
(2014) 05 AHC CK 0147

In the Allahabad High Court

Case No : Writ Petition Nos. 1168 (M/S) 1933 & 4771 of 2014

Committee of Management

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 30, 30(1), 31
National Council for Teacher Education Act, 1993 — Section 14, 14(3), 14(3)(a), 14(6), 20
Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 — Section 12, 2, 2(d), 2(e), 3

Citation : (2014) 6 ADJ 162 : AIR 2014 All 130 : (2014) 5 ALJ 162 : (2014) 3 ESC 1761

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Advocate : S.G. Husnain, G.M. Kamil and Manish Kumar, Advocate for the Appellant; Mansoor Ahmad, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Narayan Shukla, J.—Heard Mr. S.G. Husnain, Mr. G.M. Kamil and Mr. Manish Kumar learned counsel for the petitioners and Mr. Mansoor Ahmad, learned Chief Standing Counsel. The petitioner being the minority institutions claim privilege from the application of clause 13 of the Government Order dated 22-7-2013. Therefore, the petitioner has challenged the said clause being unconstitutional and ultra vires to Article 19(1)(g) and Article 30(1) of the Constitution of India.

2. The Government Order dated 22.7.2013 provides the procedure of admission in B.T.C. training course. Clause 13 of the Government order relates to the minority institution and speaks that for the B.T.C. Training in the minority institution against 50% seats the selection shall be made by the Principal District Institute of Education & Training Institute of the district concerned and against remaining 50% seats the selection shall be made by the concerned institution in accordance with the procedure provided in this Government Order.

3. Mr. S.G. Husnain, learned Senior Counsel appearing for the petitioner submitted that Article 30 of the Constitution of India has given a fundamental right to the minorities to establish and administer educational institutions of their choice. He further stated that Article 19(1)(g) of the Constitution of India provides that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business. The petitioner is a recognized minority institution and has also been recognized for imparting education of B.T.C. Training course as per provisions of the National Council for Teacher Education Act, 1993 (in short N.C.T.E. Act). The N.C.T.E. Granted recognition to the petitioner-institution by means of letter dated 24th August, 2012 for conducting D.EL.ED. Course of elementary level of two years duration with an annual intake of 50 from the academic session 2012-13 under clause 7(II) of N.C.T.E. (Recognition Norms and Procedures) Regulations, 2009 subject to fulfillment of certain conditions. Out of the conditions laid down therein one condition was that the Institution shall make admission only after it obtains affiliation from the examining body. Therefore, the State Government by means of G.O. Dated 9th May, 2013 also granted affiliation for conducting B.T.C. Training course to the petitioner-institution, subject to conditions laid down by the N.C.T.E. As well as under the Government Order dated 9th May, 2013.

4. Learned counsel for the petitioner submits that by that time no such condition as the restriction in admission to 50% intake by the petitioner-institution was imposed. He further stated that the State Government, for the regulation of admission and fixation of fee in private educational institution enacted "The Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (hereinafter referred to as Regulation of Admission Act (2006)). Chapter III of the Act relates to admission in which Sections 5 to 9 are enumerated. Section 6 relates to allocation of seats and speaks that the State Government may, by notified order, reserve seats out of sanctioned intake, in an unaided professional educational private institution, other than minority institution, under management category. He stated that as is evident the Act not provide any reservation of seats. Therefore, the executive action of the State Government, i.e., issuance of Government Order dated 22.7.2013 restricting the admission only on 50% seats is totally violative of the Regulations of Admission Act, 2006.

5. He further drew the attention of this Court towards Section 14 of the N.C.T.E. Act which describes the provisions of recognition of Institutions Offering Course of Training in Teacher Education. By means of subsection (1) of Section 14 every Institutions offering or intending to offer a course or training in teacher education has been asked to move an application to the Regional committee for grant of recognition. Section 14(3) empowers the Regional committee to pass an order granting recognition being satisfied that such institution has adequate financial facility, accommodation, qualifying staff, library 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, Section

14(6) provides that every examining body shall, on receipt of the order under sub-section (a) grant affiliation to the Institution where recognition has been granted or (b) cancel the affiliation of the institution where recognition has been refused.

