in excess of number permitted by the University, etc. Statute 24 further provides that it shall be open to the University to reject a

request for affiliation or to grant it in whole or in part mentioning subjects and courses of study and number of students to be admitted. The University is also required to inspect the College / Institution seeking affiliation and empowered to suspend and withdraw affiliation.

19. It will thus be seen that the Act under which the University has been established does not require the University to grant affiliation to College / Institution or courses recognized by statutory authorities as AICTE and NCTE automatically. Rather, wherever such recognition is applicable the same is but one of the conditions for affiliation.

20. The petitioners seek such automatic affiliation on the basis of judgments aforesaid relied by them. It thus has to be examined whether the said judgments lay down for automatic affiliation without the University, following the Act under which it is established and its Statutes.

21. The Supreme Court in *Adhiyaman Educational & Research Institute* (supra) held that in the case of Institutes imparting technical education, it is not the University Act but the Central Act (i.e. the AICTE Act, 1987) which will have jurisdiction; and to that extent the provisions of the University Act will be deemed to have become unenforceable. It was however held that the provisions of the University Act regarding affiliation 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 AICTE in respect of matters entrusted to it under Section 10 of the AICTE Act.

22. Similarly, in *Jaya Gokul Educational Trust* (supra) also, the Supreme Court while holding that the University, for granting affiliation was not required to seek approval of the Government did not hold that the University should have granted affiliation but only held that the University ought to have considered the grant of affiliation on the basis of permission granted by AICTE and other relevant factors in the University Act or Statutes which are not inconsistent with the AICTE Act or its Regulations. The Supreme Court disposed of the matter with the direction to the University in that case to so consider the application for affiliation.

23. The Supreme Court in *Sant Dnyaneshwar* (supra) was not concerned with the University Act, but nevertheless set aside the judgment of the High Court under challenge before it insofar as holding the provisions of the Maharashtra University Act with respect to grant of affiliation to be null and void. It was observed that the provisions of the Maharashtra University Act with respect to grant of affiliation would not apply to an Institution covered by the NCTE Act, 1993. It was further held that as per the scheme of the NCTE Act, once recognition has been granted by the NCTE, under Section 14(6) of the NCTE Act, every University as an examining body is obliged to grant affiliation to such Institution; Sections 82 and 83 of the Maharashtra University Act were held to be not applicable in such cases.

24. A Single Judge of this Court in *Trinity Institute of Higher Education* (supra) after noticing that the only reason cited by Guru Gobind Singh Indraprastha University for not granting affiliation was the lack of NOC from Govt. of NCT of Delhi and holding that the Govt. of NCT of Delhi had no power to refuse issuance of NOC once recognition had been granted by the NCTE, directed the University to grant affiliation. The question as for consideration in these proceedings was not for consideration before the Single Judge in *Trinity Institute of Higher Education*. Before the Division Bench in LPA No.542/2008, the contention of the University was that the recognition granted by the NCTE was not in accordance with the NCTE Regulations, 2007 notified on 10th December, 2007. However, on clarification that the application of Trinity Institute of Higher Education for recognition having been filed on 12th November, 2007, the Regulations of 2007 were not applicable, the University withdrew the appeal.

25. It will thus be seen that the judgments in *Adhiyaman Educational & Research Institute* and *Jaya Gokul Educational Trust* recognize the right of the University to consider the application for affiliation, of course on parameters not inconsistent with those for recognition prescribed by AICTE and NCTE. Axiomatically, the University will have the right to reject the application for affiliation if satisfied that the said parameters are not fulfilled. There is thus no automatic affiliation as is sought to be urged by

the counsel for the petitioners. Of course, the impact of the observations aforesaid in *Sant Dnyaneshwar* remains to be seen.

