

(2014) 06 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 7813 of 2014

B.M. Patel Education Trust

APPELLANT

Vs

Hemchandracharya South Gujarat University

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

National Council for Teacher Education Act, 1993 — Section 12, 13, 14, 14(1), 14(3)(a)

University Grants Commission Act, 1956 — Section 26

Citation : AIR 2014 Guj 187

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

**Advocate : Saurin Mehta and Anuja S. Nanavati, Advocate for the Appellant;
P.S. Champaneri and Siddharth H. Dave, Advocate for the Respondent**

Judgement

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Harsha Devani, J.—Rule. Mr. Siddharth Dave, learned advocate waives service of notice of rule on behalf of the respondent No. 1 University and Mr. P.S. Champaneri, learned advocate waives service of notice of rule on behalf of respondent No. 2-National Council for Teacher Education. Having regard to the facts of the case and the urgency of the matter, with the consent of the learned advocates for the respective parties, the matter was taken up for final hearing today. This petition under Article 226 of the Constitution of India has been filed for the following substantive reliefs:

7. In view of the aforesaid premises, the Petitioner most humbly prays that:

(A) This Hon'ble Court may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction to quash and set aside the impugned Resolution No. 2(8) passed by the Executive Council of Hemchandracharya Uttar Gujarat University, Respondent No. 1 herein and direct Respondent No. 1 University to grant affiliation to the College of the Petitioner Trust i.e. Saraswati Education College;

7AA. This Hon"ble Court may be pleased to issue writ of mandamus or writ in a nature of mandamus or any other appropriate writ or direction to quash and set aside the impugned Decision/Resolution dated 6/6/2014 at Annexure AA passed by Executive Council, Hemachandracharya North Gujarat University - Respondent No. 1 herein and direct University to grant affiliation to the college of Petitioner Trust i.e. Saraswati Education College for B.Ed. and M.Ed. Course.

2. The facts of the case as averred in the present petition are that the petitioner, an educational trust, established a self-financed B.Ed, and M.Ed. College which is run in the name and style of Saraswati Manila Education College with an intake capacity of 100 and 35 students respectively. Under section 14 of the National Council for Teacher Education Act, 1993 (hereinafter referred to as "the Act"), before establishment of any B.Ed./M.Ed. College, statutory permission is required to be obtained from the Regional Committee established under section 20 of the Act. The Regional Committee upon receipt of an application in terms of the prescribed regulations framed under the Act and upon being satisfied that the institution has adequate financial resources, accommodation, library, qualified staff as well as other requirements, passes an order granting recognition to the institute. It is the case of the petitioner that pursuant to an application made by the petitioner, the Western Regional Committee after verifying all infrastructure and conditions for establishment of B.Ed. College granted recognition to the petitioner on 7th April, 2005 for starting B.Ed. Degree course from the academic year 2004-2005 with an annual intake capacity of 100 students. Similarly, for the M.Ed. Degree course, the Western Regional Committee granted recognition on 14th March, 2008 initially with intake capacity of 25 students which was subsequently increased to 35 students in the year 2010. At the relevant time, since the petitioner Trust was imparting education to girls, it was affiliated to S.N.D.T. Women's University, Mumbai. However, subsequently by a judgment and order dated 8th September, 2011 passed by this court in Special Civil Application No. 8031/2010, it was held that colleges which are affiliated to universities situated outside the State shall seek transfer to their local university, in view of which the State of Gujarat issued a Government Resolution dated 1st September, 2012 directing all colleges which are affiliated to universities situated outside the State to seek transfer and get affiliated to its local university failing which necessary action would be initiated against them. Pursuant thereto, the petitioner made an application to the respondent No. 1-University for grant of "No Objection Certificate" to its B.Ed. College. By a certificate dated 15th May, 2013, such "No Objection Certificate" was issued in favour of the petitioner. The petitioner also obtained an NOC for transfer of affiliation from the S.N.D.T. Women's University. Thereafter, on 21st October, 2013, the petitioner Trust applied for affiliation in the prescribed form along with necessary documents. The petitioner also paid Rs. 3,52,000/- for each Degree course of B.Ed. and M.Ed. towards affiliation fees. Pursuant to the application, the University vide letter dated 19th March, 2014 appointed Need Committee which is popularly known as Local Inspection Committee (LIC) appointing two professors for the grant of

affiliation and sent a copy to the petitioner trust. It is the case of the petitioner that the LIC gave a positive report recommending that there is a need of college which can impart education in B.Ed. and M.Ed. courses. Thereafter, the University also issued letters to the petitioner appointing the names of professors for Selection Committee of the teaching staff in the college of the petitioner trust. Vide resolution No. 2(8) dated 12th May, 2014 passed by the Academic Council of the respondent University, it was resolved that the petitioner and other similarly situated institutes should produce evidence to show that it owned five acres of land along with 7/12 extracts and that such land is unencumbered. It was also stated in the resolution that if such evidence is produced, procedure be undertaken for granting affiliation otherwise no action should be taken for affiliation. Being aggrieved, the petitioner approached this court by way of the present petition challenging the aforesaid decision passed by the Academic Council of the respondent No. 1 - University. Subsequently, this court by an order dated 5th June, 2014 permitted the petitioner to make a representation to the respondent with a direction that if such representation is made, the respondents shall decide the same in the light of the decision of the Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, . Pursuant to the above order, the Executive Committee of the respondent University in its special meeting dated 6th June, 2014 considered the representation of the petitioner and confirmed its earlier decision. The petitioner, therefore, moved an amendment for challenging the resolution dated 6th June, 2014 which came to be granted.

