

(2008) 02 GUJ CK 0094

In the Gujarat High Court

Case No : Special Civil Application No. 17575 of 2007

Sarvoday Charitable Trust

APPELLANT

Vs

Gujarat University and Another

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Constitution of India, 1950 — Article 19 19(1), 19(6), 21A, 226

Gujarat University Act, 1949 — Section 39

Maharashtra Universities Act, 1994 — Section 82, 83

National Council for Teacher Education Act, 1993 — Section 12, 14, 14(3), 14(6), 15

Citation : (2008) 2 GLR 1760

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Mamta R. Vyas, for the Appellant; V.D. Nanavati, for Respondent 1 and A.J. Shastri, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The short facts of the case appear to be that the petitioner for the purpose of opening a College for imparting education in Master of Education (M.Ed.), which is a Post Graduation Course in the field of education, applied to National Council for Teacher Education (hereinafter referred to as SNCTE for short) for grant of recognition. The petitioner is a self-financed college. Ultimately, on 30.5.2007 the recognition was granted on 11.6.2007 and thereafter final recognition is granted vide order dated 26.6.2007 to the petitioner. As per the petitioner, it had applied to the Gujarat University for affiliation vide application dated 19.6.2007 onwards and as there was no response and the academic year was to begin of 2007-08, the petitioner has preferred the present petition for the appropriate directions to the respondent University to grant affiliation for M.Ed. College.

2. It appears that when the matter was at the interim stage, as no interim direction was given in the present petition, the LPA was preferred and the Division Bench of this Court (Coram: Y.R. Meena, C.J. and (Smt.) Abhilasha

Kumari, J.) vide order dated 8.10.2007 had directed the University to forthwith allot the available students, if any, for the provisional admission in the petitioner-appellant Institution. As per the University the matter is carried before the Apex Court against the said order and the notice has been issued by the Apex Court in the proceedings of SLP (Civil) No. 20191 of 2007. It also appears that since the order was not complied with the petitioner moved for contempt proceedings before this Court and the Apex Court has also stayed the said contempt proceedings. The learned Counsel for both the sides submitted that the matter may be finally disposed of, so as to put an end to the controversy and, therefore, I have heard the learned Counsel appearing for both the sides for final disposal.

3. Heard Mr. Oza, learned Counsel appearing with Ms. Vyas for the petitioner, Mr. Shelat, learned Sr. Counsel appearing with Mrs. Nanavati for the University and Mr. Shastri, learned Counsel for NCTE. It would be just and proper to consider and refer the submissions at the appropriate stage as stated hereinafter.

4. The position of law on the point as to operation of the provisions of National Council for Teachers Education Act, 1993 (hereinafter referred to as NCTE Act for short) over the State legislature in the field of higher education is by now well settled. It would be profitable to extract the last decision of the Apex Court on the point, in case of *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others*, . In the said case, the Apex Court had an occasion to consider the policy of the Government, declining opening of a college in the State of Maharashtra. The contention of the State was that keeping in view the local condition, the State of Maharashtra is to decide from time to time as to whether "No Objection Certificate" (NOC) should be granted for opening the college or not, in spite of the recognition already granted by NCTE under the NCTE Act. The Apex Court, after considering its earlier decision, observed at para 57 to 65 as under:

57. 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, is expected to deal with applications for establishing new B.Ed. Colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated 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 cases referred to hereinabove. 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.

58. The decision relied on by Mr. T.R. Andhyarujinan *Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra and Ors.* has no application to the facts of the case. In that case, the power was with the State Government to grant or refuse permission to open B.Ed. College. Considering the fact that if

permission would be granted, there would be a large scale unemployment, it was decided by the State Government not to allow new D.Ed. Colleges to be opened. It was held by this Court that such policy decision could not be said to be arbitrary or otherwise unreasonable. The Court in that case was not concerned with the power or authority of State Government vis-a-vis Central Government and Act of Parliament. In the present case, as the field was fully occupied by Entry 66 of List I of Schedule VII to the Constitution and Parliament has enacted 1993 Act, it was not open to the State Legislature to exercise power by making an enactment. Such enactment as per decisions of this Court, would be void and inoperative. It would be unthinkable that if State Legislature could not have encroached upon a field occupied by Parliament, it would still exercise power by executive fiat by refusing permission under the "policy consideration". The contention of the State Government, therefore, has to be negated.

