

HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P.No.4205/2016

Maa Reweti Educational & Welfare SocietyPetitioner

Versus

National Council for Teachers Education
and othersRespondents

W.P.No.4375/2016

Shri Ramkripal Siksha SamitiPetitioner

Versus

National Council for Teachers Education
and othersRespondents

Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Sanjay Yadav, J.

Whether approved for reporting : Yes

Shri Sanjay Kumar Agrawal, Advocate for the petitioner in W.P.
No.4205/2016.

Shri M.P.S. Raghuvanshi counsel and Shri Brindavan Tiwari,
counsel for the petitioner W.P. No.4375/2016.

Shri K.K. Singh, Advocate for the N.C.T.E.

Shri P.K. Kaurav, Advocate for the M.P. Board of Secondary
Education.

Date of Decision : 14.3.2016

ORDER
{14.3.2016 }

Per: A.M. Khanwilkar, Chief Justice:

Heard counsel for the parties.

02. As short question is involved, petitions are taken up for final disposal forthwith, by consent. Counsel for the respondents waive notice for final disposal.

03. Common question raised in both these petitions is : whether, in terms of Regulation 5 read with 7(1) of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 (hereinafter referred to as Regulations of 2014), an application submitted by the Institution for grant of recognition to the National Council for Teacher Education (hereinafter referred to as Council or as NCTE), not accompanied with the No Objection Certificate (hereinafter referred to as NOC for the sake of brevity) issued by the concerned affiliating body, can be treated as complete and valid application; and the sequel therefor ?

04. The petitioners are relying on the decisions of the Division Bench of this Court in W.P.Nos.10946 and 19397 of 2015

decided on 14.1.2016, W.P. No.20670 of 2015 decided on 4.2.2016, W.P. No.12765 of 2015 decided on 17.2.2016, W.P. Nos.2136, 2141 and 2363 of 2016 decided on 8.2.2016, W.P. Nos.3179 and 3252 of 2016 decided on 19.2.2016 and lastly W.P. No.2451 of 2016 decided on 25.2.2016, to buttress the argument that non-submission of such NOC issued by the concerned affiliating body is no impediment for the respondent/Council (NCTE) to process the application for grant of recognition.

05. The petitioners may be justified in relying on the decisions in W.P. No.12765 of 2015, W.P. Nos.3179 & 3252 of 2016 and W.P. No.2451 of 2016 decided on 17.2.2016, 19.2.2016 and 25.2.2016 respectively (hereinafter referred to as the said decisions of this Court), which have accepted the argument of the Institution that such NOC from the concerned affiliating body need not be insisted by the Council (NCTE) to process the application for grant of recognition submitted by the Institution within the prescribed time. However, on a closer scrutiny of the said decisions of this Court, it is noticed that the same are passed on the basis of concession given by the Advocate for the respondent/Council (NCTE).

06. In the present petitions, however, the respondent/Board (affiliating body), has taken a firm stand that non-filing of NOC issued by the affiliating body would render such application submitted by the Institution incomplete and invalid and be treated as rejected. As a result, we have been called upon to examine this contention.

07. At the outset, we may observe that the said decisions of this Court cannot be treated as a binding precedent. For, the same were based on concession and the Court was not called upon to examine the relevant governing provisions concerning the matter in issue.

08. Before we analyze the relevant provisions, we deem it appropriate to deal with the said three decisions of this Court pressed into service by the petitioner. In W.P. No.12765 of 2015, no doubt, the Court noticed the argument of the petitioner that NOC issued by the affiliating body need not be insisted, but the Court did not examine the contention further, in view of the statement made by the Advocate for the Respondent No.3(NCTE) that the legal position was answered against the said respondent by the Supreme Court in the case of **State of Maharashtra vs. Sant**

Dnyaneshwar Shikshan Shastra Mahavidyalaya & others¹; and also the decisions of this High Court in W.P. No.10946/2015 dated 14.1.2016 and W.P. No.20670/2015 dated 4.2.2016. However, in the matter before the Supreme Court and the said two decisions of this Court dated 14.1.2016 and 4.2.2016 respectively, the issue was discussed in the context of requirement to file NOC of the State Government and not of the affiliating body. In other words, the Court did not examine the contention which has now been specifically raised by the respondent/Board (affiliating body).

