
(2012) 08 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5207 of 2011

Shri Om Prakash Shiksha Prasar Samiti and Another

APPELLANT

Vs

National Council for Teachers Education and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2013) 1 MPLJ 146

Hon'ble Judges : Brij Kishore Dube, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : Shobha Menon, with Pavan Dwivedi, for the Appellant; Tapan Trivedi for Respondent Nos. 1 and 2 and Raghvendra Dixit, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—The order passed in this petition shall also govern the disposal of connected W.P. No. 6528/2011, Shri Om Prakash Shiksha Prasar Samiti and another vs. M.P. Board of Secondary Education and others. By this petition under Article 226 of the Constitution of India the petitioners are seeking the following reliefs:

(i) The respondent No. 1 and two may kindly be directed to immediately issue recognition/issue formal letter of recognition to the petitioners from the academic session 2010-2011 for D.Ed. Course in compliance of order dated 18-7-2011 (vide Annexure P/1) and order dated 22-9-2010 (vide Annexure P/2) and/or.

i. A. To issue writ of mandamus/certiorari setting aside letter dated 26-8-2011/Annexure P/10 (wrongly typed; indeed it is P/11) and all subsequent action taken in pursuance of the said letter including the decision taken by the WRC in its 154th and 162nd meetings as illegal and direct respondents to restore the recognition granted earlier as enumerated in 153rd meeting of WRC.

i. B. To direct the respondents to declare the result of the students who have appeared in examination by virtue of interim directions of this Hon''ble Court.

i. C. Alternatively to processes the application of petitioner in view of the recommendation made by the visiting team and to confer recognition D.EI.Ed. Course forthwith.

(ii) In terms of order dated 22-9-2010 passed by the Hon''ble High Court in W.P. No. 5234/2010, the students provisionally admitted for the academic session 2010-2011 for D.Ed. Course be directed to be allowed to submit examination form and to sit in the examination and.

(iii) The respondent authorities be directed to see and ensure that because of inaction on the part of respondent No. 1, the future of the students admitted for the academic session 2010-2011 for D.Ed. Course be not allowed to put in dark and/or.

(iv) Any other relief in favour of the petitioner may also be granted, if the facts and circumstances of the case permit in the interest of justice.

2. In brief, the case of the petitioners is that the first petitioner is a registered Society and runs an un-aided private Educational Institution (petitioner No. 2) (in short "the Institution") since 2003 and is conducting B.Ed. Course since 2003. The Institution was given recognition w.e.f. the year 2006 for M.Ed. Course. The Institution applied for grant of recognition of D.EI.Ed. Course to National Council for Teachers Education (in short "the NCTE") vide its application dated 26-10-2009 for the academic session 2010-2011 within limitation and according to the norms prescribed under the NCTE Regulations 2009 (in short "the Regulations") which are framed under the National Council for Teacher Education Act, 1993 (in short "the NCTE Act").

3. After four months of the receipt of the application, the NCTE issued a letter dated 22-2-2010 to the Institution pointing out some deficiency which was duly removed by the Institution and compliance report was submitted on 31-3-2010 including the CLU certificate duly notarised. The Western Regional Committee (In short "the WRC") and NCTE rejected the application of the petitioner for grant of recognition for D.EI.Ed. Course vide its order dated 13-5-2010. Eventually, the Institution filed an appeal and the matter was remanded back to the WRC. After remand, again certain deficiencies were pointed out which were duly clarified by the petitioner but despite it the WRC took a long time of seven months in constituting a visiting team for inspection. After the inspection was made by the team, the matter was taken into consideration by the WRC in its 149th meeting convened on 4/6th May, 2010. The team, thereafter again took time of two months in inspecting the Institution. Indeed, the inspection of the Institution was made by the said visiting team on 12-7-2011 and thereafter, the recommendation report was submitted to the WRC. According to the petitioner, the report of the visiting team is favourable to the petitioner in all aspects and found everything in the Institution as per the prescribed norms (Annexure P-9).

