

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No. 12854 of 2018

and

WMP.Nos.15105 to 15107 of 2018

Arul College of Education,
Rep. by its Chairman,
P.Allimuthu M.A.Med.,
Pali, Ulundurpet,
Villupuram District

.... Petitioner

Vs.

1. National Council for Teacher Education,
Southern Regional Committee,
Jnanabarathy Campus Road, Nagarabhavi,
Bengaluru- 560 072, represented by its
Regional Director.

2. The Tamil Nadu Teacher Education University
Gangaiammankoil Street,
Karapakkam,
Chennai-600 007
represented by its Registrar

.... Respondents

Prayer: PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorarified Mandamus to
call for records on the file of the second respondent in
No.TNTEU/R/Fresh Affiliation-B.Sc. B.Ed-returned/1004 dated
09.05.2018 passed by the second respondent and quash the same
and direct the second respondent to grant provisional
affiliation to the petitioner college for the B.Sc.B.Ed
(integrated) course.

For Petitioner :: Mr.V.Prakash

Senior counsel

for Mr.B.Balavijayan

For Respondents :: Mr.PH.Aravind Pandian

Additional Advocate General

for Mr.V.Venkatesan (R2)

Mr.Su.Srinivasan (R1)

ORDER

This Writ Petition is for issuance of a Writ of Certiorarified Mandamus to quash the order of the second respondent in Ref.No.TNTEU/R/Fresh Affiliation-B.Sc. B.Ed-returned/1004 dated 09.05.2018 and for a direction to the second respondent to grant Provisional Affiliation to the petitioner for the B.Sc., B.Ed course for the academic year 2018-2019.

2. The case of the writ petitioner as stated in the affidavit filed in support of the Writ Petition are as follows:

(i) The petitioner institution is running B.Ed course. The petitioner also applied for two units of new course in B.Sc., B.Ed., (4yrs integrated course). The first respondent scrutinized all the infrastructural facilities available in the petitioner college as per the National Council for Teacher Education (NCTE) norms and regulations, and granted recognition to the petitioner college on 02.05.2017. The National Council for Teacher Education (NCTE) before granting recognition, sent an inspection team with the experts on two occasions and the inspection team after scrutinizing each and every facility provided by the petitioner institution and the infrastructure available in the Institution, including the building, staffs and other aspects found that the petitioner college has provided all the infrastructure facilities required for the new course i.e., B.Sc., B.Ed. The recognition to the petitioner institution to commence B.Sc., B.Ed., was applied in two units and the recognition was given to the first unit by order dated 02.05.2017 and the recognition was granted to the second unit on 19.01.2018.

(ii) After obtaining the recognition from the first respondent, for the first unit of B.Sc., B.Ed., the petitioner applied for affiliation for the course before the second respondent on 19.07.2017. The second respondent simply kept the application for the affiliation submitted by the petitioner for more than one year, without processing the same. Due to such delay, the petitioner has already lost one academic year. The petitioner approached the second respondent for early affiliation. The second respondent sent two member team on 08.05.2018 to the petitioner institution for inspection without any prior intimation, knowing that the institution is closed for summer vacation. The petitioner received the team and co-operated with them for completing the inspection. Surprisingly, on the very next day of inspection i.e., on 09.05.2018, the second respondent passed an order rejecting the application for affiliation. No opportunity was given to the petitioner before passing the impugned order. The second respondent has given 20

reasons in the impugned order with an oblique motive to reject the application. The second respondent though has no authority to verify and re-examine the finding of the first respondent for granting recognition has purposely gone into the adequacy of the infra structure provided by the petitioner institution. The impugned order passed by the second respondent goes to show that the second respondent has discarded the inspection conducted by the first respondent and expressed its view, contrary to the findings and observations made by the first respondent. It has been held by the Hon'ble Supreme Court that the purpose of recognition and affiliation are different. The Affiliation permits the institution to send the students to participate in public examination conducted by the examining body to secure the qualification in the nature of degrees, diploma and certificates. Recognition is the license to the institution to offer course or training in teaching education and the affiliating body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition. The impugned order is liable to be quashed on the sole ground that it is in violation of principles of natural justice. Though the application for affiliation was given by the petitioner in July 2017, the order came to be passed within one year from the date of application i.e. 09.05.2018. Since, the second respondent is not an authority to conduct inspection and re-examine the facilities and infrastructure provided by the petitioner, the impugned order is liable to be quashed for want of Jurisdiction. The impugned order is contrary to law laid down by the Hon'ble Supreme Court in several Judgments and hence it is liable to be quashed.

