

(2017) 05 AHC CK 0079
In the Allahabad High Court
Case No : 180 of 2017

The V.C., Deen Dayal Upadhyay?Gorakhpur University & Another Vs C/M Ramesh Chandra Rao Navtappi?Mahavidyalay & 4 Othe

Date of Decision : 15-05-2017

Acts Referred:

Constitution of India, Article 226 -
Uttar Pradesh State Universities Act, 1973, Section 37(2)

Citation : (2017) 05 AHC CK 0079

Hon'ble Judges : V.K. Shukla, Mahesh Chandra Tripathi

Bench : Division Bench

Advocate : Brajesh Datta Pandey, Arvind Kumar Singh, Chandra Bhan Gupta, Rashmi Tripathi, Shivendra?Kumar Gupta, Sushil Kumar Rao

Judgement

1. In all the abovementioned Special Appeals in question, as common question of law has been engaging the attention of this Court, the Special Appeals in question are being decided collectively.

2. Deen Dayal Upadhyay Gorakhpur University, Gorakhpur through its Vice Chancellor is before this Court seeking to assail the judgement and order of Learned Single Judge rendered on 24.06.2016 passed in Writ C No.28274/2016 (C/M Ramesh Chandra Rao Navtappi Mahavidyalaya and another vs. State of U.P. and others) whereby the matter has been remitted back to the University concerned to consider and take fresh decision in accordance with law preferably within stipulated period.

3. The basic facts pertaining to issue in question may be stated as follows:- The C/M Ramesh Chandra Rao Navtappi Mahavidyalaya Rampurgarh, Deoria is the Society registered on 08.03.2016 under Societies Registration Act, 1860 and the said Society runs an Institution known as Ramesh Chandra Rao Navtappi Mahavidyalaya Rampurgarh, Deoria (hereinafter referred to as the "Institution") . The said Institution is a self financed institution and is duly affiliated with Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. The Institution in question is governed by the provisions of U.P. State University Act,

1973 (in brevity the "Act 1973") as well as the Rules and Regulations framed therein and the provisions of NCTE Act. It appears that the said Institution is imparting education upto undergraduate level and recognition was also accorded to the same under section 37(2) of U.P. State University Act, 1973 in the year 2012 for running graduation classes. The said Institution in the year 2012 has applied for recognition for running the B.Ed. course and for the said purpose, fee has been deposited as required under the provisions of NCTE Act. On the said request being made, the NCTE had issued a letter of intent in favour of Institution under clause 7(9) of the NCTE Regulations 2014 on 09.05.2015. The NCTE vide its order dated 29.05.2015 granted recognition to the petitioners" Institution to conduct B.Ed. course of two years duration for an annual intake of 100 (two units) from the academic session 2015-16. However the University concerned had rejected the application of petitioners for affiliation vide order dated 22.05.2016 issued by the Registrar of the University and communicated the decision of Affiliating Committee of the University, whereby the application of petitioners" Institution to conduct the B.Ed. Course has been declined. While rejecting the said claim, the University had taken two grounds (i) the University did not issue any no objection in terms of the Government Order dated 27.09.2002 (ii) the inspection panel constituted by the University not submitted the report to the University.

4. In this backdrop while partly allowing the Writ Petition in question, the Learned Single Judge has proceeded to consider both the grounds which were taken by the concerned University for rejecting the claim of petitioners" Institution. The relevant is extracted below:- "As regards the first ground that the University has not issued any no objection is concerned, this Court in its judgement dated 24th June, 2016 rendered in companion Writ-C No. 28141 of 2016 (C/M Babu Baij Nath Singh Mahavidyalaya and another v. State of U.P. and others) has elaborately considered this issue and has set aside the order of the University for the reasons mentioned in the said judgement.

Insofar as the second ground that the inspection panel constituted by the University has not submitted its report is concerned, the petitioners in paragraph-18 of the writ petition have averred that a three-Member Committee constituted by the University has submitted its report on 28th May, 2016, wherein it has made a recommendation for affiliation. It is stated that the Committee has found that the petitioners" institution fulfils the norms laid down by the University and the Government order. A copy of the said report is on the record as annexure-8 to the writ petition. The University, however, in its counter affidavit has not specifically denied the said averments made in the writ petition and has given an evasive reply. Paragraph-18 of the writ petition has been replied by the University in paragraph-34 of the counter affidavit which reads as under:

"34. That the contents of paragraph 18 of the writ petition are the matters of record hence, need no reply. However, the suitable reply has already been given

in the preceding paragraph of this affidavit. The inspection panel is constituted as per government order dated 5.2.2014 for grant of affiliation. But the fact remains when the recognition is self faulty as no objection certificate by the competent authority has admittedly been not submitted by the petitioner along with the application for grant of the recognition before the N.C.T.E. and, therefore, the subsequent action is not in accordance with law."

As can be seen, the University has not denied the fact that a report has been submitted on 28th May, 2016. The University has also not denied the fact that the said report, which is part of the record, is a fabricated document. In view of the evasive reply given by the University, the Court has no reason to disbelieve the averments made in paragraph-18 of the writ petition.

