

\$~9

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

+ **W.P. (C) 10170/2018**

Reserved on: 12th February, 2020
Pronounced on: 18th February, 2020

SJRD MEMORIAL COLLEGE OF EDUCATION.....Petitioner
Through: Mr. Sanjay Sharawat, Mr.
Divyank Rana, Mr. Abhishek
Dhankar and Mr. Ashok
Kumar, Advs.

versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION AND ANR. Respondents**
Through: Ms. Arunima Dwivedi, SC with
Ms. Miharika Rai, Adv. for
Respondent No. 1

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C. HARI SHANKAR**

%

J U D G M E N T

C. HARI SHANKAR, J.

1. The petitioner college is engaged in running teacher training programmes, and is recognised, for the said purpose, by the National Council for Teacher Education (Respondent No. 1 herein and referred to, hereinafter, as “NCTE”).

The Statutory Scenario

Relevant provisions of the National Council for Teacher Education Act, 1993

2. Teacher education, in India, is governed by the provisions of the National Council for Teacher Education Act, 1993 (hereinafter referred to as “the NCTE Act”), enacted on 29th December, 1993. The Act provides for the establishment of the NCTE, which operates through Regional Committees, i.e. the North Regional Committee (NRC), the East Regional Committee (ERC) and South Regional Committee (SRC).

3. Chapter IV of the NCTE Act deals with “Recognition of teacher education institutions”. Sections 14 and 15, thereunder, read thus:

“14. Recognition of institutions offering courses or training in teacher education. –

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of 6 months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

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

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

—

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

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

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

(4) Every order granting or refusing recognition to an institution for a 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 institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub- section (3).

(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.

15. Permission for a new course or training by a 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 any 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) If the 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.

The NCTE Regulations

4. Section 32(1) of the NCTE act empowers the NCTE to, by notification in the Official Gazette, make regulations, generally to carry out the provisions of the NCTE Act. Sub-section (2) of Section 32 visualises certain specific matters, in respect of which Regulations may be framed; as is normal in such clauses, however, the sub-section clarifies that the enumeration of these individual “matters” is “without prejudice to the generality of the foregoing power”.

5. As a throwback to what has been discussed hereinabove, we may note that, among the various matters, enumerated in Section 32 (2) of the NCTE Act, clause (f) covers “conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub-section (3) of section 14”, clause (g) covers “the form and the manner in which an application for permission is to be made under sub-section (1) of section 15, and

clause (h) covers “conditions required for the proper conduct of a new course of training and conditions for granting permission under clause (a) of sub-section (3) of section 15”. Here, again, the distinction between grant of recognition to the institution, and grant of permission to run a course in the recognised institution, stands distinctly emphasised.

6. Regulations, governing the functions of the institutions recognised under the NCTE, have also been framed under Section 32(2)(f) and (g), read with Sections 14 and 15 of the NCTE Act. These regulations have been re-notified from time to time. The controversy, before us, would involve the National Council for Teacher Education Regulations (hereinafter referred to as “the NCTE Regulations”) 2005, the NCTE Regulations 2007, the NCTE Regulations, 2014 and the National Council for Teacher Education (Recognition, Norms and Procedure) (Amendment) Regulations 2017, whereby the NCTE Regulations, 2014 were amended. For the sake of convenience, these regulations would be referred to, hereinafter, as the “2005 Regulations”, the “2007 Regulations”, the “2014 Regulations” and the “2017 Amendment Regulations”.

The 2005 Regulations

7. The 2005 Regulations were notified, by the NCTE, *vide* Notification No F. 49-42/2005-NCTE (N & S), and came into effect w.e.f. 27th December, 2005, when they were notified in the Official Gazette. Regulation 3, which dealt with the “Applicability” of the

2005 Regulations, clearly stated that the said Regulations would be applicable to all matters relating to teacher education programmes covering “norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in the existing programmes and other matters incidental thereto”. Significantly, this Regulation, too, distinguishes between recognition of institutions, vis-à-vis commencement of new programmes and addition to sanctioned intake in the existing programmes.

8. Regulation 7 of the 2005 Regulations dealt with the manner in which applications, submitted under the said Regulations, were to be processed, whereas the conditions for grant of recognition were contained in Regulation 8. Sub-regulation (5) of Regulation 8 stipulates thus:

“(5) No institution shall be granted recognition under these regulations unless it is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease for a period of not less than 30 years. In cases where under relevant State/UT laws the maximum permissible lease period is less than 30 years, the State Governments/UT Administration law shall prevail.”