(iii) The Tamil Nadu Teachers Education University Act (TNTEU ACT) 2008, does not permit the second respondent to conduct an inspection for affiliation and hence the impugned order on the basis of alleged inspection is arbitrary and unconstitutional. The second respondent cannot assume the powers of the first respondent. The impugned order which is in effect to nullify the recognition granted by the first respondent is motivated with malafides. Since such arbitrary exercise of powers without legal sanction leads to corruption, favoritism and red-tapism, the same cannot be permitted by Courts in public interest.

3. The undisputed fact of this case is that the first respondent granted recognition to the petitioner institution in terms of Section 14(1) of NCTE Act for B.Sc., B.Ed course (integrated course) of four years duration by order dated 02.05.2017. This order is for the first unit with an intake of 50 students from the academic year 2017-2018 as per Clause 7(16) of NCTE (Recognition Norms and Procedure) regulations, the order

granting recognition is of course subject to certain conditions to maintain Endowment fund and Reserve fund and to comply with other norms and standards. The petitioner institution was permitted to make admissions only after it obtains affiliation from the examining body viz., the second respondent as per the regulations. The petitioner also was directed to ensure that the number of academic staff are duly approved by affiliating body for conducting the course.

4. The petitioner thereafter applied for affiliation before the second respondent on 19.07.2017. From the date seal of the second respondent it appears that on 21st July 2017 application for affiliation was acknowledged by the second respondent. The petitioner was granted recognition for the second unit of B.Sc., B.Ed., integrated course with intake of another 50 students. Based on the recognition granted for the second unit, the Petitioner institution applied for affiliation for two units by a combined order for 2018-19. The second respondent, based on the application, sent a team for inspection to inspect the petitioner college on 08.05.2018. In the impugned order, it is stated that that the inspection committee has submitted a report and on a perusal of the report, the following deficiencies have been found in the petitioner college.

"1. There is no built up area to offer four year integrated B.Sc., B.Ed. degree programme from the academic year 2018-2019.

2.The building where the 2 year B.Ed. degree programme is being offered was shown to the inspection team.

3.The building plan produced before the commission is not in the name of Arul College of Education and also it meant for offering B.Ed. degree programme and not for B.Sc., B.Ed.

4.Building completion certificate dated 10.10.2016 produced before the inspection team is meant for B.Ed. degree programme and not for offering B.Sc., B.Ed. degree programme.

5.The faculty members appointed for B.Sc., B.Ed. degree programme do not have either NET or Ph.D. qualification as per NCTE Regulation, 2014.

6.The Principal (Y.Anitha) appointed for B.Sc., B.Ed. programme does not possess P.G. Degree in Science.

7. All faculty members including the Principal were not present at the time of Inspection.

8.None of the qualification degree certificates of the faculty members were produced before the commission for verification.

9.Non toilets rooms for faculty, students (Boys& Girls) have been built in the campus.

10. Only a few halls are there but no separate classrooms as per NCTE norms.

11. No multipurpose hall or Seminar hall in the campus as per NCTE norms

12. Building Construction is incomplete

13. Plan approval for the construction of building was obtained on 18.07.2016, but the Building Completion Certificate is obtained on 10.10.2016. (Surprisingly the Building has been completed within 81 days!)

14. The validity of Building License had already expired on 24.08.2017.

15. Land Use Certificate not obtained for B.Sc., B.Ed. degree programme as per Survey No.21/1B, 1C, 21/2 on 25.08.2014.

16. Sanitary certificate is not obtained for B.Sc., B.Ed. degree programme.

17. Fire Prevention Certificate is not obtained for B.Sc., B.Ed. programme.

18. Physical Science Lab and Biological Science lab are not available at all.

19.Documentary evidence for payment of infrastructure and amenity charges not submitted.

20. Pollution Control Certificate from the appropriate authority not submitted."

5. Since, the University was unable to complete the process of affiliation without list of documents, it is stated that the application dated 19.07.2017 submitted by the petitioner for grant of fresh provisional affiliation for B.Sc., B.Ed degree programme was returned with all the enclosures. Challenging the above order the present Writ Petition has been filed.

