

(2005) 03 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No's. 9251, 16570 and 16703 of 2004 and 118, 255, 256, 612, 845, 1026, 1236, 1894, 1898, 1947, 1974, 2071, 2328, 2679, 2705, 4112 and 4130 of 2005

Shree Gram Sarvajani Education Trust

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14, 14(1), 14(3), 14(4), 15
National Council for Teachers Education (Norms and Standards for Teacher Education Programmes) Regulations, 2001 — Regulation 3, 6, 7

Citation : AIR 2005 Guj 247

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Y.N. Oza, Mitul Shelat, Shirish Joshi, Mehul K. Vakhariya, Mamata R. Vyas, A.J. Shashtri, J.V. Bhairaviya and H.J. Nanavati, for the Appellant; Dipen Desai, learned AGP appearing in Special Civil Application Nos. 9251 and 16703/04 and 612, 1026, 1236, 1894, 1898, 1947, 2071 and 2328 of 2005 and H.D. Dave, learned AGP appearing in Special Civil Application Nos. 16570/2004 and 118, 255, 256, 845, 1974, 2679, 2705, 4112 and 4130 of 2005, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—In this group of matters, as the common question of law and facts arises, all these special civil applications are being disposed of by this common order. In the some of the matters, Rule is already issued and in matters where Rule is not issued, in those matters.

Rule. Shri Dipen Desai, and Shri H.D. Dave, the learned AGP waive service of Rule on behalf of the respondents State Authority and Shri P.K. Jani, the learned advocate waives service of Rule on behalf of the National Council for Teacher Education ("NCTE" for short).

With the consent of the learned advocates for the parties, the matter is taken up

for final hearing today.

2. In these matters, the respective petitioners have challenged the action of the respondent - State Government in refusing grant of No Objection Certificate ("NOC" for short) for starting new B.Ed. college / PTC college on the basis of apprehension that the respondent NCTE will reject their applications for recognition to start new B.Ed. PTC colleges only on the basis of refusal of NOC by the State Government. The individual facts pertaining to each special civil application are as under :

.RS 2.

3. SPECIAL CIVIL APPLICATION NO. 9251 of 2004

The petitioner trust wanted to start B.Ed. College at village Amrapur, Taluka Jasda and it is the case of the petitioner that Saurashtra University has granted NOC to the effect that the University has no objection if the petitioner No. 1 is permitted to start new B.Ed. college at village Amrapur, Taluka Jasada. It is the case of the petitioner that the petitioner applied for NOC with the State Government by application dated 23rd October, 2003 and by order dated 27.12.2003, the State Government rejected the application of the petitioner on the ground of NOC by order dated 13/16th January, 2004 and the petitioner challenged the said decision before this Court by way of Special Civil Application No. 17 of 2004 and as the said order dated 13/16th January, 2004 was a non speaking order, this Court by order dated 29.6.2004 partly allowed the said special civil application and remanded the matter to the State Government reconsider the application for issuance of NOC afresh and to pass the reasoned order and thereafter, on remand the State Government has passed the impugned order on 26.7.2004, by which, the State Government has rejected the application of the petitioner for NOC to start B.Ed. college which is impugned in the present special civil application.

SPECIAL CIVIL APPLICATION NO. 16570 OF 2004

As the petitioner wanted to start B.Ed. College for women at village Transwad, District Mehsana, the petitioner has approached the State Government for grant of NOC by application dated 16th September, 2004 and the State Government by order / communication / endorsement dated 16.10.2004 has rejected the application of the petitioner for grant of NOC which is impugned in the present special civil application.

SPECIAL CIVIL APPLICATION NO. 16703 of 2004

So far as Special Civil Application No. 16703 of 2004 is concerned, it is the case of the petitioner that the petitioner wanted to start a new B.Ed. college at Himatnagar, the petitioner moved an appropriate application with the State Government for granting NOC on 9.12.2003 which came to be rejected by a non speaking order by order dated 16.1.2004 which came to be challenged by the petitioner by way of Special Civil Application No. 11655 of 2004 and while

disposing the aforesaid special civil application, this Court remanded the matter to the State Government for deciding the application of the petitioner for NOC afresh and as the application of the petitioner was not decided, the petitioner has preferred the special civil application. However, in the mean time, by communication dated 19th January, 2005, the application of the petitioner for grant of NOC to start B.Ed. college at Himatnagar has been rejected and hence, the present special civil application is filed.

