



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2021

Pronounced on : 04.03.2021

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THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.14749 of 2020

and

W.M.P.(MD) Nos.12406 and 12407 of 2020

D.V.D. Teacher Training Institute,
Rep. by its Secretary,
Kottar - 629 002, Nagercoil,
Kanyakumari District.

... Petitioner

-vs-

1.The Regional Director,
National Council for Teacher Education,
Southern Regional Committee,
G-7, Sector - 10, Dwaraka,
Delhi - 110 075.

2.The Director,
State Council of Educational Research and Training,
College Road, DPI Campus,
Chennai - 600 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the second respondent herein in Na.Ka.No.1731/E1/2019, dated 28.09.2020, quash the same, and further direct the second respondent herein to approve the admission of all the eligible students in the petitioner institute for the academic year 2020-2021 in pursuance to the recognition granted by the first respondent herein.

For Petitioner : Mr.E.V.N. Siva
For Respondent 1 : Mr.Su.Srinivasan
Central Government Standing Counsel
For Respondent 2 : Mr.M.Sricharan Rangarajan
Additional Advocate General
Assisted by Mrs.Lakshmi Prasanna
Government Advocate



ORDER

The petitioner is a Teacher Training Institute which was established during the year 1953-1954. The recognition of the institution was granted by the State Government in 1954. After the formation of the National Council for Teacher Education (NCTE), the institute obtained necessary recognition as per Section 14(3)(a) of the National Council for Teacher Education Act, 1993 for conducting elementary course training for a duration of two years with an intake of 40 students from the academic year 1998-1999. Subsequently, the intake was increased from 40 to 80 students from the academic year 2002-2003. Originally, the institute was admitting only male students and subsequently, it became a co-educational institute from the academic year 2011-2012.

2. In the last few years, there has been a steady decrease in admission of students in the institute, as the chance for getting employment after being imparted training in the institute, was becoming bleak. In the last academic year 2019-2020, only 18 students were admitted out of the total intake of 80 students.

3. The Government has issued G.O.Ms.No.87, School Education Department, dated 28.05.2019 in which it is stated that any institute which runs with a student strength of less than 30%, not to admit any students in future from the academic year 2020-2021. As per the Government Order, the petitioner institute which had admitted as low as 18 students was directed to give explanation by the second respondent. In response to the show-cause notice, the petitioner institute submitted its explanation on 17.10.2019 stating that they had addressed a letter to the first respondent for reducing the intake from 80 to 40 students and requested the second respondent to consider the fact that the petitioner institute is prepared to withdraw the total intake from 80 students to 40 students.

4. The second respondent, however, was not satisfied with the explanation offered by the petitioner institute, therefore, by proceedings dated 07.03.2020 directed the petitioner not to admit any students from the academic year 2020-2021 and appropriate steps will be taken for closure of the institution. As against the said proceedings, the petitioner approached this Court in W.P.(MD)No.7991 of 2020. When the matter came up for hearing before this Court, on behalf of the first respondent, it was represented that the request of the petitioner institute was being considered for reducing intake from 80 to 40 students. On such submission being made by the learned Counsel appearing for the first respondent, this Court, by order dated 04.08.2020 set aside the proceedings of the second respondent dated 07.03.2020 and remitted the matter back to the second respondent for fresh consideration and pass appropriate order



by providing an opportunity to the petitioner and also directed the petitioner institute to furnish all the documents.

5. In the meanwhile, the petitioner institute submitted a letter on 05.08.2020 to be included in the forthcoming counselling for admitting students for the academic year 2020-2021. In the meanwhile, the first respondent vide proceedings dated 17.08.2020 communicated withdrawal of the additional intake of 40 students from the petitioner institute on the basis of the resolution dated 23.07.2020 and 24.07.2020.

6. While matter stood thus, the second respondent once again by its letter dated 28.09.2020 rejected the request of the petitioner for admission of students for the academic year 2020-2021 relying on G.O.Ms.No.87, School Education Department, dated 28.05.2019 and reiterated that any student is admitted for the academic year 2020-2021 it will not be approved and no staff grant will be provided. As against the said proceedings of the second respondent, dated 28.09.2020, the present Writ Petition is filed.

7. The above Writ Petition was entertained and notice was ordered. The learned Judge of this Court vide his order dated 14.12.2020 passed an interim order as under:

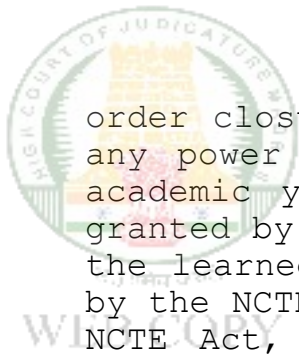
"4. Taking note of the contention of both parties, this Court is of the view that without prejudice to the rights of the parties, the petitioner is permitted to continue the course with reduced strength of 40 students. The petitioner is directed to intimate the students about the pendency of the Writ Petition and in case, the Writ Petition is dismissed, they will not get any certificate based on the course that may be undertaken by them. This order cannot be quoted by the school to continue the admission for the subsequent years.

5. The students are permitted to undertake their examinations. However, certificate will be issued only after the disposal of the Writ Petition. This Court also makes it very clear that the students if any going to be aggrieved is entitled to get impleaded in the Writ Petition and they cannot be permitted to file separate Writ Petition at a later point of time, and that, the intimation about the pendency of this Writ Petition has got to be given by the Writ Petitioner to all the students who are pursuing the course for the academic year 2020-2021.

6. Post the matter for final hearing on 20.01.2021."

Thereafter, the matter was posted for final hearing.

8. The learned Counsel appearing for the petitioner, at the <https://hcservicescourts.gov.in/hcservices/> submit that the second respondent has no authority to



order closure of the petitioner institution nor has he clothed with any power to withdraw approval for admission of students for the academic year 2020-2021 in the teeth of the permanent recognition granted by the National Council for Teacher Education. According to the learned Counsel for the petitioner, once recognition is granted by the NCTE, the first respondent herein under the provisions of the NCTE Act, 1993, it is not within the jurisdiction of the second respondent to recall the grant-in-aid or order the petitioner institute not to admit students. Such power is not vested with the second respondent after formation of the National Council for Teacher Education in 1993 and coming into place of the NCTE Act.

9.The learned Counsel for the petitioner would also submit that the impugned order dated 28.09.2020 is also invalid for the simple reason that the second respondent has not taken into consideration the withdrawal of the 40 students from the petitioner institute in terms of the resolution of the first respondent dated 23.07.2020 and 24.07.2020 and read with the proceedings of the first respondent dated 17.08.2020. Further, the learned Counsel would submit that the petitioner institute being governed by the Tamil Nadu Recognised Private School (Regulation) Rules, 1974, the second respondent is not the authority who can control the affairs of the petitioner institute. Even on this ground, the impugned proceedings of the second respondent is liable to be declared as null and void.

10.The learned Counsel also relied on Section 29 read with Rule 20 of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules stating that the order of closure could be issued only by the proper authority constituted under the Act and following the procedure laid down therein. The G.O.Ms.No.87, School Education Department, dated 28.05.2019 is an executive order which cannot override the statutory provisions of the Act and Rules. According to him, the impugned order also is in violation of various other provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act. Therefore, he would seek the intervention of this Court by setting aside the impugned proceedings of the second respondent dated 28.09.2020.

11.Per contra, the learned Additional Advocate General appearing for the second respondent would submit that the contention that the second respondent has no jurisdiction in regard to the subject matter is incorrect and cannot be countenanced in law. The learned Additional Advocate General would draw the attention of this Court to the recognition granted by the first respondent under NCTE Act, 1993 to the petitioner institute on 09.02.1998 originally with an intake of 40 students. In the recognition order itself conditions laid down in clauses 4 and 6 mandate fulfillment of requirements to be prescribed by the regulatory bodies like the State Government etc. The conditions as found in clauses 4 and 6 of the recognition order dated 09.02.1998 are extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices/> Further, the recognition is subject to fulfillment



of all such other requirements as may be prescribed by other regulatory bodies like the State Governance etc.

6.If the institution contravenes any of the above conditions or any of the provisions of the NCTE Act, Rules, Regulations and Orders made or issued thereunder, the Regional Committee may withdraw the recognition under the provisions of Section 17(1) of the NCTE Act."

