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

+ **W.P.(C) No.3976/2017 & C.M. Nos.17475-17478/2017**

% Judgment reserved on: 24th May, 2017
Date of Judgment: : 5th June, 2017

SHIMLA COLLEGE OF EDUCATION PETITIONER
Through Mr.Sanjay Sharawat, Advocate

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION
& ANOTHER RESPONDENTS
Through Mr.Kishan Nautiyal, Advocate

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

CM No.17477/2017 (permission to file detailed list of dates & events)

This application has been filed by the petitioner seeking permission to file lengthy list of dates and events.

For the reasons stated in the application, the same is allowed.

WP(C) No.3976/2017

1. The petitioner, which is an unaided and self financed educational institution, established by a registered trust namely Shimla Education Society Trust imparting education in various fields including teacher training courses, has approached this Court being aggrieved by the action

of the respondents in refusing to grant permission to the petitioner for starting M.Ed. course from the 2017-18 academic session based on the decision taken in its 269th meeting held from 26th April, 2017 to 2nd May, 2017. The petitioner has also prayed for quashing of Regulation 8[4][iii] of the National Council for Teacher Education [Recognition Norms & Procedure] Regulations, 2014 [notified in official gazette on 01.12.2014] on the ground of its being ultra vires the NCTE Act, 1993, Transfer of Property Act, 1882 and violative of Articles 14 & 19 of the Constitution of India.

2. At the outset, it may be noted that the counsel for the respondent has produced a notification dated 28th April, 2017 by which the Regulation 8[4][iii] of the NCTE Regulations, 2014 stands substituted. It is, therefore, unnecessary to decide the challenge made to notification.

3. The facts dealing with the present petition are that the petitioner claims to be an Institution which has been established by a trust namely Shimla Education Society Trust (referred to as 'Trust' hereafter) which was formed and registered on 15th March, 1999. The founder of the trust, namely Shri Ram Krishan Shandil, was the owner of land measuring 10 bigha 7 biswa (8032 mtrs) comprising in Khasra No.72/2 and 69 situated in Mauza Chamiana Pargana Chhabrogti, Shimla, Himachal Pradesh. The said property measuring 8032 sq. mtrs. was settled with the Trust and thus stood transferred irrevocably on settlement of the Trust. The Trust

Deed was duly got registered upon payment of the requisite stamp duty at the Office of the Registrar, Shimla.

These facts are undisputed.

4. The petitioner/Institution had submitted an application to the respondent no.2 for grant of recognition/permission for starting B.Ed. course of one year duration along with copies of the aforesaid Trust Deed and the Supplementary Trust Deed. The said permission was duly granted vide order dated 4th July, 2007 by the respondent no.2 after satisfying itself about the fulfilment of all rules and regulations. After getting recognition from respondent no.2, the petitioner/Institution also got affiliation from the Himachal Pradesh University, Shimla which also examined the same documents i.e. Trust Deed in proof of the petitioner being owner of the land in question. Admittedly, the petitioner has been running B.Ed. course for the last many years. So far as the present case is concerned, we note that the respondents thus recognised the petitioner's ownership of the said land from as back as the year 2007.

5. As per the petitioner, besides the aforesaid land referred to in para 3 above, the founder Trustee Shri R.K. Shandil owned some more land. This land included some land in Khasra No.8, which is contiguous to the afore-mentioned land measuring 8032 sq. mtrs. comprising Khasra Nos.38, 39 & 40, which had been earlier settled by the said Shri R.K. Shandil in favour of the Trust. Therefore, on 17th January, 2010, the

founder trustee Shri R.K. Shandil executed and got registered a Supplementary Trust Deed upon payment of the requisite stamp duty at the Registrar Office at Shimla. Vide this Supplementary Trust Deed, further land measuring 6908 sq. mtrs. including land in Khasra No.8 was also settled in favour of the Trust.

6. At this stage, it may be relevant to mention that the petitioner who from 2007, had been running a B.Ed. (Bachelor of Education) course on the land, in the year 2012 had submitted an application additionally seeking recognition for additional course namely D.El. Ed. (Diploma in Elementary Education) course in premises on the same land. This application was initially rejected.

7. The petitioner, therefore, preferred a statutory appeal before the respondent no.1 who directed the petitioner to obtain a certificate from the Directorate of Higher Education, Shimla, Himachal Pradesh, certifying the exact status of the College and the land on which it was situated.

8. The petitioner, therefore, approached the Directorate of Higher Education with a request to conduct inspection of its premises who deputed its Deputy Director to carry out the requisite inspection, which inspection was duly carried out and a certificate dated 1st September, 2012 was issued certifying that the college run by Shimla Education Society Trust had its own building on the land of Khasra Nos.38, 39 &40.

