
(2012) 10 AHC CK 0083

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 57527 of 2010 and 493 of 2012

Shashi Kumar Dwivedi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(g), 21, 226, 32

National Council for Teacher Education Act, 1993 — Section 14, 14(1), 14(3), 14(3)(a), 15

University Grants Commission Act, 1956 — Section 2, 2(f), 22, 22(3), 23

Citation : (2012) 9 ADJ 641 : (2013) 1 ALJ 756

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : Gautam Baghel, G.K. Singh, P.S. Baghel and V.K. Singh, for the Appellant; R.C. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Dilip Gupta, J.—Writ Petition No. 57527 of 2010, has been filed by some of the candidates who were admitted to the two years Basic Teachers Certificate (hereinafter referred to as "BTC") Course in the Academic Session 2008-09 in the Nehru Gram Bharti University, which is a deemed University, for quashing the order dated 14th July, 2010 passed by the Director of the State Council of Educational Research and Training (hereinafter referred to as "SCERT") and for a direction upon the SCERT to recognize the BTC Course and the certificates awarded by the deemed University.

Writ Petition No. 493 of 2012 has been filed by some of the candidates who had been granted admission by the deemed University to the BTC Course in the next Academic Session 2009-10 and the relief claimed in this petition is also for a direction upon the respondents to recognize the BTC Certificate awarded by the deemed University so that the petitioners can be considered eligible for appointment as Assistant Teachers in the Junior Basic Schools.

Nehru Gram Bharti, a Society registered under the provisions of the Societies Registration Act, 1860, established the Rajiv Gandhi Post Graduate College at Kotwa, Jamunipur, Allahabad (hereinafter referred to as the "Post Graduate College"). The Post Graduate College was granted affiliation by the Chhatrapati Shahu Ji Maharaj, University, Kanpur (hereinafter referred to as the "Kanpur University") under the provisions of the U.P. State Universities Act, 1973.

2. The Post Graduate College was conducting a number of Graduate and Post Graduate Courses including the B.Ed. Course. It also sought permission from the Northern Regional Committee of the National Council for Teacher Education (hereinafter referred to as "NCTE") for starting the two years BTC Course under the provisions of the National Council for Teacher Education Act, 1993 (hereinafter referred to as the "NCTE Act") and the Northern Regional Committee of the NCTE by its letter dated 16th August, 2005 granted permission to the Post Graduate College u/s 15(3) of the NCTE Act to start the new two years BTC Course subject to the terms and conditions contained in the letter. However, steps for starting the BTC Course were not taken by the Post Graduate College.

3. On 2nd June, 2007, the Post Graduate College sent a proposal to the University Grants Commission to declare it as a deemed University u/s 3 of the University Grants Commission Act, 1956 (hereinafter referred to as the "UGC Act") and by the notification dated 27th June, 2008, the Central Government declared the Post Graduate College as Nehru Gram Bharti deemed University for a period of three years from the date the Kanpur University disaffiliated the Post Graduate College. The State Government by the order dated 17th November, 2008 granted permission for disaffiliation of the Post Graduate College u/s 37(8) of the U.P. State Universities Act. The deemed University then made a request to the Northern Regional Committee of the NCTE for changing the name in the permission earlier granted on 16th August, 2005 and the Northern Regional Committee of the NCTE in its 134th Meeting granted such permission for change in name of the Post Graduate College to that of Nehru Gram Bharti University and intimated its decision to the deemed University by the letter dated 2nd December, 2008.

4. An advertisement was also issued by the deemed University inviting applications from candidates for admission to the BTC two years course for the Academic Session 2008-09 and similar advertisement was issued for the subsequent Academic Session 2009-10. The petitioners are such candidates who were given admissions in the two years BTC Course in the deemed University in the Academic Sessions 2008-09 and 2009-10 and have completed the two years BTC course.

5. The deemed University sent a communication dated 23rd February, 2010 to the SCERT stating therein that after declaration as a deemed University, it had started the two years BTC course on the basis of the permission granted by the NCTE and so SCERT/State Government may approve the certificates granted by the deemed University and include the name of the deemed University in the list

of approved Institutions so that the students who are awarded the Certificates by the deemed University may not have any difficulty in future in seeking employment as Assistant Teachers in the Junior Basic Schools. A student by the name of Shiv Prakash Chauhan-petitioner No. 42 in Writ Petition No. 57527 of 2010 also sent a communication dated 18th June, 2010 to the Director of SCERT for considering him for appointment as an Assistant Teacher in the Junior Basic School on the basis of the certificate awarded by the deemed University, but the Director, SCERT by the letter dated 14th July, 2010, informed the said petitioner that the papers were being returned as they did not concern the SCERT.

6. The two Writ Petitions have, accordingly, been filed for a direction upon the respondents to recognize the BTC Course of the deemed University and to treat the certificates awarded by the deemed University as valid certificates for appointment as Assistant Teachers in the Junior Basic Schools.

7. Sri G.K. Singh, learned counsel appearing for the petitioners in both the Writ Petitions submitted:

(1) The Central Government by the notification dated 27th June, 2008 issued u/s 3 of the UGC Act declared the Post Graduate College as "Nehru Gram Bharti University" and the deemed University has its Memorandum of Association, which is in accordance with the model Memorandum of Association approved by the University Grants Commission.

(2) Section 14 of the NCTE Act deals with recognition of Institution offering course or training in teacher education and it provides that every Institution offering or intending to offer a course or training in teacher education may for grant of recognition under the Act, make an application to the Regional Committee concerned in the manner determined by the Regulations.

(3) Section 15 of the NCTE Act deals with permission for new course or training by recognized Institutions.

(4) The Northern Regional Committee of the NCTE on 16th August, 2005 had earlier granted the Post Graduate College permission for starting the new BTC Course u/s 15(3) of the NCTE Act for an annual intake of 50 seats and subsequently when the College became a deemed University, the Northern Regional Committee of the NCTE by its notification dated 2nd December, 2008 approved the change in the name of the Post Graduate College as Nehru Gram Bharti University.

(5) Once the NCTE had granted permission u/s 15(3) of the NCTE Act, the deemed University could start the BTC two years course without seeking affiliation from the "examining body" under Sections 15 and 16 of the NCTE Act as the deemed University itself is the "examining body" which can hold the examination and award the certificates.

(6) The State Government and its agencies including the SCERT are, therefore, bound to consider the certificates of BTC Course awarded by the deemed

University as valid certificates for the purpose of the considering such candidates as eligible for appointment as Assistant Teachers in the Junior Basic Schools under the provisions of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the "1981 Rules").

8. In support of these contentions, learned counsel for the petitioners relied upon the judgment of the Supreme Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, , and the judgments of the Division Bench of the Court in Special Appeal No. 1639 of 2007 State of U.P. and others v. Dau Dayal Mahila P.G. College, and others, decided on 31st July, 2009 and State of U.P. and Others Vs. Furqan Ali and Others, .

9. Sri C.B. Yadav, learned Additional Advocate General assisted by Sri S.P. Singh, learned Standing Counsel appearing for the State-respondents made the following submissions:

(1) In the notification issued by the University Grants Commission u/s 3 of the UGC Act containing the list of Institutions declared as deemed Universities, the name of Nehru Gram Bharti, University is at Serial No. 124 and at the bottom of the list it is also mentioned that all Deemed Universities can award degrees for only such courses offered at the time of conferment of the status and courses allied to the approved courses and that Deemed Universities can also award degrees for conventional/general degree programmes leading the B.A./B.Sc./B.Com. or M.A/M.Sc.

