

(2000) 12 DEL CK 0105

In the Delhi High Court

Case No : Civil Writ Petition No. 6227 of 2000

Rahul Dhaka Vikas Society and Another

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Constitution of India, 1950 — Article 254, 254(2)

Indraprastha Vishwa Vidyalaya Act, 1998 — Section 5

National Council for Teacher Education Act, 1993 — Section 14, 14(3), 14(6)

Citation : AIR 2001 Delhi 154

Hon'ble Judges : Arun Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Ravindra Sethi and J.P. Sengh, for the Appellant; S.N. Kumar and G.D. Goel and Sanjiv Goel for Respondent 1, R.K. Singh, for Respondent 2 and Pragnya Routray, for Kailash Gambhir, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—This petition raises interesting question of law. Petitioner No. 1 is the society registered under the societies Registration Act which is running petitioner No. 2 named "V.D. Institute of Technology" It is conducting B.Ed, courses. The National Institute for Teacher Education Act, 1993 (hereinafter referred to as "NCTE Act") was passed by the Parliament with the main objective to provide for the establishment of a 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 and for matters connected therewith. As per the provisions of this Act, any Institution offering course or training in teacher education is required to seek recognition under this Act. The petitioner (hereinafter referred to as the "Institute") applied for grant of recognition under the said Act by making appropriate application and the recognition has been granted by the Regional committee of the National Council for Teacher Education (hereafter referred to as "Council"). Petitioner also

wanted affiliation with Guru Gobind Singh Indraprastha University (hereinafter referred to as the "University"). This was provisionally given earlier for the year 1999-2000. However, the University has refused to continue this affiliation for the Session 2000-2001. The Institute claims that once it has been granted recognition by NCTE i.e. respondent No. 2, the University cannot refuse affiliation and has challenged the impugned communication dated 22nd August, 2000 by the University refusing to give affiliation. It is in this context that following question of law has fallen for consideration :

Where it is obligatory on the part of the University (or the examining body) to grant affiliation to an institution where recognition has been granted to such institution by the Council.

2. At this stage it would be appropriate to scan through the portentous events which have led to this controversy. In May, 1999 petitioner No. 1 society was given no objection by the Government of Delhi for setting up an institution to run B.Ed. Course in the NCT of Delhi. Thereafter Institute applied for recognition u/s 14(1) of NCTE Act. By order dated 6th September, 1999 Northern Regional Committee, NCTE granted recognition to the Institute for B.Ed. One year course for academic year 1999-2000 with annual intake of 60 students. The Institute thereafter submitted proposal of affiliation to university for conduct of B.Ed. of one year duration. On this Vice Chancellor constituted an Estimate Committee comprising of 3 officers, (2 from Delhi University and a Deputy Registrar of its own university). Thereafter the University addressed letter dated 11th October, 1999 to the Institute conveying the provisional affiliation of the Institute. This was conveyed in the terms of Section 5 (21) of the Indraprastha Vishwavidyalaya Act, 1998. Number of conditions were, however, mentioned subject to which provisional affiliation was given. In this manner students admitted by the Institute to B.Ed. course completed the course and took the examination conducted by University. It is the claim of the Institute that all the 60 students passed the said examination and 48 students out of these secured first division.

3. On 12th January, 2000 University wrote a letter to the Institute asking it to deposit Rs. 10,000/- as processing fee to consider the continuation of provisional affiliation for the year 2000-01. Review Committee of the University visited the Institute on 4th February, 2000 to monitor and evaluate the implementation of B.Ed. programme and based on that letter dated 14th March, 2000 was written to the Institute informing various deficiencies which were noted. Taking serious view of the matter, University by the letter, advised the Institute to remove the deficiencies and fulfill terms and conditions of affiliation and promises made to the Assessment Committee. It was also urged that report in this regard be sent to the University latest by 10th April, 2000. The Institute responded by submitting paradise reply and stating that there were no deficiencies as required by NCTE and University norms. While this was going on, the Institute requested the NCTE for permanent recognition. Assessment Committee, NCTE visited the Institute and after inspection informed the Institute about certain deficiencies

which the Institute claims it removed and after being satisfied, the NCTE by order dated 31st July, 2000 granted recognition to the Institute. This recognition is for B.Ed, one year for the Academic session 2000-01 with annual intake of 60 student and subject to fulfilling all the conditions stated in the said order.