12.The second respondent who is the regulatory authority controlling all the technical institutions in the State of Tamil Nadu is very well within its power to prescribe conditions or insist on certain requirements to be complied with by the technical institutes and such power has been recognized by Courts being lawful and valid. According to the learned Additional Advocate General, the Courts have held that such power enjoyed by the regulatory bodies is not repugnant to the recognizing bodies.

13.In regard to the legal contention as to the jurisdictional issue raised on behalf of the petitioner, the learned Additional Advocate General would rely on the following decisions and he referred to relevant paragraphs which are extracted hereunder:

(i) **Annai J.K.K.Sampoorani Ammal Charitable Trust vs. Bharathiyar University** reported in **MANU/TN/7785/2006** wherein, the learned Additional Advocate General would draw the attention of this Court to paragraphs 11 to 19, 24 to 30 and 35 to 37 which are extracted as under:

11. The NCTE Act, 1993, came into force on 1.7.1995 and the object of the Act as stated in the preamble is as follows:

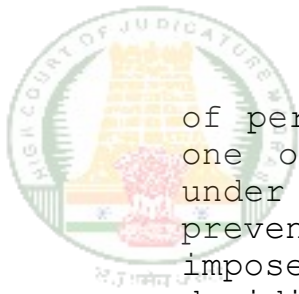
"An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system through out the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

Thus, the Act was enacted with the twin objects of:-

(a) Achieving planned and coordinated development of teacher education system through out the country and

(b) Regulation and proper maintenance of norms and standards in the teacher education system.

12. For the purpose of achieving the above objects, the Act provided for the establishment of a National Council, whose functions were laid down under Section 12 of the Act. Section 12 imposed a duty upon the Council to take steps to achieve the twin objectives of the Act and empowered the Council to do certain things for the purpose



of performing its functions under this Act. Interestingly, one of the functions imposed upon the National Council under Section 12 (m), is "to take all necessary steps to prevent commercialisation of teacher education." This duty imposed upon the Council, is to be kept in mind while deciding the issue, since the main grievance of the petitioner is that the huge investment made by them in the infrastructure, would not get a return for the year 2005-2006, if affiliation is postponed to 2006-2007.

13. Chapter IV of the Act dealing with "Recognition of Teacher Education Institutions" makes provisions for recognition of institutions offering courses or training in teacher education, permission for any new course or training, the affiliation to be granted, the contravention of the provisions of the Act and its consequences and appeals.

14. The sheet anchor of the case of the petitioner is on the basis of the tone and tenor of sub Section (6) of Section 14, which reads as follows:-

"(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. The word "examining body" appearing in the aforesaid Section 14(6), is defined under Section 2(d) to mean "an University, Agency or Authority to which an institution is affiliated for conducting examinations in teacher education qualifications."

16. Therefore the contention raised on behalf of the petitioner is that once an order of recognition is granted by NCTE, the University (which is the examining body) is obliged to simply follow suit, on account of the clear mandate of the Section that it "shall grant affiliation".

17. Other than Section 14, there are also other provisions in the Act, to which my attention was drawn by the learned counsel for the petitioner. Section 16 of NCTE Act, 1993 reads as follows:-

"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



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(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."

Sections 17(3) and 17(4) of the NCTE Act, 1993, read as follows:-

"17. Contravention of provisions of the Act and consequences thereof.-- (3) Once the recognition of a recognised institution is withdrawn under sub-section(1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section(1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government."

18.A combined reading of Sections 14(6),16,17(3) and 17 (4) shows that what is primarily required by NCTE Act, 1993 is that the National Council and the University should act in tandem and not at a tangent. The plain and simple message that is sought to be conveyed by these Sections of the NCTE Act, 1993, is that the University shall grant affiliation only if NCTE grants recognition and shall refuse affiliation if NCTE refuses recognition. Similarly if NCTE withdraws recognition, the University shall also withdraw affiliation and the qualification acquired from an unrecognised institute shall not be treated as a valid qualification for employment in any State or Central



Government or Government Body. In other words, the decision of the University to grant or not to grant or to withdraw affiliation, should coincide with the decision of the NCTE to grant or not to grant or to withdraw recognition. What is actually sought to be achieved by Sections 14(6), 16, 17(3) and 17(4) of NCTE Act, 1993, is an identity of mind and uniformity of objective to ensure that there is proper maintenance of norms and standards, as spelt out in the Statement of Objects and Reasons. The same cannot be stretched to such an extent, as to make affiliation, a mere counterfoil to an order of recognition.

19. The object of the above provisions of NCTE Act, 1993, is only to ensure coordination and co-existence with mutual respect between NCTE and the affiliating University and I am unable to see any intention on the part of the Parliament, to dwarf the Universities, by incorporating these Sections, in NCTE Act, 1993.

.....

24. Thus, it is clear that the University need not necessarily act as an invalid creature, simply following the dictates of its Master namely NCTE. All the judgments of the Supreme Court arose out of cases where either the State Government insisted upon a prior approval from them or the University Acts contained a provision for prior approval from the State Government. The repugnancy noticed in almost all cases was only in the matter of the requirement of No Objection Certificate from the State Government and not with respect to the academic standards prescribed by the University.

25. Much reliance is placed upon the judgment of the Supreme Court in State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others (2006 (3) Scale 675). My attention was particularly drawn to paragraphs 6, 32, 35, 51, 52, 61, 62, 67, 73, 76 and 77 of the said judgment. As seen from paragraph 6 of the judgment, the case before the Supreme Court arose out of the University insisting upon a permission from the State Government, as a condition precedent for the grant of affiliation, by relying upon the provisions contained in Maharashtra Universities Act, 1994. The permission to be obtained from the Government had nothing to do with the maintenance of norms and standards or for attaining the excellence in the field of education. It is in this background, which is made out very clearly in paragraph-6 of the judgment that we have to read the contents of the other paragraphs of the said judgment.



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While paragraphs-32 and 35 extracted the provisions contained in the Act and the Regulations, paragraphs-51 and 52 of the judgment dealt with the law laid down in St. John Teacher Training Institute's case. In paragraph-61, the Supreme Court held that in so far as the coordination and determination of standards in institutions for Higher education and 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 the Parliament. In paragraph-62, the Supreme Court laid emphasis that "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." But the last line of paragraph-62 made it clear that the law laid down by the Supreme Court therein, was in the context of State Government refusing permission by relying upon a State Act.

26. In paragraph-67, the Supreme Court again held that the final authority vested with the NCTE. But again in the last line of the said paragraph, the Supreme Court made it clear that the absence or non-production of NOC was immaterial and irrelevant so far as the power of NCTE is concerned.

27. In paragraph-74, the Supreme Court held that "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". But the context in which the supremacy of NCTE was upheld by the Supreme Court in the said case, is made clear in paragraphs-76 and 77 of the said judgment, by holding Sections 82 and 83 of Maharashtra Universities Act, 1994, to be inconsistent with the provisions of NCTE Act, 1993. Thus, the State of Maharashtra case entirely related to the insistence by the University, of permission from the State Government to start a Teacher Training Institute, by taking umbrage under Sections 82 and 83 of the Maharashtra Universities Act, 1994. In that case, the Supreme Court was not concerned with a tussle between NCTE and University in the implementation of academic standards or any other matter connected with the improvement of norms and standards in the field of teacher education. As a matter of fact, if there is any provision in the University Act, the application of which would aid the process of achieving the twin objects for which NCTE was created, those provisions cannot be looked



at, as being repugnant but should be looked at as being supplemental and supportive to the NCTE Act. For example, if the University prescribes certain number of term days for a particular curriculum, it cannot be said that the absence of such an prescription under the NCTE Act, would make it repugnant to the NCTE Act.

28. Once the NCTE Act has made it clear that its object is to achieve planned and coordinated development of teacher education system and to regulate and maintain the norms and standards, the prescription of a specified number of term days would only aid NCTE in achieving those norms. To hold otherwise, would tantamount to ridiculing the very object of the NCTE Act.