(2) Even otherwise, the deemed University can award only such degrees which have been notified by the University Grants Commission, with the approval of the Central Government, u/s 22(3) of the UGC Act.

(3) BTC is not a certificate included in the list notified by the University Grants Commission and, therefore, the deemed University cannot award this certificate merely because it had been declared a deemed University unless it was granted affiliation by the "examining body" under Sections 15 and 16 of the NCTE Act.

(4) The deemed University, therefore, could not have started the BTC course and granted admission to the students without obtaining affiliation from the "examining body".

(5) Mere grant of permission by the NCTE u/s 15(3) of the NCTE Act cannot be made a ground by the deemed University to contend that it is exempted from the relevant notifications issued by the State Government for running the BTC course.

(6) Under the Government Order dated 27th February, 2004, the "examining body" for conducting different examinations in the departments of the Government of Uttar Pradesh is the Examination Regulatory Authority, Uttar Pradesh and the Head of this Authority is the Secretary who is responsible for conducting all examinations in the same way as the Secretary of Secondary Education (Madhyamik Shiksha Parishad) and it is this Authority which is responsible for grant of affiliation on individual basis to the Institutions.

(7) Affiliation to the Institutions recognized by the NCTE are granted in accordance with the Government Orders dated 27th February, 2004, 25th November, 2009 and 18th January, 2010 and for appointment as Assistant Teachers in the Junior Basic Schools run by the Basic Shiksha Parishad, it is essential for an applicant to possess certificate awarded by an Institution which has obtained affiliation from the "examining body" and so the certificate awarded by the deemed University cannot be considered for appointment as Assistant Teachers in the Junior Basic Schools.

(8) Even under the National Council for Teacher Education (Recognition Norms and Procedure) Regulation, 2007, (hereinafter referred to as the "2007 Regulation") and the National Council for Teachers Education (Recognition Norms and Procedure), Regulation 2009 (hereinafter referred to as the "2009 Regulation"), it is provided in Regulation 8(12) that the University or "examining body" shall grant affiliation only after issue of the formal recognition order and admission by the Institution shall be made only after affiliation by the University or Affiliating Body and as per the State policy.

(9) Appendix-2 of the 2007 or 2009 Regulations, which deals with norms and standards for diploma in Elementary Teacher Education Programme leading to Diploma and Elementary Education, provides for the admission procedure which shall be on merits on the basis of the marks obtained in the qualifying examination and/or in the Entrance Examination or any other selection process as per the policy of the State Government/U.T. Administration.

10. In support of his contentions learned Additional Advocate General placed reliance upon the decisions of the Supreme Court in State of Rajasthan and Others Vs. Lata Arun, ; Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others, ; Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, ; Rajasthan Pradesh V.S. Sardarshahar and Another Vs. Union of India (UOI) and Others, and the decision of this Court in Rajiv Kumar and Others Vs. State of U.P. and Others, .

11. I have considered the submissions advanced by learned counsel for the parties.

The main issue that arises for consideration in these petitions is whether an Institution, in the present case a deemed University, which has been granted permission u/s 15(3) of the NCTE Act to conduct the two years BTC Course is required to seek affiliation from the "examining body" before it can start the said Course and make admissions.

It is not in dispute that when the Post Graduate College was being run by the Society, it was affiliated to the Kanpur University under the provisions of the U.P. State Universities Act, 1973. The Post Graduate College, which had been conducting a number of Graduate and Post Graduate Courses including the B.Ed. Course from 1996 and M.Ed. Course from 2006, submitted a proposal to the Central Government on 2nd June, 2007 for conferring upon it the status of a

deemed University u/s 3 of the UGC Act under which the Central Government may, on the advice of the University Grants Commission, declare, by notification in the Official Gazette, any institution for higher education, other than a University to be a deemed University for the purpose of the UGC Act.

For considering the proposal for declaring an Institution as a deemed University u/s 3 of the UGC Act, the University Grants Commission has framed guidelines and paragraphs 2, 3 and 4 of the guidelines are reproduced below:

2. This provision has been made in the Act to bring under the purview of the University Grants Commission institutions which for historical reasons or for any other circumstances are not universities and yet are doing work of a high standard in specialized academic field comparable to a university and that granting of the status of a university would enable them to further contribute to the cause of higher education which would mutually enrich the institution and the university system.

3. To qualify for recognition of status as a university, the institution should have among its primary objectives, post-graduate instruction and training in such branches of learning as it may deem fit, and research for the advancement and dissemination of knowledge.

4.(a) For the purpose of recognition as a university an institution should generally be:

(i) Engaged in teaching programmes and research in chosen fields of specialization which are innovative and of very high academic standards at the Master's (or equivalent) and/or research levels. It should also have a greater interface with society through extra mural, extension and field action programmes.

(ii) Making in its area of specialisation, distinct contribution to the objectives of the University education system through innovative programmes and on being recognized as a university capable of further enriching the university system as well as strengthening teaching and research in the institution and particularly in its area of specialization.

(iii) Competent to undertake application oriented programmes in emerging areas which are relevant and useful to various development sectors and to the society in general.

(iv) Institutions should have the necessary viability and a management capable of contributing to the university ideals and traditions.

4(b). Ordinarily, institutions affiliated to universities and which are offering only conventional degree programmes leading to B.A./B.Com. B.Sc., or M.A./M.Com./M.Sc., will not be considered for grant of deemed to be university status. However, such institution which is also offering innovative programmes, and which has adequate resources, might be considered for recognition as a

university. Supplementary assistance for innovation may be considered by the UGC only in such exception cases.

4(c). Institutions which are imparting routine type of institution to full-time students or offering training programmes for in-service personnel, unless of high quality, would, generally, not qualify for recognition.

4(d). In selective cases, outstanding research institutions specializing in Social Sciences, Sciences and Technology can be considered for research degrees and highly specialized programmes at the Master's level.

4(e). In case the institution is offering a degree/diploma, in professional subject(s), the academic programme(s) should be recognized by the concerned statutory authority e.g. AICTE, MCI, DCI, CCH, INC. etc. before it applies for a deemed to be university status u/s 3 of the UGC Act. This shall, however, not apply to de-novo institutions in the emerging areas with the promise of excellence, not yet fulfilling the prescribed guidelines of the UGC whose case will be considered for a provisional status for a deemed to be university.

12. It is seen that Institutions which are not University but are engaged in doing work of a high standard in specialized academic fields comparable to a University can be considered for granting the status of a University to enable them to further contribute to the cause of higher education which would mutually enrich the Institution and the University system. The Institution should have, amongst its primary objectives, post-graduate instruction and training and research for the advancement and dissemination in branches of learning and the Institution should generally be engaged in teaching programmes and research in chosen fields of specialization which are innovative and of very high academic standards at the Master's or Research Levels.

13. On the basis of the recommendation made by the University Grants Commission, the Central Government, by the notification dated 27th June, 2008, declared the Post Graduate College as a deemed University u/s 3 of the UGC Act for a period of three years from the date Kanpur University disaffiliated the Post Graduate College with the condition that prior to the expiry of three years, the deemed University shall get a review done by the Committee of the University Grants Commission and permanent status as a deemed University shall then be granted on the recommendation made by the University Grants Commission in this regard.

14. A copy of the said notification dated 27th June, 2008 was endorsed to the deemed University with certain conditions in addition to the conditions contained in the notification and the conditions relevant for the purposes of these petitions as translated in English are:

(1). The programmes conducted by the University or to be conducted in future shall satisfy the norms and standards prescribed by the Statutory Authorities like, UGC, AICTE and the deemed University shall not confer any degree or

degrees which have not been specified by the University Grants Commission. The deemed University shall also ensure that the degrees awarded by it are prescribed by the University Grants Commission as contemplated u/s 22 of the UGC Act namely a degree which, with the previous approval of the Central Government, has been specified by the Commission by notification issued in the Official Gazette.