6. The first respondent filed a counter affidavit supporting the petitioner's stand and limited the role of the second respondent. It is also the stand taken by the first respondent that once NCTE granted recognition on satisfaction of infrastructure and instructional requirements, the State Government or affiliating University cannot go into very same aspect or to carry out the inspection for that purpose. The first respondent further relied upon Clause 5 (3), 7(4) and 7 (13) of the Regulation 2014 and the provisions of NCTE Act particularly Section 16 of the Act. The Judgment of Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Maha Vidhyalya Vs., State of U.P. reported in 2013 2 SCC 617 and Judgment in the case of Chairman Bharatia Education Society and another Vs., State of Himachal Pradesh and others reported in 2011 (4) SCC 527 are also relied upon by the first respondent, regarding the scope of power that was conferred on the second respondent in the NCTE Act for the purpose of granting affiliation to the petitioner institution.

7. The second respondent has also filed a detailed counter affidavit inter alia pointing out that recognition was granted for the petitioner in two phrases i.e., on 02.05.2017 and 19.01.2018 and the petitioner himself requested for affiliation in a combined order for the academic year 2018-2019 and therefore there was no delay as suggested by the petitioner. It is the further contention of the second respondent that the University is empowered to inspect the petitioner college in order to assess the eligibility criteria of the petitioner college to offer teacher education programmes and to enable the respondent University to grant the provisional affiliation. It is the case of the second respondent that under Sub-Section 8 of Section 11 of the Tamil Nadu Teachers Education Act 2008 and as per statute 3 (4) (xxiv) of Chapter IV of the Tamil Nadu Teachers Education University Statutes, 2015, vice chancellor of the University is empowered to inspect the college for grant of

affiliation. It is the case of the second respondent that the impugned order is not a final decision of the respondent University. Since the petitioner has not produced the documents or place materials regarding several deficiencies, the application of the petitioner was rejected by the second respondent so as to enable the petitioner to resubmit the same after rectifying deficiencies. It is submitted that the petitioner cannot challenge the impugned order of the second respondent on the ground of violation of Principles of Natural Justice. With regard to the reasons that were stated in the order impugned in the Writ Petition, the specific stand taken by the second respondent is that the petitioner instead of producing the supporting documents and providing required infrastructure and facilities to offer the programme, has come forward with the writ petition, without any documents or material to prove that the petitioner has provided all the facilities and infrastructure as required and that the deficiencies pointed out are fictitious. Finally, the second respondent has referred to the amendment that was brought in by NCTE to the existing regulations where under the teacher to be appointed for taking classes for B.Sc., B.Ed., programme must have cleared National Eligibility Test (NET) conducted by University Grants commission. Since the amendment has been published in "The Gazettee of India: Extraordinary" dated 29.05.2017, the petitioner institution should implement the amendment and the recognition granted earlier by the first respondent will not enable the petitioner to admit students without fulfilling the educational qualifications of the faculty. It is also relevant to mention that the second respondent specifically taken a stand that the impugned order is not an order of rejection, but only the Communication rejecting the application for getting more particulars and as such the petitioner cannot maintain the Writ Petition. With regard to several legal issues, referring to Judgment of Hon'ble Supreme Court, the second respondent has stated that the University has passed its order strictly in terms of the orders of Hon'ble Supreme Court and that the action of the respondent University is neither unconstitutional nor contrary to any statute. It is contended by the second respondent that the petitioner institution instead of proving all their ability and showing preparedness to offer B.Sc., B.Ed., programme as per the provisions of NCTE and University Act has come forward with this Writ Petition which is inappropriate and unsustainable.

8. The learned Additional Advocate General produced before this Court a typed set containing the relevant provisions of Act 33 of 2008 viz., The Tamil Nadu Teachers Education University Act, 2008 and pointed out that the vice chancellor of the second respondent University has power to cause an inspection; surprise visit either by him or by an inspection commission constituted

by him or by the syndicate, of any institution or college maintained or recognized or affiliated to the University and ask for a report of the general condition and teaching facilities and the same may be placed before the Syndicate. He shall also initiate action against erring affiliated colleges and issue Show Cause Notices for withdrawal of affiliation and place the explanation before the Syndicate for such action as it may deem fit. The learned Additional Advocate General relied upon the the interim order of the Hon'ble supreme Court in Maa Vaishno Devi Mahila Mahavidhyalaya Vs., State of Utter Pradesh and others regarding the time schedule for granting of affiliation suggested by the Hon'ble Supreme Court.