29. In so far as the judgment of the Supreme Court in Union of India vs. Shah Goverdhan L.Kabra Teachers' College ((2002) 8 SCC 228) is concerned, the same arose under different circumstances. In the said case, the validity of Section 17(4) of the NCTE Act, was put to test on the touchstone of the independence of the State Government to prescribe its own standards for employment to the State Services. It was argued in the said case that Section 17(4) of the NCTE Act amounted to a law dealing with employment, infringing upon the right of the State Government. In paragraph-8 of the said judgment, the Supreme Court made it clear that any interpretation to any Act, should actually subserve the object for which the Act was enacted, in the following words:-

"Both Entries 65 and 66 of List I empower the Central Legislature to secure the standards of research and the standards of higher education, the object behind them being that the same standards are not lowered at the hands of the particular State or States to the detriment of the national progress and the power of the State Legislature must be so exercised as not to directly encroach upon power of the Union under Entry 66".

30. If we do not loose track of the objects for which NCTE Act was enacted, we would find that any provision contained in the University Act that would improve the norms and standards of teacher education, cannot be held to be repugnant to the NCTE Act. If by applying the doctrine of pith and substance, we find that a particular provision in the University Act is intended for improving the quality of teacher education, it should be taken as subservient to the cause sought to be achieved by NCTE and not subversive of the objects sought to be achieved.



35. In paragraph-13 of the same judgment, the Division Bench of the Delhi High Court also made it clear that if an institution is refused recognition by NCTE, the University has no discretion except to refuse affiliation. But the reverse was not true viz., that there would not be an automatic affiliation if there was recognition by the NCTE.

36. Dealing with the word "shall" appearing in Section 14(6) of the NCTE Act, 1993, the Division Bench of the Delhi High Court held in paragraph-14 as follows:-

"No doubt once the word 'shall' is used in a provision, it raises a presumption that the particular provision is mandatory. However, this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequence flowing from such construction. Keeping in view this consideration we are of the opinion that the word 'shall' occurring in sub-section (6) of Section 14 should be construed as merely directory and not mandatory as the context and the intention of legislature demands this construction. Instances are not lacking where Courts have given such interpretation to the word 'shall' appearing in the provisions of a Statute by carefully attending to the whole scope of the Statute."

37. In conclusion, the Division Bench of the Delhi High Court upheld the role of the University in the following words in paragraph-15 of its judgment as follows:-

"Therefore normally affiliation should not be refused on the grounds which are covered by Section 14(3) of NCTE Act and Council has already satisfied itself that the Institute meets these requirements. However, this would not be an absolute rule and the University shall still have the right to satisfy itself about the fulfillment of conditions for affiliation by the Institute in accordance with its Act, Statutes etc. But if the affiliation is refused on any of these grounds, it will be for the University to justify its decision that notwithstanding the 'recognition by the Council, the institution lacked any of the aforesaid facilities and the Council had not acted properly in granting the recognition. Moreover, apart from the considerations mentioned in Section 14(3) of the NCTE Act, there may be other valid considerations which may compel the University to still refuse affiliation. After all it is the University which confers the degree. It is the credibility, reputation or the goodwill of the University which is at stake."



The above dicta, in my considered view, applies in all force to the case on hand.

(ii) **KR Teacher Training Institute for Women and others vs. The State of Tamil Nadu and others** reported in **MANU/TN/1155/2008** wherein the learned Additional Advocate General would refer to paragraphs 4, 8, 9, 14 and 33 to 37 which are extracted as under:

"4. When G.O. (2D) No.59, School Education Department, dated 14.11.2006 prescribing the last date for approval of the list of staff members by the respective TTIs were issued, a batch of writ petitions being W.P.No.47503 of 2006 and batch cases (Annai Teacher Training Institute -vs- State of Tamil Nadu) was filed before this Court. Those writ petitions were dismissed by a common judgment dated 03.4.2007. V.Ramasubramanian, J. delivering the common judgment while upholding the said G.O. in paragraphs 27(c), (d) and (e) had observed as follows:-

'27.(c) Within two months from the date of receipt of a copy of this order, the State Government shall issue a compendium of guidelines, prescribing the calendar of activities for the Teacher Training Institutes, indicating (i) the date of commencement of the Course, (ii) the cut off date for approval of staff members, (iii) the cut off date for admission of students, (iv) the cut off date for holding Single Window Counselling, for sponsoring candidates under the Government Quota, (v) the method of recruitment of Teaching Faculty, administrative and technical support staff, (vi) the calendar of activities for the academic year including the days of instruction and days of internship, (vii) the schools in which the internship could be undergone, (viii) the Schedule for the Examination as well as the Commission Work and Observation Work and (ix) such other matter as required for streamlining the system of Teacher Education in the State. The said compendium of guidelines, shall be issued by the Government within two months and it shall take effect from the academic year 2007-2008 onwards.

(d) In the compendium of guidelines, the State Government shall make it clear that the question of grant of affiliation or approval of admission of students and appointment of Faculty Members, would be considered for every academic year, only in respect of those institutes which get orders of recognition upto a particular date, say 31st July or 31st August of a year. The date so prescribed shall be in tune with the calendar of activities prepared by the State Government, taking note of para -2 of Appendix 2



Norms and Standards prescribed under Amended Regulations of the year 2006. The Institutes which receive orders of recognition beyond the cut off date so prescribed by the State Government, would be entitled to have affiliation and approval of admission of students and appointment of staff members only for the following academic year.

(e) Since NCTE has now modified the format of the orders of recognition and the academic year is not mentioned in the orders of recognition, the Institutes will have a right (from the academic year 2007-2008 onwards) to admit students only after the grant of approval of staff members and the grant of affiliation by the State Government, in view of Regulation No.7(11), 7(12) and 8(10) of National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2005 published in the Government Gazette on 13.1.2006."

8. Since the said GO is under challenge, the relevant portion of the GO in paragraphs 1, 2 and 3 may be usefully extracted below :-

'1. In the letters third read above, the Director of Teacher Education Research and Training has stated that the Private Teacher Training Institutes in the State who have obtained recognition from the Southern Regional Committee, National Council for Teacher Education, Bangalore send proposals through the Principal of the District Institutes of Education and Training concerned to the Director of Teacher Education Research and Training seeking approval to the staff list of those Institutions. On examining these proposals, it is noted that certain persons appointed in a particular Teacher Training Institute are included in the staff list seeking approval in respect of another institute, such staff list proposals are returned to the institutes stating that one person cannot simultaneously work in two institutes. Besides, there are also a large number of instances wherein bogus experience certificates are produced by the Institutes with an ulterior motive of getting approval for the staff list. In the absence of countersignature by the departmental officers concerned the experience certificates are not accepted for want of genuineness. When the proposals for staff lists are returned for the above reasons, such orders are challenged before the Hon'ble High Court. The Hon'ble High Court in many cases has pointed out that as no guidelines prescribing the procedure have been issued by Government, returning



the proposal pointing out the above nature of deficiency is not sustainable. The Director of Teacher Education Research and Training has also stated that in the above context it has become necessary to frame certain Guidelines governing the procedures for grant of approval for the staff list by the Director of Teacher Education Research and Training. Further, he has also stated that in respect of colleges offering B.Ed., and M.Ed., courses after getting recognition from NCTE, the Universities concerned in Tamil Nadu are granting affiliation to such colleges, only after which the colleges concerned are entitled to make admission of students.

2. The Director of Teacher Education, Research and Training has therefore requested that Government may contemplate empowering the DTERT to grant affiliation to the recognised Self-Financing Private Teacher Training Institutes by laying down certain norms therefor. The DTERT has also submitted a Draft Guidelines prescribing conditions for grant of affiliation, grant of approval for staff list, approval for list of students, attendance and condonation, visits to institutes and conduct of Diploma in Teacher Education exams and award of Diploma etc.

3. After careful consideration of the draft guidelines sent by the Director of Teacher Education Research and Training, the Government hereby issue the following guidelines which shall come into force with immediate effect."

9. After notice from this court, the third respondent NCTE offered the following remarks setting out the stand taken by the NCTE with reference to the impugned GO.:

'As the institution cannot offer the course without having an affiliating body for conducting the teacher education course, wherein which the affiliating authority will issue the calendar of events for the academic year, conduct theory and practical examinations and also announces the result and issue certificates to the candidate of the institution which is affiliated.

