

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21551 of 2018

-
-
1. Md. Aatur Rahman S/o Md. Afzal, R/o Village and P.O.- Purkhauli, P.S.- Lalganj, District- Vaishalia- 844121.
 2. Tejnarain Sharma, S/o Ramsewak Thakur, R/o Village- Kanth Chhapra, P.O.- Ashok Pakri, P.S.- Pipra, District- East Champaran.
 3. Neelam Kumari, D/o Shiv Shankar Pandey, R/o Village- Shri Krishna Nagar Ahri, P.O. and P.S.- Aurangabad, District- Aurangabad- 824101.
 4. Vikas, S/o Raj Kishore Sharma, R/o Mohalla-Ayodhya Prasad Lane, Motijhil, P.O.- HPO, District- Muzaffarpur- 842001.
 5. Mahesh Ram, S/o Muneshwar Ram, R/o Village- Gannipur Bhanpur, P.O.- Bharthipur, P.s.- Baligaon, District- Vaishali- 843114.

... .. Petitioner/s

Versus

1. Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur through its Registrar, Muzaffarpur, Bihar-842001
2. The Registrar, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur, Bihar- 842001.
3. The Directorate of Distance Education, Babasaheb Bhimrao Ambedkar Bihar University, BU Campus, Muzaffarpur through its Director, Muzaffarpur, Bihar-842001
4. The Director, the Directorate of Distance Education, Babasaheb Bhimrao Ambedkar Bihar University, BU Campus, Muzaffarpur, Bihar-842001
5. The Examination Board, Babasaheb Bhimrao Ambedkar Bihar University, BU Campus, Muzaffarpur through its Vice Chancellor, Muzaffarpur, Bihar-842001
6. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
7. The Secretary, Department of School Education and Literacy, Ministry of Human Resources Development, Government of India, Shashtri Bhawan, New Delhi
8. The Hon'ble Chancellor, Universities of Bihar, Patna, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Sinha, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate
For the State	:	Mr. Prabhakar Jha, GP-27
For the University	:	Mr. Nikhil Kumar Agrawal, Advocate
For the Chancellor	:	Mr. Rajendra Kumar Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT



Date : 23-12-2020

The present writ petition has been filed by the petitioners for directing the respondents to take the final examination of last semester of the Academic Session 2015-17 of B.Ed. Programme (Distance Mode) and issue necessary certificate for such examination.

2. The brief facts of the case are that the respondent Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur (hereinafter referred to as the 'University') had initially established a Centre of distance education in the year 1995 with the aim and object of providing higher education to those students who were not able to attend regular classes in the colleges on account of various factors but wanted to upgrade their educational qualifications. The centre of distance education was renamed as Directorate of Distance Education (hereinafter referred to as the "D.D.E.") by the University, in the month of September, 2011 and the same had started various professional courses. The respondent University had also started B.Ed. (Distance Mode) course from the Session 2014-15, with the approval of the National Council for Teachers' Education (hereinafter referred to as the 'NCTE'). In the year 2014, the D.D.E. of the respondent University had published admission



notice for the purposes of admission in B.Ed. (Distance Course) for the session 2015-17 and the application was to be filled up in between 26.06.2015 to 21.07.2015 and the last date for admission was fixed as 15.10.2015. The said advertisement was only for those candidates who were either untrained working teachers or primary education trained working teachers or those who had completed some programme recognized by the N.C.T.E. pertaining to distance education, in a regular way. It is stated that 500 students including the petitioners herein, who were working in different schools had taken admission in the aforesaid B.Ed. (Open & Distance Learning System) (hereinafter referred to as the "B.Ed.- O.D.L.") course for the Session 2015-17, after fulfilling all the criteria and had deposited admission fee of Rs. 50,000/- each for the entire course up to the final semester. It has been pointed out that the Eastern Regional Committee, N.C.T.E. had granted recognition to the B.Ed.-O.D.L. course of the respondent University on 31.05.2015 itself with intake capacity of 500 students. It is the further case of the petitioner that the petitioners and other similarly situated students appeared in the B.Ed. 1st Year Examination, 2015-17, for which admit cards had been issued and then the results were also published by the respondent



University, whereafter the petitioners and others were admitted in the final semester of the said B.Ed.-O.D.L. course for the Session 2015-17 by the respondent University, whereupon the academic schedule was also completed for the final semester, however, the final examination is not being taken by the respondent University. It has been submitted that the Ministry of Human Resources Development Department, Department of School Education & Literacy, Government of India has issued letter dated 03.08.2017 which provides that the untrained teachers in the school are required to have minimum professional qualification mandated under the Right to Education Act, 2009 and untrained teachers would not be permitted to continue in service beyond 31.03.2019 and shall be dismissed from service in case they do not attain appropriate qualification. It is contended that pursuant to the afore-said letter of the Government of India, the State Government, Education Department has also decided to remove the untrained in service teachers from their services in the Government Schools/ Government Aided School if these teachers do not acquire requisite qualification of B.Ed. or diploma in Elementary Education by 31.03.2019. It is submitted that if the examination is not conducted by the respondent University and



the certificate of B.Ed.-O.D.L. course is not granted to the petitioners and others, their fundamental right to livelihood as well as right to equal opportunity in public employment, as guaranteed under Article 14 & 16 of the Constitution of India would be affected.

3. The respondent University has filed a counter affidavit in the present case and it has been submitted that the Directorate of Distance Education (D.D.E.), B.R.A. Bihar University, Muzaffarpur had submitted an application to the Eastern Regional Committee of N.C.T.E. for grant of recognition for conducting B.Ed.-O.D.L. course with an annual intake capacity of 500 students, whereafter the N.C.T.E. had granted recognition to the respondent University for conducting the aforesaid course vide order dated 30.05.2013. The U.G.C. vide letter dated 28.05.2014 had also conveyed its approval to the University for offering programmes under the Distance Learning Mode during the Session 2014-15 and the said recognition was further continued by the UGC vide letter dated 15.09.2015. Thereafter, the respondent University had admitted students for the aforesaid B.Ed. course in the Open and Distance Learning Mode for the session 2015-17 and the examinations were also conducted for the first year of the Session 2015-17. In the



meantime, the draft ordinance and regulation for B.Ed. course under the O.D.L. Mode alongwith other courses for the Session 2016-18 was forwarded vide letter dated 27.09.2017 for the assent of the Chancellor, however, the Governor Secretariat has communicated to the respondent University vide letter dated 14.09.2018 that the Chancellor has rejected the proposal regarding approval of draft ordinance and regulation pertaining to Open and Distance Learning Mode including that of B.Ed. course (O.D.L. Mode) of the respondent University, hence, the University is unable to conduct examination of the petitioners and other similarly situated persons.

4. The learned counsel appearing for the Chancellor has submitted that the respondent University was never granted any recognition by the N.C.T.E. to conduct B. Ed. course, as is clear from Annexure-P/5 i.e. the letter of the Ministry of Human Resources Development, Department of School Education & Literacy, Government of India dated 03.08.2017, which only provides that all the in-service untrained teachers are required to undergo D. El. Ed. programme, only through O.D.L. on NIOS, failing which they would not be allowed to continue in service beyond 1st April, 2019 and there is no requirement of possessing the B.Ed. degree. It is further submitted that the petitioners



herein and others are required to complete the D. El. Ed. course, however, they are trying to push their case for B.Ed. course. As far as the respondent University is concerned, it has been submitted that the N.C.T.E. vide letter dated 30.05.2013, had accorded recognition to the respondent University for conducting B.Ed.-O.D.L. course of secondary level for two years, however, the said recognition was subject to fulfilment of certain conditions laid down in the said order itself. One of such conditions stipulated at Sl. No. (iv) is as follows:-

“All such other requirements as may be prescribed by the other regulatory bodies like U.G.C., affiliating University/ Body, the State Government etc., as applicable.”

5. It is submitted by the learned counsel for the Chancellor that the U.G.C. vide letter dated 15.09.2015 has extended recognition of the O.D.L. Mode to the respondent University for academic Session 2015-16 only and the very first condition for recognition was that the University shall offer only those programme through Open & Distance Learning (O.D.L.) Mode, which are approved by the statutory bodies of the University as per the norms and also by the U.G.C. and wherever necessary by the Apex Legal Body in the country. The said condition is



reproduced herein under:-

‘2 i) The University shall offer only those programmes through Open and Distance Learning (ODL) mode, which are approved by the statutory bodies of the University as per norms and also by the UGC and wherever necessary by the apex regulatory bodies in the country.’

6. It is further submitted by the learned counsel for the Chancellor that under Section 39(2) (ii) of the Bihar State Universities Act, 1976, as amended up to date, an Ordinance and Regulation for any course of study requires to be approved of the Chancellor of the Universities. Such Regulation has been made effective since the date it has been ‘assented’ to be the Chancellor. The relevant extract of Section 39(1) (ii) of the Act reads as follows:-

Section 39(2) (ii): Such a regulation shall have effect from the date on which it has been assented to by the Chancellor on being passed by the Senate with or without amendment, or from any date fixed by the Chancellor”.