It was clearly certified by the Deputy Director (Higher) Education that the said building was exclusively being used for the college.

9. Based on this inspection report, the appeal filed by the petitioner had been allowed and the matter had been remanded back to the respondent no.2. It is noteworthy that the respondent no.2 had conducted a physical verification and re-inspection. Being satisfied with regard to the land issue, the respondent no.2 had finally granted recognition to the petitioner on 30th January, 2017 for conducting the course of Diploma in Elementary Education as well.

10. A public notice was issued by the respondent no.1 on 26th November, 2012 inviting fresh applications from institutions across the country desirous of seeking recognition of various teacher training courses. Pursuant thereto, the petitioner submitted an application to the respondents on 30th December, 2012 seeking recognition for conducting an M.Ed. course commencing from the academic session 2013-14 and this application and its rejection is the basic issue which needs adjudication in the present writ petition.

11. The application of the petitioner was considered by the respondents and after exchange of letters between the parties including deficiency letter dated 6th April, 2013. The request of the petitioner was rejected vide order dated 26th March, 2015 mainly on the ground that as per the land documents, the land was on lease basis with the petitioner and that

this was not acceptable as per NCTE Regulations. Aggrieved by the aforesaid order, the petitioner preferred a statutory appeal.

12. It may also be relevant to note here that while the petitioner's application for recognition of M.Ed. course was pending consideration, the petitioner/Institute had been running B.Ed. course continuously from the year 2007 on the same land based on that very lease deed. Despite the fact that the B.Ed. course was being run continuously since 2007 in the said premises, acting malafide the respondent no.2 had also passed an order dated 28th January, 2014, withdrawing the recognition of B.Ed. course premised on the same land issue. As a result, the petitioner was compelled to prefer a statutory appeal before the respondent no.1 which was allowed vide an order dated 2nd July, 2014 holding that the petitioner/Institution fulfilled the requirements under the provisions of NCTE Act, rules and regulations including instructional and infrastructural facilities. The matter was remanded to the respondent no.2 for passing an order afresh.

13. After the remand order passed by the respondent no.1, vide its order dated 24th April, 2015, the respondent no.2 restored the recognition of the petitioner for B.Ed. course. Thus, it is evident that at this stage i.e. on 24th April, 2015 both the respondent nos.1 & 2 were satisfied that the petitioner/Institute was fulfilling the requirements under the NCTE Act and rules. More important, the baseless objection premised on the

petitioner having leasehold rights in the subject land stood settled and resolved authoritatively.

14. In the meanwhile, the petitioner who was aggrieved by the order dated 26th March, 2015 passed by the respondent no.1 refusing recognition for conducting M.Ed. course, had submitted a statutory appeal dated 16.06.2015 to the respondent no.1. This appeal was also allowed by the respondent no.1 by the order dated 13.10.2015 and the matter was remanded to the respondent no.2 once again with a direction to process the application as per the regulations.

15. It is pertinent to note that while remanding the matter to the respondent no.2, the Appeal Committee of respondent no.1 had specifically observed that so long as appellant society is able to establish its ownership rights over the property through legally acceptable documents and also able to transfer the land and the built up area thereupon, in the name of the appellant institution, within six months after the grant of recognition, there was no objection to the appellant society's leasing out the land to the applicant college.

16. After the remand of the petitioner's case for grant of recognition for M.Ed. course, it was expected that the respondent no.2 would now take expeditious steps to process the application of the petitioner. But the respondent no.2 once again vide its order dated 23rd December, 2015, rejected the application of the petitioner, mainly relying on Clause 8[4][i]

of the NCTE Regulations, 2014 and totally ignoring the findings of the Appeal Committee of the respondent no.1.

17. After rejection of its request by the respondent no.2, the petitioner was once again compelled to make a representation dated 23rd December, 2015 to the Chairman of the respondent no.1. In this representation, while pointing out the relevant facts, the petitioner specifically pointed out that its request was being repeatedly rejected by respondent No.2 on the very grounds which already stood decided in its favour vide the appellate order dated 13th October, 2015.

18. Apprehending delay in disposal of its representation dated 25th December, 2015, the petitioner approached this Court by way of WP (C) No.392/2016 which was listed before a learned Single Judge of this Court who vide the order dated 15th January, 2016 disposed of the petition with a direction to the Chairman of the respondent no.1, to decide the petitioner's representation in accordance with law as expeditiously as possible and preferably within a period of two weeks.