(2). The deemed University shall not introduce a fresh education programme without seeking prior permission from the Health and Family Welfare Ministry and the concerned Statutory Authorities like Medical Council of India/All India Council for Technical Education. The deemed University shall confer degrees to only such students who have been granted admission after the issuance of the notification from the academic session 2008-09 and those who have been admitted earlier will be conferred degrees by the concerned University to which the Postgraduate College was affiliated.

(3). The deemed University shall follow the conditions prescribed by the appropriate Statutory Authorities like, University Grants Commission, All India Council for Technical Education with respect to the admissions of the students, the sanctioned strength and the new courses to be introduced.

(4). The deemed University shall not run any Distance Education Programme without the prior approval of the University Grants Commission and the Distance Education Council. (5). The deemed University, without prior approval of the University Grants Commission, shall not open an Education Centre/Campus Centres/Offshore Centre.

(emphasis supplied)

Section 3 of the UGC Act provides that on such a declaration being made by the Central Government for conferring the status of a deemed University, all the provisions of the UGC Act shall apply to such an Institution as if it were a University.

Section 22 of the UGC Act deals with the right of the University or an Institution deemed to be a University to confer degrees and is reproduced below:

Section 22.- Right to confer degrees.--(1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

15. The Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , examined the provisions of the UGC Act and the purpose for which the Act was enacted and observed that it was the responsibility of the Parliament to ensure that proper standards and uniformity are maintained in Institutions for Higher Education or Research throughout the country and after noticing the Statement of Objects and Reasons of the UGC Act, pointed out that in view of Section 22 of the Act, the right to confer or grant a degree can be exercised only by a University or an Institution deemed to be a University u/s 3 of the Act. The Supreme Court also pointed out that in view of the provisions of sub-section (3) of Section 22 of the UGC Act, the degrees that are awarded by the University or an Institution deemed to be a University should have been specified in the notifications issued by the University Grants Commission. The importance of degrees awarded by a University or an Institution deemed to be a University was also pointed out by the Supreme Court.

The observations of the Supreme Court are:

33. The consistent and settled view of this Court, therefore, is that inspite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

34. In order to achieve the aforesaid purpose, Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short "the UGC Act") is illustrative and consequently it is being reproduced below:

The Constitution of India vests Parliament with exclusive authority in regard to "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither coordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in universities, both old and new. It is also necessary to ensure that the available resources are utilised to the best possible effect. The problem has become more acute recently on account of the tendency to multiply universities. The need for a properly constituted Commission for determining and allocating to universities funds made available by the Central Government has also become more urgent on this account.

35. In the second para it is said that the Commission will also have the power to

recommend to any University the measures necessary for the reform and improvement of university education and to advise the university concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in universities.

36. The preamble of the UGC Act says - an Act to make provision for the coordination and determination of standards in universities and for that purpose to establish a University Grants Commission. Section 2(f) of this Act defines a university and it means a university established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the university concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act. Clause 12 provides that it shall be the general duty of the Commission to take, in consultation with the universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of university education and determination and maintenance of standards of teaching, examination and research in universities, and for the purpose of its functions under the Act, the Commission may do all such acts enumerated in sub-sections (a) to (j) thereof. Sections 22 and 23 are important and are being reproduced below:

22. Right to confer degrees.--(1) The right of conferring or granting degree shall be exercised only by a university established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a university u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

23. Prohibition of the use of the word "University" in certain cases.--No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word "University" associated with its name.

37. It is important to note that in view of Section 22 of UGC Act, the right of conferring or granting degree can be exercised only by university or an

institution deemed to be university u/s 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a "degree" and what it connotes is not given in the UGC Act but the meaning of the word as given in dictionaries and standard books is as under:

Webster's Third New International Dictionary:

1. "a title conferred upon students by a college, university, or professional school upon completion of a unified programme of study carrying a specified minimum of credits, passing of certain examinations, and often completion of a thesis or other independent research project."
2. "a grade or class of membership attained in a ritualistic order or society denoting a stage of proficiency often after a set ordeal or examination."

Wharton's Law Lexicon:

the state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a University."

Chambers's Twentieth Century Dictionary:

a mark of distinction conferred by universities, whether earned by examination or granted as a mark of honour.

P. Ramanatha Aiyar Law Lexicon (2nd Edn):

a mark of distinction conferred upon a student for proficiency in some art or science; university diploma of specified proficiency.

Encyclopedia Americana

"Degree" - the title conferred by a college or university, signifying that a certain step or grade has been attained in an area of learning. The award of a diploma conferring the bachelor's degree marks completion of undergraduate study. The master's and doctor's degrees reward graduate study. Other degrees constitute evidence of preparation for professional work - the MD (doctor of medicine) for example.

In the 20th century, however, the MA is granted in American universities and in those of England and the Commonwealth of Nations (apart from Oxford and Cambridge) on the basis of study beyond the BA and the presentation (usually) of a thesis. An exception is Scotland, where the MA has been the first degree conferred in all six universities ever since their founding. The bachelor of philosophy and bachelor of letters degrees are given for work beyond the MA.

The New Encyclopedia Britannica "Degree" - in education, any of several titles conferred by colleges and universities to indicate the extent of academic achievement. The hierarchy of degrees, dating from the 13th century, once resembled the medieval guild system. In the United States and Great Britain, the modern gradation of academic degrees is usually bachelor (or baccalaureate),

master, and doctor. With some exceptions, intermediate degrees, such as those of bachelor and master, have been abandoned in the universities of continental Europe.

38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A university degree confers a kind of a status upon a person like a graduate or a post-graduate. Those who have done research work and have obtained a PhD, DLitt., or DSc degree become entitled to write the word "Doctor" before their name and command certain amount of respect in society as educated and knowledgeable persons. That apart the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, post-graduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given u/s 22 of UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in *S. Azeez Basha and Another Vs. Union of India* (UOI), .

...

... 63. There is hardly any merit in the submission raised. The impugned Act which enables only a proposal of a sponsoring body to be notified as a university is not likely to attract private capital and a university so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such

institutions are established which provide high level of teaching and other facilities like well equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not universities without any teaching facility but having the authority to confer degrees. If good institutions are established for providing higher education, they can be conferred the status of a deemed university by the Central Government in accordance with Section 3 of UGC Act or they can be affiliated to the already existing universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned counsel as it enables a proposal alone being notified as a university.

(emphasis supplied)

It is, therefore, clear that the right of conferring or granting degree can only be exercised by a University or an Institution deemed to be a University and only such degrees can be conferred or granted which have been specified by the University Grants Commission in the notifications issued in the Official Gazette.

16. The respondents have brought on record the notifications dated 1st December, 1958, 17th November, 1960, 26th June, 1964, 27th April, 1966, 18th June, 1968, 17th February, 1969, 22nd December, 1969, 26th February, 1971, 15th November, 1973 and 18th July, 1975 issued by the University Grants Commission u/s 22(3) of the UGC Act. The said notifications specify the degrees that can be awarded and amongst others, they include Bachelor of Education (B.Ed.) and Master of Education (M.Ed.) degrees.

