

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 276 OF 2012**

**Maa Vaishno Devi Mahila  
Mahavidyalaya  
Appellant** ...

**Versus**

**State of U.P. & Ors.  
Respondents** ...

**WITH**

**Writ Petition (Civil) No. 296 of 2012**

**Writ Petition (Civil) No. 306 of 2012**

**Writ Petition (Civil) No. 307 of 2012**

**Writ Petition (Civil) No. 329 of 2012**

**Civil Appeal No. 9062 of 2012  
(Arising out of SLP (C) No. 24976 of 2012)**

**Writ Petition (Civil) No. 354 of 2012**

**Civil Appeal No. 9063 of 2012  
(Arising out of SLP(C) No. 25666 of 2012)**

**Writ Petition (Civil) No. 345 of 2012**

**Writ Petition (Civil) No. 346 of 2012**

**Writ Petition (Civil) No. 347 of 2012**

**Writ Petition (Civil) No. 350 of 2012**

**Writ Petition (Civil) No. 349 of 2012**

**Civil Appeal No. 9064 of 2012**  
**(Arising out of SLP(C) No. 21527 of 2012)**

**Civil Appeal No. 9065 of 2012**  
**(Arising out of SLP(C) No. 21643 of 2012)**

**Civil Appeal No. 9066 of 2012**  
**(Arising out of SLP(C) No. 21671 of 2012)**

**Civil Appeal No. 9067 of 2012**  
**(Arising out of SLP(C) No. 21695 of 2012)**

**Civil Appeal No. 9068 of 2012**  
**(Arising out of SLP(C) No. 21720 of 2012)**

**Civil Appeal No. 9069 of 2012**  
**(Arising out of SLP(C) No. 21873 of 2012)**

**Civil Appeal No. 9070 of 2012**  
**(Arising out of SLP(C) No. 21874 of 2012)**

**Civil Appeal No. 9071 of 2012**  
**(Arising out of SLP(C) No. 21876 of 2012)**

**Civil Appeal No. 9072 of 2012**  
**(Arising out of SLP(C) 10No. 21877 of 2012)**

**Civil Appeal No. 9073 of 2012**  
**(Arising out of SLP(C) No. 21878 of 2012)**

**Civil Appeal No. 9074 of 2012**  
**(Arising out of SLP(C) No. 21881 of 2012)**

**Civil Appeal No. 9075 of 2012**  
**(Arising out of SLP(C) No. 21882 of 2012)**

**Civil Appeal No. 9076 of 2012**  
**(Arising out of SLP(C) No. 21890 of 2012)**

**Civil Appeal No. 9077 of 2012**  
**(Arising out of SLP(C) No. 24959 of 2012)**

**10 Civil Appeal No. 9078 of 2012**  
**(Arising out of SLP(C) No. 22351 of 2012)**

**Writ Petition (Civil) No. 395 of 2012**

**Writ Petition (Civil) No. 389 of 2012**

**Writ Petition (Civil) No. 397 of 2012**

**J U D G M E N T**

**Swatanter Kumar, J.**

1. Leave granted in all the Special Leave Petitions.
2. In the case of *College of Professional Education and Others Vs. State of Uttar Pradesh* [Civil Appeal No.5914 of 2011 decided on 22<sup>nd</sup> July, 2011], this Court recorded that for the academic year 2012-2013 and subsequent academic years, the institutions and the State Government have arrived at a broad consensus regarding the procedure and terms and conditions of admission, recognition and affiliation. The terms and conditions which have been agreed and had received the approval of the court were noticed in great detail in that

judgment. For the academic year 2012-2013 and subsequent years, the following schedule for admission was provided :

1.	Publication of Advertisement	01.02.2011
2.	Sale of Application Forms and their submission	10.02.2012 to 10.03.2012
3.	Date of Entrance Examination	20.04.2012 to 25.04.2012
4.	Declaration of Result	25.05.2012 to 30.05.2012
5.	Commencement and completion of counseling	01.06.2012 to 25.06.2012
6.	Last Date of Admissions after counseling	28.06.2012
7.	Commencement of Academic Session	01.07.2012

3. The Court further directed that for the academic year, there would be only one counseling. It was to continue for a period of 25 days and was to be conducted as per the directions contained in the judgment. Having provided for the various facets in relation to the manner, procedure and methodology to be adopted for admissions, the court also provided for the time by which affiliation should be granted to the colleges for the relevant academic year. Clause VI(b) of the judgment which has bearing upon the matters in issue before us reads as under:-

“(b) After the counseling is over, the concerned University will continue to allot the candidates from the above mentioned waiting list against the vacant seats till all the seats in the colleges are filled up. It is further submitted that the organizing university will provide students only to the existing B.Ed. College and all those B.Ed. Colleges which will get affiliation upto dated 07.07.2011 will not be considered for counseling to the year 2011-12 and for the next consecutive years and onward the colleges which will be get affiliated on or before 10<sup>th</sup> of May of that year, would be considered for counseling.”

4. As is clear, the Court had fixed a cut-off date for affiliation. The colleges which were affiliated upto 7<sup>th</sup> July, 2011 only were permitted to participate in the counseling for the academic year 2011-2012. For the next consecutive academic years, the colleges which were permitted to participate in the counseling were the ones' which received affiliation on or before 10<sup>th</sup> May of that year. In other words, the colleges which did not receive affiliation by the said cut-off date were not to be included in the counseling.

5. Some of the colleges in the State of Uttar Pradesh which had not received affiliation filed writ petitions challenging the order of the universities declining grant of affiliation to them. These writ petitions came to be dismissed by different

judgments of the High Court of Judicature at Allahabad, Lucknow Bench, *inter alia*, but primarily on the ground that the court had no jurisdiction to extend the cut-off date as provided in the judgment of this Court in the case of *College of Professional Education* (supra).

6. In 17 special leave petitions, different petitioners have challenged the judgments of the concerned High Court before this Court. The petitioners in 15 writ petitions have approached this Court under Article 32 of the Constitution of India challenging the order of the university/authorities declining to grant affiliation again in view of the cut-off date fixed by this Court.

7. These writ petitions and appeals have raised common questions of law on somewhat different facts. Thus, we propose to dispose of these writ petitions and appeals by this common judgment. Before we dwell upon the real controversy arising for consideration of the Court in the present case, it will be necessary for the court to refer to the facts in some of the writ petitions/appeals.

## **Facts**

### **Writ Petition (Civil) No. 276 of 2012**

8. It is the case of the petitioner that Maa Vaishno Devi Shiksha Samiti, a society registered under the provisions of the Societies Registration Act, 1860 had been imparting education in various disciplines as main object. In furtherance to its stated objects, the society opened Maa Vaishno Devi Mahila Mahavidyalaya (for short, the "College") to conduct courses in education (B.A., B.Ed.) in the year 2007. Initially, the college started with B.A. course and was granted affiliation by Dr. Ram Manohar Lohia Avadh University (for short, the 'University') in accordance with law. Thereafter, the college intended to conduct B.Ed course for which it applied for grant of affiliation and recognition to the respective authorities. On 24<sup>th</sup> September, 2010, the National Council for Teacher Education (for short "NCTE") granted recognition to the petitioner college for conducting B.Ed. courses of secondary level of one year with annual intake for 100 students from the academic session 2010-2011.

9. In furtherance to the request of the College, the University conducted inspection of the College and thereupon recommended its case to the State Government. On 6<sup>th</sup> July, 2011 the State Government granted permission to accord temporary affiliation to the petitioner to run B.Ed classes for one year on self-finance basis for the academic year 2011-2012. Subsequently, on 22<sup>nd</sup> July, 2011, as already noticed, the judgment of this Court came to be passed in the case of *College of Professional Education and Ors.* (supra) fixing the time schedule for grant of affiliation. A strict timeline was laid down for application, examination, counseling and admissions with the academic session to begin on 1<sup>st</sup> July, 2012.

10. Para VI of the judgment dated 22<sup>nd</sup> July, 2011 does have an element of ambiguity. While noticing the submissions and passing appropriate directions, the court noticed "it is further submitted that the organizing university will provide students only to the existing B.Ed. College and all those B.Ed. colleges which will get affiliation dated 7<sup>th</sup> July, 2011 will not be considered for counseling to the year 2011-12 and for the next consecutive year and onward, the colleges which will get affiliated on or before 10<sup>th</sup> of May of that year would be

considered for counseling.....". It is obvious that there is something amiss prior to the words 'will not' appearing immediately after the date of 7<sup>th</sup> July, 2011. Obviously, what the court meant was that the colleges which are affiliated or which will get affiliation upto 7<sup>th</sup> July, 2011 are the colleges to which the organizing university will provide students, but other colleges which get affiliation after 7<sup>th</sup> July, 2011 will not be considered for counseling for the year 2011-2012. Furthermore, for subsequent academic years, the colleges to which the students will be provided would be the colleges which attain affiliation by 10<sup>th</sup> May of that year. That is the spirit of the directions. Thus, we must read and construe the judgment in that fashion.