7. Thus, it is submitted that unless the ordinance and regulation for a course of study is approved by the Chancellor, no University can proceed with the admission process in anticipation of the assent of the Chancellor of the Universities



and any such attempt on the part of the University to proceed with the admission process without approval of the ordinance and regulation, is not only illegal but has also been deprecated several times by the Chancellor's Secretariat, however, the respondent University, especially its D.D.E. wing, has developed a habit of playing with the career of thousands of students. It has been categorically stated on behalf of the Chancellor that the ordinance and regulations submitted by the respondent University regarding conducting the B.Ed.-O.D.L. course has never been approved by the Chancellor of the Universities. It has also been submitted that the draft ordinance and regulations of various courses under the Directorate of the Distance Education of B.R.A. Bihar University (O.D.L. Mode) was received in the Chancellor's Secretariat vide University's letter on 29.09.2014 and the same was placed before the Advisory Committee. After considering the draft resolution, a letter no. BU-24/2011-643, GS(I), dated 05.05.2015 was issued to the University to make necessary changes in the Ordinance & Regulation of the aforementioned course. In response, the University had submitted the revised proposal vide letter dated 30.07.2015, after making necessary changes in the draft Ordinance and Regulation. The matter was again placed before



the Advisory Committee on 12.12.2015 and after due consideration of the draft Ordinance & Regulations, the Advisory Committee suggested to return the draft Ordinance & Regulation to the University to re-submit the same according to the guidelines published in the Central Gazette, for consideration and assent of the Hon'ble Chancellor. Accordingly, the draft was returned to the University by the Governor's Secretariat vide letter dated 21.01.2016. In response, a revised draft Ordinance and Regulations was received in the Chancellor's Secretariat vide letter dated 11.05.2016 which was also placed before the Advisory Committee of the Hon'ble Chancellor and the Committee, after due consideration observed that the University be directed to follow the Gazette document of NCTE with details of curriculum and other guidelines/instructions with regard to two years B.Ed. Course through ODL, taking it as common uniform guidelines for running the course under reference and no deviation/ violation of the norms as detailed in the Gazette document shall be allowed at any level. Thereafter, upon due consideration, the proposed Draft Ordinance & Regulation of B.Ed. Course under distance education mode of B.R.A. Bihar Muzaffarpur was rejected by the Hon'ble Chancellor on the advice of the



Advisory Committee and the same was communicated to the University vide Governor's Secretariat letter no. BU (Regulation)-67/2014-2132GS(I), dated 20.09.2016. In the said letter the University was suggested to re-submit the duly modified proposal. Again the University submitted various proposals including the Draft Ordinance & Regulations pertaining to the B.Ed. Course under distance education mode on 27.09.2017. The matter was placed before the Advisory Committee on 16.03.2018 and the Advisory Committee after due consideration and after threadbare discussion recommended that these Draft Ordinance and Regulations of the proposed courses can be approved only in the Regular mode and not in Distance mode. In the meantime, the order of this Court dated 10.04.2018 passed in C.W.J.C. No. 6518 of 2018 was received in the office of the Chancellor wherein the following observations/directions had been made:-

“This application is, accordingly, disposed off with an observation that let a decision be taken by the Office of the Chancellor in respect of approval of the draft regulation, if the same has been sent and is pending. The Court, however, indicates that while taking any decision on approval of draft regulation for B.Ed. Course in question, it will have to be kept in mind, whether or not the B.Ed. Course can be



allowed to be undertaken through distance education mode.”

8. After receiving the aforesaid order dated 10.04.2018 passed by this Court, all the proposals including that of the B.Ed.-O.D.L. Mode course was considered by the Advisory Committee afresh on 19.04.2018 and after considering the recommendation of the Advisory Committee, concerned letters of N.C.T.E. and other regulatory bodies as also the proposals of the University, the Advisory Committee forwarded its proposal to the Hon'ble Chancellor, who after due consideration of all the materials available on record, has been pleased to reject all the 17 proposals sent by the respondent University on 27.09.2017 and then the order of the Chancellor has been communicated to the University vide letter dated 14.09.2018. It has been submitted that not only for the Session 2015-17 but also with regard to the Session 2016-18, the respondent University's regulations have not been approved by the Chancellor as far as B.Ed.-O.D.L. Mode course is concerned, hence no relief can be granted to the petitioners. The learned counsel for the Chancellor has thus in nutshell submitted that the petitioners and other similarly situated in-service elementary school teachers were required to complete their diploma course in elementary education (D. El. Ed.), Annexure P/5 has nothing to



do with B.Ed. Course, State/UT were given responsibility to ensure that the in-service elementary school teachers complete their D. El. Ed. in stipulated time frame, there is no D. El. Ed. (ODL)/ B. Ed. (ODL) mode programme under B.R.A. Bihar University which is recognized by the competent regulatory body, the advertisement of the Department of Distance Education of the B.R.A. Bihar University was itself a fraudulent act on the part of the said department as even otherwise, the University was not granted recognition for B.Ed. Course for the period 2016-17 and 2017-18 and in such a situation the advertisement for the sessions 2015-17 was apparently illegal and the petitioners cannot claim similar relief as was granted by the Hon'ble Division Bench in L.P.A. No. 1795/2017 in CWJC No. 2292/2017 in the case of M. Phil students.

9. The learned counsel appearing for the petitioners, in reply, has submitted that the grounds for non-approval of the regulations pertaining to conducting course of B.Ed.-O.D.L. course has been suppressed and despite the respondent University having approval from N.C.T.E. as well as U.G.C. to conduct the B.Ed. course through O.D.L. Mode, the Chancellor has not approved the regulation regarding the same. It is submitted that the respondent University cannot be allowed to



take shelter of the order of the Chancellor dated 14.09.2018 inasmuch as the respondent University was bound to take final year examination on time and as per the schedule since the entire assignment and course of the students have been completed as per the curriculum and schedule and in case the examination is not taken, irreparable loss and injury will be caused to the petitioners and other similarly situated students who will lose their employment if they are not trained by 31.03.2019. It is further submitted that the respondent University is being illegally discriminated with, especially in view of the fact that other students/teachers have been granted certificates in respect of the same Session for the same course through same mode by other Universities in Bihar and one of such example is the case of Nalanda Open University, which has been given approval to conduct examination of B.Ed. course (second year) through ODL Mode for the year 2019. The learned counsel for the petitioner has also referred to a judgment dated 03.07.2018 passed by the learned Division Bench of this Court in L.P.A. No. 1795 of 2017 and L.P.A. No. 1823 of 2017 to contend that in the case of the same respondent University, the appellants therein had approached this Hon'ble Court for a direction upon the authorities to hold examination for Master of



Philosophy (M. Phil) for the Sessions 2014-15 & 2015-16, however, the writ petitions filed by them were dismissed, hence, they had filed appeals wherein it was submitted that a large number of students had been permitted to enrol for M. Phil courses in the B.R.A. Ambedkar University on the basis of Advertisement issued by the D.D.E. of the University, whereafter the admissions were taken, classes were held and the course schedule was also concluded, however, the examination was not being held on the pretext that proper ordinance / regulations had not been approved by the Chancellor, as such the University was not in a position to take the final examination of such students, nonetheless, the University had put forth a proposal to the effect that such students who had taken admission in the M. Phil courses and had pursued their studies would be required to go through the rigors of new statutes and the ordinance and thereafter, by way of one time measure, examination would be held, hence, in such view of the matter, the learned Division Bench of this Court had passed directions, vide the aforesaid order dated 03.07.2018, in the following terms:-

“As a via media, we are in agreement with the stand taken by the University that the students cannot be allowed to drift in the vacuum. Therefore, in terms of



the new statute and regulation or ordinance, which have been approved by the Hon'ble Chancellor these students would be directed to comply with the requirements laid down there with regard to the classes or attendance etc. Once, they complete the eligibility as a onetime measure, examination will be held and the results of the successful candidates would be duly declared.

This may not be treated as precedence for such mis-adventurism on the part of the University. The University authorities should be more careful because such indiscretion or mindlessness also has fall out on innocent students and their families.”

10. The learned counsel for the petitioners has further submitted that there is no relevancy of the learned counsel for the Chancellor raising the issue of D. El. Ed. in as much as the present case is only concerned with grant of B.Ed.-O.D.L. Mode degree to the petitioners and other similarly situated persons, after holding of the final examination for the Session 2015-17. It is further submitted that the norms and standards for Bachelor of Education Program through open and distance learning system leading to Bachelor of Education (B. Ed) is given in Appendix-10 under NCTE (Recognition Norms and Procedure), Regulation 2014 and under the said regulations, the petitioners and other similar students had taken admission in a recognized



B. Ed (ODL) programme, which gives sanctity to the eligibility of the institution for imparting education of B. Ed degree course. If any recognition has been given under the aforesaid regulation framed under the Central Act to the Institution, then it is not subject to the approval of any other Regulation at the State level under a State Act. Furthermore, Nalanda Open University is running B. Ed. Degree course through ODL mode and examination is being taken. In fact no reply is coming forth from the Chancellor as to why Respondent B.R.A. Bihar University is being treated differently, although there is no difference in conducting the B.Ed. course through the ODL mode, as far as the aforesaid two universities are concerned. It is further submitted that once a course is approved by the N.C.T.E. and the U.G.C., not permitting the University to take examination and grant certificates to the petitioners, is not only unjust but also against the law, especially in view of the amendment brought in the NCTE Act, by way of the "National Council for Teachers Council (Amendment) Act, 2019" whereby in Sections 14(1) & 15(1), a proviso has been inserted, whereby the recognition has been continued till the academic year 2017-18.

11. Furthermore, it has been submitted by the Ld. Counsel



for the petitioners that in the Right to Free and Compulsory Education (Amendment) Act, 2017, a new proviso has been inserted in section 23 (2) after the proviso, which is as follows:-

“Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free & Compulsory Education (Amendment) Act, 2017.”

12. The petitioners and the persons represented by them are working from before the year 2014 and only such candidates who have completed two years of their service were eligible for admission in B.Ed. Degree course through the ODL mode in B.R.A. Bihar University. It is submitted that if the regulations made by the Respondent University is not approved and no reason is disclosed for such non-approval, the same amounts to an unfair act, more so since the Regulations are placed in the meeting of the Senate and after approval by the Senate it is sent for approval by the Chancellor. It is pertinent to note here that Senate is the supreme Governing Body of the University and the Chancellor is the ex-officio member of the Senate. Therefore, once regulation is prepared by the Senate, of which the



Chancellor is an ex-officio member, not approving such regulation, is meaningless especially, when admittedly the Institution/Course stands recognized by the NCTE and UGC.

13. I have heard the learned counsel for the parties and perused the materials on record. At the outset, it would be appropriate to reproduce the relevant provisions of law, which are required to be considered in the present case, herein below:-

I. The Bihar State Universities Act, 1976

“Section 38. **Ordinances, how made:-** (1) An Ordinance made by the Syndicate under Section 37 shall be submitted as soon as may be to the Senate, and thereupon it shall be the duty of the Senate to consider the Ordinance at its next meeting and the Senate may, by resolution passed by a majority of the members present and voting at such meeting, either reject the Ordinance or approve it with such modifications, if any, and from such date, as it may direct.