SPECIAL CIVIL APPLICATION NO. 118 of 2005

It is the case of the petitioner that the petitioner trust wanted to start a new B.Ed. college and therefore, the petitioner trust had moved an application before the State Government for grant of NOC on 2.12.2004 which came to be rejected on 27.12.04 which is impugned in the present special civil application.

SPECIAL CIVIL APPLICATION NO. 255 of 2005

It is the case of the petitioner that the petitioner trust wanted to start a new B.Ed. college at Bechraji, District Mehsana and therefore, the petitioner trust had moved an application before the State Government for grant of NOC on 21.10.2004 which came to be rejected by the State Government on 20.1.2005 which is impugned in the present special civil application.

SPECIAL CIVIL APPLICATION NO. 256 of 2005

As the petitioner trust wanted to start a new B.Ed. college at Visnagar, District Mehsana and therefore, the petitioner trust had moved an appropriate application before the State Government for grant of NOC to start new B.Ed. college on 8.12.2004 and by communication dated 20.1.2005, the application of the petitioner for grant of NOC has been rejected which is impugned in the present special civil application.

SPECIAL CIVIL APPLICATION NO. 612 of 2005

It is the case of the petitioner that as the petitioner wanted to start new B.Ed. college in city of Dhangadhra, District Surendranagar, the petitioner trust has moved an appropriate application with the State Government for grant of NOC on 24.12.2003 which came to be rejected by order dated 16.1.2004 and again the petitioner had moved fresh application for NOC dated 24.8.04 after obtaining necessary NOC from the Saurashtra University. However, despite the same, by communication dated 3.1.2005 the application of the petitioner for NOC to start self financed new B.Ed. college has been rejected and therefore, the present special civil application has been filed.

SPECIAL CIVIL APPLICATION NO. 845 of 2005

It is the case of the petitioner that as the petitioner wanted to start new PTC college at Ahmedabad, the petitioner has submitted an appropriate application with the State Government for NOC and by communication dated 20th January, 2005, the application of the petitioner for grant of NOC is turned down and

therefore the present special civil application is filed.

SPECIAL CIVIL APPLICATION NO. 1026 of 2005

M.D. Mehta Education Trust the petitioner wanted to start a new B.Ed. college had applied for affiliation for SNTD Women's University, Mumbai and the said University has granted provisional affiliation subject to NOC from the State Government and therefore, the petitioner trust had submitted an appropriate application with the State Government for grant of NOC which is rejected by the State Government by communication dated 13th July, 2004 and the application of the petitioner for grant of NOC is turned down and therefore, the present special civil application has been filed.

SPECIAL CIVIL APPLICATION NO. 1236 of 2005

Yoganand Educational & Charitable Trust wanted to start a new B.Ed. college at Rajkot from the academic year 2005-06 had submitted an application for grant of NOC for opening new B.Ed. College with the State Government with a view to have NOC on 25.10.2004 and as the application of the petitioner for grant of NOC is rejected, the petitioner has preferred the present special civil application.

SPECIAL CIVIL APPLICATION NO. 1894 of 2005

V.J. Oza Trust, Lakhatar wanted to start a new PTC college at Lakhtar, the petitioner trust had submitted an appropriate application for grant of NOC with the State Government on 3.12.2004 and the State Government by its order dated 27.12.2004 has rejected the application of the petitioner for grant of NOC to start new PTC college at Lakhatar, District Surendranagar, the petitioner has preferred the special civil application.

SPECIAL CIVIL APPLICATION NO. 1898 of 2005

V.J. Oza Trust, Lakhatar wanted to start a new B.Ed. college at Lakhtar, District Surendranagar the petitioner trust had submitted an appropriate application for grant of NOC with the State Government to start new B.Ed. College on 3.12.2004 and the State Government by its communication / endorsement dated 3.1.2005 has rejected the application of the petitioner for grant of NOC to start new PTC college at Lakhatar, District Surendranagar, the petitioner has preferred the special civil application.

SPECIAL CIVIL APPLICATION NO. 1947 of 2005

Gnan Sampradya Kelvani Khatu (Trust) petitioner wanted to start a new B.Ed. college at Sarasa village, District : Anand, the petitioner trust has submitted an appropriate application for grant of NOC with the State Government on 31.12.2003 and by communication / endorsement dated 19.1.2005, the application of the petitioner for grant of NOC to start new B.Ed. college at Sarasa is rejected which is challenged by way of present special civil application.

