

(2006) 04 AHC CK 0192
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 78699 of 2005 and 5479 of 2006

Jan Kalyan Charitable Trust (Registered) and Samarth
Institute for Education and Technology

APPELLANT

Vs

State of U.P. and National Council for Teacher Education,
Northern Regional Committee

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Constitution of India, 1950 — Article 142
National Council for Teacher Education Act, 1993 — Section 14, 14(3), 15, 32, 32(2)
National Council for Teachers Education (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permissions to Start New Course or Training) Regulations, 1995 — Regulation 5
National Council for Teachers Education (Norms and Standards for Teacher Education Programmes) Regulations, 2001 — Regulation 6

Citation : (2006) 6 AWC 6135 : (2006) 3 UPLBEC 2821

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Shailendra, for the Appellant; J.S. Bachel and Rajiv Joshi and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Jan Kalyan Charitable Trust is a trust registered under the Societies Registration Act, 1860. The said trust, in order to establish institution for running B. Ed. course, applied for issuance of "No Objection Certificate" (NOC) on 14.08.2004 to the State Government. Petitioners have contended that along with the same an application u/s 15 of the National Council of Teachers Education Act, 1993 had been also moved before the Regional Officer of National Council of Teachers Education. The State Government was not taking any decision on the said application for grant of NOC and the matter was kept pending. The University in its turn had recommended for issuance of NOC. After the said application had been moved, on 20.06.2005 communication was sent informing and intimating deficiencies as contained in the aforesaid letter, and the

two deficiencies pointed out were that "No Objection Certificate" issued by the State Government in original had not been submitted. Secondly, copy of the valid land document, since land acquired by the society/institution pertained to the agricultural land, certificate of competent authority pertaining to land use conversion is required to be submitted, and the said deficiencies were to be removed by 31.12.2005. At this juncture petitioners preferred writ petition No. 78699 of 2005. Notice of the aforementioned writ petition was given on 22.12.2005 and the same was got reported on 23.12.2005, and the same was taken up on 03.01.2006, and by that time period, which was mentioned for fulfilling prerequisite terms and conditions had expired. On repeated occasions matter was taken up, and thereafter from the side of State Government, letter dated 18.01.2006 was sent informing the Chief Standing Counsel of this Court that "No Objection Certificate" requested on behalf of the petitioner is being turned down. At this juncture, writ petition No. 5479 of 2006 has been filed.

2. In writ petition No. 78699 of 2005 short counter affidavit and supplementary counter affidavit have been filed on behalf of State-respondents, contending therein that proposal with regard to grant of "No Objection Certificate" was examined by the State Government in the light of norms and standards fixed by means of orders dated 27.9.2002 and 11.10.2002 and various deficiencies had been found in the said proposal, viz., (i) the trust running the institution in question had not made available the details of its annual income; (ii) the records pertaining to land do not make it clear that all the land holdings belonging to college are connected together; (iii) the institute has mentioned that there are three colleges including B.Ed. college within its periphery of 15 Kms., which is against the stipulated norms; (d) the proposed college has applied to run B.Ed. course only which is in contravention with the view of the State government that NOC to run B.Ed course should not be granted to such colleges, which are not already running graduation/post-graduation courses. In this regard and in this background, it has been submitted that justifiable order has been passed.

3. Rejoinder affidavit has been filed, and therein it has been contended that application was filed on 14.08.2004 and the same was sent to the State Government after recommendation by the University on 12.10.1004 and the said application ought to have been decided within six months i.e. by February, 2005, and as no action was being taken, it would be a case of deemed approval. It has been also sought to be contended that objection which has been sought to the raised was unsustainable, inasmuch as income tax details could not be furnished unless and until institution in question started running. Qua objection No. (b) it has been contended that Tehsildar Sadar, Meerut has already given certificate dated 07.12.2005, and as such said objection is unsustainable. Qua objection (c) that there are three colleges including one B.Ed. college, it has been submitted that the University is the best judge in this respect and unwarranted observations are unsustainable. Further, it has been contended that petitioner institution had applied for B.Com. and B.Ed. courses and recognition had been accorded vide order dated 14.07.2005. In this background, none of the

objections are sustainable. Supplementary affidavit has also been filed, and therein it has been contended that S.D.M. Meerut on 04.01.2006 has already accepted the proposal of conversion of land. Copies of document dated 04.01.2006 and the Government Order dated 27.09.2002 have been appended.