In the companion writ petition i.e. C/M Babu Baij Nath Singh Mahavidyalaya (supra) and in a batch of writ petitions, in the impugned orders the grounds are similar and identical and in those cases after quashing the impugned order, this Court has remitted the matter back to the University to reconsider the issue afresh. The operative part of the judgement in C/M Babu Baij Nath Singh Mahavidyalaya (supra) is quoted below:

"In view of the reasons stated above, I find that once the decision taken by the University is found to be contrary and against the law laid down by the Supreme Court, this Court in its jurisdiction under Article 226 of the Constitution can direct the University to reconsider its decision in the light of the law laid down by the Supreme Court mentioned above.

For the reasons recorded herein-above, I find that the impugned order of the University dated 22nd May, 2016 needs to be quashed and accordingly, it is quashed. The matter is remitted to the University to take a fresh decision in accordance with law within three weeks from the date of communication of this order.

Accordingly, the writ petition is partly allowed. No order as to costs."

In view of the above, the impugned order dated 22nd May, 2016 in this case also is quashed. The matter is remitted to the University to consider and take a fresh decision in accordance with law within three weeks from the date of communication of this order. Accordingly, the writ petition is partly allowed. No order as to costs."

5. Shri B.D. Pandey, learned counsel for the appellantrespondents has vehemently contended that to run B.Ed. Course, several requirements are to be completed and one of the requirement is that the Institution in question, which is submitting the application for recognition, has to annex the copy of NOC issued by the Competent Authority in order to prove that the land in question, on which the college for B.Ed. course is going to run, belongs to said Society or the Institution and in case NOC is not submitted, the application for recognition is considered to be incomplete and in support of his submission, he has placed

reliance on the Government Order dated 27.09.2002. In view of this, he submits that on this score the University has rightly rejected the application for affiliation of the Institution concerned for running B.Ed. course. He has further submitted that under Regulations 2009 and 2014 also, NOC is mandatory and as such it is sought to be contended that in absence of NOC of the University, the Institution could not induct the students under the B.Ed. Course. He has also urged before this Court that for grant of affiliation with the University, the Institution in question is to satisfy whether there is proper infrastructure and the staff is qualified or not and so far as the Inspection Panel is concerned, it has not at all submitted its report till the date of passing of order dated 22.05.2016 and in this backdrop, there was no occasion or reason for this Court to pass an order under Article 226 of the Constitution of India and as such, the Learned Single Judge has erred in law as without completing the formalities no such directives could be issued to the University concerned for affiliation.

6. Per contra, Shri C.B. Gupta, Advocate and Shri S.K. Rai, Advocate, who represents the Institution in question, have vehemently opposed the prayer that has been so made and submitted that in the present matter, the Learned Single Judge has rightly proceeded to allow the Writ Petition in question relying upon the judgement dated 24.06.2016 rendered in Writ C No.28141 of 2016 (C/M Babu Baij Nath Singh Mahavidyalaya and another vs. State of U.P. and others) wherein the Learned Single Judge has considered each and every aspect of the matter, similar to the issues raised in the present matter, and decided the controversy in hand with detailed judgement but the reason best known to University concerned at no point of time, the said order in question till now has been assailed and thus the same holds the field. Here, in the present case, the order impugned relying upon the judgement passed in C/M Babu Baij Nath Singh Mahavidyalaya (supra) has been passed and the said judgement in question cannot be challenged in the present Special Appeal. It has also been submitted that, in the present matter, the NCTE has accorded recognition to the Institution for the Academic Session 2015-16 and as such, the insistence of University for NOC was wholly irrelevant in view of the fact that NCTE had granted due approval for appointment of teachers for B.Ed. course. He further apprised to the Court that the Inspection Panel constituted by the University has also found that the petitioners' Institution has all the necessary infrastructure, therefore, the University was bound to grant affiliation. It has also been complained to us that in the present matter the Authority, on the spot, has adopted pick and choose policy as in the leading Writ Petitions, 40 similarly situated Institutions were there and hardly few Special Appeals had been preferred. This very act clearly establish that from day one the University concerned was biased and chosen not to accord permanent recognition either for one reason or the other to the Institution concerned and trying to raise an objection which cannot sustain in the light of the judgement passed in the case of Babu Baij Nath Singh Mahavidyalaya (supra) and on this score, the present Special Appeal in question is liable to be dismissed.

7. Ms. Rashmi Tripathi, learned counsel for NCTE has supported the version of the Institution concerned and submitted that once NCTE had granted recognition to the Institution in question, the University concerned had very limited role not to accord affiliation in terms of Section 14(3) and 14(5) of the NCTE Act. She further apprised to the Court that the NOC is only a recommendation and in view of the deeming clause under Regulation 7(4) of the Regulations 2009, the State Government is deemed to have been granted no objection. She has also placed reliance on the judgement of Apex Court passed in State of Maharashtra vs. Sant Dhyaneswar Shikshan Shashtra Mahavidyalaya and others 2006 (9) SCC 1 . Further, she urged that a combined reading of Section 14(4) & 14(6) read with Section 16 of the NCTE Act obligates an affiliating body to grant affiliation in case the NCTE has granted the recognition to the institution and the provisions of the NCTE Act indicate that it leaves no discretion to the affiliating body to impose any further condition particularly no objection from the State Government, and as such no interference is required in the matter. Heard rival submissions and perused the record.

