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

+ W.P.(C) 7114/2011 & CM.16246/2011

Reserved on 06.05.2013

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Judgment delivered on 19th June, 2013

G.D. MEMORIAL COLLEGE OF EDUCATION Petitioner
Through : Mr.Sanjay Sharwat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR. Respondents
Through : Mr.Amitesh Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J

1. By the present writ petition, filed under Article 226 of the Constitution of India, the petitioner seeks a direction to quash the impugned order dated 05.07.2011 passed by the Respondent No.1. The petitioner also seeks a direction to the respondents to conduct inspection and finally decide the application of the petitioner as per law for grant of recognition for starting a B.Ed Course for the academic session 2011-2012.
2. Rule.
3. The brief facts, to be noticed and as stated in the writ petition, for disposal of the present writ petition are that the petitioner is an unaided and self financed institution which was established by a registered society with the object of imparting teacher training courses. As per the petition, with a view to commence new B.Ed teacher training course the petitioner

submitted requisite application dated 10.05.2008 with the Northern Regional Committee (hereinafter referred to as “NRC”), Respondent No.2, on 09.06.2008 for seeking recognition under Section 14 of the NCTE Act, 1993. At the time of submitting the said application the land, on which the college building was constructed, was in the name of the Chairperson of the society sponsoring the institution and he had given the land to the society on lease for a period of 99 years. This was in consonance with the requirements of the NCTE Regulations, 2006, dated 13.01.2006. The new Regulations were notified on 10.12.2007 by which the requirement of land was changed and land on private lease was done away with. The Chairman of the petitioner had constructed the building on the land in question much prior to the notification of the new Regulations, 2007, and accordingly the lease deed was executed in favour of the society. However after submission of the application with NRC on 09.06.2008, the petitioner became aware of the new Regulations and with utmost promptitude the chairman transferred the land in favour of the society by executing a registered Gift Deed on 03.07.2008. It is the case of the petitioner that even before NRC could raise any objection in the application of the petitioner, the petitioner submitted the registered gift deed dated 03.07.2008 with NRC alongwith other documents on 16.07.2008. Finding the application of the petitioner complete in all respects, NRC issued Letter of Intent [LOI] on 04.08.2008 in favour of the petitioner requiring the petitioner to give unconditional consent for physical verification of the college. The petitioner submitted the requisite consent for inspection with NRC on 07.08.2008. Instead of conducting the inspection of the college the NRC vide its letter dated 03.10.2008 sought clarification from the petitioner with regard to submission of the land conversion certificate.

4. Mr.Sanjay Sharawat, learned counsel for the petitioner, submits that by a letter dated 13.10.2008 the petitioner submitted the land conversion certificate with NRC as per its requirement. Thereafter the NRC was obliged to conduct inspection, however, since NRC did not proceed ahead with the matter. The petitioner was forced to file W.P.(C)No.8749/2008 before this Court which was allowed vide order dated 10.12.2008 on the basis of a statement made by Counsel for the respondents to the effect that the application of the petitioner shall be processed and decided as per regulations within a period of 90 days. Counsel further submits that the NRC considered the case of the petitioner alongwith similar other cases in its meeting held from 28.02.2009 to 01.03.2009 and by pointing out three deficiencies, which were never pointed out earlier, it decided to close the file without even issuing a mandatory show cause notice as contemplated under section 14 of the NCTE Act, 1993. Pursuant to the said decision, the NRC rejected the application of the petitioner vide formal order dated 12.03.2009 on three grounds, which were never raised earlier by the NRC. Even otherwise after issuance of LOI the NRC was obliged to conduct an inspection of the college as it is mandatory as per the NCTE Regulations. Counsel next submits that no show cause notice under section 14 of the NCTE Act was issued before passing the said order. Counsel contends that being aggrieved by the said order dated 12.03.2009 the petitioner filed a Civil Writ Petition, being CWP No.4784 of 2009, before the Jaipur Bench of the Rajasthan High Court. In the said writ petition notice was issued to the respondents and they were directed to file their counter affidavit. The said writ petition of the petitioner before the Jaipur Bench of Rajasthan High Court was adjourned from time to time. Counsel also contends that in the said writ petition the respondents did not take the objection which has now been taken by the NCTE in the impugned order.