As per para 8(12) of the regulations, once the recognition is granted by NCTE, the institution has to obtain affiliation from the concerned authorities. The concerned authorities like Universities for courses like B.Ed. B.P.Ed., M.Ed., etc. and State Government Departments like SCERT, DSERT, DTERT for D.Ed. C.P.Ed. & Pre-primary courses. The affiliating authorities will have their own set of rules and



regulations for according affiliation to the institutions which makes application after obtaining recognition from NCTE. It is the liberty of the affiliating authority to frame the rules for grant of affiliation to the institution. As the NCTE has completed its process of application and also has granted recognition, it is the further part of affiliation which the institution has to follow the rules stipulated by the affiliating authority for obtaining affiliation to the institution. The conditions prescribed for grant of affiliation cannot be questioned by NCTE as the NCTE cannot affiliate any institution directly. The affiliating body necessarily need to be satisfied before the grant of affiliation to any institution. As such the conditions stipulated cannot be commented by NCTE nor it amounts to encroachment of NCTE Act, Rules and Regulations.

As envisaged above, the NCTE Act itself aims for planned and co-ordinated development of teacher education system throughout the country. As such, the conditions stipulated by any affiliating authorities does not amount to encroachment of NCTE Act and regulations and also not contrary to any of the NCTE Act and its regulations."

14. Countering these submissions, Mr.S.Ramasamy, learned Additional Advocate General contended that the examining body as found in section 2(d) and 2(m) read with Section 14 (6) is set up by the State Government. Under Section 14(6) of the NCTE Act, it is open to the examining body to grant affiliation to an institution and also cancel the affiliation where recognition has been refused by the NCTE. The word "'shall" found in Section 14(6) does not mean that there will be an automatic recognition. The examining body is not expected to act like a rubber stamp of the NCTE. The argument put forth by the counsel for the petitioners in this regard is erroneous. The examining body itself has certain role to play. The areas such as admission of students, staff approval, conditions of teachers and other non-teaching staff, to find out whether the conditions of recognition have been complied with by the TTIs and the time schedule for examining the syllabus for the diploma course will come squarely within the purview of the State Government. The impugned GO is very much within the legislative competence of the State Government and referable to Entry 25 List III of Schedule VII. The very necessity to frame such guidelines arose due to the directions given by this Court in two of its earlier orders. As long as the State Government has the legislative competence, it is well open to the State to frame such



guidelines so that each officer functioning under the State will not act in different directions. Laying down guidelines will only enhance the smooth functioning of the institutions and there will be uniformity in the orders passed by the officers under the State.

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33. The challenge to the impugned GO was mainly on the usage of the term "affiliation" by the examining body. Therefore, much of the time of the counsels were spent by stating that the examining body, if it is a University, can grant affiliation, but it cannot be conferred to an examining body like the Board of Examination set up by the State Government. This argument is fallacious since section 17(6) of the NCTE Act itself uses the term "affiliation" by an examining body. Therefore, affiliation by an examining body can only mean in case of colleges, the universities and in case of the Diploma Courses, it is only the State Boards of Examination.

34. The term "affiliate", as found in the Chambers 20th Century Dictionary, New Edition (1991) reads as follows:-

"affiliate" to adopt or attach as a member or branch: to impute paternity of: to assign the origin of. -v.i. to become closely connected, to associate: to fraternise.- n. an affiliated person, an associate: a branch, unit, or subsidiary of an organisation."

35. Therefore, when the plain meaning of the term "affiliation" is clear, it cannot be given any artificial meaning as suggested by the counsels for the petitioners. The NCTE itself in their orders of recognition had given power to grant approval for the teaching staff as per the qualification prescribed by them. But with reference to the other staff (teaching and non-teaching), it exclusively vests on the State to make rules in this regard. Even the conditions of Recognition clearly set out that students can be admitted only after the TTI obtains affiliation from the examining body. It also specifies that the recognition of the NCTE was subject to fulfillment of all such other requirements as may be prescribed by the regulatory bodies including State Government as applicable. Therefore, it is too late in the day for the petitioners to contend that the State has no power to prescribe guidelines in the areas in which it has exclusive jurisdiction.

36. It is not seen from the impugned order that any of the guidelines encroach upon the NCTE Act or the Regulations framed thereunder. The only issue relating to Single Window System has been given up by the learned Additional Advocate General. Hence, that is not gone into in the present case.

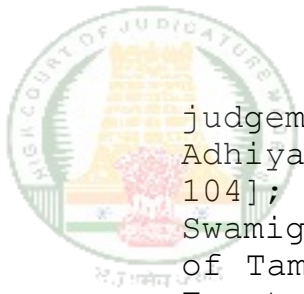


As alleged by Mr.Vijay Narayan, learned Senior Counsel, there is no contradiction between paragraphs 6 and 7 in the impugned order. Para 6 regarding affiliation being granted on fulfillment of all conditions and cancellation of affiliation where recognition has been refused by NCTE is fully inconsonance with Section 14(6) of the NCTE Act. Para 7 very clearly states that in case of non-compliance, only a compliant will be sent to the NCTE regarding factual position and after clearance from the NCTE, decision will be taken. Such a power cannot be said to be a power beyond the scope conferred to the State. An attempt is made to portray the said paragraph, as if it is in conflict with the dictum of this Court in Bharathidasan University -vs- Dhanalakshmi Srinivasan Educational and Charitable Trust reported in (2005) 2 CTC 182. Much of arguments was concentrated on the possible delay in ascertaining the views of NCTE before grant of affiliation and such a provision will be abused by the State authority. This Court is unable to agree with the said submission. Since the State is empowered to grant affiliation only on fulfillment of conditions of recognition by the NCTE, it cannot act like a rubber stamp. If there are any unusual delay not contemplated under the Act, it is not as if the aggrieved parties have no remedies by approaching this Court and seeking for appropriate directions.

37. Ultimately in the matter of TTIs, the NCTE and the State authorities will have to co-exist in the interest of academic excellence and to prevent mushroom growth of fly by night institutes. What is at stake is the innocent students and gullible public and they should not be allowed to be left to the vagaries of such institutes. The underlying public policy behind the impugned GO only enhances the spirit of Article 14 and it is not derogation of the said Article. Even the question of reservation is covered by the provisions of the NCTE Regulations of 2007. Annexure to the Regulation in paragraph 3.2.2 clearly sets out that the rules of reservation as prescribed by the State Government will prevail."

(iii) ***Self Financing Private Teacher Training Institutes Association vs. The State of Tamil Nadu and others*** reported in **MANU/TN/0141/2008** wherein the learned Additional Advocate General draw the attention of this Court to paragraphs 31, 32, 47, 48 and 51 which are extracted as under:

"31. It is also pertinent to point out at this stage that while dealing with the concept of affiliation by the Universities to B.Ed., degree courses in the light of various provisions of the NCTE Act, a Full Bench of this Court (in which I am also a party) in W.P.No.28304 of 2007 dated 06.10.2007, after taking note of various



judgements of the Supreme Court in State of Tamil Nadu vs. Adhiyaman Educational & Research Institute [1995 (4) SCC 104]; Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu [1996 (3) SCC 15] and Jaya Gokul Educational Trust vs. Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and another [2000 (5) SCC 231], held that when the concerned AICTE Act, Indian Medical Council Act and NCTE Act prescribe the manner and procedure as per Entry 66 of List I of the Seventh Schedule to the Constitution of India, the field is occupied by the Central Government, but also held that it does not mean that once the Central body grants recognition or approval, the concerned University by closing its eyes should necessarily grant affiliation, since the University owes its existence to its statutes and one cannot direct the University to disobey its own statutes by relying on the judgment of the Supreme Court in A.P.Christians Medical Educational Society vs. Government of Andhra Pradesh (AIR 1986 SC 1490). Ultimately, the Full Bench has held that while granting affiliation, the University cannot be expected to act as a rubber stamp after the recognition or approval granted by the Central body and it has to apply its statute before granting affiliation, however, not insisting any standard or requirement, which is more than what is required by the Central authority by virtue of its powers under Entry 66 of List I of the Seventh Schedule to the Constitution of India.