4. After pleadings aforementioned have been exchanged, present writ petitions have been taken up for final hearing and disposal with the consent of the parties.

5. Sri Shailendra, learned Counsel for the petitioners, contended with vehemence that in the present case, application in question was moved on 14.08.2004 before the University, and the same was sent to the State Government vide recommendation dated 12.10.2004. The said application was to be decided within six months as per Regulations, as such it would be a case of deemed approval and the NCTE was duty bound to deal with the application of the petitioner for grant of permission by presuming deemed permission, and as the same had not been done, as such subsequent exercise by rejecting application is unsustainable and uncalled for. Apart from this, it has been contended that the order passed by the State Government refusing to accord "No Objection Certificate" in all eventuality is liable to be placed before the Regional Committee, and it is Regional Committee, which is final authority to take decision in the matter, as such writ petition is liable to be allowed in the facts of the present case.

6. Sri Rajiv Joshi, learned Counsel appearing for the NCTE, on the other hand, contended that in the present case maximum time limit has been provided for, for disposal of "No Objection Certificate". Thereafter, there is no provision of deemed approval in the event of not taking any decision on the same, as such the arguments which are being advanced are unsustainable, and coupled with this Regional Committee while entertaining application can proceed only if there is "No Objection Certificate", when it was told that "No Objection Certificate" has not been issued, claim of petitioner cannot be adverted to, therefore, the writ petitions as framed are liable to be dismissed.

7. Sri J.S. Baghel, learned Standing Counsel appearing on behalf of State-respondents, contended that in the present case valid reasons have been assigned for passing order dated 18.01.2006 and further, by no stretch of imagination, "No Objection Certificate, could be deemed to have been issued, and as such claim of petitioner is devoid of any substance and the writ petitions are liable to be dismissed.

8. Before proceeding to advert to respective arguments advanced, it would be better to look into the judgment of the Hon'ble Apex Court in the case of St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, , decided on 07.02.2003 wherein provisions of Regulation 5(e) and 5(f) requiring the application for recognition to be accompanied by "No Objection Certificate" from the State Government or UT concerned has been adverted to. The Hon'ble Apex Court took the view that said

Regulations were intra vires the parent Act, and it was further held that power conferred by Regulations 5(e) and 5(f) of the National Council for Teachers Education (Application for Recognition, the Manner for Submission, Determination of Conditions for Recognition of Institutions and Permission to Start New Course or Training) Regulations, 1995 does not confer arbitrary or unchannellised power on the State Government or Union Territory to grant "No Objection Certificate" and the guidelines dated 02.02.1996 issued to the State Government by NCTE for issuance of NOC pertain to the matters to be taken into consideration u/s 14(3) of the NCTE Act by the Regional Committee for granting recognition. These guidelines have direct nexus with the object of the Act and refusal to grant NOC in disregard of said guidelines would entitle the applicant to challenge the same, but would not, by itself vitiate the statutory provisions. In the said judgment, however, no time limit has been provided, as such observations were made that if the applications are not decided within four months then it would be a case of deemed approval. In the said judgment, liberty was given to frame Regulations fixing time limit. Relevant paragraphs 14 to 21 of the judgment are being quoted below:

14. As the preamble shows, the main object for enacting the Act is to achieve planned and coordinated development of the teacher education system and also the regulation and proper maintenance of norms and standards therein.