17. The NCTE Act provides for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development for the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

The various courses or training in teacher education specified in the Regulations framed under the NCTE Act are:

- (i) Diploma in Early Childhood Education (D.E.C.Ed.)
- (ii) Diploma in Elementary Education (D.El.Ed.)
- (iii) Bachelor of Elementary Education (B.El.Ed.) degree.
- (iv) Bachelor of Education (B.Ed.) degree.
- (v) Master of Education (M.Ed.) degree.
- (vi) Diploma in Physical Education (D.P. Ed.)
- (vii) Bachelor of Physical Education (B.P. Ed.) degree.

(viii) Master of Physical Education (M.P. Ed.) degree.

(ix) Diploma in Elementary Education (D.El.Ed.) through Open and Distance Learning System.

(x) Bachelor of Education (B.Ed.) degree, through Open and Distance Learning System.

(xi) Master of Education (M.Ed.) degree. through Open and Distance Learning System.

(xii) Diploma in Arts Education (Visual Arts).

(xiii) Diploma in Arts Education (Performing Arts).

18. In the present case the Institution was conducting the D.El.Ed. Programme which aims at preparing teachers for elementary stage of education that is Classes I to VII/VIII. The elementary teacher education programme carries different nomenclatures like BTC, Diploma in Education, TTC and so on.

The provisions of the NCTE Act relevant for the purposes of determining the controversy need to be reproduced.

Section 2(d), (e), (i), (1), (m) and (n) of the NCTE Act are as follows:

Section 2(d). "examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications;

(e) "institution" means an institution, which offers courses or training in teacher education;

... (i) "recognised institution" means an institution recognised by the Council u/s 14;

...

(1) "teacher education" means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education;

(m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act;

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

Sections 14, 15 and 16 of the NCTE Act are as follows:

Section 14 -Recognition of Institutions Offering Course or Training in Teacher

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

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

(2) The fee to be paid alongwith 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 reason 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 subsection (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.

15. Permission for a new course or training by recognised institution.--(1) Where

any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

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

(3) On receipt of an application from an institution under sub-section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall,-

(a) if it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory, and that it fulfills such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulation; 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 permission to such institution, for reasons to be recorded in writing:

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

(4) Every order granting or refusing permission to a recognised institution for a new 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 recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government.

16. Affiliating body to grant affiliation after recognition or permission by the Council.--Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,-

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution,

unless the institution concerned has obtained recognition from the Regional Committee concerned, u/s 14 or permission for a course or training u/s 15.

19. In exercise of the powers conferred u/s 32(2) of the NCTE Act, the NCTE framed the 2007 Regulations and Regulations 4 and 8 are as follows:

4. Eligibility.--The following categories of institutions are eligible for consideration of their applications under these Regulations:

(1) Institutions established by or under the authority of the Central/ State

Government/UT administration;

(2) Institutions financed by the Central/State Government/UT administration;

(3) All universities, including institutions deemed to be universities, so recognised under the UGC Act, 1956.

(4) Self-financed educational institutions established and operated by "not for profit", societies and trusts registered under the appropriate law.

...

8. Conditions for grant of recognition.--(1) An institution must fulfil all the prescribed conditions related to norms and standards as prescribed by NCTE for conducting the course or training in teacher education. These norms, inter alia, cover conditions relating to financial resources, accommodation, library, laboratory, other physical infrastructure, qualified staff including teaching and non-teaching personnel, etc.

2...11.

(12) The University or Examining Body shall grant affiliation only after issue of the formal recognition order under sub-regulation (11) of Regulation 7 of these Regulations. Further, admissions by the institution shall be made only after affiliation by the University or Affiliating body and as per the State policy.

Later on, these 2007 Regulations were superseded and 2009 Regulations were framed. There was no change in Regulations 4 and 8 and, therefore, they are not reproduced.

20. It is thus seen that all Institutions including Universities and Institutions deemed to be Universities offering or intending to offer a course or training in teacher education on or after the appointed day, can make an application u/s 14 (1) of the NCTE Act to the Regional Committee concerned for grant of recognition and Section 14(3) of the Act provides that the Regional Committee can either pass an order for granting recognition to such an Institution or refuse to grant such recognition. Section 15(1) of the NCTE Act, however, deals with permission for a new course or training by recognised Institution. Sub-section (1) of Section 15 provides that where any recognised Institution intends to start any new course or training in teacher education, it may make an application to seek permission from the Regional Committee concerned and under sub-section (3) of Section 15, the Regional Committee can either grant permission subject to certain conditions as may be determined by regulations or refuse to grant permission. Under sub-section (4) of Section 15, every order granting or refusing permission to a recognised institution for a new course or training in teacher education, shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government. Section 16 of the NCTE Act deals with grant of affiliation by the

affiliating body after recognition or permission by the Council. It provides that notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day, grant affiliation or hold examination 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 of the NCTE Act. It is also clear from Regulation 8(12) of the 2007 Regulations or the 2009 Regulations that admissions can be made by the Institution only after it has been granted affiliation by the University or the affiliating body and as per the State Policy.

21. It transpires that when the Institution was a Post Graduate College it was conducting a number of Graduate and Post Graduate courses including the B.Ed. Course for which recognition must have been obtained from the NCTE u/s 14(3) of the NCTE Act. It, however, desired to introduce the two years BTC Course and for this purpose, the Post Graduate College submitted an application before the Northern Regional Committee of the NCTE u/s 15(1) of the NCTE Act for permission to start the new two years BTC course.

22. The Northern Regional Committee of the NCTE by its letter dated 16th August, 2005, in exercise of the powers vested in it u/s 15(3) of the NCTE Act, granted permission to the Post Graduate College to start the two years BTC Course for an annual intake of fifty students in the 1st year and the same for the IInd year with effect from 11th August, 2005 subject to compliance of the conditions mentioned in the order. The said order dated 16th August, 2005 is reproduced below:

Rajiv Gandhi Post Graduate College, Kotwa, Jamunipur, Allahabad Uttar Pradesh submitted an application to the Northern Regional Committee of National Council for Teacher Education for grant of recognition for BTC of Two Year duration in terms of Section 15(1) of NCTE Act, 1993.

2. Now, therefore, in exercise of the powers vested u/s 15(3) of the NCTE Act, 1993, the Regional Committee hereby grants recognition to Rajiv Gandhi Post Graduate College, Kotwa, Jamunipur, Allahabad, Uttar Pradesh for an annual intake of 50 seats (Fifty Only) (50 seats in the 1st year and the same for the IInd year in BTC Course of Two year duration with effect from 11 August, 2005 subject to compliance of the following before the commencement of the academic session.

(a) Appointment of the faculty members duly qualified and staff as per the norms of NCTE/State Govt./SCERT is to be completed before the commencement of the session.

(b) The counter signed statement of all faculty members from the Director, SCERT should be submitted before the commencement of the academic session.

(c) The institution shall adhere to all the other regulations and guidelines as framed by NCTE from time to time.

(d) The institution shall within one month of the receipt of Recognition order, convert the Endowment Fund account into a Joint Account in the form of FDR for a period of not less than 60 months (Five years) in a Nationalized Bank only to be operated alongwith an official of the Regional Committee.

(e) The Reserve Fund for an amount equal to three months salary of the Teachers & Staff be created within one month from the date of issue of this order and maintained in the form of FDR in favour of the management/institution, for a period of not less than sixty months (Five years) in a Nationalized Bank.

(f) Before starting the course the institution should seek prior permission of the competent authority for conducting the exams and approval of the curriculum that they are going to adopt for the course.

(g) Institutions if starts the training programme without prior approval/permission of competent authority/examining body regarding the curriculum they have adopted and conduct of examination for award of Diploma/Certificate the recognition of such institutions shall be withdrawn.