6. In the light of the aforesaid provisions the learned counsel for the petitioner submitted that after grant of recognition by NCTE it is obligatory upon the examining body to accord affiliation.

7. It is stated that the controversy involved in the matter has already been set at rest by Hon"ble the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, In Paragraph 68 of T.M.A. Pai's case (supra) Hon"ble Supreme Court has held as under,

"It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principles of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For Instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backwards sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non minority unaided and professional colleges. The same principles may be applied to other non professional but unaided educational institutions viz. Graduation and post graduation non-professional colleges or institutes."

In Paragraph 161 Hon"ble Supreme Court posed some question and answered. Relevant question No. 5 and its answers are quoted as under:

5(a) Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to

admit students to the colleges aforesaid, as in that extent, the institution will fail to achieve excellence."

8. Since some questions framed in T.M.A. Pai's (supra) case were unsettled, those were placed for settlement in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, With regard to the educational institutions Hon"ble Supreme Court in paragraph 121 of P.A. Inamdar's case has held as under"

"121. Affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with, the requirement of ensuring merit, excellence of education and preventing mal-administration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a pre-requisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be changed, cannot be regulated."

9. Under head of "Minority educational institutions receiving State aid" in paragraph 124 Hon"ble Supreme Court has made some observations regarding reservation of seats in unaided professional educational institutions. Paras 127, 128, 129, 130, 132 and 133 (paras 124, 125, 126, 127, 129 & 130) are quoted hereunder.

"127. Nowhere in Pai Foundation (supra) either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats."

"128. We make it clear that the observations in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State."

"129. In Pai Foundation (supra) it has been clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees."

"130. For the aforesaid reasons, we cannot approve of the scheme evolved in

Islamic Academy of Education and Another Vs. State of Karnataka and Others, to the extent it allows the States to fix quota for seat sharing between the management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy (supra) in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation (supra)"

"132. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in minority or non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1)."

"133. So far as the minority unaided institutions are concerned to admit students being one of the components of" the right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom."

10. Learned counsel for the petitioner also drew the attention of this Court towards another decision of Hon"ble Supreme Court rendered in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others, in which Hon"ble Supreme Court has demarcated the jurisdictional field of the center as well as the State by considering the provisions of the NCTE Act. Relevant paragraphs 62, 63, 74 and 80 are quoted hereunder;

"62. From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination 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 1 of Schedule VII to the Constitution and the 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 and Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State legislature subject to limitation 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 and 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".

"74. It is thus clear that the central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher education system" throughout the country." NCTE, therefore, in our opinion. It is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State Policy" to refuse such permission. In fact, as held by this Court in the cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

"80. In our opinion the observations that the provisions of Sections 82 and 83 of the Maharashtra Universities Act are" null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by the 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE u/s 14(6) of the Act, every university (examining body) is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases."

11. State has come forward to contest the matter by filing the counter affidavit in which it has been submitted that the impugned Government Order is completely in consonance of the provisions of Section 14 of the N.C.T.E. Act, 1993. It is stated that the petitioner-institution has been granted recognition for BTC/NTT course vide order dated 24.8.2011 by the NCTE, subject to fulfillment of all such other requirements as may be prescribed by the regulatory bodies like U.G.C., affiliating university/body, the State Government etc. as applicable. The institution has been granted affiliation on the recommendation of the State Level Committee for the academic session 2012-13 for 50 intakes, subject to the conditions that the rules and regulations framed time to time by the NCTE as well as the State Government would be applicable on the institution concerned and no change without prior approval of the State Government is permissible.

12. Mr. Mansoor Ahmad, learned Chief Standing Counsel submitted that the petitioner-institution has taken approval of the Secretary, Examination Regulatory Authority for starting B.T.C. Training course. In the order of approval it has been provided that the institution shall ensure approval of the faculty

members selected in accordance with law as per standard fixed by the NCTE. He further submitted that the Government Order impugned does not violate the law laid down by the U.P. Private Professional Educational Institutions (Regulations of Admission and Fixation of Fee) Act, 2006. He gave emphasis on Section 7 of the Regulation of Admission Act which provides the manner of admission. Sections 7, 8 and 9 are extracted below;

"7. Manner of admission--An unaided professional educational institution--

(a) shall make admission to a seat under the general category, on the basis of the Common Entrance Test, in such manner as may be prescribed by the State Government.

