

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

**WRIT PETITION Nos.26870 of 2016, 26906 of 2016, 27226 of 2016,
27238 of 2016, 27309 of 2016, 27401 of 2016, 27406 of 2016 and
27413 of 2016**

COMMON ORDER:

Heard Sri S.Sriram, Sri G.Girimoji Rao and Smt.G.Jhansi, learned counsel for petitioners in these Writ Petitions, learned Government Pleader for Education for the State of Telangana appearing for 1st respondent and Sri A.Abhishek Reddy, learned Standing Counsel for 2nd respondent.

2. Since common question of law arises for consideration in this batch of cases, they are being disposed of by this common order.

3. Some of the petitioners in these Writ Petitions are Societies registered under the A.P. Societies Registration Act, 2001 and they had established colleges to provide B.Ed. courses. In the rest of these cases the B.Ed. colleges themselves are petitioners.

CONTENTION OF PETITIONERS

4. All the petitioner Societies/ Societies which established the petitioner B.Ed. colleges obtained No Objection Certificates from the respective Universities under whose jurisdiction they fall. They then applied to the National Council for Teacher Education (for short 'NCTE') for recognition for starting new B.Ed. colleges pursuant to a public notice dt.27-02-2015 issued by the NCTE for the academic

year 2016-17. Thereafter they applied to the Southern Regional Committee (SRC) of the NCTE with requisite fee enclosing the No Objection Certificate and other documents in compliance with the requirements of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014. The SRC of the NCTE conducted inspection of the colleges of the petitioners and issued individual orders granting formal recognition to the B.Ed. colleges.

5. Petitioners contend that thereafter the University in question under Section 14(6) r/w Section 16 of the National Council for Teacher Education Act, 1993 has to grant affiliation to the B.Ed. colleges of the petitioners once recognition therefor is granted by the NCTE, but the respective Universities refused to undertake the exercise for grant of affiliation on the ground that the State of Telangana had not issued Government Order granting permission under Section 20 of the A.P. Education Act, 1982 as adopted by the said State.

6. Petitioners also allege that the Director of School Education in some of the cases also conducted inspection of the B.Ed. colleges on behalf of the State of Telangana and submitted reports stating that the said Colleges fulfill all the conditions required for proper functioning of the Institution for the courses or training in Teacher Education and requested the Government to issue necessary orders in respect of all the B.Ed. Colleges/petitioners. But the 1st respondent has not issued

Government Order thereby disabling the respective Universities from granting affiliation and as a consequence of this, the B.Ed. colleges are disabled from participating in the web-counseling conducted/to be conducted by the Telangana State Council for Higher Education and the Convenor Admissions (Ed-CET 2016).

7. Petitioners contend that in order for an institution to impart Teacher Education, it is required to secure recognition from the SRC of the NCTE; on the basis of such recognition, it has to secure permission from the State Government and affiliation from the affiliating University; and for the purpose of Section 20 of the A.P. Education Act, 1982, the State Government formally issues a Government Order in order to comply with the mandate of Section 21 of the said Act. Petitioners contend that the State Government, in regard to the field occupied by the NCTE under the NCTE Act, 1993, does not have any other area or scope for inspection or verification of any of the aspects touching upon the said activity, and the said formal permission/Government Order, cannot be withheld on any substantive or policy formulations of the Government. It is contended that it is imperative on the part of the State Government to grant permission under Section 20 of the A.P. Education Act, 1982 to the B.Ed. colleges set up by the petitioners. Petitioners contend that the State cannot have any “policy” outside the NCTE norms for the reason that the NCTE is a central body and as such there cannot be a State action repugnant to the norms and standards of the central body as the same

would be *ultra vires* the NCTE norms; even if it had a policy, it should have placed the same before the NCTE and that too before NCTE granted permission. Petitioners contend that under the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014, the NCTE grants the State Government an opportunity to furnish its recommendations and comments prior to deciding upon the application for grant of recognition, and if the State Government does not raise any objection to the setting up of the Institution at that juncture, then the State Government is estopped from raising any objections or refraining from granting permission at a later stage.

8. They contended that the State Government cannot take any plea that it took a policy decision not to grant permission to new B.Ed. colleges particularly when NCTE took the decision for calling of application for establishing new B.Ed. colleges in the notified areas after consulting the State Governments. Petitioners contend that there is a clear need for establishment of B.Ed. colleges in the State and even otherwise, the respective Universities constituted under the A.P. Universities Act, 1991 as adopted by the State of Telangana, are not obligated under the said legislation, to await the Government Order for undertaking their statutory duty of granting affiliation to the colleges which are granted recognition by NCTE. According to them, such deference by the University to the Government is contrary to the provisions of the NCTE Act and the Regulations framed thereunder

and amount to abdication of statutory power vested in them without sanction therefor in law. Petitioners contend that respondents are proposing to the conduct counseling in the near future and it is necessary to direct the State Government to grant permission to the petitioner B.Ed. colleges and for the respective Universities to grant affiliation so as to enable the allotment of students to them in the next phase of process of counseling, which would be notified by the Telangana State Council of Higher Education and the Convenor Admissions (Ed-CET 2016).