9. The learned Senior Counsel appearing for the petitioner relied upon the Judgment of Division Bench of this Court in Self Financing Private Teacher Training Institutes Association (Regd.) rep. by its President Vs., State of Tamil Nadu rep. by its Secretary to Government reported in (2011) 5 MLJ 605, wherein similar situation was considered and the issue has been dealt with in the following lines:

"36. So, it is clear that a representative of the State is already there in the Regional Committee. The application for recognition would be considered only by the said Committee. The Committee, before considering the application for recognition, deputed an expert team to inspect the instructional and infrastructural facilities. The report submitted by the expert team would be considered by the Regional Committee and a decision would be taken, either to grant or refuse recognition. Therefore, the State is very much a party to the process of recognition. In such circumstances, there is no point in conducting a fresh inspection to ensure the availability of instructional and infrastructural facilities. The nomination of representative in the committee is made only by the concerned State or Union Territory. Therefore, the participation of the representative is deemed to be the participation of the State. When the very recognition is granted by the Regional Committee, which comprises of experts and a representative of the State, there is

no logic behind the inspection of instructional and infrastructural facilities by the State as an Affiliating Body at a later point of time.

37. There is no dispute that the subject education comes under the Concurrent List. Therefore, the Union as well as the States are entitled to legislate on the subject. The subject education is included in Entry 25 of List III meaning thereby, besides Union Government, the State also can pass appropriate Legislation in the matter. The parliament in its wisdom enacted the National council for Teacher Education Act 1993. Therefore, it is not open to the State to pass a Legislation, which would run contra to the Central Legislation. Article 254(1) gives an overriding effect to the Law made by the parliament, in case the Parliament of the matters enumerated under List III. Therefore, if a particular Legislation made by the State is repugnant to the Law made by the Parliament, the concerned Legislation made by the State would be declared as void to the extent of repugnancy.

45. Most recently in Chairman, Bhartiya Education Society and Another v. State of Himachal Pradesh and Others (2011) 3 scale 48, the Supreme Court considered the limited jurisdiction of the State as an affiliating body in the light of the recognition granted by NCTE after satisfying itself about the instructional and institutional facilities available in the concerned institution. It was held as follows:

"17. Sub-Section (6) of Section 14 no doubt mandates every examining body to grant affiliation to the institution on receipt of the order of NCTE granting recognition to such

institution. This only means that recognition is a condition precedent for affiliation and that the examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition. For example, 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. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. 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".

46. It is therefore evident that there is a conflict between the Central Act and the Government order and overlapping functions of the council and the affiliating body.

47. When the State has no power to pass a legislation under Entry 25 of List III, in view of the Central Act operating in the field, the question of issuing a Government order invoking Article 162 of the Constitution of India does not arise. The order granting recognition indicates that the NCTE has inspected the instructional and infrastructural facilities and after satisfying about such facilities, recognition was granted. Therefore, no useful purpose would be served by directing second inspection at the instance of the State. The Supreme Court has now made the position clear that the State cannot deny affiliation on the ground that institution does not have instructional and infrastructural facilities. Therefore, in view of the

Central Act operating in the filed, the impugned regulations in so far as it mandates the institutions to prove the instructional and infrastructural facilities is liable to be quashed as it is beyond the executive power of the State."

10. The learned Senior counsel appearing for the petitioner also relied upon the Judgment of the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidhyalaya Vs., State of Utter Pradesh and others reported in (2013) 2 SCC 617. The relevant portions from paras 53 to 56, 70, 71, 77 and 79 to 81 are extracted hereunder:

" 53.The NCTE Act is a special Act enacted to cover a particular field i.e. teacher training education and, thus has to receive precedence over other laws in relation to that field. No institution or body is empowered to grant recognition to any institution under the NCTE Act or any other law for the time being in force, except NCTE itself. Grant of recognition by the Council is a condition precedent to grant of affiliation by the examining body to an institute.