4. Further the case of the petitioners is that the report of the visiting team was considered by the WRC in its 153rd meeting held on 30-7-2011. The WRC in its said meeting granted recognition to the said Institution u/s 15(3) of the NCTE Act read with Regulation 7(11) of the Regulations (Annexure P-10). According to the petitioners, despite the recognition was granted to the Institution in the 153rd meeting by the WRC convened in between 28th to 30th July, 2011, the same was deliberately not informed to the Institution by executing the order and indeed it should have been communicated to the Institution and also it was to be published in the Gazette as per section 15(4) of the NCTE Act. It is also the case of the petitioner that the authorised nominee of the Board of Secondary Education, Madhya Pradesh (in short "the Board") approved the admissions of the students of B.Ed. Course in the Institution on 26-8-2011. The examining body i.e. the Board issued order of eligibility and allotted roll numbers to the students of the Institution on 26-8-2011. The Board further appointed its authorised nominee for approving the admission for the academic session of 2011-2012 on 8-9-2011 and the duly admitted students of the Institution have appeared in the D.Ed. Examination held on 12-9-2011 to 16-9-2011.

5. In between, the NCTE (MHRD) issued a letter dated 26-8-2011 (Annexure P-11) thereby observing that the decision for grant of formal recognition to the Institution under Clause 7(11) was taken without issuance of letter of intent [under Clause 7(9)] and the Principal of the Institution does not possess the requisite experience of teaching in elementary education and that the original affidavits of the faculty members are not available. Thus, it recommended for reconsideration of the decision of grant of recognition by the WRC. According to the petitioner, the said letter of NCTE was never communicated to the Institution. Thereafter, the said letter was considered by the WRC in a mechanical manner in its 154th meeting held on 11/12th September, 2011 in which a decision was taken to issue letter of intent under Clause 7(9) of the NCTE Regulations (Annexure P-12).

6. It is also the case of the petitioner that WRC in pursuance to the aforesaid decision issued letter of intent to the Institution on 29-9-2011/3-10-2011 (Annexure P-13). Although the letter of NCTE dated 26-8-2011 was without jurisdiction and compliance of the said letter by the WRC in its subsequent 154th meeting was also without jurisdiction because it was a mere surrender of its discretion without application of mind, even then the Institution duly submitted its compliance pursuant to such letter of intent on 13-10-2011.

7. According to the petitioner, when WRC and NCTE did not respond to the repeated requests of the Institution and did not care for the students, the present petition has been filed by the petitioner for the grant of recognition and declaration of result.

8. This Court on 9-8-2011 as an interim measure directed that the Human Resource Development Department shall take a decision in the matter within a period of one week and meanwhile the petitioner-Institution shall be permitted to

fill up the examination form of the students of the D.Ed., course through online for the session 2010-2011. This order was challenged by the NCTE as well as by the Board by filing separate SLPs before the Supreme Court and the same was disposed of by passing a common order on 9-5-2011. The Apex Court did not interfere in the interim order but passed an order that the Board shall not be compelled to take further steps including the declaration of result of the students who were permitted to appear in the D.Ed. Examination for the session 2010-2011. The Supreme Court further observed that High Court shall decide the writ petition on its own merits without being influenced by the order which has been passed by the Apex Court.

9. A joint return has been filed by the NCTE and WRC (respondents 1 and 2). The stand which has been taken in the return is that the petitioners' Institution applied for the recognition of the session 2010-2011 and on the strength of the order dated 22-9-2010 passed in W.P. No. 5234/2010 admitted 50 students provisionally in the course in question. Thus, the relief which has been claimed that the recognition be granted from the retrospective effect i.e. from session 2010-2011 for the D.Ed. Course in compliance of the order dated 22-9-2010 and 18-7-2011 passed in W.P. No. 5234/2010 and W.P. No. 4199/2011 respectively with a further prayer that the students who have been provisionally admitted may be allowed to submit the examination form and to sit in the examination so that the future of the students may not be put to dark, cannot be allowed because in the orders passed in the aforesaid writ petitions there is no direction that the petitioner is entitled to admit the students without having recognition and the affiliation and in absence of a valid recognition, the petitioner is not authorised to admit the alleged students even provisionally. It is also pleaded that the selection and appointment of alleged teachers is illegal and contrary to the Regulations having the statutory force. Because the petitioner is banking upon the Regulations 2009 it has to adopt the entire Regulations in toto and cannot choose the provisions to its profit.