CONTENTION OF THE STATE GOVERNMENT OF TELANGANA

9. The State Government through the Special Chief Secretary to Government filed counter-affidavit refuting the above allegations. It referred to the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 and in particular Regulation No.7(13), 7(14) and 7(15) and contended that out of the faculty appointed by the petitioner colleges, very few are eligible and the balance do not have experience as fixed under the NCTE norms. The State expressed surprise as to how NCTE could give Recognition to such institutions.

10. It relied upon Section 20 of the A.P Education Act, 1982 and contended that since there is a need for providing educational facilities to the people in the locality, permission cannot be granted by the competent authority under the Act. It is also contended that there is no necessity to establish new B.Ed. colleges in the State having regard

to the number of B.Ed. qualified candidates already available. It is contended that the permission for starting new Colleges has to be granted by the State Government under the provisions of the A.P Education Act, 1982 wherein the State Government has to satisfy itself that there is a need for opening new B.Ed. colleges in the State, that this is an independent function of the State Government under a separate Act, and the recognition granted by the NCTE is not binding on the State Government.

THE POINT FOR CONSIDERATION

11. In the light of the respective submissions of the parties, the question therefore arises for consideration :

“Whether, having regard to the provisions of the NCTE Act, 1993, it is open to the State Government of Telangana to take a stand that there is no need to grant permission to new B.Ed. colleges such as the petitioner colleges in view of Section 20 of the Telangana Education Act, 1982?”

12. The Supreme Court of India in **State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others**¹ considered the scope of NCTE Act, 1993 and its effect on the statutes enacted by the State Legislatures in matters relating to education. It held that the field of Teacher Education System in the Country is fully and completely occupied by the NCTE Act, 1993, that it is covered by Entry 66 of List I of Schedule VII of the Constitution of India and it

¹ (2006) 9 SCC 1

was not open to the State Legislature to encroach upon the said field. It held that the Parliament alone could have exercised the power by making appropriate law and it is not open to any State Government to refuse any permission relying on a State Act or on “policy consideration”. It held that neither the State Government nor a University can, on the basis of local conditions or State Policy, refuse permission or over rule the decision of NCTE. It observed in para-63 and 74 as under:

“63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on “policy consideration”.

... ..

74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system “throughout the country”. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither

open to the State Government nor to a university to consider the local conditions or apply “State policy” to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.”

13. A Division Bench of this Court in **Self-Financing Rural Engineering College Managements Association and others Vs. All India Council for Technical Education and others**² considered similar issue in the context of AICTE Act, 1987 and held that the representatives of the State have to be included in the decision making process under the AICTE Act as well and the final decision rests with the AICTE. It held that it is the prerogative of AICTE to approve or not to approve establishment of a new college, but it is bound to consider the view of the State Government. It observed:

“21. Therefore in the light of these three judgments, the law may be summarized as that the educational needs of a locality are to be ascertained and determined by the State having regard to the regulations framed under the Central Act. The representatives of the State have to be included in the decision making process and the final decision rests with the AICTE. It is the prerogative of AICTE to approve or not to approve establishment of a new college, but it is bound to consider the view of the State Government. There is no dispute between the parties with regard to the applicability of the regulations framed on 06-01-2005. Although a feeble attempt was made by the Special G.P. appearing for the Government that they were not sure as to which of the regulations would apply for the present case, but it is a fact that letters of intent were issued after the regulations of 06-01-2005 came into force. Regulation 6 lays down

² 2005(5) ALT 547

the procedure for processing of the applications for grant of approval for establishment of new technical institutions. Regulation 6(1)(b) lays down that AICTE shall seek recommendations from the concerned State Government on the viability of the applications received for starting new technical institutions. Regulation 6(1)(c) says that the State Government, while forwarding the recommendations on the viability of the applications, shall provide reasons and justification to substantiate their stand and do so by the date stipulated by the Council from time to time. Regulation 6(1)(d) lays down that the recommendations of the concerned State Government shall be taken into consideration, among various other relevant factors, including the demand and requirement of the technical educational facilities in respective States, before issuing a letter of intent for establishment of new technical institutions.