3. In response to the averments made in the petition, the respondent No. 1 has filed an affidavit-in-reply to which the petitioner has filed an affidavit-in-rejoinder. However, since such affidavit-in-rejoinder has been filed on 11th June, 2014 during the course of hearing of the matter, the respondents did not have any opportunity to deal with the factual averments which were sought to be brought on record by way of the said rejoinder affidavit.

4. Mr. Saurin Mehta, learned advocate for the petitioner vehemently assailed the impugned resolutions passed by the respondent University. It was submitted that as per the norms laid down by the NCTE in respect of infrastructural facilities, an institution is required to possess 2500 square metres of exclusive well-demarcated land for initial intake of 100 students out of which 1500 square metres is required to be the built-up area and the remaining space for lawns and playfields. For additional intake of 100 students or part thereof, it is required to possess additional 500 square metres of land and for annual intake beyond 200 and up to 300, it is required to possess 3500 square metres of land. It was submitted that the petitioner institution had provided necessary land admeasuring 8751 square metres and constructed building thereon approximately on 400 square metres which is more than the required built-up area of 1500 square metres. It was submitted that the Western Regional Committee, NCTE after verifying the entire infrastructure and the conditions for establishment of B.Ed. College, had granted recognition on 9th April, 2005 for

starting B.Ed. Degree course and had granted recognition on 14th March, 2008 for M.Ed. Degree course to the college of the petitioner trust. It was submitted that it is by now well-settled by a catena of decisions of the Supreme Court that the norms prescribed by the NCTE would prevail over the norms prescribed by the University, UGC or the concerned college. Therefore, it is not open for the respondent University to prescribe any conditions that are contrary to the conditions prescribed by the NCTE. It was contended that the requirement of five acres of land being contrary to the norms prescribed by the NCTE, the action of the respondent University in requiring the petitioner to provide for five acres of land is required to be struck down. In support of his submissions, the learned counsel placed reliance upon the decision of the Supreme Court in the case of *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh* (supra) for the proposition that the affiliating body/examining body does not have any discretion to refuse an affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition. That, in terms of section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In other words, granting recognition is the basic requirement for grant of affiliation. Reliance was also placed upon the decision of a Full Bench of the Kerala High Court in the case of *Vikram Sarabhai Educational Trust and B.Ed. College Vs. University of Calicut and Another*, , the decision of the Himachal Pradesh High Court in the case of *Shimla Education Society and Trust Vs. State of H.P. and Another*, , the decision of this court in the case of *Sharada Education Trust Vs. State of Gujarat and Others* , the decision of this court in the case of *Sarvodaya Charitable Trust Vs. Gujarat University and Another*, as well as the decision of the Allahabad High Court in the case of *Sampurnand Sanskrit University Vs. State of U.P., Director, State Council of Educational Research and Training (S.C.E.R.T.), National Council for Teacher Education and Union of India (UOI)*, .

4.1 The attention of the court was invited to the Norms and Standards for Bachelor of Education programme leading to Bachelor of Education (B.Ed.) Degree, to point out that wherever any subject falls within the domain of the University, the same has been specifically prescribed under the regulations. That insofar as infrastructural and other facilities, in respect of which specific prescription has been made by the NCTE in its regulations, the same do not fall within the domain of the UGC and the University and as such, neither the UGC nor the University has any power to prescribe any conditions which are in conflict with the conditions prescribed by the NCTE. It was accordingly urged that the respondent University is not justified in insisting upon providing five acres of freehold land in terms of the UGC guidelines as the same are contrary to the norms provided by the NCTE. It was, accordingly, urged that the impugned resolutions passed by the respondent University are required to be set aside and the respondents are required to be directed to consider the grant of affiliation to the college of the petitioner trust without insisting upon the condition of providing five acres of land.

4.2 As regards the allegation that the petitioner had subsequently mortgaged the land for obtaining a loan, it was submitted that in case of breach of any condition of recognition, it is always open to the NCTE to withdraw recognition. However, the fact that no such action has been taken by the NCTE means that it has relaxed the conditions. Moreover, the petitioner has subsequently repaid the loan amount and redeemed the mortgage.

