

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

% Judgment reserved on : 21.08.2013
Judgment pronounced on : 02.09.2013

+ **W.P.(C) 4009/2013 & CM 11465/2013**

HARYANA SHAKTI COLLEGE OF EDUCATION..... Petitioner

Through: Mr. Sanjay Sharawat, Adv.

versus

DIRECTORATE OF HIGHER EDUCATION & ANR.

..... Respondents

Through: Mr. Mukul Talwar, Mr. S.
Mohaptra, Advs. for GGISP
University

Ms. Zubeda Begum and Ms. Sana
Ansari, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The issue in this writ petition is as to whether respondent no.2-IP Indraprastha University is entitled to refuse affiliation to its B.Ed Course to a college, an institute which is being run in a non-conforming area i.e. area which under the Master Plan/Zonal Development Plan cannot be used for running such an institute.

The petitioner before this Court is a Society which claims to be running a school under the name of `Haryana Shakti Higher Secondary

School', since the year 1945. On 27th February, 2012, the petitioner submitted a proposal to respondent No.2 Guru Gobind Singh Indraprastha University seeking affiliation for B.Ed. course, which it was seeking to start. The petitioner had earlier applied to respondent Northern Regional Committee of National Council for Teacher Education seeking recognition for the said course with intake of 100 seats. An inspection of the premises of the petitioner was carried out by a Joint Assessment Committee on 4-7-2012 and it was given recognition to the B.Ed. programme, with intake of 100 seats, for the Academic Year 2012-13. The name of the B.Ed. institute of the petitioner was included by the I.P. University for the second counseling for the Academic Year 2012-13 and the Board of Affiliation of the said University, in its meeting held on 6th September, 2012, approved grant of provisional affiliation to the petitioner, for the said course. According to the petitioner, it filled 7 seats under the management quota in the Academic Year 2012-13. On 15th January, 2013, the petitioner submitted a fresh proposal to the I.P. University seeking affiliation for the Academic Year 2013-14. Vide communication dated 16th May, 2013, the Govt. of NCT of Delhi, Directorate of Education, informed the University that since the petitioner

institution falls under the category of 'non-conforming area', as per the existing policy guidelines, NOC cannot be issued to it for the B.Ed. Programme for the Academic Year 2012-13. The said communication dated 16th May, 2013 was considered by the Board of Affiliation of the University in its meeting held on 5th June, 2013 and it was decided that since the NOC has not been issued to the petitioner for conducting B.Ed. programme for the Academic Year 2012-13, the provisional affiliation cannot be granted to the said institute for the Academic Year 2012-13 and its application seeking affiliation for the Academic Year 2013-14 cannot be processed. Being aggrieved from the decision of the Govt. of NCT of Delhi to refuse NOC and the decision of the University to grant affiliation, the petitioner is before this Court seeking the following reliefs:-

[a] Issue a **writ of certiorari** and quash the decision taken by the Respondent No.1 in terms of its letter dated 16.05.2013 [Annexure P-22] as the same is violative of its own policy guidelines dated 06.05.2011 [Annexure P-6] and consequently direct the said Respondent to issue the requisite NOC in terms of the said policy guidelines for 2012-13 academic session and for subsequent

years to enable the Petitioner to conduct B.Ed course from 2013-14 academic session; and

[b] Issue a writ of certiorari and quash the decision taken by the Respondent No.2 in its 57th meeting held on 05.06.2013 [Annexure P-25] thereby rejecting the proposal of the Petitioner for grant of affiliation for 2013-14 session and consequently direct the said Respondent to revalidate/extend the affiliation and include the name of the Petitioner in the 1st round of counseling commencing w.e.f. 20.06.2013 for conducting B.Ed course for 2013-14 academic session; ”

2. In its counter affidavit, the respondent No.1 Govt. of NCT of Delhi has stated that as per its policy guidelines dated 6th May, 2011, schools having 2.5 acres of land in conforming area can start/run B.Ed. courses and since the petitioner does not fulfill the aforesaid criteria, it is not entitled to run B.Ed. course. It is pointed out in the reply that the school of the petitioner society is situated in village Kanjhawala, on agriculture land and, therefore, the policy decision not to grant permission for fresh courses in the non-conforming areas applies to the petitioner.