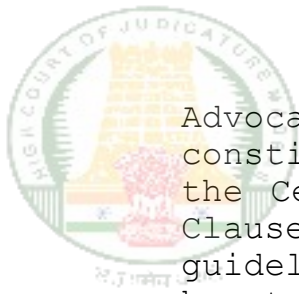
32. The abovesaid cases related to Universities which were bound by their own statutory guidelines. But as far as the Director of Teacher Education is concerned, it is admitted that the State Government has not framed any guidelines or Rules and Regulations for the purpose of either granting approval for the teachers appointed by the private Management or for any other matters except periodical Government Orders issued relating to the fixation of date for the purpose of admission of students for Diploma in Teacher Education, fixation of date for approval of teachers in the said Institutions, etc. Therefore, the crucial issue to be considered is as to the role of the examining body, viz., the State Government as well as the Director of Teacher Education, Research and Training in respect of approval of Teachers. In the absence of proper guidelines framed by the State Government to follow uniform procedure in respect of the Institutions, which are granted recognition, the guidelines which are stated to be available to the State Government are only the Government Orders passed from time to time.



47. The subtle difference between the words "recognition and affiliation" came to be decided by the Supreme Court in the Principal and others Vs. The Presiding Officer and others [AIR 1978 SC 344]. The Supreme Court has in categorical terms held that "affiliation" is meant to prepare and present the students for public examinations, while "recognition" is for other purposes mentioned in the Act and only if the School is recognised by the "appropriate authority", it becomes amenable to other provisions of the Act. The relevant portion of the judgment of the Supreme Court which explained the distinction is as follows:

"6. It appears to us that since the School was affiliated to the Board, the Delhi Administration caused its name to be included in the aforesaid list. The fact that the School is affiliated or attached to the Board is also of no consequence and cannot justify the conclusion that the School is a 'recognised school'. There is a significant difference between 'affiliation' and 'recognition'. Whereas 'affiliation' it may be noted is meant to prepare and present the students for public examination, 'recognition' of a private school is for other purposes mentioned in the Act and it is only when the School is recognised by the 'appropriate authority' that it becomes amenable to other provisions of the Act. " (Emphasis supplied)

Therefore, it is clear that 'affiliation' to a University is for the purpose of preparing the students for examination, while 'recognition' by NCTE is a condition precedent for the institute to come into existence. As such, applying the same, it is clear that recognition by NCTE is necessary for an institute to come into existence, while the institution is activated by the examining body, which actually prescribes the syllabus for the students, apart from preparing schedule of examinations, conducting examinations etc. Merely because the NCTE is satisfied about the qualification of the teachers before granting recognition as per its regulations, it cannot be said that the State Government or respondents 1 and 2 have nothing to act at all. Arriving at such conclusion would make the provisions of Sections 14(4), 14(6) and 16 of NCTE Act nugatory. Mere absence of proper guidelines by the State Government cannot take away its powers as conferred under the Central Act in the above said provisions.



Advocate General, even if the State Government has not constituted Selection Committee as per the provisions of the Central Act, especially Regulations, 2006 Appendix 2, Clause 4.2, when the NCTE itself has prescribed clear guidelines regarding qualifications, the State Government has to satisfy itself whether the qualifications prescribed by the NCTE Regulations are in fact possessed by the teachers. There is no doubt that the State Government or the Director of Teacher Education, Research and Training is having not only a statutory right but also a duty to verify the correctness of the particulars furnished by the Institutes to NCTE for obtaining its recognition. It is true that on the State Government finding that such particulars furnished by the Institutes to the NCTE for obtaining recognition are not in fact available or the qualifications furnished to the NCTE are not correct, it is for the second respondent to take immediate action by referring the same to the Regional Committee of the NCTE, and till NCTE takes action in accordance with the Central Act, it cannot be said that second respondent has no right to withhold the granting of approval in respect of such teacher whose qualification is not in conformity with the NCTE Regulations. As I have stated above, in spite of the State authorities finding that the particulars furnished by the Institutes regarding the qualification of the particular teacher to the NCTE for granting approval are not in fact available, if the State authorities are to be directed to approve the list as per the provisions of Sections 14(2), 14(6) and 16 of the NCTE Act, it will make the entire provisions a mockery. Therefore, the contention of the learned senior counsel that in spite of State authorities on verification having found that the qualification of the concerned teachers are not in accordance with the norms prescribed by the NCTE Regulations, the State authorities should grant approval is not sustainable. Even if the powers of the State authorities are secretarial or ministerial in the matter of verifying the particulars furnished by the respective Institutes, one cannot ignore that such powers are conferred under the Central Act as well as Regulations framed thereunder. In this regard, it is relevant to point out the observations of V.Ramasubramanian, J. in a batch of writ petitions, viz., W.P.No.47503 of 2006 etc. batch in the order dated 03.04.2007, which are as follows:

"24. From the aforesaid National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2005, which came into effect from 13.1.2006, there is no escape from the conclusion that the Institutions are entitled to admit students

for the following steps are fulfilled viz., :-



(a) Obtaining an order of recognition.

(b) Appointing qualified Faculty Members, putting the information on the Official Website and formally informing the Regional Committee concerned.

(c) Getting an unconditional order of recognition.

(d) Getting affiliation from the Examining Body.

The Examining Body viz., the University concerned or the State Government (depending upon whether the Course is an Undergraduate/Post-Graduate Course or a Diploma/Certificate Course), can grant affiliation only after the list of staff members is approved. After the publication of the Amended Regulations of the year 2006 in respect of the Norms and Standards, with effect from 11.12.2006, the role of the Examining Body has been enlarged, in the matter of examining and granting approval to the staff members appointed by the Institution, under para-4.2 of Appendix 2 Norms extracted in para-21 above."

51. In the present case, the contention that the State Government has no role to play at all after the recognition granted by the NCTE is not only against the provisions of NCTE Act, particularly Sections 14(4) and 14(6) read with Section 16, which recognises the State Government's powers, but also against the law laid down by the Supreme Court consistently starting from *State of Tamil Nadu vs. Adhiyaman Educational & Research Institute* (1995 (4) SCC 104). Since the field is occupied by the Central government, the power of the State Government is limited and it cannot transgress into the powers of the Central Government under Entry No.66 of List I of the Seventh Schedule to the Constitution of India. Therefore, in my considered view, the respondents 1 and 2 certainly have the right of superintendence over the institutions which are situated within the territory of the State and the said right is limited so that it should not transgress into the powers of the NCTE. The right of superintendence of the respondents 1 and 2 encompasses within it the power to verify whether the particulars given to the NCTE by the Institutions are in fact available or any of the Institutions have played fraud on NCTE by not furnishing proper particulars and in such event, it is for the first and second respondents to inform the same to the NCTE for taking appropriate action. Till such appropriate action is taken, no one can compel the State Government, which has in fact found some defects in the particulars furnished by the Institutes to the NCTE, to grant approval to the appointment of teachers. Therefore, the contention of the learned senior counsel that all the particulars have been furnished to the NCTE even before the grant of



unconditional recognition and such particulars have been hosted on the website has no basis, for, the State authorities can find out only on verification, as to whether such particulars are in fact available as per the terms of the NCTE Regulations."

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(iv) ***Infant Jesus Teacher Training Institute vs. M.Manikandan and others*** reported in **MANU/TN/1674/2010** wherein the learned Additional Advocate General refers to paragraphs 19, 27, 29 and 31 which are extracted as under:

"19.Under Section 2(d) of National Council for Teacher Education (NCTE) Act, 1993, "examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications. Under Section 2(j) of the Act, "Regional Committee" means a committee established under section 20. Under Section 2(m) of the Act, "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act.