5. Vehemently opposing the petition, Mr. Siddharth Dave, learned counsel for the respondent No. 1 University submitted that the petitioner has not provided proper facilities which are necessary and desired by the University Grants Commission in its regulations as well as by the respondent University as conditions for affiliation. Reference was made to the order dated 7th April, 2005 passed by the NCTE under section 14(1) of the Act granting recognition to the petitioner for starting B.Ed. of one year for the academic session 2004-2005 with annual intake of 100 students, to point out that the recognition was subject to various conditions as set out in clause (3) thereof, one of which is that the institution shall comply with the various other norms and standards as prescribed in the NCTE Regulations. Referring to clause (5) thereof, it was pointed out that the recognition was also subject to the fulfillment of all such other requirements as may be prescribed by the other regulatory bodies like the UGC and the State Government etc. It was submitted that when unconditional recognition is granted by the NCTE, the University may have no role to play, but in the present case where the order of recognition itself contemplates fulfillment of other requirements as may be prescribed by the UGC and the State Government, etc., which has been accepted by the petitioner, he is required to satisfy the norms prescribed by the UGC. It was pointed out that in terms of regulation 3.1.1 of the UGC Affiliation of Colleges by Universities Regulations, 2009 (hereinafter referred to as "the UGC Regulations"), the proposed college seeking affiliation is required to have undisputed ownership and possession of land measuring not less than 2 acres if it is located in metropolitan cities, and 5 acres if it is located in other areas. It was submitted that the institute in question is not located in a metropolitan city and hence in terms of the above regulation, the college should own 5 acres of land. That on a conjoint reading of clause (5) of the order granting recognition and Regulation 3 of the above UGC Regulations, it is apparent that the petitioner is required to satisfy the eligibility criteria prescribed by the UGC. That the petitioner, having failed to satisfy such requirement, is not entitled to the grant of affiliation and the respondent-University has rightly insisted upon compliance of the above condition for grant of recognition.

5.1 Next, it was submitted that it is not in the case of the petitioner alone that the respondent-University has insisted upon the above requirement of land. Even in case of one Vithalprabhu Education and Charitable Trust, the respondent University had insisted for satisfying the requirements of five acres of land against which, the trust had approached this court by way of a writ petition being Special Civil Application No. 2207/2013. Thereafter, a representation came to be made by the trust and subsequently a writ petition being Special Civil Application

No. 10241/2014 came to be filed which came to be dismissed vide order dated 19th July, 2013. The said matter was carried in appeal in Letters Patent Appeal No. 916/2013 which also came to be dismissed. It was, accordingly, urged that, therefore, the requirement of five acres of land has been upheld by this court.

5.2 It was further submitted that Regulation 7(i) of the NCTE Regulations prohibits the grant of recognition under the regulations unless the institution is in possession of required land on the date of application and that the land free from all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than 30 years. The attention of the court was drawn to the extracts of village form No. 6 and 7/12 in respect of the land in question. It was pointed out that immediately after the recognition came to be granted by the NCTE, the petitioner had mortgaged the land for obtaining a loan of Rs. 30 lakhs, which fact has been suppressed in the present petition. Thus, the conduct of the petitioner is also required to be taken into account, inasmuch as, soon after the grant of recognition, the petitioner has committed breach of the above condition and has suppressed such fact. It was argued that apart from the fact that Regulation 3.1.1 of the UGC Regulations was not complied with, Regulation 7(i) of the NCTE Regulations has also not been complied with. It was urged that grant of affiliation is not an empty formality and it is open for the university to examine as to whether the requirements of the relevant regulations are satisfied. Reliance was placed upon the decision of the Supreme Court in the case of *Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others*, wherein it was brought to the notice of the court that grave irregularities were committed by the Western Regional Committee of NCTE in granting recognition to private institutions who did not fulfill the mandatory conditions relating to financial resources, accommodation, library and other physical infrastructure and qualified staff and admitting students who had either not passed the entrance test or had not appeared for the centralised counselling conducted under the directions issued by the State Government. The court held that the State Government/Union Territory Administration is entitled to make recommendations on the application made for grant of recognition and the same are required to be considered by the Regional Committee before taking a final decision on the application. That while granting recognition, the Regional Committees are required to give due weightage to the recommendations made by the State Government/UT Administration and keep in view the observations made by the Supreme Court in *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*. Reliance was also placed upon an unreported decision of the Madras High Court in the case of *KSP Educational Trust v. Government of Puducherry*, rendered on 21st November, 2013 in W.P. No. 24683 of 2013 wherein the core question before the court was whether the State would be justified in rejecting the application for NOC solely on the ground of non-possession of land as per UGC norms. The court after referring to the relevant regulations held that the permission from the State is not automatic. The State must ensure that the Trust/

Society has complied with the UGC norms regarding establishment of a college. The State is not a post office to forward the application to the University. The court held that the applicant must show that the Trust/Society has complied with the essential requirements of establishing the institution. That it is true that there are certain statutory requirements and its compliance should be verified only by the UGC/University. However, that is not the case with regard to land. The possession of land is a primary requirement which cannot even be relaxed. In case the applicant failed to satisfy even the basic requirement for making an application for permission to establish a college, the State would be justified in rejecting permission. Mr. Dave, accordingly, submitted that the petitioner has not satisfied the basic requirement of possessing 5 acres of freehold land and hence the respondent University was wholly justified in resolving that the petitioner's application for affiliation shall be considered only if the above condition is complied with.

5.3 As regards the decision of the Supreme Court in the case of *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh* (supra), it was submitted that the same would apply only where NCTE has granted unconditional recognition. It was further submitted that as per the resolution dated 12th May, 2014, the petitioner was required to produce the documents referred to therein within a period of 15 days. However, the petitioner has not submitted the required documents and therefore, admittedly the conditions for affiliation are not satisfied. Even otherwise, undisputedly, after the grant of recognition, the petitioner had mortgaged the land and there is nothing to show that as on the date when the impugned resolution came to be passed, the property was not mortgaged. It was submitted that it was on the basis of the documents produced by the petitioner, including extracts of the village forms No. 6 and 7/12 pertaining to the land in question it was found that the required conditions were not fulfilled, that the impugned resolution came to be passed stipulating that the petitioner's application for affiliation shall be considered only upon compliance of such condition. It was, accordingly, urged that the petition being devoid of any merit or substance deserves to be dismissed.