11. Reverting to the facts of the present case, the University granted temporary affiliation to the college for the academic year 2011-12 on 27<sup>th</sup> August, 2011 with intake capacity of 100 seats. The petitioner college claims that it had got permanent recognition from NCTE for B.Ed. courses. In face of this, the name of the petitioner college was inducted in the list of colleges for which the counselling was held by the organizing university for the academic year 2011-12. Since the petitioner

college had received temporary affiliation for B.Ed. classes only for one year, it again approached the University and the State Government for grant of permanent affiliation for the subsequent academic years and completed all the formalities as well as requested the authorities to constitute an Inspection Team as required under the law. In the meanwhile, the Department of Higher Education, State of Uttar Pradesh, issued an office order dated 11<sup>th</sup> January, 2012 vide which the time schedule for seeking affiliation as directed by the court was fixed. The last date for submission of proposal to the concerned university was 10<sup>th</sup> March, 2012. The proposal received was to be forwarded to the Government by the University latest by 25<sup>th</sup> March, 2012 and the State Government was required to grant approval by 10<sup>th</sup> April, 2012. This date of 10<sup>th</sup> April, 2012, in fact, stood extended upto 10<sup>th</sup> May, 2012, the date fixed by this Court. The University constituted a three member team to inspect the college which submitted its report on 26<sup>th</sup> February, 2012. The Report is stated to have been submitted finding that the petitioner was possessed of adequate building, infrastructure and funds for running the B.Ed. course and recommended permanent affiliation. It is the

case of the petitioner that all relevant documents and fees for grant of permanent affiliation were submitted to the University on 5<sup>th</sup> March, 2012, i.e., five days prior to the last date for submission of proposal. The University took lot of time and finally on 10<sup>th</sup> April, 2012, it informed the petitioner that some more documents were required to be submitted. The petitioner submitted the required documents on 11<sup>th</sup> April, 2012. This application was forwarded by the University to the State Government only on 20<sup>th</sup> April, 2012 along with approval in Form 'A'. For the academic year 2012-13, the organizing university had held the Joint Entrance Test for all UP colleges on 23<sup>rd</sup> April, 2012. The result of the same was declared and admission and counseling sessions were scheduled to be held between 7<sup>th</sup> June, 2012 to 22<sup>nd</sup> June, 2012. The petitioner college seriously apprehended that it may not be able to participate in the counseling for the academic year 2012-2013 because of the delay caused by the University and the State Government, particularly keeping in view the cut-off date of 10<sup>th</sup> May, fixed by the Court. Consequently, the petitioner along with others filed writ petition being Writ Petition (Civil) No. 2417(M/S) of 2012 in the High Court of Judicature at

Allahabad, Lucknow Bench. This Writ Petition came to be disposed of by the order of the Court dated 9<sup>th</sup> May, 2012. The Court, while noticing the directions of this Court as contained in its order dated 22<sup>nd</sup> July, 2011, directed the respondents to consider petitioner's case on the basis of their eligibility as required for affiliation and take decision while expressing the hope that the State would do its best in the matter. The petitioner has contended that though a number of deficiencies were noticed in the other colleges, yet most of the colleges were granted conditional permission for affiliation giving time to remove the deficiencies pointed out in the order. Unlike other colleges, the State Government vide its Order dated 10<sup>th</sup> May, 2012, had rejected the application of the petitioner and pointed out various deficiencies. The relevant part of the order reads as under:-

“(3) In the sequence of the said orders of the Hon'ble High Court, Lucknow Bench, Lucknow, after the last date i.e. 25.03.2012 prescribed by the Government, the proposals for affiliation for B.Ed. course of the referred university were considered. After due consideration, in the impugned affiliation proposal the following discrepancies have been found:-

1. For granting of affiliation, on the University level the certificate of the

committee organized has not been received.

2. The inspection report of the inspection board and the details of the area of classes in the letter of the University have not been mentioned.

3. The boundary walls of the university are not plastered and the photograph of the boundary walls of only one side has been received and on the second floor of the university construction work is partly going on. In front of the rooms of the second floor railings have not been constructed due to which a serious accident is possible.

4. The result of B.Ed. has not been received. The University with the deficiency of the result of examination has made conditional recommendation on the Format-A.

5. In relation to not being charged with group cheating/copying the educational session in the report of the controller of examination is not clear.

6. The fire extinguishing certificate has been issued on 15.02.2009. The certificate till date has not been received.

7. The NBC has been signed by the Additional Engineer/Superintending Engineer but the letter number and date is not mentioned.

8. The details of payment of monthly salary from the bank to the teachers are not received. The record

of the months of December 2011 and January and February 2012 has been made available.

(4) Therefore, in view of the abovementioned discrepancies the State Government under section 37(2) of the U.P. State University Act, 1973 (as amended by the U.P. State University Amendment Act, 2007) at Graduation level has for Maa Vaishno Devi Women University, Siyaram Nagar, Devrakot, Faizabad under the Education system has not found it eligible for a prior permission of affiliation for B.Ed. course with a capacity of 100 seats since under the autonomous scheme from educational session 2012-2013. In sequence of it the writ petition no. 2417(M/S)/2012 and in others also which are in question, in compliance to the order dated 09.05.2012 of the Hon'ble High Court the application of Sh. Chedi Lal Verma, Manager, Maa Vaishno Devi Women University, Siyaram Nagar, Devrakot, Faizabad dated 09.05.2012 is accordingly dismissed."

12. The petitioner has submitted that it removed the objections as pointed out in the said letter and informed the authorities on 18<sup>th</sup> May, 2012. On the same very date, the petitioner made a representation to the State Government stating that objections had been removed and the case of the petitioner may be considered for affiliation. No response was received to the said representation. Being left with no other option, the petitioner filed another writ petition being WP (M/S) No.3499 of 2011 before the same court praying *inter alia* that

the order dated 10<sup>th</sup> May, 2012 passed by the State Government be quashed, for issuance of a direction requiring respondent No. 2 to include the petitioner college in the counseling for B.Ed. course for the academic year 2012-13 and for direction that the petitioner college be deemed to have received affiliation, temporarily at least. This writ petition was finally disposed of by a Bench of that Court vide its order dated 13<sup>th</sup> June, 2012. The relevant part of the order reads as under:-

“The arguments of the learned counsel for the petitioner in view of the recommendations of the University appears to be correct. Accordingly, the order dated 10.5.2012 contained in Annexure-1 to the writ petition is hereby set aside. The matter is remitted back to the State Government to decide it afresh in the light of the recommendations of the University and the letter of the institution contained at page 50 subject to their information available on record and the State Government shall take a decision, expeditiously, say within a period of ten days’ from the date a certified copy of this order is produced before it.

Subject to above, the writ petition is finally disposed of.”

13. As is clear from the above direction, the matter was remitted to the State Government. The order dated 10<sup>th</sup> May, 2012 was set aside and the State Government was directed to

consider the case afresh. This was primarily on the basis that according to the petitioner, the University had recommended the case and had forwarded its approval in Form A showing no deficiencies. The State Government, without any inspection, had rejected the request for affiliation and other colleges had been given temporary affiliation.

14. On the very next day i.e. on 14<sup>th</sup> June, 2012, the petitioner again made a representation to the State Government to consider its case in accordance with the directions of the Court in the order dated 13<sup>th</sup> June, 2012. Again, vide order dated 21<sup>st</sup> June, 2012, the State Government rejected the application of the petitioner. The State Government referred to the schedule for counseling as well as for grant of affiliation in terms of the order of this Court dated 22<sup>nd</sup> July, 2011. The State Government referred to the Schedule for counseling as well as for grant of affiliation in terms of order dated 22<sup>nd</sup> November, 2011. It rejected the application being beyond the cut-off date of 10<sup>th</sup> May. It also mentioned in paragraphs VI of the said order that certain compliances had not been done till that date by the college and again eight defects of non-compliance were pointed out in the said order.

15. The petitioner claims to have been seriously prejudiced by the order dated 21<sup>st</sup> June, 2012 as it was denied the chance to participate in the counseling process for the academic year 2012-2013 onwards.