59. We may state at this stage that the contesting respondents have placed heavy reliance on Section 12 of the Act which relates to functions of the Council and submitted that it is incumbent on the Council to lay down norms and guidelines for ensuring planned and co-ordinated development of the teacher education and it is not open to the Council to delegate those "essential functions" to the State Government. According to them, such delegation would be excessive and impermissible and abdication of power by the Council in favour of the State Government which is inconsistent with the provisions of the parent Act and must be held ultra vires. In reply, Mr. Andhyarujina submitted that the constitutional validity of the Regulations or Guidelines had not been challenged before the High Court and the respondents now cannot be permitted to raise such point in this Court in the absence of the challenge. The respondents, however, urged that since they succeeded before the High Court on other points, it was not necessary for them to challenge the vires of Regulations. But when the State had approached this Court, they can support the judgment on any ground available to them including unconstitutionality of Regulations and Guidelines. In our opinion, it is not necessary to enter into larger question since we are satisfied that in the facts and circumstances of the case, the High Court was justified in allowing the petitions filed by the colleges and setting aside the order dated December 28, 2004 passed by the State Government and also in dismissing the petition filed by the State holding that the order of the State was not legal. We may, however, observe that the learned Counsel for NCTE, Mr. Raju Ramachandran is right in submitting that the Guidelines permitted the State Government to collect necessary data and materials and make them available to NCTE so as to enable NCTE to take an appropriate decision. In accordance with the provisions of 1993 Act, final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all authorities in the light of the provisions of the Act and the law declared by this Court. It has been so held in St. John Teachers Training Institute.

60. The learned Counsel for the respondents are also right in relying upon the provisions of Articles 19 and 21A of the Constitution. Under Clause (g) of Article

19(1), all citizens have the right to practise any profession, or to carry on any occupation, trade or business, unless they are restrained by imposing reasonable restrictions under Article 19(6). In the instant case, applications had been made by colleges to NCTE under 1993 Act and after complying with the provisions of the Act, permission was granted by NCTE. The State thereafter could not have interfered with the said decision. It is also clear that Article 21A would cover primary as well as secondary education and petitioners could claim benefit of Part III of the Constitution as well.

61. The respondents have stated that they have spent huge amount and incurred substantial expenditure on infrastructure, library, staff, etc. and after satisfying about the necessary requirements of law, permission had been granted by the NCTE, if the said action is set aside on the basis of the decision of the State Government, irreparable loss will be caused to them. Since in our view, the order passed and action taken by NCTE cannot be termed illegal or unlawful and the State Government could not have passed the impugned order refusing permission on the ground of so called "policy" of not allowing new B.Ed. College to be opened, it is not necessary for us to delve into further the said contention.

62. Before parting with the matter, we may state that at one stage, the High Court has observed that in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted u/s 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted u/s 82 of the Maharashtra University Act. To that extent the provisions of Section 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void.

63. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University 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 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.

64. Since we have decided the matters on merits, we have not dealt with preliminary objection raised by the colleges that the State cannot be said to be "person aggrieved" and, therefore, has not locus standi to challenge the decision of NCTE.

65. We may, however, state that the academic year 2005-06 is almost over and as such it is not possible to grant the prayer of respondent-colleges to allow them to admit students for the year 2005-06. It is, therefore, directed that the order passed by NCTE would operate from the next academic year, i.e., from the year 2006-07.

5. Reference may also be made to the unreported decision of the Division Bench of this Court (Coram: M.S. Shah and S.D. Dave, J.J.) dated 30.11.2005 in LPA No. 1571/2005, wherein after considering the Scheme of the NCTE Act, for PTC Colleges, the Schedule came to be framed as per the operative portion of the order at para 20 as under:

20. The appeals are allowed in the following terms:

I. The Director of Primary Education shall allot the students to the PTC Colleges of the appellant institutions for the academic year 2005 2006 subject to the following terms and conditions and clarifications:

(i) The appellant institutions shall adhere to NCTE norms as mentioned in the NCTE letter dated 26.9.2005 addressed to the Director of Primary Education and copies endorsed to the appellants and the Director of Primary education shall get the necessary verification made within one week from today.

(ii) This order shall not be construed as dispensing with fulfillment of norms of the Examining Body regarding completion of terms and attendance for eligibility to appear at the examinations.

(iii) All the seats in the appellant institutions shall be filled in from the merit lists prepared by the State Government authorities and no seat shall be treated as a management seat.