09. In the second set of writ petitions (W.P. Nos.2136, 2141 and 2363 all of 2016) decided on 8.2.2016, the same were disposed of by a common order alongwith other petitions listed together for analogous hearing. In those cases the issue was whether the application submitted by the concerned Institution could be rejected for non-submission of “hard copy of the application and its accompaniments” within 15 days from the date of submission of application online. Further, those writ petitions were decided with the observation that the same involved similar issue as already answered in W.P. Nos.10946 and 19397 of 2015 decided on 14.1.2016, in which question was relating to non-submission of

¹ (2006) 9 SCC 1

NOC of the State Government. It was, therefore, held that such NOC from the State need not be insisted for processing of the application filed within prescribed time. Obviously, that situation was directly covered by the decision of the Supreme Court in the case of **State of Maharashtra** (supra). Hence, even the decision dated 8.2.2016 in the second set of writ petitions (W.P. Nos.2136, 2141 and 2363 of 2016) will have no bearing on the question that arises for consideration in the present petitions. Similarly, W.P. Nos.3179 & 3252 of 2016 were decided on the same basis – following earlier decisions dated 14.1.2016 and 8.2.2016. As a result, even these decisions cannot be pressed into service to answer the question raised by the respondent/Board (affiliating body).

10. In the decision dated 25.2.2016, the Court was called upon to consider the validity of a show cause notice issued to the Institution which, *inter alia*, did mention that NOC from the affiliating body was not submitted alongwith the application for grant of recognition by the Institution. The Court noted that the petitioner was not required to cure the objection regarding NOC from the affiliating body, following the decision dated 17.2.2016 in W.P. No.12765/2015. As aforesaid, that decision (in W.P.

No.12765/2015) was based on a concession given by the Advocate appearing for the respondent/Council (NCTE). Accordingly, even this decision will be of no avail to the petitioners; nor can be any impediment for us to examine the question raised by the respondent/Board (affiliating body) with reference to the provisions of National Council for Teacher Education Act, 1993 (hereinafter referred to as the Act of 1993) and the Regulations of 2014 framed thereunder.

11. In other words, if we were to accept the interpretation of the statutory provisions as canvased by the respondent/Board (affiliating body), it would necessarily follow that the decisions pressed into service by the petitioners referred to above will have to be treated as inapplicable and/or *per incuriam*. Accordingly, we proceed to examine the contention of respondent/Board (affiliating body).

12. The Act of 1993 has been enacted to provide for the establishment of the National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, and for the

regulation and proper maintenance of norms and standards in the teacher education including qualification of school teachers and for matter connected therewith. This being Central Enactment, must prevail over any State Legislation on the stated subject. Section 3 of the Act of 1993 postulates establishment of the Council to be called the National Council for Teacher Education. The functions of the Council have been delineated in Section 12 of the Act. Section 12A provides for power of the Council to determine minimum standards in education of school teachers. Section 14 mandates that if Institution offering or intending to offer a course or training of teacher education on or after the appointed day, must apply for grant of recognition under that Act to the Regional Committee of the Council in the prescribed manner. *Sans* such recognition by the Council, no Institution can impart education or offer a course or training in teacher education. Section 15 of the Act predicates the manner of making application for a new course or training by recognized Institution. Section 16 which is of some relevance for considering the issue on hand, opens with a *non-obstante* clause. It then provides that no examining body (affiliating body) can grant affiliation to any Institution or hold examination whether provisional or otherwise for a course or

training conducted by a recognized Institution, unless the Institution concerned has obtained recognition from the Regional Committee under Section 14 or permission for a course or training under Section 15. The procedure for making such application to the Regional Committee has been spelt out in Regulations of 2014, which have been framed in exercise of powers conferred by sub-Section (2) of Section 32 of the Act of 1993 and in supersession of the Regulations of 2009. The method for making application and time limit is prescribed in Regulation 5, which reads thus:-

“5. Manner of making application and time limit. – (1)
An institution eligible under regulation 4, desirous of running a teacher education programme may apply to the concerned Regional Committee for recognition in the prescribed application form along with processing fee and requisite documents:

Provided that an institution may make simultaneous applications for shifting of premises or additional intake, or additional teacher education programmes as the case may be:

Provided further that an existing institution may make an application for closure or discontinuation of one or several teacher education programmes recognised by the Council.

(2) The application form may be downloaded from the website of the Council, namely, www.ncte-india.org and different from may be downloaded for programmes offered through open and distance learning.