15. Sub-section (3) of Section 14 casts a duty upon the Regional Committee to be satisfied with regard to a large number of matters before passing an order granting recognition to an institution which has moved an application for the said purpose. The factors mentioned in Sub-section (3) are that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education as maybe laid down in the Regulations, as mentioned earlier, there are only for Regional Committees in the whole country and, therefore, each Regional Committee has to deal with applications for grant of recognition from several States. It is, therefore obvious that it will not only be difficult but almost impossible for the Regional Committee to itself obtain complete particulars and details financial resources, accommodation, library, qualified staff, laboratory and other conditions of the institution which has moved an application for grant of recognition, the institution may be located in the interior of the district in a faraway State. The Regional Committee cannot perform such Herculean task and it has to necessarily depend upon some other agency or body for obtaining necessary information. It is for this reason that the assistances of the State Government or Union Territory in which that institution is located is taken by Regional Committee and this is achieved by making a provision in Regulation 5(e) and (f) that the application made by the institution for grant of recognition has to be accompanied with NOC from the State or Union Territory concerned, the impugned Regulations in fact facilitate the job of the Regional Committees in discharging their responsibilities.

16. The contention that there are no guidelines for the State /governments regarding grant of an NOC and consequently, the State Government may refuse to grant an NOC on wholly irrelevant considerations is without substance. It is averred in para 7 of the counter affidavit filed by the Council that it has issued certain guidelines to the State Government on 2-2-1996 for issuance of an NOC and a copy where of has also been annexed. The relevant part of the guidelines is being reproduced below:

1. The establishment of teachers' training institutions by government, private managements or any other agencies should largely be determined by assessed need for trained teachers. This need should take into consideration the supply of trained teachers from existing institutions, the requirement of such teachers in relation to enrollment's projections at various stages, attrition rates among trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and possibility of their development. The States having more than the required number of trained teachers may not encourage opening of new institutions for teachers education or to increase the intake.

2. States having shortage of trained teachers may encourage establishment of new institutions for teacher education and to increase intake capacity for various levels of teacher education institutions keeping in view the requirements of teachers estimated for the next 10-15 years.

3. Preference might be given to institutions which tend to emphasize the preparation of teachers for subjects (such as Science, Mathematics, English etc.) for which trained teachers have been in short supply in relation to requirement of schools.

4. a[part from the usual courses for teacher preparation, institutions which propose to concern themselves with new emerging specialties (e.g. computer education, use of electronic media, guidance and counselling etc. should receive priority. Provisions for these should, however, be made only after ensuring that requisite manpower, equipment and infrastructure are available, these considerations will also be kept in view by the institution intending to provide for optional subjects to be chosen by students such as guidance and counselling special education etc.

5. With a view to ensuring supply of qualified and trained teachers for such specialties such as education of disabled, non-formal education, education of adults, preschool education, vocational education etc. special efforts and incentives provided to motivate private managements/voluntary organizations for establishment of institutions, which lay emphasis on these areas.

6. With a view to promoting professional commitment among prospective teachers, institutions which can ensure adequate residential facilities for the Principal and staff of the institutions as well as hostel facilities for a substantial proportion of its enrollment should be encouraged.

7. Considering that certain areas (tribal, hilly regions etc.) have found it difficult to attain qualified and trained teachers, it would be desirable to encourage establishment of training institutions in those areas.

8. Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate teachers and other staff, adequate buildings and other infrastructure (laboratory, library etc., a reserve fund and operating funds to meet the day to day requirements of the institutions, including payment of salaries, provision of equipment etc. Laboratories, teaching science methodologies and practicals should have adequate gasplants, proper fitting and regular supply of water, electricity etc. They should also have adequate arrangements. Capabilities of the institution for filing norms prepared by NCTE may be kept in view.

9. In the establishment of an institution preference needs to be given to localities which have a large catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and undertake practice teaching. A training institution which has a demonstration school were innovative and experimental approaches can be demonstrated could be given preference.