6. Mr. P.S. Champaneri, learned counsel for the respondent No. 2 - NCTE invited the attention of the court to Clauses 3, 4, 6 and 7 of the order of recognition to submit that the recognition granted by the NCTE was conditional upon compliance with the conditions stipulated thereunder. Reference was made to sub-regulation (7) of Regulation 8 of the NCTE (Recognition, Norms and Procedure) Regulations, 2007. It was pointed out that clause (i) thereof provides that no institution shall be granted recognition under the regulations unless the institution or society sponsoring the institution is in possession of required land on the date of application. The land free of all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than 30 years. It was pointed out that clause (iv) of the said sub-regulation provides that the society sponsoring the institution shall be required to transfer and vest the title of the land and building in the name of the

institution within a period of six months from the date of issue of formal recognition order under sub-regulation (11) of Regulation 7. Referring to the order of recognition, it was submitted that the same was conditional and not absolute. It was submitted that affiliation is required to be granted to the institution and not the trust and the requirements of clause (iv) of sub-regulation (7) of Regulation 8 of the NCTE Regulations are required to be complied with. Moreover, the moment there is any change in the nature of the property the petitioner is required to bring it to the notice of the NCTE. In the present case, it is not the case of the petitioner-Trust that it had brought to the notice of NCTE the fact that the property had been mortgaged and hence the question of relaxation of conditions would not arise.

7. In the backdrop of the facts and contentions noted hereinabove, the moot question that arises for consideration is as to whether when the NCTE, upon compliance of the requirements prescribed by it, has granted recognition to the petitioner's college for starting B.Ed. and M.Ed., the University could have refused to grant affiliation on the ground that the petitioner did not comply with the norms regarding possession of land as prescribed by the UGC.

8. Before advertng to the merits of the case, some facts may be noted. By orders dated 7th April, 2005 and 14th March, 2008, the Saraswati Mahila Education College, Shri B.M. Patel Education Trust (the petitioner herein) was granted recognition for starting B.Ed. and M.Ed. courses. Sub-clause (c) of clause (3) of the said order provides that the institution shall comply with the various norms and standards as prescribed in the NCTE Regulations. Clause (4) of the said order provides that the recognition is subject to all such requirements as may be prescribed by other regulatory bodies like UGC and State Government, etc. Clause (5) of the Norms and Standards for Bachelor of Education Programme leading to Bachelor of Education (B.Ed.) degree makes provision for facilities to be provided by B.Ed. degree colleges. Clause (1) thereof prescribes the infrastructure and sub-clause (i) thereof, inter alia, postulates that the institutions shall possess 2500 sq. mts. (two thousand five hundred square metres) of exclusive well demarcated land for the intake of one hundred students out of which 1500 sq. mts. (one thousand five hundred square metres) shall be built up area and the remaining space for lawns, playfields etc. Sub-clause (ii) thereof provides for the built up area for running other courses in combination with B.Ed. programme. In case of B.Ed. plus M.Ed. the prescribed built up area is 2000 sq. mts. and the land area is 3000 sq. mts. The petitioner trust has provided 8751 sq. mts. of land with approximately 4000 sq mts. of built up area.

9. In the exercise of powers conferred by clauses (f) and (g) of sub-section (1) of section 26 of the University Grants Commission Act, 1956, the UGC has made regulations called the UGC (Affiliation of Colleges by Universities) Regulations, 2009. Regulation 3 provides for "Eligibility Criteria for Temporary Affiliation" and clause (3.1) thereof lays down that the proposed college seeking affiliation, at the time of inspection by the university, shall satisfy the requirements laid down

thereunder or the requirements in respect of any of them prescribed by the Statutory/Regulatory body concerned, whichever is higher. Clause (3.1.1) thereof reads thus:

"3.1.1 undisputed ownership and possession of land measuring not less than 2 acres if it is located in metropolitan cities, and 5 acres if it is located in other areas."

If the said regulation is applicable in the present case, the petitioner would be required to possess 5 acres of land as the college of the petitioner Trust is not located in a metropolitan city.

10. Now, therefore, though in terms of the NCTE Regulations, the petitioner is required to possess 3000 sq. mts. of land, under the UGC Regulations, the requirement is 5 acres. The sole question that arises for consideration is whether the UGC norms in respect of requirement of land can be made applicable and affiliation can be refused despite the fact that the norms prescribed by the NCTE are satisfied and the NCTE has granted recognition for starting B.Ed. and M.Ed. in the petitioner's college.

11. At this juncture, reference may be made to the decisions on which reliance has been placed by the learned counsel for the respective parties.