26. In so far as Institutions / courses within the domain of AICTE are concerned, the matter is no longer *res integra*. The Division Bench of this Court in *Rahul Dhaka Vikas Society Vs. Guru Gobind Singh Indraprastha University* AIR 2001 Del 154, i.e. before *Sant Dnyaneshwar*, held that it is not obligatory for the University to grant affiliation to an Institute granted recognition by NCTE. The word “shall” in Section 14(6) was held to be read as “may”. Recognition and affiliation were held to be two separate functions. It was further held that normally affiliation should not be refused on grounds covered by Section 14(3) of the NCTE Act and with respect whereto NCTE has already satisfied itself; however the same was held to be not an absolute rule and University was held to have a right to satisfy itself about the fulfilment of conditions for affiliation in accordance with its Act, Statutes etc. It was further held that there may be other valid considerations which may compel the University to still refuse affiliation since it is the University which confers the Degree and it is the credibility, reputation and goodwill of University which is at stake. I may mention that the same Division Bench which decided *Rahul Dhaka* (supra), in *University of Delhi Vs. Shri Karan Ahuja* MANU/DE/0628/2002 applied the same principle to AICTE recognized Institutions and courses also.

27. What has to be considered by this Court is whether what has been held by the Division Bench of this Court in ***Rahul Dhaka*** stands impliedly overruled by ***Sant Dnyaneshwar***. The Single Judge in ***Trinity Institute of Higher Education*** had no occasion to go into the said question since affiliation in that case was refused only on the ground of absence of NOC from the State and which NOC was held to be not required in terms of ***Sant Dnyaneshwar***.

28. With all humility I state that my study shows that the Supreme Court in ***Sant Dnyaneshwar*** was not concerned with the powers of the University to grant or refuse affiliation and which as aforesaid were upheld in ***Adhiyaman Educational and Research Institute*** and ***Jaya Gokul Educational Trust***. The Supreme Court in ***Sant Dnyaneshwar*** was only concerned with the NOC required from the State Government; after holding the said NOC to be not required, the requirement in the University Act for the said NOC was held to be not applicable to Colleges/Institutes governed by the NCTE Act. The Supreme Court thus had no occasion to consider whether the University was entitled to satisfy itself as to fulfilment of other conditions for affiliation and which right of the University was upheld in ***Adhiyaman Educational and Research Institute*** and ***Jaya Gokul Educational Trust*** and which were not dissented from.

29. It is a well established principle that a judgment is a precedent on what it decides and on what is for decision before the Court. Reference in this

regard may be made to (i) *State of Orissa Vs. Sudhansu Sekhar Misra* AIR 1968 SC 647 (ii) *Sreenivasa General Traders Vs. State of A.P.* (1983) 4 SCC 353 (iii) *Union of India Vs. Dhanwanti Devi* (1996) 6 SCC 44 and (iv) *Government of Karnataka Vs. Gowramma* (2007) 13 SCC 482. I respectfully observe that *Sant Dnyaneshwar* does not foreclose such right of the University.

30. I therefore find merit in the contention of the counsel for the University that the University is not bound to grant affiliation merely on the Recognition Certificate issued by the AICTE or NCTE being produced. The right of the University to so satisfy itself has not been taken away by the NCTE Act or by the AICTE Act.

31. In the light of the aforesaid legal position, the next question which arises for consideration is whether any of the reasons given by the University for refusing affiliation in the present case are such which it is not entitled to take owing to the same being in conflict with the parameters of recognition laid down by AICTE or NCTE.

32. However, before doing so it is deemed expedient to have a look at the NCTE and AICTE Act and the Rules and Regulations framed thereunder.

33. Regulation 7(9) of the NCTE Regulations, 2009 providing for “Processing of Applications” for recognition provides for issuance first of a Letter of Intent only with copy to the affiliating body / University with the request that the process of appointment of qualified staff as per policy of State Government or University Grants Commission or University may be initiated and the Institution be provided all assistance to ensure that the staff or faculty is appointed as per NCTE norms. It is only upon approval by the affiliating body of the faculty appointed that the Institution becomes entitled to recognition under Regulation 7(11). Regulation 8 while prescribing conditions for grant of recognition, in sub-Regulation 12 again provides that the University / examining body shall grant affiliation only after recognition by NCTE and further provides that admissions shall be made by the Institution only after affiliation by the University or the affiliating body and as per State policy.