8. Before coming to the merit of the case, the Court has pointed specific query to the counsel for the University concerned that the order impugned is dated 24.06.2016, and in the backdrop as at no point of time there was any stay order passed in the present Special Appeal, the said order has been complied with or not.

9. Shri B.D. Pandey, counsel representing the University concerned, on the instructions so received, made an statement that earlier provisional NOC was already accorded to the Institution in question and no other NOC has been issued in favour of the Institution concerned on account of pendency of Special Appeal in question.

10. In order to appreciate the controversy in hand, it would be appropriate to refer the relevant provisions of the statute which regulate the recognition by the NCTE, affiliation by the University and the role of the State Government.

11. The NCTE Act has been enacted by the Parliament. Its Preamble 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 in the whole of the country, the regulation and proper maintenance of norms and standards in the teacher education system. The NCTE was set up in the year 1973 as a purely advisory body. It was felt that the said body could not achieve its objective as it had very little impact on the standards of teacher training institutions in the country. In view of the said fact, the Parliament enacted the National Council for Teacher Education Act, 1993. The object thereof was in the light of the national policy on education and the NCTE was empowered to provide necessary resources and capacity of accredited institution of teacher education. It was entrusted with the task to provide guidance regarding curricula and methods. The Parliament has enacted the NCTE Act under Entry 66 of List-I i.e. Union List of the Seventh Schedule of the Constitution of India. Entry 66 of

List-I of the Seventh Schedule of the Constitution reads as under: "66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

12. Before the Constitution (Forty-second Amendment) Act, 1976, Entry 11 of the State List i.e. List-II of the Seventh Schedule provided for the education including Universities subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List- III. After the said amendment, Entry 25 of List-III provides that the education, including, technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

13. The aforesaid Entries indicate that insofar as the higher education or research on scientific and technical education is concerned, that has not been subject to any amendment and was always under the purview of the power of Parliament. The Constitution (Forty-second Amendment) Act, 1976 came into force with effect from 03rd January, 1977, and the only change thereafter made was that Entry 11 of List-II was merged with Entry 25 of List- III from the List-II. The amended Entry 25 of List-III explicitly lays down that it is subject to the provisions of Entries 63, 64, 65 and 66 of List-I.

14. The preamble of the NCTE Act provides that one of the main objects of the Act is to achieve planned and coordinated development of teacher education throughout the country. Section 2(d) of the NCTE Act defines the "examining body" in the following terms: "(d) "examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications;"

Section 2(i) of the NCTE Act gives the definition of "recognised institution" thus:

"(i) "recognised institution" means an institution recognised by the Council under Section 14;"

Definition of "University" has been given under Section 2(n) of the NCTE Act, as under:

"(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 under Section 3 of that Act (3 of 1956);"

15. Chapter II of the NCTE Act deals with establishment of the Council. Chapter-III enumerates various functions of the Council. Section 12(f) & (g) deals with laying down guidelines and standards in respect of teacher education. By an amendment, Section 12-A has been inserted in the NCTE Act by Act No. 18 of 2011 with effect from 01st June, 2012, which empowers the Council to determine the minimum standards of education and qualifications of persons for being recruited as school teachers also in respect of pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college. Thus, the teachers employed from pre-primary stage of the education were also included

within the purview of the NCTE Act. Chapter-IV of the NCTE Act deals with recognition of teacher education institutions. Since the dispute in the present case relates to recognition and affiliation of institution, it is necessary to extract Section 14 of the NCTE Act, 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 on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

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

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

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

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it 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 fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

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

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

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

- (6) Every examining body shall, on receipt of the order under sub-section (4),--
- (a) grant affiliation to the institution, where recognition has been granted; or
 - (b) cancel the affiliation of the institution, where recognition has been refused."

16. Section 15 of the NCTE Act deals with the procedure for application for recognition. Since in the case in hand the recognition has been granted by the NCTE, Section 15 is not relevant for the purpose. Section 16 provides that the University shall not grant affiliation to any institution unless the institution concerned has obtained recognition from the Regional Committee under Section 14. Section 16 of the NCTE Act is quoted below: "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, under Section 14 or permission for a course or training under Section 15."

Section 17 provides the consequences of contravention of the provisions of the Act. Sub-sections (3) & (4) of Section 17, being relevant for the purpose, are quoted below: "(3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1) or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any School/College or other educational body aided by the Central Government or any State Government."

17. Chapter-VII of the NCTE Act deals with miscellaneous matters. Section 31 gives power to the Central Government to make rules. The Central Government in exercise of the powers conferred by Section 31 of the NCTE Act has made the rules, namely, the National Council for Teacher Education Rules, 1997. Rule 8 of

the Rules, 1997 provides that an institution which intends to conduct the B.Ed. course shall be inspected to ascertain as to whether the institution has necessary physical and other infrastructure in terms of the provisions of the NCTE Act and the Rules and Regulations made thereunder. Rule-8 of the Rules, 1997 reads as under:

"8. Inspection.--(1) The Council may inspect the recognized institutions in the manner specified in sub-rules (2) to (8).