4. Coming back to the question of affiliation by the University, the University issued letter dated 25th July, 2000 to the Institute to send details along with qualifications of teaching staff and principal for continuing B.Ed. programme by 31st July, 2000 which were sent, However, thereafter impugned communication dated 22nd August, 2000 was sent by the University to the Institute stating that in the meeting of Board of Affiliation held on 17th August, 2000 it was decided that admission for the year 2000-01 should not be allowed to the Institute and that case be referred to the NCTE. It may be mentioned at this stage that University conducts common entrance examination for admission to B.Ed, course and successful students eligible to get admission, are thereafter allocated by the University to its various affiliated institutes/colleges. The University had conducted this entrance examination for admission in B.Ed. course for 2000-01 in the month of June, 2000. Students who passed the entrance examination were allocated to different colleges but no students were allotted to the Institute. Instead the Institute had received a letter dated 22nd August, 2000 as mentioned above. The Institute sent detailed reply dated 25th August, 2000, wherein it tried to explain out the deficiencies pointed out in University's letter dated 22nd August, 2000. The Institute further received communication dated 18th September, 2000 stating that reply dated 25th, August, 2000 was placed before the Board of Affiliation in its 12th Meeting held on 14th September, 2000 and it reiterated its stand withholding the affiliation of the Institute for the academic year 2000-01. It was mentioned in the letter that decision was taken after taking into consideration the conditional recognition conveyed by NCTE vide their letter dated 13th July, 2000, the recommendation of Re-estimation Committee which visited the Institute on 16th August, 2000, the reports of the earlier Committees which had visited the Institute, deliberations/decisions taken in the 8th and 11th Meeting of the Board of Affiliation and the reply dated 25th August, 2000 of the institute. In this letter in detail, the observations of the Board of Affiliation are also recorded on the basis of which it is mentioned that the Board observed that the Institute had not shown desired minimum level of seriousness and intention to fulfill the minimum laid down standards of the University and in particular the conditions relating to appointment of the Principal/Faculty and to establish the Institute as a separate entity as per their own commitment made from time to time. At this stage the Institute rushed to this Court and filed the instant petition.

5. Although in the writ petition the Institute has challenged the virus of the provisions of the Indraprastha Vishwavidyalaya Act, 1998 and Statute No. 13(4) of its Statutes being inconsistent with the NCTE Act and ultravires the Constitution of India, at the time of arguments, this challenge was not pressed. The learned counsel for petitioners confined his arguments on the question of law

formulated above.