The writ petition of the petitioner alongwith 31 other similar and connected writ petitions pending before the Jaipur Bench of the Rajasthan High Court were listed for final arguments on 14.09.2009. Vide order dated 14.09.2009 the Hon'ble Bench dismissed all the writ petitions on the ground of alternative remedy being available to the petitioners by way of appeal and, thus, relegated all petitioners therein including the petitioner herein to the alternative remedy of a statutory appeal provided under section 18 of the NCTE Act, 1993. Thus the petitioner filed a statutory appeal under Section 18 of the NCTE Act, 1993 before the NCTE on 31.12.2009.

5. Learned counsel for the petitioner submits that by an order dated 12.04.2010 the NCTE has rejected the appeal filed by petitioner on a non-existent ground which was never raised by the NRC during the last two years during which period the application of the petitioner was pending consideration nor found mentioned in the final order passed by the NRC. Being aggrieved by the order dated 12.4.2010 the Petitioner filed W.P.(C)No.4094/2010 before Delhi High Court on 03.06.2010 in which notice was issued. The said writ petition was allowed by the Delhi High Court vide order dated 13.07.2010 by which NRC was directed to decide the application of the petitioner within 90 days. The NRC did not take any step in implementing the order dated 13.07.2010 which was to be complied within 60 days i.e latest by first week of September, 2010. Counsel further submits that the respondents challenged the order dated 13.07.2010 by filing LPA No.743/2010 on 07.10.2010. On 24.02.2011 orders were reserved in the LPA. Counsel contends that after the judgment was reserved by the Hon'ble court on 24.02.2011, counsel for the respondents had filed written submissions before the Court and a copy of the same was also furnished to the counsel for the Petitioner. The

Division Bench delivered the judgment in the LPA on 20.04.2011. Counsel next contends that being aggrieved by said judgment petitioner filed a review petition, being R.P No.258/2011, dated 27.04.2011 in LPA No.743/2010. There were various justifiable grounds to seek review of the said judgment as detailed in the review petition. The Respondents filed an affidavit in R.P No.258/2011 on 24.05.2011. The Division Bench allowed the review petition filed by the petitioner on 25.05.2011 whereby the respondents were directed to reconsider the case of the petitioner.

6. By the impugned order the NCTE has again rejected the appeal filed by the Petitioner. This Hon'ble Court had allowed identical writ petition being W.P [C] No.5621/2010 vide order dated 18.08.2010. In identical appeals the NCTE has taken the stand that deficiencies can be removed within the stipulated period as per the Regulations.
7. Learned counsel for the petitioner submits that the impugned order dated 12.03.2009, whereby the appeal of the petitioner was rejected, is bad in law for the sole reason that the mandatory show cause notice contemplated under section 14 of the NCTE Act, 1993 was not given before refusing the desired recognition. It is further submitted that the proviso to Sub-Section (3) of Section 14 contemplates that before refusing permission the Regional Committee shall provide reasonable opportunity to the institution for making a written representation. Counsel contends that since in the present case no show cause notice was issued before passing the final order of refusal as required under Section 14 of the NCTE Act, 1993, the order dated 12.03.2009 passed by Respondent No.2 is liable to be quashed.
8. Learned counsel for the petitioner submits that at the time of submitting the application on 09.06.2008 the land on which the college building was constructed was in the name of the Chairperson of the society sponsoring

the institution and he had given the land to the society on lease for a period of 99 years. This was in consonance with the requirements of the NCTE Regulations, 2006 dated 13.01.2006. The new Regulations were notified on 10.12.2007 by which the requirement of land was changed and land on private lease was done away with. The requirement which was enforced was that the land must be owned by the society. However after submission of the application with NRC on 09.06.2008, the Chairperson became aware of the new NCTE Regulations, 2007, pertaining to land and with utmost promptitude he transferred the land in favour of the society by executing a registered Gift Deed on 03.07.2008. It is also submitted that even before NRC could start processing the application much less raise any objection with regard to the application of the petitioner, the Petitioner submitted the registered gift deed dated 03.07.2008 with the NRC alongwith other documents with a covering letter dated 16.07.2008. The application of the petitioner was thus as per the new Regulations and ought not to have rejected on the ground that the land was not in the name of the society. Counsel also contends that without prejudice even if it is assumed that at the time of submitting the application the petitioner was not in possession of the land as per Regulation 8[7], even then the date of submission of the application may be treated as 18.07.2008 when the registered gift deed was submitted with NRC. Therefore the objection of the NCTE is totally misconceived. The impugned order is thus bad in law.