(2) The Council shall approve a panel of names of experts in teacher education or educational administration who may be able to inspect the recognized institutions. The Chairman shall nominate at least two persons out to the panel of experts to a inspection team.

(3) The Council shall give a notice of its intention to the institution along with a questionnaire in Form "IV" seeking information within fifteen days on all relevant matters relating to the institution.

(4) On receipt of the completed questionnaire, the Council shall communicate the names of the members of inspection team and the date of inspection to the institution.

(5) The institution to be inspected shall nominate its one officer or employee, to be associated with the inspection team.

(6) The inspection team shall ascertain as to whether the institution is functioning in accordance with the provisions of the Act and the rules and regulations made thereunder.

(7) The members of the inspection team may, if deem necessary, interact with the faculty members and other employees of the institution.

(8) The inspection team shall submit its report to the Council within a period of fifteen days from the last day of the inspection."

18. Section 32 of the NCTE Act empowers the NCTE to make regulations not inconsistent with the provisions of the NCTE Act and the rules made thereunder. The Regulations, amongst others, provides the norms, guidelines and standards in respect of the minimum qualifications, form and manner, in which an application for recognition is to be submitted under sub-section (1) of Section 14, the conditions required for the proper conduct of a new course, etc.

19. At this stage, it would be advantageous to have a survey of the law on this subject and can start with the case of State of T.N. and another v. Adhiyaman Educational & Research Institute and others 1995 (4) SCC 104. The Parliament prior to enactment of the NCTE Act had enacted the All India Council for Technical Education (AICTE) Act in the year 1987 under Entry 66 of List-I of the Seventh Schedule of the Constitution. The AICTE Act deals with technical education. The said Act was also enacted with reference to Entry 66 of the Union List and Entry 25 of the Concurrent List. After the enactment of the AICTE Act,

the conflict between the Central Act, AICTE Act, and the State Act, under which the Universities have been established, arose. The Supreme Court in the said case held as under: "30. ... As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

In paragraph 41(iv) of the judgment i.e. Adhiyaman Educational & Research Institute (supra) the Supreme Court observed as under:

"41 (iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case."

20. The judgment of Adhiyaman Educational & Research Institute (supra) was followed by the Supreme Court in Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and another 2000 (5) SCC 231. In this case the issue arose in respect of the affiliation by the Kerala University to a self-financing engineering college. In spite of the recognition from the AICTE, the University had rejected the application for affiliation on the ground that the State Government did not issue no objection. The Supreme Court held that as the AICTE Act occupied the field relating to the grant of approval, the requirement of the Kerala University Statute of approval of the State Government was found to be inconsistent with the provisions of the AICTE Act and hence, such requirement is illegal and void. The Court further held that the provisions of the Kerala University and its Statute would not be inoperative, except only those provisions which are inconsistent with the AICTE Act or regulations.

21. Insofar as the conflict between the guidelines of the NCTE and the provisions of the Statutes & Ordinances of the University is concerned, it came to be considered by the Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh and others 2013 (13) 2 SCC 617 . In the said case, the Supreme Court quoted with approval its earlier judgment in the case of Bhartia Education Society v. State of H.P. 2011 (4) SCC 527, wherein it was held that "recognition" and "affiliation" are different. The University, which is an examining body, can impose conditions only in respect of those matters which deal with the admission of the students and the examinations. It also held that if the recognition is granted by the NCTE, in that event the affiliating body/ examining body has very limited scope to reject it in respect of those factors which have been considered by the NCTE while granting the recognition. The

relevant part of the judgment in *Maa Vaishno Devi Mahila Mahavidyalaya* (supra) reads as under: "70. Under Section 14 and particularly in terms of Section 14(3) (a) of the Act, NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In other words, granting recognition is the basic requirement for grant of affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining body. It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expressions of distinct meaning and consequences. In *Bhartia Education Society v. State of H.P.* 2011 (4) SCC 527 this Court held that: (SCC p. 534, para 19).

"19. The purpose of "recognition" and "affiliation" is different. In the context of the NCTE Act, "affiliation" enables and permits an institution to send its student to participate in public examination conducted by the examining body and secure the qualification in the nature of degrees, diplomas and certificates. On the other hand, "recognition" is the licence to the institution to offer a course or training in teaching education."

The Court also emphasised that the affiliating body/ examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by NCTE while granting recognition.

71. The examining body can impose conditions in relation to its own requirements. These aspects are:

- (a) eligibility of students for admission;
- (b) conduct of examinations;
- (c) the manner in which the prescribed courses should be completed; and
- (d) to see that the conditions imposed by NCTE are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto."

22. The principle of law that emanates from the above judgments are that the matter in respect of infrastructure such as library, building, etc. is overlapping in the Central and the State Acts. For determination of the extent of inconsistency between the NCTE Act, Rules and Regulations with the University Act (Act, 1973), First Statutes of the University and Government Orders issued by the State Government from time to time, it will be necessary to set out the relevant statutory provisions. Rule 8 of the Rules, 1997 has been set out in the earlier

part of this judgment. Sub-rule (3) of Rule 8 provides that the Council shall give a notice of its intention to the institution along with a questionnaire in Form "IV" seeking information within fifteen days. Sub-rule (4) of Rule 8 further says that on receipt of the completed questionnaire, the Council shall constitute inspection team. Sub-rule (6) of Rule 8 enjoins that inspection team shall ascertain the information supplied by the institution.