34. It will thus be seen that the recognition procedure by the NCTE expressly recognizes affiliation and fulfilment of conditions prescribed by the University for affiliation and rather relies on the exercise required to be undertaken by the University before granting affiliation. The Regulations nowhere do away with the right of the University to grant or not grant affiliation.

35. Though the AICTE Act does not contain any provision equivalent to Section 14(6) of the NCTE Act, but the AICTE (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for the Courses or Programmes) Regulations, 1994 do provide for scrutiny and verification of the information contained in the application for recognition submitted to the AICTE by the concerned University and satisfaction of the University as to the viability of the Institution. I do not find anything in the Approval Process Handbook of AICTE also which would prevent the University from satisfying itself of the affiliation requirements.

36. Of course, the affiliation requirements of the University have to be in consonance with AICTE and NCTE norms and cannot be inconsistent therewith as held by the Supreme Court. I see no harm in such dual check over Institutions which are going to shape the careers of the future of the country. The ground realities in our country are such which do not enable the students or their parents to make a choice in the matter of seeking admissions. The demand for Colleges/Institutes remains several times more than the supply. Moreover, the education sector has comparatively recently only been opened to the private sector and which is guided more by financial rather than altruistic motives. The possibility of half-baked Institutions without being fully equipped to impart education, in their zeal to start earning opening up their gates to gullible students cannot be ruled out. This

Court also cannot be oblivious to the recent happenings. The regulatory bodies particularly as AICTE & NCTE being in their nascent stage are yet to firmly strike their roots. The newspapers of 22nd August, 2010 also have reported the sad state of affairs prevailing at least in the Northern Regional Committee (NRC) of the NCTE. A High Powered Committee constituted for the said purpose has found irregularities in grant of approvals / recognition by the NRC. It has been reported that recognitions have been granted to Institutes which did not deserve recognition. In such state of affairs, the time is not right, at least as of now, to eliminate the second tier provided by the Universities in evaluating whether the Institute recognized is in a position to provide education to the students whom the University will examine and grade. There have been other similar allegations against other similar regulatory bodies as the Medical Council of India.

37. I have wondered the need for affiliation to the University inspite of the recognition by NCTE or AICTE. The said need arises because NCTE and AICTE are not examining bodies. Though NCTE and AICTE hold an Institution to be capable of imparting education in a particular course but the said bodies are not concerned with the syllabus, curriculum and holding examinations for the students admitted to the said Institutions. Another Division Bench of the Madras High Court in ***Loordhu Ammal Educational Trust Vs. The University of Madras*** MANU/TN/0517/2005 held that

University is a centre of higher learning and naturally has to maintain its reputation and it will like to grant affiliation only to a College which has proper facilities, qualified staff and financial resources. The Division Bench hypothetically considered the case of obtaining recognition from NCTE fraudulently. Another Division Bench of the Bombay High Court in ***Dr. D.Y. Patil Educational Academy Vs. The Director of Technical Education, Government of Maharashtra*** MANU/MH/0755/2008 also held that the role of the University cannot be wiped out entirely. A Single Judge of the Madras High Court in ***Annai J.K.K. Sampoorani Ammal Charitable Trust Vs. Bharathiyar University*** MANU/TN/7785/2006 also held that the provisions of NCTE Act are not intended to dwarf the Universities – a mere grant of recognition would be of no use as students cannot be imparted training and consequently obtain Degree in the absence of affiliation – it is the University which is to ensure as to whether the students had put in minimum attendance and had undergone the course in the prescribed syllabi and had been imparted training by qualified teachers before allowing such students to write the examinations. I may notice that a three-Judge Bench of the Supreme Court in ***State of Tamil Nadu Vs. S.V. Bratheep*** (2004) 4 SCC 513 relying on ***Dr. Preeti Srivastava Vs. State of M.P.*** (1999) 7 SCC 120 held that a State has the right to control education so long as the field is not occupied by any Union legislation. It was held that eligibility for admission has a connection with the standard of education and the power of the State to prescribe higher eligibility conditions for admission than prescribed by

AICTE was upheld. It was further held that prescription of standards in education is always accepted to be an appropriate exercise of power by the bodies recognizing the Colleges or granting affiliation like AICTE or the University and if in exercise of such power the prescription has been made, it cannot be said that the whole matter has been foreclosed. A Single Judge of this Court in *Abhijay Vs. A.I.C.T.E.* MANU/DE/7951/2007, relying on *Bharathidasan University Vs. AICTE* 2001 (8) SCC 676 and scanning through the provisions of the AICTE Act and the University Grants Commission Act, 1956 in juxtaposition, held that the role of AICTE vis-à-vis the Universities is only advisory, recommendatory and a guiding factor.