16. To the averred facts there is not much controversy. Primarily, the respondents have raised two pleas (i) firstly that the deficiencies had not been removed in their entirety and secondly that the cut-off date fixed by this Court by its order dated 22<sup>nd</sup> July, 2011 does not permit the State to grant affiliation to the petitioner college for the current academic year.

**SLP (C) No.21695 of 2012**

17. The petitioner is a private unaided institution run by a registered society namely Aman Educational and Welfare Society. The Society started the Aman Institution of Education and Management (for short the "College") and had applied for grant of recognition for running the B.Ed. course. The college was inspected and recognition was granted by the NCTE on 30<sup>th</sup> September, 2008. The State Government had granted affiliation subject to fulfillment of conditions stated therein,

which amongst others contained a stipulation that admission of the students shall be made only after affiliation by the examining body before the commencement of the academic session and admission shall be completed well before the cut-off date. For the academic year 2009-2010, the University conducted the inspection on 12<sup>th</sup> March, 2011 and forwarded its recommendation for grant of permanent affiliation. Similar recommendations were also made on 7<sup>th</sup> July, 2011 for the academic year 2011-2012. The State Government, in view of these recommendations granted permission for temporary affiliation for one year with effect from 1<sup>st</sup> July, 2011 for the academic year 2011-2012. The students were also provided to the college against the sanctioned 100 seats for that academic year. The petitioner college had applied for extension of affiliation for the academic session 2012-2013 and the University had sent its recommendations to the State Government vide its letter dated 3<sup>rd</sup> December, 2011. Vide letter dated 9<sup>th</sup> April, 2012, respondent No. 1 had brought out certain deficiencies. On 13<sup>th</sup> April, 2012, the petitioner submitted necessary documents. However, again certain deficiencies were pointed out by the State Government vide its

letter dated 18<sup>th</sup> April, 2012. The petitioner claims to have removed these deficiencies and intimated respondent No. 1 vide its letter dated 20<sup>th</sup> April, 2012. Thereafter the University had sent its recommendations vide letter dated 9<sup>th</sup> May, 2012. According to the petitioner, thereafter the State Government did not point out any substantive deficiencies and, in fact, no deficiencies. According to them, though there were no deficiencies, the State Government vide its letter dated 9<sup>th</sup> May, 2012 refused to grant affiliation to the petitioner and pointed out certain deficiencies and informed that the institution was not found fit for grant of affiliation for 100 seats. The petitioner had challenged this order of the State Government before the High Court. It was the case of the petitioner that there were no shortcomings or deficiencies in the Institute. Furthermore, number of other similarly placed institutions had been granted permission/affiliation and had been given time to remove the deficiencies. Thus, the order of the respondent was arbitrary.

18. It may be noticed that apprehending its exclusion from the counseling, the petitioner had filed a writ petition being Writ Petition (M/S) No.2572 of 2012 before the High Court of

Judicature at Allahabad, Lucknow Bench in which vide its order dated 28<sup>th</sup> May, 2012, the Court had directed the respondent authorities to consider the case of the petitioner college afresh. In this order, the court had also noticed “the court finds that all shortcomings as pointed out by the State Government stand removed. Therefore, in these circumstances, it is provided that the State Government may take a fresh decision in light of the present facts and additional evidence which had been brought on record by the petitioner and pass fresh orders in accordance with law, within a period of ten days.” In furtherance to the order of the High Court, the State Government still persisted with the fact that there were deficiencies in the infrastructure and other requirements of the petitioner college and while noticing the deficiencies which were still persisting, the State Government vide letter dated 11<sup>th</sup> June, 2012 rejected the application for grant of affiliation. The following deficiencies were noticed:-

“1.	Lasted inspection report was not found	Deficiency is still exists there.
2.	Certificate from the Bank for the payment to teachers and details	Certificate of payment of was not provided with the representation

3.	Affidavits and Agreement of the proposed teachers for the year 2008-2009 not provided and for	Deficiency is still exists. Balance sheet of CA is provided Deficiency is still exists Deficiency is still exists
4.	Appointment letters of proposal teachers are not provided	
5.	C.A. Balance Sheet for one Year only	
6.	Fire fighting certificate is not mentioned	
7.	Certificate from NCB or equivalent officer (Executive Engineer)	
8.	Affidavit of manager on stamp paper of Rs. 50/- is not mentioned	

XXXXX      XXXX      XXXX      XXXX

10. In respect B.Ed. Education course in the Special Leave Petition bearing no. 13040/2010, titled College of professional Education and ors vs. UP State and others, Vide order dt. 22.7.2011 passed by the Hon'ble High Court in the said petition for fixing the time table to the concerned and fixed last date for permission 10.5.2012, and after expiry of the aforesaid all the deficiency have to be fulfilled, otherwise it shall be contempt of the Court.

Therefore in the precept the petitioner Institute, there is no occasion to provide a chance, if the proposal of the petitioner university proposed for the year 2013-14 the same can be considered accordingly, therefore the representation of the petitioner dt. 30.5.2012.

Therefore, the orders in the Writ Petition no. 2972 (MS) 2012 of the petitioner, Aman Institute of Management and education, Duhai, Ghaziabad, Vs. UP State, In compliance of order dated 28.5.2012 is being sent."

19. The petitioner challenged the legality and correctness of the order dated 11<sup>th</sup> June, 2012 before the High Court in Writ Petition (M/S) No. 3607 of 2012. The High Court dismissed the writ petition but made certain observations which were in favour of the petitioner. The operative part of the order reads as under:-

“Assuming that the petitioner is qualified to be affiliated, even then petitioner cannot be granted any indulgence on account of cut-off date fixed by the apex court i.e. 10.5.2012. This Court does not have any power to reschedule the time schedule fixed by the apex court. The petitioner, if is aggrieved by the said cut-off date, is at liberty to approach the apex court for clarification and further orders, so that they are able to convince the apex court regarding their rightful claim.

In the present case, the Court feels that there is no shortcoming in the petitioner-institution at the moment and the State Government has acted unmindfully, but it has to be looked into at this juncture whether the cut-off date can be by-passed. No such direction is possible at the hands of this 3 Court and, therefore, any direction in favour of the petitioner will amount to violating the orders passed by the apex court.

The argument of learned counsel for the petitioner that the opposite parties

themselves have not followed the time schedule as fixed by the apex court can be looked into and can be gone into by the apex court. But this Court feels that no such direction for allocation of students can be issued in favour of the petitioner at this juncture.

The writ petition is accordingly dismissed.

20. Aggrieved from the said judgment, the college has filed the appeal by way of special leave.

**Writ Petition (Civil) No. 350 of 2012**

21. This petition has been filed under Article 32 of the Constitution of India by three petitioner colleges which are being run and managed by the Society registered under the Societies Registration Act, 1860. Vide order dated 24<sup>th</sup> January, 2007, the NCTE at its 113<sup>th</sup> Meeting held on 18<sup>th</sup>/19<sup>th</sup> January, 2007 considered the application moved by the first petitioner for grant of recognition to run B.Ed. courses in the institution and granted the same. However, in its 141<sup>st</sup> Meeting, the Northern Regional Committee (for short "NRC") refused recognition to the first petitioner vide order dated 25<sup>th</sup> January, 2010. This order was subsequently modified upon appeal by the first petitioner, but without any effective relief.

Being dissatisfied, the first petitioner filed Writ Petition No. 3836 (M/B) of 2010 before the High Court of Judicature at Allahabad. The Court passed order dated 14<sup>th</sup> May, 2010, in furtherance to which an inspection was conducted under Section 17 of the NCTE Act, 1993. Thereafter the first petitioner filed another Writ Petition No. 7248 of 2010 before the same court in which vide order dated 20<sup>th</sup> April, 2011, the Court took note of the fact that the NCTE had failed to comply with the direction of passing final order within one month and directed the concerned authorities to comply with the order dated 14<sup>th</sup> May, 2010, and required them to explain their conduct. However, in the meanwhile, this Court passed the order dated 22<sup>nd</sup> July, 2011 in the case of the *College of Professional Education* (supra) fixing 10<sup>th</sup> May as the cut-off date for grant of affiliation to colleges for running of courses for the current academic year. The petitioner colleges Nos. 1 and 2 got affiliation from the Ram Manohar Lohiya Avadh University, Faizabad, Uttar Pradesh, in accordance with the Uttar Pradesh State Universities Act, 1973 (for short, 'the Universities Act'). Petitioner No.1 college was accorded affiliation vide order dated 25<sup>th</sup> August, 2011 for 100 seats in

the B.Ed. course for one year. In furtherance to order of the High Court, the petitioner No.1 was asked to furnish certain details. The response submitted by Petitioner No.1 was considered by the NRC of the NCTE in its 190<sup>th</sup> Meeting and it decided to restore the recognition for B.Ed. courses with annual intake of 100 seats in continuation of the previous recognition order dated 24<sup>th</sup> January, 2007. Accordingly, the order dated 28<sup>th</sup> December, 2011, was passed by the NRC of the NCTE. Thereafter, the respondent-university, vide its letter dated 30<sup>th</sup> April, 2012 recommended to the State Government for grant of permanent affiliation to petitioner No. 1 to run the B.Ed. courses. For these reasons, the petitioner No. 1 claimed that it was entitled to be included in the Counseling as at that time, they had the recognition as well as the affiliation. Petitioner Nos.2 and 3 were also placed in similar situation. However, the State Government on insignificant shortcoming refused the affiliation to petitioner Nos. 2 and 3 vide order dated 10<sup>th</sup> May, 2011. According to the petitioner, certain other colleges similarly placed were granted affiliation and even included in the list of counseling for the academic year 2012-2013.