SPECIAL CIVIL APPLICATION NO. 1974 of 2005

The petitioner Lok Niketan Trust wanted to start new B.Ed. college and therefore, the petitioner trust has submitted an appropriate application for grant of NOC with the State Government to start new B.Ed. College on 28.12.2004 which came to be rejected by the State Government by endorsement / communication dated 25.1.2005 which is subject matter of the present special civil application.

SPECIAL CIVIL APPLICATION NO. 2071 of 2005

Shree Maharshi Devanand Saraswati Kelavani Mandal had submitted an appropriate application for grant of NOC with the State Government to start new B.Ed. college at Visnagar on 22.1.2004 which came to be dismissed / rejected by the State Government vide communication / endorsement dated 25.1.2005 which is subject matter of the present special civil application.

SPECIAL CIVIL APPLICATION NO. 2328 of 2005

As Gnanyog Education & Welfare Trust wanted to start a new B.Ed. collage at Prantij, Taluka, District Sabarkantha, the petitioner submitted an appropriate application with the State Government for grant of NOC with the State Government for starting new B.Ed. college at Prantij on 15.10.2004 and by communication dated 20.1.2005, the application of the petitioner for grant of NOC to start new B.Ed. college at Prantij is turned down and therefore, the present special civil application is filed.

SPECIAL CIVIL APPLICATION NO. 2679 of 2005

The petitioner - Shree Shivshakti Education Trust wanted to start a new B.Ed. collage at Lunawada, Taluka and District Panchmahal, they submitted an appropriate application for grant of NOC with the State Government on 25.10.2004 and by communication dated 20.1.2005, the application of the petitioner for grant of NOC to start new B.Ed. college at Lunawada is turned down and therefore, the present special civil application is filed.

SPECIAL CIVIL APPLICATION NO. 2705 of 2005

Yadunandan Education Trust, Rajkot had requested the State Government to grant NOC for starting new B.Ed. college at Rajkot which came to be rejected vide communication / endorsement by the State Government dated 20.1.2005 and the application of the petitioner for grant of NOC to start new B.Ed. college at Rajkot is turned down and therefore, the present special civil application has been filed.

SPECIAL CIVIL APPLICATION NO. 4112 of 2005

Late Devashibapa Smarak Education Trust wanted to start new B.Ed. College at Talala, Taluka Junagadh and therefore, they submitted an appropriate application with the State Government for grant of NOC on 9.12.2004 and by communication dated 3.1.2005, the application of the petitioner for grant of NOC to start new B.Ed. college at Talala is rejected and therefore, the present special civil application has been filed.

SPECIAL CIVIL APPLICATION NO. 4130 of 2005

Swami Education Trust wanted to start a new B.Ed. College at Vastral, Taluka - Daskroi, District Ahmedabad and therefore, an appropriate application for grant of NOC to start new B.Ed. college at Vastral came to be submitted by the petitioner with the State Government on 19.11.2004 and by communication / endorsement dated 20.1.2005 the State Government has rejected the application of the petitioner for grant of NOC to start new B.Ed. college and therefore, the present special civil application is filed.

3. Heard Shri Y.N. Oza, the learned Senior Advocate with Shri Mitul Shelat, and other the learned advocates Shri Shirish Joshi, Shri Mehul K. Vakhariya, Ms. Mamata R. Vyas, Shri A.J. Shashtri, Shri J.V. Bhairaviya, Shri H.J. Nanavati appearing on behalf of the respective petitioners and Shri Dipen Desai, the learned AGP and Shri H.D. Dave, the learned AGP for respondent State Government and Shri P.K.Jani, the learned advocate on behalf of National Council for Teachers Education.

