
(2016) 06 AHC CK 0040

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28141 of 2016

C/M Babu Baij Nath Singh Mahavidyalaya And Another

APPELLANT

Vs

State of U.P. and 4 Others

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 49

Citation : (2016) 6 ADJ 506 : (2016) 5 ALLJ 1 : (2016) 5 AllWC 4438 : (2016) 3 UPLBEC 2174

Hon'ble Judges : Pradeep Kumar Singh Baghel, J.

Bench : Single Bench

Advocate : Shivendu Ojha and Radha Kant Ojha, Advocates, for the Appellant; C.S.C., Brajesh Datta Pandey, Ramanuj Tiwari, Rijwan Ali Akhtar and Saumitra Singh, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioners have instituted this writ proceedings under Article 226 of the Constitution of India for quashing of an order dated 22nd May, 2016 communicated by the Registrar of Deen Dayal Upadhyay Gorakhpur University, Gorakhpur denying affiliation to the petitioners' institution for the academic session 2016-18 and for a direction upon the respondents to permit the petitioners' institution to participate in the counselling and also to allot the students on the basis of entrance examination conducted for B.Ed. course for session 2016-18.

2. The basic facts pertinent to the issue in question may be stated as follows:

Baij Nath Smarak Sansthan, Deorhi, Deoria is a Society, which is registered under the provisions of the Societies Registration Act, 1860. It has established a degree college, namely, Babu Baij Nath Singh Mahavidyalaya, Deorhi, Deoria (College), which is affiliated to Deen Dayal Upadhyay Gorakhpur University, Gorakhpur (the University). The college is governed under the provisions of the

Uttar Pradesh State Universities Act, 1973 (Act, 1973) and the First Statutes of the University. The college runs undergraduate classes. It is a self-financing institution.

3. In the year 2012, the petitioners made an application to the Northern Regional Committee (NRC) of the National Council for Teacher Education (NCTE) for recognition to run Bachelor of Education (B.Ed.) course in the college.

4. The NCTE sent a team of Experts, Visiting Team, with a view to assess the level of preparedness of the institution to commence the course. The Visiting Team made an inspection of the college and it has also got done videography of the building, laboratory, library, members of the staff, etc. The NRC in its 223rd meeting, which was held on 17th to 19th January, 2014, considered the report and videography submitted by its Expert Committee/Visiting Team. On the basis of the report submitted by the Visiting Team and the videography, the NRC was prima facie satisfied that the college possesses adequate financial resources, accommodation, library and laboratory, etc. as prescribed in the norms and standards and it also fulfils all such other conditions relating to infrastructural and instructional facilities required for proper functioning of the institution for a teacher education course. Hence, the NCTE decided to issue a letter of intent to the college and the same was issued on 08th February, 2014. It is worthwhile to notice that the letter of intent is issued prior to grant of recognition/permission for B.Ed. course.

5. In the letter of intent the NCTE laid down certain conditions to be fulfilled before grant of formal recognition, such as, submissions of documents relating to particulars of the staff duly approved by the University, advertisement in leading newspapers, educational & professional qualification certificates of all teaching staff, etc. It is stated that the college has made the appointment of the qualified teachers and the University vide its orders dated 19th February, 2015, 26th August, 2015 and 12th May, 2016 has accorded approval to 11 teachers in the college.

6. The NCTE having been satisfied that the college fulfils its norms for grant of recognition, vide its order dated 09th April, 2015 granted recognition to the college to run B.Ed. course for two years duration with 100 annual intakes (two units) from the academic session 2015-16.

7. It is stated that although the recognition was granted from the academic session 2015-16 but the petitioners could not be able to get the students for admission for the said session.

8. It is further stated that about 40 institutions had applied for recognition from the NCTE in the year 2012 but they were granted recognition in 2015. In those cases also, No-Objection Certificates (NOC) from the University were not taken. This aspect was considered by the Executive Council of the University in its meeting dated 18th May, 2016 and deferred the consideration on the ground that issue of NOC is under consideration of NCTE. It is stated that NCTE was likely to

take decision on 19th May, 2016, therefore, the Executive Council authorised the Vice-Chancellor of the University to take appropriate decision after the decision is taken by the NCTE on 19th May, 2016.

9. On 19th May, 2016 the NRC considered a letter of the Registrar of the University dated 22nd April, 2016, which was received in the office of the NRC on 10th May, 2016, and decided to grant recognition in respect of 29 institutions including the petitioners' college and rejected the recognition of 11 institutions. In the cases of all 29 institutions, the NRC was satisfied that the applications of these institutions for recognition were in process before the implementation of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 (Regulations, 2014). It also noted that the applications of the petitioners and other 28 institutions were in process before the Gazette Notification of the Regulations, 2014. It further noted that the approvals of the Faculty by the affiliating University were considered equivalent to NOC from affiliating University.

10. In spite of the recognition of the NCTE dated 09th April, 2016 the University issued a show cause letter dated 04th May, 2016 to the college calling upon it to submit a reply that without obtaining NOC from the University the college has secured permanent recognition from the NCTE. It was also mentioned therein that recognition granted by the NCTE is against the Regulations, 2014 and letter of the NCTE dated 21st May, 2015. The petitioners submitted a reply on 10th May, 2016 and pointed out that the recognition is for the session 2015-16. Hence, the requirement of NOC in view of the Regulations, 2014 is not required.

11. On 22nd May, 2016 the University has issued the impugned order rejecting the application of the petitioners for affiliation to run B.Ed. course amongst other grounds that the University has not issued no objection to the college.

12. Relevant, it would be to mention that said decision was taken by the Affiliation Committee (IEC)rk Ifefr).

13. The next ground mentioned in the impugned order is that the letter of intent was issued under Clause 7(9) of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 (Regulations, 2009) on 18th February, 2014, however, approval of 11 lecturers have been granted on 19th February, 2015, 26th August, 2015 and 12 May, 2016, whereas the permanent recognition has been granted by the NCTE on 09th April, 2015 under Regulation 7(16) of the Regulations, 2014.