3. In its counter affidavit, respondent No.2 I.P. University has stated that affiliation to the petitioner institute was refused by the Board of

Affiliation, on account of the letter dated 16th May, 2013 received from the Govt. of NCT of Delhi, informing that the petitioner institute falls in a non-conforming area.

3. The following issues primarily arise for consideration in this writ petition:-

“1) whether an NOC from the Government of NCT of Delhi is necessary before granting affiliation to an institute which has already been granted recognition by NCTE under Section 14 of the NCTE Act.

2) If Grant of NOC from the State Government is a pre-requisite condition for grant of affiliation by the University, whether respondent No. 1, Government of NCT was justified in refusing NOC to the petitioner on the ground that the petitioner-institute falls in a non-conforming area;

3) whether the petitioner-society can be directed to be affiliated with I.P. University, to run a B.Ed. institute in a building constructed on agriculture land.”

4. Clause 3(b) of Statute 24 of Guru Gobind Singh Indraprastha University reads as under:-

“3(ii)(b) 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 being sought”

It would thus be seen that this is a mandatory requirement of the Statute of the University that a college/institution seeking affiliation to the University must have been granted NOC by the concerned State Government.

5. Section 14 of NCTE Act, to the extent, it is relevant, reads as under:-

“14(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations;

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,--(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or

training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations;

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

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

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

6. In *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra*; (2006) 9 SCC 1, the petitioner-society, which was respondent before the Apex Court, was running a secondary school and desired to start B.Ed. course. It spent a huge amount to meet the requirement on infrastructure, library, staff, etc., submitted an application to the concerned University for affiliation and also paid the requisite affiliation fee. It also made an application to the National Council for Teacher Education (NCTE) for grant of permission to start B.Ed. college in accordance with the provisions of National Council for Teacher Education Act, 1993 and the National Council for Teacher Education (Norms & Conditions for recognition of Bachelor of Elementary Education) Regulations, 1995. After inspection by an Expert Committee,

NCTE granted permission to the petitioner for the proposed B.Ed. college. The petitioner then applied to Government of Maharashtra for grant of permission to start the college and include the name of the college in the Central Admission Process. The State Government passed an order to the effect that it had taken a policy decision not to grant NOC to any institution for starting new B.Ed. colleges for the said academic year. The petitioner filed a writ petition before Bombay High Court, seeking quashing of the said order. The State Government also challenged the decision of NCTE. The High Court held that Sections 82 and 83 of Maharashtra University Act, to the extent they required the University to grant affiliation only after permission was granted under Section 82 were null and void. Dismissing the appeal filed by the State Government, Supreme Court *inter alia*, held as under:-

“79. 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)

The above-referred decision of the Supreme Court came for interpretation before the Full Bench of Madras High Court in **Rukmani College of Education Kadayanallur v. State of Tamil Nadu & Ors.** AIR 2008 Madras 127, and the following view was taken:-

“23. The ratio in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) is entirely related to the insistence by the University for permission from the State Government to start a teacher training institute by taking recourse to Sections 82 & 83 of the Maharashtra Universities Act, 1984. In that case, the Supreme Court was not concerned with the statutes framed by the University for implementation of the academic standards or any other matter connected with the improvement of norms and standards in the field of teacher education. As a matter of fact, the Supreme Court did not agree with the observations made by the Division Bench of the Bombay High Court that the provisions of Sections 82 & 83 of the Maharashtra Universities Act which are inconsistent with the

provisions of the NCTE Act are “null and void” and clarified that what the High Court wanted to convey was that the provision of Sections 82 & 83 of the said Act requiring approval from the State would not apply to the institution covered under Section 14(6) of the NCTE Act, and once recognition is granted under Section 14(6), the University is obliged to grant affiliation to such institution and Sections 82 & 83 of the Maharashtra Universities Act do not apply to such cases.”