6. The main contention of the Institute runs as follows :

NCTE Act is a Central Act made by Parliament which governs teachers education system throughout the country. It is enacted by the Parliament pursuant to Entry 65 in List of Schedule VII. Section 14 of this Act deals with recognition of teacher education institutions for which appropriate application is to be made to the Regional Committee of the Council. If the Regional Committee is satisfied that such 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 of training in teacher education as determined by regulations, it may pass an order granting recognition to such institution (Section 14(3)). Thus the recognition is granted after NCTE has satisfied itself that the particular institute conforms to all requisite standards. Once such recognition is granted, it is the obligation of every "examining body" to grant affiliation to the said institute which is the mandate provided under Sub-section 6 of Section 14 of the Act, On the other hand, Section 16 mandates that the examining body shall not grant affiliation to any institution unless the institution concerned has obtained recognition u/s 14 of the Act. If the recognition contravenes any of the provisions of the Act, Regional Committee is empowered u/s 17 to withdraw recognition of such recognised institution. On the basis of these provisions, it was submitted that the recognition of an institution is the prerogative of the NCTE and once that is done it was compulsory for the University to grant affiliation to the Institute. It was further argued that the University in the instant case had refused the affiliation for the year 2000-01 pointing out certain alleged deficiencies although in the estimation of NCTE, there were no such deficiencies as otherwise Institute would not have received recognition from the NCTE. It was also submitted that if the University feels that any such institute suffers from any deficiencies, it can only refer the matter to the Council. It was done in the instant case and council has reiterated its decision of recognition by letter dated 6th September, 1999. Still, if the University alleges deficiencies, it was not proper. In fact by doing so, the University was chartering the field covered by the NCTE Act which it was not authorised to do. It was also argued that the Indraprastha Vishwavidyalaya Act, 1998 was the Act being enacted by its legislative assemble, and Therefore, if there was anything contained in this Act which was contrary to the provisions of NCTE Act, it is the Central Act which was to prevail over the State Act.

7. In order to appreciate the aforesaid contention of the Institute, it would be apposite to take note of certain relevant provisions of NCTE Act. NCTE Act was enacted by the Parliament to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated 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. u/s 3 of the Act, Council

is established and its composition is specified. Section 12 enumerates various functions which are to be discharged by the Council. These include the guidelines contained in Section 2(d) "examining body" which means a university, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications : (e) "institution" which offers courses or training in teacher education and (f) "Member" of the Council and includes the chairperson and Vice-chairperson. Chapter IV which contains Sections 14 to 16, provides for "recognition of teacher education institutions". For the purpose of ascertaining whether the recognised institutions are functioning in accordance with the provisions of the Act, Council is given power u/s 13 to inspect any such institution. As already pointed out above, Sub-section 6 of Section 41 states that the "examining body"; on receipt of order of granting or refusing recognition to institution under Sub-section 6 of Section 14, shall grant the affiliation or cancel the affiliation as the case may be. Section 16 puts an embargo on the examining body from granting affiliation unless the concerned institution has obtained recognition from the Regional Committee concerned. If it is found by the Regional Committee that any institution has contravened any of the provisions of the Act or the Rules and Regulations made or issued thereunder, consequences thereof are provided u/s 17 which may include withdrawal of recognition. Section 17 which may include withdrawal of recognition. Section 18 provides for appeal to the Council against the order by the Regional Committee u/s 14 or Section 15 or Section 17. Since Sections 14 and 16 are pivotal, both the sections are reproduced for complete appreciation of the matter.

"Sections 14 :

(1) Every institution offering or intending to offer a course of 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 fulfills 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 fulfill 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 Sub-section (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 institute where recognition has been refused.

Section 16 :--

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 u/s 14 or permission for a course or training u/s 15.

8. "Examining body" is defined u/s 2(d) of the Act and this definition runs as follows :

"Examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications."

9. From the aforesaid provisions it is clear that the main objective for which the NCTE Act has been enacted is to achieve planned and, co-ordinated development of the teacher education system. The Council is given the task of regulating and properly maintains the norms and standards in the teacher education system. It is this reason that the functions of the Council, inter alia, include laying down

guidelines in respect of minimum qualifications for a person to be employed as teacher laying down the norms for course or training in teacher education, laying down standards in respect of "examinations", leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training. The purpose is to lay down standards for teacher education and to achieve those standards. To ensure that an institution imparting teacher education fulfills such standards, Section 14 mandates that every such institution has to obtain recognition from by the Council. If recognition is not granted then such institution has to discontinue the course of training in the teacher education from the end of the academic session next following the date of receipt of the order refusing recognition. In that eventuality even the examining body i.e. university, agency or authority to which institution is affiliated for conducting examination in teacher education qualifications has also to cancel the affiliation of institution. Therefore, grant of recognition is pre-condition for starting or continuing the course or training in teacher education by any institution and an institution which has not been granted recognition or the recognition is refused or cancelled has to discontinue the course and the examining body has also to cancel the affiliation of such institution. Therefore the underline theme of NCTE Act is that no institution shall impart teacher education unless it is recognised by the Council. However whether reverse is also true ? In other words whether it is an obligation of the "examining body", i.e., the University in the instant case, to necessarily grant affiliation to the institution like the petitioner/Institute where the recognition has been granted by the Council? Or, put It otherwise, whether the word "shall" appearing in Sub-section 6 of Section 14 is a mandate to the "examining body", i.e. the University or discretion still vests with the examining body to refuse to grant affiliation or discontinue affiliation?