14. It is averred in the writ petition that for admission in B.Ed. course a common entrance examination has been conducted at the State level by the Lucknow University and the result was declared and the counselling has started since 06th June, 2016. Therefore, there is extreme urgency in the matter because in case the students are not allotted to the petitioners' college, it will suffer irreversible loss as it has already lost one session of 2015-16 in spite of the fact that it was granted recognition from session 2015-16.

15. The petitioners have averred that the University had sent a separate Expert Committee for inspection of the infrastructure available in the college. The three-Member Expert Committee constituted by the University was comprised of the Regional Higher Education Officer and two experts. It is stated that the said Committee found that the college has necessary infrastructure in terms of the requirement of the University and it made a recommendation for affiliation.

16. A counter affidavit has been filed on behalf of the University sworn by a Senior Assistant. The stand taken by the University is that to run B.Ed. course several requirements are to be completed and one of the requirements is that the college, which is submitting the application for recognition, has to annex the copy of NOC issued by the competent authority in order to prove that the land, on which college for B.Ed. course is going to run, belongs to the said society or the institution and in case NOC is not submitted, the application for recognition is considered to be incomplete.

17. A Government Order dated 27th September, 2002 was issued to the effect that no objection certificate granted by the State Government is to be submitted by the institution for granting recognition to the new college. It is stated that for regulating the institutions to run B.Ed. course, the Regulations, 2009 has been framed, which makes it mandatory for sending a certified copy of the registered land documents issued by the competent authority.

18. Thereafter, the Regulations, 2014 has been framed which has made it mandatory that online application for grant of recognition to run the B.Ed. course must accompany a no objection certificate issued by the competent authority about the land documents. Thus, NOC in respect of the land is mandatory. It has also referred a Government Order dated 05th February, 2014 in respect of the time-schedule. It is also stated that the University has sent the letter dated 22nd April, 2016 to the NCTE but the NCTE has wrongly granted the recognition.

19. A rejoinder affidavit has been filed by the petitioners. It is stated therein that the NCTE itself has clarified in its resolution dated 19th May, 2016 that there is no need of any NOC from the affiliating body. It is also stated that the petitioners have moved the application much before the new Regulations of 2014 were made and hence, it was governed under the Regulations, 2009, wherein it was provided that if the State Government does not send its objection within 45 days, then NRC will be free to take decision on merit. In the present case, the application was moved in the year 2012. In paragraph-8 of the rejoinder affidavit the petitioners have mentioned the name of several institutions which are similarly placed but the University has given them affiliation in spite of the fact that those institutions have also not taken NOC either from the State Government or from the University. There are about 15 such colleges. The names of some of the colleges have been mentioned by the petitioners. It is also stated that other Universities have also granted affiliation without insisting for NOC.

20. Along with the rejoinder affidavit, the petitioners have also brought on record

recommendations of the Expert Committee of the University. It is worthwhile to mention that the said Expert Committee was constituted by the University itself and the Committee has found that the college fulfils the norms of the University and the State Government. Hence, a recommendation has been made by the Committee of the University to grant affiliation. The University did not seek any time to rebut the averments made in the rejoinder affidavit. The learned counsel for the University in his submissions did not deny the said fact.

21. I have heard Sri Radha Kant Ojha, learned Senior Advocate appearing for the petitioners, assisted by Sri Shivendu Ojha, learned counsel for the petitioners, Sri B.D. Pandey, learned counsel for the University, Sri R.A. Akhtar, learned counsel for the NCTE, and Sri Vikram Bahadur Yadav, learned Standing Counsel.

22. Sri Radha Kant Ojha, learned Senior Counsel appearing for the petitioners, has submitted that the NCTE has granted recognition to the college on 09th April, 2015 from the academic session 2015-16. The University was bound to grant affiliation for the academic session 2015-16 in terms of Section 14(6) read with Section 17(3) & (4) of the National Council For Teacher Education Act, 1993 (NCTE Act). The insistence of the University for NOC was wholly irrelevant in view of the fact that the University had granted approval for the appointment of the teachers for B.Ed. course. He further submitted that the inspection panel constituted by the University had also found that the petitioners' college has all the necessary infrastructure, therefore, the University was bound to grant affiliation. It was also urged by him that the NCTE Act is enacted by the Parliament under Entry 66, List-I of the Seventh Schedule of the Constitution of India, therefore, the provisions of the State Universities Act in respect of the affiliation shall be deemed to be inoperative. He has placed reliance on a judgment of the Supreme Court in *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and others* (2006) 9 SCC 1 and a judgment of the Kerala High Court in the case of *Vikram Sarabhai Education Trust and B.Ed. College, Keipamangalam v. University of Calicut* 2009 (4) ESC 2826 (Ker) (FB). Lastly, he urged that the college has made the application in the year 2012, therefore, the Regulations, 2009 shall be applicable.

23. Learned counsel for the University Sri B.D. Pandey has submitted that the requirement of NOC is one of the mandatory provisions and the petitioners' college has failed to submit the NOC as required under the Government Order dated 27th September, 2002. Hence, the University has rightly rejected the application of the petitioners for affiliation. He further submitted that under the Regulations of 2009 and 2014 also NOC is mandatory. Learned counsel for the University has laid emphasis on the Government Order dated 27th September, 2002 in this regard. It is also urged by Sri Pandey that the students cannot be admitted by the college without affiliation of the University and this Court under Article 226 of the Constitution may not issue any direction to admit the students provisionally. Lastly, he urged that for grant of affiliation the University is entitled to be satisfied that the college has qualified teaching staff and proper

infrastructure. He has placed reliance on a judgement of the Supreme Court in the case of *Minor Sunil Oraon Tr. Guardian & ors. v. C.B.S.E. & ors.* JT 2006 (10) SC 375, and a judgment of this Court in *Samiksha Verma v. University of Lucknow and others*, 2009 (8) ADJ 648 (LB) for the proposition that by interim order the students should not be permitted to join a course or to appear in examination.