6. In *State of Tamil Nadu vs. Adhiyaman Educational and Research Institute*: 1995 AIR SCW 2179, the Hon’ble Supreme Court considered the role of All India Council for Technical Education (AICTE), vis-à-vis the role of the University and after comparing the AICTE Act and Tamil Nadu Private Colleges (Regulation) Act and the rules framed thereunder and the Madras University Act, the Apex Court, inter alia, held as under:-

“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 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 de-recognition 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 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....

...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.”

In *Tihirumuruga Kirupanda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu*, AIR 1996 SC 2384, the Apex Court was concerned with the repugnancy between the provisions of Indian Medical Council Act, 1956 and Tamil Nadu University Act, 1987 and held that Section 5 of Tamil Nadu Act which required prior permission of the State Government for

establishing a medical college was repugnant to Section 10A of the Indian Medical Council Act and to the extent of repugnancy the said Act would not operate.

In *Jaya Gokul Educational Trust -vs- Commissioner of Secretary to Government, Higher Education Department* AIR 2000 SC 1614, the appellant-trust, which wanted to establish a self-financing engineering college submitted an application to the University as well as to the AICTE. The application was rejected by the University for want of approval from the State Government. Allowing the appeal, the Apex Court held that AICTE Act occupied the field relating to grant of approval for establishing educational institutions and consequently, the Kerala University Statute, requiring approval of the State Government would be repugnant to the provisions of the AICTE Act and such provisions would be void. It was also held that the policy decision taken by the Government not to grant any affiliation to start private colleges is illegal and void since the State could not have any policy outside AICTE.

In *Rukmani College of Education Kadayanallur* (supra), the Full Bench of the Madras High Court, after taking into consideration the

above-referred pronouncements of the Apex Court, inter alia held as under:-

“21. In none of these judgments, the Supreme Court has laid down that the grant of affiliation by the University is a matter of course or mere formality once the expert body set up by the Central Act had granted the permission. All the judgments of the Supreme Court arose out of a case where either the State Governments insisted upon the prior approval from them or the University Acts contained a provision for prior approval from the State Governments. In all the cases, the issue was only in regard to the requirement of ‘no objection certificate’ from the State Government and not with respect to the academic standards prescribed by the University.”

The legal position in this regard was formulated by the Full Bench as under:-

“In our opinion, it is impossible to accept the submission of the learned counsel appearing for the Institution that merely because the recognition to the institution has been granted by the NCTE, affiliation must necessarily be granted by the University. If the interpretation as suggested by the

Institution is given, it would only mean that the University has to grant affiliation even if the particular institution does not conform to the standards or does not meet the requirements of the Act, Statutes, Ordinances and Regulations of the University and may have the effect of destroying the very autonomy of the University. Merely because the NCTE Act is a Central Statute it does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore, there is a need to interpret the provisions of the Central Act and the State Act, harmoniously so that both are able to survive in the respective fields and also able to achieve their respective objectives. No doubt, Section 14(6) says that the University, on receipt of the order under sub-section (4) of Section 14 of the NCTE Act, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as the order of recognition from the NCTE is produced before the University, it is bound to close its eyes and straightaway grant affiliation. It would only mean that normally affiliation should not be refused on the grounds which are covered by Section 14(3) of the NCTE Act, as the Council has already satisfied itself that

the institute meets these requirements. However, this would not be an absolute rule and the University can make a limited enquiry as to whether the institution has proper facilities, competent teaching staff, etc. in consonance with Section 14(3) of the NCTE Act. If it is found that the college does not have the adequate facilities, qualified teaching staff, adequate financial resources, etc. or permission has been obtained by deception or fraudulent means, it would be open for the University to refer the matter to the NCTE for appropriate action. After all it is the University which confers the degree. It is the credibility, reputation or goodwill of the University which is at stake. Therefore, in our opinion, no institution can claim affiliation as a matter of right.”

7. Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005, to the extent it is relevant, provides that an institution/society shall furnish an affidavit stating the permission of the Competent Authority to use the land for educational purposes.