(2) Such an Ordinance approved by the Senate shall be submitted to the Chancellor who shall declare that he assents to the Ordinance.

(3) An Ordinance shall have no validity until it has been assented to by the Chancellor under sub-section (2). [provided that any ordinance having financial implication shall not be enforceable unless prior



approval of State Government has been obtained.]

(4). Notwithstanding anything contained in sub-sections (1), (2) and (3), if at any time, except when the Senate is in session, the Syndicate makes an Ordinance and considers its immediate enforcement necessary, the Syndicate may recommend to the Chancellor accordingly and the Chancellor shall thereupon, by order published in the official Gazette, direct that the Ordinance shall come into immediate effect, but such Ordinance shall cease to have effect on the expiry of seven days from the date of the next meeting of the Senate unless confirmed by it.

39. Regulations, how made.- (1) Subject to the provisions of this Act, the Statutes and the *Ordinance*, Regulations may be made to provide for all or any of the following matters, namely-

- (a) the courses of study to be laid down for all degrees and diplomas of the University;
- (b) the condition under which students shall be admitted to the degree or diploma courses and to the examinations of the University and shall be eligible for such degrees and diplomas;
- (c) the formation of departments of teaching in the Faculties;
- (d) the conditions and mode of appointment and duties of examiners and the conduct of examinations;
- (e) the standard of teaching to be maintained in the colleges; and



(f) all matters which by this Act, the Statutes or the Ordinances are to be or may be provided for by Regulations.

(2) (i) A Regulation made by the Academic Council under sub-section (1) shall be forwarded, as soon as may be, to the *Syndicate* for transmission to the Senate, and the Syndicate shall duly forward the same to the Senate with such recommendations, if any, as it may wish to make and shall have no power to return it to the Academic Council for reconsideration, unless such Regulation, in the opinion of the Syndicate relates to matters which directly or indirectly, affect the finances of the University.

(ii) Such a regulation shall have effect from the date on which it has been assented to by the Chancellor on being passed by the Senate with or without amendment, or from any date fixed by the Chancellor:

Provided that at any time except when the Senate is in session, if the Academic Council makes a Regulation and considers its immediate enforcement necessary, the Academic Council may recommend through the Syndicate, to the Chancellor accordingly and Chancellor with such amendment as he think proper shall direct by a notification published in the Gazette that the Regulation shall come into immediate effect, but such a Regulation shall cease to be effected on the expiry of seven days from the date of the next meeting of the Senate, unless confirmed by the Senate:



Provided further that if any Regulation made by the Academic Council under the preceding proviso, involves expenditure from the University funds, the Regulation shall be forwarded to the Chancellor with the advice of the Financial Adviser.

Provided that any regulation having financial implication shall not be Enforceable unless prior approval of State Government has been obtained.

3. Where the Syndicate has returned to the Academic Council a Regulation made by it and the Academic Council on reconsideration of the matter does not agree with the Syndicate the Academic Council may refer the matter to the Senate through the Syndicate and thereupon the Senate may either confirm the Regulation or amend or reject it.

II. The National Council for Teachers' Education Act, 1993.

Section 2(d) "examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications;

Section 14. Recognition of institutions offering course or training in teacher education:-

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

(a) grant affiliation to the institution, where



recognition has been granted; or

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

Section 15. Permission for a new course or training by recognised institution—

(1) Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) The fees to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application from an institution under sub-section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall,
—

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



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

Provided that before passing an order refusing permission *under* sub-clause (b) the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

(4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under sub-section (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government.

Section 16. Affiliating body to grant affiliation after recognition or permission by the Council —

Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day, —

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a



recognised institution,

unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under section 15.

III. National Council for Teacher Education (Recognition, Norms & Procedure) Regulations, 2014.

Section 3. Applicability.- These regulations shall be applicable to all matters relating to teacher education programmes for preparing norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in the existing programmes including the following, namely: -

- (a) recognition for commencement of new teacher education programmes which shall be offered in composite institutions;
- (b) permission for introduction of new programmes in existing teacher education institutions duly recognized by the Council;
- (c) permission for additional intake in the existing teacher education programmes duly recognised by the Council;
- (d) permission for shifting or relocating of premises of existing teacher education institutions;



(e) permission for closure or discontinuation of recognised teacher education programmes, or institutions as the case may be:

Provided that for teacher education programmes offered through open and distance learning, the respective norms and standards for each such learning programme shall be applicable.

“Section-9 Norms & Standards-

Every Institution offering the following programme shown *in* the table shall have to comply with the norms & standards for various teacher education programmes as specified in Appendix-1 to Appendix-15

[My Note- "**Appendix-10**" pertains to Bachelor of Education programme through Open & Distance Learning System leading to Bachelor of Education (B. Ed) degree.]

Clause 9 of Appendix-10 reads as follows:-

“9. Pre-requisites for applying for grant of recognition of the programme.— Before applying to the NCTE for recognition of the B.Ed. (ODL) programme, the university/institution shall complete the following:

(a) Preparation of the project document with details about the scope of the programme, fee structure, student enrolment, faculty, learning resources, Study



Centres with facilities and tutors/counsellors estimated expenditure for development and implementation of the programme, norms of payment for development and implementation of the programme, norms of payment to Study Centres and resource persons, additional faculties, resources to be provided to Study Centres and monitoring and supervision of the programme.

(b) Approval of the appropriate university body or state government for launching the programme.

(c) Preparation of curriculum (course-wise and unit-wise structure) including scheme of evaluation/examination and support services, duly approved by the University.

(d) Preparation of the self-learning materials in print and non-print, duly certified by the Distance Education Board (DEB).

(e) Undertaking from the identified Study Centers in a prescribed format ensuring strict observation of B.Ed. norms for the study centres.

(f) Initiation of staff selection process such as advertising, screening, interviewing and offering appointment to the selected candidates.”

IV. The National Council for Teacher Education (Amendment) Act, 2019 (notified in the official gazette on 11.01.2019) —



2. In the National Council for Teacher Education Act, 1993 (hereinafter referred to as the principal Act), in section 14, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that such institutions, as may be specified by the Central Government by notification in the Official Gazette, which—

(i) are funded by the Central Government or the State Government or the Union territory Administration;

(ii) have offered a course or training in teacher education on or after the appointed day till the academic year 2017-2018; and

(iii) fulfil the conditions specified under clause (a) of sub-section (3), shall be deemed to have been recognised by the Regional Committee.”.

3. In section 15 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the course or training in teacher education offered on or after the appointed day till the academic year 2017-2018 by such institutions, as may be specified by the Central Government by notification in the Official Gazette, which—

(i) are funded by the Central Government or the State Government or the Union territory Administration; and

(ii) fulfil the conditions specified under clause (a) of



sub-section (3), shall be deemed to have been granted permission by the Regional Committee.”

14. It would be apt to reproduce the order issued by the N.C.T.E. in terms of Section 14(1) of the N.C.T.E. Act, 1993, granting recognition to the Directorate of Distance Education, B.R.A. Bihar University, Muzaffarpur, herein below:-

“AND WHEREAS on scrutiny/perusal of the application submitted by the institution, the report and videography, recommendation of the State Government, the Committee is satisfied that the institution/society fulfills the requirements under the provisions of NCTE Act, Rules and relevant Regulations including the Norms and Standards for the Secondary Teacher Education (B.Ed. (Open and Distance Learning System)) programme such as instructional facilities, infrastructural facilities, library, accommodation, financial resources, laboratory etc. for running the programme and has selected/appointed duly qualified teaching staff as per NCTE norms.

3. NOW, THEREFORE, in exercise of the power vested under Section 14 (3) (a) of the NCTE Act, 1993, the Eastern Regional Committee hereby grants recognition to Directorate of Distance Education, B.R.A. Bihar University, Muzaffarpur. Plot No. 742, 743, Street Number- Main Road, village-Khabra, PO-BU Campus, Tehsil/ Taluka- Muzaffarpur, City/ Dist-



Muzaffarpur, Bihar- 842001 for conducting B.Ed. (Open and Distance Learning System) Course of Secondary (level) of two year duration with an annual intake of 500 (Five hundred) subject to the condition that a Study Centre shall enroll not more than one hundred students in a given session from the academic session 2014-15 under clause 7(11) of NCTE (Recognition Norms & Procedure) Regulation, 2009.”

15. It would be further relevant to reproduce the relevant portion of the letter dated 15th September, 2015 issued by the University Grant Commission, New Delhi granting continuation of recognition to the Directorate of Distance Education, B.R.A. Bihar University, Muzaffarpur for offering programmes in Open & Distance Learning (O.D.L. Mode) for the academic year 2015-16, herein below:-

“Reference is invited to your letter no. DDE/367 dated 08.07.2015 vide which a letter of intent and a fresh affidavit duly sworn in has been forwarded to this office. UGC vide its letter no. DEB/Recog/BRA/Bihar/7067-7071 dated 28th May, 2014 had conveyed its approval to your University for offering programmes under distance learning mode during the session 2014-15. In this regard, I am directed to inform that the UGC vide its 505th meeting vide item no. 2.03 held on 22nd December, 2014



decided to maintain the status quo about recognition of the programmes, under distance education mode, during the academic session for 2015-16. Accordingly, the recognition accorded to your University, vide the above said letter of UGC, is hereby continued for the academic year 2015-16. Your University may therefore continue to offer the programmes under 'Institutional Recognition' through ODL mode, which were mentioned in the letter of intent dated 22.09.2014 submitted along with an affidavit for the year 2014-15 (copy enclosed)."

16. Thus the issue which arises for consideration in the present case is as to whether despite approval granted by the N.C.T.E. as well as recognition granted by the U.G.C. for running B.Ed.-O.D.L. mode course for the Session under consideration in the present case and the examining body being the respondent University in the present case which has in fact started the said course and its Directorate of Distance Education had issued Advertisement for the purposes of taking admission for the Session 2015-17 in the B.Ed.-O.D.L. mode course, can the Chancellor still be an impediment to the conduct of the said B.Ed.-O.D.L. mode course by the respondent University by not granting assent to the draft ordinance and regulation pertaining to the B.Ed. course under the O.D.L. Mode.