22. The petitioners challenged the non-grant of affiliation by the State Government to conduct the courses of B.Ed. on account of their non-inclusion in the Bulletin for Counseling and admission to their colleges. The petitioners, thus, are aggrieved from non-inclusion in counseling process as well as non-grant of affiliation on account of the cut-off date of 10<sup>th</sup> May of the current academic year.

**Writ Petition (Civil) No. 346 of 2012**

23. This is also a petition filed under Article 32 of the Constitution of India. The petitioner is an unaided self-financing institution run by a registered society named J. Milton Shiksha Samiti. The petitioner college was granted recognition by the NCTE vide its order dated 14<sup>th</sup> May, 2008 for conducting B.Ed. courses for the academic year 2008-2009 whereafter the petitioner obtained affiliation from Dr. Bhimrao Ambedkar University, U.P., Respondent No.2, for that academic year and has been conducting the said course till the academic year 2011-2012. The respondent No.2-University granted provisional affiliation to the petitioner for the academic year 2011-2012 vide letter dated 7<sup>th</sup> July, 2011, subject to fulfillment

of certain conditions. Vide letter dated 21<sup>st</sup> December, 2011, the petitioner informed the University (respondent No.2) about fulfillment of the conditions as required by the letter dated 7<sup>th</sup> July, 2011 and requested the University to consider the case of the petitioner for grant of extension of provisional affiliation or grant of permanent affiliation. For the academic year 2012-2013, respondent No.3-University conducted Joint Entrance Test for admission to UP B.Ed. Colleges on 23<sup>rd</sup> April, 2012. Counseling was scheduled to be held from 7<sup>th</sup> June, 2012 to 22<sup>nd</sup> June, 2012. As noticed earlier, this Court had passed the order dated 22<sup>nd</sup> July, 2011 directing the last date for grant of affiliation as 10<sup>th</sup> May of the concerned academic year. Vide letter dated 13<sup>th</sup> June, 2012, respondent No. 2 University had forwarded the affiliation proposal of the petitioner to the State Government. Although, the State Government did not pass any written order rejecting the case of the petitioner, but according to the petitioner, they were orally informed that their case could not be processed now for the current academic year in view of the order passed by this Court.

24. The petitioner filed writ petition being Misc. Single No.4040 of 2012 before the Allahabad High Court. The High

Court, vide its order dated 25<sup>th</sup> July, 2012, directed the respondents to pass fresh order.

25. It is the case of the petitioner that denial of affiliation and permission to participate in the counseling by the respondent is on account of the cut-off dates fixed by this Court and, therefore, has approached this Court under Article 32 of the Constitution of India with the above prayers.

**Writ Petition (Civil) No. 345 of 2012**

26. Writ Petition (Civil) No.345/2012 and Writ Petition (Civil) No. 347 of 2012 also has similar facts where the petitioner-college was granted recognition by the NCTE and had even been granted affiliation for the academic year 2011-2012. However, its application for extension of affiliation for the academic year 2012-2013 or grant of permanent affiliation was not decided and subsequently the petitioner was denied affiliation and permission to participate in the counseling for the current academic year 2012-2013 in view of the cut-off date fixed by this Court. In both these writ petitions, the writ petitioners challenged the action of the respondents, and their non-inclusion in the list for counseling.

27. It is not necessary for us to note the facts of each case separately as in all other cases the facts are somewhat similar to either of the writ petitions, the facts of which we have afore-referred.

28. For regulation and proper maintenance of norms and standards in the teacher education system and for all matters connected therewith, it was considered to establish a Central National Council for Teacher Education, for which purpose the Indian Parliament enacted the National Council for Teacher Education Act, 1993 (for short, the 'Act'). The NCTE was to be established in terms of Section 3 of the Act and was to consist of the persons specified therein. For the purpose of the present case, we are required to refer to certain provisions of the Act. The first relevant provision which can be referred to is Section 12 of the Act which states the functions that are to be performed by the NCTE. Section 13 places an obligation upon the NCTE to conduct inspection of the Institute in the prescribed manner. Other very significant provision is Section 14 that deals with the recognition of the Institution offering course or training in teacher education. One of the important powers of the NCTE is the power of delegated legislation as

contained in Section 32 of the Act. We shall deal with these provisions along with some other relevant provisions in some detail.

29. Under the Scheme of the Act, in terms of Section 12, it shall be the duty of the NCTE to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education, as per the Preamble of the Act. It has to lay down guidelines for compliance by recognized institutions for starting new courses of training and for providing physical and instructional facilities, staffing pattern and staff qualification amongst others, to examine and review periodically the implementation of the norms, guidelines and standards laid down by the NCTE and to suitably advise the recognised institutions and foremost, it must ensure prevention of commercialization of teacher education. For the purposes of ascertaining whether the recognised institutions are functioning in accordance with the provisions of this Act, the Council may cause inspection of any such institution to be made by such person as it may direct and in such manner as may be prescribed. A complete procedure has been provided under Section 13 for conducting inspection of the institution. After

coming into force of the Act, 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 the Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by the Regulations. Section 14(3)(a) provides the scope and requirement for establishing such institution. The recognition may be granted to an institution when it has adequate financial resources, accommodation, library, qualified staff, laboratory and it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education as may be determined by regulations and upon such conditions as may be imposed. If an institution does not satisfy the requirements of Section 14(3)(a), the Council may pass an order refusing recognition to the institution for reasons to be recorded. Such grant and/or refusal has to be published in the Official Gazette and communicated in writing to the institution and to the concerned examining body or the State Government and the Central Government in accordance with Section 14(4). Section 14(6) will be of some significance once we deal with the facts of the present case, as it is a

provision providing interlink between recognition of an institution by the NCTE, on the one hand and affiliation by the examination body, on the other. Section 14(6) reads as under :

“14(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.”

30. Linked to this very provision is the provision of Section 16 of the Act that reads as follows :

**“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 recognized 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.”

31. The institution which does not comply with the terms and conditions imposed or contravenes any terms and conditions subject to which the recognition was granted, any regulation, orders made under the Act and/or any provision of the Act, the NCTE may withdraw recognition of such recognized institution for reasons to be recorded in writing under Section 17(1) subject to compliance of the conditions stated therein. Once the recognition is withdrawn, the following very serious consequences follow in terms of Section 17(3) of the Act :

1. such institution shall discontinue the course or training in teacher education;
2. 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.

32. Following the date of communication of such order, an institution which carries on and offers any course of training in

teacher education in terms of Section 17(4), the degree obtained from such an institution shall not be treated as valid qualification for employment under any State Government or the Central Government, Government University or school, college or any other Government institution.

33. From the reading of the above provisions, it is clear that the NCTE is expected to perform functions of a very high order and to ensure maintenance of higher standards of education in teachers training. Default in compliance of its orders/directions can result in very serious consequences and, in fact, would render the concerned institute ineffective and inoperative. Where the recognition by the NCTE gives benefits of wide magnitude to an institute, there the withdrawal of recognition not only causes impediments in dispensation of teacher training courses by that institution but the institution is obliged to discontinue such courses from the specified time.

34. Section 16 opens with a *non obstante* language and has an overriding effect over all other laws for the time being in force. It requires that unless the institution concerned has obtained recognition from the Regional Committee concerned, no

examining body 'shall', on or after the appointed day, grant affiliation, whether provisional or otherwise, or even hold examination, whether provisional or otherwise, for the courses in the teacher training programme. On the other hand, Section 17(3) also uses the expression 'shall' thereby making it mandatory for the University or the examining body to cancel affiliation of the institution in accordance with the order passed by the NCTE withdrawing the recognition of the Institution. These provisions convey the significant, vital and overriding effect of this Act in comparison to other laws in force.