4. It is the common contention on behalf of the petitioners that as they wanted to start new B.Ed. / PTC colleges, they have moved an appropriate application with the National Council for Teachers Education ("Council" for short). As per the provisions of The National Council for teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmer and permission to start new course or training) Regulations, 2002. (hereinafter referred to as the "Regulations, 2002" for short), No Objection Certificate ("NOC" for short) / endorsement from the State Government was required and therefore, the respective petitioner had moved appropriate application before the State Government for grant of NOC to start new B.Ed. / PTC college as per their applications and either their applications are rejected and / or the respective petitioners are informed by the State Government i.e. by the Director of Primary Education that as considering the avenue of the employment and need for trained teachers, it has been decided by the State Government not to grant NOC for starting new B.Ed./ PTC colleges in the State of Gujarat for the academic year 2005-06 and therefore, their applications are rejected. It is the contention on behalf of the petitioners that refusal of NOC by the State Government would be considered by the Council and their applications for recognition to start new B.Ed. / PTC colleges would be rejected by the Council out rightly and automatically. Therefore, they have prayed for an appropriate writ, order and / or direction to quash and set aside the action of the State Government in not granting NOC and directing the State Government to grant NOC to start B.Ed. / PTC colleges as per their applications. It is submitted on behalf of the learned advocates for the petitioners that decision of the State Government by Director of Primary Education not to grant NOC for starting new B.Ed. / PTC colleges on the ground that there is no need for new colleges considering the need for trained teachers and the existing institutions and the requirement of teachers, is

absolutely illegal and most arbitrary and therefore, requested to direct the State Government to grant NOC.

5. Relying on the judgment of the Hon''ble Supreme Court of India in case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, as well as St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, more particularly, para-336 of the T.M.A. PAI FOUNDATION v. STATE OF KARNATAKA, it is submitted that the Council should not reject the application of the respective petitioners for recognition to start B.Ed. / PTC colleges as per the respective applications solely relying upon the decision of the State Government not to grant NOC and therefore, the learned advocates for the respective petitioners have requested to issue appropriate direction by allowing the special civil applications of this group as prayed for.

6. On the other hand, Shri Dipen Desai and Shri H.D. Dave, learned Assistant Government Pleaders appearing on behalf of the State Government have submitted that the decision of the State Government can be termed as an "Endorsement" on the applications of the respective petitioners for grant of NOC. Refusal to grant NOC to start new B.Ed./ PTC colleges is in consonance with the guidelines issued by the Council which is narrated in para-16 of the judgment of the Hon''ble Supreme Court in case of ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR., (Supra). It is submitted that as per the amended Regulations of 2003, every State Government while considering the application for grant of NOC is required to take into account the guidelines for issue of NOC issued by the NCTE from time to time. It is submitted that one of the guidelines issued by the NCTE to the State Government issued on 2.2.1996 for issuance of the NOC is that while considering the application for NOC, the State Government is required to assess the need for trained teachers and this need should take into consideration the supply of trained teachers from existing institutions, requirement of such teachers in relation to enrolment projections at various stages, the attrition rates amongst trained teachers due to superannuation, change of occupation, death etc.. and the number of trained teachers on the live register of the employment exchanges seeking employment and the possibility of their deployment. It is further submitted that as per the said guidelines, if the State have more number of teachers than of required number of teachers, may not encourage opening of new institutions for teacher education institution or to increase in intake. Therefore, it is submitted that considering the aforesaid guidelines and having found that against the inflow of the trained teaches from existing B.Ed. colleges, actual requirement of the trained teachers is less, more particularly, against approximate strength of 11,000 trained teachers from existing B.Ed. institutions, there will be hardly requirement of 4,000 to 5,000 teachers and therefore, it has been decided not to grant NOC for new B.Ed. colleges and the same is in consonance with the guidelines issued by the NCTE. Relying on the decision of the Hon''ble Supreme Court in case of ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL

FOR TEACHER EDUCATION AND ANR., (Supra) and even considering the amended Regulations of 2003, it is submitted that this can be considered to be an "endorsement" of the State Government on the application submitted by the respective petitioner for NOC to start new institutions and the same is required to be considered by the Council and it is ultimately for the Council to take a final decision. It is also further submitted that even as per Section 14 of the Act, the concerned Institution have an opportunity to make a written representation to the Regional Committee and before passing order under sub-clause (b) of sub-section (3) of Section 14 of the Act, the Regional Committee is required to provide reasonable opportunity to the concerned institute for making written representation. Under the circumstances, it is submitted that the respective petitioners and the concerned institutions can make written representation before the Regional Committee which can also be considered by the NCTE / Council before taking a final decision on the application submitted by the concerned institutions for recognition.