24. Sri R.A. Akhtar, learned counsel for the NCTE, submits that once the NCTE has granted recognition, the University is bound to grant affiliation in terms of Section 14(3) and 14(5) of the NCTE Act. He further submitted that the NOC is only a recommendation and in view of the deeming clause under Regulation 7(4) of the Regulations, 2009 the State Government is deemed to have granted no objection. He has also placed reliance on the judgment of the Supreme Court in *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (supra). Further, he urged that a combined reading of Section 14(4) & 14(6) read with Section 16 of the NCTE Act obligates an affiliating body to grant affiliation in case the NCTE has granted the recognition to the institution. The provisions of the NCTE Act indicate that it leaves no discretion to the affiliating body to impose any further condition particularly no objection from the State Government.

25. Before adverting to the submissions made by the learned counsel for the parties, it would be appropriate to refer the relevant provisions of the statutes which regulate the recognition by the NCTE, affiliation by the University and the role of the State Government.

26. The NCTE Act has been enacted by the Parliament. Its Preamble provides for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development for the teacher education system in the whole of the country, the regulation and proper maintenance of norms and standards in the teacher education system. The NCTE was set up in the year 1973 as a purely advisory body. It was felt that the said body could not achieve its objective as it had very little impact on the standards of teacher training institutions in the country. In view of the said fact, the Parliament enacted the National Council for Teacher Education Act, 1993. The object thereof was in the light of the national policy on education and the NCTE was empowered to provide necessary resources and capacity of accredited institution of teacher education. It was entrusted with the task to provide guidance regarding curricula and methods. The Parliament has enacted the NCTE Act under Entry 66 of List-I i.e. Union List of the Seventh Schedule of the Constitution of India. Entry 66 of List-I of the Seventh Schedule of the Constitution reads as under:

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

27. Before the Constitution (Forty-second Amendment) Act, 1976, Entry 11 of the State List i.e. List-II of the Seventh Schedule provided for the education including Universities subject to the provisions of Entries 63, 64, 65 and 66 of

List I and Entry 25 of List-III. After the said amendment, Entry 25 of List-III provides that the education, including, technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

28. The aforesaid Entries indicate that insofar as the higher education or research on scientific and technical education is concerned, that has not been subject to any amendment and was always under the purview of the power of Parliament. The Constitution (Forty-second Amendment) Act, 1976 came into force with effect from 03rd January, 1977, and the only change thereafter made was that Entry 11 of List-II was merged with Entry 25 of List-III from the List-II. The amended Entry 25 of List-III explicitly lays down that it is subject to the provisions of Entries 63, 64, 65 and 66 of List-I.

29. As noticed above, the preamble of the NCTE Act provides that one of the main objects of the Act is to achieve planned and coordinated development of teacher education throughout the country. Section 2(d) of the NCTE Act defines the "examining body" in the following terms:

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

Section 2(i) of the NCTE Act gives the definition of "recognised institution" thus:

"(i) "recognised institution" means an institution recognised by the Council under Section 14;"

Definition of "University" has been given under Section 2(n) of the NCTE Act, as under:

"(n) "University" means a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956, and includes an institution deemed to be a University under Section 3 of that Act (3 of 1956);"

30. Chapter II of the NCTE Act deals with establishment of the Council. Chapter-III enumerates various functions of the Council. Section 12(f) & (g) deals with laying down guidelines and standards in respect of teacher education. By an amendment, Section 12-A has been inserted in the NCTE Act by Act No. 18 of 2011 with effect from 01st June, 2012, which empowers the Council to determine the minimum standards of education and qualifications of persons for being recruited as school teachers also in respect of pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college. Thus, the teachers employed from pre-primary stage of the education were also included within the purview of the NCTE Act. Chapter-IV of the NCTE Act deals with recognition of teacher education institutions. Since the dispute in the present case relates to recognition and affiliation of institution, it is necessary to extract Section 14 of the NCTE Act, as under:

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

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

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

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

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

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

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

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

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

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

(a) grant affiliation to the institution, where recognition has been granted; or

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

31. Section 15 of the NCTE Act deals with the procedure for application for recognition. Since in the case in hand the recognition has been granted by the NCTE, Section 15 is not relevant for the purpose. Section 16 provides that the University shall not grant affiliation to any institution unless the institution concerned has obtained recognition from the Regional Committee under Section 14. Section 16 of the NCTE Act is quoted below:

"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."

Section 17 provides the consequences of contravention of the provisions of the Act. Sub-sections (3) & (4) of Section 17, being relevant for the purpose, are quoted below:

"(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."

32. Chapter-VII of the NCTE Act deals with miscellaneous matters. Section 31 gives power to the Central Government to make rules. The Central Government in exercise of the powers conferred by Section 31 of the NCTE Act has made the rules, namely, the National Council for Teacher Education Rules, 1997 (Rules, 1997). Rule 8 of the Rules, 1997 provides that an institution which intends to conduct the B.Ed. course shall be inspected to ascertain as to whether the institution has necessary physical and other infrastructure in terms of the

provisions of the NCTE Act and the Rules and Regulations made thereunder. Rule-8 of the Rules, 1997 reads as under:

"8. Inspection. - (1) The Council may inspect the recognised institutions in the manner specified in sub-rules (2) to (8).

(2) The Council shall approve a panel of names of experts in teacher education or educational administration who may be able to inspect the recognised institutions. The Chairman shall nominate at least two persons out to the panel of experts to a inspection team.

(3) The Council shall give a notice of its intention to the institution along with a questionnaire in Form "IV" seeking information within fifteen days on all relevant matters relating to the institution.

(4) On receipt of the completed questionnaire, the Council shall communicate the names of the members of inspection team and the date of inspection to the institution.

(5) The institution to be inspected shall nominate its one officer or employee, to be associated with the inspection team.

(6) The inspection team shall ascertain as to whether the institution is functioning in accordance with the provisions of the Act and the rules and regulations made thereunder.

(7) The members of the inspection team may, if deem necessary, interact with the faculty members and other employees of the institution.

(8) The inspection team shall submit its report to the Council within a period of fifteen days from the last day of the inspection."