19. Despite these directions of the learned Single Judge of this Court, the previous orders of the appellate authority as well as the factual position established on record, the respondent no.1 decided the petitioner's representation after more than six weeks vide order dated 2nd March, 2016. The respondent no.1 noted the fact that the petitioner/Shimla College of Education, was an existing institution

recognized by NCTE for conducting B.Ed. since 2007; and that it could not be denied that recognition order dated 4th July, 2007 had been issued by NRC(Respondent no.2) only after it was satisfied that the institution fulfilled the requirements under the provision of the NCTE Act, Rules and Regulations including infrastructural and instructional facilities. After noticing the aforesaid facts, by the order dated 2nd March, 2016, the respondent no.1 again directed the respondent no.2 to consider the case of the petitioner/Institution for recognition of M.Ed. after obtaining an affidavit on stamp paper worth Rs.100/- duly attested by the Oath Commissioner from Shima Education Society Trust, stating that land under lease would be formally transferred in the name of the institution within a period of six months from the date of formal recognition order under Regulation 7 with a further direction that thereafter an inspection of the college could be carried out within the abovesaid period and if the Trust later failed to transfer the land in the name of the college, the recognition could be withdrawn.

20. Since as per the NCTE Regulations, the last date for issuance of formal order of recognition of 3rd March, 2016 was approaching and the petitioner's application had not yet been decided, the petitioner once again approached this Court by way of a second writ petition being WP(C) No. 3007/2016 seeking primarily the implementation of the order dated 2nd March, 2016 passed by the respondent no.1 in its favour. This

writ petition was listed before a learned Single Judge of this Court who was of the opinion that the writ petitions could not be filed to seek execution of orders passed by the Tribunals or subordinate Authorities, without filing any representation or application before the said Tribunal/Authority. The writ petition and application of the petitioner were, therefore, dismissed vide its order dated 6th April, 2016 with liberty to the petitioner to file representation/application/proceedings before the Tribunal/Subordinate Authorities.

21. In compliance of the above, the petitioner submitted a representation dated 21st April, 2016 to the respondent no.2. Since no decision was taken thereupon, the petitioner was yet once again compelled to approach this Court by way of a third writ petition i.e. WP(C) No.3714/2016 seeking recognition of M.Ed. Course. The learned Single Judge of this Court was of the opinion that even though the petitioner had applied to the respondent on 21st April, 2016, only ten days had elapsed from the time application was filed, the writ petition was premature and, therefore, vide order dated 2nd May, 2016, was dismissed.

22. After the dismissal of the petitioner's writ petition, the respondent no.2 once again considered the application of the petitioner. By its order dated 6th May, 2016, it again reiterated its refusal order dated 23rd December, 2015.

23. The petitioner having no other option, was once again compelled to file a statutory appeal before the respondent no.1. Yet again, the appeal was allowed by respondent no.1 placing reliance on its earlier order dated 13th October, 2015 wherein it had been held that as long as the Society is able to establish its ownership rights over the property through legally permissible documents and also able to transfer the land and built up area thereon in the name of the appellant institution within six months after grant of recognition, again reiterating there was no objection to the appellant society's leasing out the land to the appellant college and while remanding the matter to N.R.C., it was specifically directed that the application be processed.

24. It may be pertinent to note that while remanding the matter to respondent no.2, the respondent no.1 had specifically observed that the respondent no.2 was to consider the application of the petitioner for M.Ed. course as per directions given in the Appellate Order dated 13th October, 2015 and the Chairman's order dated 2nd March, 2016.

25. It is truly unfortunate that despite the above, the respondent no.2, yet again did not consider the case of the petitioner for another more than two months. Finally in its 259th meeting held from 18th to 20th October, 2016, respondent No.2 considered the case of the petitioner referring to the decision dated 2nd March, 2016 of the Appeal Committee of respondent no.1. Finally, a decision on 4th November, 2016 was taken

that the petitioner be directed to submit an affidavit on stamp paper worth Rs.100/- from Shimla Education Society Trust, stating that the land under lease will be formally transferred in the name of the Institution within a period of six months from the date of formal recognition order under Regulation 7.

26. The petitioner promptly complied with the above and duly submitted the affidavit to the respondent no.2 as directed vide its order dated 4th November, 2016.

27. Yet again no steps were taken by the respondent no.2. Therefore, the petitioner was constrained to approach this Court by way of its fourth writ petition being WP(C) No.5989/2016 with virtually the same prayer as before. On 29th November, 2016, when this writ petition was listed before the learned Single Judge, the respondents through their counsel assured the learned Single Judge that the affidavit submitted by the petitioner shall be considered by the respondent no.2 in its next meeting. Based on this submission made by the counsel for the respondent, the writ petition was dismissed as withdrawn.

28. It may be relevant to note that even though the counsel for the respondents had specifically assured this Court on 29th November, 2016 that the affidavit submitted by the petitioner in accordance with the direction given by the respondent no.2, would be duly considered in the next meeting. But strangely, the minutes of the next meeting i.e. 26th November, 2016

meeting held from 14th to 19th December, 2016, show that no consideration was effected in respect of the petitioner's request. The minutes only record that on the 14th December, 2016, NRC, NCTE had received the relied documents sent by the institution on 14th December, 2016.