11.1 In *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others*, , the Supreme Court discussed the scheme of the NCTE Act as under:

"36. For regulation and proper maintenance of norms and standards in the teacher education system and for all matters connected therewith, it was considered to establish a Central National Council for Teacher Education, for which purpose the Indian Parliament enacted the National Council for Teacher Education Act, 1993 (for short "the Act"). NCTE was to be established in terms of Section 3 of the Act and was to consist of the persons specified therein. For the purpose of the present case, we are required to refer to certain provisions of the Act. The first relevant provision which can be referred to is Section 12 of the Act which states the functions that are to be performed by NCTE. Section 13 places an obligation upon NCTE to conduct inspection of the institute in the prescribed manner. Other very significant provision is Section 14 that deals with the recognition of the institutions offering course or training in teacher education. One of the important powers of NCTE is the power of delegated legislation as contained in Section 32 of the Act. We shall deal with these provisions along with some other relevant provisions in some detail.

37. Under the scheme of the Act, in terms of Section 12, it shall be the duty of NCTE to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education, as per the Preamble of the Act. It has to lay down guidelines for compliance with recognised institutions for starting new courses of training and for providing physical and instructional facilities, staffing pattern and staff-qualification amongst others, to examine and review

periodically the implementation of the norms, guidelines and standards laid down by NCTE and to suitably advise the recognised institutions and foremost, it must ensure prevention of commercialisation of teacher education. For the purposes of ascertaining whether the recognised institutions are functioning in accordance with the provisions of this Act, the Council may cause inspection of any such institution to be made by such person as it may direct and in such manner as may be prescribed. A complete procedure has been provided under Section 13 for conducting inspection of the institution. After coming into force of the Act, every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under the Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by the Regulations.

38. Section 14(3)(a) provides the scope and requirement for establishing such institution. The recognition may be granted to an institution when it has adequate financial resources, accommodation, library, qualified staff, laboratory and it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education as may be determined by regulations and upon such conditions as may be imposed. If an institution does not satisfy the requirements of Section 14(3)(a), the Council may pass an order refusing recognition to the institution for reasons to be recorded. Such grant and/or refusal has to be published in the Official Gazette and communicated in writing to the institution and to the examining body or the State Government concerned and the Central Government in accordance with Section 14(4).

39. Section 14(6) will be of some significance once we deal with the facts of the present case, as it is a provision providing interlink between recognition of an institution by NCTE, on the one hand and affiliation by the examining body, on the other. Section 14(6) reads as under:

"14. (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."

40. Linked to this very provision is the provision of Section 16 of the Act that 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 (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."

41. The institution which does not comply with the terms and conditions imposed or contravenes any terms and conditions subject to which the recognition was granted, any regulation, orders made under the Act and/or any provision of the Act, NCTE may withdraw recognition of such recognised institution for reasons to be recorded in writing under Section 17(1) subject to compliance with the conditions stated therein. Once the recognition is withdrawn, the following very serious consequences follow in terms of Section 17(3) of the Act:

1. such institution shall discontinue the course or training in teacher education;
2. the University or the examining body concerned 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.

Following the date of communication of such order, an institution which carries on and offers any course of training in teacher education in terms of Section 17(4), the degree obtained from such an institution shall not be treated as valid qualification for employment under any State Government or the Central Government, government university or school, college or any other government institution.

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

43. Section 16 opens with a non obstante language and has an overriding effect over all other laws for the time being in force. It requires that unless the institution concerned has obtained recognition from the Regional Committee concerned, no examining body "shall", on or after the appointed day, grant affiliation, whether provisional or otherwise, or even hold examination, whether provisional or otherwise, for the courses in the teacher training programme. On the other hand, Section 17(3) also uses the expression "shall" thereby making it mandatory for the University or the examining body to cancel affiliation of the institution in accordance with the order passed by NCTE withdrawing the recognition of the institution. These provisions convey the significant, vital and overriding effect of this Act in comparison to other laws in force."

On the question of grant of affiliation the court held thus:

"52. Under the scheme of the NCTE Act, there are three principal bodies involved in processing the applications for grant or refusal of recognition for running of

teacher training courses by various institutions. They are NCTE, the State Government, the affiliating body or the University, as the case may be. Each of these stakeholders has been assigned a, definite role under the provisions of the NCTE Act and even the stage at which such role is required to be performed. The provisions of the NCTE Act even identify the scope and extent of power which each of these bodies is expected to exercise. As already noticed, the NCTE Act has been enacted with the object of constituting a National Council with a view to achieve planned and co-ordinated development of teacher education system throughout the country and also to ensure maintenance of proper norms and standards in teacher education system. NCTE is a specialised body and is expected to perform varied functions including grant of recognition, ensuring maintenance of proper norms and standards in relation to teacher education, inspection of the colleges through experts and to ensure strict adherence to the time schedule specified under the NCTE Act and the Rules and Regulations framed therein.

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

54. The non obstante language of Section 16 requires the affiliating body to grant affiliation only after recognition or permission has been granted by NCTE. The provisions of Section 16 give complete supremacy to the expert body/NCTE in relation to grant of recognition. In fact, it renders the role of other bodies consequential upon grant and/or refusal of recognition. When NCTE is called upon to consider an application for grant of recognition, it has to consider all the aspects in terms of Section 14(3)(a) of the NCTE Act. The amplitude of this provision is very wide and hardly leaves any matter relatable to an educational institution outside its ambit. To put it simply, NCTE is a supreme body and is vested with wide powers to be exercised with the aid of its expertise, in granting or refusing to grant recognition to an educational institution. NCTE is the paramount body for granting the approval/recognition not only for commencing of fresh courses but even for increase in intake, etc. The Council has to ensure maintenance of educational standards as well as strict adherence to the prescribed parameters for imparting of such educational courses, including the infrastructure. The provisions and scheme of the NCTE Act are in pari materia with that of the Medical Council of India Act, 1956 and the All India Council for Technical Education Act, 1987, etc."