33. Section 32 of the NCTE Act empowers the NCTE to make regulations not inconsistent with the provisions of the NCTE Act and the rules made thereunder. The Regulations, amongst others, provides the norms, guidelines and standards in respect of the minimum qualifications, form and manner, in which an application for recognition is to be submitted under sub-section (1) of Section 14, the conditions required for the proper conduct of a new course, etc..

34. At this stage, it would be advantageous to have a survey of the law on this subject and can start with the case of State of T.N. and another v. Adhiyaman Educational & Research Institute and others (1995) 4 SCC 104. The Parliament prior to enactment of the NCTE Act had enacted the All India Council for Technical Education (AICTE) Act in the year 1987 under Entry 66 of List-I of the Seventh Schedule of the Constitution. The AICTE Act deals with technical education. The said Act was also enacted with reference to Entry 66 of the Union List and Entry 25 of the Concurrent List. After the enactment of the AICTE Act, the conflict between the Central Act, AICTE Act, and the State Act, under which the Universities have been established, arose. The Supreme Court in the said case held as under:

"30. ? As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

In paragraph 41(iv) of the judgment i.e. Adhiyaman Educational & Research Institute (supra) the Supreme Court observed as under:

"41 (iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case."

35. The judgment of Adhiyaman Educational & Research Institute (supra) was followed by the Supreme Court in Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and another, (2000) 5 SCC 231. In this case the issue arose in respect of the affiliation by the Kerala University to a self-financing engineering college. In spite of the recognition from the AICTE, the University had rejected the application for affiliation on the ground that the State Government did not issue no objection. The Supreme Court held that as the AICTE Act occupied the field relating to the grant of approval, the requirement of the Kerala University Statute of approval of the State Government was found to be inconsistent with the provisions of the AICTE Act and hence, such requirement is illegal and void. The Court further held that the provisions of the Kerala University and its Statute would not be inoperative, except only those provisions which are inconsistent with the AICTE Act or regulations.

36. The conflict of the provisions of the NCTE Act and the State Universities Act came to be considered in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra). Learned Senior Counsel appearing for the petitioners has placed heavy reliance upon this judgment. In this case, the institution was granted recognition by the NCTE. However, the State Government took a stand that since there are large number of B.Ed. colleges in the State, therefore, the State Government took a policy decision to refuse permission to establish new B.Ed. colleges on policy consideration. The Supreme Court observed that similar objections were raised by the Government in the earlier case in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N. (1996) 3 SCC 15 and Jaya Gokul Educational Trust (supra). The Supreme Court held as under:

"61. Interpreting the statutory provisions, this Court held (at SCC p. 34, para 31)

that by enacting Section 10-A, Parliament had made "a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country". No further scope is left for the operation of the State legislation in the said field which was fully covered by the law made by Parliament. The Court, therefore, held that the proviso to sub-section (5) of Section 5 of the State Act which required prior permission of the State Government for establishing a medical college was repugnant to Section 10-A of the Central Act and to the extent of repugnancy, the State Act would not operate. The Court noted that in the scheme that had been prepared under the Regulations for the establishment of new medical colleges, one of the conditions for the qualifying criteria laid down was "essentiality certificate" regarding desirability and of having the proposed college at the proposed location which should be obtained from the State Government. The proviso to sub-section (5) of Section 5 of the Act, therefore, must be construed only as regards "proposed location". The "essentiality certificate", however, could not be withheld by the State Government on any "policy consideration" inasmuch as the policy and the matter of establishment of new medical college rested with the Central Government alone.

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

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on "policy consideration". As already observed

earlier, policy consideration was negated by this Court in *Thirumuruga Kirupananda Trust* (1996) 3 SCC 15 as also in *Jaya Gokul Educational Trust* (2000) 5 SCC 231.

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68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of no-objection certificate by the State Government/Union Territory. Absence or nonproduction of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned."

37. The law laid down in *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (supra) has consistently been followed by the Supreme Court. In the case of *National Council for Teacher Education and others v. Shri Shyam Shiksha Prashikshan Sansthan and others* (2011) 3 SCC 238, the Supreme Court held as under:

"40. In *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (2006) 9 SCC 1, this Court considered the question whether, after grant of recognition by NCTE, the State Government can refuse to issue no-objection certificate for starting B.Ed. colleges on the premise that a policy decision in that regard had been taken. After advertent to the relevant provisions of the Constitution, the Act and the Regulations and the judgment in *St. Johns Teachers Training Institute v. National Council for Teacher Education* (2003) 3 SCC 321, the Court held that final authority to take decision on the issue of grant of recognition vests with the NCTE and it cannot be denuded of that authority on the ground that the State Government/Union Territory Administration has refused to issue NOC."

38. The same issue has also been considered by a Division Bench of the Madras High Court in the case of *University of Madras v. Loordhu Ammal Educational Trust and anr.* 2005 W.L.R. 395. But the issue before the Madras High Court was slightly in different context. The issue which arose before the High Court was whether after the recognition of NCTE the affiliation by the University was automatic. In the said case the NCTE granted recognition, thereafter the institution applied for affiliation with the Madras University. The University asked the institution not to conduct the classes without provisional affiliation and to seek no objection from the Government. The institution challenged the orders of the University and the writ petition was allowed by the learned Single Judge. Before the Division Bench a submission was made whether grant of affiliation by the University was a formality. The Division Bench of the Madras High Court, speaking through Hon'ble Markandey Katju, J. (as he then was), held as under:

"15. We cannot accept the submission of the learned counsel for the first respondent that merely because recognition to the college has been granted by

NCTE, affiliation must necessarily be granted by the Madras University. Since the degree which would be granted will be that of Madras University obviously the Madras University, before granting affiliation, would like to be satisfied that the college seeking affiliation has proper facilities, competent and qualified teaching staff, etc.

16. Every University has got certain reputation, which it naturally wants to be protected and upheld. It is for this reason that before grant of affiliation, Universities make inspection, enquiry etc. about the college seeking affiliation.

17.

18. We are of the opinion that any college or institution admitting students for a degree in a University even before the University accords it affiliation is really committing fraud on those students and is cheating those students who are given admission, because those students can be left in the lurch if ultimately affiliation is not granted.