29. After the disposal of the aforesaid writ petition, despite the admitted land position in view of the recognition granted to the B.Ed. course of the petitioner and despite receiving the affidavit as directed by respondent no.2, again instead of approving the petitioner's application, the respondents passed yet another order dated 4th January, 2017, this time calling upon the petitioner to submit an authenticated copy of the mutation in the name of the petitioner/college. The petitioner was further directed to provide the name and designation of the revenue officer who had signed the documents on the specious ground that the seal of the officer was not clear.

30. Faced with such a stand of the respondents, the petitioner who was aware that the last date for grant of recognition for the academic year 2017-2018 was 3rd March, 2017, again approached this Court by way of fifth writ petition being WP(C) No.627/2017 for recognition of M.Ed. course. The writ petition was listed on 24th January, 2017 when counsel for the respondents sought time to seek instructions due to which the matter was adjourned to 7th February, 2017.

31. On 7th February, 2017, counsel for the respondents informed the learned Single Judge that pursuant to the submission of the affidavit by the petitioner, a visiting team had been constituted, that the concurrence of the members of the visiting team had been taken and it was expected that between 11th February, 2017 to 3rd March, 2017, the team shall visit the petitioner institution for inspection. After noticing the submission made on behalf of the petitioner that the last date for grant of recognition was 3rd March, 2017, the learned Single Judge came to the conclusion that it would be appropriate that the inspection is carried out within ten days i.e. on or before 17th February, 2017.

32. In accordance with the order of this Court, the visit by the inspecting team of the respondent, was conducted before 17th February, 2017. The case of the petitioner for grant of recognition for M.Ed. course was thereafter considered in the 264th Meeting of the respondent no.2 held from 20th to 23rd February, 2017 in which certain deficiencies regarding the size of the multi-purpose hall, number of books and non-supply of certified copy of certain document were raised and a show cause notice dated 27th February, 2017 was issued to the petitioner in this regard. Interestingly, no such deficiencies were ever before pointed on the petitioner's application made on 30th December, 2012 which was now pending for over four years.

33. The petitioner once again submitted a detailed reply dated 28th February, 2017 giving a point-wise explanation in respect of the various observations of respondent no.2 enclosing therewith a verification report made by the Executive Engineer of the Himachal Pradesh Public Works Department clearly showing that the total built up area of the petitioner's institute was 4064.7 sq. mtrs. as well as other compliances.

34. On the 1st of March, 2017 the aforesaid writ petition of the petitioner came up for hearing before the learned Single Judge, when the counsel for the respondents informed the Court that the Committee had considered the report submitted by the visiting team and had found certain deficiencies which had been communicated to the petitioner by way of a show cause notice which show cause notice had been replied to by the petitioner. The said writ petition was disposed of observing that it was expected, that the respondents shall consider the reply to the show cause notice as expeditiously as possible.

35. At this juncture, it may be relevant to note that while the petitioner's attempt to get recognition for the M.Ed. course was still pending before this Court, the respondent no.2 had passed an order dated 30th January, 2017 granting recognition/permission to the petitioner for conducting the Diploma in Elementary Education which is a Teacher Education Programme of two years duration. This recognition order categorically records that the institution/society fulfils the requirements

under the provisions of NCTE Act, Rules thereunder as well as the relevant Regulations including the Norms and Standards for the concerned Teacher Education Programme such as instructional and infrastructural facilities, library, accommodation, financial resources, laboratory, etc. for running the programme. It also records that the petitioner has selected/appointed duly qualified teaching staff as per NCTE norms and as per the approval of faculty given by the affiliating body.

36. The respondent no.2, therefore, vide its own order dated 30th January, 2017, certified that the petitioner/Institute fulfilled the requirements under the provisions of NCTE Act and rules and regulations. Clearly the decision on the petitioner's application for recognition of M.Ed., was being withheld malafide only on one unjustified reason or another. This become evident from the fact that despite the assurance given to this Court on 1st March, 2017 for expeditious consideration of the petitioner's case, the respondents again in its 267th Meeting held from 5th to 7th April, 2017, deferred the agenda item referring to the petitioner's case that too on the informal request of the Principal Secretary, Education, Govt. of Himachal Pradesh who did not attend this meeting due to his pre-occupation. The petitioner's case was unreasonably deferred to the next meeting to be held from 19th to 21st April, 2017 completely ignoring the spirit of the orders dated 7th

February, 2017 & 1st March, 2017 passed by the learned Single Judge pursuant whereto an expeditious consideration of the petitioner's case was clearly expected.