17. A perusal of the guidelines would show that while considering an application for grant of an NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply institutions which propose to concern themselves with new emerging specialties like computer education, use of electronic media, and also for specialty education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions, which find it difficult to get qualified and trained teachers and locations which, catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education, the guidelines clearly to the matters enumerated in Sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for grant of recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus with to the object of the Act, namely, planed and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot therefore be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of NOC, is an arbitrary or unchallenged power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering an application for

grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in Sub-section (3) of Section 14 of the Act and the issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are ultra vires or invalid.

18. Learned Counsel for the appellants has also submitted that the impugned regulations have the effect of conferring the power of consideration of the application for the grant of recognition u/s 14 of the Act upon the State Government, as in the event of rejection of an NOC the application is not even registered by the Council. This contention no longer survives on account of a subsequent development. Shri M.N. Krishnamani, Learned Senior Counsel appearing for the respondents, has submitted that the Council has made fresh regulations on 13.11.2002, which are known as the NCTE (Form of Application for Recognition, the Time of Submission of Application, Determination of Norms and Standards for Recognition of Teacher Education Programmers and Permission to Start New Course or Training) Regulations, 2002. Regulation 6 6 thereof reads as under:

6 Requirement of No Objection Certificate from the State Government/U.T. Administration:

(i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which institution is located.

(ii) The endorsement of the State Government/UT Administration in record to issue of no Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.

(iii) If the NOC issued by the State Government/UT Administration does not indicate the intake, it will be for the Regional Committee to determine the intake taking into account the infrastructure and instructional facilities available in the institution and other relevant provisions in the Norms and Standards applicable to the relevant teacher training programme.

(iv) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.

(v) The NOC will be deemed to have lapsed if the institution fails to get recognition within three years from the date of its issue.

(vi) Requirement of NOC shall not apply to Government institutions

(vii) Requirement of NOC shall not apply to University Departments for taking up

innovative teacher education programmes for a maximum intake of 50 (fifty only), the question as to whether a programme is innovative will be decided by the Regional committee concerned.

19. Regulation 6(ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the State Government or Union Territory concerned and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of an NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulation 5(e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under Sub-Section (3) of Section 14 of the Act. Therefore, no exception can be taken to such a course of action.

20. In *Kunj Behari Lal Butail v. State of H.P.* cited by learned Counsel for the appellant, it has been held that a delegated legislation must conform to the provisions of the statute under which it is framed and that it must also come within the scope and purview of the rule making power of the authority framing the rule and in the event either of these two conditions are not fulfilled, the rule so framed would be void. As discussed earlier, the impugned Regulations do not contravene any one of the conditions inasmuch as Section 32 of the Act clearly empowers the Council to make regulations generally to carry out the provisions of the Act and thus they come within the scope and purview of the power of the authority framing the Regulations, the Regulations also conform to the provisions of the Act and are not in excess of the authority of the Council as no essential legislative function has been delegated to the State Government.

21. Learned Counsel for the appellant has strongly urged that in some cases the State government has sat over the matter for a very long period without taking any decision either to grant an NOC or declining to grant the same and on account of this inaction of the State government the application moved by the institution before the Regional committee was not even registered for consideration and thereby the right of the appellants to establish an institution for teachers training or starting a course in teacher education was completely defeated, there can be no manner of doubt that the State Government must take a decision within a reasonable time it will obviously defeat the right of an institution to have its application considered by the Regional Committee. It will therefore, be proper that the Council frames appropriate regulations fixing the time limit within which a decision should be taken by the State Government on

the application moved by an institution for grant of an NOC. In the present case, we are of the opinion that till such regulations are made the decision should be taken by the State Governments within four months, failing which it shall be deemed that the NOC has been granted.

9. Pursuant the aforementioned judgment of the Apex Court Regulations were framed and amendment was incorporated on 06.06.2003, Relevant Amended Regulation 6 is being quoted as below:

In exercise of the powers conferred under Clauses (f) and (g) of Sub-section (2) of Section 14 of the NCTE Act, 1993 (73 of 1993) and pursuant to the judgment dated 7.2.2003 of the Hon'ble supreme Court in SLP No. 2421 of 2001 in the matter of St., John Teachers Training Institute and a batch of similar Special Leave Petitions and writ petitions, interalia, directing NCTE to frame appropriate regulations fixing the time limit within which a decision should be taken by the State government on the application made by an institution for grant of No Objection Certificate", the National Council for Teachers Education hereby makes the following regulations to amend the NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards of recognition of teacher education programmes an permission to start new course of training) Regulations, 2002 dated 13th November, 2002.