10. At this stage, for the purpose of answering the aforesaid question, one may point out that the University or the examining bodies may have their own rules for grant of affiliation. In the instant case itself the University which is also a creature of Statute namely the Indraprastha Vishwavidyalaya Act, 1998 is regulated by the provisions of the said Act. It has its own provisions for grant of affiliation. We may note the provisions of this Act relevant to this context. Preamble to the Act reads to say that the Act is enacted to establish and incorporate an affiliating and teaching University at Delhi to facilitate and promote studies, research and extension work in emerging areas of higher education with focus on professional education, for example engineering, technology, management studies, medicine, pharmacy, nursing, education, law, etc., and also to achieve excellence in these and connected fields and other matters connected therewith or Incidental thereto. University is defined in Section 2(za) to mean the Indraprastha Vishwavidyalaya as incorporated under this Act. Section 4(2) stipulates that no college or Institution situated within the jurisdiction of the University shall compulsorily be affiliated to the University, and affiliation shall be granted by the University only to such college or institution as may agree to accept the Statutes and the Ordinances. Thus grant of affiliation to

an institution is the discretion of the University, Section 5 lays down powers of the University and Sub-section 33 thereof provides that University and Sub-section 33 thereof provides that University has the power to prescribe the code of conduct for managements of affiliated colleges and institutions. Section 21 of the Act provides for the Board of Affiliation which shall be responsible for admitting colleges of and institutions to the privileges of the University. Section 25 of the Act enumerates the matters which Statutes may provide and Section 26 prescribes the procedure as to how Statutes are to be made. Section 27 deals with Ordinances and Section 28 deals with Regulations. Thus before an institution is granted affiliation, the Board of Affiliation is to be satisfied that such institution would conform to the provisions of Act, Statutes, Regulations which, inter alia, provide for standards of teaching, examinations and output characteristics of its graduates. The affiliation is not compulsory or automatic and it is within the discretion of the Board of Affiliation or for that matter the University. University as an examining body issues the degrees to the successful students in the exams who belong to affiliated institutions. Thus any institution which is affiliated to the University, its students are given the degrees of the University on passing the concerned exams. Therefore, it is the right of the University to ensure the concerned institution conforms to all standards set by its Act. Statutes, Ordinances and Regulations because ultimately the students of such a institution would get the degrees/ certificates of the University.

11. It is, keeping in view the provisions of the Indraprastha Vishwavidyalaya Act, 1998 that provisions of Section 16 of the NCTE Act are to be given an interpretation. If the interpretation as suggested by Institute is given, following would be the consequences :

- a) Grant of recognition would mean grant of automatic affiliation with any University.
- b) Depriving the University of its power to give affiliation or refuse affiliation.
- c) Possessed with the order of recognition and institution can go to any University for affiliation. In other words, it would be the sole prerogative of the institution to decide the University with which it wants to be affiliated and such University has no choice but to grant affiliation.
- d) University will have to grant affiliation even if the particular institution does not conform to the standards or meets the requirements of the Act, Statutes, Ordinances and Regulations of that University.