As is apparent from a reading of Regulation 8(5) of the 2005 Regulations, an institution applying for recognition, under the said Regulations, was required to be in possession of land, free from all encumbrances, “either on ownership basis or on lease for a period of not less than 30 years”. The sub-regulation did not contain any further

stipulation, with respect to the lease, applicable to the land, on which the institution was situate.

The 2014 Regulations

9. The 2005 Regulations were succeeded, sequentially, by the NCTE Regulations, 2007 (which were notified on 10th December, 2007), the NCTE Regulations, 2009 (which were notified on 31st August, 2009) and the 2014 Regulations (which were notified on 1st December, 2014).

10. Regulation 3 of the 2014 Regulations, which dealt with the applicability thereof, read thus:

“3. Applicability. –

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

- (a) recognition for commencement of new teacher education programs which shall be offered in composite institutions;
- (b) permission for introduction of new programs in existing teacher education institutions duly recognised by the Council;
- (c) permission for additional intake in the existing teacher education programs duly recognised by the Council;

(d) permission for shifting or relocating of premises of the existing teacher education institutions;

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

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

11. Regulation 8 of the 2014 Regulations dealt with the conditions for grant of recognition. Sub-Regulation (4) thereof read thus:

“(4) (i) No institution shall be granted recognition under these regulations unless the institution of society sponsoring the institution is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from The government or Government institutions for a period of not less than 30 years. In cases where under relevant State or Union territory laws the maximum permissible lease period is less than 30 years, the State Government or Union territory Administration law shall prevail and in any case no building shall be taken on lease for running any teacher training program.

(ii) The society sponsoring the institution shall have to ensure that the post teacher education institution is a well demarcated land area as specified by norms.

(iii) The society sponsoring the institution shall be required to transfer an investor the title of the land and building in the name of the institution within a period of 6 months from the date of issue of formal recognition order under sub- regulation (16) of regulation 7. However, in case, the society fails to do so due to local laws or rules or bylaws it shall intimate

in writing with documentary evidence of his inability to do so. The Regional Office shall keep this information on record and place it before the Regional Committee for its approval.”

The 2017 Amendment Regulations

12. The 2014 Regulations were amended by the 2017 Amendment Regulations, which came into effect on 28th April, 2017. Regulation 8 (4) of the 2014 Regulations was, *inter alia*, substituted by the 2017 Amendment Regulations. So substituted, Regulation 8 (4) read thus:

“(4) No institution shall be granted recognition under these regulations unless the institution also the sponsoring the institution is in possession of required land free from all encumbrances on the date of application in the said land shall be either on ownership basis or on lease from the Government or Government institutions for a period of not less than 30 years subject to the relevant laws of the concerned State or Union Territory.

Provided that in cases of Central or State Government Institutions Universities, recognition may be accorded for a period of 5 years, on land premises, which is leased to them.

Provided further that such institution shall be required to shift to premises with old land and building thereon, in conformity with the specification in these regulations within a period of 5 years from the date of recognition.

Provided also that in case of Central or State Government Institutions or Universities, recognition may be accorded on land or premises, which is leased to them for a period of 30 years or more.

Provided also that in cases of Cities notified as Category X and Y by the Government of India for the purposes of House rent allowance, any University or College which has been in existence for the last 10 academic years on the date of application and not in possession of land as per

National Council for Teacher Education norms, be allowed to apply for new Teacher Education Programs or additional Intake exclusively on the basis of the availability of built-up area as per the National Council for Teacher Education Norms, if the institution has at least 1000 sq. meter of land area on which the required infrastructure is built up.

Provided also that the relaxation in land area shall not apply to any Physical Education program.”

Facts

13. The statutory arena, within which our deliberations are required to perambulate, being thus definitively chalked out, we may proceed to the facts.

14. The Chairman of Shree Vaishno Devi Shiksha Samiti (hereinafter referred to as “the Society”), which was the Society sponsoring the petitioner-College, was the owner of an area of land, admeasuring about 2 acres, located in Mahendergarh, Haryana.

15. *Vide* a registered lease deed dated 28th June, 2004, the Chairman of the Society leased the aforesaid land, admeasuring 2 acres of land, in favour of the Society for 30 years, for the purpose of establishing a teacher training college. In accordance with the terms of the said lease, the building, wherein the petitioner establishment is located, was constructed on the said land. Thereafter, in accordance with Section 14 (1) of the NCTE Act, applications were submitted, by the petitioner, to the NRC, seeking recognition, for conducting the B. Ed., B. Ed. (Addl.), D. El. Ed. and M. Ed. courses.