(b) may make admission to a seat reserved under management category, in such manner, as may be prescribed by the State Government, through a notified order.

8. Common Entrance Test--In aided professional educational institution, admission to sanctioned intake shall be on the basis of the Common Entrance Test in such manner as may be prescribed.

9. Admission--(1) Every admission to an aided or unaided educational institution, shall be made in accordance with the provisions of this Act or the rules made thereunder and every admission made in contravention thereof shall be void.

(2) The State Government or the Committee if satisfied that an aided or unaided professional educational institution has taken admission in violation of any provision of this Act or the rules or an order of the State Government issued in this behalf, it may recommend to the appropriate statutory body for the withdrawal of the affiliation or recognition of such institution."

13. He further submitted that the petitioner has not disclosed the fact that whether the institution is maintaining its minority character as in order to establish it, it is necessary to give the details of students but the same has not been disclosed. Since the petitioner has claimed the parity of one Tirthanker Mahavir university in the matter of admission, which is also a minority institution, the respondents have submitted that it has been considered under Tirthanker Mahavir University Act, 2008 which prescribes its own procedure to make an appointment. Therefore, it cannot be equated with other private unaided minority institution including the petitioner.

14. Learned Chief Standing Counsel further drew the attention of this Court towards the decision of Full Bench of this Court rendered in the case of Tuples Educational Society and Sri Sandeep Sangu Vs. State of U.P. and Chaudhary Charan Singh University, Relevant paragraph 16 is reproduced hereunder,

"16 Prior thereto, the learned Judge noted that under the NCTE Act regulations were framed vide Gazette publication dated 13.11.2002. Appendix 7 to these regulations contained norms and regulations for secondary education programme. The eligibility clause therein reads as follows:

"3 Eligibility.

(a) candidates with at least 45% marks in the Bachelor's/Master's Degree with at least two school subjects at the graduation level are eligible for admission.

(b) Admission should be made either on the basis of marks obtained in the qualifying examination or in the entrance examination conducted by the University/State Government, as per the policy of the State Government/University to which the institution is affiliated.

(C) There shall be reservation of seats for S.C./S.T./O.B.C./Handicapped/Women etc. as per the rules of the concerned State Government".

15. This case also relates to the admission to the B.Ed. course. In this case the petitioners, who were the Educational Institutions, submitted that till 2005-06 and 2006-07 in the absence of common entrance test conducted by educational institutions coming together or by the State Government Private Unaided Educational Institutions were entitled to grant admission to the students on the basis of marks obtained in the last examination or school leaving certificate stage followed by an interview.

16. Per contra the respondents submitted that admission to the B.Ed. course during these two academic years are made through the university level examination, which is regulated by the statutory orders that are permissible vide Section 28(5) of the U.P. State Universities Act, 1973.

17. The Full Bench of this Court examined the aforesaid rival submission in the light of the judgment of Hon"ble Supreme Court rendered in the cases of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, Islamic Academy of Education and Another Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, and held as under. Relevant paragraph 160 of T.M.A. Pai Foundation's case is quoted hereunder;

160. "A citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining inter alia, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces."

18. During the course of arguments a reference of Regulation of Admission Act, 2006 was made. However, a bare perusal of Section 2 of the Act shows that minority institutions have been excluded from the application of this Act. Therefore, in order to decide the controversy involved in the cases on hand, I feel it appropriate to discuss the provisions of the NCTE Act, 1993 and the executive policy framed by the State Government as well as the judicial pronouncements.

19. The preamble of NCTE Act, 1993 speaks that it is an Act to provide for the establishment of National Council for Teacher Education 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 (including qualification of schools teachers) and for matters connected therewith.

