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

Date of Decision 05th August, 2021

+ **W.P.(C) 5820/2021 & CM APPL. 18242/2021**

HIMALAYAN UNIVERSITY Petitioner
versus

NATIONAL COUNCIL FOR
TEACHER EDUCATION & ANR. Respondents

+ **W.P.(C) 5827/2021 & CM APPL. 18270/2021**

NATIONAL WOMEN COLLEGE OF HIGHER
EDUCATION& ANR. Petitioners
versus

NATIONAL COUNCIL FOR
TEACHER EDUCATION & ANR. Respondents

+ **W.P.(C) 6621/2021 & CM APPL. 20813/2021**

NATIONAL WOMEN COLLEGE OF HIGHER
EDUCATION& ANR. Petitioners
versus

NATIONAL COUNCIL FOR
TEACHER EDUCATION & ANR. Respondents

+ **W.P.(C) 5887/2021 & CM APPL. 18518/2021**

APEX PROFESSIONAL UNIVERSITY Petitioners
versus

NATIONAL COUNCIL FOR
TEACHER EDUCATION & ANR. Respondents

+ **W.P.(C) 6472/2021 & CM APPL. 20352/2021**

LRL SHIKSHAN PRASHIKSHAN
MAHAVIDYALAYA & ANR. Petitioners
versus

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NATIONAL COUNCIL FOR
TEACHER EDUCATION & ANR.

..... Respondents

Present:- For Petitioners

Mr. Amitesh Kumar, Ms. Priti Kumari & Ms. Binisa Mohanty, Advocates for all the Petitioners.

For Respondents

Ms. Kartika Sharma, Mr. Udian Sharma, Mr. Shivam Singh, Mr. Jaideep Khanna, Mr. Harpreet Singh Gupta, Mr. Jai Sahai Endlaw and Mr. Ashutosh Rana, Advocates for NCTE

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The controversy in these five cases arises out of applications made by the petitioners for recognition of integrated teacher education programmes ["ITEP"]. The applications were made pursuant to a public notice dated 20.05.2019 issued by the respondent-National Council for Teacher Education ["NCTE"].
2. The grievance with which the petitioners have approached the Court is that their applications have been returned by the NCTE, pursuant to a policy decision taken at the 52nd General Body Meeting held on 25.01.2021. In all the five cases, the application fees submitted by the petitioners have been returned. The petitioners have

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sought directions for processing of their applications and have also challenged the policy decision taken by the NCTE.

3. The policy decision was incorporated in the following resolution taken at the meeting held on 25.01.2021:

“Decision of the Council:-

The Council decided that the application fees given by colleges should be returned back to them. Alternatively, the session should be started only for academic year 2022-23. Starting the course on pilot basis in Govt. institutions will be examined afresh.”

4. In support of these petitions, Mr. Amitesh Kumar, learned counsel for the petitioners, has raised the following principal arguments:

a) Mr. Kumar submits that the decision of the NCTE is contrary to specific orders granted by this Court in each of the five cases. He has drawn my attention to those orders¹. These writ petitions were filed by the petitioners and were disposed of with directions upon the NCTE to process the petitioners’ applications within a given time frame. The petitioners contend that the NCTE failed to comply with the aforesaid orders. This has led to the institution of contempt proceedings by four of the five petitioners, which are pending before a Coordinate Bench of this Court². Mr. Kumar submits that the

¹ Order dated 19.02.2020 [corrected by an order dated 06.03.2020] in W.P.(C) 1943/2020, order dated 06.03.2020 in W.P.(C) 2628/2020, order dated 08.01.2020 in W.P.(C) 10583/2019, order dated 02.12.2020 in W.P.(C) 3850/2020 and order dated 10.11.2020 in W.P.(C) 8794/2020. [Against the order dated 19.02.2020 read with the order dated 06.03.2020 in W.P.(C) 1943/2020, the NCTE has preferred LPA No. 200/2020 which remains pending. However, no interim orders have been granted by the Division Bench.]

² CONT. CAS.(C) Nos. 352/2020, 358/2020, 394/2020 and 289/2021

impugned decision of the NCTE is in breach of the directions issued by this Court in the earlier round of litigation. He has cited several judgments of the Supreme Court in support of his contention that executive acts cannot, without an alteration in the foundational basis of the judgments rendered by a Court, nullify the effect of a writ of mandamus issued to an authority.

b) Mr. Kumar further submits that the policy decision is also inconsistent with the report of the Justice J.S. Verma Commission [“Justice Verma Commission”] which was set up pursuant to the order of the Supreme Court dated 13.05.2011 in SLP(C) No. 4247-4248/2009. The Justice Verma Commission recommended inter-disciplinary teacher training courses, pursuant to which the ITEP was introduced. Mr. Kumar relies upon the orders of the Supreme Court dated 10.10.2012, 06.08.2013 and 10.09.2013 to submit that the Supreme Court accepted the recommendations of the Justice Verma Commission in totality and specifically held that the recommendations would be binding upon all the stakeholders, including the NCTE. Mr. Kumar submits that the NCTE (Recognition, Norms and Procedure) Regulations, 2014 [“the 2014 Regulations”] were notified to implement the recommendations of the Justice Verma Commission. The ITEP was introduced by virtue of an amendment to the 2014 Regulations pursuant to a meeting of the NCTE held on 28.03.2018, wherein reference is made to the report of the Justice Verma Commission and to the orders of the Supreme Court. Mr. Kumar points out that the public notice dated 20.05.2019 was issued by the NCTE pursuant to an order dated 15.05.2019 passed by the Supreme

Court on the NCTE's application for permission to invite applications for the ITEP.

c) Mr. Kumar's final contention is that, in returning the application fees to the concerned applicants, the NCTE has implemented the first part of the resolution dated 25.01.2021, without reference to the second part thereof, which contemplates an alternative course of implementation from the next academic year, i.e. 2022-23.