(iv) The allotment shall be made within ten days from today strictly on the basis of merit lists prepared by the Director of Primary Education for the respective categories, but those who have already secured admission in other PTC colleges (whether in Government quota or in management quota) shall not be considered for admissions to the appellant PTC colleges. There will be no reshuffling.

(v) The Director of Primary Education shall issue advertisements in all five leading Gujarati newspapers in the State being Gujarat Samachar, Sandesh, Divya Bhaskar, Fulchhab and Jansatta-Loksatta (all Gujarat editions) calling students from a particular Sr. No. to a particular Sr. No. in the respective categories to remain present for the interviews with necessary documents.

(vi) The expenses for the newspaper advertisements shall be deposited by the appellant institutions with the Director of Primary Education and to start with, each appellant institution shall deposit Rs. 25,000/- latest by 3rd December, 2005.

(vii) The appellants shall not charge from the students any amount in excess of the amounts of tuition fees, hostel fees and any other fees/expenses determined by the State Government and/or the Director of Primary Education. The accounts relating to all the amounts received by the appellants including food bill amounts shall be submitted to the Director of Primary Education or any other authority nominated by him.

(viii) Looking to the number of days which have elapsed, the students shall be

required to pay only proportionate amount of tuition fees and hostel fees for the month of December till the examination is held. In other words, no fees and other expenses shall be charged for the period upto November, 2005.

(ix) The appellants shall pay salaries and allowances to the members of their teaching as well non-teaching staff only by A/c. Payee cheques or by depositing the amounts in their bank accounts.

(x) If any person has any complaint or grievance regarding fees or any other facilities, it will be open to such person to make a complaint to the Director of Primary education and/or to the NCTE at Bhopal.

(xi) The Managing Trustee of each appellant institution shall file an undertaking before this Court by 3rd December 2005 to comply with all the above terms and conditions.

II. Apart from the aforesaid directions being granted in the facts of the present case, the Court cannot help observing that the State Government and the Director of Primary education on one hand and the Regional Committee, NCTE, Bhopal on the other hand, shall make endeavour to make assessment of the need for trained primary teachers in the State of Gujarat for future academic years and the NCTE shall accordingly consider the applicants for recognition for opening the new PTC colleges or permission to open additional classes in the existing PTC colleges and the admission process shall be completed every year as per the Schedule indicated in this judgment, subject to any variations which may be made upon consensus being reached by the above authorities or subject to any statutory regulations which may be framed in this behalf by the competent authority.

6. The reference may also be made to certain provisions of the NCTE Act, more particularly of Chapter IV and specifically Section 14(6), which reads as under:

Section 14(6) Every examining body shall, on receipt of the order under Sub-section (4),-

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

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

7. It appears that the language used by the Parliament is that every examining body, which is University in the present case, shall grant affiliation, where the recognition has been granted and shall cancel the affiliation of the Institution, where the recognition has been refused. Section 15 of the NCTE Act provides for permission for a new course for a training recognized by the Institute. Section 16 of the said Act provides for a bar operating against any examining body notwithstanding anything contained in any other law for the time being in force to grant affiliation unless the Institution concerned has obtained recognition either u/s 14 or Section 15 of the said Act. Section 17 of the Act provides for taking action by the Regional Committee of its own motion or upon the

representation received from any person to withdraw the recognition if the Institute has contravened any provisions of the Act or the Rules or the Regulations or the Order issued therein, after following the procedure as provided under the said Section. It also provides that upon the withdrawal of the recognition, the Institute shall discontinue the course and the concerned University or the examining body shall cancel the affiliation of the Institute. Section 18 of the Act provides for appeal by any aggrieved person against the order u/s 14 or Section 16 or Section 17 of the Act. Therefore, as per the Scheme of the Act and more particularly Chapter IV of the Act, it appears that there is an inbuilt mechanism provided under the Act for grant of recognition for withdrawal or discontinuation of the recognition or the course and of preferring the appeal. There cannot be any different conclusion than the language used by the Parliament of the word "shall", which in its literal meaning is to be read as "mandate" or "mandatory" upon the University or the Institute granting affiliation or a body granting affiliation upon the recognition granted by NCTE under the NCTE Act. If the University or the examining body is of the view that there is contravention to the provisions of the Act or the Rules or the Regulations or the Order made therein or the breach of any of the conditions on the basis of which, recognition has been granted, it has to bring to the notice of the Regional Committee of NCTE, which is required to take action as per the provisions of Section 17 of the Act and/or in alternative, the University or the examining Body can also prefer the appeal u/s 18 of the NCTE Act, if otherwise aggrieved, in any manner, by the order of granting recognition.