1. Short title and Commencement

(i) These regulations may be called the NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards of recognition of teacher education programmes an permission to start new course of training) Regulations, 2002 dated 13th November, 2003,

(ii) They shall come into force with effect from the date of their publication in the official gazette.

2. Extent of Amendment

Para 6 of the aforesaid NCTE Regulations shall be substituted by the following:

(i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which institution is located. Application without NOC/endorsement of the State Government/UT shall not be processed by the concerned Regional Committee of NCTE.

(ii) Every State Government/UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training and/or increase in intake, as expeditiously as possible, and shall provide its NOC/endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government/UT.

(iii) Every State Government/UT Administration while considering application for grant of No Objection Certificate shall take into account the guidelines for issue of No Objection Certificate issued by the NCTE from time to time.

(iv) The NOC/endorsement of the State Government/UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.

(v) The State Government/UT Administration will indicate in the NOC the number of seats for which NOC is being granted within the ceiling of basic unit fixed by the NCTE for the concerned pre-service course on teacher education and without this information it will be presumed that the NOC is for the basic unit of the course.

(vi) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.

(vii) The NOC will be deemed to have lapsed if the institution fails to get recognition from NCTE for the course within three years from the date of its issue.

(viii) Requirement of NOC shall not apply to Government Institutions. (ix) Requirement of NOC shall not apply to University Departments for taking up innovative teacher education programmes for a maximum intake of 50 (fifty only), the question as to whether a programme is innovative will be decided by the concerned Regional Committee.

10. A bare perusal of these Regulations would go to show that in exercise of powers conferred under Clauses (f) and (g) of Sub-section (2) of Section 14 of the NCTE Act, 1993 paragraph 6 of the NCTE Regulations, 2002 was amended and it was provided that application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training would be accompanied by a "No Objection Certificate" (NOC) from the State or Union Territory in which institution is located. The application without NOC/endorsement of the State Government/UT shall not be processed by the concerned Regional Committee. Amendment has provided that every State Government/UT Administration shall endeavour to dispose of the application seeking NOC for recognition of a course or starting a new course or training and to increase intake capacity as expeditiously as possible and shall provide this NOC/endorsement within six months from the last date of receipt of the application. The State Government or Union Territory while considering the application for grant of NOC shall take into account the guidelines for issuance of No Objection Certificate issued by NCTE from time to time. The No Objection Certificate/endorsement of the State Government/U.T. in regard to issue will be considered by Regional Committee while taking decision on the application for recognition.

11. In the light of these provisions, claim of petitioners is being adverted to. Undisputed position is that application for grant of "No Objection Certificate" was