12. Naturally, such an interpretation as suggested by the institute which leads to the aforesaid appalling and blighting consequences and may have effect of destroying the very autonomy of an University and may give license 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. It is only when the provisions of the State Act are repugnant to that of Central Act that the provisions of State Act have to give way to the provisions of Central Act. Article 254 of the Constitution of India deals with the situation where there is inconsistency between laws made by the Parliament and laws made by the legislatures of States interpreting the principle of repugnancy contained in this Article, following principles can be culled out from various judgments :

1. The State law does not become void as soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the State legislature to legislate with respect to a Concurrent subject merely because there is a Union law relating to the same subject, Article 254(2) is attracted only if the State law is "repugnant" to the Union Act, which means that the two cannot stand together. The doctrine of "occupied field" has no application in the interpretation of the present Article.

2. There is no question of applying Article 254, unless the State law is, in its "pith and substance" a law relating to the Concurrent List. If it is covered by an Entry in the State List, but only touches the Concurrent List incidentally, there is no application of Article 254.

3. The onus of showing the "repugnancy" and the extent thereof is on the party who attacks the validity of the State law.

13. In the instant case, we do not find any such repugnancy when the matter is looked into in the right perspective and recognise the fact that recognition and affiliation are two separate functions. It is the function of the Council under NCTE Act to grant recognition. On the other hand discretion lies with the University to grant or refuse the affiliation. Of course, where an institution is refused recognition or its recognition is cancelled by the Council, on this ground itself the examining body shall refuse affiliation. However, reverse is not true namely there would not be an automatic affiliation by an University to which an institution approaches armed with recognition from the Council. The University can still exercise its discretion in granting or refusing to grant the affiliation. Understood in this sense, the word "shall" appearing in Section 14 of the NCTE Act has to be read as "may" giving discretion to the examining body to grant affiliation to the institution which has been accorded recognition by the Council,

14. We may put a caveat here while defining the powers of the University to grant or refuse to grant an affiliation. The University while exercising discretion cannot act arbitrarily. It has to act fairly and in consonance with the principles of natural justice. The University, like the respondent No. 1 in the present case, is State or another authority within the meaning of Article 12 of the Constitution of India, and Therefore, is supposed to act reasonably and fairness in action on its part is the legitimate expectation of any institution. Therefore if the University

refuses recognition to an institution which has been recognised by the Council, the judicial review of such act of refusal on the part of the University is permissible. The judicial review has to be on accepted principles. While exercising this power under Article 226 of the Constitution of India, the High Court would be entitled to examine as to whether the refusal was an act of mala fides or arbitrary or whether relevant factors were omitted from consideration or irrelevant material was taken into consideration. It can also be challenged on the ground that the action/decision was ultra virus the powers of the authority which refused affiliation, for example the challenge on the ground that matter was considered and decided at the level of the Board or Affiliation or was taken by an authority not empowered to take such decision, Otherwise, we do not agree with the submission of the counsel for the Institute that it is a compulsion on any University to whomsoever institution approaches with recognition from the Council, to accord affiliation also. No doubt once the word "shall" is used in a provision, it raises a presumption that the particular provision is mandatory. However, this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequence flowing from such construction, keeping in view this consideration we are of the opinion that the word "shall" occurring in Sub-section (6) of Section 14 should be construed as merely directory and not mandatory as the context and the intention of legislature demands this construction. Instances are not lacking where Courts have given such interpretation to the word "shall" appearing in the provisions of a Statute by carefully attending to the whole scope of the Statute. (Refer : Rani Drig Raj Kuer Vs. Raja Sri Amar Krishna Narain Singh, , K. Narasimhiah Vs. H.C. Singri Gowda, . State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another, . Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, , Ammal Chandra Dutt v. II Additional District Judge reported in AIR 1989 SC 255 : 1989 All LJ 27, Rubber House Vs. Excellsior Needle Industries Pvt. Ltd., .