23. A careful perusal of Form "IV" [sub-rule (3) of Rule 8 of the Rules, 1997] will demonstrate that the NCTE has laid down detailed guidelines and requirements in respect of, amongst others: Land and Building, Educational Technology, Library Resources, Sports and Physical Education Resources, Organisation and Management, Teaching Resources, etc.. For the sake of convenience, three items, regarding Land & Building, Educational Technology and Library Resources, of Form-IV are extracted below:

"20. Land and Building

- (a) Institution functions from its own building
- (b) Institution functions from a rented building
- (c) Institution building is under construction
- (d) Institution building is shared for running another course(s)
- (e) Title of the land is on free-hold ownership basis
- (f) Title of the land is long lease as per law

21. Educational Technology

- (a) Number of computers with supporting accessories
- (b) Access to Internet
- (c) Number of hands on experience hours provided to each student per week
- (d) Number of education related CR-ROMs available
- (e) Number of education related video-cassettes available
- (f) Number of education related audio-cassettes available
- (g) Website of the institution
- (h) Availability of LCD projector
- (I) Availability of Overhead Projector (OHP)
- (j) Availability of Television (TV)
- (k) Availability of Video Cassette Recorder (VCR)
- (l) Availability of public address system

22. Library Resources

- (a) Number of books in the library
- (b) Number of books added to the library during the preceding year
- (c) Total number of educational journals/periodicals being subscribed
- (d) Number of encyclopaedia available in the library
- (e) Number of books available in the reference section of the library
- (f) Total seating capacity in the library

23. Sports and Physical Education Resources Institution has

*** ** Organisation and Management

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24. So far as the detailed direction so issued by the Apex Court in Maa Vaishno Devi Mahila Mahavidyalaya (supra) wherein the strict schedule has also been provided, the said schedule has also been considered by the Co-ordinate Bench of this Court in Special Appeal no.609/2015 (C/M Vidyarthi P.G. Colleg and another vs. State of U.P. and another). The Schedule in question provides as follows:-

"The Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya (supra) held as follows:

"87.1. Schedule for Recognition and Affiliation

87.1.1 Submission of applications for recognition in terms of Regulation 5(4)

1st September to 1st October of the year immediately preceding the relevant academic year

87.1.2 Communication of deficiencies, shortcomings or any other discrepancy in the application submitted by the applicant to the applicant in terms of Regulation 7(1) Within 45 days from the date of receipt of the applications

87.1.3. Removal of such deficiencies by the applicant

Within 60 days from the date of receipt of communication

87.1.4. Forwarding of copy of the application to the State Government/UT Administration for its recommendations/comments in terms of Regulation 7(2)

Within 90 days from the date of receipt of the application

87.1.5. Recommendations/comments of the State Government/UT Administration to be submitted to the Regional Committee under Regulation 7(3)

Within 30 days from the date of issue of letter to it

87.1.6. If recommendations/comments are not received within 30 days, the Regional Committee shall send to the State Government/UT Administration a reminder letter for submission of the recommendations/comments

Within seven days from the date of expiry of the period of 30 days

87.1.7. State Government/UT Administration shall furnish the recommendations/comments

Within 15 days from the date of receipt of such reminder letter

87.1.8.

Intimation regarding inspection by the Regional Committee to the applicant under Regulation 7(4)

Within 10 days from final scrutiny of the application

87.1.9.

Report by the Inspection Committee under Regulation 7(5)

20 days thereafter

87.1.10.

Letter of intent to the institution with respect to grant or refusal of recognition in terms of Regulation 7(9)

10th of February of the succeeding year/relevant year

87.1.11.

Time to comply with certain specified conditions, in terms of Regulations 7(10) and 7(11)

20 days from the date of issuance of letter of intent

87.1.12.

Issuance of formal order of recognition By 3rd March of each year

87.1.13.

Last date for submitting proposal for affiliation By 10th March of each year

87.1.14.

Forwarding of proposal by the University to the State Government/UT Administration after inspection by expert team By 10th March of each year

87.1.15.

Comments to be submitted by the State Government/UT Administration, if any

By 10th March of each year

87.1.16.

Final date for issuance/grant of affiliation for the relevant academic year

By 10th March of each year

87.4. We make it clear that no Authority/person/Council/Committee shall be entitled to vary the Schedule for any reason whatsoever. Any non-compliance shall amount to violating the orders of the Court.