17. In order to answer the aforesaid issue, I would first of all like to refer to the Central Act i.e. the National Council for Teachers' Education Act, 1993 which provides for grant of recognition to an institution offering course or training in teacher education under Section 14 thereof and sub-clause (6) thereof stipulates that the examining body i.e. the University/Agency/ Authority, to which an institution is affiliated for conducting examinations in teacher education qualifications, upon receipt of order of recognition under sub-clause (4) of Section 14 of the N.C.T.E. Act, 1993, is mandatorily required to grant affiliation to the institution. Section 15 of the said N.C.T.E. Act, 1993 provides for grant of permission to a recognized institution for starting any new course or training in teachers education. Under Section 17 of the N.C.T.E. Act, 1993, the examining body i.e. the respondent University in the present case, is mandatorily required to hold examination for a course or training conducted by a recognized institution in case the said institution has obtained recognition from the concerned Regional Committee under Section 14/15 of the N.C.T.E. Act, 1993. Section 9 of the N.C.T.E. (Recognition, Norms & Procedure) Regulation, 2014 prescribes the norms and standards for various teachers education programmes and as far



as Appendix-10, pertaining to B.Ed.-O.D.L. Mode, programme is concerned, clause-9 thereof prescribes that before applying to the N.C.T.E. for recognition of the B.Ed.-O.D.L. programme, University/ Institution shall have the approval of the appropriate University Body or State Government for launching the programme and should have prepared the curriculum (course wise and merit wise structure) including the scheme of evaluation/examination and support services, duly approved by the University. In view of the aforesaid provisions of law, this Court is of the view that D.D.E. of the respondent University could have applied for grant of recognition of the B.Ed.-O.D.L. programme only upon having been granted approval by the appropriate University Body or the State Government and would have definitely prepared the curriculum including the scheme of evaluation/ examination and support services, duly approved by the University as also would have prepared the self learning materials and would have also initiated the staff selection process. It is only after compliance of clause-9 of Appendix-10 to the Regulation-9 of the N.C.T.E. (Recognition, Norms & Procedure), Regulation, 2014, the respondent D.D.E. of the University could have filed an application before the N.C.T.E. for grant of recognition to the B.Ed.-O.D.L.



programme as also compliances would have definitely been made as per the N.C.T.E. (Recognition, Norms & Procedure), Regulations, 2014 and only thereafter, the enquiry team/visiting team of the N.C.T.E. would have made inspection and only upon being satisfied about the compliances, the N.C.T.E. would have issued the recognition letter dated 30.05.2013 to the D.D.E. of the respondent University, which clearly specifies that upon scrutiny of the application of the Institution, the documents attached therewith, affidavit and the input received from the visiting team in the form of report and videography, recommendation of the State Government, the Committee is satisfied that the Institution/ Society fulfils the requirements under the provisions of the N.C.T.E. Act Rules and relevant regulations including the Norms and Standards for the Secondary Teacher Education (B.Ed. (Open & Distance Learning System) programme such as instructional facilities, infrastructural facilities, library, accommodation, financial resources, laboratory etc. for running the programme and has selected/appointed duly qualified staff as per N.C.T.E. norms. In such view of the matter, the Eastern Regional Committee, N.C.T.E. has granted recognition to the Directorate of Distance Education, B.R.A. Bihar University, Muzaffarpur for conducting



B.Ed. (Open & Distance Learning System) course of secondary (Level) of two years duration with an annual intake of 500 students with effect from the academic Session 2014-15. This Court additionally finds that the said recognition granted by the N.C.T.E. to the D.D.E. of the respondent University has stood extended up to the Session 2017-18 as is apparent from the aforesaid National Council for Teacher Education (Amendment) Act, 2019. In fact, this Court further finds that the U.G.C. has also granted continuation of recognition for offering programmes in Open & Distance Learning Mode for the academic year 2015-16 as well. Apparently, only after receiving recognition from the N.C.T.E. for running the B.Ed.-O.D.L. programme and approval by the U.G.C., the respondent University had published advertisement in the year 2015 for the purposes of taking admission to the B.Ed.-O.D.L. course for the Session 2015-17, had admitted students and had held the B.Ed. 1st year examination, whereafter the results were also published, nonetheless, the final examination for the final semester of the B.Ed.-O.D.L. course for the Session 2015-17 has not been taken by the University on the pretext that its draft ordinance and regulation for B.Ed. course under the O.D.L. Mode has not been approved by the Chancellor.



18. At this juncture, it would also be relevant to consider the effect of Section 39(2) (ii) of the Bihar State Universities Act, 1976 which mandates that a regulation made by the academic council of the University and having been passed by the Senate, with or without amendment, shall have effect from the date on which it has been assented to by the Chancellor. In order to answer the aforesaid issue appropriately by taking into account the effect of Section 39(2) (ii) of the Bihar State Universities Act, 1976, it would be appropriate to state that Article 246 of the Constitution of India read with Entry 66 of List-I (Union List) to the 7th Schedule to the Constitution of India provides that Parliament has the exclusive power to make laws with respect to:-

“coordination and determination of standards in institution for higher education or research and scientific and technical institutions”.

As far as Entry-25 of List-III (Concurrent List) is concerned, the same refers to:-

“Education, including technical education, medical education and University, subject to the provisions of Entries 63, 64, 65 & 66 of List-I; vocational &



technical training of labour”.

19. Thus, it is clear that any law made with regard to the technical institution by the Parliament would prevail and the State Government would not have parallel powers. In the present case, the Parliament has already enacted the N.C.T.E. Act, 1993, which is in force and the preamble of the said Act provides for establishment of National Council for Teacher Education with a view to achieve planned and coordinated development of the teacher education system throughout the country, regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Thus the field is fully and completely occupied by an act of Parliament and covered by Entry-66 of List-I of Schedule-VII to the Constitution of India and the State has no power to encroach upon the legislative power of the Parliament. Hence, it is not open for the Chancellor to have refused assent to the draft ordinance and regulation for B.Ed. Course in O.D.L. Mode, sent by the University to the Chancellor, especially after the respondent University had been granted approval/recognition, both by the N.C.T.E. as well as by the U.G.C. to conduct the B.Ed. (O.D.L. Mode) programme for the Session 2014-15 onwards. In this connection, it would be apt



to refer to a judgment rendered by the Hon'ble Apex Court in the case of *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyala & ors.* reported in (2006) 9 SCC 1, paragraph nos. 62, 63, 64, 65, 66, 74, 76, 77, 78 & 80 thereof are reproduced herein below:-

“62. From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher- education system and for



matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a [State Act](#) or on 'policy consideration'.

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that no permission could be refused by the State Government on 'policy consideration'. As already observed earlier, policy consideration was negated by this Court in Thirumuruga Kirupananda Trust, as also in Jaya Gokul Educational Trust.

65. It is true that during the pendency of St. John's Teachers Training Institute, NCTE framed regulations called the NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002.

66. Regulation 6 required production of 'No Objection Certificate' from the State Government/Union



Territory. Clause (1) thereof read thus;

6. Requirement of No Objection Certificate from the State Government/U.T. Administration.

(i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certification (NOC) from the State or Union Territory in which the institution is located.

(ii) to (vii) * * *

(emphasis supplied)

74. It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System 'throughout the country'. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, State Government has no power to reject the prayer of



an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.

76. We may state at this stage that the contesting respondents have placed heavy reliance on Section 12 of the Act which relates to functions of the Council and submitted that it is incumbent on the Council to lay down norms and guidelines for ensuring planned and co-ordinated development of the teacher education and it is not open to the Council to delegate those 'essential functions' to the State Government. According to them, such delegation would be excessive and impermissible and abdication of power by the Council in favour of the State Government which is inconsistent with the provisions of the parent Act and must be held ultra vires. In reply, Mr. Andhyarujuna submitted that the constitutional validity of the Regulations or Guidelines had not been challenged before the High Court and the respondents now cannot be permitted to raise such point in this Court in the absence of the challenge. The respondents, however, urged that since they succeeded before the High Court on other points, it was not necessary for them to challenge the vires of Regulations. But when the State had approached this Court, they can support the judgment on any ground available to them including unconstitutionality of Regulations and Guidelines. In our opinion, it is not



necessary to enter into larger question since we are satisfied that in the facts and circumstances of the case, the High Court was justified in allowing the petitions filed by the colleges and setting aside the order dated December 28, 2004 passed by the State Government and also in dismissing the petition filed by the State holding that the order of the State was not legal. We may, however, observe that the learned counsel for NCTE, Mr. Raju Ramachandran is right in submitting that the Guidelines permitted the State Government to collect necessary data and materials and make them available to NCTE so as to enable NCTE to take an appropriate decision. In accordance with the provisions of 1993 Act, final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all authorities in the light of the provisions of the Act and the law declared by this Court. It has been so held in St. John Teachers training Institute.

77. The learned counsel for the respondents are also right in relying upon the provisions of Articles 19 and 21A of the Constitution. Under clause (g) of Article 19 (1), all citizens have the right to practise any profession, or to carry on any occupation, trade or business, unless they are restrained by imposing reasonable restrictions under Article 19 (6). In the instant case, applications had been made by colleges to NCTE under 1993 Act and after complying with the provisions of the Act, permission was granted by



NCTE. The State thereafter could not have interfered with the said decision. It is also clear that Article 21A would cover primary as well as secondary education and petitioners could claim benefit of Part III of the Constitution as well.

78. The respondents have stated that they have spent huge amount and incurred substantial expenditure on infrastructure, library, staff, etc. and after satisfying about the necessary requirements of law, permission had been granted by the NCTE. If the said action is set aside on the basis of the decision of the State Government, irreparable loss will be caused to them. Since in our view, the order passed and action taken by NCTE cannot be termed illegal or unlawful and the State Government could not have passed the impugned order refusing permission on the ground of so called 'policy' of not allowing new B.Ed. college to be opened, it is not necessary for us to delve into further the said contention.

80. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14 (6) of the Act, every university ('examining body') is obliged to grant affiliation to such institution and



Sections 82 and 83 of the University Act do not apply to such cases.”

20. Another judgment on the aforesaid issue is the one rendered by the Hon’ble Apex Court in the case of ***Maa Vaishno Devi Mahila Mahavidyala vs. The State of Uttar Pradesh & ors.*** reported in ***(2013) 2 SCC 617***; paragraph nos. 36, 42, 59, 60, 66, 68, 69, 70, 71, 73, 77, 78, 79 & 80 thereof are reproduced herein below:-

“36. For regulation and proper maintenance of norms and standards in the teacher education system and for all matters connected therewith, it was considered to establish a Central National Council for Teacher Education, for which purpose the Indian Parliament enacted the National Council for Teacher Education Act, 1993 (for short, the ‘Act’). The NCTE was to be established in terms of Section 3 of the Act and was to consist of the persons specified therein. For the purpose of the present case, we are required to refer to certain provisions of the Act. The first relevant provision which can be referred to is Section 12 of the Act which states the functions that are to be performed by the NCTE. Section 13 places an obligation upon the NCTE to conduct inspection of the Institute in the prescribed manner. Other very significant provision is Section 14 that deals with the recognition of the Institution offering course or training in teacher education. One of the important



powers of the NCTE is the power of delegated legislation as contained in Section 32 of the Act. We shall deal with these provisions along with some other relevant provisions in some detail.

42. From the reading of the above provisions, it is clear that the NCTE is expected to perform functions of a very high order and to ensure maintenance of higher standards of education in teachers training. Default in compliance of its orders/directions can result in very serious consequences and, in fact, would render the concerned institute ineffective and inoperative. Where the recognition by the NCTE gives benefits of wide magnitude to an institute, there the withdrawal of recognition not only causes impediments in dispensation of teacher training courses by that institution but the institution is obliged to discontinue such courses from the specified time.

59. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infrastructure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central



statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist.

60. The NCTE Act has been enacted by the Parliament with reference to Entry 66 of List I of Schedule VII of the Constitution. There is no such specific power vested in the State Legislature under List II of the Seventh Schedule. Entry 25 of List III of the Seventh Schedule is the other Entry that provides the field for legislation both to the State and the Centre, in relation to education, including technical education, medical



education and Universities; vocational and technical training and labour. The field is primarily covered by the Union List and thus, the State can exercise any legislative power under Entry 25, List III but such law cannot be repugnant to the Central law. Wherever the State law is irreconcilable with the Central law, the State Law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to professional education, including the teacher training programmes. In the case of Medical Council of India V. State of Karnataka [(1998) 6 SCC 131], the Court had the occasion to discuss this conflict as follows: -

“27. The State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub- section (10) of Section 53,



falling in Chapter IX of this Act, provides for maximum number of students to be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the university or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail. Teacher- student ratio prescribed is 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the ratio



of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached hospitals.

*

*

*

29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10-A, 10-B and 10-C in the



Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29-9-1993 (though the notification is dated 20-9-1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities), has to apply to the Central Government for permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply.”

66. From the above consistent view of this Court it is clear that wherever the field is covered by the Parliamentary law in terms of List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void. Of course, there has to be a direct conflict between the laws. The direct conflict is not necessarily to be restricted to the obedience of one resulting in disobedience of other but even where the result of one would be in conflict with the other. It is difficult to state any one principle that would uniformly be applicable to all cases of repugnancy. It will have to be seen in the facts of each case while keeping in mind the laws which are in conflict with each other. Where the field is occupied by the Centre,



subject to the exceptions stated in Article 254, the State law would be void.

68. Now, let us examine the conflict that arises in the present cases. In terms of the provisions of the Act, the Regional Committee is required to entertain the application, consider State opinion, cause inspection to be conducted by an expert team and then to grant or refuse recognition in terms of the provisions of the Act. Once a recognition is granted and before an Institution can be permitted to commence the course, it is required to take affiliation from the affiliating body, which is the University.

69. Thus, grant of recognition or affiliation to an institute is a condition precedent to running of the courses by the Institute. If either of them is not granted to the institute, it would not be in a position to commence the relevant academic courses. There is a possibility of some conflict between a University Act or Ordinance relating to affiliation with the provisions of the Central Act. In such cases, the matter is squarely answered in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) where the Court stated that after coming into operation of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It also observed that provision of the Universities Act regarding affiliation of technical colleges and conditions for grant of continuation of such affiliation by university would remain operative



but the conditions that are prescribed by the university for grant and continuation of affiliation must be in conformity with the norms and guidelines prescribed by the NCTE.

70. Under Section 14 and particularly in terms of Section 14(3) (a) of the Act, the 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 other 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 the case of *Chairman, Bhartia Education Society V. State of Himachal Pradesh & Ors.*, [(2011) 4 SCC 527], this Court held that Under Section 14 and particularly in terms of Section 14 (3) (a) of the Act, the 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 other 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 the case of *Chairman, Bhartia Education Society V. State of Himachal Pradesh & Ors.* [(2011) 4 SCC 527], this Court held that:

“19.The purpose of ‘recognition’ and ‘affiliation’ is different. In the context of the 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, diploma 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 emphasised 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 the 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 the 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.

73. In these appeals, we are concerned with the colleges which are affiliated to different universities. Some of them are affiliated to Dr. Ram Manohar Lohia Avadh University, Faizabad, some to Dr. Bhimarao Ambedkar University, Agra while others to the University of Meerut. All these universities have been created by statutes and have their own ordinances. The Universities Act is the parent statute under which all these universities have been constituted. Under Section 2 (20) of the Universities



Act, 'University' means an existing University or a new University established after the commencement of this Act in terms of Section 4 of this Act. Section 4 empowers the State Government to establish a university in the manner prescribed by its notification in the Official Gazette. The provision provides for establishment of different universities and which had, in fact, been already established.

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 in so far 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 the NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State Law. The affiliating/examining body and the State Government must abide by the proficiency and command of the 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 the NCTE forthwith of the shortcomings and non-compliance of 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 the NCTE.

78. Now, we may deal with another aspect of this very facet of the case. It is a very pertinent issue as to what the role of the State should be after the affiliation is granted by the affiliating body. We have already discussed that the State opinion, as contemplated under Section 37 of the University Act, to the extent it admits to overreach, is reconcilable and its results are not in its orientation to the directives of the NCTE are void and inoperative to the extent they can be resolved in which case clear precedence is to be given to the directives of the NCTE during such resolution. The opinion of the State, therefore, has to be read and construed to mean that it would keep the factors determined by the NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the University to determine the grant or refusal of



affiliation and role of the State should be bare, minimum non- interfering and non-infringing.

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, the 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 are 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 the 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 viz-a-viz the State Government as well as the affiliating body. Normally, these questions cannot be re-agitated 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 life of the students working in the school because of non-compliance of 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 the case of Bhartia Education Society (supra), 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 the 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. John Teachers Training Institute (supra), the Court stated that the State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the NCTE while considering 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.

21. Yet another judgment rendered by the learned Division Bench of this Court, in the case of **Mata Gujri Memorial Medical College & L.S.K. Hospital vs. The State of Bihar & ors. Reported in 1995 (1) PLJR 237** would be relevant to be relied upon, paragraph nos. 7, 26 & 30 whereof are reproduced herein below:-

"7. The Vice-Chancellor of the Respondent-University proposed a Transitory Regulation to conduct Phase-I examination of Bachelor of Medicine and Bachelor of Surgery for the students of the said College. The Chancellor of the University approved the Transitory Regulation of the University by issuing a Notification dated 25.12.92 in exercise of power conferred upon him u/s 39 (2)(ii) of the Bihar Universities Act (hereinafter referred to as 'the Act'). In the said Transitory Regulation it was directed to conduct Phase-I examination of M.B.B.S. course, 1992 for the students of the petitioner-College, a copy of the aforesaid Transitory Regulation has been made Annexure-7 to the writ application. In spite of the aforesaid transitory regulation, the Controller of B. N. Mandal University issued a notification on 6.5.93 fixing the date for filing forms and fees only for the



students of Katihar Medical College for the first year M.B.B.S. examination of 1989-91 batch. It was stated in the said notification that the first year M.B.B.S. examination of 1990-92 batch of the petitioner-College will be conducted after the completion of the examination of 1989-91 batch of the Katihar Medical College, a copy of the said Notification is annexed as Annexure-8 to the writ application.

26. Again in the famous case of *Unni Krishanan, J.P vs. State of Andhra Pradesh (AIR 1993 SC 2178)* the Apex Court in para 169 has held as follows:

“We must, however, make it clear, and which is of crucial importance herein, that the right to establish an education institution does not carry with it the right to recognition or the right to affiliation. In *St. Xaviers College vs. State of Gujrat (1975) 1 SCR 173 (AIR 1974 SC 1389)* it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J., stated that this has been “the consistent view of the court”. They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other



body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State- much less they have the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognised and/or affiliated as stated above, its certificates will be of no use. No one would join such educational



institution. As a matter of fact, by virtue of the provisions of the U.G.C. Act, noticed hereinabove, no educational institution in this country except an University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government/University. The idea is that if such students pass the said examination, the Government/University will award its degree/ diploma/ certificate to them. These educational institutions follow the syllabus prescribed by the Government/University, have the same courses of study, follow the same method of teaching and training. They do not award their own degrees/ qualifications. They prepare their students for University/ Government to permit them to appear at the examination conducted by them and to award the appropriate degrees to them. Clearly and indubitably, the recognised/affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State. In the above circumstances, it is idle to contend that imparting of education is a business like any other business or that it is an activity akin to



any other activity like building on grasses, bridges etc. In short, the position is this: No educational institution except an University can award degrees (Sections 22 and 23 of the U.G.C. Act). The private educational institutions cannot award their own degrees. Even if they award any certificates or other testimonials they have no practical value inasmuch as they are not good for obtaining any employment under the State or for admission into higher courses of study. The private educational institutions merely supplement the effort of the State in educating the people, as explained above, It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory-in the interest of general public upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising/affiliating authority is the 'State', it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the



Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions.”