16. *Vide* orders dated 12th October, 2007, 13th October, 2007 and 29th November, 2007, the NRC granted recognition to the petitioner, for conducting the B. Ed. and B. Ed. (Addl.), D. El. Ed. and the M. Ed. courses with an intake of 50, 100, 50 and 25 students, respectively. Each of these orders specifically acknowledged that, on scrutiny of the applications submitted by the petitioner, the documents attached therewith and the affidavit submitted by the petitioner, as well as inputs received from the team of the NRC which visited the premises of the petitioner, and videographed the arrangements available therein, the NRC was satisfied that the petitioner fulfilled the requirements, for recognition, as prescribed in the NCTE Act, and the 2005 Regulations, including norms and standards for secondary teacher education programme such as instructional facilities, library, accommodation, financial resources, laboratory and duly qualified teaching staff.

17. It is not in dispute that, since the date of grant of aforesaid recognition, the petitioner has been conducting the B. Ed., D. El. Ed and M. Ed. courses, to the satisfaction of all concerned.

18. After the coming into effect of the 2014 Regulations, but before their amendment by the 2017 Amendment Regulations, applications, for recognition of teacher training programmes, for the Academic Session 2016-2017, were invited by the NCTE *vide* Public Notice dated 27th February, 2015. Having already been granted recognition, in October 2007, for conducting the M. Ed course, the petitioner applied, on 30th June, 2015, for being permitted additional intake in

the said course being conducted by it, from the Academic Session 2016-2017 onwards.

19. The aforesaid application, of the petitioner, promoted the issuance, by the NRC, to the petitioner, of a Show Cause Notice, dated 30th December, 2015, proposing rejection of the petitioner's application for permission for additional intake in its M. Ed. course on two grounds viz., firstly, that the petitioner had not submitted No Objection Certificate (NOC) from its affiliating body, as required by Regulation 5(3) of the 2014 Regulations, and, secondly, that the land, on which the petitioner was situated, was on private lease, which infringed Regulation 8(4) of the 2014 Regulations.

20. On the ground that the petitioner had failed to reply to the aforesaid Show Cause Notice dated 30th December, 2015, the application, of the petitioner, for grant for being permitted additional intake in its M. Ed. course, was rejected, by the NRC, *vide* Refusal Order dated 6th July, 2016.

21. The petitioner impugned the said Refusal Order, before this Court, by way of WP (C) 2187/2018. While issuing notice on the said writ petition on 9th March, 2018, this court directed to consider the application of the petitioner for grant of recognition *de hors* the requirement of NOC, as an interim measure.

22. The said writ petition is presently pending before this Court.

23. In compliance with the aforesaid interim direction passed by this Court on 9th March, 2018, the NRC issued the impugned Refusal Order, dated 13th September, 2018, once again rejecting the application, of the petitioner, for being permitted additional intake in its M. Ed. course. Seven grounds, for rejection, figure in the impugned Refusal Order, which may be reproduced thus:

- “As per land documents submitted by the institution, the land is on private lease basis which is not acceptable as per NCTE Regulations, 2014.
- The institution has also not submitted the land document for Khasra No ½ and Plot No 11, 12, 19, 22, and 37 as mentioned in online application.
- Latest NOC from the District Town Planner regarding land-use has not been submitted.
- The institution has not submitted the Land Use Certificate issued by the Competent Authority to use the land for educational purpose.
- The institution has not submitted the Non-Encumbrance certificate issued by the Competent Authority indicating that the land is free from all encumbrances.
- The institution has not submitted the approved Building plan signed by the Competent Government Authority indicating the name of the course, name of the institution, Khasra No/Plot No, total land area, total built up area and measurements of the Multi-purpose For as well as the other infrastructural facilities such as classrooms etc.
- Certificate of accreditation has already expired.”

24. The petitioner calls, into question, the aforesaid Refusal Order, dated 13th September, 2018, in the present writ petition, to the limited

extent the said order cites the fact that the petitioner-institution is situated on privately leased land, as a ground to reject the petitioner's application. Accordingly, the writ petition prays that the NRC be directed to reconsider the petitioner's application, *de hors* the said requirement. Additionally, the writ petition challenges Regulation 8(4) of the 2014 Regulations, as amended by the 2017 Amendment Regulations, to the extent it creates a distinction between institutions situated on land leased from the Government, vis-a-vis those situated on land which is privately leased. For ready reference, the prayer clause in the writ petition may be reproduced thus:

“It is therefore respectfully prayed that this Hon'ble Court may be pleased to: –