(h) Non-compliance of the above mentioned conditions shall cause action u/s 17(1) of NCTE Act, 1993.

3. The Recognition is subject to the condition that the affiliating body shall ensure that, among other things, the institution has appointed required number of faculty members (including Principal/ Head of Department), as per the norms of the NCTE/State Govt./Affiliating Body.

4. Further, the recognition is subject to fulfillment of all such requirements as may be prescribed by other regulatory bodies like SCERT/State Government etc.

5. The institution shall submit to the Regional Committee a Self-Appraisal Report at the end of each academic year alongwith a copy of the approval of the affiliating body/State Directorate of Education about the appointment of faculty members and the Statement of Annual Accounts duly audited by a Chartered Accountant.

6. If the institution contravenes any of the above conditions or any of the provisions of the NCTE Act, Rules, Regulations and/or order made or issued there under, the Regional Committee may withdraw the recognition under the provisions of Section 17(1) of the NCTE Act, 1993.

7. Please acknowledge receipt of this order together with its enclosures.

(emphasis supplied)

23. It appears that the Post Graduate College, inspite of the permission having been granted by the Northern Regional Committee of the NCTE, kept silent in the matter and did not take steps for getting affiliation from the "examining body" for starting the two years BTC course. However, when the said Institution was declared a deemed University, it made a request to the Northern Regional

Committee of the NCTE for changing its name from Rajiv Gandhi Post Graduate College to Nehru Gram Bharti University and the Northern Regional Committee of the NCTE issued a corrigendum dated 2nd December, 2008 to the earlier order dated 16th August, 2005 for changing the name but made it clear that all the other terms and conditions shall remain the same. The said corrigendum is:

Corrigendum to the order No. F. NRC/ NCTE/F-7/UP-1561/2005/8868-8877 dated 16.8.2005

Vide order No. F. NRC/NCTE/F-7/ UP-1561/2005/8868-8877 dated 16.8.2005 recognition/permission was granted for conduct BTC course of 50 seats to Rajiv Gandhi P.G. College, Kotva, Jamunipur, Allahabad, U.P. The institution had requested for a change in its name, the same was accorded by NRC in its 134th meeting. Accordingly the name of the institution may be read as "Nehru Gram Bharti University, Kotva, Jamunipur, Allahabad, U.P." in place of "Rajiv Gandhi P.G. College, Kotva, Jamunipur, Allahabad, U.P."

All other terms and conditions shall remain the same.

24. The deemed University, however, without seeking affiliation from the "examining body", issued an advertisement inviting applications from candidates for admission to L.L.B. three years Course and BTC two years Course for the Academic Session 2008-09. The advertisement provided that the admission forms could be obtained from 22nd September, 2008 to 4th October, 2008 and could be deposited by 4th October, 2008. The date of holding the entrance examination was notified as 15th October, 2008 and the date of commencement of classes was notified as 25th October, 2008.

25. The petitioners of Writ Petition No. 57527 of 2010 claim to have been admitted to the said BTC two years Course for the Academic Session 2008-09, while the petitioners of Writ Petition No. 493 of 2012 claim to have been admitted to the said BTC two years Course on the basis of the subsequent advertisement issued by the deemed University for the Academic Session 2009-10. The petitioners admitted to the Academic Sessions 2008-09 and 2009-10 completed their two years BTC course and were awarded the certificates by the deemed University.

The grievance of the petitioners is that they are not being considered eligible for the post of Assistant Teachers in the Junior Basic Schools for the reason that the Institution had not taken affiliation from the "examining body" before starting the Course. It is the contention of the petitioners that it was not necessary for obtaining such affiliation after permission was granted by the NCTE as the Institution had been declared a deemed University and could confer the certificates for the BTC Course.

When the Institution was a Post Graduate College, it was affiliated to the Kanpur University and was running a number of Graduate and Post Graduate courses including the B.Ed. and M.Ed. Course. The B.Ed. and M.Ed. are Courses in

teacher education and, therefore permission was required to be taken from the NCTE u/s 14(3) of the NCTE Act and must have been taken by the Post Graduate College. The B.Ed. and M.Ed. degrees are also degrees prescribed by the University Grants Commission u/s 22(3) of the UGC Act and, therefore, the Kanpur University, to which the Post Graduate College was affiliated, could grant the said degrees to the students of the Post Graduate College admitted to the B.Ed. or M.Ed. Courses.

26. The Institution, however, intended to start the two years BTC Course and, therefore, submitted an application before the Northern Regional Committee of the NCTE u/s 15(1) of the NCTE Act and by the letter dated 16th August, 2005, the Regional Committee of the NCTE granted permission to the Post Graduate College for starting the two years BTC Course subject to the terms and conditions contained in the letter. The Post Graduate College, however, did not take steps for starting the two years BTC Course and it is only in 2007 when the Institution was declared a deemed University by the University Grants Commission u/s 3 of the UGC Act that it took steps for starting the two years BTC Course and for this purpose first filed an application before the Regional Committee of the NCTE for changing the name of the Institution in the earlier permission granted to it by the letter dated 16th August, 2005. The Regional Committee of NCTE issued a corrigendum dated 2nd December, 2008 for change of the name of the Institution to Nehru Gram Bharti University and then the deemed University, without taking affiliation from the Examination Regulatory Authority constituted by the State Government under the Government Order dated 27th February, 2004, started the two years BTC Course and admitted students in the Academic Sessions 2008-09 and 2009-10 and also awarded certificates to such students.

27. It is in the light of the aforesaid provisions of the UGC Act, the NCTE Act, the Regulations framed therein and the conditions attached by the University Grants Commission while conferring the status of a deemed University and the conditions attached by the Regional Committee of NCTE while granting permission to start the two years BTC Course that the contention of learned counsel for the petitioners that since the Institution is a deemed University it was not necessary to seek affiliation from the Examination Regulatory Authority and it can award the two years BTC certificates like it can award the degrees u/s 22 of the UGC Act, has to be considered.

28. Though Section 14 of the NCTE Act is not involved as the Institution had filed the application u/s 15(1) of the Act for starting the new BTC Course, but it will be useful to examine the provisions of Section 14 of the Act also. An Institution offering or intending to offer a course or training in teacher education programme is required to submit an application before the NCTE for grant of recognition and under sub-section (3) recognition can be granted or it can be refused. Under sub-section (4) every order granting or refusing recognition is required to be published in the official gazette and communicated for appropriate action to such Institution and to the concerned "examining body", the local

authority or the State Government and the Central Government. Under sub-section (6), every "examining body" shall, on receipt of the order under sub-section (4) grant affiliation to the Institution where recognition has been granted or cancel the affiliation where recognition has been refused.

29. An "examining body" has been defined u/s 2(d) of the NCTE Act to mean a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications and "University" has been defined u/s 2(n) to mean a University defined under clause (f) of Section 2 of the UGC Act and includes an Institution deemed to be a University u/s 3 of the said Act.

Likewise, an Institution intending to start a new course or training in teacher education is required to submit an application u/s 15(1) of the NCTE Act to the Regional Committee of the NCTE for grant of permission and under sub-section (3), permission can be granted or refused. Under sub-section (4), every order granting or refusing permission for a new course or training in teacher education is required to be published in the official gazette and communicated in writing for appropriate action to such recognized Institution and to the concerned "examining body", the local authority, the State Government and the Central Government.

30. Section 16 of the NCTE Act provides that notwithstanding anything contained in any other law for the time being in force, no examining body shall grant affiliation to any institution or hold examination 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 new course or training u/s 15 of the said Act.