54.The non obstante language of section 16 requires the affiliating body to grant affiliation only after recognition or permission has been granted by NCTE. The provisions of section 16 give complete supremacy to the expert body/NCTE in relations to grant of recognition. In fact, it renders the role of other bodies consequential upon grant/or refusal of recognition. When NCTE is called upon to consider an application for grant of recognition, it has to consider all the aspects in terms of section 14(3) (a) of the NCTE Act. The amplitude of this provision is very wide and hardly leaves any matter relatable to an educational institution outside its ambit. To put it simply, NCTE is a supreme body and is vested with wide powers to be exercised with the aid of

its expertise, in granting or refusing to grant recognition to an educational institution. NCTE is the paramount body for granting the approval/recognition not only for commencing of fresh courses but even for increase in intake, etc. The council has to ensure maintenance of educational standards as well as strict adherence to the prescribed parameters for imparting of such educational courses, including the infrastructure. The provisions and scheme of the NCTE Act are in pari materia with that of the Medical Council of India Act, 1956 and the All India Council for Technical Education Act, 1987, etc.

55. Now, we may examine some of the judgments of this Court which have dealt with these aspects. In State of T.N. V. Adhiyaman Educational & Research Institute the Supreme Court while discussing various aspects in regard to constitutional validity of the Tamil Nadu Private College Regulation Act, 1976 and the provisions of the All India Council for Technical Education Act clearly spelled out the preferential role of the Council as under: (SCC PP.118-20, para 22).

"22. The aforesaid provisions of the Act including its Preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It

is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to derecognize the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. ... It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centred around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the council for such education from time to time. The council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well".

56. Further, this court, while noticing the inconsistency between the Central and the State statutes or the State authorities acting contrary to the Central statute, held as under: (Adhiyaman Educational case, SCC p.135, paras 41 & 43)

"41... (vi) However, when the situations/seats are available and the

State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognize or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

43. As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the derecognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative."

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70. Under Section 14 and particularly in terms of section 14(3) (a) of the Act, NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In order words, granting recognition is the basic requirement for grant of affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining

body. It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expressions of distinct meaning and consequences. In *Bhartia Education Society V. State of H.P.* (2011) 4 SCC 527 this Court held that" (SCC p.534, para 19)

"19. The purpose of 'recognition' and 'affiliation' is different. In the context of the NCTE Act, 'affiliation' enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diplomas and certificates. On the other hand, 'recognition' is the licence to the institution to offer a course or training in teaching education."

The court also emphasized that the affiliating body/examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by NCTE while granting recognition.

71. The examining body can impose conditions in relation to its own requirements. These aspects are:

- a) eligibility of students for admission;
- (b) conduct of examinations;
- (c) the manner in which the prescribed courses should be completed; and
- (d) to see that the conditions imposed by NCTE are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university

and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto.

.....
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77. The fields which are sought to be covered under the provisions of Section 37 of the Universities Act and the statutes of various universities are clearly common to the aspects which are squarely covered by the specific language under the Act. That being so, all State laws in regard to affiliation insofar as they are covered by the Act must give way to the operation of the provisions of the Act. To put it simply, the requirements which have been examined and the conditions which have been imposed by NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State law. The affiliating/re-examining body and the State Government must abide by the proficiency and command of NCTE's directions. To give an example, existence of building, library, qualified staff, financial stability of the institution, accommodation, etc. are the subjects which are specifically covered under Section 14(3)(b) of the Act. Thus, they would not be open to re-examination by the State and the university. If the recognition itself was conditional and those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform NCTE forthwith of the shortcomings and non-compliance with the conditions. In such situation, both the Central and the State body should act in tandem and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation. But certainly, the State Government and the university cannot act in derogation to

NCTE.