19. In our opinion, no college can claim affiliation as of right. It is only for the University in its discretion to grant affiliation or not. This Court cannot arrogate to itself the powers to grant affiliation, nor can it direct the University to grant affiliation. An act which the statutory authority has to do cannot be done by this Court, and this Court must exercise restraint in this connection."

39. In the review application, the Division Bench in its judgment reported in 2005(2) CTC 513 (Loordhu Ammal Educational Trust v. The University of Madras), held as under:

"4. In our opinion, the word "automatic" used in the aforesaid judgment should not be treated to mean that the Madras University must blindly grant affiliation whenever an order of recognition by NCTE under the NCTE Act, 1993 is produced before it. No doubt Section 14 (6) says that the examining body, on receipt of the order under sub-section (4) of Section 14, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as an order of recognition from the NCTE is produced before the University it must close its eyes and straightaway grant affiliation.

5. In our opinion, when a recognition order of NCTE is produced before the University, the University can make a limited enquiry as to whether the Regional Committee before granting recognition followed the provisions of Section 14(3) (a) of the NCTE Act, which states:

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

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or

training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations."

6. It must be understood that a University is a centre of higher learning and naturally has to maintain its reputation and it will like to grant affiliation only to a college which has the proper facilities, qualified staff, financial resources, etc.

7. We may take a hypothetical case. Supposing a college which does not have the adequate facilities, qualified staff, financial resources etc. by manipulation or some fraud obtains a recognition certificate from the NCTE even though the procedure under Section 14(3)(a) has not been followed, and then it applies for affiliation to the Madras University, does not mean that the Madras University must close its eyes and even without making any enquiry on its own whether Section 14(3)(a) was complied with must straightaway grant affiliation? Madras University is a prestigious university which has produced outstanding scholars who have created a mark all over the world and we cannot accept the contention that Madras University must blindly grant affiliation just because the recognition certificate by NCTE is produced before it. Of course, if in the limited enquiry as to whether before granting recognition the Regional Committee had followed the procedure mentioned in Section 14(3)(a), the Madras University is satisfied that it was followed, then Madras University will have to grant affiliation, but it can certainly make this limited enquiry before doing so. After all, the degree which will be granted will be of Madras University."

40. A Full Bench of the Madras High Court in the case of Rukmani College of Education run by Rukmani Educational and Charitable Trust v. The State of Tamil Nadu and others approved the view taken by the Division Bench in the case of Loordhu Ammal Educational Trust (supra). The Full Bench of the Madras High Court, speaking through Hon'ble Ajit Prakash Shah, J. (as he then was), held as under:

"35. We have considered the provisions of the relevant statutes and the decided cases. In our opinion, it is impossible to accept the submission of the learned Counsel appearing for the Institution that merely because the recognition to the institution has been granted by the NCTE, affiliation must necessarily be granted by the University. If the interpretation as suggested by the Institution is given, it would only mean that the University has to grant affiliation even if the particular institution does not conform to the standards or does not meet the requirements of the Act, Statutes, Ordinances and Regulations of the University and may have the effect of destroying the very autonomy of the University. Merely because the NCTE Act is a Central Statute it does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore, there is a need to interpret the provisions of the Central Act and the State Act, harmoniously so that both are able to survive in the respective fields and also able to achieve their respective objectives. No doubt, Section 14(6) says that the University, on receipt of the order under Sub-section (4) of Section 14 of the

NCTE Act, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as the order of recognition from the NCTE is produced before the University, it is bound to close its eyes and straightaway grant affiliation. It would only mean that normally affiliation should not be refused on the ground which are covered by Section 14(3) of the NCTE Act, as the Council has already satisfied itself that the institute meets these requirements. However, this would not be an absolute rule and the University can make a limited enquiry as to whether the institution has proper facilities, competent teaching staff, etc. in consonance with Section 14(3) of the NCTE Act. If it is found that the college does not have the adequate facilities, qualified teaching staff, adequate financial resources, etc. or permission has been obtained by deception or fraudulent means, it would be open for the University to refer the matter to the NCTE for appropriate action. After all it is the University which confers the degree. It is the credibility, reputation or goodwill of the University which is at stake. Therefore, in our opinion, no institution can claim affiliation as a matter of right."

41. The Full Bench of the Madras High Court in *Rukmani College of Education (supra)* followed the view taken by a Division Bench decision of the Delhi High Court in *Rahul Dhaka Vikas Society v. Guru Govind Singh Indra Prastha University and others*, AIR 2001 (Del.) 154. The relevant part of the judgment of the Division Bench of the Delhi High Court reads as under:

"12. Naturally, such an interpretation as suggested by the Institute which leads to the aforesaid appalling and blighting consequences and may have the effect of destroying the very autonomy of an University and may give licence to an institution to violate the provisions of the Acts, Statutes, Ordinance etc. of the University with impunity, cannot be accepted. Merely because the NCTE Act is a Central Statute, does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore need is to interpret the provisions of the two Acts, one Central and other State, harmoniously so that both are able to survive in their respective fields and also able to achieve their respective objectives."

42. Insofar as the conflict between the guidelines of the NCTE and the provisions of the Statutes & Ordinances of the University is concerned, it came to be considered by the Supreme Court in the case of *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh and others* (2013) 2 SCC 617. In the said case, the Supreme Court quoted with approval its earlier judgment in the case of *Bhartia Education Society v. State of H.P.* (2011) 4 SCC 527, wherein it was held that "recognition" and "affiliation" are different. The University, which is an examining body, can impose conditions only in respect of those matters which deal with the admission of the students and the examinations. It also held that if the recognition is granted by the NCTE, in that event the affiliating body/ examining body has very limited scope to reject it in respect of those factors which have been considered by the NCTE while granting the recognition. The

relevant part of the judgment in *Maa Vaishno Devi Mahila Mahavidyalaya* (supra) reads as under:

"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 *Bhartia Education Society v. State of H.P.* (2011) 4 SCC 527 this Court held that: (SCC p. 534, para 19)

"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 student to participate in public examination 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."