- (a) Issue a writ of certiorari and quash Regulation 8 (4) of NCTE Amendment Regulations, 2017, notified in the official Gazette on 28.04.2017 to the extent it makes artificial distinction between Private and Government lease at the same is unreasonable, arbitrary and discriminatory and hence are ultra vires Articles 14 and 19 of the Constitution of India; and
- (b) In the alternative hold and declare that the requirement of having land and building or ownership basis or on Government lease as contemplated under Regulation 8(4)(i) of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 does not apply retrospectively to the case of the petitioner for the purpose of submitting fresh applications under section 15 of NCTE Act, 1993; and
- (c) Issue a writ of certiorari and quashed the order dated 13.09.2018 passed by the Respondent No 2 and consequently direct the said Respondent to decide the application of the Petitioner for grant of formal recognition under clause 7 (16) of National Council for Teacher Education (Recognition Norms and

Procedure) Regulations, 2014 for M. Ed. (Addl) course in the rented an already recognised premises; and

(d) pass any other and further orders (s) as may be deemed fit.”

Rival Submissions

25. Given the urgency of the issue involved, we have heard Mr. Sanjay Sharawat, learned counsel for the petitioner, and Ms. Arunima Dwivedi, learned counsel for the respondent, at considerable length.

26. Though no counter affidavit has been filed in response to the notice issued in the writ petition, despite repeated opportunities, Ms. Arunima Dwivedi submits that the counter affidavit is ready. We have, accordingly, permitted her to urge her all contentions advanced therein, during the course of arguments.

27. We are of the view that this writ petition is capable of being disposed of, without entering into the issue of *vires* of Regulation 8(4) of the 2014 Regulations.

28. Mr. Sharawat contends, principally, that the NRC has, in rejecting the application of his client, confused the concept of ‘recognition’ of the institution and ‘permission’ for additional intake. Mr. Sharawat points out that, while recognition of teacher education institutions is governed by Section 14 of the NCTE Act, permission for starting a new course, or for being allowed additional intake in an existing course, is governed by Section 15 thereof.

29. Mr. Sharawat, therefore, submits that the question of recognition arises only once at the initial stage when the institution itself is recognised. The application, dated 30th June, 2015, as submitted by his client, he points out, was not seeking recognition, but permission for additional intake in a course which already stood recognised as far back as on 30th October, 2007.

30. Regulation 8 of the 2014 Regulations, therefore, he submits, did not apply, at all, to the present case, and the rejection, of the application, dated 30th June, 2015, submitted by his client, being premised, as it were, on Regulation 8(4) of the 2014 Regulations, is clearly unsustainable in law.

31. Arguing *per contra*, Ms. Dwivedi draws attention to clause (iii) of Regulation 8(4) of the 2014 Regulations, before the amendment of the said sub-regulation by the 2017 Amendment Regulations. She submits that, at the time of application, by the petitioner, for being permitted additional intake in its M. Ed. course, the pre-amended 2014 Regulations were in force, Regulation 8(4)(iii) whereof required the Society to transfer and vest the title of land and building on which the institution was situated, in the name of the institution within a period of six months from the date of issue of formal recognition.

32. According to Ms. Dwivedi, this requirement had not been complied with, by the petitioner, and the rejection of the petitioner's application, for being permitted additional intake was, therefore, perfectly in order.

33. Ms. Dwivedi further submits that the requirement of the land, on which the institution was situate, having to be either in the ownership of the Society, or under government lease, was in the interests of preventing commercialisation of education, which was one of the avowed objectives of the NCTE, as per clause (m) of Section 12 of the NCTE Act. To support her submission, Ms. Dwivedi places reliance, on the order passed by the Supreme Court in *Rashtrasant T. M. S. & S. B. V. M. C. A. Vid. v. Gangadar Nilkant Shende*¹ in support of her contention that the petitioner was bound to comply with Clause 8(4)(iii) of the 2014 Regulations, in its pre-amended *avatar*.

Analysis

34. The challenge in the writ petition is limited, and is directed only against the first ground on which the application, of the petitioner, for being permitted additional intake in its M.Ed. course has been rejected, *vide* the Refusal Order, dated 13th September, 2018, being that the institution was located on land, which was on private lease.

35. Ms. Dwivedi had sought to contend that the petitioner had not complied with clause (iii) of Regulation 8 (4) of the 2014 Regulations, as it existed before the amendment by the 2017 Amendment Regulations. The said sub-regulation requires the society, sponsoring the institution, to transfer and vest the title of the land and building in the name of the institution within a period of 6 months from the date

¹ Order dt 10th September 2013, passed in SLP (C) 4247-48/2009

of issue of formal recognition order under sub- regulation (16) of Regulation 7.