moved on 14.08.2004 and the same was recommended by University to the State Government on 12.10.2004. For a period of six months, no action, whatsoever, was taken on the same, inasmuch as record in question reveals that objection had been raised for the first time by the State Government on 20.06.2005. As per amended Regulations dated 06.06.2003 outer limit of six months has been provided for deciding such an application. The question is, if in the event of such application being not decided in time, can it be a case of deemed approval as per judgment of the Apex Court dated 07.02.2003 rendered in the St. Johns Teachers Training Institute (supra). The judgment of the Apex Court was confined only till the period Regulations were not framed fixing time limit, and once Regulations have been framed and outer limit has been prescribed without making any provision for deemed approval, then in absence of any such provisions under the amended Regulations deemed approval cannot be presumed. The NCTE, at no point of time, while exercising its power of framing Regulations ever indicated that in case there was failure to take decision on the application, then it would be a case of deemed approval. Apex Court's decision in case of St. Johns Teachers Training Institute (supra) came in view of the fact, as there was no time limit prescribed and till the Regulations were framed, during the said intervening period, the Hon'ble Apex Court took the view that in case decision is not taken within reasonable period, which was judged as four months, then it would be presumed deemed approval. This fact has also been noted by Hon'ble Apex Court in its subsequent decision in the case of Krishnasamy Reddiar Educational Trust Vs. Member Secretary, National Council for Teachers Education and Another, The said directives have been issued by Hon'ble Apex Court in exercise of authority vested under Article 142 of the Constitution, but once Regulations have been framed providing outer limit and the said time limit having expired, then it cannot be a case of deemed approval, and the remedy at the most with the institution in question is to approach respective High Court for commanding respondent-State Government to discharge its obligatory duty of taking decision under the Regulations, but in the absence of provisions, by no stretch of imagination, deemed approval can be inferred. Legal fictions are always provided for and backed by statutory provisions and the effect of legal fiction is that in spite of the fact that factually such event has not taken place, but presumption is drawn in law that such event has taken place. Such is the effect of legal fiction. Such legal fictions are presumed only when there is statutory provision to that effect and not in the absence of the same. Thus, in the present case once the State Government was sitting tight over the matter and has chosen not to decide the matter within six months, then the petitioner institution ought to have approached this Court for issuance of time bound direction for discharging its obligation for deciding the application. Inaction on the part of the authority in not discharging their statutory functions, also tantamounts to misuser of power and same is totally against the rule of fair play, resulting in arbitrariness and whimsical action.

12. Much reliance has been placed by petitioner on Regulation dated 27.12.2005,

National Council For Teachers Education (Recognition, Norms and Procedure) Regulations, 2005, by contending that said Regulation takes care of each and every contingency which could possibly emanate dealing with application form recognition and therein also provision of deemed approval is there, as such said benefit be extended. Perusal of these Regulations clearly exhibit that said Regulations are being sought to be introduced to facilitate the operation of Regulations and for removal of functional difficulties from the same. It is true that Regulation dated 27.12.2005 are self contained and takes care of each and every stage of the way and manner in which the respective application has to be dealt with as the very object of introducing said amendment is to facilitate the operation of Regulations and for removing functional difficulties. Both the objects are being fully achieved by the same, but the difficulty is that said Regulation would come into force with effect from the date of their publication in the Official Gazette. Till date said Regulations have not been notified and consequently have not come into force, as such no benefit or advantage could be derived out of the same, and the matter has to be dealt with as already mentioned above as per the existing operating Regulations.

13. Once action was taken on the application and "No Objection Certificate" had been accorded then things would have been different, but once "No Objection Certificate was refused" without taking into consideration, the relevant factors enumerated under Sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors, which are relevant, then remedy of the petitioner is to question the validity of the same in accordance with law. Now at this juncture, the forum provided for redressal of grievance is being looked into. In paragraph 19 of the judgment in case of St. Jon's Teachers Training Institute v. Regional Director (supra) relevant extract of which has already been quoted above, while dealing with Regulation 6 (ii) of earlier Regulations clearly mentions that endorsement of State Government/Union Territory Administration in regard to grant of NOC will be considered by Regional Committee while taking decision on the grant of recognition. Even if the NOC is not granted by the State Government or Union Territory concerned and the same is refused, the entire matter will have to be considered and examined by the Regional Committee, while dealing with the application for grant of recognition. The grant or refusal of an NOC by the State Government/Union Territory has not been held to be binding and conclusive and said views are subject to further consideration by Regional Committee. As per the said judgment, the grant or refusal of NOC by the State Government/Union Territory is not binding and conclusive, and same is subject to further consideration by Regional Committee. Similar view has been expressed by Learned Single Judge of this Court in writ petition No. 2820 (MIS) of 2005, Kunwar Rajveer Singh Shiksha Prachar Prasar Samiti, Agra v. State of U.P. and Ors. decided on 29.07.2005, that NCTE has to consider the application for recognition in the light of provisions of Section 14 of the NCTE Act as well as Regulations issued by the NCTE in this regard, and since the State Government has declined to grant "No Objection Certificate", the