43. The principle of law that emanates from the above judgments are that the matter in respect of infrastructure such as library, building, etc. is overlapping in the Central and the State Acts. For determination of the extent of inconsistency between the NCTE Act, Rules and Regulations with the University Act (Act, 1973), First Statutes of the University and Government Orders issued by the

State Government from time to time, it will be necessary to set out the relevant statutory provisions. Rule 8 of the Rules, 1997 has been set out in the earlier part of this judgment. Sub-rule (3) of Rule 8 provides that the Council shall give a notice of its intention to the institution along with a questionnaire in Form "IV" seeking information within fifteen days. Sub-rule (4) of Rule 8 further says that on receipt of the completed questionnaire, the Council shall constitute inspection team. Sub-rule (6) of Rule 8 enjoins that inspection team shall ascertain the information supplied by the institution.

44. A careful perusal of Form "IV" [sub-rule (3) of Rule 8 of the Rules, 1997] will demonstrate that the NCTE has laid down detailed guidelines and requirements in respect of, amongst others: Land and Building, Educational Technology, Library Resources, Sports and Physical Education Resources, Organisation and Management, Teaching Resources, etc.. For the sake of convenience, three items, regarding Land & Building, Educational Technology and Library Resources, of Form-IV are extracted below:

"20. Land and Building

- (a) Institution functions from its own building
- (b) Institution functions from a rented building
- (c) Institution building is under construction
- (d) Institution building is shared for running another course(s)
- (e) Title of the land is on free-hold ownership basis
- (f) Title of the land is long lease as per law

21. Educational Technology

- (a) Number of computers with supporting accessories
- (b) Access to Internet
- (c) Number of hands on experience hours provided to each student per week
- (d) Number of education related CR-ROMs available
- (e) Number of education related video-cassettes available
- (f) Number of education related audio-cassettes available
- (g) Website of the institution
- (h) Availability of LCD projector
- (I) Availability of Overhead Projector (OHP)
- (j) Availability of Television (TV)
- (k) Availability of Video Cassette Recorder (VCR)

(I) Availability of public address system

22. Library Resources

(a) Number of books in the library

(b) Number of books added to the library during the preceding year

(c) Total number of educational journals/periodicals being subscribed

(d) Number of encyclopaedia available in the library

(e) Number of books available in the reference section of the library

(f) Total seating capacity in the library

23. Sports and Physical Education Resources Institution has

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Organisation and Management

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45. Before enactment of the NCTE Act, 1993, the State Universities had the power to grant affiliation to Degree and Post Graduate Colleges to conduct B.Ed. course. The Act, 1973, the First Statutes of the University and Ordinance was a complete Code in itself. Section 37 of the Act, 1973 deals with affiliation to the colleges. The Executive Council is the authority to grant affiliation. In the State of U.P., all the State Universities are established and governed under the provisions of the U.P. State Universities Act, 1973. Section 49 of the Act, 1973 provides that the Statutes of the University may provide for any matter in respect of the constitution, powers and duties of the authorities of the University; classification and recruitment including minimum qualifications and experience of Principals and other teachers of the University; the institution of degrees and diplomas; the establishment of departments of teaching in the Faculties; the conditions under which the colleges and other institutions may be admitted to the privileges of affiliation or recognition by the University; the recognition of the Management of any affiliated or associated college, etc..

46. Section 50 of the Act, 1973 provides how the Statutes are made. It provides that the First Statutes of the Universities shall be made by the State Government by a notification in the Gazette. Thereafter, the Executive Council may at any time make new or additional Statutes or may amend or repeal the Statutes. It also provides that every new Statute or addition to a Statute or any amendment or repeal of a Statute shall be submitted to the Chancellor, who may assent to it or withhold his assent therefrom.

47. In exercise of the powers conferred by sub-section (1) of Section 50 of the Act, 1973, the Governor of the State has made the First Statutes of each of the University separately. The Deen Dayal Upadhyaya Gorakhpur University has also

its separate First Statutes, namely, Gorakhpur University First Statutes. The University was previously known as "Gorakhpur University". By the Uttar Pradesh State Universities (Second Amendment) Act, 1997 (U.P. Act No. 18 of 1997) an amendment has been made in the Act, 1973 to rename the Gorakhpur University as "Deen Dayal Upadhyaya, Gorakhpur University, Gorakhpur". By the same amendment, a new section, being Section 72-G has been inserted in the Act, 1973 after Section 72-F. Section 72-G provides that with effect from the date of commencement of the U.P. Act No. 18 of 1997 any reference to the University of Gorakhpur or any rules, Statutes, Ordinances, statutory instruments, or any other law for the time being in force or in any document or proceedings shall be construed as a reference to Deen Dayal Upadhyaya, Gorakhpur University, Gorakhpur. By the same amendment, Rohilkhand University, Bareilly was also renamed as Mahatma Jyotiba Phule Rohilkhand University, Bareilly. In view of the said amendment, the First Statutes of the Gorakhpur University is renamed as First Statutes of Deen Dayal Upadhyaya, Gorakhpur University, Gorakhpur.

48. Chapter-XIII of the First Statutes of the University deals with the affiliation of new colleges. Statutes 13.06, 13.07, 13.08, 13.09 and 13.10 give a detailed procedure for application and grant of affiliation. It requires creation of endowment fund, laboratory and other infrastructure. Statute 13.08 enjoins that a panel of Inspectors shall be appointed to inspect the college and make a detailed report on all relevant matters.

49. The scheme of the Act, 1973 and the First Statutes of the University demonstrate that the requirement in the Statutes and the guidelines of the NCTE in respect of infrastructure such as land building, library, etc. are overlapping. But the Rules, 1997, the Regulations and guidelines demonstrate that they are more and more elaborate and deal with details of the infrastructure, laboratory, library and other physical infrastructure than the First Statutes of the University and Government orders issued by the State. A close look of the aforesaid and their comparison lead to inescapable conclusion that the Central Act and its subordinate legislation cast a statutory obligation upon the NCTE to satisfy itself before granting the recognition regarding adequate infrastructure. No such detail is required under the First Statutes of the University. Insofar as the various Government orders are concerned, a close scrutiny of them will reveal that there is no consistency among them and more or less they are similar to the requirement of the NCTE.