10. According to the respondents, the petitioner is not in a position to deny that till date the Institution is not having the recognition issued under Clause 7(11) of the Regulations 2009. The NCTE Act nowhere permits that the Institution can admit students without recognition and the affiliation of the examining body and in this regard emphasis has been made to Clause 8(12) of the Regulations 2009. In the return it has been pleaded that Clause 4 of the Regulations 2009 speaks for eligibility of the Institution applying for Teacher Education course and thus, contends that the Institution should fulfil the eligibility. As per the stand taken in the return, the petitioner applied to the Board for the affiliation on 22-9-2010 but the Institution was not having any letter of intent issued in its favour on or before 22-9-2010 and this is a gross violation of the Regulations because application for affiliation was incomplete and the Board cannot act in violation of the provisions contained in the NCTE Act. In compliance of the direction, case of the petitioner was processed on merits and while considering the merits of the case of the petitioner on the basis of documents submitted by the petitioner the

deficiency letter dated 22-9-2010 was issued which was to be replied within 60 days and the petitioner Institution replied it and submitted the required documents which were received in the office of WRC on 27-1-2011 (Annexure R-2). By taking the aid of order dated 22-9-2010 passed by this Court in W.P. No. 5234/2010, the stand which has been taken is that this Court disposed of the aforesaid petition by directing that the representation of the petitioner Institution be kept in next meeting by the respondent No. 1 and it was observed that merely on the ground that the meeting will take place after 30th September, 2010 would not be a ground to disentitle the petitioners to the relief claimed in the petition, if they are otherwise entitled for the relief.

11. The respondents further submit that accordingly the matter was considered by the WRC in its 144th meeting held in January, 2011 and taking the case of the petitioner after the remand, processed it on merits and decided to issue a show cause notice and accordingly a show cause notice was issued on 15-3-2011 (Annexure R-3) and its reply was submitted on 7-3-2011. The reply to show cause notice was also submitted by the Institution on 15-3-2011. The said reply was also taken into account in 149th meeting of WRC convened in May, 2011. It has also been pointed out in the return that the supersession of the NCTE Committee took place and the decisions were reviewed by the Headquarter of the NCTE and hence in the 149th meeting of the WRC it was decided to issue letter of intent under Clause 7(9) of the Regulations 2009 and now the petitioner Institution has to comply the provisions of Regulation coming into operation after the issuance of order under Clause 7(9) of the Regulations 2009. Thereafter, the WRC in exercise of statutory function shall consider the case of the petitioner on merits and law for the issuance of any recognition under Clause 7(11) of the Regulations. Copy of the letter of intent dated 22-9-2011 is Annexure R-4 which has also been filed by petitioner as Annexure P-13. In this manner it has been prayed that this petition be dismissed because the staff of the institution is not qualified particularly the Principal Smt. Meera Gupta and there are other illegalities in regard to the submissions of original affidavits.

12. Thereafter, the rejoinder was filed and the stand which has been taken in the rejoinder is that after having exercised the power u/s 15(3)(a) of the NCTE Act and Regulation 7(11) nothing is to be done further and only Gazette Notification is to be issued. There is no power of review even though the NCTE was superseded. The averments that the Principal is not having necessary experience etc. are altogether foreign because the final order and the powers have been exercised in favour of petitioner u/s 15(3)(a) of the NCTE Act and also as per the Regulation 7(11) of the Regulations.

13. Against the rejoinder, an additional return has been filed but substantially the stand of the respondents is the same.

14. We have heard learned counsel for the parties at length. The main emphasis which has been put forth by Smt. Shobha Menon, learned senior counsel for the petitioners is that in the 153rd meeting held on 28-30th July, 2011 a firm

decision was taken by the NCTE considering visiting team report u/s 15(1) of the NCTE Act. On the basis of the report of the documentary evidence/data placed, the WRC decided to grant recognition u/s 15(3)(a) of the NCTE Act and Clause 7(11) of the NCTE Regulations 2009 for D.El.Ed. Course with an annual intake of 50 students from the academic session 2010-2011 as per the directions of this Court in W.P. No. 4199/2011 dated 18-7-2011 and because this order became final and therefore, the NCTE became functus officio and even after it was superseded the letter dated 26-8-2011 (Annexure P-11) is without jurisdiction and all the action which has been taken thereafter is also without jurisdiction including the statutory letter of intent (Annexure P-13) dated 29-9-2011/3-10-2011 and holding the emergency 162nd meeting in May, 2012 by which a decision was taken to issue show cause notice to the institution prima facie holding that Principal is not having eligibility to be appointed on the said post. Our attention has been drawn to section 15(4) of the NCTE Act and also Regulation 7(11).