In **Adarsh Shiksha Mahavidyalaya and Others vs. Subhash Rahangdale and Others** (2012) 2 SCC 425, the Apex Court, *inter alia*,

held that the Regional Committees are duty bound to ensure that no private institution offering or intending to offer a course or training in teacher education is granted recognition unless it satisfies the conditions specified in Section 14(3)(a) of the 1993 Act and Regulations 7 and 8 of the Regulations. It was further held that while granting affiliation, the examining body shall be free to demand rigorous compliance of the conditions contained in the statute like the University Act or the State Education Board Act under which it was established or the guidelines/norms which may have been laid down by the examining body concerned.

8. In *Rahol Dhaka Vikas Society v. Guru Govind Singh Indra Prastha University and others*, AIR 2001 (Del.) 154, the petitioner was granted recognition by NCTE. The IP University granted provisional affiliation for the year 1999-2000, but refused to continue the affiliation for the subsequent year. The refusal of the University to extend the affiliation was challenged on the ground that once NCTE had granted affiliation, the University cannot refuse affiliation. The contention of the petitioner before this Court was strongly based upon the provisions contained in Section 14(6) of the NCTE Act with emphasis on the word

“shall” in the said sub-section. Rejecting the contention, the Division bench, inter alia held as under:-

11. It is, keeping in view the provisions of the Indraprastha Vishwavidyalaya Act, 1998 that provisions of Section 16 of the NCTE Act are to be given an interpretation. If the interpretation as suggested by Institute is given, following would be the consequences:

- a) Grant of recognition would mean grant of automatic affiliation with any University.
- b) Depriving the University of its power to give affiliation or refuse affiliation.
- c) Possessed with the order of recognition and institution can go to any University for affiliation.

In other words, it would be the sole prerogative of the institution to decide the University with which it wants to be affiliated and such University has no choice but to grant affiliation.

- d) University will have to grant affiliation even if the particular institution does not conform to the standards or meets the requirements of the Act, Statutes, Ordinances and Regulations of that University.

12. Naturally, such an interpretation as suggested by the Institute which leads to the aforesaid appalling and blighting consequences and may have the effect of destroying the very autonomy of a University and may give licence to an institution

to violate the provisions of the Acts, Statutes, Ordinance etc. of the University with impunity, cannot be accepted.

...we are of the opinion that the word “shall” occurring in sub-section (6) of Section 14 should be construed as merely directory and not mandatory as the context and the intention of legislature demands this construction.

15. Therefore normally affiliation should not be refused on the grounds which are covered by Section 14(3) of the NCTE Act and Council has already satisfied itself that the Institute meets these requirements. However, this would not be an absolute rule and the University shall still have the right to satisfy itself about the fulfillment of conditions for affiliation by the Institute in accordance with its Act, Statutes, etc.

Moreover, apart from the considerations mentioned in Section 14(3) of the NCTE Act, there may be other valid considerations which may compel the University to still refuse affiliation. After all it is the University which confers the degree. It is the credibility, reputation or the goodwill of the University which is at stake.”

9. The legal position which emerges from these decisions can be summarized as under:-

i. The State Government cannot act contrary to the provisions of NCTE Act and, therefore, if a policy decision is taken by the State not to permit a new college/institution to impart B.Ed. programme such a decision would be illegal being contrary to the provisions of NCTE Act.

ii. NCTE is the final authority to decide the matters which fall in its domain under Section 14(3) of the NCTE Act, but, the affiliating University, while granting affiliation, is entitled to require strict compliance with the guidelines/norms laid down by it.

10. The Regional Committee of NCTE is duty bound to ensure that the institute, seeking recognition, complies with the requirements laid down in its regulations, including the requirement laid down in Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005, relating to permission of the Competent Authority, to use the land on which the institute is situated for educational purposes. Ordinarily, the University must grant affiliation to an institution, recognized by NCTE, but, for considerations, which are legal, cogent and justified in law, the affiliating University may deny affiliation to such an institute. This would include non-fulfillment of the requirements laid down in NCTE regulations such as the permission envisaged under Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005.