50. It is noteworthy that after the enactment of the NCTE Act, no corresponding amendment has been made in the Act, 1973 or the First Statutes providing that the University will insist upon the requirement under the Act or the First Statutes of the University notwithstanding the requirement of the NCTE, nor the NCTE Act provides that the University will not insist for compliance of the requirements in its Act or the First Statutes. Thus, the provisions of the Central Act as well as the State Act, the Act, 1973, operate in the same field.

51. A careful analysis of the requirement for recognition under the NCTE Act, its

regulations and guidelines and the provisions of the State Universities Act and the First Statutes of the University indicate that some of the provisions are inconsistent but they are not incompatible. Both the provisions can be easily harmonized. In view of the aforesaid overlapping provisions, the Universities are bound to comply with the law laid down by the Supreme Court in the cases of *Jaya Gokul Educational Trust (supra)*, *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra)*, *Engg. Kamgar Union v. Electro Steels Castings Ltd. (2004) 6 SCC 36*, *Bhartia Education Society (supra)* and *Maa Vaishno Devi Mahila Mahavidyalaya (supra)*.

52. Accordingly, I find that the principles established by the above mentioned decisions clearly indicate that in respect of infrastructure, land building, laboratory, library, etc. if the NCTE is satisfied and it grants recognition then the University cannot re-examine the same on the basis of its First Statutes or Government orders. Therefore, in my view, the NCTE has a last word on the issue of grant of recognition and it cannot be denuded of that authority on the ground that the State or the University has not given its NOC. If the University is satisfied that the college has secured the recognition from the NCTE by fraud or misrepresentation which is grave in nature, it can point out to the NCTE, which shall take appropriate decision after furnishing opportunity to the college. The University has no authority to hold a parallel enquiry and refuse the affiliation. The University has an important role in respect of admission and examination. The law laid down in the aforesaid cases can be culled out in the following terms:

(I) NCTE Act is a Central Act. Wherever the State laws are irreconcilable with the Central law, the State law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to provisional education, including the teachers training programmes.

(II) Where the provisions of the State Act overlap and are in conflict with the provisions of the Central Act in various areas, the matters which are specifically covered under the Central Act shall prevail.

(III) The provisions of the Universities Act requiring the University to obtain merely the views of the State Government would not be characterised as requiring approval of the State Government.

(IV) The teachers' education and the matters connected therewith are fully covered and completely occupied by the NCTE Act, hence the State legislature can not encroach upon that field.

(V) The NCTE Act is referable to Schedule VII List I Entry 66. Hence, no law enacted by the State, which is in conflict with the Central law, can be permitted to be operative.

(VI) The examining body/University can impose conditions in relation to its own requirements regarding eligibility of students for admission, conduct of examinations, the manner in which the prescribed courses should be completed

and to see that the conditions imposed by the NCTE are complied with by the institution.

(VII) If the NCTE grants recognition under Section 14, the affiliation by the University is not automatic. The University may insist to comply its requirements. In case it is held that the affiliation is automatic, it will erode the autonomy of the University.

53. Reverting back to the facts of the present case, I find that the petitioners had made the application to the NRC in the year 2012. The NRC sent a team of the Experts for inspection of the college and it had also got done videography of the building, laboratory, library, etc. The report of the Visiting Team was considered on 19th January, 2014 by the NRC. Having considered the report and the videography, it was prima facie satisfied that the college possesses necessary infrastructure and other requirements as per the norms of the NCTE Act. Hence, it issued a letter of intent on 08th February, 2014.

54. The letter of intent is issued before grant of formal recognition and the institution is asked to appoint duly approved staff. Regard may be had to the fact that under the provisions of the Act, 1973, the approval of the Vice-Chancellor/ University is necessary for appointment of a teacher in any affiliated college. As noticed above, the college appointed the requisite number of the teachers and the University vide its orders dated 19th February, 2015, 26th August, 2015 and 12th May, 2016 accorded approval to 11 teachers in the college. The NCTE thereafter granted permanent recognition vide its order dated 09th April, 2015.

55. The University has rejected the affiliation to the petitioners' college primarily on the ground that the recognition of the NCTE to the college is contrary to the Government Order dated 27th September, 2002. The said Government order provides that no-objection certificate by the State Government is a mandatory. A copy of the said Government order is on the record. From a perusal of the Government order it is evident that it does not deal with recognition/affiliation to the institution which intends to conduct B.Ed. course. The Government order deals with the new degree colleges/existing degree colleges which want to seek affiliation for the new college or for affiliation of the additional subjects in existing colleges. It lays down norms with regard to infrastructure and requires no objection from the State Government. I find that the said Government order is not applicable in the present controversy.

56. A perusal of the aforesaid Government order also indicates that it lays down the norms with regard to the land, additional classrooms, library, furniture, etc. As noticed by the Supreme Court, these requirements have been taken care of by the detailed regulations of the NCTE. In *Maa Vaishno Devi Mahila Mahavidyalaya* (supra) the Supreme Court held that requirement in the Statutes of the State Act and the University about the conditions like adequate financial resources, suitable and sufficient building, adequate library, two hectares of land, facilities for recreation of students, etc. are squarely covered by the specified

language under the NCTE Act and its Regulations. The Supreme Court further held: "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 direction."