36. Infraction of Regulation 8(4)(iii) of the 2014 Regulations, is not cited as one of the grounds on which the impugned Refusal Order has come to be issued. We would not, therefore, ordinarily have been inclined to countenance the said submission, as advanced by Ms. Dwivedi, at all. Every official order, it is trite, has to sink, or swim, on the basis of recitals therein, and cannot sought to be buoyed either by averments in affidavits filed in court, or by arguments of learned counsel. Orders, to borrow the felicitous metaphor employed by Krishna Iyer, J., in *Mohinder Singh Gill v. Chief Election Commissioner*², are not like old wine, becoming better as they grow older.

37. Even on merits, we are not convinced that the petitioner's application for grant of permission for additional intake in its M.Ed. course, could have been declined on the basis of Regulation 8(4)(iii) of the 2014 Regulations. In the first place, the 2014 Regulations stipulate no adverse consequence, which would visit the violator of Regulation 8(4)(iii). Secondly, compliance with Regulation 8(4)(iii) is not contemplated, either in the Act or in the 2014 Regulations before or after their amendment by the 2017 Amendment Regulations, as a ground on which the application for permission for additional intake could be rejected. Thirdly, by the date of passing of the impugned Refusal Order, dated 13th September, 2018, Regulation 8(4)

² (1978) 1 SCC 405

of the 2014 Regulations, already stood amended by the 2017 Amendment Regulations, and the amended Regulation 8(4) completely did away with the requirement contained in sub-regulation (iii) of the pre-amended Regulation 8(4).

38. We are, therefore, of the considered opinion that sub-regulation (iii) of Regulation 8(4) of the 2014 Regulations, prior to its amendment by the 2017 Amendment Regulations, cannot come to the aid of the respondent, or be cited as a justification for the decision to refuse permission, to the petitioner, for additional intake for its M. Ed. Course.

39. Apropos the order of the Supreme Court in ***Rashtrasant T. M. S. & S. B. V. M. C. A. Vid.¹***, Ms. Arunima Dwivedi has drawn our attention to the following paragraphs, with which the said order concludes:

“ We also reiterate the direction given earlier and make it clear that all the recommendations made by the implementation committee shall be binding on the Government of India, the Governments of all the States and the administration of Union Territories as also NCTE and University Grants Commission and all of them shall implement the same without any objection and without modifying the same.

With the above direction, the proceedings of these petitions are closed and the special leave petitions are disposed of.

Those who are desirous of establishing teacher education colleges/institutions shall be free to make application in accordance with the new regulations. Their applications shall be decided by the competent authority keeping in view the relevant statutory provisions. All the

pending applications shall also be decided in accordance with the new regulations.”

40. We feel, on a reading of the aforesaid paragraphs, that they, if anything, make it clear that the new Regulations would govern the *establishment* of the teacher education institutions – as opposed to the running of courses therein, or increasing intake thereof.

41. We are, consequently, in agreement with the submission, of Mr. Sharawat, that the NRC has apparently, failed to appreciate the distinction between grant of recognition – which applies at the stage when the institution is being established, or started – and grant of permission – which is required to be obtained whenever any new course is started, or additional intake, in any existing course, is desired.

42. Separate statutory dispensations, dealing with these two eventualities, are to be found, in Sections 14, and 15, of the NCTE Act, respectively. ‘Recognition’ is granted to the institution. Grant of recognition to an institution is governed by Section 14 of the NCTE Act. As against this, ‘permission’, to start any new course or training in teacher education, is covered by Section 15 of the NCTE Act, and is granted to *recognised* institutions. Grant of permission to start a course would, therefore, require, *a priori*, the institution itself to be recognised.

43. This distinction, between ‘recognition of the institution’, and ‘permission to start a course in the recognised institution’, is also underscored by the considerations, to be borne in mind, while assessing the application, whether for recognition or permission, as visualised by clause (a) of sub- section (3), of Section 14 (in the case of recognition) and Section 15 (in the case of permission). Section 14(3)(a) requires the application, by the institution, for grant of recognition to the institution, to be examined by assessing whether “such institution has adequate financial resources, accommodation, library, qualified staff, laboratory” and whether “it fulfils such other conditions *required for proper functioning of the institution for a course or training in teacher education*”. As against this, Section 15(3)(a) stipulates “adequate financial resources, accommodation, library, qualified staff, laboratory” and fulfilment, by the institution, of “such other conditions *required for proper conduct of the new course or training in teacher education*”, as the relevant criteria, to be borne in mind while granting permission, to the institution, to start a new course or training in teacher education. The difference, between the expressions italicised in the afore-extracted words, from Section 14(3)(a) and Section 15(3)(a), of the NCTE Act, are not legislative tautology. It is a cardinal principle, of interpretation of statutes, that, where, in parallel provisions of the same statutory instrument, different expressions are used by the legislature, such different usage is to be treated as deliberate, and with a purpose. It is not permissible, while interpreting the instrument, either to overlook such different usage, or to interpret the provisions concerned, in a manner which would efface the intent behind such different usage. While assessing