(3) The application **shall be submitted** online electronically **alongwith** the processing fee and **scanned copies of required documents such as no objection certificate issued by the concerned affiliating body.** While submitting the application, it has to be ensured that

the application is duly signed by the applicant on every page, including digital signature at appropriate place at the end of the application.

(4) While submitting the application online a copy of the registered land document issued by the competent authority, indicating that the society or institution applying for the programme possess land on the date of application, shall be attached along with the application.

(5) Duly completed application in all respects may be submitted to the Regional Committee concerned between 1st March to 31st May of the preceding year from the academic session for which recognition is sought.

Provided that the aforesaid period shall not be applicable for submission of application to innovative programmes of teacher education.

(6) All applications received online from 1st March to 31st May of the year shall be processed for the next academic session and final decision, either recognition granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year.”
(emphasis supplied)

Regulation 7 of the said Regulations provides for processing of application submitted under Regulation 5. The same reads thus:-

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 circumstance –

(a) 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;

(b) failure to submit print out of the applications

made online alongwith the land documents as required under sub-regulation (4) of Regulation 5 within fifteen days of the submission of the online application.

(3) Furnishing any false information or concealment of facts in the application, which may have bearing on the decision making process or the decision pertaining to grant of recognition, shall result in refusal of recognition of the institution besides other legal action against its management. The order of refusal of recognition shall be passed after giving reasonable opportunity through a show cause notice to the institution.

(4) A written communication alongwith a copy of the application for 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.

(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.

(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.

(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 Office. The Regional Committee shall ensure that inspection is conducted ordinarily within thirty days from the date of its communication to 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 to the visiting team at the time of inspection along with building completion certificate issued by the competent civil authority, if not submitted earlier.

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

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.

(8) At the time of the visit of the team of experts to an institution, the institution concerned shall arrange for the inspection to be videographed in a manner that all important infrastructural and instructional facilities are videographed along with interaction with the management and the faculty, if available at the time of such visit. The visiting teams, as far as possible shall finalise and courier their reports alongwith the video recordings on the same day:

Provided that the videography should clearly establish the outer view of the building, its surroundings access road and important infrastructure including classrooms, labs, resource rooms, multipurpose hall, library and others. The visiting team shall ensure that the videography is done in a continuous manner, the final

unedited copy of the videography is handed over to them immediately after its recording and its conversion to a CD should be done in the presence of visiting team members:

Provided further that at the time of inspection for new courses or enhancement of intake of the existing course, the visiting team shall verify the facilities for existing recognized teacher education courses and ascertain the fulfillment and maintenance of regulations and norms and standards for the existing courses as well.

(9) The application and the report alongwith the video recordings or CDs of the visiting team shall be placed before the Regional Committee concerned for consideration and appropriate decision.

(10) The Regional Committee shall decide grant of recognition or permission to an institution only after satisfying itself that the institution fulfills all the conditions prescribed by the National Council under the Act, rules or regulations, including, the norms and standards laid down for the relevant teacher education programmes.

(11) In the matter of grant of recognition, the Regional Committees shall strictly act within the ambit of the Act, the regulations made thereunder including the norms and standards for various teacher education programmes, and shall not make any relaxation thereto.

(12) The Regional Director, who is the convener of the Regional Committee, while putting up the proposals to the Regional Committee, shall ensure that the correct provisions in the Act, rules or regulations including norms and standards for various teacher education programmes are brought to the notice of the Regional Committee so as to enable the Committee to take appropriate decisions.

(13) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per policy of State government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff

or faculty is appointed as per the norms of the Council within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

(14)(i) All the applicant institutions shall launch their own website with hyperlink to the Council and corresponding Regional Office websites soon after the receipt of the letter of intent from the Regional Committee, covering, inter alia, the details of the institution, its location, name of the programme applied for with intake; availability of physical infrastructure, such as land, building, office, classrooms, and other facilities or amenities; instructional facilities, such as laboratory and library and the particulars of their proposed teaching faculty and non-teaching staff with photographs, for information of all concerned. The information with regard to the following shall also be made available on the website, namely;

- (a) sanctioned programmes along with annual intake in the institution;
- (b) name of faculty and staff in full as mentioned in school certificate along with their qualifications, scale of pay and photograph;
- (c) name of faculty members who left or joined during the last quarter;
- (d) names of students admitted during the current session along with qualification, percentage of marks in the qualifying examination and in the entrance test, if any, date of admission and such other information;
- (e) fee charged from students;
- (f) available infrastructural facilities;
- (g) facilities added during the last quarter;
- (h) number of books in the library, referred journals subscribed to, and additions, if any, in the last quarter;

(ii) The institution shall be free to post additional relevant information, if it so desires.