26. In the light of the aforesaid decision it has to be seen as to whether the provisions of section 21(2)(d) of the Universities Act, which requires prior approval of the State Government before grant of affiliation to the Medical College is valid in the eye of law or not. From bare perusal of the aforesaid provision, it would appear that at the time of granting approval to the affiliation of the Medical College to the University, the State Government has to be satisfied that in truth and reality the institution has been established. As it is clearly stated therein that before granting approval for affiliation of a Medical College, the State Government shall consider the financial viability of the College, the nature and form of the proposed management of the College, the viability of the academic standard and all other conditions which are likely to have adverse effect on the interest of students admitted to such a College. The investigation on the aforesaid points by the State Government before approval applies to the



minorities' institutions also. The aforesaid investigations are in the nature of regulatory measures to find out as to whether a college which is asking for permission for grant of affiliation has come into existence in truth or reality or not. In other words, the enquiry envisaged by the aforesaid provision is with the sole object to find as to whether the norms or standard required for establishing and administering a medical college is possessed by the college or not. The State Government after considering the aforesaid aspect of the matter can refuse to grant permission if it comes to the conclusion that the institution even if established by the minorities which have a right under Article 30(1) to establish and administer educational institution of their own choice, does not fulfil the standard requirements essential for a medical college. Accordingly, the submissions advanced on behalf of the learned counsel for the petitioner that the aforesaid provisions do not apply to the minorities institution is repelled. As stated above, the State Government has found that the infrastructure and other facilities as prescribed by the Medical Council of India for the opening of the medical college is lacking in the college in question and as such it was justified to refuse to grant permission for affiliation of the college in question to the University.

30. It was submitted by the learned counsel for the petitioner that one of the grounds given for non-affiliation of the college that no prior permission for



the establishment of institution was taken by the State Government in accordance with the provisions of proviso to clause (C) of Section 2 of the Bihar Act is not tenable in law for the reason that no prior permission is required for establishing a minority institution in view of the provision of Article 30(1) of the Constitution of India. The submission is well founded. The provision requiring prior permission for establishing a minority institution is void, as it is violative of fundamental right guaranteed under Article 31(1) of the Constitution of India. A Full Bench of this Court in the case of Rahmani Primary Teachers' Training Collage (supra), while dealing with a similar provision contained in Bihar Non-Government Physical Training College and Non-Government Teachers' Training College and Non-Government Primary Teachers' Education Colleges (Control and Regulation) Act, 1992, held that it will not apply to minority institutions. Thus, it is held that the proviso to clause (c) of Section 2 of the Bihar Act does not apply to minority institutions. However, as I have held that the amended provisions of the Indian Medical Council Act are applicable in the case of the petitioner's institution, the non-applicability of the aforesaid provisions of the Bihar Act is of no help to the petitioner. This apart, after the addition of amended provisions 10(A), 10(B) and 10(C) in the Indian Medical Council Act, the said provisions in the Bihar Act regarding prior permission for the establishment of the medical college, either in the



case of minority or in the case of majority, has become inoperative. Article 66 of List-I of 7th Schedule of the Constitution empowers the Parliament to make legislation regarding co-ordination and determine the standards in institution for higher education or research and scientific and technical institutions. Entry 25 of List III (concurrent list) relates to technical education, medical education and University and the same is subject to the provisions of Entries 65 and 66 of List-I.

Entry 66 vests power to see that the required standard of higher education in the country is maintained. The Parliament has exclusive power to make legislation on the said subject. If the Parliament has already made a law which falls under Entry 66 of the list, then the State Government cannot make a parallel enactment under Entry 25 of List III. The Central Government has already enacted law (Sections 10(A) to 10(C)) of the Indian Medical Council Act) for co-ordination and determination of excellence in the standard in institutions of medical education. The similar provision in the Bihar Act will be void. In that view of the matter, the provision of the Bihar Act has become inoperative after the addition of amended provisions in the Medical Council of India Act, which falls under Entry No. 66 of List-I."

22. Thus, from the aforesaid principle of law laid down by the Hon'ble Apex Court as well as by the learned Division Bench of



this Court, it is seemingly clear that the exercise of power by the Chancellor under Section 39(2) (ii) of the Bihar Universities Act, 1976, in disallowing the proposal for approval of draft ordinance and regulation of Distance & O.D.L. Mode including B.Ed. Course (O.D.L. Mode) of B.R.A. Bihar University, Muzaffarpur, decision whereof is contained in the letter of the Governor Secretariat, Bihar, Patna dated 14.09.2018, is bridled by the decision of the Eastern Regional Committee, N.C.T.E. contained in its order dated 13.05.2013 to grant recognition to the D.D.E. of the respondent University for conducting B.Ed. (Open & Distance Learning System) course of two years duration with an intake capacity of 500 students from the academic Session 2014-15 onwards, since once the N.C.T.E. grants recognition, such grant attains supremacy vis-a-vis the State Government as well as the affiliating Body and none is expected to obstruct the commencement of admission process and academic courses as also holding of examination and grant of degrees to the admitted students, thus the decision of the Chancellor contained in the letter of the Governor Secretariat, Bihar, Patna dated 14.09.2018 is not only contrary to law but is also bad and erroneous on account of the fact that the same does not spell out any reason whatsoever much less cogent, clear and



succinct reasons for disallowing the proposal of the respondent-B.R.A. Bihar University, Muzaffarpur, regarding approval of draft ordinance and regulation of Distance & O.D.L. Mode including B.Ed. Course (O.D.L. Mode), in terms of the mandate / principles of law laid down by the Hon'ble Apex Court in the case of **ORYX Fisheries Pvt. Ltd. Vs. Union of India & Ors.**, reported in (2010) 13 SCC 427, hence, the order passed by the Chancellor, as contained in letter of the OSD (Judicial), Governor Secretariat, Bihar, Patna, dated 14.09.2018 is quashed.

23. In any view of the matter, even Section 39(2) (ii) of the Bihar State Universities Act, 1976 mandates mere assent by the Chancellor upon regulation being forwarded to him, after being passed by the senate of the University and it is only the date of coming into force of the regulation which is to be guided by the date on which the assent is granted by the Chancellor.

24. It would be further relevant to refer to a judgment rendered by the learned Division Bench of this Court in the case of *Mata Gujri Memorial Medical College vs. The State of Bihar & Ors.*, reported in *AIR 1994 Patna 22*, paragraph nos. 1, 6, to 8, 14 and 16 to 18 whereof are reproduced herein below:-



“1. The petitioner has filed the present writ application for quashing part of the notification dated 6-5-1993 issued by the Controller of Examination of the respondent B. N. Mandal University by which it has been directed that the 1st Part of M.B.B.S. Examination 1990-92 batch of the petitioner institution will be conducted after completion of the M.B.B.S. Part I examination of 1989-91 batch of Katihar Medical College, and for a further direction to hold examination of the students of petitioner institution as per the directions of the Chancellor along with the students of the said Katihar Medical College.

6. Despite the said resolution of the Board, Chancellor for his own reasons felt persuaded to approve the transitory regulation permitting holding of examination for students of the unaffiliated institutions like the petitioner institution.

7. The present Vice-Chancellor under its letter dated 9-1-1993 addressed to the Governors Secretariat by pointing out the provisions of Bihar Medical Educational (Regulation and Control Act, 1981 (herein after State Regulation Act) raised various objections regarding the validity and enforceability of the aforesaid transitory regulation, which contemplated for holding of examination of the students of the petitioner institution. But the Chancellor vide a letter dated 9-2-93 written by his secretary as contained in Annexure 'C' to the counter



affidavit, directed the Vice-Chancellor to abide by the directions contained in the transitory regulations. The Vice-Chancellor again by his letter dated 2-3-93 (Annexure D) communicated to the Chancellor that the Examination Board of the University after examining the entire legal position, has resolved to request the Chancellor to review his earlier order keeping in view the difficulties mentioned in the resolution, a copy whereof was enclosed with the letter, has been annexed as part of Annexure 'D'. The Secretary of the Chancellor under his direction vide letter dated 23-4-93 (Annexure E) then communicated that the objections and the requests for review will be considered for the performance and conducting of future examination of the institution. But in the meantime the university must conduct the examination as per the transitory regulation within a month. Again by another letter dated 23-4-1993 the said Secretary to the Chancellor directed the Vice-Chancellor to file a show cause as to why appropriate action should not be taken against him for not implementing the Chancellor's direction as provided under Section 11 of the University Act, which contemplates a deemed removal of the Vice-Chancellor in case of his failure to abide by the directions of the Chancellor. The Vice-Chancellor filed his show cause Annexure 'G'. The matter seems to be resting at this stage.

8. There are three Acts in force which require



permission/affiliation/recognition by an institution intending to impart teaching and training in the faculty of medicine. These are [Indian Medical Council Act](#), 1956 (hereinafter [Central Act](#)), as amended by the [Indian Medical Council \(Amendment\) Act](#), 1993, an act made by the Parliament, State Regulation Act and State University Act. [The Central Act](#) has been made under Entry 66 of List I read with Entry 26 of List III and the [State Act](#) has been made under Entry 25 of List III of the Constitution of India. Keeping in view the provisions of [Article 246\(1\)](#) of the Constitution, the law made by the Parliament in relation to education will prevail over any State legislation made in this regard.

14. Keeping in view the law laid down by the Supreme Court which binds the High Courts under Article 141 of the Constitution, at least this Court cannot permit or approve the permission accorded by any authority in relation to appearance of the students of any unaffiliated/unrecognised private college including the petitioner at the university examination.

16. In a case similar to the present one, while dealing with the similar reliefs as claimed in the present case, in the case of Nawadah Vidhi Mahavidyalaya v. State of Bihar, C.W.J.C. No. 5855 of 1993 and in the case of Board of Directors of Sarjug Dental College v. State of Bihar, C.W.J.C. No. 3459 of 1992 and analogous case both disposed of on 2nd September, 1993, we have held that the action of the Vice-Chancellor and



the Chancellor in framing the transitory regulations permitting the students of unrecognised law College and Dental College is ultra vires the underlying policy and mandatory provisions of the University Act and is contrary to the law laid down by the Supreme Court.