5. Mr. Shivam Singh, learned Standing Counsel for the NCTE, on the other hand submits as follows:-

a) Mr. Singh states that the NCTE has not abolished the ITEP or done away with it altogether. He draws my attention to the contents of the counter affidavit filed by the NCTE [which has been filed in W.P.(C) 6621/2021], which indicates that the NCTE is making all efforts to invite applications for introduction of the ITEP in the 2022-23 academic session, in line with the National Education Policy, 2020.

b) According to Mr. Singh, the deferral of the ITEP has been necessitated by the framing of the National Education Policy, 2020 by the Government of India, which sets in place certain pre-conditions for the introduction of the ITEP, in terms of the conditions for admission of students and a curriculum framework. He submits that the NCTE is bound under Section 29 of the NCTE Act, 1993 to comply with the directions of the Central Government on matters of policy. Pursuant to the decision, the application fee tendered by 3000 applicants has been returned to them.

c) Mr. Singh submits that the policy decision has been taken by the expert regulatory authority after extensive discussion with regard

to the readiness of the regulator and the institutions for introduction of the ITEP, which is a new course altogether. He urges that such a decision ought not to be interfered with by the writ court.

6. Although Mr. Kumar and Mr. Singh have joined issue on the legal arguments with regard to the policy decision, I am of the view that it is not necessary to decide these legal issues at this stage. In view of the lapse of time, Mr. Kumar does not dispute that the petitioners' applications can now be considered only for the academic session 2022-23. The NCTE's specific contention in its counter affidavit is as follows:

“III. NCTE being a regulator of teacher education has taken a policy decision to not process any ITEP applications for the academic session 2021-2022. It is making all efforts to invite applications for 2022- 2023 in line with the National Education Policy.”³

7. The dispute between the parties which requires adjudication in these writ petitions is, therefore, fairly narrow. Mr. Kumar urges that the NCTE should be bound to a specific time frame to avoid further loss of academic years at the cost of the petitioners. Mr. Singh has, however, emphasized that the NCTE has not yet taken a positive decision to introduce the ITEP in the academic session 2022-23.

8. The scope of interference in policy decisions in academic matters is limited. It is not appropriate for the writ court to direct introduction of a course which the regulator feels unready to implement. However, I am of the view that the matter cannot be left

³ Emphasis supplied.

undecided for an indefinite period. The NCTE had invited applications pursuant to the order of the Supreme Court in the year 2019. That decision itself should have been taken after due deliberation as to the necessary infrastructure and putting in place the regulatory environment. The petitioners claim to have invested time and money in setting up their institutions and making the applications. Those applications have now been returned, and the applicants have lost the academic sessions 2020-21 and 2021-22 in the process. The NCTE is, therefore, directed to take a decision on the required infrastructure or any other aspect, so that the applications can be considered for the academic session 2022-23, in line with its own counter affidavit.

9. There is also no dispute that the fate of those applications would be dependent upon the petitioners' complying with the regulations as they exist for the introduction of the ITEP in the concerned year. Mr. Kumar accepts that the regulatory framework requires institutions to ensure compliance with the requirements of a course, as prescribed from time to time. The petitioners will therefore comply with the directions of the NCTE for consideration of their applications for the academic session 2022-23 and will deposit the application fees which have been returned, as and when requested by the NCTE.

10. As far as the issue of violation of the orders of this Court is concerned, Mr. Kumar has emphasised that the policy decision dated 25.01.2021 was taken much after the lapse of the time granted by the orders of this Court. That is a matter for consideration in the contempt petitions, which are pending before a Coordinate Bench. The factors which weigh with the Court while deciding whether or not to issue a

writ of mandamus are different from those upon which contempt proceedings are adjudicated. The observations made in this order are therefore not intended to prejudice the rights and contentions of the parties in the adjudication of the contempt petitions.

11. Whatever decision the NCTE wishes to take should be taken in time, so that the processing of the petitioners' applications for the academic session 2022-23 can be concluded. If necessary, the NCTE will process the petitioners' applications in anticipation of the decision and subject to the petitioners' compliance with any changes in the regulatory regime. It is made clear that it is for the NCTE to take a call on the question as to whether the institutions are to be granted permission or not. The present directions are for processing of the applications in terms of the applicable regulatory regime to enable the institutions to commence the ITEP in the academic session 2022-23, if found compliant.

12. As applications for 3000 institutions were returned by virtue of the policy decision dated 25.01.2021, the NCTE will implement the aforesaid directions in respect of all those institutions, rather than compelling each one of them to approach the Court. The NCTE will notify the institutions concerned, to whom the policy decision dated 25.01.2021 was made applicable, of the contents of this order.

13. The writ petitions, alongwith the pending applications, are disposed of in terms of the aforesaid directions.

PRATEEK JALAN, J.

AUGUST 05, 2021/ 'pv'

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