(iii) Any false or incomplete information on its website shall render the institution liable for withdrawal of recognition.

(15) The institution concerned, after appointing the requisite faculty or staff as per the provisions of norms and standards of respective programmes, and after fulfilling the

conditions under regulation 8, shall formally inform about such appointments to the Regional committee concerned.

(16) The letter granting approval for the selection or appointment of faculty shall also be provided by the institution to the Regional Committee with the document establishing that the Fixed Deposit Receipts of Endowment Fund and Reserve Fund have been converted into a joint account and after receipt of the said details, the Regional Committee concerned shall issue a formal order of recognition which shall be notified as provided under the Act.

(17) In cases, where the Regional committee, after consideration of the report of the visiting team and other facts on record, is of the opinion that the institution does not fulfill the requirements for starting or conducting the course or for enhancement of intake, after giving an opportunity of being heard to the institution pass an order refusing to allow any further opportunity for removal of deficiencies or inspection for reasons to be recorded in writing : provided that against the order passed by the Regional Committee, an appeal to the Council may be preferred as provided under section 18 of the Act.

(18) The reports of inspection of the institutions along with the names of the visiting team experts shall be made available on the official website of the Regional Committee concerned after the same have been considered by the Regional Committee.

(19) The Regional Committee shall process the application for closure in the manner prescribed for the processing of applications for new programmes or additional programmes or additional intake.”

(emphasis supplied)

13. It is not necessary for us to advert to other provisions of Act of 1993 or the Regulations framed thereunder, for answering the question posed for our consideration.

14. Regulations 5 (3) in no uncertain terms, *inter alia*,

stipulates that application should be submitted online electronically alongwith the processing fee “and” scanned copies of the “required documents such as NOC issued by the concerned affiliating body”. True it is, that neither the Act of 1993 nor the Regulations of 2014 contain prescribed form of application. That, however, has been prescribed by way of Instructions for filling up the online application issued by the respondent/NCTE. The same reads thus:-

“NATIONAL COUNCIL FOR TEACHER EDUCATION
Hans Bhawan, Wing-II, 1, Bahadur Shah Zafar Marg, New Delhi-110 002

Instructions for filling up the online application

Please read the following instructions/documents carefully, before filling online application:-

1. Documents to be read before filling online application:

- (i) NCTE Act 1993**
- (ii) NCTE Regulations 2014**
- (iii) Public Notice dated 27.02.2015**

2. If you are not earlier registered you should click on “Not Registered Yet” link and get registered. You will get generated a User name and a Password. These would be required for future reference.

3. The details in the following parameters need to be filled:

- (i) Particulars of authorized signatory/applicant
- (ii) Particulars of Applicant society/trust/Company / Govt body
(in case of Government Institutions)
- (iii) Particulars of the Applicant Institution
- (iv) Details of programmes other than teacher education
- (v) Details of existing teacher education programmes being run
by the applicant society/trust/Company/Govt body
- (vi) Details of already submitted application(s)
- (vii) Details of Infrastructural facilities
- (viii) Details of Instructional Resources
- (ix) Games & Sports facilities (equipments available)

4. Applications for grant of recognition or permission for additional intake or new programmes shall be submitted online

and the copies of the printouts of the applications so submitted online shall be sent in four copies to the concerned Regional Committee along with following documents:

- (i) An affidavit in prescribed format on Non-Judicial Stamp Paper of Rs.100/-, attested by Notary Public/Oath Commissioner
- (ii) Copies of land documents, relating to ownership/lease (lease is allowed from Govt. authority only) duly certified by the office of the Registrar/Sub-registrar or any other competent authority where land was registered. (*Attested, self attested or notarized copy of the land document shall not be treated as the certified copy*).
- (iii) Building plan approved by the Competent Authority
- (iv) Non-encumbrance certificate issued by competent authority
- (v) Land use certificate issued by competent authority
- (vi) Minority certificate issued by competent authority
- (vii) NOC from affiliating body**
- (viii) Accreditation certificate from competent authority, wherever applicable

5. How to submit online application:

- (i) Click on the “submit” button after filling all relevant information in the form on your computer to confirm the data saved. You will get alert “Data has been saved”
- (ii) The data so entered, can be edited till the Final Submission of Application for Payment. After completing the payment process, and submitting it, the data entered cannot be edited. Therefore, you have to ensure that whatever necessary changes you desire, you have to make them before final submission. Thereafter, see print preview before confirming “Final Submit Application for Payment”.