9. Counsel for the petitioner also contends that even otherwise the petitioner is entitled to claim protection under Regulation 7[1] of NCTE Regulations, 2007, which obliges the NRC to raise deficiencies and permit the petitioner to remove the same. Even if the petitioner had not removed the deficiency of land on its own even then the NRC was obliged to raise the said deficiency and the petitioner would have removed the

same within 90 days. It is also contended by Mr.Sherawat that another cardinal principle of law, namely, “subsequent events” can be taken into account on equitable considerations and to do complete justice between the parties comes to the aid of the petitioner. It is further contended that assuming the right to remove deficiencies was not available under Regulation 7 even then on the basis of the said principle the case of the petitioner should not have been rejected by the respondents. Admittedly the deficiency regarding land documents was removed by the petitioner on 16.07.2008 even before NRC could start processing the case.

10. Mr.Sharwat has relied upon in the case of *Vithalbhai [P] Ltd vs Union Bank of India, reported at (2005) 4 SCC 315* wherein the Supreme Court of India while dealing with subsequent events has held that a suit, based on a plaint which does not disclose a cause of action, is not necessarily to be dismissed on trial solely because it was premature on the date of its institution and if by the time the written statement came to be filed or by the time the Court is called upon to pass a decree, the plaintiff is found entitled to the relief prayed for in the plaint. Counsel submits that if for the sake of arguments it is assumed that the application was deficient at the time of submission but the deficiency was removed before the NRC could start processing the case then the subsequent event must be taken into consideration. Mr.Sharawat has relied upon para 22 of *Vithalbhai's case* [supra] which reads as under:-

“22. We may now briefly sum up the correct position of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the Court; the Court entertaining such a suit and passing decree therein is not

acting without jurisdiction but it is in the judicial discretion of the Court to grant decree or not. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the Court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the Court shall not exercise its discretion in favour of decreeing a premature suit in the following cases : (i)

When there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction, and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See : Samar Singh v. Kedar Nath and Ors. 1987 Supp. SCC 663). One more category of suits which may be added to where leave of the Court or some authority is mandatorily required to be obtained before the institution and was not so obtained”.

11. Per contra, Mr.Amitesh Kumar, learned counsel for the respondent, submits that NCTE Act makes it clear that the Council i.e. NCTE is the principal body which takes policy decisions and make regulations to carry

out the provision of the Act. It is also the monitoring and supervisory body and the power to grant recognition or permission to an institution for conducting any teacher education programme and also the power to withdraw such recognition or permission lies with the concerned Regional Committee. It is further submitted that the National Council for Teacher Education in exercise of its power conferred under section 32(2) of the NCTE Act, 1993 framed National Council for Teacher Education (Recognition Norms and Procedure) Regulation 2007 which was notified in Official Gazette on 10.12.2007.

12. Mr.Kumar submits that Regulation 5 provides for the manner of making an applications and time limit. It is submitted that Regulation 5 (4) provides that the cut off date for submission of application to the Regional Committee shall be 31st day of October of the proceeding year to the academic session for which recognition has been sought. Further, Regulation 5[5] contemplates processing of “ all complete applications” received on or before the cut off date prescribed i.e. 31st October. Further, Regulation 7 deals with the processing of applications and Regulation 7 (1) provides that the applicant institution shall ensure submission of applications complete in all respects. Further, Regulation 7[2] provides that on receipt of an application, a written communication along with a copy of the application form submitted by the institution shall be sent by the office of the Regional Committee to the State Govt./U.T. Administration concerned.
13. Reliance is placed upon Regulation 8 which deals with conditions for grant of recognition and Regulation 8 (7) provides as under in respect of the requirement of land:

“No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of

application. The land free from all encumbrances could be either on ownership basis or on lease from Government/Government Institutions for a period of not less than 30 years. In cases where under relevant state/UT laws the maximum permissible lease period is less than 30 years, the State Government/UT Administration law shall prevail. However, no building could be taken on lease for running any teacher training course.”