15. While giving harmonious interpretation to the provisions of Section 14 and other related provisions of the NCTE Act and that of the Indraprastha Vishwavidyalaya Act, 1998, we may state at this stage that the Council gives the recognition only when it is satisfied that an institution has adequate financial resources, accommodation, library, laboratory, qualified staff and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by Regulations. Thus when an institution is given recognition it has to be presumed that such institution satisfies all the aforesaid requirements. The Council is an expert body in so far as matter relating to teacher education is concerned and it has to be treated as specialist in this particular field. In fact the NCTE Act is enacted by the Parliament for this very purpose. On the other hand, the University is established as an affiliating and teaching university in number of fields like engineering, technology, managements studies, medicine, pharmacy, nursing, education law etc. Thus teacher education is one of many spheres/ activities of the University. Of course the Board of Affiliation for educational institutions would include the

experts in the field of teacher education. Still NCTE Act being a Central Act providing for the planned and co-ordinated development of teacher education system throughout the country, once recognition is given by the Council the same should be respected in so far as the standards to be maintained by such institution which has been given recognition, are concerned by proceeding on the basis that such institution fulfills all the requisite requirements for proper functioning for a course or training in teacher education. Therefore when such institution approaches in University for affiliation, the University would not normally refuse affiliation on the ground that such institution does not have adequate financial resources, accommodation, library, qualified staff, laboratory or it lacks conditions required for proper functioning of the institution for a course or training in teacher education. Therefore normally affiliation should not be refused on the grounds which are covered by Section 14(3) of NCTE Act and Council has already satisfied itself that the Institute meets these requirements. However, this would not be an absolute rule and the University shall still have the right to satisfy itself about the fulfillment of conditions for affiliation by the Institute in accordance with its Act, Statutes etc. But if the affiliation is refused on any of these grounds, it will be for the University to justify its decision that notwithstanding the recognition by the Council, the institution lacked any of the aforesaid facilities and the Council had not acted properly in granting the recognition. Moreover, apart from the considerations mentioned in Section 14(3) of the NCTE Act, there may be other valid considerations which may compel the University to still refuse affiliation. After all it is the University which confers the degree. It is the credibility, reputation or the goodwill of the University which is at stake. While exercising the power of judicial review the aforesaid factors namely whether the grounds for refusing recognition were bona fides and valid or not, can be examined.

16. Having set down the parameters, let us examine the background to which the affiliation was refused by the University to the Institute in this case in hand. This background material is provided in the counter affidavit filed by the University. It, inter alia, mentions that the Institute was granted provisional affiliation by letter dated 11th October, 1999 for the academic session 1999-2000 subject to the fulfillment of conditions stipulated in that letter, subsequent to the approval accorded by NCTE for 1999-2000. In the said letter it was categorically stated that the Institute shall adhere to the provisions of the Act, the Statute, the Ordinances and the Regulations of the University and will comply with the standing orders and directions of the University. After the centralised admissions and allotment of students to the Institute it commenced classes from 15th November, 1999. The review committee was set up by the Vice-Chancellor to monitor and evaluate the implementation of the academic programmes in all the institutions, affiliated to this University, comprising of the following :

- (i) Prof. C.S. Jha, formerly Vice-Chancellor, Banaras Hindu University.
- (ii) Prof. T.N. Kapoor, formerly Vice-Chancellor, Punjab University.

(iii) Prof. P.N. Srivastava, formerly Vice-Chancellor, Jawaharlal Nehru University.

(iv) Prof. V.K. Sabharwal, Professor, Department of Education, University of Delhi.

17. The Committee was also to analyze and report in regard to the compliance of the stipulated conditions. The Committee visited the institute on 4th February, 2000. It was also stated that in the intervening period students of the Institute submitted complaints to the University as well to the Hon"ble Chief Minister vide letter dated 13th January, 2000. A fact finding committee under the Chairmanship of Shri A.S. Awasthi, Registrar (Administration) also visited the Institute. In response to the complaint received from the students and submitted their report. The Review Committee and the fact finding committee submitted their reports. The relevant extract from the Review Committee report in regard to deficiencies, general observations and recommendations are reproduced below :

"DEFICIENCIES"

1. The physical infra-structure is inadequate to the extent:

(i) that no separate Identity of the institute has been retained and the building is also being utilised and shared by a senior secondary school,

(ii) that there was no accommodation earmarked for Psycho-practicals, visual education room. Principal's room, staff room, common room for girls.