6. How to make online payment:

You can make payment of processing fee amounting Rs.1,50,000/-* (Rupees one lakh fifty thousand only) through any of the following options:

- (i) Payment through Net Banking/Credit/Debit card: In case you choose payment through these options, you will be directed to **Payment Gateway** on NCTE website on which you can pay online through your valid credit card (Master and Visa) or VISA Debit cards of the following banks:

ICICI, DCB Bank, HDFC, Indian Overseas Bank, Axis Bank, Bank of Maharashtra, Yes Bank, Federal Bank, Union Bank of India, Central Bank, Corporation Bank, Deutsche Bank, Citibank, United Bank of India, SBI, City Union Bank, IndusInd Bank, Saraswat Bank, Karnataka Bank, Vijaya Bank, IDBI, Andhra Bank, Bank of India, Karur Vysya Bank, J&K Bank, Canara Bank, South Indian Bank, Indian Bank, State Bank of

Bikaner & Jaipur, ING Vysya Bank, State Bank of Hyderabad, State Bank of Patiala, State Bank of Mysore, Kotak Mahindra Bank, State Bank of Travancore, Catholic Syrian Bank, Punjab National Bank, Dhanalaxmi Bank

An online receipt of the payment made will be generated by the system, which is to be sent through registered/speed post to NCTE along with other documents.

Note: In case if your transaction becomes successful and you did not get the Application ID in Print Preview, please inform the NCTE Hqrs, New Delhi about Transaction ID i.e. Merchant Transaction No. or Merchant Reference ID through email on email address: mail@ncte-india.org/ ms@ncte-india.org.

(ii) Payment through Demand Draft:

In case, payment is not possible through the above mentioned mode, you may get prepared a Demand Draft in favour of the Member Secretary, NCTE payable at concerned Regional office located at Bhubaneswar, Bhopal, Jaipur & Bengaluru as the case may be and the original Demand draft may be sent along with hard copy of the application form to the concerned Regional Office of NCTE within the stipulated period from the date of online submission.

7. After getting hardcopy of the "Print Preview", please confirm the Application ID mentioned on the hard copy. Note down this number and use Application ID in all your future correspondences with NCTE and its Regional Offices.

8. Your submission of application will be considered as complete in all respect only when the printout of the online application along with documents as annexures mentioned in para 3 are submitted and followed by dispatch through Registered Post within stipulated period from the date of submission of online application to the concerned Regional Committee Office.

9. In case application has not been submitted online/application ID is not generated/payment is not made/documents mentioned at S. No.3 not attached, the application shall not be accepted and processed by the Regional Committee concerned.

Note:

- a) No column in the application form should be left blank. The column in respect of which there is no information to furnish or which is not applicable may be indicated as NA or 0 (for number).*
- b) Registration for online submission of application for academic session 2016-17 shall be open from 01st March 2015 to 31st May, 2015.*

c) Applicants may contact the Technical Assistant, NCTE in case any of difficulties/hardships are faced during online registration process, at the Tel: 011-23370151 from 9.30 A.M. to 5.30 P.M. on all working days except Saturdays, Sundays and public holidays and Research Officer (Regulation) at the Tel: 011-23370175 for clarification with regard to NCTE (Recognition Norms and Procedure) Regulations, 2014.

10. NCTE is not responsible for incorrect details submitted in the application. The onus of producing the relevant documents pertaining to the information submitted lies with the Applicant Society/Trust/Company.

11. No corrections shall be entertained once application is submitted.

12. The submission of online application for recognition of the programme shall not confer any right on the applicant for grant of recognition.

13. You are also required to enclose duly signed copy, by the authorized signatory, of the Undertaking in the prescribed format (format attached) with the printout of the online submitted application to the Regional Committee concerned.

* The processing fee has been revised vide Rule notified dated 27.02.2015 from Rs.50,000/- to Rs.1,50,000/-.”

