

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17078 of 2003

with

SPECIAL CIVIL APPLICATION Nos 17382 and 17383 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VIDYADHAN CHARITABLE TRUST THROUGH TRUSTEE

Versus

NATIONAL COUNCIL FOR TEACHERS EDUCATION

Appearance:

1. Special Civil Application No. 17078 of 2003
MR AJ SHASTRI for Petitioner No. 1
MR PK JANI for Respondent No. 1
Ms NANDINI JOSHI, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 26/12/2003

COMMON ORAL JUDGEMENT

Rule. Mr PK Jani, learned counsel waives service of Rule for respondent No.1. Ms Nandini Joshi, learned AGP is directed to waive service of Rule for respondent Nos. 2 and 3. Accordingly, service of Rule is waived on behalf of all the respondents.

In the facts and circumstances of the case, the petitions have been taken up for final disposal and the arguments have been heard on three dates.

2. These three petitions are filed by three separate educational institutions which had applied to the National Council for Teacher Education ("the NCTE" for short) for recognition of PTC courses (for imparting instructions in Primary Teacher Certificate Courses) in December 2002. All of them have been granted recognition by the Regional Director, Western Regional Committee ("WRC" for short) of the NCTE by order dated November 5/7, 2003 for the PTC courses for the academic session 2004-05 subject to the condition that the college will submit the list of staff/faculty duly approved by the Director of Primary Education before the commencement of the academic session. It is further stated therein that the formal order of recognition will be issued after the receipt of the list by the WRC, NCTE, Bhopal. The petitions are filed with prayers for appropriate writ, order or direction to direct respondent No.1-NCTE to recognize the petitioner-institutions for the PTC courses for the current academic session i.e. 2003-04 also.

Ordinarily, a petition with such a prayer would not have been entertained and that too in the month of December, but the petitioners have pointed out that -

(i) on account of litigations before this Court, admissions to the PTC colleges all over the State of Gujarat did not commence before November, 2003, applications were invited in November 2003, and the last round of admissions was going on even in the last week of December, 2003.

(ia) Non-recognition of the petitioner-institutions for the year 2003-04 is not on account of any inadequacies either in infrastructure, facilities or teaching/non-teaching staff, but only because of communication gap between the two respondent authorities and for certain alleged procedural delays for which the petitioner-institutions are not at fault. The cases of the petitioners in Special Civil Application Nos. 17382 and 17383 of 2003 were not considered for the year 2003-04 only on the ground that the documents were not submitted by them within the stipulated time limit of 15.3.2003. The petitioners have pointed out that when they reached Bhopal on 14.3.2004, they found that the office of the NCTE was closed

on account of public holidays on 14th, 15th and 16th March, 2003 and, therefore, the documents were submitted on 17.3.2003, but subsequently in May/June 2003 the NCTE asked for original documents of which attested true copies were given on 17.3.2003. In none of these three cases the NCTE has pointed out any inadequacies on the ground that the petitioner-institutions do not meet with the standards laid down by the NCTE.

(ii) The Director of Primary Education had granted the certificate approving the teaching staff of the three petitioner-institutions on 19.5.2003, 1.8.2003 and 11.8.2003 respectively.

(iii) Another similarly situate institution called "Samast Patidar Education Trust, Karamsad" in Anand District had also applied alongwith the petitioners in December, 2002, but by the letter issued just two days earlier i.e. on November 3, 2003, the said institution has been granted recognition by NCTE (respondent No.1) for the PTC course for the academic session 2003-04 subject to the condition that the college will produce the list of staff/faculty duly approved by the Director of Primary Education before commencement of the academic session and that the formal order of recognition will be issued only after receipt of the list by NCTE.

In the said institution no students were enrolled till November, 2003 and it is only in December, 2003 that the said college has admitted students and teaching has commenced in the said college only around 15th December, 2003.

(iv) About Rs.70 to 80 lakhs have been invested by the petitioner-trusts in order to see that the PTC courses can be run from the year 2003-04. The arrangements for building, machinery, computers etc. are not only ready since long, but they have been specifically verified by the inspection team of the NCTE in September, 2003. The inspection team of the NCTE was satisfied that all the requisite arrangements were made for commencing PTC course from 2003-04 including appointment of teaching staff.

(v) Although the entire infrastructure is ready in all the three petitioner-institutions, staff and

teaching as well as non-teaching staff are appointed and the institutions have incurred capital expenditure to the tune of about Rs.70 to 80 lakhs and monthly salaries are being paid by each of the petitioner-institutions.

(vi) Apart from the impugned decision requiring the petitioners to keep such huge investments idle for one academic year, there is dearth of PTC colleges in the State and thousands of applicants are still waiting for admissions to the PTC course, out of whom atleast 150 students can be granted admissions to the PTC colleges to be run by the three petitioner-institutions, that is, 50 in each college as per the intake sanctioned.

(vii) Primary schools in rural areas without teachers will be able to get 150 more qualified teachers upon completion of the course, if the petitioner-institutions are permitted to commence the academic sessions from 2003-04.