17. For those very reasons, we hold that the transitory regulation is contained in Annexure '7' to the writ application is ultra vires and inoperative and, accordingly, the said transitory regulations and the directions issued by the Chancellor for compliance thereof, are quashed.

18. Recently another Bench of this Court while dealing with the case of another private unaffiliated/unrecognised medical college in C.W.J.C. No. 11696 of 1992 and analogous case disposed of on 15th July, 1993, after examining the relevant statutory provisions as noted above, including Sections 10A, 10B and 10C of the Indian Medical Council Act is inserted by the Indian Medical Council (Amendment) Ordinance, 1993, and the succeeding Act incorporating the said provisions, has held that the private medical institutions so far not affiliated or recognised can impart medical education only after seeking permission from the Central Government. It has also been held that the decision of the Central Government either granting or refusing permission will bind the State Government as well as the University, who have to act in conformity with such order. It has refused the prayer of those institutions to



permit their students to appear at the University examination.

25. This aspect of the matter has also been considered in a judgment dated 02.09.1993 passed by the learned Division Bench of this Court in ***CWJC No. 5855 of 1993 (Nawadah Vidhi Maha Vidhalaya, Nawadah & Ors. vs. The State of Bihar & Ors.)***, paragraph nos. 1, 5, 8, 16 to 19 and 21 to 27 whereof are reproduced herein below:-

“1. This writ application has been filed by the petitioners for issuance of an appropriate writ and/or direction commanding the respondents to (i) grant affiliation to Nawadah Vidhi Maha Vidyalaya, Nawadah (hereinafter in short the ‘Institution’), (ii) allow the students of the institution to appear at the ensuing LL.B. Examination, (iii) publish the result of 1990 LL.B. Part I, Part II and Part III examinations of the alleged students of the Institution and (iv) declare the transitory regulation dated 17.04.1993 (Annexure-9) as ultra vires the powers of the Chancellor and the Vice-Chancellor.

5. On the above premise the questions which falls for our consideration are:

(i) Whether the Chancellor has any authority to accord permission to the students of an un-affiliated (unrecognized) college to appear at the University examination?



(ii) Whether any transitory regulations like Annexure-3 can be made by the Vice-Chancellor with the approval of the Chancellor? and

(iii) Whether the University or its authorities can permit the students of any unaffiliated/ unrecognized institution to appear at the examination?

8. Subordinate legislations like Statutes, Ordinances and Regulations have been conceived under Sections 34, 37 and 39 of the Act respectively. Section 34 provides that subject to the provisions of this Act, the Statutes may provide for the admission of educational institutions as colleges and the withdrawal of privileges from the colleges so admitted. Section 37(e) provides that the Syndicate may, subject to the provisions of this Act and Statutes, make Ordinance to provide for the inspection of Colleges by any agency. Section 39(b) provides that subject to the provisions of the Act, the Statutes and the Ordinance, Regulations may be made to provide the condition under which students shall be admitted to the degree or diploma courses and to the examination of the University and shall be eligible for such degrees and diplomas.

16. Now I take up the last issue which relates to the validity of the transitory regulations quoted above. Interestingly, both, the petitioners as well as the respondents are repudiating the same. The petitioners are challenging the impugned transitory regulations



because the last proviso of the Regulation prohibits publication of result of the examination at which the alleged students of the institution have been allowed to appear under the directions of the Chancellor till affiliation is granted. The respondents are disowning and intent to get rid of it because, according to them, the making thereof cannot be justified with reference to any of the provisions of the Act.

17. It is essential to note here that though under Section 9(7) (ii) the Chancellor has been empowered to issue binding direction to the University but that can be only in relation to administrative or academic interest of the Universities. The direction in the present case as contained in Annexure-9 cannot be said to be either in the administrative or academic interest of the Universities. These can at best be held in the interest of persons who intend to act in violation of the statutory provisions. The directions are obviously contrary to the academic interest of the University. Such directions merely lead to hamper of academic pursuits and results in grant of University degrees to persons otherwise unqualified for the same. Such directions are primarily responsible for reducing entire educational system into a mockery. It is such directions which encouraged the mushroom growth of fake or unauthorised institutions as any easy-make-money adventures, which are not only unconstitutional but are crimes against the society.

18. Section 39(2) provides for making of the



Regulations which reads as under :

“39 (2)(i) A Regulation made by the Academic Council under sub-section (1) shall be forwarded, as soon as may be, to the syndicate for transmission to the Senate, and the Syndicate shall duly forward the same to the Senate with such recommendations, if any, as it may wish to make and shall have no power to return it to the Academic Council for re-consideration, unless such Regulation, in the opinion of the Syndicate relates to matters which directly or indirectly affect the finances of the University.

(ii) Such a regulation shall have effect from the date on which it has been assented to by the Chancellor on being passed by the Senate with or without amendment, or from any date fixed by the Chancellor:

Provided that at any time except when the Senate is in session, if the Academic Council makes a Regulation and considers its immediate enforcement necessary, the Academic Council may recommend through the Syndicate, to the Chancellor accordingly and the Chancellor with such amendment as he thinks proper shall direct by a notification published in the Gazette that the Regulation shall come into immediate effect, but such a Regulation shall cease to be effective on the expiry of seven days from the date of the next meeting of the Senate, unless confirmed by the Senate.

Provided further that if any Regulation made by the Academic Council under the preceding proviso, involves expenditure from the University funds, the Regulation shall be



forwarded to the Chancellor with the advice of the Financial Adviser.”

19. A reading of the aforesaid provisions shows that the Academic Council has to initiate the process of making regulation which will become an enforceable statutory instrument after having passed through the Syndicate and Senate and having been assented to by the Chancellor. The 1st proviso to sub-section 2 further provides that if the Syndicate is not in session and if the academic Council feels that enforcement of certain regulation is an immediate need it may recommend through the Syndicate to the Chancellor and the Chancellor may, subject to amendments, direct by a notification published in the Gazette that the regulation shall come into force with immediate effect subject to the limitations provided therein. Therefore, even in a case of urgency of enforcement any regulation, the process has to be initiated by the Academic Council and such regulation can become effective only on its publication in the official Gazette.

21. Therefore, on the above statement it is quite clear that the impugned transitory regulations had been drawn at the instance of the Chancellor to effectuate his wishes and directions to permit the purported students of unrecognized institutions to appear at the University examination. It was also admitted at the Bar by the learned Advocate General that the impugned transitory regulations have not been



published in the Gazette and therefore, was not enforceable in law. The submission of the learned Advocate General is based on a sound proposition of law. (Ref. *Narendra vs. Union, 1960 S.C. 430 and A. Venkata subbarao & ors. vs. The State of A.P., 1965 S.C. 1773*).

22. Section 21 deals with the powers and duties of the Senate, Clause (d) of sub-section (2) of this section assigns a duty on the Senate to exercise the powers for the purpose of control in colleges and Tols, and of superintendence which include affiliation and disaffiliation of colleges. It further provides that affiliation or disaffiliation of colleges or Tols shall not take effect, unless it is approved by the State Government. The second proviso provides for prior approval of the State Government if the grant of affiliation relates to medical college. The guidelines set out for grant of approval by the State Government for the purposes of affiliation have been set out as (i) Financial viability of the college, (ii) the nature and form of the proposed management of the College, (iii) the viability of the Academic standard and (iv) all other conditions which are likely to have adverse effect on the interests of the students admitted to such a College.

23. Section 18, 22 and 24 provides the constitution of the Senate, Syndicate and the Academic Council. A reference to these provisions shows that the statutory bodies have to be comprised of Ex-officio Members,



nominated Members as also Elected Members. The Syndicate and the Senate of the Universities established under the Act had been dissolved with enforcement of the Bihar State Universities (3rd Amendment) Ordinance, 1986 with effect from 17.12.1986 by incorporating the following section in the Act:-

“Section 79A- The present syndicate and Senate shall cease to exist with effect from the date of the Bihar State Universities (3rd Amendment) Ordinance, 1986 comes into force. The powers and duties of the Senate and Syndicate, as the case may be, shall be discharged by the Vice-Chancellor so long the new Senate/Syndicate is not constituted.”

24. The above said proviso was kept alive through the process of repromulgation of the Ordinances till the enactment of the Bihar State Universities (Amendment) Act, 1990 (Act 3 of 1990) which came into force on 30th January, 1990. The Legislature did not approve the retention of the above noticed provision on the statute book. The result was that since the enforcement of the aforesaid amending act, the Vice-Chancellor ceased to have any power to discharge the functions of the Senate and the Syndicate. But I cannot just stop here.

25. By the aforesaid amending act, amendments were made in sections 18, 22 and 24 of the Act



touching upon the constitution of the authorities of the University referred to in section 17 of the Act. It has been said at the Bar that so far no effort has been made to reconstitute the said bodies in accordance with the amended provisions. Even it be so, the Legislature by incorporating section 75A in the Act, has provided an answer to it. This provision read as under:

“75क. विश्वविधालय निकायों के गठित न होने पर कार्य व्यवस्था /-

(1) यदि किसी कारणवश विश्वविधालय की सिनेट अथवा अभिषद अथवा विद्वत परिषद अथवा अन्य किन्हीं निकाय का गठन न हो सके तो जब तक इन निकायों का गठन नहीं हो जाए तब तक अधिनियम के उपबन्धों को कार्यान्वित करने के प्रयोजनार्थ, पदेन एवम नाम निर्देशित सदस्य मिलकर सम्बन्धित निकाय की किन्हीं शक्तियों का प्रयोग तथा किन्हीं कर्तव्यों का पालन कर सकेंगे।

(2) किसी विश्वविधालय द्वारा रिक्तियों रहने के कारण उनके द्वारा चुनाव अवैध नहीं होगा।”

25. In view of the aforesaid provisions, if for any reason, the Senate or Syndicate or the Academic Council is not constituted, then till its constitution, for the purpose of carrying out the business under the Act the Ex-officio and nominated members will be competent to exercise the powers and discharge the duties of those bodies. No doubt under section 10(12) of the Act, some emergency powers have been vested in the Vice-Chancellor to be exercised for taking some immediate action, but it is subject to the limitations prescribed therein. In any case, those cannot extend to making of delegated legislation. In any view of the



matter, if the Vice-Chancellor feels that there is any immediate necessity of calling of the meeting of any body constituted under the act for discharging of its functions, he has been amply empowered in this regard under sub-section (7) of section 10 of the Act.