27. Time and again Supreme Court has deprecated the practice of educational institutions admitting the students without requisite recognition or affiliation, vide STATE OF TAMIL NADU VS. ST.JOSEPH TEACHER'S TRAINING INSTITUTE (1991) 3 SCC 87) and MINOR SUNIL ORAON TR.GUARDIAN VS. C.B.S.E. & OTHERS (2007 (4) LAW WEEKLY 97). Though the ultimate victims are innocent students, that cannot be a ground for granting the relief to the educational institutions. In 1991 (3) SCC 87, it was held that the students, who are admitted in unrecognised institutions cannot be permitted to write examinations. Learned Special Government Pleader Mr.G.Sankaran has drawn our attention to the judgment of the Supreme Court in S.L.P.(C) Nos.7375, 8009 11, 8108, 7416, 7560 62 of 1993 dated 15.6.1993 in St.Johns Teacher Training Institute (W), Madurai Vs. State of Tamil Nadu and others, wherein it was held as under:

"The teacher-education programme has to be redesigned to bring in a system of education which can prepare the student-teacher to shoulder the responsibility of imparting education with a living dynamism. Education being closely inter related to life, the well trained teaching can instil anaesthetic excellence in the life of his pupil. The traditional, stereotyped, lifeless and dull pattern of "chalk, talk and teach" method has to be replaced by a more vibrant system with improved methods of teaching to achieve qualitative excellence in teacher-education. Keeping in view the National Policy on Education, Government of Tamil Nadu has published a revised syllabus for



the diploma in teacher education course in the Government Gazette of August, 15, 1990. The aims and objectives of the said syllabus and curriculum as given by the State of Tamil Nadu are as under:-

"A Sound Programme of Elementary Teacher Education is inevitable for the qualitative improvement of education. Education must become an effective instrument of social change and the part played by the teacher should be suitable and significant for this purpose, the gap between Teacher Education curriculum and School Curriculum has to be minimised for enabling the teachers to act as agents of social change which necessitates that the education imparted in school has relevance to the personal as well as social life of individuals and to the needs and aspiration of the people in order to be a catalyst in the process of developing a citizen who is productive and who believes in social justice and national integration, the teacher himself needs to become such a citizen through appropriate learning experience"

29. As pointed out earlier, students were admitted even before grant of affiliation. Having regard to the plight of the students, extreme indulgence was shown to the students that is even awaiting staff approval, the additional intake of 50 students was ordered to be taken as intake for the academic year 2009-2010 and the review petitioner Institution has also undertaken not to admit any fresh students and that the 50 students would be treated as students for the academic year 2009-2010. Review Petitioner Institution has also undertaken that for the academic year 2010-2011 no fees will be charged.

31. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170, the Supreme Court held as under:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979 (4) SCC 389), speaking through Chinnappa Reddy,



J., has made the following pertinent observations: (SCC p. 390, para 3)

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (AIR 1963 SC 1909), there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* (AIR 1960 SC 137), wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to



be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

(v) Self Financing Private Teacher Training Institutes Association vs. The State of Tamil Nadu and others reported in **MANU/TN/1184/2011** wherein the learned Additional Advocate General would also refers to paragraphs 32, 48 and 51 to 58 which read as under:

"32.Regulation III provides for grant of approval to the Staff List. Regulation IV, V, VI deals with admission of students, attendance and condonation and visits to institutes. Regulation VI gives wide powers to the Principals of DTERT or any authority authorized by him in that behalf to make visits to the self-financing Private Teacher Training Institutes to ensure that the staff employed in the Institute, as approved by the Director of Teacher Education Research and Training are actually in position and that the work relating to imparting instruction to the teacher trainees is taken up in accordance with the syllabus as prescribed by Government to achieve the object of qualitative education to the teacher-trainees. It also provides that during the visit by the Director or his Subordinate officers or Principals of DIETs, if any lapse or deficiency is noticed, it shall be reported to the Southern Regional Committee, National Council for Teacher Education to proceed against the institute under Section 17 of the Central Act.

48.The other question relates to the validity of Regulation III, IV V and VI. Those guidelines deal with matters which would come under the sphere allotted to the examining body.

51.This issue is no longer res integra in view of the decision of the Supreme Court in *Bhartia Education Society* and another [supra].

52.The preamble to the Government Order indicates the modus operandi adopted by the institutions in the matter of faculty. The teachers who were shown as faculty members in one institute were also found in the list of faculty in other institutions. It was found that subsequent to the inspection by the examining body, the teachers joined the other institutions, after submitting resignations, so as to satisfy the Inspection Committee about the availability of faculty members in the later institutions. On record, some of the faculty members were working in several institutions simultaneously. It was only to weed this unhealthy practice, regulation no.III was introduced.



53.Regulation IV pertains to admission of students. The institutions were making admissions without following the Rule of Reservation and at times, even more than the intake permitted. The recognition granted by NCTE was taken as a shelter to make admissions even before the approval of staff list. Even as per the NCTE Regulations, approval of the staff List and affiliation by the State/Examining Body are preconditions for admission of students. It was also found that without adhering to the cut off date, midterm admissions were made and the students were made to apply for condonation in the matter of attendance. Similarly, without even satisfying the condition regarding minimum marks, admissions were made and ultimately, students were compelled to approach the Courts to regularize the admissions during the fag end of the course and just before the public examination. All these factors do weighed with the State Government in framing Regulation No.IV regarding admission of students.

54.The examining body should be satisfied that the students have attended the class for the required number of working days. Therefore, the State as an examining body, prescribed the minimum attendance and shortage of days, which could be condoned. Regulation No.V was therefore, well within the sphere of Examining body.

55.The Director of Teacher Education, Research and Training and the Principal of District Institute of Education were nominated as the authorities to inspect the Institutions, to ensure that the approved faculty members are actually in position and that the work relating to imparting instructions to the teacher trainees is taken up in accordance with the syllabus as prescribed by the Government. The regulation indicates that it was made to achieve the qualitative education to the teacher trainees. It is open to the Affiliating Authority to dis-affiliate an institution on valid reasons and as such, inspection is an essential facet of the affiliation process. Since some of the institutions have adopted unethical practices and attempted to open "Teacher Training Shops" instead of "Teacher Training School of Excellence", the State, as an affiliating body, was fully justified in making this provision for inspection so as to appraise the Regional Committee of NCTE, in case any lapse or deficiency is noticed during the time of inspection. This would enable the NCTE to take follow up action and even to de-recognize such erring institutions. The State was only discharging its functions as a responsible affiliating body. Therefore, regulation No.VI was well within the legislative competence of the State.



56.The Supreme Court in Bhartia Education Society made the legal position clear that Sub Section 6 of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber stamping, consequent upon recognition without any kind of discretion in the examining body to examine whether the Institute deserves affiliation or not independent of the recognition.

57.In Bhartia Education Society, the institutions contended that having regard to the provisions of Section 14(6) of the NCTE Act, the examining body is bound to grant affiliation to an institution in regard to which recognition has been granted by NCTE. While negating the said contention, the Supreme Court distinguished the concept of 'recognition' and 'affiliation' and it was held thus :-

"7.It is well settled that admission to a course can be given only to those candidates who are eligible as per the regulations of the Examining Body and the State Government. Therefore, unless the students fulfilled the eligibility requirements stipulated by the Board which is the affiliating and examining authority, their admissions will be invalid and they cannot be permitted to take the examination.

15.The purpose of 'recognition' and 'affiliation' are different. In the context of NCTE Act, 'affiliation' enables and permits an institution to send its students to participate in the public examinations conducted by the Examining Body and secure the qualification in the nature of degrees, diplomas, certificates. On the other hand, 'recognition' is the licence to the institution to offer a course or training in teacher education. Prior to NCTE Act, in the absence of an apex body to plan and coordinate development of teacher education system, respective regulation and proper maintenance of the norms and standards in the teacher education system, including grant of 'recognition' were largely exercised by the State Government and Universities/Boards. After the enactment of NCTE Act, the functions of NCTE as 'recognizing authority' and the examining bodies as 'affiliating authorities' became crystallized, though their functions overlap on several issues. NCTE Act recognizes the role of examining bodies in their sphere of activity".

58.The Supreme Court in Bhartia Education Society, while rejecting the contention regarding automatic affiliation consequent to recognition, indicated the power of the affiliating body to frame guidelines within their spheres.

<https://hcservices.ehps.gov.in/hcservices> This online service reads thus :



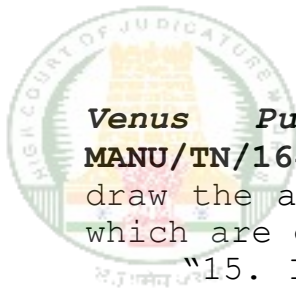
17. ... But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State government and/or the examining body. Even the order of recognition dated 17.7.2000 issued by NCTE specifically contemplates the need for the institution to comply with and fulfil the requirement of the affiliating body and state government, in addition to the conditions of NCTE. We extract below conditions 4, 5 & 6 of the order of recognition issued by NCTE in this behalf :

"4.The admission to the approved course shall be given only to those candidates who are eligible as per the regulations governing the course and in the manner laid down by the affiliating University/State Government.