11. In the case before this Court, the University vide its Resolution dated 05.06.2013, denied affiliation to the petitioner solely on the ground

that the Government of NCTE had not issued NOC to the petitioner for B.Ed programme for the Academic Session 2012-2013. The affiliation was not denied specifically on the ground that the petitioner did not have permission of the Competent Authority to use the land on which the building of the petitioner-institute is constructed, for educational purposes as required by Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005. Since the decision of the University to refuse recognition solely for want of NOC from the State Government is bad in law, I need not go into the illegality or otherwise of the decision of the Government of NCTE not to grant NOC to the petitioner, though the plea taken by respondent No. 1 is that since the petitioner-institute is situated on agricultural land, its case is not covered under the policy decision dated 06.05.2011 which permits B.Ed. courses only in the schools situated on land in conforming areas, i.e., the areas which under the Master Plan/Zonal Development Plan can be used for institutional purposes. As regard the Cabinet decision dated 10.12.2012, the case of respondent No. 1 is that the said decision applies only to the existing institutes and not to the new institutes sought to be set up in a non-conforming area and the petitioner, though running a school,

was not running a B.Ed. course in a non-conforming area. A perusal of the said decision would show that the proposal placed before the Council of Ministers was to permit the institutes located in Lal Dora/extended Lal Dora to run the course that had been previously allowed. However, no such permission in respect of B.Ed. institute was granted to the petitioner at any time by Government of NCTE of Delhi even for the year 2012-2013, though the University did grant provisional affiliation for the said year and 7 students are stated to have been admitted in the Academic Year 2012-2013 under the Management Quota. Another proposal before the Cabinet was the revalidation, for the Academic Year 2012-2013, of the existing NOCs, issued to the University for the year 2011-2012, subject to the institute obtaining a communication from DDA clarifying that the institute is located either in the conforming area or the area proposed for inclusion as institutional land or area proposed of regularization as per the policy of DDA. Admittedly, the petitioner-institute had no permission even for the Academic Year 2011-2012 as far as B.Ed. course is concerned.

12. Section 14 of Delhi Development Act, which is an Act passed by Parliament and which extends to the whole of National Capital of Territory, Delhi reads as under:-

“14. User of land and buildings in contravention of plans.—After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.”

Section 7 of Delhi Development Act, to the extent it is relevant, provides that Delhi Development Authority shall prepare a Master Plan for Delhi which shall define the various zones into which Delhi various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used. The Master Plan serves as a basic pattern of framework within, which the zonal development plans of the various zones may be prepared

by DDA. As provided in Section 8 of the said Act, a Zonal Development Plan may contain a site plan for the development of the zone and show the proximate locations and extents of land uses proposed in the zone for various things. Section 9 of the Act provides that the words ‘plan’ means the Master Plan as well as the Zonal Development Plan for a zone. The plan, after it is approved by the Central Government, is required to be published in the prescribed manner. It is thus a mandatory requirement to use a land or a building in Delhi only for the purposes specified in this regard in the Master Plan and the Zonal Development Plan. Any use of the land and building in contravention either of the Master Plan or of the Zonal Development Plan contravenes the provisions of Section 14 of Delhi Development Act, which is punishable under Section 29 thereof. In my view, a University to which affiliation is sought, will be entitled to refuse such affiliation, if it finds that the use of the land or building for running the course in respect of which affiliation is sought would contravene the provisions of Section 14 of Delhi Development Act. This is more so where such an institute does not have permission from the Competent Authority in terms of Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure) Regulations, 2005.

13. The learned counsel for the petitioner has relied upon (i) the decision of this Court in **Trinity Institute of Higher Education v. Govt. of NCTE of Delhi**, 2008 (105) DRJ 167; (ii) the decision of this Court in W.P.(C) No. 472 of 2013 **Gitarattan International Business School v. Guru Gobind Singh Indraprastha University** and (iii) the decision in W.P.(C) No. 13751/2006 **Aditya College of Pharmacy & Science v. Guru Gobind Singh I.P. University & Anr.** However, none of these judgments deals with the question whether an affiliating such as I.P. University can refuse recognition to an institute which seeks to start B.Ed. course on a land which is agricultural land, and which under the Master Plan and Zonal Development Plan cannot be used for an institutional purpose such as for running a B.Ed. course.