31. Under Regulation 4 of the 2007 Regulations, all Universities including the Institutions deemed to be Universities are required to seek recognition from the NCTE if they intend to offer a course or training in teacher education. The various courses or training in teacher education referred to above, include the Diploma in Elementary Education, which is another nomenclature for BTC for preparing teachers for elementary stage of education i.e. Class I to Class VII/VIII and the B.Ed. and M.Ed. Courses. When the Institution was a Post Graduate College, it had filed the application u/s 15(1) of the NCTE Act for starting the new two years BTC Course since earlier it must have been granted recognition for the B.Ed. Course. Permission was granted by the Regional Committee of NCTE to the Post Graduate College by the letter dated 16th August, 2005 to start the BTC Course subject to the compliance of the terms and conditions mentioned in the letter. It was specifically provided that the appointment of the faculty members was to be as per the norms of the NCTE/State Government/SCERT and the Institution had to be adhere to all the other Regulations and guidelines framed by the NCTE. The Institution was also specifically directed, before starting the course, to seek prior permission of the Competent Authority for conducting the examination and the approval of the curriculum. The permission was also subject to the condition that

the Affiliating body shall ensure, amongst other things, that the Institution had the required number of faculty members as per the norms of the NCTE/State Government/Affiliating Body and if the Institution started a training programme without prior approval/permission of the competent authority/examining body/ NCTE/ SCERT, the permission to such Institution will be withdrawn. When the name of the Institution was changed by the Regional Committee in December, 2008 as Nehru Gram Bharti University, it was clearly stated that the terms and conditions contained in the earlier letter dated 16th August, 2005 shall remain the same. It was, therefore, incumbent upon the Post Graduate College and the deemed University to strictly ensure compliance of the conditions contained in the letter granting permission to start the two years BTC Course.

32. The Post Graduate College was declared a deemed University u/s 3 of the UGC Act by the notification dated 27th June, 2008. The notification contained a number of conditions which have been mentioned above and the first condition which is relevant for the purposes of these petitions is again reproduced:

(1). The programmes conducted by the University or to be conducted in future shall satisfy the norms and standards prescribed by the Statutory Authorities like, UGC, AICTE and the deemed University shall not confer any degree or degrees which have not been specified by the University Grants Commission. The deemed University shall also ensure that the degrees awarded by it are prescribed by the University Grants Commission as contemplated u/s 22 of the UGC Act namely a degree which, with the previous approval of the Central Government, has been specified by the Commission by notification issued in the Official Gazette.

It needs to be remembered that even u/s 22(3) of the UGC Act, only such degrees, as have been specified by the University Grants Commission, can be conferred or granted by a University or an institution deemed to be a University.

While the B.Ed. and M.Ed. degrees have been specified by the University Grants Commission in the notifications issued u/s 22(3) of the UGC Act, the two years BTC certificate is not specified. The deemed University, therefore, could award the B.Ed. and M.Ed. Degrees if recognition had been granted by the NCTE. What has, therefore, to be considered is whether an Institution which has been declared to be a deemed University and which can confer or grant degrees u/s 22 of the UGC Act, can award the two years BTC certificate also merely because it had been granted permission by the Regional Committee of the NCTE u/s 15(3) of the NCTE Act without seeking affiliation from the "examining body". Section 22(3) of the UGC Act prohibits the University or an Institution deemed to be a University from conferring or granting any degree not specified by the University Grants Commission. Such a condition was also imposed by the University Grants Commission while conferring the status of a deemed University on the Institution. This is also what was emphasized by the Supreme Court in Prof. Yash Pal (supra). It needs to be noticed that Institutions which are not University but are engaged in doing work of a high standard in specialized academic field are

granted the status of a University to enable them to. further contribute to the cause of higher education.

It is, therefore, not possible to accept the contention of learned counsel for the petitioners that as a deemed University, the Institution can hold examinations and confer degrees, since it will be the "examining body" for the BTC Course and there is no necessity to seek affiliation from the Examination Regulatory Authority.

33. The definition of "examining body" in Section 2(d) of the NCTE Act, on which reliance has been placed by learned counsel for the petitioner, also needs to be examined. It uses the words "University", "agency" or "authority" to which an Institution is affiliated. As noticed hereinabove, there are a number of courses or training in teacher education. Some of the degrees can be awarded by the University as they have been prescribed by the University Grants Commission. In such cases the University will be the examining body and in other cases it will be the "agency or authority" and this is the reason that for the BTC Course, the Examination Regulatory Authority is the "examining body".

Thus, as the University or a deemed University is not "examining body" of the two years BTC certificate, the University or a deemed University, after having obtained permission from the Regional Committee of the NCTE for starting a new Course, is required to seek affiliation from the "examining body" as provided for in Sections 15 and 16 of the NCTE Act.

34. This is also what was observed by the Division Bench of this Court in *Dau Dayal Mahila Post Graduate College (supra)*. It was pointed out by the Division Bench, after taking into consideration the various notifications issued by the State Government, that the "examining body" is the Examination Regulatory Authority which consists of the Secretary as the Chairman, the Principal of the Rajya Shiksha Sansthan, Uttar Pradesh, Allahabad, and the Principal of District Institute of Education and Training to be nominated by the Director of SCERT. The Division Bench, on the basis of the Government Order dated 27th February, 2004 declared that the "examining body" for affiliation as created by the State Government itself u/s 2(d) of the NCTE Act, is the "Examination Regulatory Authority" which shall be responsible for grant of affiliation or otherwise on individual basis to the Institution and that mere grant of permission by NCTE does not amount to automatic affiliation for running the BTC course.

The relevant paragraphs of the judgment are:

From a comparative reading of Sections 14 and 15 of the Act, we are of the opinion that it would make no difference inasmuch as the institution already stood recognized u/s 2(i) read with Section 14 of the Act and in the event the institution was making a request for running a new course, a permission was to be granted u/s 15. This permission has to be communicated to the concerned examining body for affiliation and the examining body has been defined u/s 2(d) of the Act, which is as follows:

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

The consequence of a permission granted u/s 15 are that the examining body will have to ascertain for itself as to whether the institution fulfils the norms prescribed so as to grant affiliation. It is for this reason that Section 16 prohibits the grant of affiliation by the affiliating body to such institutions which do not have any recognition or permission under Sections 14 and 15 of the Act as the case may be. Accordingly, we are of the opinion that once the permission had been granted u/s 15 to the respondents-institutions, which fact has not been disputed by the learned Additional Advocate General, then the examining body set up by the State Government was required to consider the individual request of the institutions separately on merits. We hasten to observe that in case the institutions have subsisting permission granted by the NCTE only then the question of granting affiliation by the examining body would arise.

We may add that the learned single Judge further found and which is also evident on record, that the respondents - institutions had applied for permission to run B.T.C. course in response to a public Notice issued by the NCTE dated 14.9.2003, wherein the institutions were required to get a No Objection Certificate prior to moving of such applications. It is on account of the aforesaid condition so imposed that the respondents - petitioners had approached the State Government for giving a No Objection Certificate. The impugned letter dated 26.9.2004 came to be issued by the State Government intimating the NCTE that they would not extend any such benefit. The NCTE had, however, issued a Notification relaxing the said condition of obtaining No Objection vide notification dated 1.1.2004. In such a situation, the examining body was bound to consider the individual requests of the institutions which was being resisted by the State Government on the strength of a policy decision noted herein above.