7. Shri P.K. Jani, the learned advocate appearing on behalf of the Council has submitted that the apprehension on the part of the respective petitioners that on the basis of rejection of their application by the State Government and / or refusing to grant NOC by the State Government, the Council will reject their applications for recognition to start new institution is not well founded and is without any substance. It is submitted that as per the Regulations of 2002 and amended Regulations of 2003, more particularly, sub-regulation (iv) of Regulation (6), the Regional Committee while taking a decision on the application for recognition is required to consider the NOC / endorsement of the State Government and it is ultimately for the Council to take a final decision and which is not depending on the NOC and / or endorsement of the State Government. Shri P.K. Jani, the learned advocate has also made a statement that the Council will take an appropriate decision independently in accordance with law and on merits after considering the endorsement of the State Government. Shri Jani has also relied upon the observations made by the Hon"ble Supreme Court in para-19 of the decision in case of ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR., (Supra), by which, it is held that an endorsement of the State Government in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition and even if the NOC is not granted by the State Government and the same is refused, the entire matter will be examined by the Regional Committee while taking decision on the application for recognition and that, grant or refusal of NOC by the State Government is not a conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking decision on the application for grant of recognition. Relying upon the aforesaid judgment and the observations of the Hon"ble Supreme Court, Shri Jani, the learned advocate has submitted that Council will abide by the same and that entire matter will be examined by the Regional Committee independently and the views expressed by

the State Government will be considered by the Regional Committee while taking a decision on the application for grant of recognition submitted by the respective petitioners.

8. Heard the respective learned advocates appearing on behalf of the parties.

9. Courses for B.Ed. / PTC are governed by (The) National Council for Teacher Education Act, 1993. Section 14 of the said Act deals with recognition of the institutions offering course or training in teacher education. Section 14 of the Act reads as under :

"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 or or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations;

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

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

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall, -

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, 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), pas an order refusing recognition to such institution for reasons to be recorded in writing;

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

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

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

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

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

10. Section 32 of the Act deals with powers to make regulations. In exercise of powers conferred under clause (f) and (g) of sub-section (2) of Section 32 read with Section 14 & 15 of the Act, the NCTE has framed Regulations viz. The National Council for teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programme and permission to start new course or training) Regulations, 2002. (hereinafter referred to as the "Regulations" for short). Said Regulations are applicable to all the matters relating to grant of recognition / permission for starting a course or training in teachers education including teacher education process through open and distance learning system which is including B.Ed./ PTC course. Regulation (3) deals with manner of making application. Regulation (6) deal with requirement of NOC from the State Government / Union Territory administration. Regulation (7) deals with time for making an application. After decision of the Hon'ble Supreme Court in case of St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, the aforesaid Regulation of 2002 is amended and Regulation (6) is substituted which reads as under :

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

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

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

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

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

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

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

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

(viii) Requirement of NOC shall not apply to Government institutions.

(ix) Requirement of NOC shall not apply to University Departments for taking up innovative teacher education programmer for a maximum intake of 50 (Fifty only). The question as to whether a programmer is innovative will be decided by the concerned Regional Committee."

11. As per sub-regulation (ii) of Regulation (6), the every State Government/UT Administration shall endeavour to dispose of the application of the institution seeking NOC for starting a course or training in teacher education or seeking permission to start a new course or training and / or increase in intake, as expeditiously as possible, and shall provide its NOC / endorsement within six months of the last date of receipt of application for grant of NOC fixed by the concerned State Government / UT. As per sub-regulation (iii) of Regulation (6), the State Government / UT Administration while considering application for grant of No Objection Certificate shall take into account the guidelines for issue of No Objection Certificate issued by the NCTE from time to time and as per sub-regulation (iv) of Regulation (6), the NOC / endorsement of the State Government / UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision in the application for recognition. Thus, considering the aforesaid provisions and the regulations, the State Government is required to dispose of application of the institution/s seeking NOC for starting a new course or new institution and is required to provide its NOC / endorsement within six months. If NOC is granted then, there is no difficulty. As per the aforesaid Regulation, either the State Government may grant NOC and / or make endorsement, meaning thereby, if NOC is not granted and / or the same is refused, it is required to be treated as an endorsement and the same is required to be sent to the Regional Committee of the Council which is required to take decision on the application for recognition considering the NOC / endorsement of the State Government. In other words, endorsement of the State Government would be "The Views" of the State