15. It has also been put forth by learned senior counsel that after the decision has been taken by the NCTE in its 153rd meeting (Annexure P-10) to give recognition to petitioner institution for the year 2010-2011, the only formality which was required to be made is to publish the decision of NCTE in the official gazette and nothing more and it is only a ministerial job. In this context, learned counsel has placed reliance on a Full Bench decision of Punjab and Haryana High Court, *Kashmir Lal and Others Vs. State of Punjab and Another*, and also the decision of Supreme Court *Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra*,

16. On the other hand, in his usual vehemence, Shri Tapan Trivedi, learned counsel for the respondents 1 and 2 submitted that after supersession of the NCTE if it was found by the respondents that the recognition has been given on the basis of certain wrong facts, certainly the order can be reviewed and therefore, all proceedings and actions which are taken in pursuance to letter dated 26-8-2011 (Annexure P-11) are legal and cannot be set aside and the case of petitioner Institution shall be considered by respondents and accordingly if the case is found to be proved on the touchstone and anvil of the provisions contained in NCTE Act and the Regulations 2009, certainly the recognition will be given.

17. Shri Trivedi, learned counsel for the respondents 1 and 2 further submits that the order passed by this Court in W.P. No. 4199/2011 was clarified again by the Division Bench of this Court in MCC No. 423/2011 on 18-12-2011 wherein it has been clarified that in order dated 18-7-2011 the word "consideration" would mean "consideration in accordance with law". Because the Principal and other staff members of the petitioner Institution do not qualify the norms contained in National Council for Teacher Education (Procedure to be followed by the Regional Committees) Regulation, 1995, the Principal is not qualified since she is not having five years' requisite experience. By placing reliance on three decisions of

Supreme Court National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others etc. etc., , Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College Vs. National Council for Teachers Education and Others, and Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, , it has been contended by learned counsel that the recognition cannot be given retrospectively. Hence, it has been prayed that the petition be dismissed.

18. Having heard learned counsel for the parties at length we are of the view that this petition deserves to be dismissed.

19. In the first round of litigation between the same parties in W.P. No. 5234/2010 this Court on 22-9-2010 passed the following operative order:

In this view of matter, according to us, the representation of the petitioners be kept in the next meeting by the respondent No. 1, however, merely on the ground that the meeting will take place after 30th September, 2010 would not be a ground to disentitle the petitioners for the relief claimed in the writ petition, if they are otherwise entitled for the relief.

With the aforesaid observation, this petition is disposed of.

(Emphasis supplied)

20. Later on, in second round of litigation between the same parties in W.P. No. 4199/2011 on 18-7-2011 the following operative order was passed by this Court:--

In this view of the matter, the petition of the petitioners is disposed of with a direction that the meeting of the Western Regional Committee, Bhopal be held within a period of two weeks from the date of receipt of a certified copy of the order in regard to consideration of application of the petitioner's institution for grant of recognition to conduct D.EL.ED. Course for the academic sessions 2010-2011. It is further observed that the Committee shall take into consideration the directions issued by this Court in W.P. No. 5234/2010 vide order dated 22-9-2010.

The writ petition is disposed of accordingly. No order as to costs.

21. Thereafter, between the same parties in MCC No. 423/2011 the Division Bench of this Court on 18-11-2011 clarified the word "consideration" used in the order dated 18-7-2011 and it was held that the word "consideration" would mean "consideration in accordance with law".

22. In pursuance to the order passed in W.P. No. 4199/2011 dated 18-7-2011, the matter was considered in 153rd meeting which was convened in between 28th to 30th July, 2011 and the following decision was taken by the WRC which reads, thus:

1. Consideration of the Visiting Team Report u/s 15(1) of NCTE Act, 1993.

The contention of learned senior counsel for the petitioners is that on bare perusal of the aforesaid decision it is luminously clear that the recognition was made for the academic session 2010-2011 on the basis of the report of the visiting team and the documentary evidence/data placed and thus, by exercising the jurisdiction conferred to WRC u/s 15(3)(a) of the NCTE Act and also in accordance to Regulation 7(11) of the NCTE Regulations the Committee further gave recognition of annual intake of 50 seats for the academic session 2010-2011 and therefore, the letter of intent which has been issued after the supersession of the NCTE Committee would amount to driving the car in reverse gear which is not at all permissible because having taken a decision by the NCTE Committee under the aforesaid provision, thereafter it would become *functus officio* and its action cannot be reviewed later on by a Body taking charge of superseded NCTE Committee. According to us, the aforesaid argument at the first blush appears to be quite attractive, however, on deeper scrutiny we find it to be devoid of any substance for the simple reason that the decision of the NCTE is not always final but it is to be notified in the Official Gazette and will be communicated in writing to take appropriate action to such recognised institution and to the concerned examining body, the local authority, the State and Central Government as envisaged u/s 15(4) of the NCTE Act.