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, NCTE shall send a copy of the application with its letter inviting recommendations/comments of the State Government on all aspects within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified fields is called for. This is the stage where the State and its Department should play a vital role. They must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by NCTE and examined in conjunction with the report of the experts, it may grant attains supremacy via-a-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated at the time of grant of affiliation. Once the university conducts inspection in terms of its statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to the life of the students working in the school because of non-compliance with a substantive condition imposed by either of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

80. In Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya the view of this Court was that the State Government has no role whatsoever. However, in Bhartia Education Society it was stated that the role of the State Government was limited to the manner of admission, eligibility criteria, etc. without interfering with the conditions of recognition prescribed by NCTE. The exercise of discretion by the State Government and affiliating body has to be within the framework of the Act, the Regulations and conditions of recognition. Even in St. Johns Teachers Training Institute the Court stated that the State Government or the Union Territory has to necessarily confine itself to the guidelines issued by NCTE while considering the application for grant of "no-objection certificate". Minimization of the role of the State at the second stage can also be justified on the ground that affiliation primarily is a subject-matter of the university which is responsible for admission of the students laying down the criteria thereof, holding of examinations and implementation of the prescribed courses while maintaining the standards of education as prescribed.

81. Lastly, the question which is required to be discussed in the light of the facts of the present cases is adherence to the schedule. Once the relevant schedules have been prescribed under the Regulations or under the Judge-made law, none, whosoever it be, is entitled to carve out exceptions to the prescribed schedule. Adherence to the schedule is the essence of granting admission in a fair and transparent manner as well as to maintain the standards of education. The purpose of providing a time schedule is to ensure that all authorities concerned act within the stipulated time. Where, on

the one hand, it places on obligation upon the authorities to act according to the schedule, there it also provides complete clarity to other stakeholders as to when their application would either be accepted and/or rejected and what will be the time duration for it to be processed at different quarters. It also gives clear understanding to the students for whose benefit the entire process is set up as to when their examinations would be held, when results would be declared and when they are expected to take admission to different colleges in order of merit obtained by them in the entrance examinations or other processes for the purposes of subject and college preference."

11. Again the learned Senior Counsel relied on the judgment of Hon'ble Supreme Court in the case of Rungta Engineering College and another Vs. Chhattisgarh Swami Vivekanand Technical University and another reported in 2015 11 SCC 291, wherein it is held as follows:

"32. An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the respondents. AICTE, on inspection of the first petitioner College reported that the first petitioner College fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The respondents did not make any specific assertion that such a report of AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the respondents, the petitioner College has not in fact fulfilled any one of the conditions required under

the norms specified by AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of AICTE and seek appropriate action against the petitioner College.

33. We are, therefore, of the opinion that the decision of the respondent not to grant the affiliation to the first petitioner College is wholly untenable and is required to be set aside. The same is accordingly set aside. Since the respondent did not decline the affiliation to the first petitioner College either on the ground that the petitioner College is admitting wholly ineligible students as per the norms stipulated by the respondent University or that the admission procedure prescribed by the respondents is not being complied with by the petitioners or on any other ground that the petitioners violated any one of the stipulations made by the University which the University is legally competent to make, we have no option but to direct the respondents to grant affiliation to the petitioner College. The operative portion of the judgment of this Court has already been pronounced on 01.09.2014. Therefore, we are not reiterating the same."

12. The judgment of Hon'ble Supreme Court in Maa Vaishno Devi case was followed by Hon'ble Supreme Court in yet another judgment in the case of State of Rajasthan Vs., LBS B.Ed college and others reported in (2016) 16 SCC 110. Para 14 and 15 of the judgment are as follows:

"14. Yet again, another two-Judge Bench in Maa Vaishno Devi Mahila Mahavidyalaya V. State of U.P. opined that (SCC p.656, para 79) Regulations framed under the Act clearly show that upon receiving an application for recommendation, NCTE shall send a copy of the application with its letter inviting recommendations/comments of the State Government on all aspects

within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matter that may concern it in any of the specified fields are called for. The Court observed that this is the stage where the State and its Department should play a vital role and they must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy vis-a-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated at the time of grant of affiliation.

15. Proceeding further, in Maa Vaishno Devi case it was held that (SCC p.656, para 79) once the university conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to life of the students working in the school because of non-compliance with a substantive condition imposed by either of the bodies but in the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable."

13. From the above Judgment the position is well settled.

Since the amplitude of S. 14 (3) (a) of the NCTE Act is very wide, NCTE is a Supreme body and is vested with wide power in the matter of granting or refusing to grant recognition to an Educational institution. The university namely the affiliating body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by NCTE while granting recognition. The university can impose condition only in respect of the following aspects

- a) Eligibility of students for admission
- b) Conduct of examination
- c) the manner in which the prescribed courses should be completed and
- d) to comply with condition imposed by NCTE.