22. On bare perusal of Regulations 6(1)(b), (c) and (d), it is Imperative that the State Government has to apply its mind to each of the applications and cannot decline to consider the applications and frame its opinion on the ground that it has framed a policy of not having any other Engineering college in the State, which is a prerogative of the AICTE alone.”

14. Thus, even according to this decision, before AICTE/NCTE takes a decision to grant recognition, they are bound to consider the views of the Government, but the prerogative is of the AICTE/NCTE and once the said body has decided to permit new colleges, the State Government cannot question it and decline to consider applications on the ground that it is of the view that there is no necessity for other new colleges or on the ground that the faculty employed by the colleges are not qualified.

15. Recently, in **Rungta Engineering, Bhilai and another Vs. Chhattisgarh Swamy Vivekananda Technical University and**

another³, again the question whether the State Government, as a matter of policy, can decline to grant approval/permission for establishment of new Engineering Colleges in view of its perception that opening of new colleges will not be in the interest of students and employment, fell for consideration. In that case, AICTE had granted provisional/conditional approval to the petitioner colleges and new courses for the academic year 2013-14 subject to grant of affiliation by the University concerned. Later the University informed the College of certain short comings and thereafter its Executive Council disapproved the provisional affiliation granted earlier. The petitioner questioned the same. The Supreme Court held that the field of *“determination of standards in institutions for higher education or research and scientific and technical institutions”* is exclusive to Parliament and any law made by Parliament referable to the said field is paramount. It held that after coming into operation of the Central Act, the provisions of any other State law overlapping on the area covered by the Central Act will be deemed to have become unenforceable, and the State Legislature cannot stipulate norms of higher standards even in those areas which are covered by AICTE. The Court observed that the State could not have a policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission.

³ (2015) 11 SCC 291

16. The Supreme Court referred to the decision in **Bharatia Education Society Vs. State of H.P.**⁴, which was a case under the NCTE Act and observed that the scheme of NCTE is identical to the AICTE Act. It held that NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, *qualified staff*, and laboratory required for proper functioning of an institution for a course or training in teacher education. It held that when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects and consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, *qualified staff*, or laboratory required for proper functioning of the institution.

17. In view of the above legal position, it is clear that the field of “*determination of standards in institutions for higher education*” is exclusive to Parliament and the NCTE Act, 1993 made by Parliament referable to the said field, is paramount. The NCTE Act deals with establishment of National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. After coming into operation of the NCTE Act, 1993 the provisions of the A.P.Education Act, 1982 overlapping on the area covered by the NCTE Act will be deemed to have become unenforceable and the State Legislature cannot stipulate

⁴ (2011) 4 SCC 527

norms of higher standards even in those areas which are covered by the NCTE Act. It is not open to the State Legislature to refuse permission relying on a State Act or on policy consideration since the State Legislature cannot encroach upon the said field which is fully covered by Entry 66 of List I of Schedule VII. The State Government has no power to reject the prayer of an institution for grant of permission or to over rule the decision of the NCTE. Once the NCTE had granted recognition, it is deemed and implied that it has satisfied itself that the institution in question has adequate financial resources, accommodation, library, *qualified staff*, and laboratory required for proper functioning of the institution for a course or training in teacher-education.

18. Therefore it is not open to the State Government now to refuse permission to the B.Ed. courses *set up* by the respective petitioners on the ground that there are no *adequate* qualified staff to impart teacher education in these colleges. It is also not open to the State Government to refuse permission to the petitioner B.Ed. colleges on the ground that opening of new colleges will not be in the interest of students, once the NCTE has granted recognition to the said B.Ed. colleges. It was open to the State Government to have placed this consideration *before* the NCTE granted recognition to the petitioner B.Ed. colleges, but it is not open to the State Government to raise this plea after such recognition is granted by the NCTE.

19. I also agree with the contention of petitioners that the respective Universities constituted under the A.P. Universities Act, 1991 as adopted by the State of Telangana, are not obligated under the said legislation, to await for the Government Order for undertaking their statutory duty of granting affiliation to the colleges which are granted recognition by NCTE. Such deference by the respective Universities to the Government is contrary to the provisions of the NCTE Act and the Regulations framed thereunder and amount to abdication of statutory power vested in them without sanction in law.

20. For all these reasons, all these Writ Petitions are allowed and the State of Telangana is directed to grant permission under Section 20 of the Telangana Education Act, 1982 to the B.Ed. colleges set up by the petitioners; respective Universities are directed to grant affiliation to the said colleges; and the Telangana State Council of Higher Education is directed to include the petitioner B.Ed. colleges in the second phase of process of web-counselling for allotment of Students in B.Ed. course for the academic year 2016-17 in view of the recognition granted to them by the NCTE. No costs.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-09-2016

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