23. The term Notification has not been defined in the NCTE Act nor in the Regulations and therefore, we are required to go through the dictionary meaning. On bare perusal of P. Ramanatha Aiyar The Major Law Lexicon 4th Edition 2010 Volume 4 page 4638 and 4639, the meaning of Notification has been explained as under:--

NOTIFICATION:-- Act of notifying, act of making known; an intimation or notice; esp., act of giving official notice or information by words, by writing, or by other means;

Notification" in common English acceptation means and implies a formal announcement of a legally relevant fact and in the event of a statute speaking of a Notification being published in the Official Gazette, the same cannot but mean a Notification published by the authority of law. It is a formal declaration and publication of an order and shall have to be in accordance with the declared policies or in the event the requirement of the statute then in that event in accordance therewith. Please see: Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra,

24. The decision of Kashmiri Lal (supra) which has been placed reliance by learned senior counsel for the petitioners in regard to the notification goes against her own contention, because the Full Bench of the Punjab and Haryana High Court in para-8 formulated a question "However, can it be said that such an order or decision ipso facto becomes a notification even when it is disclosed to no person other than its author?". The question was answered that "In my view, this would not be so. It is only the factum of proclamation or publication in the gazette or other prescribed modes of publicity which alone would give such an

order or decision, the indicia or the necessary stamping of a notification. Till then it would remain merely an order or decision and as has been mentioned earlier, it may not travel beyond the knowledge of its author and might well remain completely cloistered. The decision of Supreme Court Subhash Ramkumar Bind (supra) is also not at all helpful to the petitioners since it has been held by the Supreme Court that unless and until a Notification is published in the official gazette, the administrative instructions cannot possibly be substitute for Notification which is the requirement of Statute.

25. At this stage, it would be apt to quote section 15(4) of the NCTE Act which reads, thus:--

15. Permission for a new course or training by recognised institution -

(1)***

(2)***

(3)***

(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.

26. On bare perusal of the aforesaid provision the decision of the NCTE u/s 15(3) (a) could be implemented firstly after having its publication in the official gazette and secondly it is to be 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. Thus, the aforesaid clauses embodied in section 15(4) of the said Act are to be read in context to section 15(3)(a) of the NCTE Act and if we keep both the provisions in juxtaposition and are read conjointly, a clear picture is formed that although the Institution to start new course is ripe, but, the decision could be implemented only after it is notified in the official gazette and thereafter it should be communicated in writing to the authorities concerned mentioned in Sub-section (4) of section 15 of the said Act. Admittedly, this has not been done and thereafter simply because a decision has been taken u/s 15(3)(a) of the NCTE Act by the NCTE committee it cannot be said that right of recognition has been conferred to the petitioner Institution. According to us, Shri Tapan Trivedi, learned counsel for the respondents 1 and 2 is right in his submission that merely taking a decision by the NCTE would not be sufficient because it is subjected to section 15(4) of the Act. Thus, it is clear that there is no recognition with respect to the WRC decision taken in 153rd meeting held from 28th to 30th July, 2011.

27. In the present case, the State Government and the Central Government have not been impleaded as parties. According to us, it was incumbent upon the petitioner to implead them as party so that there cards could be opened that

whether the aforesaid decision of the WRC taken in 153rd meeting could be notified in the Official Gazette and was further required to be intimated in writing in regard to the recognition of the Institution. We may further add that till the decision of NCTE is notified in the Official Gazette and intimated in writing in accordance to section 15(4) of the NCTE Act the ball still remains in the Court of NCTE and had not gone to the Court of either State Government or Central Government to notify the decision and thus, if on account of some glaring illegality or irregularity in regard to the non-eligible staff members or the Principal of the petitioner Institution has come into the notice and thereafter if a letter of intent dated 26-8-2011 (Annexure P-11) making certain observations as embodied in the said letter in Clause (viii) is sent to the petitioner Institution, nothing can be said to be an illegal action on the part of the respondents. For ready reference we would like to quote the observation highlighted in the said letter of intent (Annexure P-11) which reads, thus:

(viii) Boston College of Professional Studies, Gwalior, M.P.-D.Ed. Course.