"68. Now, let us examine the conflict that arises in the present cases. In terms of the provisions of the Act, the Regional Committee is required to entertain the application, consider State opinion, cause inspection to be conducted by an expert team and then to grant or refuse recognition in terms of the provisions of

the Act. Once a recognition is granted and before an institution can be permitted to commence the course, it is required to take affiliation from the affiliating body, which is the university.

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

70. Under Section 14 and particularly in terms of Section 14(3)(a) of the Act, NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In other words, granting recognition is the basic requirement for grant of affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining body. It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expressions of distinct meaning and consequences. In *Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others*, this Court held that:

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

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

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

(a) eligibility of students for admission;

- (b) conduct of examinations;
- (c) the manner in which the prescribed courses should be completed; and
- (d) to see that the conditions imposed by NCTE are complied with.

Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto."

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

(Emphasis supplied.)

11.2 The Allahabad High Court in the case of Sampurnanand Sanskrit University Vs. State of U.P., Director, State Council of Educational Research and Training (S.C.E.R.T.), National Council for Teacher Education and Union of India (UOI), has held that the norms, guidelines and standards made by the Council will supersede any standards which may have been made by the University Grants Commission or State Government for teachers' education in the University and the institutions. Any other interpretation will defeat the object and purpose of NCTE Act, 1993. In Sarvoday Charitable Trust Vs. Gujarat University and Another, , this court held that it is obligatory for the University to grant affiliation to an institute that has received recognition from National Council for Teacher Education. In Sharada Education Trust v. State of Gujarat (supra), this High Court held that once NCTE has granted recognition, there should be no hesitation

in granting affiliation and allotment of students. In *Bharuch Jilla Adarsh Samaj Seva Mandal Vs. Veer Narmad South Gujarat University and Others*, , this High Court held that as far as grant of affiliation is concerned, the University is bound to grant the same once recognition is granted by the NCTE. In *Shimla Education Society and Trust Vs. State of H.P. and Another*, , the Himachal Pradesh High Court held that once the permission is granted by the competent authority as per the Central Act, there is no requirement of further fulfilment of any condition prescribed by the State. The State is not a regulatory body under any law of the land, either a Central or a State Act. In *Vikram Sarabhai Educational Trust and B.Ed. College Vs. University of Calicut and Another*, , the Kerala High Court held that where the recognition has been granted by the Regional Committee of NCTE, the University cannot decline affiliation on the ground of lack of infrastructural facilities.

12. Thus, on a conspectus of the above decisions, it clearly emerges that the provisions of the NCTE Act have a vital and overriding effect in comparison to other laws in force. The NCTE Act is a special Act enacted to cover teacher training education and, thus, has to receive precedence over other laws in relation to that field. The provisions of section 16 of the NCTE Act give complete supremacy to the expert body/NCTE in relation to grant of recognition and in fact, it renders the role of other bodies consequential upon grant and/or refusal of recognition. The Council is the authority constituted under the Central Act and has the responsibility of maintaining education standards and judging upon the infrastructure facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The Department of the State concerned and the affiliating university have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. Moreover, the affiliating body/examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition.

13. In *Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others*, , on which reliance has been placed by the learned counsel for the University, the Western Regional Committee of NCTE had committed grave irregularities in granting recognition to private institutions who did not fulfill the mandatory conditions relating to financial resources, accommodation, library, laboratory and other physical infrastructure and qualified staff and admitted students who had either not passed the entrance test or had not appeared for the centralised counselling conducted under the directions issued by the State Government. In this context, the Supreme Court held thus:

"87. As a sequel to the above discussion, we hold that the impugned orders do not suffer from any legal infirmity warranting interference by this Court. We also reiterate that:

(i) The Regional Committees established under Section 20 of the 1993 Act are duty-bound to ensure that no private institution offering or intending to offer a course or training in teacher education is granted recognition unless it satisfies the conditions specified in Section 14(3)(a) of the 1993 Act and Regulations 7 and 8 of the Regulations. Likewise, no recognised institution intending to start any new course or training in teacher education shall be granted permission unless it satisfies the conditions specified in Section 15(3)(a) of the 1993 Act and the relevant Regulations.

(ii) The State Government/UT Administration, to whom a copy of the application made by an institution for grant of recognition is sent in terms of Regulation 7(2) of the Regulations, is under an obligation to make its recommendations within the time specified in Regulation 7(3) of the Regulations.

(iii) While granting recognition, the Regional Committees are required to give due weightage to the recommendations made by the State Government/UT Administration and keep in view the observations made by this Court in *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*, and *National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others etc. etc.*, which have been extracted in the earlier part of this judgment.

(iv) The recognition granted by the Regional Committees under Section 14(3)(a) of the 1993 Act read with Regulations 7 and 8 of the Regulations and permission granted under Section 15(3)(a) read with the relevant Regulations shall operate prospectively i.e. from the date of communication of the order of recognition or permission, as the case may be.