an application, for grant of recognition, by a teacher education institution, the concerned Regional Committee would, therefore, *inter alia*, examine whether the institution fulfils the requisite conditions for proper functioning of the institution itself, for the course or training in teacher education. The emphasis, here, is on “functioning of the institution”. While assessing an application for grant of permission, to start a course, in the recognised institution, *per contra*, the Regional Committee would, examine whether, *inter alia*, the institution fulfils the requisite conditions “for proper conduct of the new course or training in teacher education”. The emphasis, here, is, therefore, not on the functioning of the institution *per se*, but on the proper conducting, in the recognised institution, of the new course or training in teacher education.

44. We may note, here, that the statutory provisions which succeed Section 15, in the NCTE Act, too, underscore the distinction between recognition of the institution and permission for the course or training. Section 16 prohibits the examining body to grant affiliation, or hold examination, “unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 of permission for a course or training under section 15”. Section 17, in a similar vein, empowers the Regional Committee to withdraw recognition, where the recognised institution contravenes “any conditions subject to which recognition under sub-section (3) of section 14 of permission under sub-section (3) of section 15 was granted”. It is not necessary to multiply references to the other statutory provisions, contained in the NCTE Act. Suffice it to state, at

the cost of repetition, that the distinction, as envisaged by the NCTE Act, between recognition – which is to the institution – and permission – which is for starting the course in the recognised institution – has always to be borne in mind.

45. The distinction between ‘recognition’ and ‘permission’, is also manifest from clauses (e) and (f) of Section 32 (2) of the NCTE Act, vis-à-vis clause (h) thereof, For ready reference, clauses (e), (f), (g) and (h) of Section 32(2) may be reproduced thus:

“32. Power to make Regulations:

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: –

(e) the form and the manner in which an application for recognition is to be submitted under sub- section (1) of section 14;

(f) conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub- section (3) of section 14;

(g) the form in the manner in which an application for permission is to be made under sub- section (1) of section 15;

(h) conditions required for the proper conduct of a new course of training and conditions for granting permission under clause (a) of sub- section (3) of section 15;”

46. The nature of the lease governing the land on which the institution is situated is, no doubt, a relevant consideration, *in the matter of grant of recognition to the institution*, by virtue of Regulation 8(4). There is, however, no provision which makes this valid as a consideration while examining an application for *permission for additional intake in a course, in an institution which already stands recognized, for imparting the said course*. Neither has Ms. Dwivedi been able, despite her sincere efforts, to draw our attention to any such provision.

47. Ms. Dwivedi has, however, placed reliance on the judgments of the Supreme Court in *Swami Vivekanand College of Education v. U.O.I.*³ and *Government of Andhra Pradesh v. P. Laxmi Devi*⁴.

48. Of these, the latter decision, i.e. *P. Laxmi Devi*⁴, has been pressed into service, only with regard to the challenge, by the petitioner, to the *vires* of Regulation 8(4). Inasmuch as we are not expressing any opinion on this aspect of the petitioner's challenge, reference to the said decision may not be necessary.

49. *Swami Vivekanand College*³ has been cited, by Ms. Arunima Dwivedi, to contend that there has been no retrospective application, to the petitioner's case, of the 2014 Regulations. In view of our finding that the Regulation 8(4) of the 2014 Regulations does not make, in any manner, the application, of the petitioner, for grant of permission for being allowed additional intake, conditional to

³ (2012) 1 SCC 642

⁴ (2008) 4 SCC 720

compliance therewith, the question of retrospective application of the said provision, too, does not fall for consideration.