Observation:

(a) Decision for grant of formal recognition under Clause 7(11) was taken without issuance of 7(9). The inspection report was received on 29th July, 2011 and immediately placed in 153rd meeting. Instead of considering the VT Report for grant of initial recognition under 7(9), the committee decided to issue final recognition under 7(11).

(b) Meera Gupta, Principal doesn't possess the requisite experience of teaching in elementary teacher training institution.

(c) Original Affidavits of faculty members are not available in file. In the light of above the decision of the WRC for grant of recognition as per the clause 7(11) may be reconsidered.

28. In the present case, the another glaring error which is apparent is that before taking a decision to give recognition to the Institution by the NCTE in its 153rd meeting held in between 28th to 30th July, 2011, nowhere the letter of intent informing the Institution in regard to the taking of decision of grant of recognition or permission subject to appointment of qualified faculty members before the commencement of academic sessions was ever sent to it which is mandatory as envisaged under Clause 7(9) of the Regulations. Thereafter, the Institution is further required to submit the list of faculty, as approved by the affiliating body to the Regional Committee. This was also not done by the Institution. Hence, rightly the letter of intent dated 29-9-2011/3-10-2011 (Annexure R-4) was sent to the Institution in terms of Clause 7(9) of the Regulations.

29. After having complied with the procedure to send the letter of intent under Clause 7(9) of the said Regulations the Institution has to launch their own website in terms mentioned in this Clause. This all would be done only after

sending the letter of intent by the Council and which is totally lacking in the present case.

30. Even if the argument of learned senior counsel for the petitioner is accepted that under the NCTE Act there is no provision of review and after supersession of the NCTE there cannot be any review of the decision of the Committee, since certain glaring illegalities in regard to authenticity and hallmark of the eligibility of the Principal Meera Gupta and the non-availability of the original affidavits of the faculty members are there, if a letter of intent has been issued and reconsideration is to be done, according to us, it is for the benefit of the students at large who have to undergo the studies. Needless to say that if ineligible staff and that too the Principal who is not having essential eligibility to be appointed as Principal according to the norms given under the Regulation and the NCTE Act is given stamp of approval, one could imagine the fate of students and it would amount to giving stamp of approval to give recognition to an Institution having a Principal who is not eligible to hold the post. The Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, and also in later decisions *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*, *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, and *Shakur Basti Shamshan Bhumi Sudhar Samiti (Regd.) Vs. The Lt. Governor, National Capital Territory of Delhi and Others*, has held that although the order impugned was without jurisdiction but the justice has been done and therefore, while exercising the writ jurisdiction under Article 226, the High Court rightly did not permit to continue illegal order or illegal action although it has been set aside by the authority having no jurisdiction. The Supreme Court in these decisions has highlighted the scope of Article 226 of the Constitution of India and has categorically held that merely the authority was not having jurisdiction to pass an appropriate order setting aside the illegal action, since justice has been done, the High Court should not exercise the writ jurisdiction.

31. We are refraining ourselves in regard to the observations made in letter of intent dated 29-9-2011/3-10-2011 (Annexure P-13) about the eligibility of the Principal Meera Gupta and in regard to non-availability of original affidavits because the decision is yet to be taken by the respondents and the petitioner Institution is required to satisfy that the observations which are made in the said letter are not having any bearing. Although Shri Tapan Trivedi, learned counsel for the respondents 1 and 2 has put emphasis that on bare perusal of the documents which are filed, it is obvious that Principal of the Institution Meera Gupta is not eligible to hold the post of Principal and the affidavits in original are not filed as observed in the observation clause of Annexure P-13, but we would not like to say anything in this regard because it is the domain of the respondents to consider this aspect of the matter and at present nothing can be said in this regard because it would effect the merit of the decision of giving recognition to the Institution which is yet to be taken.