14. If the University refuses recognition on the ground that the B.Ed. institute was proposed to be run on an agricultural land which under the Master Plan/Zonal Development Plan could not be used for running a B.Ed. institute, that would not be in derogation of the provisions contained in the NCTE Act, it would rather be in consonance with the regulations framed by NCTE, particularly Regulation 8(6) of National Council for Teacher Education (Recognition Norms Procedure)

Regulations, 2005. Of course, the University will not be justified in refusing recognition if the institute has obtained or does obtain such a permission from the Competent Authority, which in this case would be DDA.

15. During the course of arguments, the learned counsel for the petitioner, relief upon annexure V to the Zonal Development Plan, purporting to be approved by Government of India. From the copy filed by the petitioner, it cannot be verified whether the said plan stands published or not. In any case, what is included in Annexure V are the application of various pre-existing institutions received in response to public notice dated 01.05.2008 and this includes the application of the pre-existing Haryana Shakti Senior Secondary School, Kanjhawala Road and not the B.Ed. institute which the petitioner claims to have started in the Academic Year 2012-2013. Moreover, as per the note appended to the list of applications, the regularization of the said institutions would be subject to examination by Zonal Committee, further processing for approval as per Resolution dated 10.04.2008 and fulfillment of all the conditions contained in Government's direction dated 08.03.2010 from Government of India. It is further stated in the said note that some of such

facilities although indicated in plan as existing facilities shall not become part of the used zone until the Competent Authority approves it, subject to the fulfillment of all the conditions. There is no material on record to show that even the application of Haryana Shakti Senior Secondary School has thereafter been examined by the Zonal Committee and approval in terms of the Authority Resolution dated 10.04.2008s has been granted to its regularization. Till the time the application of Haryana Shakti Senior Secondary School and other institutions referred in Annexure 5 are examined and approved, no benefit of the regularization sought by these institutes can be claimed by them. In any case, the Annexure V includes the school and not the B.Ed. Institute. Therefore, reliance upon this document is wholly misplaced.

16. Referring to the letter dated 03.06.2011, issued by DDA, the learned counsel for the petitioner submitted that the case of the petitioner institute is being considered by DDA for regularization. This letter is addressed to Haryana Shakti Education Society which is already running Haryana Shakti Senior Secondary School, Kanjhawala Road. When read with Annexure V to the Zonal Development Plan for Zone 'N' prepared by DDA, it is quite clear that this communication refers to the school and

not to the B.Ed. Institute. In any case, unless and until regularization is actually allowed by DDA, no benefit of this letter can be claimed by the petitioner since it is not known to what extent the building occupied by the school may be regularized.

17. Relying upon the notification dated 12.08.1959, issued by Government of India, Delhi Administration, under Section 1 of Delhi Land Reforms Act, it was contended by the learned counsel for the petitioner that the land in question does not fall in non-conforming area and the petitioner is entitled to the benefit of the proviso to Section 14 of Delhi Development Act. The said notification only shows that the land comprised in Khasra Nos. 160/246 and 160/243 in village Kanjhawala owned by certain private persons was occupied by Haryana Shakti School, Kanjhawala. This notification does not show what was the extent of construction, if any, on the aforesaid land on the date this notification was issued. The notification shows Ghair road on the land comprised in Khasra No. 160/246 and Ghair school on the land comprised in Khasra No. 160/43. It does not show the extent of construction on the said land which was being used for the purposes of the school. The benefit of the proviso to Section 14 can be claimed only in respect of such use which