20. Section 2(d) of the Act defines "examining body" as examining body means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications. Section 2(e) defines "institution" as institution means an institution, which offers courses or training in teacher education. Section 3 of the Act provides for establishment of the council by the Central Government which is called National Council for Teacher Education.

21. Section 12 of the Act speaks about functions of the Council. It speaks that it shall be the duty of the Council to take all steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act. A number of steps have been enumerated for doing by the Council.

22. Section 14 provides provisions for recognition of institutions, who offer course or training in teacher education. Section 20 of the Act empowers the council to establish the Regional Committees to perform the function assigned to it by the Council.

23. Section 14 of the Act empowers the Regional Committee to accept the application from the Institution for grant of recognition and pass an order granting recognition to such institution, if it is satisfied that such institution has adequate financial resources, accommodation, library, qualifying staff, laboratory and such other conditions required for proper functioning of the institution for all courses or training in teacher education as may be determined by the Regulation. Pursuant to the decision of the Regional Committee for granting or refusing recognition to an institution for a course or training in teacher education examining body has been empowered to grant affiliation to the Institution where recognition has been granted or to cancel the affiliation of the institution where recognition has been refused.

24. In exercise of power provided u/s 32(2) of the NCTE Act, 1993 the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations 2009 have been framed. Clause 3(3) of Appendix 2 of the Regulations, 2009 provides the admission procedure and speaks that admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/UT Administration.

25. Regulation 7 of the Regulations, 2009 requires recommendation or comments on the application for grant of recognition by the State Government or Union

Territory Administration which shall be taken into consideration by the Regional Committee concerned while disposing of the application. Letter of indent regarding decision for grant of recognition would be sent to the Institution and affiliated body with request that the process of appointment of qualified staff as per policy of the State Government or University Grant Commission or University may be initiated. It is also provided that the institution shall submit the list of faculty as approved by the affiliating body to the Regional Committee. In appointment of faculty the approval of the affiliating body has been made compulsory and only on such information received by the Regional Committee it shall issue a formal order of recognition.

26. Regulation 8(7) (clause 1) provides that no institution shall be granted recognition under these regulations unless the institutions or society sponsoring the institution is in possession of required land on the date of application. Clause (2) provides that the Society sponsoring the institution shall have to ensure that proposed teacher education institution has well demarcated the land area as specified by the norms. The teacher education institution shall not be allowed to have any other institution within its demarcated area or building and shall not have any other course(s) in its building.

27. Thus, it is evident that the State Government/affiliating body plays an important role in the matter of grant of recognition.

28. In order to impart the teachers training course the NCTE has chosen the State Council of Educational Research and Training the State of U.P. Lucknow as its agent to accept the applications from the institutions offering the training courses on the format uploaded on the internet.

29. The State Government through its Government Order dated 22nd July, 2013 has notified all the details of the B.T.C. Training course including submission of the application therefor and its selection process. One Examination Regulatory Authority has been created by the Government to conduct the qualifying examination. It also provides that after final selection the candidates shall be allotted training center established by district institution of educational training as well as in the Private institution on the basis of preferences opted by the candidates. The selection shall be on the basis of merit which shall be based on the total quality point of marks awarded to the candidates on the basis of total marks obtained by them in the High School, Intermediate and graduation examination. Thus, it provides that the selection shall be on merit based.

30. In the judicial pronouncements the Hon"ble Supreme Court has also held that the admission in professional courses shall be based on merit and the merit shall not be compromised in any manner. The petitioners also do not dispute the merit based admission but submit that they cannot be compelled to admit 50% candidates from the list prepared by Principal District Education and training Institute and to this extent they feel offending from the provisions provided under clause 13 of the Government Order dated 22.2.2013. For admission

against 50% seats the institutions have been permitted for selection of the candidates in accordance with the provisions provided in the Government Order itself.

31. In *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, Hon''ble Supreme Court has held that unaided professional institutions are entitled to keep autonomy in their administration while at the same time, they do not forgo or discard the principles of merit.

32. It has been held that it would, therefore, be permissible for the University or the Government, at the time of granting recognition to require a private unaided institution to provide for merit based selection while at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the College concerned for admission while the rest of the seats may be filled up on the basis of counselling by the State agency.