14. Mr.Kumar next submits that the petitioner submitted an application to NRC on 09.06.2008 seeking recognition of the institution in the name and style of G.D. Memorial College of Education, Mahendergarh, Haryana for running a B.Ed. course. The Petitioner submitted various documents alongwith the application including land document and land title certificate. It is further submitted that subsequently the NCTE vide its letter dated 04.08.2008 informed the correspondent of Sri Krishna Shiksha Samiti, Kanina to give unconditional confirmation of readiness for physical verification of their institution. The NCTE vide its letter dated 04.08.2008 also forwarded a copy of the application to the Education Secretary, Government of Haryana, Chandigarh requesting that the recommendation of the State Government may be furnished to the Regional Committee. It is next submitted that subsequently, the Government of Haryana vide its letter dated 15.09.2008 informed the Regional Director, NRC that the matter was considered by the State Government and it is observed that the number of Education College operating in District Mahendergarh are 38. There are already more than 400 colleges of Education in Haryana and the total numbers of seats in B.Ed. course is about 51,000. Whereas, about 42000 students graduate every year. As a result thousand of seats in these courses remained unfilled. Further, the State Government also expressed its opinion that in future no B.Ed. colleges should be opened in the state for the present as

operation of such large number of B.Ed. colleges will compromise the quality of Education and some children may even get exploited. State Government also expressed its view that they have received complaints of exploitation of the students by many institutions. Complaints from time to time also keep arising regarding poor quality of education in many of the colleges. A poor quality B.Ed. college will result into poor quality of teachers which will defeat the very purpose of education. This state of affairs has arisen due to the liberal policy of the NCTE in granting permission to open B.Ed. colleges. It was, therefore, requested that no more applications for opening of B.Ed. colleges for the State of Haryana may be entertained.

15. Subsequently, NRC vide its letter dated 03.10.2008 informed the Principal of the Petitioner institution to the following effect:

“With reference to your reply dated 09.09.2008 submitted in compliance of LOI communicated by this office vide letter dated 04.08.2008. It is to inform you that based on the further examination of your reply, the following essential documents furnished, still need more clarification from your end.

- *The institution is required to submit land conversion certificate issued by revenue department.*

It is therefore requested to clarify the aforesaid points duly supported with requisite documents within 21 days from the date of issue of this letter positively, so that your application could be further processed. In case the above required documents are not received in this office within the stipulated period then the responsibility will be yours.

It may please be noted that the reply to the deficiency letter should be submitted only on “one time basis” no part reply will be accepted and the reply submitted should be strictly as per the NCTE norms.”

16. Mr.Kumar further submits that subsequently, the NRC in its 137th meeting held on 28th February and 1st March, 2009 considered the application of the petitioner institution and after considering the original file of the institution, other related documents, Act of NCTE, 1993, Regulations and Guidelines of NCTE published from time to time, the NRC observed as under:-

- *“State Government recommendation is required Clause 7 (3) of Regulations 2007. The State Government recommendation is negative, State Government has provided reasons/ grounds and statistics for not granting recognition.*
- *The Institution has not submitted permission letter from the competent authority to use the land for educational purposes as required under the clause 8 (8) of Regulation 2007.*
- *The land is not in the name of institution as required under clause 8 (7) of the regulations 2007.”*

17. Mr.Kumars further also that thereafter NRC Vide its letter dated 12.03.2009 informed Principal / Correspondent of the petitioner institution to the following effect:

“I am directed to say that G.D. Memorial College of Education, Village-Gudha, Post-Kanina, Distt. Mohindergarh, Haryana, has applied for grant of recognition / permission for B.Ed. course of one year duration Northern Regional Committee on 09.06.2008.

2. The original file of the institution other related documents, Act of the NCTE 1993, Regulations and guidelines of NCTE Published from time to time were considered by the Committee and Committee observed that:

- *“State Government recommendation is required Clause 7 (3) of Regulations 2007. The State Government recommendation is negative, State Government has provided reasons/ grounds and statistics for not granting recognition.*

- *The Institution has not submitted permission letter from the competent authority to use the land for educational purposes as required under the clause 8 (8) of Regulation 2007.*
 - *The land is not in the name of institution as required under clause 8 (7) of the regulations 2007.*
3. *Hence the committee decided not to have inspection and file is to be closed and FDRs are to be returned.*
 4. *Receipt of this notice may please be acknowledged.”*

18. It is respectfully submitted that being aggrieved by the order dated 12.03.2009 of the NRC, the petitioner institution preferred an appeal before the NCTE (Council) and after considering the whole case of the petitioner institution the appellate committee passed an order dated 12.04.2010 by observing as under:

“AND WHEREAS the Council noted that the land was registered in the name of the society only on 3.7.2008 i.e. after 9.6.2008 which was the date of submission of the application. Thus the land was neither in the name of the Society nor in the name of the institution. Therefore, the institution did not fulfil the mandatory requirement of Regulation 8(7) of NCTE Regulations 2007, which stipulated that no institution shall be granted recognition under the Regulation unless it was in possession of required land either on ownership basis or on lease from Government on the date of submission of application. The Council was therefore of the view that there was no ground to accept the appeal.