50. At the cost of repetition, we may note that, in any event, clause (iii) of Regulation 8 (4) of the 2014 Regulations was no longer in existence, when the impugned order, dated 13th September, 2018, came to be passed. The said sub-clause was, therefore, neither in existence at the time when recognition, for establishing the petitioner-institution, with 50 seats in the M. Ed. course, was granted, on 13th October, 2007, nor was it in existence when the impugned order came to be passed on 13th September, 2018. Though it is true that the said proscription was in existence on 6th July, 2016, when the first Refusal Order, rejecting the petitioners application for additional intake, came to be passed, that Refusal Order was effectively – even if not expressly – set aside, by the order, dated 9th March, 2018, of this Court, whereby reconsideration of the petitioners application was directed. By the time such reconsideration took place, and the *de novo* order, dated 13th September, 2018 – impugned herein – came to be passed, clause (iii) of Regulation 8 (3) was no longer in existence. These facts, juxtaposed with the fact that Regulation 8 (3) dealt with the recognition for establishing the institution, and not with permission for additional intake in an existing course, for which recognition already stood granted, in our view, invite the inevitable conclusion that, in stipulating the fact that the land, on which the petitioner-institution was located, had been taken on private lease, rather than Government lease, as a ground to reject the petitioner's

application for permission for additional intake in its M. Ed. course, the NRC did not act in accordance with law.

51. In fact, we are of the view that, while examining the petitioner's application, the approach of the NRC has been somewhat blinkered.

52. The petitioner was granted recognition, for establishment of its institution, and for running its M. Ed. course with 50 students, as far back as on 30th October, 2007. It is admitted position, on ground, that the petitioner has been successfully running the said course, for 12 years – despite being situated on privately leased land. The application of the petitioner was only for additional intake in the said course.

53. The considerations, to be borne in mind, while examining an application, by a recognised institution, for starting the course, stand specifically delineated, in clause (a) of Section 15(3) of the NCTE Act, as possession of “adequate financial resources, accommodation, library, qualified staff” and “laboratory”, apart from fulfilment of “such other conditions required for proper conduct of the new course of training in teacher education, as may be determined by regulations”. As has already been noted hereinabove, at the time of grant of recognition, to the petitioner with permission to conduct its M. Ed. course with 50 students, as far back as on 13th October, 2007, the NRC has already observed, on the basis of documentary material as well as personal visits at the petitioner institution that it is in possession of infrastructural facilities, requisite equipment, duly qualified staff and

library facilities etc. The impugned Order, dated 13th September, 2018, does not find the petitioner as lacking on any count, as determined by the 2014 Regulations, which are necessary for proper conduct of the M. Ed. course, already being conducted by it, with an additional intake of 50 students. The nature of the lease, relating to the land on which the institution is situate, in our view, is not contemplated, by the 2014 Regulations, as a relevant consideration, while examining the application, by an institution, for additional intake of students, in a course for which recognition already stands granted to it, and which it has been successfully conducting for a number of years.

54. In view thereof, keeping in mind the aforesaid statutory position, as it emerges from a reading of Sections 14 and 15 of the NCTE Act, as well as Regulation 8(4) of the 2014 Regulations, whether before, or after, its amendment by the 2017 Amendment Regulations, we are in agreement with the submission of Mr. Sharawat that the petitioner's application, for being permitted additional intake in its M. Ed. course, could not have been rejected on the ground that the petitioner was situate on privately leased land.

55. This legal position, we may also note, does not appear to be *res integra*, having engaged the attention of a Division Bench of the High Court of Himachal Pradesh in ***Mehar Ram Ditta Memorial Physical Education College v. Regional Director, N.C.T.E.***⁵, authored by Kurian Joseph, C.J. (as His Lordship then was).

⁵ 2010 SCC OnLine HP 1395

56. In *Mehar Ram Ditta Memorial Physical Education College*⁵, the petitioner-Institution, which had been recognised by the NCTE and was running a degree course of Bachelor of Physical Education since 2007, applied for starting a new Teacher Training Course of Bachelor of Physical Education, which was rejected on 21st February, 2010, on the ground that the institution was not located on land which was owned by it or taken on lease from Government or Government institutions, as required by Clause 8.7(i) of the NCTE Regulations, 2009. Para 6 of the report, which speaks eloquently for itself, reads thus:

“6. It is also to be seen that *the Regulation speaks only of recognition of an institution and not sanctioning of a course.* It is also to be seen that the petitioner has constructed its own building. *Once the institution has already been granted recognition in terms of the Regulations which existed at the time of recognition, the N.C.T.E. cannot insist for compliance with the Regulations framed thereafter, while an application for a new course is considered. The Regulations extracted above, applies only for recognition of the institution and not for sanctioning of a course.* Even otherwise, *the petitioner having satisfied all the conditions for recognition of institution as per the then existing Regulations and the N.C.T.E. having recognised the institution, the N.C.T.E. cannot refuse to sanction a new course, on the ground that the institution does not satisfy the requirements in terms of the 2009 Regulations, in case the institution is otherwise eligible.* 2009 Regulations would govern the case of institutions for recognition after 2009. It cannot retrospectively apply to an institution, like the petitioner, which had already been recognised in terms of 2005 Regulations. Therefore, *in case the petitioner otherwise satisfies the requirements for the teacher training course in B.P.Ed., the application cannot be rejected on the only ground of the institution not satisfying the conditions regarding the possession of land as per 2009 Regulations.*”

(Emphasis supplied)

57. We express our respectful agreement with the views expressed by the High Court of Himachal Pradesh in the aforesaid judgment, which fortify our opinion.

58. Resultantly, the impugned Order dated 13th September, 2018 would be required to be set aside, to the extent it cites the fact that the petitioner-institution is located on land taken on private lease, as a factor to reject the petitioners request for being permitted additional intake, in its M. Ed. course.

59. The fact that the petitioner-institution is located on land taken on private lease is cited as the very first ground, for rejecting the petitioner's application for additional intake. Significantly, the other factors, cited in the impugned Order, dated 13th September, 2018, i.e. the non-submission of land documents, NOC from the District Town Planner, Land Use Certificate by the competent authority, Non-Encumbrance certificate and approved Building Plan, are all curable defects – if they are defects at all. Insofar as the Certificate of Accreditation of the petitioner is concerned, the writ petition avers that the said requirement is subject matter of challenge, before this Court, in cognate proceedings. Besides, the impugned Refusal Order is essentially by way of an adjunct to the Refusal Order dated 6th July, 2016, to the extent the former Order also cites non-submission of NOC by the affiliating body, as a ground for rejecting the petitioners application. Whether such NOC, from the affiliating body, is required, in law, or not and, if so required, whether such requirement is reasonable, or unreasonable, is subject matter of WP (C) 2187/2018,

preferred by the petitioner and presently pending before this court. Submissions, by the learned counsel before us in these proceedings, were also limited to the first ground of refusal in the impugned Refusal Order dated 13th September, 2018, vis-à-vis that the petitioner institution was located on land taken on private lease. In the circumstances, we are not in a position to set aside, wholesale, the decision, of the NRC, to reject the petitioners application for additional intake. We, therefore, restrict this judgment to the specific prayers in this writ petition, which are essentially directed against the requirement – as the NRC views it – of the land, on which the institution is located, having to be on Government lease, as a delimiting factor, to grant of permission, to the institution, for additional intake. In our view, no such factor exists, in the extant legislature regime, as governed by the NCTE Act and the 2014 Regulations.

Conclusion

60. In view of the aforesaid discussion, this writ petition is allowed in the following terms, and to the following extent:

- (i) We clarify that the location, of the petitioner institution, on land, which is on private lease, *cannot* be treated as a ground to reject the petitioner's application for being permitted additional intake in its M. Ed. course.

(ii) The NRC is directed to reconsider the petitioner's application for grant of additional intake and pass a fresh order, uninfluenced by the fact that the institution is located on land which is on private lease.

(iii) In the course of such reconsideration, it would be permissible for the petitioner to establish that the other "defects", cited in the impugned Order dated 13th September, 2018, stand cured.

(iv) We make it clear that the reconsideration of the petitioners application, in accordance with our direction at (iii) hereinabove, would be limited to the factors mentioned in the impugned Order dated 13th September, 2018. It would not be permissible for the NRC to rely on any new factors, to reject the petitioner's application.

(v) The petitioner shall be entitled to an opportunity of personal hearing before the NRC, in its next meeting, the date and time whereof would be intimated to the petitioner by registered Post as well as by e-mail.

61. Inasmuch as the impugned Refusal Order was issued in compliance with the directions contained in the interim order dated 9th March, 2018, passed in WP (C) 2187/2018, which is presently pending before this Court, the *de novo* order passed in compliance with the above directions shall also remain subject to the outcome of the WP (C) 2187/2018.

62. Needless to say, should the petitioner be aggrieved by any order that is passed by the respondent, the petitioner would be entitled to challenge the same in accordance with law.

63. We make it clear that we have not expressed any opinion regarding the *vires* of Regulation 8(4) of the 2014 Regulations (as amended by the 2017 Amendment Regulations).

64. There shall be no order as to costs.

C. HARI SHANKAR, J.

CHIEF JUSTICE

FEBRUARY 18, 2020

dsn