(v) The recognition can be refused by the Regional Committee under Section 14(3)(b), in the first instance, when an application for recognition is made by an institution. Likewise, permission can be refused under Section 15(3)(b).

(vi) If the recognition is refused under Section 14(3)(b) after affording reasonable opportunity to the applicant to make a written representation, the institution concerned is required to discontinue the course or training from the end of the academic session next following the date of receipt of the order.

(vii) Once the recognition is granted, the same can be withdrawn only under Section 17(1) if there is a contravention of the provisions of the Act or the Rules, or the Regulations, or orders made therein, or any condition subject to which recognition was granted under Section 14(3)(a) or permission was granted under Section 15(3)(a).

(viii) The withdrawal of recognition becomes effective from the end of the academic session next following the date of communication of the order of withdrawal.

(ix) Once the recognition is withdrawn under Section 17(1), the institution concerned is required to discontinue the course or training in teacher education

and the examining body is obliged to cancel the affiliation. The effect of withdrawal of the recognition is that the qualification in teacher education obtained pursuant to the course or training undertaken at such institution is not to be treated as valid qualification for the purpose of employment under the Central Government, any State Government or university or in any educational body aided by the Central or the State Government.

(x) In view of the mandate of Section 16, no examining body, as defined in Section 2(d) of the 1993 Act, shall grant affiliation unless the applicant has obtained recognition from the Regional Committee under Section 14 or permission for starting a new course or training under Section 15.

(xi) While granting affiliation, the examining body shall be free to demand rigorous compliance with the conditions contained in the statute like the University Act or the State Education Board Act under which it was established or the guidelines/norms which may have been laid down by the examining body concerned.

(xii) No institution shall admit any student to a teacher training course or programme unless it has obtained recognition under Section 14 or permission under Section 15, as the case may be.

(xiii) While making admissions, every recognised institution is duty-bound to strictly adhere to Paras 3.1 to 3.3 of the Norms and Standards for Secondary/Pre-School Teacher Education Programme contained in Appendix 1 to the Regulations.

(xiv) If any institution admits any student in violation of the Norms and Standards laid down by NCTE, then the Regional Committee shall initiate action for withdrawal of the recognition of such institution and pass appropriate order after complying with the rules of natural justice.

(xv) The students admitted by unrecognised institution and institutions which are not affiliated to any examining body are not entitled to appear in the examination conducted by the examining body or any other authorised agency.

(xvi) The students admitted by the recognised institutions otherwise than through the entrance/eligibility test conducted in accordance with the admission procedure contained in Para 3.3 of Appendix 1 to the Regulations are also not entitled to appear in the examination conducted by the examining body or any other authorised agency.

(xvii) NCTE shall issue direction for mandatory inspection of recognised institutions on periodical basis and all the Regional Committees are duty-bound to take action in accordance with those directions.

(xviii) In future, the High Courts shall not entertain prayer for interim relief by unrecognised institutions and the institutions which have not been granted affiliation by the examining body and/or the students admitted by such institutions for permission to appear in the examination or for declaration of the

result of examination. This would also apply to the recognised institutions if they admit students otherwise than in accordance with the procedure contained in Appendix 1 of the Regulations."

14. Thus, the said decision relates to a case where the recognition was granted without satisfying the norms prescribed by the NCTE and was not a decision pertaining to grant of affiliation by a university after NCTE has granted recognition. As held by the Supreme Court in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.* (supra), the requirements which have been examined and the conditions which have been imposed by the NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of State law. The affiliating/examining body and the State Government must abide by the proficiency and command of NCTE's directions. To give an example, existence of building, library, qualified staff, financial stability of the institution, accommodation etc. and the subjects which are specifically covered under section 14(3)(b) of the Act. Thus, they would not be open to re-examination by the State and the university. If the recognition itself was conditional and those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform NCTE forthwith of the shortcomings and non-compliance of the conditions. However, the examining body can impose conditions in relation to its own requirements. These aspects are:

- (a) eligibility of students for admission;
- (b) conduct of examinations;
- (c) the manner in which the prescribed courses should be completed; and
- (d) to see that the conditions imposed by NCTE are complied with.

The present case does not relate to the aspects enumerated at (a) to (c). Here NCTE has granted recognition after being satisfied that all the requirements prescribed by it in this regard are satisfied. Thus, when the NCTE has examined the requirements and imposed conditions, the examining body cannot alter such requirements under the garb of regulations prescribed by the UGC. The standards and norms prescribed by the UGC would be applicable to the extent the same are not in conflict with the Central law, however, in matters where the Central law prescribes any requirements, the standards and norms prescribed by the UGC would not be applicable in view of the overriding effect of the provisions of the NCTE Act. Therefore, the insistence of the respondent University that the petitioner should possess five acres of land as prescribed under the UGC Regulations despite the fact that the requirements of infrastructural facilities including area of land as prescribed by the NCTE are duly satisfied by the petitioner, is contrary to the law laid down by the Supreme Court in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.* (supra). Nonetheless, within the framework of the norms and standards prescribed by the NCTE, it is open for the University to see that the conditions imposed by NCTE are complied with. In this

regard, a perusal of both the impugned resolutions shows that it is not the case of the respondent University that any norm prescribed by the NCTE has not been satisfied by the petitioner. In fact even as late as on 6th June, 2014, during the pendency of the present petition, pursuant to the order dated 5th June, 2014 passed by this court, the respondent University while reaffirming its earlier resolution dated 12th May, 2014 has not accepted the representation on the following grounds (as translated into English):

(1) As the norms determined by the UGC for affiliation have been accepted by the University, it is necessary for the institution to have five acres of land and building.