35. To perform its functions, the NCTE constitutes regional committees which are divided into four different regions. The purpose of constitution of these committees is to effectively deal with the aspect of grant, continuation or refusal of the recognition. It has two objectives to attain - (1) convenience for all stakeholders; and (2) more effective implementation of the provisions of the Act. Section 32 empowers the NCTE 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 Regulations are to deal with various subjects including providing of norms, guidelines and standards

in respect of minimum qualification for a person to be employed as a teacher, starting of new courses or training in recognized institutions, standards in respect of examinations leading to teacher education, qualifications and other specified matters. The Central Government, in exercise of the power vested in it under Section 31(1) of the Act, framed the Rules called the 'National Council for Teacher Education Rules, 1997'. These Rules, in detail, deal with the expert members of the NCTE, powers and duties of the Chair-person, appeals which a person could make in terms of Rule 10 in relation to the orders passed under Sections 15, 16 and 17 of the Act. However, these Rules were subjected to amendment vide notification dated 15<sup>th</sup> September, 2003.

36. Vide notification dated 13<sup>th</sup> November, 2002, the 'NCTE (Form of application for recognition, the time limit of submissions of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002' were notified to deal with the prescribed procedure for making applications for recognition as well as how it is to be dealt with and grant and refusal of recognition. Under Regulation 8, it was

specified that the norms and standards for various teacher education courses should be separately provided for separate courses. Resultantly, under Appendix 3 to Appendix 14, norms and standards in relation to various courses, which were to be complied with by the applicant, were specified. The object was to bring greater transparency and specialization into the entire process of grant of recognition to the institutions. For example, norms and standards for secondary teacher education programme was provided under Appendix 7. Similarly, other courses were provided different standards. Appendix 1A prescribed the form of an application for grant of recognition of teacher education institutions/permission to start a new course or increase in intake. This application contained all information that was necessary for the Regional Committee to entertain an application and know the requisite details, as contemplated under Section 14(1)(a).

37. Further, to facilitate the operation of the Regulations and for removal of functional difficulties, after consultation with different quarters, the NCTE framed regulations under Section 32 of the Act which were called the 'National Council for Teachers Education (Recognition, Norms and Procedure)

Regulations, 2005'. Under these Regulations, different time limits were provided within which the applications were to be dealt with and responded to by different stakeholders involved in the process of grant/refusal of recognition. Under these Regulations, the applications which were complete in all respects had to be processed by the office of the concerned Regional Committee within 30 days of the receipt of such application. A written communication along with a copy of the application form submitted by the institution of the concerned State/Union Territory shall be sent to the State Government/UT Administration concerned. On receipt of the application, the State Government/UT Administration concerned was required to furnish its recommendations to the office of the Regional Committee concerned within 60 days from the receipt. If the recommendation was negative, the State Government was required to provide detailed reasons/grounds thereof in terms of Regulation 7(3) of the Regulations. Then, the expert team was to be appointed which was to visit the institution. Video tapes of the visiting team were to be placed before the Regional Committee along with its recommendations and the Regional Committee was to decide grant of recommendation or

permission to the institution only after all the conditions prescribed under the Act, Rules, Regulations and the norms and standards laid down were satisfied. The institution concerned was required to be informed of the decision for grant/refusal of recognition or permission. It could impose such conditions as the NCTE may deem fit and proper.

38. Thereafter, vide notification dated 27<sup>th</sup> November, 2007, again in exercise of its powers under sub-section (2) of Section 32, the NCTE revised the Regulations and these are called the 'National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2009'. They deal with the applicability, eligibility, manner of making application and time limits, processing fee, processing of applications, conditions for granting recommendation, norms and standards, academic calendar, power to relax any of the provisions of these Regulations, etc. These Regulations are quite comprehensive and under Regulation 13, the Regulations of 2007 and 2005 both are repealed and it is stated in Regulation 13(3) that the repeal of the said earlier Regulations shall not affect previous operation of any Regulation so repealed or anything duly done thereunder. Under Regulation 5, the application has to be filed

in the manner prescribed and within the time specified. Under Regulation 5(4), duly completed application in all respects may be submitted to the Regional Committee concerned during the period from 1<sup>st</sup> day of September, till 31<sup>st</sup> day of October of the preceding year to the academic session for which recognition has been sought. Regulation 5(4), however, provided that the condition of last date for submission of application shall not apply to any innovative programme of teacher education for which separate guidelines have been issued by the NCTE. The final decision on all the applications received, either recognition granted or refused, shall be communicated to the applicant on or before 15<sup>th</sup> day of May of the succeeding year. These Regulations take note of even minute details like that if there is any omission or deficiency in the documents, the Regional Committee shall point out the deficiency within 45 days of the receipt of the application which the applicant shall remove within 60 days from the date of receipt of communication of such deficiency. In terms of Regulation 7(2), like in the 2007 Regulations, a written communication along with a copy of the application has to be sent to the State Government or the Union Territory Administration within 30 days from the date of the

receipt of the application inviting recommendations or comments which are to be submitted by them within 45 days of the issue of letter to the State or the Union Territory, as the case may be. After consideration of the recommendations, the Regional Committee shall decide as regards the inspection of the institutions and communicate the same to the institution. The Regional Committee shall ensure that inspection is conducted within 30 days from the date of this communication to the institution. The experts are to visit the institution and submit their report. The inspection has to be video-graphed. Considering the recommendation of the State Government, the Regional Committee shall grant or refuse the recognition within the specified date. It is also required under these Regulations [Regulation 8(2)] that, in the first instance, an institution shall be considered for grant of recognition of only one course for the basic unit as prescribed in the norms and standards for the particular teacher education programme. After completion of three academic sessions of the respective course, it can submit an application for one basic unit only of an additional course or for an additional unit of the existing recognized course before the cut-off date prescribed for submission of applications in the

year succeeding the completion of three academic sessions. After the recognition has been granted in terms of Regulation 11, it is incumbent upon the affiliating body to regulate the process of admission in teacher education institutions by prescribing the schedule or academic calendar in respect of each of the courses listed in Appendix 1 to 13 to the Regulations and this has to be done at least three months in advance of the commencement of each academic session and upon due publicity.

39. This is the scheme of grant and/or refusal of the recognition to an institution dealing with various courses of teacher training programme.

40. Under the scheme of the NCTE Act, there are three principal bodies involved in processing the applications for grant or refusal of recognition for running of teacher training courses by various institutions. They are the NCTE, the State Government, the affiliating body or the University, as the case may be. Each of these stakeholders has been assigned a definite role under the provisions of the NCTE Act and even the stage at which such role is required to be performed. The

provisions of the NCTE Act even identify the scope and extent of power which each of these bodies is expected to exercise. As already noticed, the NCTE Act has been enacted with the object of constituting a National Council with a view to achieve planned and coordinated development of teacher education system throughout the country and also to ensure maintenance of proper norms and standards in teacher education system. The NCTE is a specialized body and is expected to perform varied functions including grant of recognition, ensuring maintenance of proper norms and standards in relation to teacher education, inspection of the colleges through experts and to ensure strict adherence to the time schedule specified under the NCTE Act and rules and regulations framed therein.

41. The NCTE Act is a special act enacted to cover a particular field, i.e. teacher training education and, thus, has to receive precedence over other laws in relation to that field. No institution or body is empowered to grant recognition to any institution under the NCTE Act or any other law for the time being in force, except the NCTE itself. Grant of recognition by the Council is a condition precedent to grant of affiliation by the examining body to an institute.

42. The non-obstante language of Section 16 requires the affiliating body to grant affiliation only after recognition or permission has been granted by the NCTE. The provisions of Section 16 give complete supremacy to the expert body/NCTE in relation to grant of recognition. In fact, it renders the role of other bodies consequential upon grant and/or refusal of recognition. When the NCTE is called upon to consider an application for grant of recognition, it has to consider all the aspects in terms of Section 14(1)(a) of the NCTE Act. The amplitude of this provision is very wide and hardly leaves any matter relatable to an educational institution outside its ambit. To put it simply, the NCTE is a supreme body and is vested with wide powers to be exercised with the aid of its expertise, in granting or refusing to grant recognition to an educational institution. The NCTE is the paramount body for granting the approval/recognition not only for commencing of fresh courses but even for increase in intake, etc. The Council has to ensure maintenance of educational standards as well as strict adherence to the prescribed parameters for imparting of such educational courses, including the infrastructure. The provision and scheme of the NCTE Act is *pari materia* to that of the

Medical Council of India Act, 1956 and the All India Council for Technical Education Act, 1987 etc.