was being made on the date the plan comes into force. The Master Plan of Delhi came into force on 01.09.1962. The benefit of the proviso is available only to the extent the building constructed on the land in Kanjhawala was being used for an Institution on the date Master Plan came into force. In order to examine whether the benefit of the proviso to Section 14 is available to the petitioner or not, this Court vide order dated 05.08.2013 directed constitution of a Committee consisting of (i) Director (in-charge of the Master Plan) of DDA or his nominee, (ii) a nominee of the Vice-Chairman of I.P. University and (iii) a nominee of Director of higher Education to inspect the institute of the petitioner, examine the documents submitted with the writ petition and report after considering the entire matter and carrying out the field survey, if any, as to whether the portion shown in red color in the site plan, filed with the writ petition, was being used for running a school on 01.09.1962 or not. It would be pertinent to note here that according to the petitioner, the portion shown in red colour in the said site plan was being used for running a school on the date Master Plan came into force. The committee in its report dated 09.08.2013 reported as under:-

“3. While inspecting the building, it observed that the building is quite old with 18 inches thick

wall at some places, wooden karries for roof at some places, room height of about 15 feet. It was also observed the renovation in some parts of the building has been done time to time.

4. The Layout plan of Haryana Shakti Higher secondary school bearing the date of 1957 is more or less same on the ground with minor addition & alternations including partition wall but authenticity of the plan could not be ascertained as to whether the plan was actually made in 1957.

From the documents produced by the Haryana Shakti College of Education it appears that Haryana Shakti Higher Secondary School/Sr.Secondary School functioning prior to 1962 and the building also seems to be quite old but it is difficult to establish that the portion of the building shown in red colour in the layout plan actually exists prior to 1962 in absence of authentic documentary proof related to approval/completion plan of the building from the then Government Authority/Local body etc.”

The petitioner, thus was not able to establish before the committee that the portion shown in red colour in the site plan was being used by the school on 01.09.1962 when the Master Plan for Delhi came into force.

Since the petitioner seeks benefit of the proviso to Section 14, the onus was upon it to satisfy the Committee by producing evidence that the said portions of the school building existed and were being used by the school as on 01.09.1962. Though the petitioner produced a private site plan purported to have been prepared in the year 1957, the authenticity of the said plan could not be established before the Committee. During the course of arguments, I specifically asked the learned counsel for the petitioner as to whether the petitioner had any material to show that the said plan was submitted by it to any authority on or before 01.09.1962. No such document, however, was forthcoming from the petitioner. In these circumstances, it is difficult to accept the claim that the whole of the portion shown in red colour in the site plan, filed with the petition, was being used by the school as on 01.09.1962.

18. Though the petitioner has claimed parity with Sant Haridas and Kamal Institue, a perusal of the decision of this Court *Trinity Institute of Higher Education* (supra) would show that in case of Kamal Public School, the recognition was denied solely as per the policy of the Government of NCTE of Delhi. B.Ed. school could be allowed only on land measuring not less than 2.5 acres in a conforming are, whereas the

institute of the petitioner in that case had land measuring 1.43 acre which fulfilled the norms of NCTE, though did not fulfil the norms fixed by the State Government. A perusal of the decision would show that in the aforesaid case, the land to the petitioner-institute, having been allotted by DDA was situated in a conforming area. Therefore, the petitioner can claim no parity with the petitioner in that case. Had the institute of the petitioner been situated in a conforming area, in all probability, the application for affiliation would not have been refused by the University.

19. For the reasons stated hereinabove, the impugned order 16.05.2013 of I.P. University denying affiliation to the petitioner for B.Ed. course is hereby quashed and the I.P. University is directed to reconsider the application of the petitioner-institute for grant of affiliation for its B.Ed. course, without insisting upon requirement of NOC from Government of NCTE of Delhi, but, taking into consideration the fact that the petitioner-institute is being run/sought to be run in a non-conforming area, thereby contravening the provisions contained in Section 14 of Delhi Development Act. It shall also keep in mind the requirement of Regulation 8(6) of NCTE Regulations. A fresh decision in terms of this

direction shall be taken by the University within a week and conveyed to the petitioner immediately thereafter.

V.K.JAIN, J

SEPTEMBER 02, 2013

KS/BG