AND WHEREAS after perusal of documents, memorandum of appeal, affidavit and after considering oral arguments advanced during hearing, the Council reached the conclusion that there was no ground to accept the appeal and hence it should be rejected. Accordingly, the appeal was rejected and NRC’s order dated 12-3-09 was confirmed.

NOW THEREFORE, the Council hereby confirms the Order appealed against.”

19. Subsequently, petitioner institution filed a Writ Petition No.4094/2010 before this Hon'ble Court and this Hon'ble Court vide its order dated 13.07.2010 set aside the order of the appeal committee dated 12.04.2010 and remanded the matter to the NRC for processing the application of the petitioner for recognition in accordance with law and this Hon'ble Court directed NRC to decide the application of the petitioner within 3 months. Thereafter, the NCTE filed an appeal being LPA No. 743 of 2010 before the Division Bench and the Division Bench vide it's common final Judgment and order dated 20.04.2011 allowed the appeal. Thereafter the petitioner herein filed a Review Petition No. 258 of 2011 seeking review of the common final Judgment and order dated 20.04.2011 passed by the Division Bench in LPA No. 743 of 2010 and after hearing the submissions, the Division Bench was pleased to dispose of the Review Petition, order of the Single Judge was set aside and the matter was remanded.
20. Thereafter, in terms of the aforesaid order passed by the Division Bench, the Appeal Committee again considered the matter and vide it's impugned order dated 05.07.2011 reached the conclusion that there was no ground to accept the appeal and accordingly, the council reiterated its earlier decision dated 12.04.2010 and appeal was rejected and order dated 12.03.2009 of NRC was confirmed.
21. Mr.Kumar submits that the petitioner has admitted that on the date of submission of application, i.e. 09.06.2008, the land was not in the name of institution. Thus, it is apparent that the application submitted by the petitioner was not complete in all respect as contemplated under the Regulations. Hence, the NRC was completely justified in rejecting the case of the petitioner taking into account the above deficiency together

with other deficiencies such as negative recommendation of the State Govt.

22. That it is submitted that NCTE framed the Regulation namely NCTE (Recognition norms and procedure) Regulations 2007 which came into force w.e.f. 10.12.2007. The Regulation 5 thereof prescribes the manner of making application and time limit in the light of mandate of Section 14 of the NCTE Act. Further, Regulation 8 prescribes conditions for grant of recognition. It is relevant to point out that regulation 8 (7) of the NCTE Regulations 2007 provides as under:-

“No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of application. the land free from all encumbrances could be either on ownership basis on lease from Government/Govt. institutions for a period of not less than 30 years. In cases where under relevant State/UT laws the maximum permissible lease period is less than 30 years, the State Government/UT Administration law shall prevail. However, no building could be taken on lease for running any teacher training course”.

23. Mr.Kumar has also submitted that the petitioner institute submitted an application for seeking recognition for B.Ed. Programme on 09.06.2008. It is submitted that admittedly, the institute did not satisfy the requirement of ownership of land on the date of making the application for recognition. Thus, the petitioner institute did not fulfil the mandatory requirement in terms of Regulation 8(7) of 2007, Regulation which is mandatory in nature and imperative in character.
24. Thus, it is contended that no direction can be given to either violate the law or to act in violation of law. In the facts and circumstances, it is submitted that since the petitioner institute did not fulfil the mandatory

requirement of Regulation 7[1] and 7[8] of the aforesaid NCTE Regulations, hence the petition does not merit consideration by this Hon'ble Court.