43. Now, we may examine some of the judgments of this Court which have dealt with these aspects. In the case of *State of Tamil Nadu and Anr. v. Adhiyaman Educational & Research Institute and Ors.* (1995) 4 SCC 104, the Supreme Court while discussing various aspects in regard to constitutional validity of Tamil Nadu Private College Regulation Act, 1976 and the provisions of the All India Council for Technical Education Act clearly spelled out the preferential role of the Council as under:

“22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This

duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country.

...It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the provisional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well....”

44. Further, the Court, while noticing the inconsistency between the Central and State statutes or the State authorities acting contrary to the Central statute, held as under :

“41. (vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its

standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

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43. As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the de-recognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.”

45. Still, in another case of *Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Deptt., Thiruvananthapuram, Kerala State and Anr.* [2000] 5 SCC 231], the Court reiterating the above principle, held as under:

“22. As held in the *Tamil Nadu* case AIR 1995 SCW 2179, the Central Act of 1987 and; in particular, Section 10(K) occupied the field relating the `grant of approvals' for establishing technical institutions and the provisions of the

Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the 'views' of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, needed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(K) of the AICTE Act, 1987 and would again be void. As pointed out in the Tamil Nadu case there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in the Tamil Nadu case, it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for 'approval' of the State Government."

46. This view of the Supreme Court was reiterated with approval by a larger Bench of the Supreme Court in the case of *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors.* [(2006) 9 SCC 1]. While discussing in detail the various legal issues in relation to grant of affiliation/ recognition to the institution and permission to start a new college, the Court held as under:

“53. The Court then considered the argument put forward on behalf of the State that while it would be open for the Council to lay down minimum standards and requirements, it did not preclude the State from prescribing higher standards and requirements.

54. Negating the contention, the Court quoted with approval the following observations of B.N. Rau, J. in *G.P. Stewart v. Brojendra Kishore Roy Chaudhury* (AIR 1939 Cal. 628 : 43 Cal. W.N. 913) :

“It is sometimes said that two laws cannot be said to be properly repugnant unless there is direct conflict between them, as when one says `do' and the other 'dont', there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say `don't' but in different ways. For example, one law may say `no person shall sell liquor by retail, that is, in quantities of less than five gallons at a time' and another law may

say, 'no person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time'. Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely, the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is *nullified*."

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64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on "policy consideration". As already observed earlier, policy consideration was negated by this Court in *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust Vs. State of Tamil Nadu*, 1996 DGLS (soft) 327 : 1996 (3) S.C.C. 15 : JT 1996 (2) S.C. 692 as also in *Jaya Gokul Educational Trust*.

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74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new Bed colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-

education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

47. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infra-structure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases,

there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work *ad idem* as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist.

## JUDGMENT

48. The NCTE Act has been enacted by the Parliament with reference to Entry 66 of List I of Schedule VII of the Constitution. There is no such specific power vested in the State Legislature under List II of the Seventh Schedule. Entry 25 of List III of the Seventh Schedule is the other Entry that provides the field for legislation both to the State and the Centre, in relation to education, including technical education,

medical education and Universities; vocational and technical training and labour. The field is primarily covered by the Union List and thus, the State can exercise any legislative power under Entry 25, List III but such law cannot be repugnant to the Central law. Wherever the State law is irreconcilable with the Central law, the State Law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to professional education, including the teacher training programmes. In the case of *Medical Council of India v. State of Karnataka* [(1998) 6 SCC 131], the Court had the occasion to discuss this conflict as follows: -

“27. The State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like

medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the university or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its regulations. *It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college.* We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail. Teacher-student ratio prescribed is 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached hospitals.

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29. *A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10-A, 10-B and 10-C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29-9-1993 (though the notification is dated 20-9-1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities), has to apply to the Central Government for permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply."*

49. A Constitution Bench of this Court in the case of *Dr. Preeti Srivastava & Anr. v. State of Madhya Pradesh & Ors.* [(1999) 7 SCC 120], while dealing with the provisions of the Medical Council of India Act and referring to Entry 25 of List III and Entry 66 of List I with reference to the Articles 245, 246, 254 and 15(4) of the Constitution, spelled out the supremacy of the Council and the provisions of the Central Act, particularly in relation to the control and regulation of higher education. It also discussed providing of the eligibility conditions and qualifications and determining the standards to be maintained by the Institutions. The Court in paragraph 36 of the judgment held as under: -

**“36.** It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher

educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;
- (5) the calibre of the students admitted to the institution;
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7) adequate accommodation for the college and the attached hospital; and
- (8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.”

50. The principle of repugnancy and its effects were discussed by this Court in the case of *S. Satyapal Reddy v. Government of A.P.* (1994) 4 SCC 391, wherein it held as under:

“7. It is thus settled law that Parliament has exclusive power to make law with respect to any of the matters enumerated in List I or

concurrent power with the State Legislature in List III of the VIIth Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the entries in List III. If the said law is inconsistent with or incompatible to occupy the same field, to that extent the State law stands superseded or becomes void. It is settled law that when Parliament and the Legislature derive that power under Article 246(2) and the entry in the Concurrent List, whether prior or later to the law made by the State Legislature, Article 246(2) gives power, to legislate upon any subject enumerated in the Concurrent List, the law made by Parliament gets paramountcy over the law made by the State Legislature unless the State law is reserved for consideration of the President and receives his assent. Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and court would endeavour to give harmonious construction. The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the

law. The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Government and the Central Government in working the provisions of the Act. It is the State Government that operates the provisions of the Act through its officers. Therefore, sub-section (1) of Section 213 gives power to the State Government to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. By necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Government to man the Motor Vehicles Department. What was done by the Central Government was only the prescription of minimum qualifications, leaving the field open to the State Government concerned to prescribe if it finds necessary, higher qualifications. The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State. Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act. In the latter event, i.e., prescribing lesser qualifications, both the rules

cannot operate without colliding with each other. When the rules made by the Central Government under Section 213(4) and the statutory rules made under proviso to Article 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers of the State Government vis-a-vis the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act.”

51. In the case of *Jaya Gokul Educational Trust* (supra), the Court, while referring to the case of *State of Tamil Nadu v. Adhiyaman Educational and Research Institute* (supra), took the view that where the provisions of the State Act overlap and are in conflict with the provisions of the Central Act in various areas, the matters which are specifically covered under the Central Act cannot be undermined and they shall prevail. The court further stated that a provision in the Universities Act requiring the University to obtain merely the views of the State Government could not be characterized as requiring ‘approval’ of the State Government. If the University Statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act and would, therefore, be void.

52. In the case of *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (supra), the Court, while dealing with the provisions of the Act with which we are concerned in the present case, held that field of teachers' education and matters connected therewith stood fully and completely occupied by the Act and hence the State legislature could not encroach upon that field. In the case of *Engineering Kamgar Union v. Electro Steels Castings Ltd. and Anr.* [(2004) 6 SCC 36], the Court was dealing with a direct conflict between the two provisions of different Acts and stated that direct conflict arises not only where the provisions of one of the Acts has to be disobeyed if the other is followed but also where both laws lead to different results. Extending the doctrine of repugnancy to that situation, the Court held in paragraph 18 of the judgment that the Central Law shall prevail. The said paragraph reads as under: -

“18. In terms of clause (2) of Article 254 of the Constitution of India where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to the matters, then the law so made by the legislature of such State shall, if it has been reserved for

consideration of the President and has received its assent, prevail in that State. It is not in dispute that the 1983 Act has received the assent of the President of India and, thus, would prevail over any parliamentary law governing the same field.”

53. From the above consistent view of this Court it is clear that wherever the field is covered by the Parliamentary law in terms of List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void. Of course, there has to be a direct conflict between the laws. The direct conflict is not necessarily to be restricted to the obedience of one resulting in disobedience of other but even where the result of one would be in conflict with the other. It is difficult to state any one principle that would uniformly be applicable to all cases of repugnancy. It will have to be seen in the facts of each case while keeping in mind the laws which are in conflict with each other. Where the field is occupied by the Centre, subject to the exceptions stated in Article 254, the State law would be void.

54. In the present case, we are concerned with the provisions of the NCTE Act which is a Central legislation referable to Entry 66 of List I of the Seventh Schedule. Thus, no law enacted by

the State, which is in conflict with the Central Law, can be permitted to be operative.

55. Now, let us examine the conflict that arises in the present cases. In terms of the provisions of the Act, the Regional Committee is required to entertain the application, consider State opinion, cause inspection to be conducted by an expert team and then to grant or refuse recognition in terms of the provisions of the Act. Once a recognition is granted and before an Institution can be permitted to commence the course, it is required to take affiliation from the affiliating body, which is the University.