88. In all the appeals and petitions before us, the basic issue is whether the university and the State Government were justified in rejecting the application or not granting application for affiliation on the ground that there was a cut-off date and/or the conditions of recommendation/affiliation had not been satisfied. In some cases, serious disputes have been raised with regard to the fulfilment of the conditions of recognition and/or affiliation. As far as the reason in relation to cut-off date is concerned, we cannot find any fault with the view taken by the authorities concerned. 10th of May has been provided as the cut-off date, after which no affiliation for the current academic year would be granted. This, being the law stated by this Court, is binding on all concerned, including any authority. The authorities have rightly acted in declining to entertain and/or refusing affiliation to the institutions being beyond the cut-off date. Adherence to the Schedule was the obligation of the authorities and the institutions cannot raise any grievance in that regard. The said time schedule must become operative in all respects and nobody should be permitted to carve out exceptions to this mandatory direction.

91.1. The Schedule stated in College of Professional Education [(2013) 2 SCC 721] and in this judgment in relation to admissions, recognition, affiliation and commencement of courses shall be strictly adhered to by all concerned including NCTE, the State Government and the University/examining body.

91.2. In the event of disobedience of schedule and/or any attempt to overreach or circumvent the judgment of this Court and the directions contained herein, the person concerned shall render himself or herself liable for proceedings under the Contempt of Courts Act, 1971 and even for departmental disciplinary action in accordance with law."

25. Pursuant to the directions so issued, the State Government formulated a time frame for consideration of applications for affiliation for which the particulars of which stood embodied in the Government Order dated 14.11.2014. In terms of the Government Order, the last date for the grant of affiliation by the University is 30th May of the year. In case a person is aggrieved by a decision taken by the University, may prefer an appeal against the decision by 15th June and the State Government is liable to decide the appeal so preferred latest by 15th July.

26. Consequently, bearing in mind the directives so issued by the Apex Court in the matter of Maa Vaishno Devi Mahila Mahavidyalaya (supra) and that has been

so considered by Co-ordinate Bench of this Court in Special Appeal no.609/2015, it is not open either to the University concerned or to the State Government to pass orders of conciliation after 30th May of the concerned year. The Apex Court has also observed that all State laws in regard to affiliation insofar as they are covered by the Act must give way to the operation of the provisions of the Act. To put it simply, the requirements which have been examined and the conditions which have been imposed by NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State law. The affiliating/examining body and the State Government must abide by the proficiency and command of NCTE's direction.

27. In the present matter, what we find that with regard to the Expert Committee constituted by the University, it had also made inspection of the petitioners' Institution and has submitted its report on 28.05.2016. The copy of the said report is appended as Annexure 8. Relevant extract of the said report reads as follows:- "VERNACULAR MATTER OMITTED"

28. At no point of time, the copy of the said report, which is on record, has been denied by the University concerned. Bare perusal of the said report of the Expert Committee clearly proceeds to observe that at the time of inspection of the Institution, adequate infrastructure, building, laboratory, library etc. has been found. Surprisingly, when the Expert Committee, which has been constituted by the University itself had submitted a categorical report, the appellant University has not taken any objection with regard to lack of infrastructure, contrarily stand has been taken that the Institution in question is not at all having the NOC in the matter.

29. Ms. Rashmi Tripathi, Advocate has also drawn our attention to Regulation 7(3) and (4) of the Regulations 2009 wherein it is incumbent upon the State Government to send its recommendations to the NRC. Sub-clause 4 of Regulation 7 further provides that if the recommendation of the State Government is not received within a period of 45 days from the date of issue of letter to the State Government, a reminder shall be sent to the Regional Committee to the State for its comments providing further time of another 30 days from the date of issue of reminder, on expiry of the said period, the meeting of Regional Committee shall not be deferred on the ground of non receipt of the comments or recommendations of the State Government.

30. The role of the State Government in terms of the Regulations 7(3) and (4) of Regulations 2009 was also subjected to detailed scrutiny by the Apex Court in Maa Vaishno Devi Mahila Mahavidyalaya (supra) . The said aspect has also been considered by Learned Single Judge in C/M Babu Baij Nath Singh Mahavidyalaya (supra). The role of the State Government in terms of Regulations is extracted below:- "The role of the State Government in terms of Regulations 7(3) & (4) of the Regulations, 2009 has elaborately been dealt with by the Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra). The material part of the judgment, insofar as the present case is concerned, is extracted below:

"78. ... The opinion of the State, therefore, has to be read and construed to mean that it would keep the factors determined by NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the University to determine the grant or refusal of affiliation and role of the State should be bare minimum, non-interfering and noninfringing.

79. It is on record and the Regulations framed under the Act clearly show that upon receiving an application for recommendation, the NCTE shall send a copy of the application with its letter inviting recommendations/ comments of the State Government on all aspects within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified fields is called for. This is the stage where the State and its Department should play a vital role. They must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy vis-a-vis the State Government as well as the affiliating body. Normally, these questions cannot be reagitated at the time of grant of affiliation. Once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to the life of the students working in the school because of non-compliance with a substantive condition imposed by either of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable."

As can be seen, the State Government did not send any comment to the NCTE that the entire process was vitiated by fraud or there was danger to the life of the students. In absence of the said comments of the State Government, as held by the Supreme Court, the role of the State is very formal one and the State Government is not expected to obstruct the admission process of the academic course once the recognition is granted. In view of the above law, the stand of the University that there was non-compliance of the Regulation 7(3) & (4) of Regulations, 2009 is untenable."