25. I have heard counsel for the parties and considered their rival submissions. This is the fourth round of litigation between the parties. Some of the undisputed facts may be noticed at the very outset are that on 9th June, 2008, with a view to commence new B.Ed. teacher training course, the petitioner submitted an application dated 10.5.2008 with the NRC, respondent no.2, seeking recognition. At the time of submitting the said application the land on which the college building was constructed was in the name of Chairperson of the society and he had given the land to the society on lease for a period of 99 years. This was in consonance with the requirements of the NCTE dated 13.1.2006. The new regulations were notified on 10.12.2007 by which the land on private lease was done away with. Since the petitioner became aware of the new regulations of the year 2007, he transferred the land in favour of the society by executing a registered gift deed on 3.7.2008. Even prior to any objection having been raised, the petitioner submitted the registered gift deed dated 3.7.2008 with NRC along with documents on 16.7.2008.
26. It is also the case of the petitioner that finding the application of the petitioner complete in all respects, the NRC issued the Letter of Intent "LOI" dated 4.8.2008, requiring the petitioner to give unconditional consent for physical verification of the college, which the petitioner consented. No inspection was carried out, instead, vide letter dated 3.10.2008 the respondent sought clarification from the petitioner with regard to the submission of the land conversion certificate. On 13.10.2008 the land conversion certificate was also submitted to the respondent. Since no inspection was being carried out the petitioner filed

WP(C)No.8749/2008 which was allowed on the basis of a statement made by counsel for the respondent that application of the petitioner would be processed and decided within 90 days. On 12th March, 2009, the application of the petitioner was rejected. Aggrieved by the order of rejection, a writ petition was filed before the Rajasthan High Court which was subsequently dismissed, as the petitioner had not availed of the alternate remedy of filing an appeal. A statutory appeal filed by the petitioner was also dismissed, which led to the filing of Writ Petition No.4094/2010, which was allowed on 13.7.2010. The matter was remanded back to the NRC to take a decision within a period of 90 days. The order of the learned Single Judge was challenged by filing an LPA which was allowed on 20.4.2011, however, a review filed by the petitioner herein the same was allowed on 25.5.2011 and a direction was issued to the respondent to re-consider the case of the petitioner. While allowing the review petition and remanding the matter back the following directions were issued by the Division Bench:

“ a. The composite order dated 20.04.2011 passed by the learned Single Judge in WP (C) No.743/2010 and WP(C) No.830/2010 is set aside.

b. The order passed by the appeal Committee under Section 80 of the NCTE Act is quashed.

c.The appeal committee shall afford appropriate and adequate opportunity to the applicant institution to put forth its case from all aspects including the issue what was not taken into consideration by the Northern Regional Committee.

d.If a contention is raised before the appeal committee that subsequent events shall be considered, the appeal committee shall consider the same in accordance with law. As the order passed by the learned Single Judge in writ petition is set aside, the same shall not be taken aid of inasmuch as when order is quashed, it becomes extinct in the eyes of law.

e. The appeal committee shall decide the appeal within a period of six weeks from today.

f. To cut short the delay, it is directed that the institution through its representative shall appear before the appeal committee on 7.6.2011

g. The stand of NCTE that the ban imposed by the NCTE would be applicable to the applicant institution being forcefully opposed by Mr. Sanjay Sharawat, the same shall be discussed and dwelled upon by the appeal committee on the grounds of parity and a finding on that score shall be recorded with objectivity.

In view of the aforesaid settlement/arrangement agreed by between parties, the order dated 20th April, 2011 in Writ Petition(Civil) No.743/2010 is recalled.

Though we have remitted the matter on concession, we hope and trust that the NCTE shall act in an objective manner and if the institution meets the eligibility criteria from all angles and fulfils the requirements under the Regulations, the same shall be dealt with without any kind of adversarial attitude as NCTE has been given a sacrosanct responsibility by the Parliament by the 1993 Act. Liberty is granted to the applicant institution to file written note of submission and all documents before the appeal committee.

The application is, accordingly, disposed of.”

27. After the matter was remanded back by an order dated 5.7.2011, the appeal was rejected which has led to the filing of the present writ petition.
28. The sum and substance of the argument of counsel for the petitioner is that at the time when an application was made seeking recognition on 9.6.2008 the land on which the college building was constructed was in the name of the Chairperson of the society, who had given the land to the society on a lease for a period of 99 years. This was in consonance with the requirements of the NCTE Regulations of the year 2006, subsequently the new regulations were notified on 10.12.2007 and land on private lease was done away with. It is also the case of the petitioner that even before

any objection could be raised by the respondent a gift deed was executed in favour of the society on 3.7.2008 and submitted to the respondent on 16.7.2008. In these circumstances, it is submitted that the petitioner had met with all the necessary requirements and necessary permission should be granted.