56. Thus, grant of recognition or affiliation to an institute is a condition precedent to running of the courses by the Institute. If either of them is not granted to the institute, it would not be in a position to commence the relevant academic courses. There is a possibility of some conflict between a University Act or Ordinance relating to affiliation with the provisions of the Central Act. In such cases, the matter is squarely answered in the case of *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (supra) where the Court stated that after coming into operation

of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It also observed that provision of the Universities Act regarding affiliation of technical colleges and conditions for grant of continuation of such affiliation by university would remain operative but the conditions that are prescribed by the university for grant and continuation of affiliation must be in conformity with the norms and guidelines prescribed by the NCTE.

57. Under Section 14 and particularly in terms of Section 14(3) (a) of the Act, the 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 the case of *Chairman, Bhartiya Education Society v. State of Himachal Pradesh & Ors.* [(2011) 4 SCC 527], this Court held that the purpose of recognition and affiliation is different. In the context of the Act, affiliation enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diploma 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 the NCTE while granting recognition.

58. 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 the 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.

59. In the case of *St. John Teachers Training Institute v. Regional Director, National Council for Teacher Education* [(2003) 3 SCC 321], this Court attempted to strike a balance between the role played by the NCTE, on the one hand and affiliating body and State Government, on the other. Once the affiliating body acts within the fundamentals of Section 14 of the Act, possibility of a conflict can always be avoided.

60. In these appeals, we are concerned with the colleges which are affiliated to different universities. Some of them are affiliated to Dr. Ram Manohar Lohia Avadh University, Faizabad, some to Dr. Bhimrao Ambedkar University, Agra while others to the University of Meerut. All these universities have been created by statutes and have their own ordinances. The Universities Act is the parent statute under which all these

universities have been constituted. Under Section 2(20) of the Universities Act, 'University' means an existing University or a new University established after the commencement of this Act in terms of Section 4 of this Act. Section 4 empowers the State Government to establish a university in the manner prescribed by its notification in the Official Gazette. The provision provides for establishment of different universities and which had, in fact, been already established. Chapter VII of the Universities Act deals with Affiliation and Recognition. Section 37(1) states that the section shall apply to different universities under which all the universities which are respondent in these appeals are covered. In terms of Section 37(2), the Executive Council may, with the previous sanction of the State Government, admit any college which fulfils such conditions of affiliation as may be prescribed, to the privileges of affiliation or enlarge the privileges of any college already affiliated or subject to the provisions of sub-section (8), withdraw or curtail any such privilege. It has further been provided that a college should substantially fulfill the conditions of affiliation in the opinion of the State Government, for it to sanction grant of affiliation to the college. In terms of Section 37(6), the

Executive Council of the university shall cause every affiliated college to be inspected from time to time at intervals not exceeding five years. Section 37(8) states that the privileges of affiliation of a college which fails to comply with any direction of the Executive Council under sub-section (7) or to fulfill the condition of affiliation may, after obtaining the report from management of the college and with previous sanction of the chancellor, be withdrawn or curtailed by the Executive Council in accordance with the provisions of the Statutes. In terms of Section 37(10), a college which has been affiliated is entitled to continue the course of study for which the admissions have already taken place. To give an example, under the statute of the Meerut University, affiliation of new colleges is dealt with under statute 13.02 to 13.10 of Chapter XIII. This requires that every application for affiliation of a college has to be made so as to reach the Registrar in less than 12 months before the commencement of the course and before an application is considered by the Executive Council, the Vice-Chancellor must be satisfied that there is due compliance with the provisions of statutes 3.05, 13.06 and 13.07. Besides, it requires the conditions like adequate financial resources, suitable and

sufficient building, adequate library, two hectares of land, facilities for recreation of students, etc. to be fulfilled. The constitution of the Management of every college has also been provided.

61. The fields which are sought to be covered under the provisions of Section 37 of the Universities Act and the Statutes of various universities are clearly common to the aspects which are squarely covered by the specific language under the Act. That being so, all State laws in regard to affiliation in so far 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 the 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 the NCTE's directions. To give an example, existence of building, library, qualified staff, financial stability of the institution, accommodation, etc. are the subjects which are specifically covered under Section 14(3)(b) of the Act. Thus, they would not be open to re-examination by the State and the University.

If the recognition itself was conditional and those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform the NCTE forthwith of the shortcomings and non-compliance of the conditions. In such situation, both the Central and the State body should act *in tandem* and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation. But certainly, the State Government and the University cannot act in derogation to the NCTE.

62. Now, we may deal with another aspect of this very facet of the case. It is a very pertinent issue as to what the role of the State should be after the affiliation is granted by the affiliating body. We have already discussed that the State opinion, as contemplated under Section 37 of the University Act, to the extent it admits to overreach, is reconcilable and its results are not in its orientation to the directives of the NCTE are void and inoperative to the extent they can be resolved in which case clear precedence is to be given to the directives of the NCTE during such resolution. The opinion of the State, therefore, has

to be read and construed to mean that it would keep the factors determined by the 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 non-infringing.

63. 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 are 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 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 viz-a-viz the State Government as well as the affiliating body. Normally, these questions cannot be re-agitated 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 life of the students working in the school because of non-compliance of 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.

64. In the case of *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* (supra), the view of this Court was that the State Government has no role whatsoever. However, in the case of *Bhartia Education Society* (supra), it was stated that the

role of the State Government was limited to the manner of admission, eligibility criteria, etc. without interfering with the conditions of recognition prescribed by the NCTE. The exercise of discretion by the State Government and affiliating body has to be within the framework of the Act, the Regulations and conditions of recognition. Even in *St. John Teachers Training Institute* (supra), the Court stated that the State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the NCTE while considering application for grant of 'No Objection Certificate'. Minimization of the role of the State at the second stage can also be justified on the ground that affiliation primarily is a subject matter of the University which is responsible for admission of the students laying down the criteria thereof, holding of examinations and implementation of the prescribed courses while maintaining the standards of education as prescribed.

65. Lastly, the question which is required to be discussed in light of the facts of the present cases is adherence to the Schedule. Once the relevant Schedules have been prescribed under the Regulations or under the Judge made law, none, whosoever it be, is entitled to carve out exceptions to the

prescribed Schedule. Adherence to the Schedule is the essence of granting admission in a fair and transparent manner as well as to maintain the standards of education. The purpose of providing a time schedule is to ensure that all concerned authorities act within the stipulated time. Where, on the one hand, it places an obligation upon the authorities to act according to the Schedule, there it also provides complete clarity to other stakeholders as to when their application would either be accepted and/or rejected and what will be the time duration for it to be processed at different quarters. It also gives clear understanding to the students for whose benefit the entire process is set up as to when their examinations would be held, when results would be declared and when they are expected to take admission to different colleges in order of merit obtained by them in the entrance examinations or other processes for the purposes of subject and college preference.

66. We are constrained to reiterate with emphasis at our command that the prescribed schedules under the Regulations and the judgments must be strictly adhered to without exceptions. None in the hierarchy of the State Government, University, NCTE or any other authority or body involved in this

process can breach the Schedule for any direct or indirect reason. Anybody who is found to be defaulting in this behalf is bound to render himself or herself liable for initiation of proceedings under the provisions of the Contempt of Courts Act, 1971 as well as for a disciplinary action in accordance with the orders of the Court. In the case of *Parshavanath Charitable Trust & Ors. V. All India Council for Technical Education & Ors.* (Civil Appeal @ SLP(C) 26086 of 2012), decided on the same date, this Court held as under :

“29... Time schedule is one such condition specifically prescribed for admission to the colleges. Adherence to admission schedule is again a subject which requires strict conformity by all concerned, without exception. Reference in this regard can be made to *Ranjan Purohit and Ors. V. Rajasthan University of Health Science and Ors.* [(2012) 8 SCALE 71] at this stage, in addition to the judgment of this Court in the case of *Medical Council of India v. Madhu Singh*, [(2002) 7 SCC 258].”

67. Undoubtedly, adherence to Schedule achieves the object of the Act and its various aspects. Disobedience results in unfair admissions, not commencing the courses within the stipulated time and causing serious prejudice to the students of higher merit resulting in defeating the rule of merit.