(iii) that the size of the library was inadequate as compared to the required norms of the University/NCTE.

2. That Institute is not yet in possession of an appropriate land for development of an independent institution for conduct of B.Ed. programmes.

3. The faculty has not been appointed on regular basis in the scales of pay prescribed, by following a systematic and transparent recruitment process :

4. The Institute is not meeting all the requirements of the prescribed curriculum and the laid down working hours/week.

5. The library books were inadequate in terms of numbers and titles available.

6. No facilities of extra curricular and co-curricular activities are available.

GENERAL OBSERVATIONS :

1. The Committee did not find the desired vision, the sincerity of the seriousness in the management to develop an institute of the required standards for running a B.Ed. programme.

2. The management of the Institute seemed to have made a breach of trust, since they had informed the Assessment Committee of the University, when they visited in September, 1999 that the school running in that campus had already been shifted to another campus in Rohini, but during the visit of this Committee,

it was informed that the school is still running.

3. The management has also failed to submit a satisfactory action plan to the satisfaction of the Committee or the University to develop a new campus for the college, within a period of one year.

4. The management of the institute has also not yet operationalized in full the various laboratories, as per the requirement of the University/National Council for Teacher Education,

RECOMMENDATIONS :--

In view of the deficiencies in academic programme as mentioned earlier, and non-fulfilment of promises made during the assessment Committee's visit on 24th September, 1999 and confirmed during the presentation on 8th October, 1999 before the subgroup of the Board of Affiliation, the Committee recommends that:

(a) admission to the 2000-2001 session to the B.Ed. programme be put on hold till the academic deficiencies are removed and promises made during the assessment visit are fulfilled .

(b) the university should send a Visiting team to the Institute soon after it has been informed that (a) above has been fulfilled ,to assess whether permission to take students for 2000-2001 be granted.

(c) the University should examine the professional qualifications of all the teachers and other academic staff appointed in all B.Ed. institution and take remedial measures and ensure that all future selections are as per University rules and guidelines.

18. It is also submitted in counter affidavit that the observations/deficiencies of the review committee visit were communicated vide letter dated 14th March, 2000 to the Institute. The Institute submitted the reply vide its letter dated 10th April, 2000. Since the reply was not satisfactory, another communication was sent for seeking the specific replies vide letter dated 4th May, 2000 to the Institute. The matter was considered by the Board of Affiliation in its 8th meeting held on 7th June, 2000 and in pursuance of the decision taken and another assessment committee comprising of experts to assess and evaluate the available infrastructural facilities was constituted. The Committee visited the Institute on 16th August, 2000. The Assessment Committee submitted its report. It was also submitted that the Board of Affiliation in its 11th meeting held on 17th August, 2000 noted the position as given by the Assessment Committee in regard to fulfillment of deficiencies with reference to the Review Committee visit on 4th February, 2000 and observed that (a) there was no change in the position in regard to the separate identity of the Institute and the building was also utilised by the senior secondary school. The position was also unchanged in regard to the faculty recruitment as no systematic and transparent recruitment process had been followed, (b) it was noted by the Board that some books have been added in the library after the last review committee visit, but standard