(emphasis supplied)

15. The moot question is : whether the requirement of submitting NOC issued by the concerned affiliating body is a mandatory requirement ? That will have to be answered on the basis of construction of Regulation 5 read with Regulation 7. On conjoint reading of these provisions, it is obvious that if the application submitted is not accompanied with the required documents, the same must be treated as incomplete and as rejected by virtue of Regulation 7 (1). For an application to be complete in all respects, it must be accompanied with all the required documents. The required documents are spelt out in Clause 4 of the

Instructions issued for that purpose. NOC from the affiliating body is one such document at No.(vii). That has not only been made part of the instructions, but also specifically mentioned in Regulation 5(3) itself. The expression used in Regulation 5(3), is that the required documents “such as” NOC issued by the concerned affiliating body must be submitted. Having said so in so many words in Regulation 5(3), there is no scope to entertain any doubt. The fact that such certificate is an essential document, is reinforced both from Regulation 5(3) and Instructions issued by respondent/NCTE – pursuant to which these petitioners and other Institutions submitted their applications.

16. A priori, the requirement specified in Regulation 5(3) must be held as mandatory. As a concomitant, if the application is not accompanied with NOC issued by the concerned affiliating body, it will be incomplete and treated as rejected on that count.

17. Having said this, respondent NCTE would be justified in disallowing such application in terms of Regulation 7(1). For, Regulation 7(1) stipulates that 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. The petitioners, however, rely on Regulation 7(2). Argument based on Regulation 7(2), does not commend to us. In our opinion, Regulation 7(2) will come into play only if the application is not or cannot be rejected in terms of Regulation 7(1). The fact that the application submitted by the petitioners was examined by NCTE or responded to, it does not make their application valid and complete in all respects. The provision such as Regulation 7(2) would come into play whilst processing of the application which is complete in all respects, as prescribed in Regulation 5. If the application is not accompanied with NOC issued by the concerned affiliating body, it can never be treated as complete application in the light of mandate of Regulation 5(3). The fact that Regulation 7(2) refers to only two circumstances for summary rejection of the application does not whittle down the mandatory provision contained in Regulation 5 and the consequence therefor postulated in Regulation 7(1), in any manner. Regulation 7(1) uses expression “application shall be treated incomplete and rejected”. Besides the word “shall”, the word “treated” has special connotation in the setting in which it has been placed. It would mean that once the

application is found to be incomplete, without doing anything more, in law, it must be treated as rejected.

18. The petitioners, however, were at pains to persuade us to take the view that Regulation 5(3) read with 7(1) be construed as directory. At any rate, it would be a case of asking the petitioners to do something which is impossible. In that, respondent NCTE vide letter dated 21.5.2015 had asked the affiliating body to issue NOC incorporating three vital facts mentioned therein. The said communication reads thus :

“JUGLAL SINGH
Member Secretary

No.F.63-11/2012/NCTE/Legal

21st May, 2015

To,

The Secretary (Higher Education) and Secretary (School Education), Department of Education of all State Government/UTs.

Subject : Affiliation to Teacher Education Institutions / Programmes, and issue of NOC for applying to NCTE for 2016-17 session by May 31, 2015.

Dear Sirs/Madam,

It is intimated that, the Hon’ble Supreme Court in SLP (C) No.4247-4247 of 2009 filed by NCTE granted extension of time till June, 2014 to revise the Norms and Standards of various teachers education programmes vide order dt.7.3.2014. NCTE filed interlocutory application on 01.01.07.2014 before the Hon’ble Supreme Court seeking extension of time to notify the new Regulations. The Hon’ble Court disposed of the said application and extended the time for notification of the new Regulations till November 2014 and approved last date for issue of formal

order of recognition to pending applications till 31st May, 2015.

2. In earlier years, as per the old NCTE Regulation, 2009 the last date for issuance of formal order of recognition was 3rd March and accordingly the deadline for accord of affiliation by the affiliating University was stipulated as 10th May. As per the new Regulations 2014, the last date for issuance of formal order of recognition has been extended upto 31st May 2015 for the academic session 2015-2016 by the Hon'ble Supreme Court. The State Govt. may therefore, issue directions to the concerned affiliating Universities to plan and fix up dates for affiliation of the recognized institutions and subsequent counseling for admission of students for 2015-2016 accordingly. This exercise should be completed at the earliest possible to avoid adverse effect on the number of teaching days of the session.

3. Also, this is to impress upon you the fact that new institutions shall apply for Teacher Education programmes afresh till May 31, 2015 as the last date for online application. And, the existing Teacher Education institutions may apply for an additional course/programme in May 2015 for 2016-17 session (so as to become composite institutions which is mandatory in Regulations 2014. **There is a new clause / requirement of NOC from affiliating body (Universities/Government Department of Education) before an application is submitted to NCTE for processing.** This is to request to expedite issue of NOC to those so that they can apply by May 31, 2015 on time.