5. Tuition fee and other fees will be charged from the students as per the norms of the affiliating University/State Government till such time NCTE regulations in respect of fee structure come into force.

6.Curriculum transaction, including practical work/ activities, should be organized as per the NCTE norms and standards for the course and the requirements of the affiliating University/Examining body."

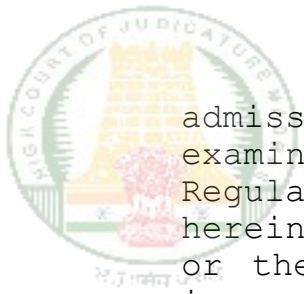
The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The state government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of the NCTE. Sub-section (6) of section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition. An institution requires the recognition of NCTE as well as affiliation with the examining body, before it can offer a course or training in teacher education or admit students to such course or training. Be that as it may."



Venus Public Education Society and others reported in **MANU/TN/1648/2011** wherein the learned Additional Advocate General draw the attention of this Court to paragraphs 15, 25, 28, 32 to 34 which are extracted as under:

"15. It is submitted by Mr. Amitesh Kumar, learned counsel for the appellants that the order of recognition passed in favour of the respondent was conditional and there was a clear stipulation that admission should not be made until formal recognition under clause 7(11) of the 2009 regulations is issued by the WRC and affiliation is obtained from the University/examining body. That apart, the order of recognition dated 27.10.2011 clearly laid a postulate that the institution shall make admission only after it obtains affiliation from the examining body in terms of clause 8(12) of 2009 Regulations for the academic session and, therefore, the High Court has fallen into error by holding that it was obligatory on the part of the NCTE to include the aim of the respondent for recognition for the academic session 2011-12 as the same was not deliberately done. The learned counsel would submit the direction given by the High Court that the institution was entitled for recognition with annual intake of 50 students for academic session of 2011-12 also is legally impermissible inasmuch as the institution had not fulfilled the NCTE norms and further the recognition could not have been made retrospectively effective.

25. On a keen scrutiny of Section 14 and the aforesaid Regulations it is vivid that the university or examining body is required to issue letter of affiliation after formal recognition under sub-regulation (11) of Regulation 7 of the 2009 Regulations is issued. It is also clear that certain obligations are to be carried out by the institution after letter of intent is received. It is clear as a cloudless sky that the letter of intent was communicated to the institution as well as to the affiliating body with a request that the process of appointment of qualified staff as per the policy of the State Government or University Grants Commission or university may be initiated and the institution may be provided all assistance to ensure that the staff or faculty is appointed as per the norms of the NCTE within two months. It was obligatory on the part of the institution to submit the list of the faculty, as approved by the affiliating body, to the Regional Committee. Thus understood, the letter of intent laid down the conditions which were to be fulfilled by the institution. The said letter was issued on 22.9.2011 and the formal order of recognition was issued on 27.10.2011. Clause 6 of the same clearly stipulates that the institution shall make

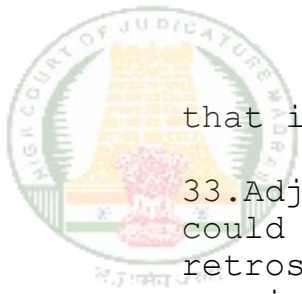


admission only after it obtains its affiliation from the examining body in terms of clause 8(12) of the 2009 Regulations. Clause 8(12), which has been reproduced hereinabove, clearly lays a postulate that the university or the examining body shall grant affiliation only after issue of formal recognition order under sub- clause (11) of Regulation 7 and thereafter the institution shall make the admissions.

28. In Adarsh Shiksha Mahavidyalaya (supra) this Court, after referring to Sections 12, 14 to 16, 17, 17-A, 18, 20, 29 and 32 of the 1993 Act, Regulations 3, 5, 7 and 8 of the 2005 Regulations and further referring to paras 1.0, 2.0, 3.0, 3.1, 3.2 and 3.3 of the amended Regulations made by notification dated 12.7.2006, has categorically laid down thus:-

"What needs to be emphasised is that no recognition/permission can be granted to any institution desirous of conducting teacher training course unless the mandatory conditions enshrined in Sections 14(3) or 15(3) read with the relevant clauses of Regulations 7 and 8 are fulfilled and that in view of the negative mandate contained in Section 17-A read with Regulation 8(10), no institution can admit any student unless it has obtained unconditional recognition from the Regional Committee and affiliation from the examining body."

32. On a studied scrutiny of the statutory provisions, the relevant Regulations of 2009 Regulations framed under section 32 of the 1993 Act and the pronouncements in the field, we are disposed to think that the High Court has clearly erred in misconstruing its earlier order passed in Writ Petition 4541 of 2011. True it is, there was some delay and, therefore, the High Court was moved in another writ petition wherein it had granted liberty to file a contempt petition expecting that the directions in the earlier order would be duly complied with. Thereafter, as is manifest, letter of intent was issued but the institution instead of complying with the same moved the High Court for grant of recognition. As has been stated earlier, the High Court in the initial order had directed to consider the case of the respondent-institution for grant of recognition without further inspection. Issuance of letter of intent was necessary prior to grant of formal letter of recognition. However, the High Court being moved directed for issuance of formal letter of recognition which was issued with a postulate that the institution shall only grant admission after obtaining affiliation from the examining body in terms of clause 8(12) of 2009



that it was meant for the academic session 2012-13.

33. Adjudged in the aforesaid perspective the High Court could not have directed the recognition to be retrospectively operative because certain formalities remained to be complied with. It could not have put the clock back. It needs no special emphasis to state that the High Court did not keep itself alive to the conceptual difference between "letter of intent" and "formal recognition". True it is, there was delay but that could not have enabled the High Court to issue a writ for treating the recognition to be effective for the year 2011-12 with intake of fifty students. That apart, the respondent-institution had not obtained affiliation from the university. Therefore, the direction of the High Court is contrary to the provisions of law and the interpretation of the Act and the Regulations made by this Court and, accordingly we are compelled to set aside the same, and we so direct.

34. Now, to the last plank of submission of the learned counsel for the appellant. It is urged by him that the NCTE had procrastinated its decision at every stage and such delay was deliberate and, therefore, the society was compelled to admit the students and impart education, regard being had to the fact that there were really no deficiencies. As has been laid down in many a pronouncement of this Court that without recognition from the NCTE and affiliation from the university/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. If we allow ourselves to say so, the institution had given admission in a nonchalant manner. Possibly, its functionaries harboured the idea that they had incomparable fertile mind. The students who had taken admission possibly immersed with the idea that ignorance is a bliss. It is also necessary to state that the institution had the anxious enthusiasm to commercialize education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law. Such attitudes only bring nemesis. It would not be wrong to say that this is not a case which put the institution or the students to choose between Scylla and charybdis. On the contrary, both of them were expected to be Argus-eyed. The basic motto should have been "transparency". Unfortunately, the institution



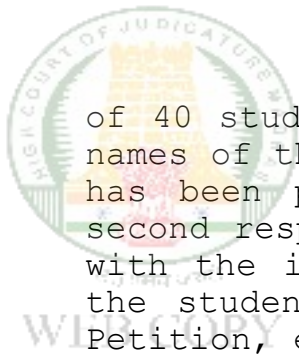
way, atrophied their intelligence. The institution decidedly exhibited characteristics of carelessness. It seems that they had forgotten that they are accountable to law. The students, while thinking "vision of hope", chose to play possum. The law does not countenance either of the ideas. Hence, the plea propounded with anxiety, vehemence and desperation on behalf of the appellant is not acceptable and, accordingly we unhesitatingly repel the same."

14. According to the learned Additional Advocate General, the ratio rendered by the Courts in the above referred decisions would in fact be the direct answers to the objections raised on behalf of the petitioner that the second respondent has no jurisdiction to issue the impugned proceedings. It is well within the purview of the second respondent to lay down conditions for ensuring merit and minimum standard of the educational institutions. He would, therefore, submit that the legal contention as to the validity of the order passed by the second respondent is to be rejected outright, as being without any substance.