At this juncture, it is necessary to clarify the status of the examining body inasmuch as the learned single Judge has proceeded on the presumption that the grant of affiliation has to be done by the State Council for Educational Research and Training, Lucknow, being the examining body and also an instrumentality of the State Government enjoined with the duty to hold such examinations. We had called upon the learned Additional Advocate General to assist the Court in locating the functions of the examining body and its status. The learned Additional Advocate General, on the basis of instructions received, has placed before us, the Government Orders dated 11.9.1981, 29.10.1981, Office Memorandum dated 19.11.1999 and Government Order dated 27.2.2004. The Government Order dated 11.9.1981 relates to the establishment of a State Council for Educational Research and Training with a Director to head the same. The Government Order, therefore, clearly indicates that the State Council is a body created with a Director to be appointed by the State Government, vide Government Order dated 29.10.1981, the administrative control of ten

departments was entrusted to the State Council for Educational Research and Training. The Office Memorandum dated 19.11.1999 issued by the Principal Secretary (Education) nominated the Director, State Council for Educational Research and Training, as the Training Manager for the training of all levels of Teachers, Officers and Employees and it was also indicated therein that administrative directions issued by the Director of State Council for Educational Research and Training shall be adhered to in this regard.

Ultimately, vide Government Order dated 27.2.2004, the examining body for conducting different examinations in the various departments of the Government of Uttar Pradesh was reconstituted by giving a new nomenclature to Registrar Departmental examinations. The new nomenclature given to this establishment of conducting examinations is the Examinations Regulatory Authority, Uttar Pradesh, and the Head of the office of such authority to be known as the Secretary of the Examinations Regulatory Authority. The Secretary was made responsible for conducting all examinations in the same way as the Secretary of Secondary Education (Madhyamik Shiksha Parishad). The administrative job of the said authority is to be conducted by a 4 member Committee of which the Secretary, Examination Regulatory Authority, would be the Chairman, the Principal, Rajya Shiksha Sansthan, Uttar Pradesh, Allahabad, and the Principal, DIET to be nominated by the Director of SCERT, as its Members. The erstwhile authority of Registrar, Departmental Examinations, would continue to be the Member Secretary of the said Committee. Clause-5 of the said Government order clearly recites that it is the said Examination Regulatory Authority which would be empowered to take all sorts of decisions relating to examinations. Clause-6 specifically provides that the Secretary, Examination Regulatory Authority, shall be responsible for the confidentiality of the entire proceedings relating to the setting up of question papers, their printing and their transmission to the examination centres. The aforesaid documents, therefore, make it clear that under the Government Order dated 27.2.2004, the examining body for affiliation as created by the State Government itself u/s 2(d) would be the Examinations Regulatory Authority which shall be responsible for the grant of affiliation or otherwise on individual basis to the institutions.

From a perusal of the records, we find that the permission which was granted u/s 15 of the Act to the respective institutions also contained a recital that the Director, State Council for Educational Research and Training, shall ensure compliance of the recognition order and the concerned department shall withhold the affiliation in case of any default and report the same to the NCTE. The affiliation, therefore, has to be granted by the concerned department set up by the State Government and as explained by the learned Addl. Advocate General with the aid of the Government Orders referred to herein above.

Under the provisions of the NCTE and Regulations as well as the Circulars issued from time to time, it is clearly laid down that such affiliation by the examining body has to be in accordance with the norms and guidelines framed in this"

regard and, therefore, the Examination Regulatory Body will have the authority to scrutinise the individual status of every applicant. We may add that mere grant of permission by the NCTE does not amount to automatic affiliation for running the B.T.C. course unless and until the institution fulfils the norms which are prescribed by the NCTE.

(emphasis supplied)

35. In *Adarsh Shiksha Mahavidyalaya* (supra) the Supreme Court also examined the provisions of Sections 14, 15 and 16 of the NCTE Act and pointed out the requirement of obtaining affiliation from the examining body after recognition had been granted by the Regional Committee of the NCTE and the observations are:

26. Learned Counsel for the appellants did not seriously contest the position that the provisions contained in Sections 14(3) and 15(3) read with Regulation 7(2), (3), (4), (5) and (9) are mandatory and the Regional Committee cannot grant recognition unless it is satisfied that the applicant has fulfilled the mandatory conditions prescribed in the 1993 Act and the Regulations. They also did not dispute that in view of Section 16, examining body cannot grant affiliation, whether provisional or permanent to any institution or hold examination for the courses of training conducted by a recognized institution unless the institution concerned has obtained recognition u/s 14 or permission for a course or training u/s 15. What needs to be emphasised is that no recognition/permission can be granted to any institution desirous of conducting teacher training course unless the mandatory conditions enshrined in Section 14(3) or 15(3) read with the relevant clauses of Regulations 7 and 8 are fulfilled and that in view of the negative mandate contained in Section 17A read with Regulation 8(10), no institution can admit any student unless it has obtained unconditional recognition from the Regional Committee and affiliation from the examining body.

(emphasis supplied)

36. Learned counsel for the petitioners placed reliance upon paragraph 74 of the judgment of the Supreme Court in *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (supra). The said paragraph is reproduced below:

74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system "throughout the country". NCTE, therefore, in our opinion, 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 coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in 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.

This decision deals with the authority of the State Government vis-a-vis the powers of NCTE for grant of recognition to an Institution and, therefore, does not help the petitioners.

37. Learned counsel for the petitioners has also placed reliance upon the Division Bench judgment of this Court in *Furqan Ali* (supra). This decision also does not help the petitioners as it relates that the provisions of Rule 8(5) of the 1981 Rules and the relevant paragraph 8 is quoted below:

8. The qualifications for each category of teachers namely academic and training are different. Whereas in sub-rule 8 (1) to 8 (2) and 8 (4), the State has power to declare any training qualification/course as equivalent to one prescribed, no such power has been retained by the State under Rule 8 (5). The Assistant Teacher to be appointed for teaching in Urdu medium must have training qualification of 2 years BTC Urdu Special Training Course. For teaching Urdu language in Basic Schools it is necessary under Rule 8 (4), for a teacher to possess Basic Teachers Certificate for teaching Urdu language from the Government Training Centres at Lucknow, Agra, Mawana in Meerut and Sakaldiha in Distt. Chandauli established by the Government for teaching Urdu or any other training qualifications recognised by the Government equivalent thereto. There is no such equivalence given for training qualifications for teaching in Urdu medium under Rule 8 (5), which provides training qualification of 2 years BTC Urdu special training course.

The Court has, therefore, no hesitation in holding that mere grant of permission by the Regional Committee of the NCTE to start the two years BTC Course u/s 15(3) of the NCTE Act is not enough and it is obligatory for a University or a deemed University to seek affiliation from the Examination Regulatory Authority before starting the BTC course. The deemed University, therefore, could not have admitted the students to the two years BTC course in the Academic Sessions 2008-09 or 2009-10 or held their examination as is also clear from the Regulation 8(12) of the 2007 or the 2009 Regulations.

38. The relief claimed by the petitioners for treating the certificates awarded by the deemed University for two years BTC Course as valid certificates, therefore, cannot be accepted.

39. The consequential relief claimed by the petitioners is that the two years BTC certificate awarded by the deemed University should be recognised for treating the petitioners as eligible for appointment as Assistant Teachers in the Junior Basic Schools under Rule 8(1)(ii) of the 1981 Rules.

Rule 8(1) (ii) of the 1981 Rules which deals with essential qualifications of candidates for appointment as Assistant Master or Assistant Mistresses of Junior Basic School is as follows:

8(1).(i)...