Finally, the Learned Single Judge has proceeded to relegate the matter to the appellant University with following observations:-

"Insofar as the other ground mentioned in the impugned order is concerned, the petitioners state that the University has failed to consider that the college was granted recognition to run the B.Ed. course for two units for 50 seats each and

for the session 2016-17 there will be only 50 students and also in the second session there will be 50 students, therefore, 1+7 ratio is sufficient for running first year B.Ed. course. Thus, for running one unit of 50 students the petitioners have completed all the formalities. As regards the third ground mentioned in the impugned order, it is stated that all the relevant documents were submitted to the three- Member Expert Committee constituted by the University and there was no allegation of mass-copying or any other irregularity in the said report. In respect of the fourth ground, it is stated in the writ petition that the petitioners have already submitted pass-book, therefore, it was not necessary to submit again the statement of bank account when passbook was already submitted to the University.

As regards the submission of the learned counsel for the University that the University has already taken a decision by the impugned order on 21st May, 2016 and in view of the time-schedule fixed by the Supreme Court in *Maa Vaishno Devi Mahila Mahavidyalaya* (supra), now it would not be possible for the University to reconsider its decision is concerned, I find myself unable to accept said submission. The University has taken its decision before the cut off date i.e. 31st May, 2016. In case its decision is found to be contrary to the unbroken line of the decisions of the Supreme Court, the University cannot take a stand that it will not reconsider its decision even though it is found to be illegal, merely because the cut off date has expired.

In view of the reasons stated above, I find that once the decision taken by the University is found to be contrary and against the law laid down by the Supreme Court, this Court in its jurisdiction under Article 226 of the Constitution can direct the University to reconsider its decision in the light of the law laid down by the Supreme Court mentioned above.

For the reasons recorded herein-above, I find that the impugned order of the University dated 22nd May, 2016 needs to be quashed and accordingly, it is quashed. The matter is remitted to the University to take a fresh decision in accordance with law within three weeks from the date of communication of this order.

Accordingly, the writ petition is partly allowed. No order as to costs."

31. It is relevant to indicate at this stage that in *Maa Vaishno Devi Mahila Mahavidyalaya* (supra) , the Hon'ble Apex court has proceeded to observe that once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to life of the students in the school because of non-compliance of a substantive condition imposed by either of the bodies but in the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission

process and academic courses once recognition is granted and affiliation is found to be acceptable. The said aspect has also been considered by Apex Court in State of Rajasthan vs. LBS B.Ed. College and others 2016 (16) SCC 110. The relevant extract of the said judgement reads as follows:-

In State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. 2006 (9) SCC 1, a three-Judge Bench, after adverting to the legislative power of the Parliament, the provisions of the Act, the power conferred on the NCTE under the Act and the role ascribed to the universities, eventually opined as follows:-

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

79. Before parting with the matter, we may state that at one stage, the High Court has observed that:

"22.....in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted under Section 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted under Section 82 of the Maharashtra University Act. To that extent the provisions of Section 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void."

In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university ("examining body") is obliged to grant affiliation to such institution and sections 82 and 83 of the University Act do not apply to such cases.

Since we have decided the matters on merits, we have not dealt with preliminary objection raised by the colleges that the State cannot be said to be "person aggrieved" and, therefore, has no locus standi to challenge the decision of NCTE."

After the pronouncement of the judgment, the NCTE and the States followed their due course of action. With the passage of time, controversy arose relating to the role of the State again in National Council for Teacher Education & others

v. Shri Shyam Shiksha Prashikshan Sansthan & other 2011 (3) SCC 238. The Court referred to various Regulations framed by the NCTE after the judgment was rendered in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) and observed as follows:-

" 31. By fixing 31st October of the preceding year, the Council has ensured that the Regional Committee gets at least 7 months for scrutiny of the application, processing thereof, receipt of recommendation/suggestion from the State Government/Union Territory Administration, inspection of the infrastructure, etc. made available by the applicant before an objective decision is taken to grant or not to grant recognition. Likewise, by fixing 15th May of the year succeeding the cut-off date fixed for submission of application, the Council has ensured that adequate time is available to the institution to complete the course, teaching as well as training and the students get an opportunity to comply with the requirement of minimum attendance. For academic session 2008- 2009, the cut-off date was amended because the 2007 Regulations were notified on 27.12.2007 and going by the cut off dates specified in clauses (4) and (5) of Regulation 5, no application could have been entertained and no institution could have been recognized for B.Ed. Course."

It is worthy to note here that the two-Judge Bench referred to the authority in St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and another 2003 (3) SCC 321, reproduced certain passages from the said decision and other authorities including the understanding of the Court as regards the authority in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) and finally observed:-

"40. In State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others (supra), this Court considered the question whether, after grant of recognition by NCTE, the State Government can refuse to issue no objection certificate for starting B.Ed. colleges on the premise that a policy decision in that regard had been taken. After adverting to the relevant provisions of the Constitution, the Act and the Regulations and the judgment in St. John Teachers Training Institute v. Regional Director, NCTE (supra), the Court held that final authority to take decision on the issue of grant of recognition vests with the NCTE and it cannot be denuded of that authority on the ground that the State Government/Union Territory Administration has refused to issue NOC."