33. In *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, Hon''ble Supreme Court held that the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing mal-administration. For example provisions can be made indicating the quality of the teachers. The existence of infrastructure sufficient for its growth can be stipulated as a pre-requisite to the grant of recognition or affiliation. Hon''ble Supreme Court also held that the unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

34. In the case of *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, the Hon''ble Supreme Court has held that the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE and thus held that the action of the State Government, which was contrary to law, has rightly been set aside by the High Court.

35. Thus, it is apparent that the NCTE has supreme role to examine the availability of the infrastructure of the institution as well as to examine the qualification of the faculty to uplift and maintain the standard of teachers' education but it cannot be denied that the NCTE acts through the State Government which is affiliating body as even for grant of recognition to the institution, recommendation of the State agency has been made compulsory under the NCTE Act.

36. At this stage it is worth to mention the case of *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others*, in which the scope of grant of

recognition and grant of affiliation by the examining body has been discussed in the following paragraphs;

69. Thus, grant of recognition or affiliation to an institute is a condition precedent to running of the courses by 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 *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* 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. u/s 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 the 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."

37. In this case Hon"ble Supreme Court has referred one its another decision, i.e., *Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others*, of this judgment is already quoted hereinabove as it is referred in the judgment of *Maa Vaishno Devi Manila Mahavidyalaya* (supra). However there are some more paragraphs, which are important in the reference of the present case. Those are quoted herein under:--

22. "Sub-section (6) of section 14 no doubt mandates every examining body to

grant affiliation to the institution on receipt of the order of NCTE granting recognition to such institution. This only means that recognition is a condition precedent for affiliation and that the 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. For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State government and/or the examining body. Even the order of recognition dated 17.7.2000 issued by NCTE specifically contemplates the need for the institution to comply with and fulfill the requirement of the affiliating body and State Government, in addition to the conditions of NCTE."

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

38. The institutions in question have been granted recognition for teacher training courses, subject to fulfillment of requirements as prescribed by the regulatory body like U.G.C., affiliating university/body, the State Government.

39. In the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra) Hon'ble Supreme Court held that granting recognition is 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. Hon''ble Supreme Court has also referred its another judgment, i.e. Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others, in which purpose of recognition and affiliation has been described.

40. In Paragraph 19 of the said judgment Hon''ble Supreme Court has held that purpose of recognition and affiliation is different. In the context of 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 the recognition is the licence to the institution to offer a course or training in teaching education.

41. In paragraph 22 of Chairman, Bhartia Education Society (supra) it has further been held that the recognition is a condition precedent for affiliation and that the 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. But this does not mean that the examining body cannot require compliance with this own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State Government or the examining body.

42. In paragraph 24 it has further been held that the examining body can impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The State Government and the examining body may also regulate the manner of admissions.

43. By means of Government Order impugned dated 22nd July, 2013 the State Government has provided the procedure for selection for B.T.C. Training course. Indisputably no procedure of selection has been laid down by the NCTE Act. Therefore, it cannot be said that the procedure prescribed by the State/Affiliating body is faulty and in contravention of the provisions of the NCTE Act.

44. Hon''ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, has also permitted the fixation of percentage of quota that are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State. No doubt it has also been held that State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

45. In the matter of non-minority institution Hon''ble Supreme Court has held that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in minority or non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 31. Thus, whole purpose of restraining

reservation or fixing any quota or percentage in admission in the minority institutions are that they should not be compelled to admit the candidates to the extent that it loses its character, but in the manner of procedure for admission, if the same is regulated by the State Government, it cannot be said to be unfair or encroachment in the jurisdiction of the minority institution.

46. As is evident from the judgments referred to above, the State Government being affiliating body has right to regulate the admission/selection for the teacher training course. Therefore, I am of the considered opinion that the State Government is fully empowered to regulate the admission. Therefore, clause 13 of the impugned Government Order cannot be said to be without jurisdiction or in contravention of Article 19(1)(g) or Article 30(1) of the Constitution of India. In the result, the writ petitions are dismissed.