15. As regards the submission made by the learned Counsel appearing for the petitioner, namely, withdrawal of intake of 40 students and thereby reducing the student strength from 80 to 40, when the petitioner approached the first respondent seeking withdrawal of 40 students vide their letter dated 17.10.2019, the petitioner had conveniently not mentioned about the contents of G.O.Ms.No.87, School Education Department, dated 28.05.2019. Without drawing reference to the said Government Order, the petitioner had got approval for admitting 40 students in order to overcome the conditions imposed by the said Government Order. Therefore, the second respondent rightly did not take the subsequent approval by the first respondent into consideration in regard to the earlier admission of the students for the academic year 2019-2020. In that academic year, admittedly, the students who were admitted were 18 in number, constituting only 18%, considering the intake position as on that date as 80 students. Therefore, the impugned proceedings were issued rightly by the second respondent directing the petitioner not to admit students for the academic year 2020-2021.

16. He would, therefore, request this Court not to interfere with the impugned proceedings as the petitioner cannot be allowed to run with 18% of the student strength, as that would run contrary to the Government Order.

17. The learned Counsel appearing for the petitioner by way of reply would submit that subsequent to the impugned proceedings, the petitioner addressed a letter to the second respondent on 03.10.2020 informing the second respondent that for the academic year 2020-2021, the petitioner had already admitted 21 students out of the total intake



of 40 students and the list has also been furnished mentioning the names of the students for the said academic year. However, no order has been passed in response to the information furnished to the second respondent. In the meanwhile, notice has been ordered along with the interim order dated 14.12.2020 protecting the interest of the students who had been admitted pending disposal of this Writ Petition, extracted supra.

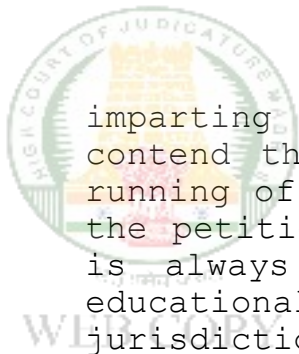
18.The learned Central Government Standing Counsel appearing for the first respondent would submit that the petitioner institute has approached them for withdrawal of 40 students and in consideration of their request, the approval was granted for withdrawing 40 students vide proceedings of the first respondent dated 23.07.2020. According to the learned Central Government Standing Counsel, as on date, the petitioner institute is having recognition for the intake of 40 students.

19.Considered the submissions of the learned Counsel appearing for the petitioner and the learned Additional Advocate General appearing for the second respondent and Mr.Su.Srinivasan, learned Central Government Standing Counsel appearing for the first respondent.

20.The principal contention of the learned Counsel appearing for the petitioner namely that the second respondent has no jurisdiction to issue the impugned proceedings ordering closure of the petitioner institute is in the opinion of this Court not to be accepted as a valid piece of submission. On behalf of the second respondent, several decisions have been cited and the relevant portions of the legal findings of the learned Judges of this Court have been extracted supra. It could be deduced from those decisions that the contention, namely, State authority has no jurisdiction to interfere with the recognition granted by the Central authority has been repulsed holding that as long as the conditions of the regulatory authority in this case, the second respondent, do not run contrary to the power exercised by the Central authority or repugnant to the recognition order, the same cannot be held to be without jurisdiction.

21.The legal principle laid down on this issue is clear and unambiguous and therefore, this Court has no hesitation in holding that the power of laying down certain conditions by the State authority regulating the functioning of the institutions like the petitioner herein in larger public interest is very much integral to the conditions of recognition and such power being exercised in lawful manner cannot be held to be illegal or void.

22.Although it is a fact that the petitioner institute has been granted permanent recognition and withdrawal of such recognition is not within the jurisdiction of the State authority, yet at the same time, the petitioner institute is being part of the State Education



imparting teacher training, it is not open to the petitioner to contend that the said authority cannot have any control over the running of the institute. Such a sweeping submission on the part of the petitioner cannot be countenanced both in law and on fact. It is always within the power of the said authority to regulate educational institutions come within the frame work of its jurisdiction, without offending the Central authority in the matter of granting recognition to the technical institutes. In fact, this legal position is fortified and strengthened as the first respondent has specifically incorporated in the recognition order itself in paragraphs 4 and 6 which are extracted supra. Therefore, any violation of the conditions of the said regulatory authority would amount to violation of recognition order itself. Therefore, on that ground alone, the petitioner's case herein needs to be rejected.

23. In the counter affidavit filed on behalf of the second respondent, it is clearly stated that no recruitment was made to the post of Secondary Grade Teacher for the past four years. In view of the complete absence of the recruitment to the post of Secondary Grade Teacher, correspondingly, there were no takers for Teacher Training Course. When employment opportunity was almost not available or open, as a consequence of that the student strength has also been decreasing steadily by passage of time. As far as the petitioner institute is concerned, it is an admitted case that only 18 students were on the roll for the academic year 2019-2020 which was not more than 22% and in that view of the matter, the institute has come within the mischief of the norms prescribed by the State Government vide its G.O.Ms.87, School Education Department, dated 28.05.2019. Therefore, it is not open to the petitioner institute to come up with a specious argument that in view of the recognition granted by the Central authority, namely, the first respondent, withdrawing intake of 40 students from the institute, as a consequence of such withdrawal would fall outside the purview of the said Government Order in the opinion of this Court is a untenable submission made with a view to wriggle out of the lawful clutches of the regulatory authority. In that view of the matter, this Court has to necessarily discountenance the submission made on behalf of the petitioner institute.

24. As regards the various other issues relating to the petitioner institute being governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, this Court is of the humble opinion that the submissions made on those aspects may not have a relevant bearing on the present issue which is thrown open for adjudication as the *lis* in this case is only in regard to the validity of the impugned proceedings of the second respondent dated 28.09.2020 vis-a-vis the recognition granted by the first respondent central body.

25. One another issue which comes up for consideration before the Court is how to deal with the present students who have been



admitted for the academic year 2020-2021. According to the petitioner, 21 students have been admitted and the names have also been furnished to the second respondent and the academic year still being active due to COVID-19 situation as on date and a request was made for continuing to run the institute in furtherance of the subsequent development of withdrawal of intake of 40 students, allowing the institute with total intake of only 40 students. This Court finds that on this aspect, there was no application of mind on the part of the second respondent in the impugned proceedings. Although this Court is finally of the view that the impugned proceedings cannot be faulted with, yet the fate of the students who have been admitted in the interregnum ought to be also considered particularly in view of the interim order passed by this Court dated 14.12.2020 which is extracted supra. When the petitioner approached the first respondent seeking withdrawal of the intake of 40 students, the petitioner did not choose to draw reference to G.O.Ms.No.87, School Education Department, dated 28.05.2019 and in the absence of any reference, there could not have been any application of mind by the first respondent in accepting the withdrawal letter from the petitioner. In the said circumstances, it is open to the petitioner institute to approach either the original authority or the appellate authority in terms of the relevant Act for grant of recognition or continuance of the same after notifying the first respondent of G.O.Ms.No.87, School Education Department, dated 28.05.2019 and any order passed in terms of the said Government Order including the present impugned proceedings. Any decision or order to be passed on such representation by the petitioner, by the first respondent, the same would govern the further right of the petitioner institute to continue with their regular academic programme.

26.In such view of the matter, any application is to be made by the petitioner to the first respondent, the same may be considered and an order be passed as expeditiously considering the plight of the students who have already been admitted and pursuing their education for the academic year 2020-2021.

27.As far as this Writ Petition is concerned, notwithstanding the above observation, the same is dismissed as being without merits and substance. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cr1)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1. The Regional Director,
National Council for Teacher Education,
Southern Regional Committee,
G-7, Sector - 10, Dwaraka,
Delhi - 110 075.

2. The Director,
State Council of Educational Research and Training,
College Road, DPI Campus,
Chennai - 600 006.

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-9258[F] dated 05/03/2021)

+1 CC to Mr.SU.SRINIVASAN, Advocate (SR-8692[F] dated 04/03/2021)

+1 CC to Mr.E.V.N.SIVA, Advocate (SR-8875[F] dated 04/03/2021)

Order made in
W.P. (MD) No.14749 of 2020 and
W.M.P. (MD) Nos.12406 and 12407 of 2020
04.03.2021

NA (CO)

SRS (15/03/2021) 36P : 6C