8. The education of the course of M.Ed., is covered by the Higher Education and thereby covered by Entry No. 66 and, therefore, the field of the Parliament, which is to prevail over any State Legislature is no more *res integra* in view of the above referred decision of the Apex Court in case of State of Maharashtra (*supra*). More or less similar question once again has been considered by the Division Bench of Himachal Pradesh High Court in case of Shimla Education Society and Trust Vs. State of H.P. and Another, and ultimately it was concluded at para 28 and 29 by the Division Bench of the High Court of Himachal Pradesh as under:

28. In view of the categoric pronouncements of the law by their Lordships of the Supreme Court, we are of the firm view that after the enforcement of the National Council for Teacher Education Act, 1993, the Ordinances of the University will be deemed to have become unenforceable with regard to educational institutions covered by the said Act. The Ordinances framed by the University under the Act are required to be in conformity with the norms and guidelines prescribed by the National Council for Teacher Education Act, 1993.

29. What emerges from the above discussion is as follows:

1. The State has no power to impinge upon the legislative power of Parliament by framing a policy since as far as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions

are concerned, the subject is occupied by Entry 66 of List 1 of Schedule VIII of the Constitution.

2. The policy framed by the State is void being repugnant to the National Council for Teacher Education Act, 1993. The order passed by the State on 22.6.2007 and the order passed by Respondent No. 2 University dated 20.7.2007 are a nullity in the eye of law.

3. The University should have considered the grant of affiliation without insisting for any NOC from the State Government and should have acted on the basis of the permission accorded by the National Council for Teachers Education.

9. However, Mr. Shelat, learned Counsel appearing for the University by relying upon the provisions of the Section 39 of the Gujarat University Act, 1973 attempted to distinguish the legal position and further contended that it is within the power of the State Legislature to control Post Graduate Education within the University Area and by the University itself and he further attempted to submit that such provisions of the statute does not operate in conflict, but would operate together in their respective fields. He further supplemented his submission by contending that as per the provisions of NCTE Act, study of Post Graduation of M.Ed. Course, may be regulated and if the Course of M.Ed. is to be open, one may be required to undergo the formalities as per the regulations of NCTE and the NCTE Act, but in spite of the NCTE and recognition granted by NCTE to the petitioner, it is within the power of the University to decline the affiliation if the establishment of such Post Graduation Centre is not in accordance with Section 39 of the Act or, in any case, if the petitioners are to open Post Graduation Centre of M.Ed., it has to be by the University and not by the petitioners like self-finance Institution.

10. In order to appreciate the contention, it would be appropriate to consider the provisions of Section 39 of the Gujarat Universities Act, which reads as under:

Section 39: Within the University Area, all post-graduate instruction, teaching and training shall be conducted by the University or by such affiliated colleges or institutions and in such subjects as may be prescribed by the Statutes.

11. It has been further contended that based on the aforesaid sections, the regulations are framed for regulating the Post Graduation Centre within the University area. If the contention is considered on its face value, it can hardly be accepted in view of the above referred settled legal position by the Apex Court in case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (Supra). However, if the matter is examined, so as to enable NCTE Act to operate with the operation of Section 39, it appears that by virtue of Appendix-8 of NCTE Act providing norms and standards for Post Education Programme (M.Ed.), the preamble reads as under:

Appendix-8

1.Preamble.-

(a) The Master of Education (M.Ed.) programme, which may be general or specialised, is meant for candidates desirous of pursuing post-graduate programme in teacher education, on full-time basis, and for preparing a professional cadre of teacher educators.

(b) Only University Departments or institutions running B.Ed. Programme are eligible to offer M.Ed. Course.