endorsement of the State Government has to be considered by the NCTE after an opportunity to the petitioner for making written representation. As on date, after amendment has been enforced w.e.f. 06.06.2003, by means of NCTE (Form of Application for Recognition , the time limit of submission of application, determination of norms and standards for recognition of Teacher Education Programmes and Permission to Start New Course or Training) (Amendment) Regulations, 2003, which has already been quoted above, said power of consideration by Regional Committee qua NOC/endorsement of State Government/Union Territory, the institution in question will have the authority to question the validity of the same, on the ground that State Government/Union Territory has not taken into consideration the relevant factors as envisaged under Sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into account factors which are not relevant, before the Regional Committee.

14. Now on the touchstone of the aforementioned provisions, action of the State Government as well as Regional Committee of NCTE is being seen. The NCTE in its turn on 12.12.2005 had communicated following facts to the institution in question:

a. No objection certificate issued by State Govt. in original: (not submitted)

(b) Copy of building plan approved by Competent Authority: (The institution submitted building plan which is not approved by competent authority. The institution is required to submit copy of the proposed building plan approved by competent authority. In case no approval by any local authority including Gram Panchayat is needed for the reason building constructed or proposed is situated in rural area then proof to this effect be submitted, which may be by way of an affidavit duly authorized and signed by the authorized person of society/institution and a certificate of the Gram Panchayat concerned.)

(c) Legally valid Document: (the institution has submitted photocopy of the land documents, the institution is required to submit certified copy of latest Khatoni of land acquired/certificate issued by the Tehsildar or Revenue Officer in support of possession of land.)

(d) Fixed deposit receipt in original for Rs. 5,00 lacs towards Endowment Fund for a period of 60 months from Nationalized Bank which is not pledged with any Society/Institute/University: (FDR is only for 39 months instead of 60 months period.)

(e) A sworn affidavit verifying the contents given in the application form and the documents attached therewith, the affidavit must be attested through a first class Magistrate/SDM/ADM: (Sworn affidavit submitted by your institutions not as per format).

2. On further scrutiny of the reply submitted by you vide letter dated 28.06.2005, received in this office on 11.07.2005, it is noted that your

application is still defective in terms of the following:

- a. No objection certificate issued by State Govt. in original (not submitted.)
- b. Copy of valid land document: since the land acquired by your society/ institution pertains to Agricultural land, a certificate of competent authority pertaining to land use conversion is required to be submitted.

3. You are hereby informed to remove the above deficiencies and submit a reply along with supporting documents to this office on or before 31.12.2005, failing which your application cannot be considered for grant of recognition.

15. On the asking for by the NCTE to provide document by 31.12.2005, writ petition No. 78699 of 2005 was filed, and during pendency of above writ petition, communication dated 18.01.2006 has been sent not to the petitioner, but to the Chief Standing Counsel giving therein various reasons for refusing to grant No Objection Certificate. Here the way and manner in which decision has been taken by the State Government is deprecated and further State Government is duty bound to take decision within six months. No reasons have been disclosed as to why decision was not taken within six months as per Regulations. State Government shall ensure, that in the future there is no laxity on this score, and the moment application for grant of NOC is moved, the decision shall be taken on the same either by grant/refusal within six months as per Regulations. However, as already mentioned above, refusal to grant No Objection Certificate is not conclusive and binding and the petitioner has remedy to question the validity of such action before the Regional Committee. Consequently, liberty is given to the petitioner to represent before the Regional Committee against the action of the State Government refusing NOC and in the event of such representation being moved, the Regional Committee shall proceed to deal with the same within next two months from the date of receipt of representation, in accordance with law and whatsoever is the outcome of the decision so taken, the same be communicated to the petitioner thereafter.

16. Subject to observations made above both the writ petitions are disposed of.

17. No order as to costs.