38. Even otherwise, the students flock to any College / Institute owing to the University to which it is affiliated. The ultimate purpose of education is to enable the students passing out from the said Institute, to deal with their life and also to provide vocation to them. The prospective employers judge the merits of the prospective employees by their qualifications and in which the University forms a relevant criteria. It is for this reason only that Universities which have maintained high standards command a better premium than other Universities. It is for this reason only that an Ivy League amongst Universities has been formed. Passing from an Ivy League University opens doors to a better future which passing out in the same course from another University does not. Thus, it cannot be said that upon the promulgation of the NCTE and the AICTE Act, the University has lost

its significance. The role to be performed by the University in relation to the Colleges / Institutes even though recognized by such bodies as AICTE / NCTE cannot be undermined and stands in its own place. All that the Supreme Court in the judgments aforesaid has held is that the University cannot prescribe a criteria different from that prescribed in the AICTE Act or in the NCTE Act. The very fact that Institutions recognized by NCTE and AICTE still feel the need to affiliate to the University shows that none would join the said Institutions unless they fall under the wings of a University. Such private institutions if permitted to hold their own exams, would be no different from commercial ventures, who in their zeal to earn for themselves and to attract more and more students, would not fail any of the students and such students even after passing out from the said institutions would not be found equipped by the employers for whom they are being readied.

39. Over the years the mode of examining the students has also changed. While earlier the students were examined only on the basis of annual examinations, the trend now is for a 'Continuous Comprehensive Evaluation'. The role of the University in the said modern system is thus not only to hold the annual examination but to also ensure that the Continuous Comprehensive Evaluation to be done by the individual College / Institute is being done in a manner behoving the standards of the University. As aforesaid, AICTE or NCTE is not concerned with the said aspect at all.

Thus the University is entitled to lay down conditions for affiliation to satisfy itself that the College / Institute will be able to deliver the syllabus and the curriculum and with which aspects as aforesaid NCTE and AICTE are not concerned. Earlier the education sector, particularly post- school, was controlled entirely by the State. In the last decade or so, private participation in education has been promoted. Education since then is the sunrise industry with each and every industrial house venturing into the same. However, it is in the public interest to maintain the standards in education. The place which the country has marked for itself today on the world map is owing to a large well qualified, skilled and educated force. Indians are recognized world over as competent to deliver the tasks assigned to them. Such advantage cannot be permitted to be lost by lowering the standards of education and which is likely to be the result if the Universities are held to have become mere rubber stamps, on recognition being granted by AICTE and NCTE.

40. Axiomatically, it follows that conditions for affiliation prescribed by the University for the aforesaid purposes cannot be said to be in conflict with the norms and standards of recognition prescribed by AICTE or NCTE inasmuch as AICTE and NCTE are not concerned with the aspects the responsibility whereof rests exclusively with the University.

41. I will now in the light of above proceed to examine whether any of the reasons given by the University for refusing affiliation inspite of recognition by AICTE and NCTE can be said to be inconsistent with the Norms of AICTE and/or NCTE.