37. At this stage, the petitioner learnt about the order dated 2nd March, 2017 passed by the Hon'ble Supreme Court in IA No.16/2017 passed in WP(C) No.276/2012 dated 2nd March, 2017 whereby the last date of issuance of the formal order of recognition for the session 2017-2018, had been extended till 2nd May, 2017 and the last date for grant of affiliation by the concerned authority was also extended till 30th May, 2017.

38. As the respondents despite their assurance given to this Court on 1st March 2017, had not taken a final decision on the petitioner's reply, the petitioner filed a contempt petition being Cont.Case (C) No.284/2017 before this court which was listed before a Single Judge of this Court, who was of the view that the contempt petition was not maintainable as no specific deadline had been stipulated by the court in its order dated 1st March, 2017. Therefore, the petitioner's contempt petition was dismissed vide the order dated 17th April, 2017 with the liberty to file a fresh writ petition in accordance with law.

39. In the meanwhile, the respondent no.2 finally considered the case of the petitioner for recognition in its 268th Meeting held from 19th to 21st April, 2017. A perusal of the minutes of the said meeting strangely recorded that the consideration in this meeting was based, not on the

report of the visiting team of the respondents, but was based on a report given by the Government of Himachal Pradesh. For the first time a wholly new issue as to whether the building in which the petitioner/Institution was running, was situated in Khasra No.8 instead of in Khasra No.38, was raised. It was, further, observed in those minutes that though the land bearing Khasra No.38 had been transferred in the name of the Trust, but it now appeared that the building was running on the land bearing Khasra No.8 which was not owned by the Society but was in the name of Dr.R.K. Shandil. Based on these observations it was proposed to issue a fresh show cause notice to the petitioner.

40. In these circumstances, the petitioner, once again received yet another show cause notice based on the wholly new issue about the college building in Khasra No.8, which the following discussion would show, was on completely incorrect premise. The petitioner submitted a detailed reply dated 26th April, 2017 clearly pointing out that the college was situated in Khasra No.38. The respondents were also informed the fact that the land comprised in Khasra No.8 measured only 270 sq. mtrs. whereas the college building was covering the huge built up area of about 4000 sq. mtrs. The respondents were reminded of the fact that the Institute stood inspected from time to time not only by the respondents, but even by the Himachal Pradesh University. In its reply the petitioner also pointed out that even otherwise it was wrong that Khasra No.8 was

still owned by Dr.R.K. Shandil and reiterated the fact that the said land stood transferred in favour of the Trust by the Supplementary Trust Deed dated 7th January, 2010. The petitioner also brought out the fact that the mutation in that regard had not taken place in the revenue records only because the matter pertaining to certain khasra numbers including Khasra No.8, was still pending adjudication before the Consolidation/Settlement Officer.

41. Since the last date for grant of recognition stood extended upto 2nd May, 2017 and the petitioner had still not received any final decision from the respondents, the petitioner was once again compelled to approach this Court by way of its sixth writ petition being WP(C) No.3683/2017. This writ petition came up before a learned Single Judge of this Court. The writ petition was disposed of by an order dated 28th April, 2017 after noting the prayer made by counsel for the petitioner that its case may be considered on or before 2nd May, 2017. It was, accordingly, ordered that the Regional Committee should consider the case of the petitioner on merits before 2nd May, 2017.

42. It transpires that the case of the petitioner was finally considered by the respondents in its 269th meeting held from 26th April, 2017 to 2nd May, 2017. It is indeed unfortunate to note that at this stage the case of the petitioner was rejected by a non-speaking order of respondent No.2 merely observing that the reply of the Institution had been considered and

found to be unsatisfactory and, that the Committee had decided that the application be rejected and recognition/permission be refused.

43. Being aggrieved by the fact that the respondent no.2 had failed to examine the relevant material, ignored established facts and again not given any reason for rejecting its application, the petitioner yet again approached this Court by way of its seventh writ petition being WP(C) No.3783/2017. This petition was listed before the learned Single Judge on 1st May, 2017 who dismissed the same holding that the alternate remedy of appeal under Section 18 of the NCTE Act was available to the petitioner and, therefore, the petitioner ought to invoke such alternative remedy as may be available to it.

44. After the dismissal of the petitioner's seventh writ petition by this Court on 1st May, 2017 the respondent no.2 passed a reasoned order on 1st May, 2017 which was then uploaded on its official website. This order is impugned before us, as the respondents had once again rejected the request of the petitioner ignoring the afore-noted admitted and accepted facts, influenced by the erroneous report given by the Principal Secretary, Education, to the effect that the petitioner/Institution was situated in Khasra No.8 and that this land continued to be in the name of R.K. Shandil.