books and journals were not available in the library as per the requirement of the National Council for Teachers Education. (c) the Board also took note of the fact that National Council for Teachers Education, significantly, while conveying the extension of approval to the Institute for the academic session 2000-2001 stipulated a specific condition that the students be allotted for admission to this and other institute only after ensuring that they have appointed teachers as per the qualifications and experience, subscribing to the selection procedure in terms of pay scale prescribed by the State/Central/UGC and teachers have actually joined. It was also submitted that taking into consideration the entire background of the fact, the Board observed that the Institute had not shown desired minimum level of seriousness and intention to fulfill minimum laid down standards of the University and in particular the condition relating to the appointment of the Principal/Faculty which was also one of the important conditions for extension of approval given by the National Council for Teachers Education. The Board also observed that the academic environment in the institution was far from satisfactory. The Principals which are head of the institutions have been frequently changed and as on date, third Principal in the year is in position. The faculty details as shown to the various committees are frequently changing including their status and there is a definite indication that the Principals and faculty are not provided the necessary academic environment to function freely. The Board also took note of the various complaints received from various resources. It was also submitted that in light of foregoing and taking note that the Institute has failed to fulfill the conditions stipulated by National Council for Teacher Education and the University, the Board, decided that the admission for the academic session 2000-2001 be not allowed for this Institute and case be referred back to National Council for Teacher education. Jaipur for appropriate action. The petitioner institute was again informed of the deficiencies and the decision vide University letter No. IPV-No.3/11 (1)/99/74 dated 18th September, 2000.

19. No doubt, while refusing affiliation, the University has taken into consideration some of the deficiencies which is otherwise a field covered by Section 14(3) of NCTE Act as well. However, the University has been able to discharge its onus and we are of the opinion that these deficiencies do exist. It may be noted that no rejoinder affidavit has been filed by the Institute rebutting the aforesaid allegations contained in counter affidavit. However, in the petition itself there are certain clarifications given by the Institute in response to the deficiencies pointed out by the University vide its letter dated 14th March, 2000. Even a reading thereof shows that deficiencies do exist and attempt is made to explain away those deficiencies. However there are other valid grounds for refusing affiliation as well and even if the alleged deficiencies are ignored, those grounds are sufficient to uphold the impugned order. In so far as allegations contained in letter dated 18th September, 2000 are concerned, the only argument of the learned counsel for the Institute was that the Institute was not made aware of any such report of the Review Committee of Fact Finding Inquiry

Committee or Re-assessment Committee. However, In spite of specific averments in the communication dated 18th September, 2000 which is annexed as Annexure P-16 to the writ petition by the Institute itself no remarks are made in the writ petition nor any rejoinder is filed refuting the contents particularly when in the counter affidavit all such reports are annexed and thus made available to the Institute. The perusal of the material with the counter affidavit particularly the report of the Board of Affiliation or the Fact Finding Inquiry Committee which has gone into the complaints of the students as well as that the Re-assessment Committee would lead to the conclusion that the decision of the University in not granting affiliation is not unjust, arbitrary or improper. The same is based on relevant material provided by the reports of the various Committees mentioned above. All these Committees were composed of persons of high status with expertise in their fields. In fact most of these persons belong to the outside institutions/ universities, and Therefore, impartiality can easily be imputed. No mala fides are alleged against any of these persons. It was tried to be argued, although half-heartedly, that the problem started after Dr. Chaddha, Principal in the Institute was removed and he influenced University in taking such a decision, Such a far-fetched plea on the basis of bald allegations cannot be even entertained keeping In view the manner in which decision has been taken at the highest level by the University. One cannot turn blind eye to all this material produced by the University in refusing affiliation and simply go by the recognition granted by the Council under the NCTE Act and issue mandamus to the University to give affiliation.

20. The impugned order dated 18th September, 2000 is Therefore legal and valid. There is no merit in the writ petition which fails and is hereby dismissed. The petitioners shall also pay to the respondent No. 1/ University cost of this petition which is quantified at Rs. 10,000/-.

21. It is however clarified that we have examined the validity of the impugned order which denies affiliation to the petitioners for the year 2000-01. It would be permissible for the petitioners to approach the University again for affiliation in the next year and if such application is made, we have no doubts that the University shall consider the same on merits objectively, dispassionately and according to law, without being influenced by the filing of present petition by the petitioners.