The university and the State Government must abide by the proficiency and command of NCTE's directions. Existence of building, library, qualified staff etc., which are specifically covered under S.14 (3) (b) of the Act are not open to re-examination by university. Once NCTE grants recognition, that attains supremacy vis-a-vis the state as well as university and the decision of NCTE cannot be questioned or the matters cannot be reagitated. In the above background this Court has to consider the case on hand.

14. The learned Senior Counsel pointed out that by the impugned order, the second respondent has pointed out only the deficiencies of infrastructure and building and other aspects, which have been found adequate by the first respondent before granting recognition. In the impugned order, the second respondent pointed out that there is no built-up area, there is no lab , no separate class rooms, no multipurpose hall or seminar hall, no toilets for faculty and students., etc., The first respondent contended that it has sent an inspection team before granting approval. It is further pointed out that the entire inspection was videographed. The counsel also relied upon the photographs. It is the case of the petitioner that the second respondent has tried to fabricate the image as if the petitioner institution has no building and no infrastructure. The learned senior counsel appearing for the petitioner contended that the exact picture which the second respondent pointed from the impugned order is that the deficiencies pointed out would make anyone suspect that first respondent would not have granted recognition to the petitioner by fair means. It is the case of the petitioner that the inspection team has opined that the petitioner institution has provided necessary infrastructure and satisfied the norms fixed by NCTE and granted recognition to the new courses with the total intake of 100 students. With regard to the staff strength, it is the case of the petitioner that the second respondent has questioned the qualification of several staff which was duly

approved by the second respondent earlier. For Example, the second respondent has granted approval for the qualification of various staff which were annexed in typed set. However, by the impugned order, the second respondent has found that the qualification of some teachers are insufficient based on amendment which came long after. It is to be pointed out from the impugned order that the second respondent has stated that the faculty including the Principal were not present at the time of inspection. It is stated that the petitioner has not produced certificates of faculty members to show their qualifications and other documents like land certificate, sanitary certificate, fire prevention certificate, etc. It is further stated that documentary evidence for payment of infrastructure and amenity charges were not submitted by petitioner and that the pollution control certificate from the appropriate authority have not been submitted. Almost for 17 out of 20 queries, the second respondent has required the petitioner to produce records now to show that the facilities and infrastructures which were found to be in order by the NCTE inspection team before granting of recognition are now available. This is nothing but illegal and absurd. In the light of pronouncement of the judgments by the Hon'ble Supreme Court and this Court, the impugned order has no legs to stand and the stand taken by the second respondent really surprises this Court.

15. The second respondent cannot insist the petitioner to produce documents once again to satisfy the University ignoring the fact that the recognition has already been granted by the first respondent. When the Hon'ble Supreme Court has categorically held that it would not be open to the State or University to re-examine the facilities ignoring the order passed by the NCTE, the second respondent has boldly in the counter affidavit has stated that the impugned order is not in derogation of the decision of the Hon'ble Supreme Court and that the petitioner's application will be considered if the petitioner produces proof for compliance.

16. The learned Additional Advocate General has produced before this Court the communication issued by the second respondent dated 13.08.2018. This Communication is addressed to the Regional Director of NCTE with specific reference to pendency of the writ petition before this Court. In the communication, the second respondent has infact has raised some doubts about the genuineness of the claim of the petitioner. It is worthwhile to refer to the letter and its contents. The second respondent in the communication has referred to the building plan dated 18.07.2016. From the building plan