4. **The initial NOC can be issued based on consideration that i) the applicant society is genuine, ii) that there is demand for such Teacher Education programme in that district / block; and that the affiliating body handle affiliation once NCTE grants recognition.** However, if the affiliating university and the state governments find it difficult to issue NOCs by the deadline of May 31, 2015, please do advise us accordingly.

Yours faithfully,

(Jugal Singh)
Member Secretary.

Copy to :

1. The Vice Chancellors of all Universities for information and necessary

- action.
2. The Director, SCERT for information and necessary action.
 3. Dr. R.K. Vijay, Deputy Secretary, Govt. of Madhya Pradesh, Ministry of Higher Education, Bhopal (MP) for information with reference to his letter No.309/146/C.C./15/38 Bhopal, Dt.29.4.2015.

(Juglal Singh)
Member Secretary.”
(emphasis supplied)

In response to this communication, the affiliating body (respondent Board) had expressed its inability to issue certificate containing the points indicated in the aforesaid communication. That circumstance, however, cannot be the basis to hold that the provision such as Regulation 5(3) read with 7(1) is directory or incapable of compliance. The Regulations apply uniformly throughout India. If one of the affiliating body in one State expresses inability to issue certificate, as required, cannot be the basis to interpret the provision as directory nor as incapable of compliance. Further, the last sentence in paragraph 4 of this communication merely envisages that some of the affiliating University or State Government may find it difficult to meet the time frame of May 31, 2015, were free to inform NCTE about that. That relaxation, at best, is to consider giving some more time to such University or State Government. That offer does not relax the requirement of issuing NOC nor of submitting the same along with the application as such. If the respondent/Board (affiliating body)

had failed to issue NOC in time (before the last date of submission of the application form), the petitioners should have been well advised to resort to appropriate remedy for issuing direction against the affiliating body to issue requisite NOC well before the last date for submission of application to respondent Council (NCTE).

19. Notably, the three factors to be specifically referred to in the NOC issued by the affiliating body are in respect of matters which are required to be reckoned by the affiliating body before grant of affiliation. The affiliating body (respondent Board) is obliged to consider whether there is real need for the institution in the given locality. The affiliating body is also obliged to examine whether the applicant institution is a genuine Society. Similarly, whether the affiliating body would be able to handle the affiliation once NCTE grants recognition, is only to reassure the NCTE that the recognition is not granted to an institution, which cannot be properly monitored by the affiliating body. Suffice it to observe that inability of the affiliating body to issue such certificate cannot be the basis to interpret the provision of the Central Legislation and the Regulations made thereunder as directory provision; nor it would be a case of asking the applicant to do something which is

impossible, as is contended.

20. Counsel for the petitioner had relied on an unreported decision of Rajasthan High Court in the case of **D Millennium Education Society vs. State of Rajasthan & others**² and connected matters decided on 11.2.2016. In that case, the learned Single Judge noted the correct legal position that the application not accompanied by NOC of the affiliating body in ordinary course entails in rejection thereof. He has further noted that no time line has been prescribed for the affiliating body for issuing NOC which is the root of the problem. However, in that case, the Regional Director during the course of hearing informed the Court that the affiliating body has already issued NOC to the concerned Institution; and that liberal approach can be adopted by not rejecting the application. The Court proceeded to issue directions to the concerned Authority on that basis. That is not the stand taken by the counsel for the respondent NCTE before us. Moreover, in the setting in which Regulation 5(3) is placed, it is not permissible to treat the same as a directory provision; and if so construed would render Regulation 7(1) otiose.

² Civil Writ Petition No.2051/2016 (SB)

21. Counsel for the petitioner placed emphasis on the dictum of the Supreme Court in Paragraph No.68 of **State of Maharashtra** (supra). The same reads thus:-

“68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of No Objection Certificate by the State Government/Union Territory. **Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.**”

(emphasis supplied)

In the first place, the above noted observations of the Supreme Court are contextual, to the issue before that Court. In that, whether NOC issued by the State was essential for processing of the application by NCTE. Notably, there is no requirement of filing NOC of the State Government alongwith application – either under Regulation 5(3) or under the Instructions issued by NCTE. Moreover, the State Government is not the competent Authority to accord recognition or affiliation, which is condition precedent for starting a new course or training in teacher education, either under the Central or State enactment – in contradiction to the requirement of affiliation by the examination body or affiliating body. As regards NOC of the affiliating body to be accompanied with the application for grant of recognition, Regulation 5(3) expressly

provides for that. Therefore, filing of NOC of the affiliating body alongwith application submitted under Regulation 5 is *sine qua non*.