45. Learned counsel for the petitioner has further contended that since it was an admitted fact that the respondents had granted recognition to the

petitioner for B.Ed. course in the year 2007, which recognition is admittedly continuing even on date, the action of the respondents in declining to grant recognition for the M.Ed. course proposed to be run in the same Institution and on the basis of the same documents, was wholly arbitrary and shows clear non-application of mind. Learned counsel for the petitioner has further contended that the rejection of the petitioner's case. It is, therefore, contended that the approach of respondent no.2 is biased for which reliance is also placed on the order passed by the High Court of Himachal Pradesh.

46. Based on the above facets order, learned counsel for the petitioner contends that it is apparent that the respondents have in a most arbitrary manner, dealt with the application of the petitioner and have rejected the case of the petitioner by relying on an inspection conducted by a person not authorised under the NCTE Act. Mr. Sehrawat has painstakingly submitted that even otherwise the respondents from time to time tried to take different stands while rejecting the case of the petitioner for grant of recognition.

47. Per contra learned counsel for the respondents while stating that as per the scheme of the Act, the council i.e. respondent no.1 is the paramount body for granting recognition to courses for Teacher Education. It is contended that its decision should not be interfered with by the Court and further that the petitioner had failed to provide

documentary evidence duly verified by the Government authority and, therefore, it is not entitled to be granted recognition. The respondents have in their counter affidavit, taken the plea that the petitioner has an alternate remedy of filing an appeal under Section 18 of the NCTE Act and on this ground also, the writ petition is not maintainable being premature at this stage.

48. Learned counsel for the respondents has further drawn our attention to the fact that as per the Regulations of the NCTE, the last date for grant of recognition for any course is 3rd March of the academic session which was extended to 2nd May, 2017 by the Supreme Court of India and has, therefore, contended that even if this Court is of the view that the petitioner is entitled to grant of recognition, the same ought to be considered only from the next academic session and not for the session 2017-2018.

49. While rebutting the aforesaid arguments of the respondents, learned counsel for the petitioner relied on *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh & Ors.* (2013) 2 SCC 617; *Parshvanath Charitable Trust & Ors. Vs. All India Council for Technical Education & Ors.* (2013) 3 SCC 385 & connected matter; *Asha Vs. Pt. B.D. Sharma University of Health Sciences & Ors.* (2012) 7 SCC 389; *Joseph Sriharsha Mary Indraja Educational Society Vs. The National Council for Teacher Education & Ors.* in WP (C)

No.26127/2013 passed by High Court of Andhra Pradesh; *Irinjalakuda Diocesan Educational Trust Vs. All India Council for Technical Education & Ors.* passed in *WP (C) No.13969/2015* on 11th June, 2015 & *Guru Teg Bahadur Institute of Technology & Ors. Vs. All India Council for Technical Education & Anr.* passed in *WP(C) No.3684/2016*.

50. We have considered the submissions made by both sides.

51. Before dealing with the rival contentions of the parties, it would be appropriate to also refer to certain relevant orders passed by the High Court of Himachal Pradesh in favour of the writ petitioner which have been produced before us during the course of hearing.

52. Mr.Sanjay Sharawat, learned counsel for the petitioner, has produced orders passed by the High Court of Himachal Pradesh in CWP No.3279 of 2015 (the eighth writ petition). The court noticed the apprehension of bias expressed by the petitioner qua one of the members of the Regional Committee of respondent no.2 namely Shri Y.K. Sharma. Finding substance on the petitioner's apprehensions, the High Court of Himachal Pradesh had vide the order dated 6th August, 2015, directed Shri Y.K. Sharma not to participate in the meetings of respondent no.2 whenever any case of the petitioner came up for consideration.

53. However, despite the order dated 6th August, 2015 passed by the High Court of Himachal Pradesh, Shri Y.K. Sharma still chaired the

meeting of the respondent no.2 held on 20th May, 2016 in which the case of the petitioner was taken up for consideration. This was in blatant violation of the High Court order dated 6th August, 2015 passed in CWP No.3279/2015.

54. The petitioner was compelled to file its sixth writ petition being CWP No.1217 of 2016 in the High Court of Himachal Pradesh.

In such circumstance, the High Court of Himachal Pradesh vide its order dated 27th May, 2016 in CWP No.1217/2016, while staying the order dated 20th May, 2016 passed by the Committee chaired by Sh. Y.K.Sharma, specifically noted the fact that despite the direction given to him not to participate in the meeting whenever case of petitioners come up for consideration, he had chaired the meeting. Though Sh. Y.K.Sharma tendered unconditional apology for the same in court, the High Court had passed an order dated 27th May, 2016 directing him to tender written apology.