3. The facts leading to filing of Special Civil Application No. 17078 of 2003, which are illustrative of these three petitions, are as under (particulars of the other two petitions are also given where similar) :-

3.1 In December, 2002, the State Government issued No Objection Certificates to the petitioner-institutions for obtaining recognition from the NCTE. By the end of December, 2002, all the petitioners submitted applications to the NCTE for recognition of their PTC courses for the academic sessions 2003-04 onwards. Admittedly, the Regional Director, WRC, NCTE received the applications from the petitioners by 31.12.2003 and acknowledged receipt of the applications and granted them Code Nos. being APW00031/322081/3405, APW00217/322099/09598 and APW00224/322099/09598.

3.2 By letter dated 27.1.2003, the NCTE called upon the petitioners (SCA 17078/03) to furnish certain particulars which were as under :-

1. No Objection certificate issued by the
State Govt./UT Administration in
original.
2. Legally valid Land Documents and evidence
pertaining to ownership of land or
building.

3. Copy of the approved building plan.

On 5.3.2003, the petitioner-institution supplied all the particulars to the Office of the Regional Director, WRC, NCTE personally through the representative of the petitioner-institution. On 10.3.2003, the petitioner-institution also sent sworn affidavit as per the requirement.

3.3 The Regional Director, WRC, NCTE sent letter dated 10.3.2003 to the petitioner-institution calling upon them to supply land documents.

Mentioning that the letter dated 10.3.2003 of the NCTE was despatched by the NCTE, Bhopal on 15.3.2003 and was received by the Surat Post Office on 22.3.2003 (as the two dates were legible on the postal stamps on the envelope containing the letter of the NCTE), on 24.3.2003 (23.3.2003 being Sunday), the petitioner sent a letter to the NCTE at Bhopal with the registered land documents as demanded and submitted the same personally on 25.3.2003.

3.4 On 17.7.2003, intimation was sent for site inspection by the inspection committee of NCTE. In response to the same, on 26.7.2003 the petitioner of Special Civil Application No. 17078 of 2003 informed the WRC, NCTE, Bhopal that everything was ready and the inspection team could come down to the college any time for inspection.

The staff profile list for the teaching staff of the three petitioner-institutions was approved by the Director of Primary Education, State of Gujarat on 1.5.2003, 1.8.2003 and 18.8.2003 respectively.

On 22.5.2003, the petitioners submitted to NCTE, Bhopal the staff profile approval list certified by the Director of Primary Education on 19.5.2003 alongwith the the petitioner's letter dated 20.5.2003.

In September 2003, the inspection team of NCTE visited the three colleges and noted that the approved teaching staff was appointed in each college.

3.5 On 5/7.11.2003, the NCTE sent a communication to the petitioner-institutions that the recognition is granted for the PTC courses for the year 2004-05 subject to production of the staff approval list.

Hence, the petitioners have filed the present

petitions on 20/21.11.2003.

4. The factual aspects regarding alleged deficiencies in Special Civil Application No. 17382 of 2003 will be narrated and discussed separately.

5. Similarly, the facts regarding alleged deficiencies in Special Civil Application No. 17383 of 2003 will also be narrated and discussed separately.

6. The contentions raised in the petitions are that-

6.1 The petitioners had applied for recognition for the academic year 2003-04 onwards well in time in December, 2002. The State government NOCs were also for the year 2003-04 and were submitted to NCTE in December 2002. The information that the NCTE required by letter dated 27.1.2003 was furnished well within the time on 5.3.2003. It was only on 22.3.2003 that the petitioners received the intimation from the NCTE that the documents for lease of land on which the building was constructed was required to be a registered lease deed and, therefore, 23.3.2003 being a Sunday, on 24.3.2003 itself the lease deed was registered and personally delivered to the NCTE on 25.3.2003. Hence, the petitioners had complied with all the requirements regarding infrastructure well within the time limit to be in a position to commence the academic session 2003-04.

Similarly the other two petitioner-institutions also removed the so called defects as soon as the same were brought to their notice.

6.2 Even when the inspection team of the NCTE visited the college in September, 2003, they had found everything in order and no queries were raised. In fact, the inspection team had also noted that the teaching staff was appointed and the approval given by the Director of Primary Education was also shown to the inspection team. If anything was missing, the inspection team would have referred to any such inadequacies.

6.3 Even the institution called Samast Patidar Education Trust of Karamsad in Anand District with Code No.322138 (whose application was received after the petitioners' application) was also informed by letter dated 3.11.2003 about recognition for 2003-04 subject to the condition that the said institution would supply the list of teaching staff approved by the Director of Primary Education. Hence, there is no ground or deficiency whatsoever for not granting the petitioners

recognition for the year 2003-04.

6.4 When everything is ready and recognition is being granted for the academic sessions 2004-05 onwards, there is no reason for not granting recognition for the year 2003-04 when the above named institution has been granted recognition for the current year as well and when it is possible for the petitioner-institutions to commence imparting instructions in the PTC course because the abovenamed college has also commenced imparting instructions from around 15th December, 2003, The admission process in all other PTC colleges in the State started after applications were invited from students in November 2003.