22. Another shade of the same argument, as canvassed by the petitioner, rested on Regulation 7(4). According to the petitioners, the language of this provision is indicative of the requirement of submitting required documents along with the application as directory requirement and a curable defect. In the first place, we are not called upon to decide the validity of Regulation 5(3) read with 7(1), which mandates that an incomplete application must be treated as rejected. Moreover, as in the case of Regulation 7(2), which comes into play only if the application is in conformity with the requirements of Regulation 5, further scrutiny of the application for the purpose of Regulation 7(4) would become relevant. In that case, the Regional Committee of NCTE is required to forward copy of application to the appropriate Government and the Affiliating Body concerned within 30 days from its receipt, in chronological order of receipt of original application in the Regional Committee. The fact that copy of the application is required to be forwarded even to the affiliating body, it does not mean that the requirement of submitting NOC of the

affiliating body alongwith the application is dispensed with. Forwarding of this document may be only to reassure that the affiliating body has in fact issued such NOC. This is reinforced from the fact that nothing more is required to be done by the affiliating body on receipt of such intimation, unlike as per the Regulation 7(5) the appropriate Government on receipt of communication from NCTE is required to submit its recommendation to Regional Committee of NCTE within specified time. Regulation 7(6) predicates that if such recommendation is not received from the appropriate Government within specified time, the Regional Committee is free to process and decide the case on merits. The role of affiliating body comes into play only after recognition is granted by NCTE to start a new College or course to offer a course or training in teacher education. *An ex post facto* NOC issued by the affiliating body cannot validate the application for recognition submitted to NCTE not accompanied by such certificate. The affiliating body, however, can grant affiliation to such institution only after the formal recognition order is issued by NCTE in terms of Act of 1993 read with Regulations framed thereunder. Before granting recognition, however, amongst others, the three points required to be stated in the NOC to be issued by

the affiliating body must be available with NCTE to assess the capability of the institution and also the willingness of the affiliating body to regulate such institution.

23. Indubitably, affiliation is granted by the affiliating body as per the provisions of the State enactment. The fact that recognition is already granted by NCTE to a given institution, does not necessarily mean that the affiliating body is obliged to grant affiliation – unless it is satisfied about compliances made by the institution of all para-meters under the State enactment and Regulations framed thereunder. Recognition by NCTE may be a condition precedent, but, that does not absolve the affiliating body to examine all relevant matters and record its satisfaction in that behalf. This position is no more *res integra*. In the case of **Chairman, Bhartia Education Society vs. State of Himachal Pradesh**³, in para 17, the Supreme Court has observed that there is no mandate against the Examining Body to grant affiliation to the institution on receipt of order of NCTE granting recognition to such institution, though the recognition given by NCTE may be a condition precedent for grant of affiliation. The Examining Body can still refuse affiliation with reference to any of the factors which

³ 2011 AIR SCW 1816

have already been considered by NCTE while granting recognition. In view of this settled legal position, even though this Court has allowed the writ petitions, on which reliance was placed by the petitioners referred to in the opening part of the judgment, the affiliating body will be free to and must examine all aspects of the matter relevant for grant of affiliation and decide the proposal of the concerned institution on its own merits. We may also observe that, in the light of this pronouncement, even NCTE is not obliged to issue recognition to concerned institution(s), unless it records satisfaction about the fulfilment of all pre-conditions.

24. While parting we may note that the respondent NCTE must examine the circumstances in which the Advocate for NCTE gave concession for allowing aforementioned writ petitions – in which the application submitted by the concerned institution to NCTE was incomplete, on account of not submitting NOC issued by the affiliating body along with the application for grant of recognition.

25. For the reasons mentioned hitherto, both these writ petitions deserve to be dismissed being devoid of merits.

26. Accordingly, these writ petitions are **dismissed** with no

order as to costs.

27. Copy of this order be forwarded to the Chairperson of the Council (NCTE) as well as the Chairman of the Board, for information and necessary action.

(A.M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge

Anchal/khan*