55. Learned counsel for the petitioner has also relied upon order dated 15th May, 2017 passed by the High Court of Himachal Pradesh in CWP No. 991 to 2017 (the tenth petition) in support of his plea that despite having granted recognition for D.El.Ed. to the petitioner on 30th January, 2017, the respondent no.2 had in its 268th meeting held from 19th to 21st April, 2017 in a most malafide manner directed issuance a show cause notice to the petitioner asking it to explain as to whether the building was

in Khasra No.8. According to the petitioner, this was an attempt to re-open settled issues, the High Court of Himachal Pradesh, therefore, had restrained the respondents from taking any action pursuant to the decision taken in the 268th meeting held from 19th to 21st April, 2017 qua the petitioner.

56. We find that it is an admitted fact that the respondents have granted recognition to the petitioner for the B.Ed Course in the year 2007 for the same institution and land and this recognition is admittedly continuing as on date. We find merit in the contention of the learned counsel for the petitioner that the rejection of the petitioner's case for grant of recognition for M.Ed. course despite repeated orders having been passed by the respondent no.1 in appeal, clearly shows that the respondent no.2 has virtually exceeded its jurisdiction and tried to overreach the order of its superior appellate authority.

57. We also find that on the one hand the Appellate Authority of respondent no.1 had been repeatedly accepting the appeals of the petitioner and was fully satisfied that the petitioner institution fulfilled all the requirements under the provisions of NCTE Act, Rules and Regulations and was providing adequate instructional and infrastructural facilities but regrettably respondent No.2 repeatedly rejected the petitioner's application without any valid reasons. The rejection of the petitioner's case for grant of recognition for M.Ed Course, despite

repeated orders having been passed by respondent No.1 in appeal, clearly shows that the respondent No.2 is virtually exceeding its jurisdiction and tried to overreach the order of its superior Appellate Authority.

58. We also find that the approach of the respondent No.2 qua the petitioner is biased as is manifested from the afore-noted orders of the High Court of Himachal Pradesh. It is evident from the orders passed by the High Court of Himachal Pradesh that a member of the Committee of respondent no.2 (Shri Y.K. Sharma) was biased against the petitioner. He had in fact despite a restraint order dated 6th August, 2015 passed by the High Court yet he had not only taken part, but in fact chaired the meetings relating to the consideration of the case of the petitioner compelling the High Court to direct him to give a written unconditional apology.

59. In the present case, on account of highly unreasonable and arbitrary conduct of the respondents, not only the petitioner, which has been running a B.Ed Course in the same institution and on the same land for the last seven years, but also hundreds of students, have been deprived of the benefit of M.Ed Course for the last four academic years i.e. from 2013-14, 2014-15, 2015-16 and 2016-17. Had the respondent No.2 promptly complied with the Appellate orders at the earliest, hundred of students would have had the benefit of receiving higher education by way of getting degree in M.Ed Course in the State of Himachal Pradesh.

60. It is no gainsaying that the respondent no.1 is the paramount body for granting recognition and courts would not normally substitute their views. But it is an equally well settled principle that once it is found that the power has been exercised by the Authority in a manner impermissible in law and shows complete non-application of mind on the part of the respondents, the Court would in exercise of the powers under Article 226 of the Constitution of India, be justified in interfering with the decision of the respondents Authority.

61. From the orders passed by the respondents from time to time, it is evident that the respondents have repeatedly rejected the case of the petitioner on wholly unwarranted grounds ignoring the basic admitted fact that the petitioner/Institute has been granted permission by the same body i.e. respondent no.2 for two other courses i.e. B.Ed. and Diploma of Elementary Education on the basis of the same documents and after specifically coming to the conclusion that it was satisfied that the Institution fulfilled the requirements under the provisions of NCTE Act, rules and regulations including instructional and infrastructural facilities.

62. We have also given our thoughtful consideration to the plea of availability of alternate remedy raised by the respondents. It is an admitted fact that the present petition is the twelfth case filed by the petitioner for the same grievance before this Court and the petitioner has already suffered on account of the highly unreasonable and arbitrary

conduct of the respondents. The plea of availability of an alternate remedy is never an absolute bar. The question which arises for our consideration is as to whether even in the teeth of such illegalities having been committed and perpetrated, this Court should not invoke its extraordinary jurisdiction under Article 226 of the Constitution of India. Having given our considered thought to the peculiar facts of the present case, we are of the view that it would be highly unjust to relegate the petitioner to the remedy of appeal at this stage, especially when we are within the extended cut-off date for grant of recognition. The injustice resultant to the petitioner upon being called upon to invoke appellate remedy is manifested from the past experience. Each time the Appellate authority has after returning factual findings in favour of the petitioner, remanded the matter to the respondent no.2 which has diverted the matter into a series of untenable objections and rejection of the prayers, necessitating the multiple writ petitions. Therefore, the alternate remedy in the present case is not an equally efficacious remedy.