Government which is required to be considered by the Council while taking a final decision on the application for recognition. As per sub-regulation (iii) of Regulation (6) while considering application for grant of No Objection Certificate, the State Government shall take into account the guidelines for issue of No Objection Certificate issued by the NCTE from time to time. Certain guidelines issued by the NCTE to the State Government issued on 2.2.1996 for issuance of NOC is referred to by the Hon"ble Supreme Court in para-16 in the decision of ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR., (Supra), which reads as under :

"16. The contention that there are no guidelines for the State Governments regarding grant of an NOC and consequently, the State Government may refuse to grant an NOC on wholly irrelevant consideration is without substance. It is averred in para-7 of the counter-affidavit filed by the Council that it has issued certain guidelines to the State Governments on 2.2.1996 for issuance of an NOC and a copy whereof has also been annexed. The relevant par of the guidelines is being reproduced below:

"1. The establishment of teacher" training institutions by Government, private managements or any other agencies should largely be determined by assessed need for trained teachers. This need should taken into consideration the supply of trained teachers from existing institutions, the requirement of such teachers in relation to enrolment projections at various stages, the attrition rates among trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and the possibility of their deployment. The States having more than the requirement number of trained teachers may be encourage opening of new institutions for teacher education or to increase the intake.

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

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

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

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

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

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

8. Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate material and manpower resources in terms, for instance, of qualified teachers and other staff, adequate buildings and other infrastructure (laboratory, library etc.), a reserve fund and operating funds to meet the day-to-day requirements of the institution, including payment of salaries, provisions of equipment etc. Laboratories, teaching science methodologies and practicals should have adequate gas plants, proper fittings and regular supply of water, electricity etc. They should also have adequate arrangements. Capabilities of the institution for filling norms prepared by NCTE may be kept in view.

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

12. Considering the aforesaid guidelines, having found that in the State of Gujarat considering the requirements of trained teachers, the same can be met with teachers from the existing B.Ed. Institutions, if the State Government has rejected the applications for grant of NOC and / or made endorsement to the effect, it cannot be said that the same is contrary to the guidelines issued by the NCTE. Even otherwise, as held by the Hon''ble Supreme Court in case of ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR., (Supra) and even as per sub-regulation (iv) of Regulation (6) which is now amended considering the judgment of the Hon''ble Supreme Court in case of ST. JOHNS TEACHERS TRAINING INSTITUTE (Supra), the endorsement of the State Government / UT Administration in regard to issue of NOC is required to be considered by the Regional Committee while taking decision on the application for recognition and

that even if the NOC is not granted by the State Government or UT Administration concerned and the same is refused, the entire matter is required to be examined by the Regional Committee while taking decision on application for recognition and grant of NOC or refusal thereof by the State Government or UT Administration is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking decision on the application for grant of recognition. In view of aforesaid facts and circumstances of the cases on hands and law laid down by the Hon''ble Supreme Court referred to above as well as sub-regulation (iv) of Regulation (6), apprehension on the part of the petitioners that considering the decision / endorsement of the State Government not to grant NOC for starting new B.Ed. / PTC colleges, NCTE will reject their applications straightaway, is not well founded and as such, there is no substance in it. As held by the Hon''ble Supreme Court in ST. JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANR., (Supra) as well as in view of amended Regulations of 2003, more particularly, sub-regulation (iv) of Regulation (6), NOC of the State Government in regard to issuance of NOC is required to be considered by the Regional Committee while taking decision on the application for recognition. Thus, it is ultimately for the NCTE / Regional Committee to take an appropriate decision on the application for grant of recognition and grant and / or refusal of NOC by the State Government is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking decision on the application for grant of recognition. Even otherwise, as stated above, the respective petitioners would be having reasonable opportunity for making written representation before the Regional Committee and as envisaged u/s 14 of the Act, before passing any order under sub-clause (b), the Regional Committee is required to provide reasonable opportunity to the concerned institution for making written representation. Thus, while disposing of the present special civil applications of this group, the Regional Committee of NCTE is directed to take appropriate decision in accordance with law and on merits considering sub-regulation (iv) of Regulation (6) on the applications for grant of recognition submitted by the respective petitioners and it is held that grant and / or refusal of NOC by the State Government is not conclusive or binding and views expressed by the State Government which are stated while rejecting the application of the respective petitioners for NOC and / or while not granting NOC will be considered by the Regional Committee while taking decision on the applications for recognition submitted by the respective petitioners.

In view of above observations and directions, all the special civil applications of this group are disposed of accordingly.

Rule, in each petition, is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.