29. The consistent stand of the respondent has been that on the date of filing of the application the petitioner had not met with the necessary requirements and thus no permission can be granted to the petitioner.
30. The stand of the respondent was not considered favourably by a Single Judge of this court, while deciding the WP(C)No.4094/2010, however, in the LPA the order of the learned Single Judge was set aside. The court cannot lose track of the fact that even while setting aside the order of the learned Single Judge in LPA the matter was remanded back to the Appeal Committee with leave to the petitioner to put-forth its case from all aspects. The Division Bench also quashed the earlier order passed by the Appeal Committee. The Appeal Committee by the order of 5.7.2011 i.e. the impugned order has taken note of the previous history in the matter and has rejected the case of the petitioner only on the ground that on the date of submission of the application the institution was in possession of the land on lease from a private party and hence, it did not fulfil the mandatory requirements as stipulated under Section 8 (7) of the Regulation.
31. The Appeal Committee no doubt has noticed the fact that a gift deed was executed on 3.7.2008 for transferring the land in the name of the institution on ownership basis which cannot be accepted, but the Appeal Committee has failed to take into consideration that even before the application of the petitioner could be processed and before the respondent could apply its mind as to whether the application form was in order or

not, a gift deed was executed thereby making the application in order. The Appeal Committee has also lost track of the fact that the land on which the college building was constructed was in the name of its Chairperson and the Chairperson had initially given the land to the society on lease for 99 years. It was for the Appeal Committee to have satisfied itself as to whether the land documents were in order or not. As on the date when the application was to be considered by the respondent, the objections stood cured by the petitioner and was not in existence.

32. Another aspect which cannot be ignored is that the NRC issued the LOI on 4.8.2008 in case the respondent was not *prima facie* satisfied with the application submitted by the petitioner there was no occasion for the respondent to have issued the LOI. The Single Judge in the order dated 13.7.2010 did not find favour with the decision rendered by the respondent and remanded the matter back for re-consideration. Although the order of the learned Single Judge was set aside, the Division Bench also remanded the matter back for re-consideration. Analysing both the orders would show that both the Single Judge and the Division Bench were convinced that the view of the respondent was not the correct view, and the matter required re-consideration. In fact the Division Bench has directed the Appeal Committee to afford appropriate and adequate opportunity to the petitioner to put-forth its case from all aspects. The Appeal Committee could also not be mindless of the fact that the deficiencies stood cured in the year 2008 itself and in case the subsequent event is not taken into consideration the petitioner would lose its right of establishing the B.Ed. course in view of ban, which has been imposed. The Appeal Committee has also not taken into consideration that before passing the order of 12.3.2009 refusing recognition, a mandatory show cause notice as contemplated under Section 14 of the NCTE Act, 1993

was not given. The proviso to sub-Section 3 of Section 14 reads as under:

“...14 [3] On receipt of an application by the Regional Committee from any institution under sub-section [1], and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,

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

[b] if it is of the opinion that such institution does not fulfil the requirements laid down in sub – clause [a], pass an order refusing recognition to such institution for reasons to be recorded in writing;

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

33. The proviso to sub-Section 3 of Section 14 provides of a reasonable opportunity to the concerned institute for making a written representation. It is tacit that in case there are defects which are curable they would be taken into account while deciding the matter, otherwise, such an opportunity would be an empty formality. Objection in the present case is with regard to ownership of the land, whereas the land was initially in the name of Chairperson herself and to meet the necessary requirements, she issued a gift deed in the name of the society, which cannot be equated with an objection which would go to the very root of the matter, viz. where no building was in existence at the time of such an application or the basic infrastructure, faculty or some other material deficiency existed. An application form must be complete in all respects, when it is

submitted, however, the deficiencies as the present one and in the present circumstances already stood cured before the application was processed. This is a fit case where the respondent must take into account the subsequent event and cannot reject the application only on the ground that the same was not complete on the day of filing of the application.

34. Accordingly, the matter is remanded back again to the Appeal Committee. The Appeal Committee shall take into account the subsequent events while deciding the appeal. The Appeal Committee shall decide the appeal as expeditiously as possible and in case it is decided in favour of the petitioner, the ban will not come in the way of the petitioner, in case the application was made prior to the imposition of the ban. The petition and the application are disposed of. No order as to costs.

G.S.SISTANI, J

June 19th 2013

msr/ssn