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STATE OF RAJASTHAN

v.

LBS B.ED. COLLEGE AND ORS.

(Civil Appeal No. 9193 of 2016)

B

SEPTEMBER 08, 2016

[DIPAK MISRA AND C. NAGAPPAN, JJ.]

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*National Council for Teacher Education Act, 1993 – ss.7, 12, 32 – National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 – Regns. 4, 5, 7 – Grant of recognition by the NCTE to private institutions desirous of conducting teacher training courses – Role of State – Held: NCTE is required to take into consideration opinion of the State, for the State has a vital role to offer proper comments supported by due reasoning – However, the final authority rests with the NCTE – Education/Educational Institutions.*

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**Disposing of the appeals, the Court**

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**HELD: 1.** The State has a say, may be a limited one, 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. Final authority rests with the NCTE. Whenever an application is received under the Regulations framed by NCTE for grant of recognition, the NCTE shall be guided by its own Regulations. The NCTE shall take into consideration the recommendations and views of the State despite the fact that it has the final say. [Paras 14 and 15] [309-C-E]

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*State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*(2006) 9 SCC 1: 2006 (3) SCR 638; *National Council for Teacher Education & others v. Shri Shyam Shiksha Prashikshan Sansthan & others* (2011) 3 SCC 238 : 2011 (2) SCR 291; *St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education and another* (2003) 3 SCC 321 : 2003 (1) SCR 975; *Adarsh Shiksha Mahavidyalaya & others v. Subhash Rahangdale &*

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*others (2012) 2 SCC 425 : 2012 (2) SCR 1; Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh & Ors. (2013) 2 SCC 617: 2012 (13) SCR 810 – Referred to.* A

Case Law Reference

2006 (3) SCR 638	referred to	Para 8	B
2011 (2) SCR 291	referred to	Para 9	
2003 (1) SCR 975	referred to	Para 10	
2012 (2) SCR 1	referred to	Para 11	
2012 (13) SCR 810	referred to	Para 13	C

From the Judgment and Order dated 22.01.2015 in D.B. Civil Special Appeal (Writ) No. 1866 of 2014 passed by the High Court of Rajasthan at Jaipur Bench.

WITH

Civil Appeal Nos. 9184, 9187, 9190, 9191, 9182, 9185, 9189, 9180, 9181, 9183, 9186, 9188, 9192 of 2016. D

P. S. Narasimha, ASG, Shiv Mangal Sharma, AAG, Ms. Ruchi Kohli, Gaurav Sharma, AOR, Ms. Abhinandini Sharma, Shrey Kapoor, S. N. Singh, Prateek Bhatia, Ms. Vara Gaur, Dhawal Mohan, Advs. for the Appellants. E

Ms. Vibha Dutta Makhija, Vivek Tankha, Sr.Advs, Anand Varma, Mritunjay Kumar Sinha, Gaurav Agrawal, Chandra Prakash, AOR, Disha Vaish, Amitesh Kumar, Shashank Shankar Singh, Ravi Kant, Mayank Manish, Kumnan D., Sachin Pujari, Ms. Nikita Shrivastava, Harshvardhan Jha, Yugandhara Jha, Adarsh Upadhyay, Ms. Asha Gopalan Nair, Ms. Nivedita Nair for the Respondents. F

The Judgment of the Court was delivered by

**DIPAK MISRA, J. 1.** Leave granted.

2. The present appeals, by special leave, call in question the legal acceptability of the common order dated 22.01.2015 passed by the High Court of Judicature for Rajasthan at Jaipur Bench in D.B. Civil Special Appeal (Writ) No. 1866 of 2014 whereby the Division Bench has allowed the students to be admitted for the academic year 2015-2016 subject to fulfillment of the new guidelines issued by the National Council for Teacher G

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A Education (NCTE) on 28.11.2014. At the very inception, it is seemly to note that the directions issued by the High Court have already been given effect to and neither the learned counsel for the State of Rajasthan nor the NCTE, the respondent herein, nor the other respondents have any kind of dispute over the same.

B 3. The crux of the controversy is whether the State Government has any say in the matter of grant of recognition to the institutions who apply for establishing institutions to get recognition from the NCTE under the National Council for Teacher Education Act, 1993 (for brevity, “the Act”) and the Regulations framed thereunder. It is necessary to state here that the learned Single Judge had arrived at the conclusion that the State has remotely any authority or say in the matter of grant of recognition and the Division Bench has concurred with the judgment of the learned single Judge without adverting to the said aspect.

C 4. We have heard Mr. P.S. Narsimha, learned Additional Solicitor General along with Mr. Shiv Mangal Sharma, learned counsel for the State of Rajasthan, Mr. Gaurav Sharma, learned counsel for the NCTE and Ms. Vibha Dutta Makhija, learned senior counsel along with Mr. Anand Varma, learned counsel for the respondents.

D 5. The Act was enacted to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matter connected therewith. The Act came into force on 30<sup>th</sup> December, 1993. To appreciate the issue that has emanated for consideration, it is necessary to understand the scheme of the Act. Section 3 deals with establishment of the NCTE. Section 12 enumerates the functions of the NCTE. We think it appropriate to reproduce Section 12, in entirety:-

E “12. **Functions of the Council.**— It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may –

F (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;

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- (b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education; A
- (c) co-ordinate and monitor teacher education and its development in the country; B
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum; C
- (f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification; D
- (g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training; E
- (h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;
- (i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof; F
- (j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institution;
- (k) evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions; G
- (l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;

- A (m) take all necessary steps to prevent commercialisation of teacher education; and
- (n) perform such other functions as may be entrusted to it by the Central Government.”