(2) As per the conditions imposed vide letter dated 14th March, 2008 No. WRC/5-6/102nd/2008/30437 it has been shown that the recognition is conditional upon the institution complying with the conditions laid down by the other authorities, the essence of which is as under:

"Further, the recognition is subject to fulfilment of all such other requirements as may be prescribed by other regulatory bodies like UGC, affiliating University, Body, the State Government etc, as applicable."

(3) In this regard other institutions had made applications for affiliation, however since they did not possess the norms prescribed by UGC the applications for affiliation by such institutions had not been granted and the concerned institutions had filed Special Civil Application No. 2207/2013, Special Civil Application No. 6917/2013 and Special Civil Application No. 6560/2014 as well as Letters Patent Appeal No. 2803/2014 before the Supreme Court, however, the High Court at Ahmedabad as well as the Supreme Court at Delhi had upheld the resolution of the University regarding requirement of five acres of land.

Thus, the University having accepted the norms prescribed by the UGC and the institutions not satisfying the norms prescribed by the UGC, no relaxation can be made in the rules and hence the resolution No. 2 of the Executive Committee in its meeting held on 12th May, 2014 in respect of the said institution is hereby maintained.

15. Thus, by the said resolution dated 6th June, 2014, the representation of the petitioner has been turned down on the ground that there can be no relaxation in the norms prescribed by the UGC. There is not even a whisper therein to the effect that the norm which provides that the land should be unencumbered is not satisfied. Now, by way of the affidavit-in-reply filed in response to the averments made in the petition, a new ground has been advanced that the petitioner has mortgaged the land subsequent to the grant of recognition, which contention is based upon documents which the petitioner has submitted together with the application for grant of affiliation. Therefore, if the petitioner is not, in any manner, qualified for grant of affiliation, the same would have been mentioned in the impugned resolutions. Now merely because the ground on which the petitioner's application for affiliation is not being considered is not a valid one, a

new ground is sought to be urged, which is also a factual one. Therefore, at this stage, the respondent cannot be permitted to refuse the affiliation on a ground which was never sought to be urged earlier. The said ground being based upon a disputed question of fact, this court would not embark upon a fact finding inquiry and decide the issue one way or the other. Therefore, insofar as the question of the petitioner having encumbered the land, the respondent is not permitted to raise such question at a belated stage; nor can it be permitted to take the same into consideration while considering the application for affiliation. At this stage, the respondent University shall consider the application made by the petitioner for grant of affiliation keeping in mind the fact that the requirements laid down by the NCTE have been satisfied. While considering the application, the respondent University shall not insist upon compliance with the norms laid down by the UGC Regulations in respect of infrastructural facilities or any other matter in respect of which the NCTE has prescribed specific norms. However, it would be open for the respondent University to bring to the notice of the NCTE any breach of the conditions imposed by it subsequent to the grant of recognition to the petitioner college and the NCTE may take necessary action thereupon in accordance with law.

16. Mr. P.S. Champaneri, learned counsel for the NCTE had invited the attention of the court to sub-regulation (7)(iv) of regulation 8 of the NCTE Regulations to submit that the society sponsoring the institution shall be required to transfer and vest the title of the land and building in the name of the institution within a period of six months from the date of formal recognition order under sub-regulation (11) of regulation 7. In this regard it may be noticed that as to whether or not such condition has been complied with is not subject matter of this petition. The petitioner has been granted recognition by the NCTE way back in the year 2005. In the interregnum, it was always open for the NCTE to insist upon compliance of the said condition. In fact, if any requirement was not complied with, it was for the NCTE to take appropriate action in accordance with law. Now after a period of nine years since the grant of recognition, in a matter relating to imposition of norms other than that prescribed by the NCTE, the question as to whether the requirements pursuant to grant of recognition have been complied with cannot be permitted to be raised. Moreso, when the same is a question of fact and no material in relation thereto has been brought on record by the NCTE. Needless to state that if any requirement for grant of recognition is not satisfied or there is a breach of any condition imposed while granting recognition or any subsequent requirement is not satisfied, the NCTE has ample powers to take suitable action in that regard and the grant of relief in this petition would not come in the way of the NCTE in taking any action in accordance with law. At present, having regard to the scope of the controversy involved in the present case, in the opinion of this court, the grounds for non-consideration of the petitioner's application for affiliation are not germane. Since no other ground has been advanced by the University in the two resolutions passed by it, at this stage, the University is not permitted to refuse to consider

the application for affiliation on any new ground. In the light of the above discussion, the petition succeeds and is accordingly allowed. The impugned resolutions dated 12th May, 2014 and 6th June, 2014 passed by the Executive Committee of the respondent No. 1-University are hereby quashed and set aside. Accordingly, the respondent No. 1-University shall consider the pending application of the petitioner for grant of affiliation at the earliest, without insisting upon compliance of any norms or guidelines prescribed by the University or by the UGC which are contrary to the norms prescribed by the NCTE and shall also pass consequential orders. Rule is made absolute accordingly with no order as to costs.