(ii) Assistant Master and Assistant Mistress of Junior Basic School.--A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishist Basic Teachers Certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the Government as equivalent thereto:

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

The petitioners do not possess a valid BTC certificate and, therefore, cannot treat themselves to be eligible for appointment as Assistant Masters in the Junior Basic Schools.

40. In this connection reference needs to be made to the decision of the Supreme Court in *Rajesh Kumar Gupta and others v. State of U.P. and others*, 2005 AIR SCW 2731, wherein the Supreme Court did not accept the Special BTC Training Course formulated by the State Government as valid since it was contrary to the provisions of the NCTE Act and the relevant paragraph is as follows:

20. The U.P. Basic Education (Teachers) Service Rules, 1981 provides u/s 5 for direct recruitment to the posts of Assistant Masters and Assistant Mistresses to Junior Basic Schools. The Rules prescribe the qualifications requisite for such posts. Academic qualification required is a bachelor's degree from a University established by law in India or a degree recognised by the Government together with "training qualification" consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any other training course recognised by the Government as equivalent thereto. In the face of these Rules, and particularly keeping in view the provisions of the National Council for Teacher Education Act, 1993, no fault can be found with the impugned judgment of the High Court that the special BTC training course formulated by the State Government was contrary to the provisions of the impugned Act and Rules and the 1993 Central Act.

41. In *State of Rajasthan and others* (supra) the Supreme Court also observed:

12. From the ratio of the decision noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

13. Testing the facts of the case in hand on the touchstone of the principles it is clear that on the date of submission of the application for joining the course the

respondent did not possess the prescribed qualification of 10+2 or 1st year TDC from a recognized institution. The Madhayama Certificate from Hindi Sahitya Sammelan Prayag, Allahabad had been deleted from the recognized qualification by the notification dated 28.6.1985. The respondent submitted the application for admission to the course in December, 1989. In the circumstances the High Court was in error in issuing a direction to the appellants to treat the respondent as a candidate possessed of the prescribed educational qualification and to declare her result on that basis.

42. In *Yogesh Kumar and others* (supra) the Supreme Court made the following observations:

8. This last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals (CAs Nos. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the nature of the training imparted for grant of certificate and for degree is totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates for the present vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that BEd candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any BEd candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.

(emphasis supplied)

43. In *Rajasthan Pradesh Vaidya Samiti* (supra) the Supreme Court examined whether persons who hold degree or diploma of "Vaidya Visharad" or "Ayurved Ratna" from Hindi Sahitya Sammelan, Prayag/Allahabad which are not included as recognised qualification in Schedule II to the Indian Medicine Central Council

Act, 1970 have a right to practice in medical sciences and held that such persons do not have such a right and for coming to this conclusion reliance was placed on the earlier judgments. The relevant paragraphs are:

41. In Delhi Pradesh Registered Medical Practitioners Vs. Delhi Admn. Director of Health Services and Others, , this Court held that unless a person possess the qualifications prescribed in Schedule II, III and IV of the 1970 Act, he does not have a right to practice and the Central legislation will proceed over the State Act if there is any repugnancy between the two.

42. In Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others, , this Court examined the issue of delegation of power dealing with the provisions of the Drugs and Cosmetics Act, 1940 wherein various observations have been made regarding registered medical practitioners and certain rules therein had been declared ultra vires by the High Court. However, the issue involved herein had not been raised in that case, though an observation has been made that persons enrolled on the State Register under accepted law who enjoyed the privileges including the privilege to practice in any system of medicine may under certain circumstances also practice other system of medicine.

...

48. In view of the above, it is evident that right to practice under Article 19(1)(g) of the Constitution is not absolute. By virtue of the provisions of clause (6) to Article 19 reasonable restrictions can be imposed. The Court has a duty to strike a balance between the right of a Vaidya to practice, particularly, when he does not possess the requisite qualification and the right of a "little Indian" guaranteed under Article 21 of the Constitution which includes the protection and safeguarding the health and life of the public at large from mal-medical treatment. An unqualified, unregistered and unauthorised medical practitioner possessing no valid qualification, degree or diploma cannot be permitted to exploit the poor Indians on the basis of a certificate granted by an institution without any enrolment of students or imparting any education or having any affiliation or recognition and that too without knowing the basic qualification of the candidates.

44. The Supreme Court has also time and again pointed out that directions in clear transgression of the provisions of the Act/Regulations should not be issued by the Courts as nothing can be more destructive of the rule of law than a direction by the Court to disobey the laws and the decisions which need to be referred for this purpose are A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, ; N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, ; State of Maharashtra Vs. Vikas Sahebrao Roundale and others, and St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., .

In A.P. Christians Medical Educational Society (supra) the Supreme Court observed:

We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws.

In N.M. Nageshwaramma (supra) the Supreme Court observed:

If by a fiat of the Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose.

In Adarsh Shiksha Mahavidyalaya (supra) the Supreme Court after placing reliance on the aforesaid decisions of the Supreme Court in A.P. Christians Medical Educational Society (supra) and N.M. Nageshwaramma (supra) observed that relief should not be granted to the students who have been admitted in Institutions which have not been granted affiliation by the examining body even after having obtained recognition from the NCTE and the observations are:

28. The question which remains to be considered is, whether the students who had taken admission in unrecognized institutions or the institutions which had not been granted affiliation by the examining body have the right to appear in the examination and whether the Court can issue a mandamus for declaration of the result of such students simply because they were allowed to provisionally appear in the examination in compliance of the interim orders passed by the High Court and/or this Court. An ancillary question, which would require consideration is, whether the students who had not completed the requirement of minimum teaching days were entitled to appear in the examination and a direction can be given for declaration of their result.

...

...

33. As a sequel to the above discussion, we hold that the impugned orders do not suffer from any legal infirmity warranting interference by this Court. We also reiterate that:

(i) The Regional Committees established u/s 20 of the 1993 Act are duty bound to ensure that no private institution offering or intending to offer a course or training in teacher education is granted recognition unless it satisfies the conditions specified in Section 14(3)(a) of the 1993 Act and Regulations 7 and 8 of the Regulations. Likewise, no recognised institution intending to start any new course or training in teacher education shall be granted permission unless it satisfies the conditions specified in Section 15(3)(a) of the 1993 Act and the

relevant Regulations.

...

(x) In view of the mandate of Section 16, no examining body, as defined in Section 2(d) of the 1993 Act, shall grant affiliation unless the applicant has obtained recognition from the Regional Committee u/s 14 or permission for starting a new course or training u/s 15.

...

...

(xiv) If any institution admits any student in violation of the Norms and Standards laid down by the NCTE, then the Regional Committee shall initiate action for withdrawal of the recognition of such institution and pass appropriate order after complying with the rules of natural justice.

(xv) The students admitted by unrecognised institution and institutions which are not affiliated to any examining body are not entitled to appear in the examination conducted by the examining body or any other authorised agency.

...

(xvii) The NCTE shall issue direction for mandatory inspection of recognised institutions on periodical basis and all the Regional Committees are duty bound to take action in accordance with those directions.

(xviii) In future, the High Courts shall not entertain prayer for interim relief by unrecognised institutions and the institutions which have not been granted affiliation by the examining body and/or the students admitted by such institutions for permission to appear in the examination or for declaration of the result of examination. This would also apply to the recognised institutions if they admit students otherwise than in accordance with the procedure contained in Appendix-1 of the Regulations.

(emphasis supplied)

In such circumstances and in view of the decisions referred to above, it is not possible for the Court to grant the reliefs sought for by the petitioners.

The writ petitions are, therefore, liable to be dismissed and are accordingly, dismissed.