B 6. Section 32 of the Act empowers the NCTE, by notification in the official gazette, to make regulations not inconsistent with the provisions of the Act and the rules made thereunder, generally to carry out the provisions of the Act. The NCTE had framed a set of Regulations, i.e., National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2009. The Regulations were superseded and another set of Regulations, namely, the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 (For short, “the 2014 Regulations”) came into force. Regulation 4 deals with eligibility which stipulates the categories of institutions who are eligible for consideration of the applications under the 2014 Regulations. Regulation 5 deals with the manner of making application and the time limit. Regulation 7 provides for processing of applications. The relevant part of the said Regulation which is pertinent for the adjudication of the controversy that has emanated herein, is extracted below:-

E “7. Processing of applications.—(1) In case an application is not complete, or requisite documents are not attached with the application, the application shall be treated : incomplete and rejected, and application fees paid shall be forfeited.

(2) The application shall be summarily rejected under one or more of the following circumstances—

- F (i) failure to furnish the application fee, as prescribed under rule 9 of the National Council for Teacher Education Rules, 1997 on or before the date of submission of online application;
- G (ii) failure to submit print out of the applications made online along with the land documents as required under sub-regulation (4) of Regulation 5 within fifteen days of the submission of the online application.

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H (4) A written communication along with a copy of the application form submitted by the institution shall be sent by the office of Regional Committee to the State Government or the Union territory

administration and the affiliating body concerned within thirty days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee. A

(5) On receipt of the communication, the State Government or the Union territory administration concerned shall furnish its recommendations or comments to the Regional Committee concerned within forty five days from the date of issue of the letter to the State Government or Union territory, as the case may be. In case, the State Government or Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application. B  
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(6) If the recommendation of the State Government is not received within the aforesaid period, the Regional Committee concerned shall send a reminder to the State Government providing further time of another thirty days to furnish their comments on the proposal. In case no reply is received, a second reminder shall be given for furnishing recommendation within fifteen days from the issue of such second reminder. In case no reply is received from the State Government within aforesaid period, the Regional Committee shall process and decide the case on merits and placing the application before the Regional Committee shall not be deferred on account of non-receipt of comments or recommendation of the State Government. D  
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(7) After consideration of the recommendation of the State Government or on its own merits, the Regional Committee concerned shall decide that institution shall be inspected by a team of experts called visiting team with a view to assess the level of preparedness of the institution to commence the course. In case of open and distance learning programmes, sampled study centres shall be inspected. Inspection shall not be subject to the consent of the institution, rather the decision of the Regional Committee to cause the inspection shall be communicated to the institution with the direction that the inspection shall be caused on any day after ten days from the date of communication by the Regional officer. The Regional Committee shall ensure that inspection is conducted ordinarily within thirty days from the date of its communication to H

A the institution. The institution shall be required to provide details about the infrastructure and other preparedness on the specified proforma available on the website of the Council so the visiting team at the time of inspection along with building completion certificate issue by the competent civil authority, if not submitted earlier:

B Provided that the Regional Committee shall organise such inspections strictly in chronological order of the receipt of application for the cases to be approved by it.

C Provided further that the members of the visiting team for inspection shall be decided by the Regional Committee out of the panel of experts approved by the Council and in accordance with the visiting team policy of the Council.”

D 7. Before we advert to the impact of the scheme of the Regulations, it is necessary to refer to the authorities of this Court that have stated about the role of the State in the context of grant of recognition by the NCTE under the provisions of the Act.

E 8. In *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*<sup>1</sup>, 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:-

F “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.

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

H <sup>1</sup>(2006) 9 SCC 1

“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*”.<sup>2</sup>

(emphasis supplied)

80. 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.

81. 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.”

9. 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 & others*<sup>2</sup>. 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

<sup>2</sup> (2011) 3 SCC 238



A 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  
 B 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  
 C for B.Ed. course.”

10. It is worthy to note here that the two-Judge Bench referred to  
 the authority in *St. Johns Teachers Training Institute v. Regional  
 Director, National Council for Teacher Education and another*<sup>3</sup>,  
 reproduced certain passages from the said decision and other authorities  
 D 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  
 E 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  
 F 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.”

G 11. Almost in continuity, the Court in *Adarsh Shiksha  
 Mahavidyalaya & others v. Subhash Rahangdale & others*<sup>4</sup>  
 addressed the issue whether the State Government has any say in the  
 matter of grant of recognition to the private institutions desirous of

<sup>3</sup> (2003) 3 SCC 321

H <sup>4</sup> (2012) 2 SCC 425

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.”

12. 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.

- A (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.
- B (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*, which have been extracted in the earlier part of this judgment.
- C (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.”
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13. Yet again, another two-Judge Bench in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh & Ors.*<sup>5</sup> 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

H <sup>5</sup> (2013) 2 SCC 617

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.

14. 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.

15. 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.