42. In as far as the decision of the University with respect to M.Ed. course is concerned, the same is understandable. It cannot be lost sight of that the respondent University is itself in its nascent stage having been set up only in or about the year 1998. Nothing wrong can be found in the version of the University of at the moment being not equipped to hold examination for M.Ed. course if allowed in the affiliates of the University. The University however cannot take a policy decision to never allow affiliates at any point of time to conduct M.Ed. course. It is expected that the University before the commencement of the next academic year would gear itself up to examine and regulate M.Ed. course in its affiliates also. The High Powered Committee constituted by the University relating to conduct of M.Ed. Programme at affiliated Institutions found (as recorded in the Minutes dated 1st April, 2009 supra) that affiliated Institutions are neither equipped technically nor intellectually to meet the academic requirements. It was felt that in the affiliates, despite the infrastructural resources, quality programme implementation was refusing to click and orchestrate well in terms of academic resources. With respect to the petitioner in WP(C) No. 4771/2010, it was expressly noted that though the Institute was required to make

permanent arrangement for running the Institution, but continued to run in the same Campus and had not shifted to a permanent Campus. It was also noticed that the recognition granted by the NCTE in any case was subject to fulfilment of requirements prescribed by other regulatory bodies. The University being not satisfied with the fulfilment of its requirement by the said petitioner thus decided to refuse affiliation. The University till recently was not offering the M.Ed. course. It could not be compelled to grant affiliation for a course which it was not offering. If the University while commencing offering the said course chooses to make a tentative beginning by first offering it in its own Campus, no error can be found therewith. The University will have a firsthand experience while so conducting the course itself and will be able refine the same before offering it open to the affiliates.

43. I do not consider the reasons given by the University to be such which can be said to be in negation of the recognition granted by the NCTE.

44. Similarly, I find the reasons given for refusing permission to the petitioners in WP(C) No. 5224/2010 and WP (C) No. 5415/2010 to be within the domain of the University and not in negation of the recognition granted by the AICTE. The University has found the requisite infrastructure to be lacking and is not insisting upon any requirements in addition to the requirements laid down by the AICTE. It is definitely open to the University, as aforesaid to take a second look even on those parameters

which are common between the AICTE and the University. The counsel for the University has also drawn attention to the Approval Process Handbook of AICTE which lays down the condition of existence of 100% of built-up area to be fulfilled before granting the second shift. It is contended that when the petitioner in WP (C) No. 5244/2010 admittedly does not have 100% covered area, even if AICTE has committed a mistake in granting recognition, the same would not prevent the University from refusing affiliation for the second shift on that ground.

45. The refusal by the University to grant affiliation for second shift for the MBA course for the reason of the same being a full-time and not a part-time course is also understandable. There is a difference between having infrastructural and faculty resources to conduct another shift for MBA course and in teaching the syllabus for the MBA course meant as a full-time course on a part-time basis. While AICTE is concerned with the former only, the University is concerned with both. If the University starts offering MBA Degree through a part-time course also, it would definitely lower the value of the same MBA Degree awarded to those doing it on a full-time basis. Only the University is concerned with whether the syllabus and curriculum for MBA course requires a full day or only a part of the day and AICTE being not concerned with the course content and curriculum has no expertise to consider the said factor.

46. Statute 24 of the University in Clause 3(ii) (e) & (f) does provide for affiliation to be granted on satisfaction that the infrastructural and faculty requirements as per the norms laid down by the University in the Ordinance exist. Though no such Ordinance is shown but Ordinance 1 of the University in Clause 3(1) thereof provides for the University to satisfy itself that the applicant for affiliation fulfills all the conditions prescribed for affiliation by the Act, the Statutes, the Ordinances, the Regulations and the Instructions issued by the University from time to time. It thus cannot be said that the norms have to be contained in the Ordinance only. The same can be contained even in the Regulations and Instructions.

47. There is another aspect of the matter. The Courts would be slow in interfering with the decision taken by the educational bodies as the Universities. Once the University has rejected the request for affiliation, the Court cannot sit over the said decision as in appeal. The University has academic experts to take a decision not only with respect to courses to be offered, syllabus, curriculum but also the manner of conduct thereof. Once such experts have taken decisions as aforesaid, unless wrong in decision making process is shown, the Court cannot substitute its own opinion.

48. Before parting with the case, I may record that the counsels for NCTE and AICTE, on the basis of recognition granted by whom the grievance against the University was made, though appearing before this Court did not

set up any case of the University being bound to grant affiliation for the reason of recognition granted by them.

49. The petitions therefore fail and are dismissed. No orders as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

13th August, 2010

gsr

(corrected and released on 18th September, 2010)