Almost in continuity, the Court in Adarsh Shiksha Mahavidyalaya & others v. Subhash Rahangdale & others 2012 (2) SCC 425 addressed the issue whether the State Government has any say in the matter of grant of recognition to the private institutions desirous of conducting teacher training courses. The Court referred to the 2005 and 2007 Regulations and opined that the rationale behind the said provisions is discernible from the guidelines issued by the NCTE vide letter dated 2.2.1996. Be it noted, the relevant portions of the said letter was reproduced in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra). Explaining various aspects, the Court ultimately ruled thus:-

"77. The above survey of precedents makes it clear that under Regulation 7(2) and (3), the State Government/Union Territory Administration is entitled to make recommendations on the application made for grant of recognition and the same are required to be considered by the concerned Regional Committee before taking a final decision on the application.

78. 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 under Section 14 or permission for a course or training under Section 15."

While enumerating the conclusions in seriatim, the Court held:-

"87. 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 under Section 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.

(ii) The State Government/UT Administration, to whom a copy of the application made by an institution for grant of recognition is sent in terms of Regulation 7(2) of the Regulations, is under an obligation to make its recommendations within the time specified in Regulation 7(3) of the Regulations.

(iii) While granting recognition, the Regional Committees are required to give due weightage to the recommendations made by the State Government/UT Administration and keep in view the observations made by this Court in *St. Johns Teachers Training Institute v. Regional Director, NCTE* (supra) and *National Council for Teacher Education v. Shri Shyam Shiksha Prashikshan Sansthan* 2011 (3) SCC 238, which have been extracted in the earlier part of this judgment.

(iv) The recognition granted by the Regional Committees under Section 14(3)(a) of the 1993 Act read with Regulations 7 and 8 of the Regulations and permission granted under Section 15(3)(a) read with the relevant Regulations shall operate prospectively, i.e., from the date of communication of the order of recognition or

permission, as the case may be."

Yet again, another two-Judge Bench in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh & Ors.* 2013 (2) SCC 617 opined that Regulations framed under the Act clearly show that upon receiving an application for recommendation, the NCTE shall send a copy of the application with its letter inviting recommendations/comments of the State Government on all aspects within a period of 30 days. To such application, the State is expected to respond with its complete comments within a period of 60 days. In other words, the opinion of the State on all matters that may concern it in any of the specified fields are called for. The Court observed that this is the stage where the State and its Department should play a vital role and they must take all precautions to offer proper comments supported by due reasoning. Once these comments are sent and the State Government gives its opinion which is considered by the NCTE and examined in conjunction with the report of the experts, it may grant or refuse recognition. Once it grants recognition, then such grant attains supremacy vis-a-vis the State Government as well as the affiliating body. Normally, these questions cannot be re-agitated at the time of grant of affiliation.

Proceeding further, it was held that once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to life of the students in the school because of noncompliance of a substantive condition imposed by either of the bodies but in the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

As we find from the aforesaid authorities as well as the Regulations framed by the NCTE, the State has a say, may be a limited one. We are inclined to use the word "limited" because the State's say is not binding on the NCTE. However, the NCTE is required to take the same into consideration, for the State has a vital role to offer proper comments supported by due reasoning. It needs no special emphasis to say that final authority rests with the NCTE. It is the clear legal position.

In course of hearing, we have been apprised that the NCTE has granted recognition to some of the institutions. As the recognition has already been granted, the controversy with regard to the said institutions shall stand closed. Needless to say, in future, whenever an application is received under the Regulations for grant of recognition, the NCTE shall be guided by its own Regulations and the judgments of this Court and the State shall remain bound by the principles set out hereinabove. Needless to say, the NCTE shall take into consideration the recommendations and views of the State despite the fact that it has the final say.

16. The appeals are accordingly disposed of. There shall be no order as to costs."

32. Once such is the factual situation that University concerned has taken a precise objection that at no point of time, the University had accorded NOC to the Institution in question in the light of the G.O. dated 27.09.2002, then we have made repeated queries to the Learned Counsel for the University as to what terms and conditions have not been fulfilled by the Institution concerned and actually what is the grievance of the University regarding non fulfilment of the conditions insofar as they lack any infrastructure or basic amenities.

33. No satisfactory reply has come forward and so far as the second objection is concerned regarding inspection panel constituted by University, that it has not at all submitted its report to the University till the date of passing of order impugned in the Writ Petition, is not correct at present whereas the said inspection panel has clearly proceeded to submit its report in favour of the petitioners" Institution way back on 28.05.2016. No doubt after the impugned order dated 22.05.2016.

34. Once such is the factual situation and keeping in mind the entire arguments advanced by learned counsel for the appellant University and the material on record, we are of the considered opinion that there is no infirmity or illegality in the order passed by the Learned Single Judge and the same is approved by us. The order dated 22.05.2016 has been rightly quashed. The University concerned accordingly has rightly been directed to take a fresh decision in the matter in accordance with law preferably within a period of two months from the date of production of certified copy of this order.

35. With these, present Special Appeal and all the connected Special Appeals are disposed of.