12. Clause (b) provides the eligibility to the University Departments or the Institutions running B.Ed. Programme to offer M.Ed. Course and it does not speak for such right to offer M.Ed. Course only to the University Departments, but it also provides for the eligibility of the Institutions running the B.Ed. Course to offer M.Ed. Course. Therefore, if the interpretation of Mr. Shelat is accepted as that of Section 39 that it is only the University has the right to open a Post Graduation Centre, then in that case, such would result into curtailing the operation of the laws made in the Parliament as against the State Legislature by virtue of Section 39 of the Act. It is by now well settled, as per the principles for interpretation of the statutes, that attempt on the part of the Court first will be to reconcile the different statutory provisions so as to allow them to operate independently and if such is not possible, the Court may read down the provisions so as to leave room for operating the legislature having overriding effecting and if there is a direct conflict, either the provisions may be declared inoperative or may be ultimately struck down as ultra vires. It is not in dispute that the subject of M.Ed., is of higher education covered by Entry No. 66 and consequently in the field of Parliament to make laws for regulating the education. Therefore, the State Legislature even if is on the statute book has to make room for operation of the laws made by the Parliament when covered by the subject of Parliament. As per the above referred provisions of the Appendix-8 incorporated in the part of the Act, if the eligibility is provided by NCTE Act to the Institutions imparting education in B.Ed., for offering course in M.Ed., such cannot be curtailed or would not operate, so as to give the widest interpretation of Section 39 as sought to be canvassed by Mr. Shelat on behalf of the University. Therefore, it would be appropriate to read Section 39 of the Act to make it applicable in cases where the University itself is to impart education of Post Graduation in M.Ed., but Section 39 would not operate as a bar to the University to grant affiliation if any other institution is found eligible and granted recognition by NCTE to impart education in M.Ed. In my view, if the provisions of Section 39 are not read down in the aforesaid manner, the aforesaid provisions of Appendix-8 read with the provisions of Section 14(6) may be rendered redundant and consequently may also come in conflict and, therefore, it would be appropriate to read down Section 39 by interpreting that Section 39 of Gujarat University Act shall apply in cases, where the University itself is desirous to offer course of M.Ed., but would not apply in cases, where any other institution found eligible and granted recognition is to offer course in M.Ed. In a case where an institution has been found eligible and has been granted recognition by NCTE under NCTE Act, it would be required for the University to grant affiliation as per

the mandate of Section 14(6) of the NCTE Act being the law made by the Parliament and to such cases Section 39 of the Gujarat Universities Act would have no applicability.

13. Much grievance has been raised on behalf of the University by contending that the NCTE itself has not examined the matter to the extent as to whether the regulation and the norms are complied with, more particularly for the appointment of staff. It was submitted on behalf of the university that as per NCTE Regulations as operating at the time when recognition was granted, the requirement for appointment of staff providing norms and standards for Master of Education Programme (M.Ed.) also provided for a particular qualification and also the appointment to be made on the basis of the recognition of the Selection Committee constituted as per the Policy of the Central Government/State Government or affiliating University concerned, whichever is applicable. Mr. Shelat submitted that the University has no knowledge whatsoever about any selection made or appointment made by the petitioner. As per the University without their knowledge, some details were submitted by the Institution and is blindly accepted by NCTE without verification of its genuineness or otherwise, including that of requisite qualifications and whether any Selection Committee was constituted or not. He further submitted that even such Selection Committee has to be as per the UGC Guidelines and as per Mr. Shelat, it is an admitted position that no Selection Committee is constituted, nor any recommendation is made by such Selection Committee with the involvement of the affiliating University for appointment of the Staff. Therefore, he submitted that the regulations are breached and the norms are not complied with by the petitioner and, therefore, this Court may not grant the reliefs to the petitioner, directing the University to grant affiliation or in alternative, this Court may not entrust the writ to a person, who has not complied with the requisite procedure and the norms framed by NCTE itself.

14. Whereas on behalf of the petitioner, it was submitted that once the recognition has been granted, the grievance, if any, against such recognition, including that of non-compliance to the norms and the conditions of the recognition is to be made before the NCTE and the University cannot be permitted to nullify the mandatory provisions of Section 14(6) of NCTE Act, more particularly when the Apex Court has already upheld its applicability in case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra).

15. Mr. Shastri, learned Counsel appearing for NCTE submitted that for some time, as the Regional Committee of NCTE was suspended, the matter could not be taken up, however, NCTE has received the letters and is to consider the matter, if the regulation or the norms prescribed for appointment of the staff is not complied with by the petitioner. He submitted that on such ground, the power may not be read with the University to decline the affiliation.