63. In the above facts and circumstances, we hold that the repeated rejections of the petitioner's application for grant of recognition for M.Ed. course, is not at all justified. In fact such conducts depict that a statutory authority which is responsible for ensuring and maintenance of standards of education of teachers, is acting in a most arbitrary manner and without due application of mind. The decision of the respondent no.2

taken in its meeting dated 1st May, 2007, therefore, is liable to be set aside and quashed.

64. We have also carefully considered the submission of the respondents that the date of 2nd May, 2017 which is the last date for grant of recognition, ought not to be interfered with by the court.

65. Having considered the exceptional circumstances which are evident from perusal of the facts noted hereinabove, coupled with the fact that the petitioner is not at all at fault for the delay caused in deciding its application made in 2012 and also the fact that the petitioner has pursued its remedy as expeditiously as possible which is evident from the fact that the petitioner was compelled to file as many as ten writ petitions (seven writ petitions before this court, three writ petitions before the High Court of Himachal Pradesh) besides one contempt petition before this Court, we are of the considered opinion that the cut off date cannot be allowed to be used by the respondent as a tool to deny the relief to which the petitioner was also and so found entitled. In fact it would be grave travesty of justice if the petitioner is not permitted to start the course, especially since it is also an admitted fact that the course of M.Ed. has to begin only in September, 2017 and there is still adequate time to start the course.

66. We are fortified by the decision of the Hon'ble Supreme Court on this aspect wherein the Apex Court has in the case of *Asha Vs. Pt. B.D. Sharma University of Health Sciences & Ors. (2012) 7 SCC 389*, in the

context of grant of admissions beyond the cut off date, it was held in paras 30 to 33 which are reproduced as under:-

“30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate,

it would be completely unjust and unfair to deny such exceptional relief to the candidate. (Refer *Arti Sapru and Others v. State of J & K*; *Chavi Mehrotra v. DG Health Services* and *Aravind Kumar Kankane v. State of U.P.*)

33. We must hasten to add at this stage that even if these conditions are satisfied, still, the court would be called upon to decide whether the relief should or should not be granted and, if granted, should it be with or without compensation.”

(Emphasis supplied)

67. Where no fault is attributable to a candidate and the candidate is denied admission for arbitrary reasons, the cut off date cannot be used as a technical instrument or tool to deny admission to a meritorious student. The aforesaid principles laid down by the Supreme Court in the case of *Asha Vs. Pt. B.D. Sharma University of Health Sciences & Ors.* (*supra*), has been followed by various Single Benches of the High Courts including High Court of Andhra Pradesh, High Court of Kerala. Our attention stands drawn to a Single Judge Bench decision of this Court in the case of *Guru Teg Bahadur Institute of Technology & Ors. Vs. All India Council for Technical Education & Anr.* passed in WP(C) No.3684/2016 wherein in para 23, the court held as under:-

“23. Learned senior counsel for the petitioners relied upon the decision of the Division Bench of the Punjab & Haryana High Court dated 06.06.2013 in LPA 1099/2013 (O & M) titled the Regional Officer, All India Council of Technical Education v. Jind Institute of Engineering & Technology:, wherein, the Division Bench, after noticing the decision of the Supreme Court in *Parshavanath Charitable Trust (supra)*, held that power under Article 226 of the Constitution of India

was wide enough to enable the Court to pass orders under the given set of facts of the case and to ensure substantial justice.”

68. It is important to note that not only most of the writ petitions of the petitioner were allowed but even the Appellate Authority of the respondent no.1 on each occasion and repeatedly opined in favour of the petitioner but still till date, the petitioner has not been able to start the course which it wanted to start in the academic session 2013-2014 which has resulted in depriving hundreds of students of the benefit of M.Ed. course to be run by the petitioner with established credentials given its experience in running the other courses.

69. In the present case, the petitioner has acted diligently and promptly responded to every query raised by the respondents. No fault is at all attributable to the petitioner. On the contrary, given the bias nursed and influence exercised by Shri Y.K. Sharma of the respondent no.2, as found by the respondent no.2, a conscious, unfair effort has been made to deny the recognition to the petitioner for commencing the M.Ed. course.

70. In the result, the impugned decision dated 1st May, 2017 of the respondent no.2 is hereby set aside and quashed and the respondents are directed to forthwith process the application of the petitioner for grant of recognition for the course of M.Ed. for the academic year 2017-2018 ignoring the reasons stated in its decision dated 1st May, 2017. The entire process including issuance of letter of intent and issuance of formal order

of recognition would be completed within four weeks from the date of receipt of order so as to ensure that the academic session 2017-2018 is not affected.

71. The writ petition is, accordingly, allowed with costs which are quantified at Rs.25,000/- against the respondents.

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In view of the writ petition having been allowed, these applications do not survive for adjudication and are dismissed as such.

(REKHA PALLI)
JUDGE

ACTING CHIEF JUSTICE

JUNE 05, 2017
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