(Emphasis supplied)

57. From the minutes of emergency meeting of the NRC, NCTE held on 19th May, 2016 it is evident that the Registrar of the University in his letter dated 22nd April, 2016, which was received in the office of NRC on 10th May, 2016, has raised the issue with regard to non-issuance of NOC. The NRC has rejected the said stand of the University on the ground that the University has approved the faculty of the colleges and their applications were in process before implementation of the Regulations, 2014. It noted that the applications of these institutions were in process before the Gazette notification of the NCTE Regulations, 2014. It also noted that the appointment of the teachers have already been approved by the University. Thus, it considered the approval of the faculty equivalent to the NOC from the affiliating university. The NRC decided that in view of the approval granted by the University, no further action is required in respect of 29 institutions including the petitioners' college. The said decision of the NRC is very material for the present case and it reads as under:

"The applications of remaining 29 institutions mentioned in the letter were processed on the basis of the lists of the faculty duly approved by the competent authority of the affiliating university. These applications were in process before the implementation of the NCTE Regulations, 2014. NRC noted that applications of these institutions were in process before the Gazette Notification of NCTE Regulations, 2014, approvals of the faculty by the affiliating university were considered equivalent to the NOC from affiliating university. NRC decided that no further action is required with respect to the following 29 institutions mentioned in the letter of the university."

58. The stand of the University that the said decision of the NRC is illegal, is totally misconceived and untenable in view of the law laid down by the Supreme Court in the case of *St. Johns Teachers Training Institute v. NCTE* (2003) 3 SCC 321, *Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya* (supra), *Bhartia Education Society* (supra) and *College of Professional Education v. State of U.P.* (2013) 2 SCC 721.

59. Regard may be had to the fact that an Expert Committee constituted by the University had also made inspection of the petitioners' college and has submitted its report. A copy of the said report is on the record, which has not been denied by the University. A perusal of the said report of the Expert Committee indicates

that it is in conformity of the Government orders of 2002 and 2005, on which heavy reliance has been placed by the learned counsel for the University and with regard to which stand has been taken in the counter affidavit. In fact, the Committee has found that the college has adequate infrastructure, building, laboratory, library, etc. It appears that in view of the report submitted by its own panel, the University has not taken any objection with regard to lack of infrastructure, but has taken a stand about the no objection of the University.

60. In addition to above, the NCTE in a communication dated 21st May, 2015 addressed to the Secretary (Higher Education) and Secretary (School Education), Department of Education of all State Governments/Union Territories, a copy whereof was also forwarded to the Vice Chancellors of all Universities for information and necessary action, had invited their attention to the judgment of the Supreme Court in S.L.P. (C) No. 4247- 4247 of 2009 filed by the NCTE for grant of extension of time till June, 2014 to revise the norms and standards of various teachers education programmes. It had filed an interlocutory application before the Supreme Court which was disposed of and the date for formal order of recognition to pending applications was extended till 31st August, 2015 for the academic session 2015-26. Hence, the State Government was requested to issue direction to concerned affiliating University and to plan and fix some dates for affiliation of the recognised institutions and subsequent counselling for admission of the students for 2015-16 accordingly.

61. The State Government in terms of Regulation 7(3) & (4) of Regulations, 2009 was expected to send its comments to the NRC. Sub-clause (4) of Regulation 7 further provides that if recommendation of the State Government is not received within a period of 45 days from the date of issue of letter to the State Government, a reminder shall be sent by the Regional Committee to the State for its comments providing further time of another thirty days from the date of issue of the reminder, and thereafter on expiry of the said period, the meeting of the Regional Committee shall not be deferred on the ground of non-receipt of comments or recommendation of the State Government.

62. The role of the State Government in terms of Regulations 7(3) & (4) of the Regulations, 2009 has elaborately been dealt with by the Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra). The material part of the judgment, insofar as the present case is concerned, is extracted below:

"78. ... The opinion of the State, therefore, has to be read and construed to mean that it would keep the factors determined by NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the University to determine the grant or refusal of affiliation and role of the State should be bare minimum, non-interfering and non-infringing.

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, the NCTE shall send a copy of

the application with its letter inviting recommendations/comments of the State Government on all aspects within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified fields is called for. This is the stage where the State and its Department should play a vital role. They must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy vis-a-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated at the time of grant of affiliation. Once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to the life of the students working in the school because of non-compliance with a substantive condition imposed by either of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable."

63. As can be seen, the State Government did not send any comment to the NCTE that the entire process was vitiated by fraud or there was danger to the life of the students. In absence of the said comments of the State Government, as held by the Supreme Court, the role of the State is very formal one and the State Government is not expected to obstruct the admission process of the academic course once the recognition is granted. In view of the above law, the stand of the University that there was non-compliance of the Regulation 7(3) & (4) of Regulations, 2009 is untenable.

64. Insofar as the other ground mentioned in the impugned order is concerned, the petitioners state that the University has failed to consider that the college was granted recognition to run the B.Ed. course for two units for 50 seats each and for the session 2016-17 there will be only 50 students and also in the second session there will be 50 students, therefore, 1+7 ratio is sufficient for running first year B.Ed. course. Thus, for running one unit of 50 students the petitioners have completed all the formalities. As regards the third ground mentioned in the impugned order, it is stated that all the relevant documents were submitted to the three-Member Expert Committee constituted by the University and there was no allegation of mass-copying or any other irregularity in the said report. In respect of the fourth ground, it is stated in the writ petition that the petitioners have already submitted pass-book, therefore, it was not necessary to submit again the statement of bank account when pass-book was already submitted to the University.

65. As regards the submission of the learned counsel for the University that the University has already taken a decision by the impugned order on 21st May, 2016 and in view of the timeschedule fixed by the Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya (supra), now it would not be possible for the University to reconsider its decision is concerned, I find myself unable to accept said submission. The University has taken its decision before the cut off date i.e. 31st May, 2016. In case its decision is found to be contrary to the unbroken line of the decisions of the Supreme Court, the University cannot take a stand that it will not reconsider its decision even though it is found to be illegal, merely because the cut off date has expired.

66. In view of the reasons stated above, I find that once the decision taken by the University is found to be contrary and against the law laid down by the Supreme Court, this Court in its jurisdiction under Article 226 of the Constitution can direct the University to reconsider its decision in the light of the law laid down by the Supreme Court mentioned above.

67. For the reasons recorded herein-above, I find that the impugned order of the University dated 22nd May, 2016 needs to be quashed and accordingly, it is quashed. The matter is remitted to the University to take a fresh decision in accordance with law within three weeks from the date of communication of this order.

68. Accordingly, the writ petition is partly allowed. No order as to costs.