16. It is true that this Court, while exercising the power under Article 226 of the Constitution, may decline the writ to a party, who has no bonafide purpose or

that the exercise of the power is to create a situation allowing such litigation to reap any undue benefits therefrom. It is also true that the respondent, who is to face the petition can raise the contention before the Court that the petitioner has not complied with the statutory provisions and, therefore, the relief may not be granted. However, if the facts of the present case are examined, it appears that the principal defence raised on behalf of the University in support of the aforesaid aspects is that the petitioner has not complied with the NCTE Regulations itself. Therefore, since they are party to such breach of law, the relief may not be granted or may not be permitted to invoke the jurisdiction of this Court.

17. It is not a matter that there is no provision under the Act for taking care of such situation. As observed earlier, Section 17 of the Act expressly deals with such situation inasmuch as, if the Regional Committee is satisfied that a recognised institution has contravened any provisions of the Act or the Rules or the Regulations, order made or issued thereunder or any conditions subject to which the recognition was granted under Sub-section (3) of Section 14, it has the power to withdraw the recognition of such recognised institution for the reasons to be recorded in writing. If the University who is otherwise bound by the mandate of Section 14(6) of the Act, is permitted to raise such contention, it may result into diluting the sanctity of the position of law and the principles laid down by the Apex Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) read with the above referred decision of the High Court of Himachal Pradesh in the case of Shimla Education Society and Trust v. State of H.P. and Anr. (Supra). It is true that in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra), it was a case of implementation of the policy of the Government on the face of the laws made by the Parliament, i.e., NCTE Act as per Entry 66, whereas in the present case, the contention is sought to be raised by way of defence by the University not to grant affiliation and thereby for supporting the action of not granting affiliation. Had it been a case put forward on behalf of the University that in view of the law laid down by the Apex Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) read with the above referred decision of the Division Bench of this Court, the University is ready to grant affiliation, but the petitioner may be directed to comply with the regulation as per NCTE Act, it may stand on different. But the action of the University of not granting affiliation is sought to be supported by raising the contention that the Regulation is not complied with, i.e., of appointment of the Staff as per the norms prescribed. Such contention even if considered for the sake of examination can be said as without foundation inasmuch as until the affiliation is granted, there will not be any constitution of the Selection Committee as conceived in the Regulations framed by NCTE. As referred to hereinabove, paragraph 4.4 of the norms and standards for Master of Education(M.Ed.) notified by the NCTE under the NCTE Act in exercise of powers under Sub-section(2) of Section 32 of the Act, which is pressed in service on behalf of the University shows as under:

18. The appointment shall be made on the basis of recommendation of Selection

Committee constituted as per the policy of the Central/State Government affiliated University concerned, whichever is applicable.

19. Literal meaning thereof shows that the affiliating University has to constitute, as per its policy, the Selection Committee, to recommend for the appointment in the institution which has been granted recognition by NCTE. It is not a case where the affiliation was granted and thereafter, the complaint is made against the appointment made without recommendation of the Selection Committee constituted by the University, but is a case of raising the dispute prior to the granting of affiliation by the University. If the University is to raise the contention that until the aforesaid condition is complied with, it would not result into full compliance to the norms and regulations framed by the NCTE itself, it would be required for the University first to grant the affiliation and thereafter to constitute a Committee and to undertake the process of recommendation for appointment. In the present case, the University has declined to grant the affiliation or rather no affiliation whatsoever is granted inspite of having been brought to the notice that the recognition is already granted by NCTE under the Act to the petitioner institution. It can hardly be disputed that until the affiliation is granted by the University, there will not be any authority on the part of the University to constitute a Selection Committee for recommendation of the appointment in the petitioner institution. Such power may flow only after the affiliation is granted. Therefore, the contention as sought to be canvassed for non-compliance of the aforesaid provision by the University that too prior to the granting of affiliation, can be said as not only to nullify the effect of Section 14(6) of the Act, but can also be said as giving a go by to the inbuilt mechanism provided under the Act of Section 17. Nothing prevented the University from moving the matter to the Regional Committee u/s 17 after granting affiliation. But it is an admitted position that such course is not undertaken. Further, if such contention is entertained, it may give leverage to the examining body which is the University in the present case, to decline affiliation, who otherwise is expected to bring it to the notice of the regional committee as per the provisions of Section 17 of the Act. Not only that, but if the contention is accepted that until appointments are made on the basis of the recommendation of the Selection Committee constituted as per the policy of the affiliated university, the affiliation cannot be granted by the University itself, then in that case, it would run counter to the submissions made on behalf of the University.