32. The petitioners are banking upon the two orders of this Court passed in W.P. No. 5234/2010 on 22-9-2010 and W.P. No. 4199/2011 decided on 18-7-2011. The operative portion of these decisions have already been quoted hereinabove. In the order dated 22-9-2010 this Court has simply directed that the case of the petitioner Institution be kept in the next meeting of the respondent No. 1 and further observed that merely on the ground that the meeting will take place after 30th September, 2010 would not be a ground to disentitle the petitioners for the relief claimed in the writ petition, if they are otherwise entitled for the relief. Thus, the case of the petitioner was required to be considered by the respondents if they are otherwise entitled for the relief and similarly the decision which has been taken by this Court on 18-7-2011 in W.P. No. 4199/2011 also speaks that the Committee shall take into consideration all the applications of the petitioner Institution for grant of recognition to conduct D.El.Ed. Course by the academic session 2010-2011 with a further direction that while considering the application of the petitioner Institution, directions issued by this Court on 22-9-2010 in W.P. No. 5234/2010 shall also be taken into account. According to us, the word embodied "consideration" would always mean "consideration in accordance with law" and therefore, no clarification was required but even then the respondents filed the MCC No. 423/2011 and this Court clarified that the word "consideration" used in the order dated 18-7-2011 means "consideration in accordance with law". Hence, the ball is still in the Court of the respondents and the decision in regard to the recognition is yet to be taken.

33. Admittedly, till date there is no recognition of the Institution to carry out the D.El.Ed. Course for session 2010-2011, therefore, section 17-A of the NCTE Act would come into picture and there is a mandate given by the Statute to all the Institutions not to admit any students to a course or training teacher education unless the Institution concerned has obtained recognition u/s 14 or permission u/s 15 of the NCTE Act as the case may be. Shri Tapan Trivedi, learned counsel for the respondents 1 and 2 rightly placed reliance on the recent decision of Supreme Court Shri Morvi Sarvajani Kelavni Mandal Sanchalit MSKM B.Ed, College (supra). In para-21 of this decision, the Supreme Court has held that there is no hesitation in rejecting the prayer for permitting the students to continue in the unrecognised institution of the appellant or directing that they may be permitted to appear in the examination. This case pertains to the NCTE Act and therefore, it is fully applicable in the present case. The other two decisions Shri Shyam Shiksha Prashikshan Sansthan (supra) and Adarsh Shiksha Mahavidyalaya and others (supra) placed reliance by learned counsel for the respondents are also applicable that recognition cannot be given retrospectively. The observations made by Division Bench of this Court in the aforesaid two petitions cannot be stretched to the extent in order to give recognition to the Institution with retrospective effect.

34. Thus, we are of the view that presently no cause is made out for the petitioner to file this petition because the decision is yet to be taken for the recognition. Hence, we hereby direct the respondents to take the decision as

early as possible preferably within a period of 30 days from today in regard to the recognition of the petitioner's institution. However, we are also constrained to think about the welfare of the students who have taken admission in the session 2010-2011. Since the petitioner Institution has not yet been recognised, therefore, we would like to adopt the observation made in para-22 by the Apex Court in Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College (supra) and accordingly, we direct the Board of Secondary Education (respondent No. 3) to put its endeavour for reallocating the students who were admitted through the Board process of selection and counseling to other recognised colleges to prevent any prejudice to such students. Such reallocation for the next session may not remedy the situation fully qua the students who may have to start the course afresh but it would ensure that if such admission/reallocation is indeed feasible, the students may complete their studies in a recognised College instead of wasting their time in a college which does not enjoy the recognition by the NCTE. We, therefore, leave this aspect entirely for the consideration of the Board (respondent No. 3) at the appropriate level having regard to its Rules and Regulations and subject to availability of the seats for such adjustment to be made as also the terms and conditions on which the same could be made. We may further add that the students shall be free to take action against the Institution, if they mislead the students that the Institution is recognised. If any action is taken by the students by filing appropriate proceedings before the appropriate forum, the same may be decided strictly in accordance with law.

35. For the reasons stated hereinabove, we do not find any merit in the present petition at present and the same is hereby dismissed with no order as to costs. The respondents are hereby directed to proceed further in consequence to letter of intent (Annexure P-13) dated 29-9-2011/3-10-2011. For the aforesaid reasons, no relief can be granted to the petitioners in connected W.P. No. 6528/2011, Shri Om Prakash Shiksha Prasara Samiti and another vs. M.P. Board of Secondary Education and this petition is also accordingly dismissed. Let a copy of this order be also kept in the record of connected W.P. No. 6528/2011.