26. Keeping in view the discussions as above, in my opinion, the impugned transitory rules have to be held as ultra vires the powers of the Vice-Chancellor and the Chancellor being opposed to the very policy underlying the Act as also for want of statutory sanction.

27. In the end I would like to quote what the Supreme Court has said in matters like the present case after noticing its earlier judgments. In the case of ***State of Maharashtra vs. Vikas Sahebrao Roundale and others***, reported in (1992) 4 S.C.C. 435(at 439) the Apex Court while expressing its anguish and displeasure has now held as the binding law that:

“Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its



prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.”

26. It would further be relevant to refer to a judgment dated 02.09.1993 rendered by the learned Division Bench of this Court in the case of the ***Board of Directors of the Sarjug Dental College, Darbhanga / Rajiv Ranjan & Ors. vs. the State of Bihar & Ors.***, in ***CWJC No. 3459 of 1992 and CWJC No. 4845 of 1993***, paragraph nos. 1, 13 to 16, 20 and 22 whereof are reproduced herein below:-

“1. These two writ applications have been preferred by the Board of Directors and the students of the Sarjug Dental College, Darbhanga, (hereinafter, in short, ‘the Institution’ only) praying therein for a mandamus for granting recognition/affiliation to the institution and for holding of B.D.S. examination by the respondent L. N. Mithila University, Darbhanga to enable the students of the institution to appear in such examination and to grant consequential reliefs by way of publication of result and grant of Bachelors degree in Dental Surgery (B.D.S.).

13. In the instant case, the relevant statutes, the provisions whereof have a bearing on the rival contentions are the Dentists Act, 1948 (hereinafter, in short, the Central Act) and the Bihar State



Universities Act, 1976 (hereinafter, in short, the State Act). In the Central Act, Sections 10A, 10B and 10C and Sections 20(2) (fa), (fb) and (fc) have been inserted by the Dentists (Amendment) Act, 1993 with effect from 27th August, 1992, the date of promulgation of the precursor ordinance. The newly added provisions to the Central Act may have material bearings on the reliefs as claimed by the petitioners.

14. Before proceeding to examine the statutory provisions , it will be necessary to explore and understand the meaning of the words and phrases- “recognition”, “affiliation” and “admission” of colleges to the privileges of the University .” Clause (a) of Section 12A of the University Grants Commission Act, 1956, provides that: “affiliation” together with its grammatical variations, includes in relation to a college, recognition of such college by association of such college with, and admission of such college to the privileges of, a university. Section 2(ag) of the State Act provides that, “recognition” with all its grammatical variations, and cognate expressions means recognitions according to the provisions of this Act and Statutes. Section 2(c) of the State Act further defines ‘affiliated college’ means educational institution having received privileges of the University according to the provisions of this Act and the University Statutes thereto. Therefore, the three expressions in question are apparently cognate in nature carrying the same meaning and import and



use thereof in relation to any College or institution leads to the same consequences.

15. The Central Act has been enacted by the Parliament with an object to regulate the profession of dentistry and to make provisions for laying down the minimum standard of training in this branch of learning. The Parliament having competence to legislate on the subject both in view of Entry 66 of the Union List and Entry 2 of the concurrent List and Article 19(6) of the Constitution, have made legislation in this regard. Certain provisions of the Central Act need to be quoted hereunder:

2(j) “recognised dental qualification” means any of the qualifications included in the Schedule.

(1) “registered dentist”, “registered dental hygienist” and “registered dental mechanic” shall mean, respectively, a person whose name is for the time being registered in a register of dentists, a register of dental hygienists and a register of dental mechanics.

10(1) Recognition of dental qualifications- The dental qualifications, granted by any authority or institution in India, which are included in Part I of the Schedule shall be recognized dental qualifications for the purpose of this Act.

34. Qualification for subsequent registration-

(1) After the date appointed under sub-section



(2) of Section 32 a person shall, on payment of the prescribed fee, be entitled to have his name entered on the register of dentists, if he resides or carries on the profession of dentistry in the State and if he

(i) holds a recognized dental qualification,

.. ..
.. ..

46. Effect of registration-(1) Any reference in any other law to a person recognized by law as a dentist shall be deemed to be a reference to a dentist registered under this Act.

(2) No Certificate required by or under any other law from a dentist shall be valid unless the person signing it is registered as a dentist under this Act.

(3) After the expiry of three years from the date appointed under sub-section (2) of Section 32, a person who is not registered in Part A of the State register of dentists shall not, except with the sanction of the Central Government or the State Government hold any appointment as dentist in any dispensary, hospital or other institution which is supported wholly or partially from public or local funds:

(4) After the expiry of two years from the publication of a register of dental hygienists in a



State, no person whose name is not entered in that register shall hold appointment as dental hygienist in any dispensary, hospital or other institution in the State which is supported wholly or partially from public or local funds.

(5) Any person who is a registered dentist, registered dental hygienist or registered dental mechanic in a State may practise as such in any other State.

16. Chapter V of the Central Act creates offences for certain acts and omission. Under section 49 of the Central Act practice in dentistry or allied matters by a person other than by a registered dentist, has been made an offence. In Part 1 of the Schedule, in the State of Bihar, only Patna University has been authorized to grant a recognized dental qualification of Bachelor of Dental Surgery (B.D.S., Patna). Therefore, keeping in view the provisions of the Central Act, the respondent L.N. Mithila University is not competent to conduct courses of studies or training for grant of any recognized dental qualification. It is a matter of record as has been admitted at the Bar as also is apparent from the statutes of this University that as required under Section 26 of the State Act, it has neither any faculty of dentistry nor it has prescribed any syllabus or courses of studies in this branch of learning nor there is any regulation providing for grant of any affiliation or recognition to any private Dental College. In this



view of the matter provisions of the newly inserted Section 10A of the Central Act will have its immediate play. The relevant clauses of Section 10A of the Central Act may be quoted thus:

10A(1) Notwithstanding anything contained in this Act or any other law for the time being in force-

(a) no person shall establish an authority or institution for a course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognised dental qualification; or

(b) no authority or institution conducting a course of study or training (including a post-graduate course of study or training) for grant of recognized dental qualification shall -

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student a such course or training to qualify himself for the award of any recognized dental qualification; or

(ii) increase its admission capacity in any course of study or training (including a post graduate course of study or



training) except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

20. So far as the impugned transitory regulation, as quoted above, permitting the candidates of even unrecognized/ unaffiliated Colleges to appear at the examination is concerned, less said is better about the framing of such regulations by the higher authorities like Vice-Chancellor and Chancellor to whom powers have been vested by the legislature for up-keeping the academic interest of the University. By framing the transitory regulation in question they have malafidely tried to defeat the very object of the University Act, which has been enacted to promote the educational excellence and to ensure certain standards of learning and training from the recipient/ holder of University qualifications. Making of such a subordinate legislation which are opposed to the legislative policy and the verdict of the Supreme Court in this regard, has to be held as ultra vires and inoperative. The impugned transitory regulation is also bad, since as discussed in C.W.J.C. No. 5855 of 1993 (Nawadah Vidhi Mahavidyala vs. State of Bihar), which has been disposed of today, the Vice-Chancellor has no statutory authority to propose framing of any such regulation. Moreover, this regulation having not been published in the official gazette, as required under Section 39(2) proviso of this State Act, cannot even



otherwise be said to have come into force at any point of time.

22. Even the Central Government cannot grant any permission to the institution in question keeping in view the provisions of Section 10A (a) of the Central Act, because such permission can be granted for establishment of any authority or institution for a course of study or training, which would enable a student to such course or training to qualify himself for grant of recognized dental qualification as is apparent from the provisions thereof quoted above. In the present case, as discussed above, the respondent University under whose territorial jurisdiction the present institution claims to have its establishment is not empowered to grant any recognized dental qualification. Therefore, unless the Central Government grants permission to the University as required under Section 10A(b) of the Central Act, for conducting the courses of studies in question and it is authorized to award recognized dental qualification, there cannot be any occasion for the Central Government for granting permission to the institution like the present one to have its permission for imparting courses and training in dentistry.”

27. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also taking into account the well-settled law to the effect that the law made with regard to the technical institutions by the Parliament would



prevail and the State Government would not have parallel powers especially in view of enactment of the NCTE Act, 1993 by the Parliament, coupled with the fact that the respondent- B.R.A. Bihar University, Muzaffarpur has been granted approval / recognition both by the NCTE as well as by the UGC to conduct the B.Ed. (ODL mode) programme for the session 2014-15 onwards, no encumbrance/hurdle can be put forth, either by the State Government or by the Chancellor, in view of law laid by the Hon'ble Apex Court in the case of *Sant Dnyaneshwar Shikshan Shastra Mahavidyala & ors. (Supra)* and *Maa Vaishno Devi Mahila Mahavidyala (Supra)* as also by the learned Division Bench of this Court in the case of *Mata Gujri Memorial Medical College & L.S.K. Hospital (Supra)*, *Mata Gujri Memorial Medical College (Supra)* and *Nawadah Vidhi Maha Vidhalaya, Nawadah & Ors. (Supra)*, hence, the respondent- B.R.A. Bihar University, Muzaffarpur is directed to hold final examination for the B.Ed. (ODL mode) course for the session 2015-17 forthwith and thereafter, issue necessary certificates / degrees to the successful candidates, in accordance with law, since the petitioners and other similarly situated students have already successfully passed the B.Ed. first year examination, whereafter they had also been admitted in the final



semester of the B.Ed. ODL course for the session 2015-17 by the respondent-University, whereupon the academic schedule has also been completed for the final semester and only the final examination is due to be undertaken.

28. The writ petition stands allowed, however without any order as to cost.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	28.03.2019
Uploading Date	28.12.2020
Transmission Date	N/A