68. We may very clearly state here that we adopt and reiterate the Schedule stated by this Court in the case of *College of Professional Education* (supra) in relation to admission as well as recognition and affiliation. This obviously includes the commencement of the courses in time. However, in order to avoid the possibility of any ambiguity, we propose to state the schedule for recognition and affiliation in terms of the NCTE Regulations 2009 and the judgment of this Court in the case of *College of Professional Education* (supra) :

69. The process for grant of recognition, affiliation and thereby sanctioning of commencement of the courses in terms of the Regulations and the orders of this Court gives an outer period of approximately 270 days, i.e. 9 months, from 1<sup>st</sup> September to 10<sup>th</sup> May of the year immediately preceding the concerned academic year. Thus, for the entire process to be within this framework, it must be completed within the afore-stated period. The process *inter alia* includes various steps including comments of the State, inspection of the institution and compliance of the various conditions afore-noted in the order of recognition and affiliation by the affiliating body.

70. There appear to be some over-lapping periods and even contradictions between the dates and periods stated under the regulations *inter se* and even with reference to the judgments of this Court prescribing the Schedule. For example in terms of the judgment of this Court in the case of *College of Professional Education* (supra), the last date for grant of affiliation is 10<sup>th</sup> May of the concerned year, but as per Regulation 5.5 of the NCTE Regulations, 2009, the last date for grant of recognition is 15<sup>th</sup> May of the relevant year. Similarly, there is an overlap between the period specified in Regulation 7.1 and that under Regulation 7.2. Such overlapping is likely to cause some confusion in the mind of the implementing authority as well as the applicant. Thus, it is necessary for this Court to put to rest these avoidable events and unnecessary controversies. Compelled with these circumstances and to ensure that there exists no ambiguity, uncertainty and confusion, we direct and prescribe the following schedule upon a cumulative reading of the Regulations and judgments of this Court in relation to recognition and affiliation.

### **Schedule**

1.	Submission of applications	1 <sup>st</sup> September to 1 <sup>st</sup>
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	for recognition in terms of Regulation 5.4	October of the year immediately preceding the relevant academic year
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
3.	Removal of such deficiencies by the applicant	Within 60 days from the date of receipt of communication
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
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.
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.
7.	State Government/UT Administration shall furnish the recommendations/	Within 15 days from the date of receipt of such reminder letter

	comments	
8.	Intimation regarding inspection by the Regional Committee to the applicant under Regulation 7(4)	Within 10 days from final scrutiny of the application.
9.	Report by the Inspection Committee under Regulation 7(5)	20 days thereafter
10.	Letter of intent to the institution with respect to grant or refusal of recognition in terms of Regulation 7.9	10 <sup>th</sup> of February of the succeeding year/relevant year
11.	Time to comply with certain specified conditions, in terms of Regulation 7(10) and 7(11)	20 days from the date of issuance of letter of intent
12.	Issuance of formal order of recognition	By 3 <sup>rd</sup> March of each year
13.	Last date for submitting proposal for affiliation	By 10 <sup>th</sup> March of each year
14.	Forwarding of proposal by the University to the State Government/UT Administration after inspection by expert team	By 10 <sup>th</sup> March of each year
15.	Comments to be submitted by the State Government/UT Administration, if any	By 10 <sup>th</sup> March of each year
16.	Final date for issuance/grant of affiliation for the relevant academic year	By 10 <sup>th</sup> March of each year

- All notices/orders/requirements/letters in terms of the above schedule or under the provisions of the Act or

terms and conditions of already granted recognition/affiliation shall be sent by the authority concerned by Speed Post/e-mail on the address given in the application for correspondence etc. and shall be posted on the website of the concerned Authority/Committee/Council/ Government.

- The recognition and affiliation granted as per above schedule shall be applicable for the current academic year. For example recognition granted upto 3rd March, 2013 and affiliation granted upto 10<sup>th</sup> May, 2013 shall be effective for the academic year 2013-2014 i.e. the courses starting from 1<sup>st</sup> April, 2013. For the academic year 2013-2014, no recognition shall be issued after 3<sup>rd</sup> March, 2013 and no affiliation shall be granted after 10<sup>th</sup> May, 2013. Any affiliation or recognition granted after the above cut-off dates shall only be valid for the academic year 2014-2015.
- 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.

71. 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 fulfillment 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. 10<sup>th</sup> 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 exceptions to this mandatory direction.

72. Coming to the cases where the plea has been taken by the respondents University/State that conditions of affiliation have not been satisfied. It is not for this Court to examine the compliance or breach of conditions and their extent in the special leave petitions or writ petitions as the case may be. In fact, the judgment of the High Court has been brought to our notice where it has been recorded that conditions in some cases have been complied with, but still the State has taken the stand that besides cut-off date, other conditions are also not satisfied. One of the examples relates to the matter where the State/affiliating body has found that even the building's boundary wall was not complete and the fire equipments have not been installed as prescribed. However, these were specifically disputed by the petitioners/appellants who contended that all conditions had been satisfied. Thus, these are disputes of very serious nature. They will squarely fall beyond the ambit of appellate or writ jurisdiction by this Court. This is for the specialised bodies to examine the matters upon

physical verification and to proceed with the application of the institute in accordance with law.

73. We may mention that firstly vide order dated 26<sup>th</sup> July, 2012 a stay in regard to counseling and admission was granted by this Court. However, this order was varied again by order dated 27<sup>th</sup> September, 2012 which reads as under:-

“By our interim order dated 26th July, 2012, we had, while taking note of the fact that counselling for vacant seats in B.Ed. Course for different private colleges in the State of Uttar Pradesh was scheduled from 27th July, 2012 to 26th August, 2012, directed that the counselling will not be held for the time being.

On 25th September, 2012, after hearing writ petition and all other connected matters, we had called upon the Universities to file an affidavit on the issue whether the students admitted to the institution which had already been affiliated will be able to complete the course during the academic session as per the Regulations of the NCTE if the interim order is vacated or modified now.

Pursuant to the aforesaid orders passed on 25th September, 2012, an affidavit has been filed on behalf of respondent No. 2 - Dr. Ram Manohar Lohia Awadh University and it is inter alia stated therein that if the vacancies in the seats in different private colleges which are affiliated are filled up and students are admitted, the University will still be in a position to complete the mandatory requirements of

200 days as per the NCTE norms and Regulations, since the examinations for the last academic session 2011-12 have commenced from the second week of September, 2012 only. Along with the affidavit, a chart has been annexed to indicate that there were 13,435 vacant seats in self-financing colleges which are affiliated to the concerned Universities comprising 2762 vacant seats in the Arts and Commerce Stream and 10,673 seats in Science and Agriculture.

Considering the aforesaid facts stated in the affidavit filed on behalf of respondent No. 2, we vacate the interim and permit the authorities to fill up the vacant seats in B.Ed. Course in different self-financing colleges which have already been granted affiliation as well as Government and Government aided Colleges. But we make it clear that the authorities will ensure that the students are admitted strictly as per the procedure that has been already notified on the basis of merit in the entrance examination and fresh counselling will take place after a fresh advertisement in the newspapers having circulation in the State of Uttar Pradesh and in the internet. The authorities will also ensure that the students admitted complete the mandatory period of 200 days' course in the B.Ed. as per norms of the NCTE.

The matters are reserved for judgment.”

74. In furtherance to the above order, we are informed that the admissions had been granted in the recognised and affiliated institutes. In the colleges which were neither recognised nor affiliated, whether or not included in the list of

counseling, no admissions were given to the students. The petitioner/appellant colleges fall in that category. We do not propose to grant any relief to them in the present writ petitions and appeals except issuance of certain directions. Consequently and in view of our above discussion, we dispose of all these appeals/writ petitions with the following directions:-

- A) The schedule stated in the case of *College of Professional Education* (supra) and in this judgment in relation to admissions, recognition, affiliation and commencement of courses shall be strictly adhered to by all concerned including the NCTE, the State Government and the University/examining body.
- B) 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 concerned person 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.
- C) We hereby direct the NCTE/ State Government/ Examining or affiliating body to consider the

applications and pass appropriate orders granting or refusing to grant recognition/affiliation to the petitioner institutions within three months from today.

D) If the institutions are aggrieved from the order passed by the authorities in terms of clause 'C' (supra), they will be at liberty to challenge the same in accordance with law.

E) The NCTE shall circulate the copy of this judgment to all Regional Committees, concerned State Governments and all affiliating bodies and also put the same on its website for information of all stakeholders and public at large.

F) The interim order dated 27<sup>th</sup> September, 2012 is made absolute.

75. All the writ petitions and appeals are accordingly disposed of, however, leaving the parties to bear their own costs.

.....J.  
(A.K. Patnaik)

.....J.  
(Swatanter Kumar)

New Delhi;  
December 13, 2012.

SUPREME COURT OF INDIA



JUDGMENT