submitted by the second respondent, it is seen that the petitioner has produced the approved building plan dated 11.08.2006, which was obtained for the construction with the built up area of 4048.16 sq.mts. Subsequently, the petitioner has put up some additional constructions and a revised plan for ground and four floors with a total area of 6079.54 sq.m. was also obtained by the petitioner. It is stated in the communication that the genuineness of these approved plans are questionable. It is unsustainable as to how this inference can be drawn on seeing two different approved plans submitted by the petitioner. Further, the genuineness of the building completion certificate, building licence, building stability certificate and fire prevention certificate dated 10.10.2016, 25.08.2014, 01.08.2014 and 22.07.2014 respectively were questioned in the communication. The petitioner has produced before this Court, the building licence that was granted under sub section (1) of Section 6 of the Madras Public Building (Licensing) Act, 1965 dated 21.02.2018 showing that license was renewed from 25.08.2017 to 24.08.2020. Only with the stability Certificate and Fire Prevention Certificate, the building license under Section 6 of Tamil Nadu Public Building (licensing) Act is renewed. Hence the petitioner has demonstrated before this court that the points 1 to 5 stated in the letter dated 13.08.2018 only expose the attitude of second respondent. The sixth query is about the qualification of the teaching faculty. The second respondent refers to the amendment of qualification which was published in the Gazette of India on 09.06.2017. The recognition was granted for 2017-2018. The teaching faculty were appointed and on the date of appointment it is not stated that any one of the teaching faculty did have any qualification. The University has every right to insist the qualification as required under the U.G.C norms. When this was submitted long before the University, the University has got power to consider the aspect. No opportunity was given to the petitioner before passing the order rejecting the application, after getting recognition. The University is duty bound to accept the facts, on the basis on which the recognition was granted by the first respondent. The Power of University/the second respondent university in terms of statute to order inspection is only for the purpose of taking action against any institution for withdrawing affiliation or for any other purposes. At the inception, the University cannot reject the affiliation on the ground that the institution has not satisfied the norms which were found adequate and approved by the first respondent for granting recognition. In this case, it is not the case of second respondent that they are not aware of the application that was filed before the first respondent for recognition. The State and the University is expected to play a vital role and they are also entitled to take all steps to offer appropriate comments with reasoning, at the time of granting recognition.

After recognition, as held by the Hon'ble Supreme Court the State Government as well as affiliating body is not expected to re-agitate any issue which are within the exclusive domain of NCTE at the time of granting affiliation. In this case, the inspection was done and on the next date, the application for affiliation was rejected pointing out deficiencies mostly on the ground that the petitioner has not produced documents or materials to prove the existence of infrastructure facility as per the norms.

17. From the whole gamut of facts, this Court is of the view that the University has made up its mind not to grant affiliation in tune with the decision taken by the first respondent to grant recognition. The University wants to sit on appeal and acts as a body who can control even the provisions of NCTE Act and NCTE.

18. The learned Additional Advocate General during his arguments suggested that the University in the letter addressed to NCTE, the first respondent has now requested the first respondent to look into the defects and the first respondent may now pass an order in the light of inspection report and queries they have raised in the communication dated 13.08.2018. The instructions now given to the learned Additional Advocate General is to somehow delay the process so that the petitioner can be vexed for coming to Court by way of the present Writ Petition. The second respondent instead of realising its mistakes wants to embarrass the first respondent and to render everything ineffective. The impugned order reveals that the second respondent has passed the impugned order for extraneous reasons which are not conducive for maintaining standard satisfying the norms and relevant criteria that is required and provided under various legislations. If this attitude of the second respondent is permitted and allowed in the decision making process it will certainly pave way for other irregularities in the whole system. This Court, therefore is of the view that the impugned order is illegal and liable to be set aside. Since, the second respondent has exceeded its jurisdiction and authority and this Court has also found that the impugned order is passed for extraneous reasons this Court was inclined to impose a cost of Rs.5,00,000/- (Rupees five lakhs) against the second respondent as it has to learn a lesson from this Court for having exhibited an attitude which cannot be tolerated in public interest. Since the cost has to come from public fund, it is not imposed. However, if the second respondent allow things to repeat in the same fashion, it is made clear that no lenience will be shown keeping in mind the longer interest of public.

19. In view of the above this Writ Petition is allowed. The second respondent is directed to grant affiliation to the petitioner's college for B.Sc and B.Ed course for the academic year 2018-2019 with an intake of 100 students forthwith (on or before 30.08.2018). No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

arr/vkr

To

1. National Council for Teacher Education,
Southern Regional Committee,
Jnanabarathy Campus Road, Nagarabhavi,
Bengaluru- 560 072, represented by its
Regional Director.
2. The Tamil Nadu Teacher Education University
Gangaiammankoil Street,
Karapakkam,
Chennai-600 007
represented by its Registrar

+2cc to Mr.B.Balavijayan, Advocate SR.No.58927
+1cc to Mr.Su.Srinivasan, Advocate SR.No.58686

WRIT PETITION NO.12854 of 2018

AD (CO)

RMP (24/09/2018)

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