20. As observed earlier, in absence of any affiliation, it would not be possible for the University to constitute a committee and thereby, to recommend for appointment and Mr. Shelat has not been able to dispute such position and he fairly submitted that it is not only if the affiliation is granted, the committee could be constituted. Had it been a case where the provisional affiliation is granted by the University and thereafter, the Committee is constituted and inspite of the same, the appointments are made by the institution without their being any recommendation of such selection committee, possibly it may stand on different footing. But in the present case, the University itself lacks the authority

to constitute Selection Committee with regard to the appointment of the staff of the petitioner until the affiliation is granted, may be provisionally or finally. It was also contended on behalf of the University by Mr. Shelat that there is no procedure for grant of provisional affiliation and thereafter to grant final affiliation by the University. Therefore, this Court is inclined to take the view that until the affiliation is granted by the University, such norms prescribed are non-implementable even if the contention of Mr. Shelat is to be considered that there is non-compliance to the norms prescribed by NCTE.

21. There are two views of looking at the situation so as to reconcile the requirement keeping in view the mandate of Section 14(6) of the Act. No different opinion can be recorded than that the examining body which is University in the present case is required to grant affiliation to an institution which has been granted recognition as per the provisions of Section 14(6) of the Act. However, if the provisions of Section 14(6) of the Act is to be implemented, one mode permissible to the University is to grant provisional affiliation upon a certificate of recognition produced before it by the institution and thereafter, as the University associates itself into the process of recommendation through selection committee for appointment of the staff so as to comply with the norms of NCTE as per the above mentioned provisions of Clause 4.4(A), after such staff is appointed and accordingly a satisfaction is recorded by the concerned competent authority of NCTE, the final affiliation may be granted so as to allot the students from the next academic year onwards. The another mode can be that the University may grant affiliation upon a certificate of recognition produced in view of the provisions of Section 14(6) of the Act and thereafter, may report to the NCTE if as per the University there is any non-compliance to the regulations or the orders made thereunder or any conditions of the recognition and the regional committee may enforce the implementation of the norms prescribed after the involvement of the University in the Selection Committee as per the norms prescribed. But one inevitable conclusion deserves to be recorded is that until the affiliation is granted by the University, it is impossible for an institution which is to seek recognition or which has been granted recognition to comply with the norms prescribed vide para 4.4(A) for appointment of staff on the basis of the recommendation of the Selection Committee constituted by the affiliating University. Ultimately, it may be for the NCTE to find out a mechanism, but in my view, until the affiliation is granted by the University and insistence is made for compliance of such norms, it can be said as lame excuse to nullify the effect of the laws made by the Parliament and more particularly, the mandate of Section 14(6) of the Act. Therefore, keeping in view the aforesaid peculiar facts and circumstances of the case, I find that such contention from the mouth of the University who itself has not obeyed the law as per Section 14(6) of the Act should not be entertained and if entertained, it would not only result into chaotic situation, but it would result into nullifying the effect of Section 14(6) of the Act so far as it creates the obligation upon the examining body, which is University in the present case, to grant affiliation in a

case where the recognition has been granted. There is one additional reason for not entertaining such contention and the same is that if such contentions are entertained by this Court, who is otherwise to enforce law and constitutional provisions, may result into diluting the sanctity of the law declared by the Apex Court in the case of Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. (supra) for prevailing of the laws made by the Parliament for higher education, which is M.Ed. in the present case, over not only the laws made by the legislature i.e., the Universities Act, but also over the action of the University of not granting the affiliation upon the contention that the norms prescribed by NCTE is not complied with, which otherwise is essentially to be examined and considered by the competent authority of NCTE and not the University.

22. In view of the above, it appears that it is obligatory on the part of the University to grant affiliation to the petitioner who has been granted recognition by NCTE under the NCTE Act. As the aforesaid has not been done, it is hereby directed that the respondent University shall grant affiliation to the petitioner Institution within four weeks from the receipt of the order of this Court. It is clarified that the aforesaid direction shall not operate as a bar to the University in bringing to the notice of the Regional Committee of NCTE for non-compliance of the provisions of the Act or the Rules or Regulations made thereunder or the conditions for grant of recognition. The present order shall also not operate as a bar to NCTE from exercising the power u/s 17 of the Act, if a case is made out before it, for non-compliance to the provisions of the Act or the Rules or Regulations made thereunder or the conditions for grant of recognition.

23. The petition is allowed to the aforesaid extent. Rule absolute. No order as to costs.