7. In response to the notice issued by this Court, affidavit in reply dated 22.12.2003 has been filed on behalf of the NCTE in each of the three petitions on the following lines :-

7.1 According to Clause 3 of the Regulations framed under the NCTE Act, the application for recognition must be submitted before 21.12.2002 for being considered for the academic sessions 2003-04 alongwith eight essential documents described in the prescribed application form. The petitioners in the three petitions had not submitted all the essential documents - in Special Civil Application No. 17078 of 2003, marked as Appendices (ii), (iii) and (iv); in Special Civil Application No. 17382 of 2003 marked as Appendices (ii), (iii), (iv), (v), (vi) and (viii) and in Special Civil Application No. 17383 of 2003 marked as Appendices (ii), (iii), (iv), (v) and (viii). However, the Chairman of the NCTE exercised his powers under Rule 7 of the Rules and allowed the institutions to remove the defects and to complete the applications for recognition till 15.3.2003 so that the applications could be considered for the academic session 2003-04. Such a general decision was taken on 10.1.2003 (Annexure "R-1/3"). The petitioners were accordingly informed vide letter dated 27.1.2003 to cure the defects, but the petitioners cured the defects after 15.3.2003 (SCA No. 17078/03 24.3.2003, SCA 17383/03 11.5.2003 and SCA 17383/03 13.6.2003). Hence, the applications were taken to have been submitted on the above dates and, therefore, considered for the academic session 2004-05.

7.2 After verification of infrastructure of the petitioners in September, 2003, the NCTE was satisfied about fulfillment of the prescribed norms and standards except the qualifications of academic and other staff and the terms and conditions of service of staff. For

satisfaction on the above aspects, the NCTE needed feed back of the State Government. Accordingly the NCTE issued letters dated 5.11.2003 to the Director of Primary education, State of Gujarat. The letters have been wrongly taken by the petitioners as the orders of recognition for the year 2004-05. In fact, the matters are still at the investigation stage and only after receipt of the reports from the Director of Primary Education in response to the above letters dated 5.11.2003, the matter of recognition shall be considered by the WRC, NCTE. It is only after the WRC, NCTE is satisfied that the petitioners have complied with all the norms and standards as stated in Clause 9 of the Regulations that the WRC, NCTE will get the jurisdiction to grant the recognition. If any recognition is granted, it will be effective from the academic sessions 2004-05 because the application for recognition were submitted on 24.3.2003/11.5.2003/13.6.2003 respectively.

8. Affidavits in reply dated 23.12.2003 have also been filed by the Deputy Director of Education, Gujarat State wherein it is stated that as per the NCTE Act, staff profile certificate approving the staff is required to be issued by the District Primary Education Officer. For issuance of such certificate, the petitioner-institution in Special Civil Application No.17078/03 sent a proposal of staff profile and the Office of the Director of Primary Education received the same on 17.5.2003. As the details sent by the petitioners were in consonance with the norms laid down by the NCTE, the Director of Primary Education issued staff profile certificate on 19.5.2003. A copy of the certificate is produced at Annexure I to the reply affidavit. It is further stated in the affidavit that as per the practice, the original certificate of staff profile is sent to the concerned institution, which in turn forwards it to the NCTE alongwith the application form for recognition. In each of the other two institutions, the staff profile certificates were issued on 1.8.2003 and 11.8.2003 respectively and copies thereof are annexed with the affidavit of the Deputy Director. The Deputy Director has further pointed out a few difficulties which are likely to arise if the three petitioner-institutions are permitted to commence academic session for the current year, which shall be referred to hereinafter.

9. At the hearing of the petitions, Mr AJ Shastri, learned counsel for the petitioners has submitted that-

9.1 the entire chain of events makes it clear that

the petitioners had done everything within their means to make all necessary arrangements for commencement of the PTC course from the academic session 2003-04. The petitioners removed the alleged deficiencies before 15th March, 2003 and if the NCTE subsequently required further details, the same were immediately supplied.

9.2 In fact, when the inspection team visited the colleges in September, 2003, all the entire infrastructure and other facilities were ready and the teaching staff was also appointed as per the endorsements made by the inspection team. Even the Director of Primary Education had approved the teachers' list as far back as on 19.5.2003 (SCA No.17078/03) and on 1.8.2003 and 11.8.2003 in the other two petitions, and the inspection team was also informed about the same by each institution.

9.3 When another institution which had applied after the petitioners and, therefore, given the later Code No. has been granted recognition just two days earlier i.e. on 3.11.2003 with effect from the current academic session 2003-04, there is no reason for not according the same treatment to the petitioners. Even in case of the said institution i.e. Samast Patidar Education Trust of Karamsad in Anand District, the Regional Director's letter to the Director of Primary Education and a copy endorsed to the Principal of the college reads that the recognition is granted subject to the condition that the college will submit the list of staff/faculty duly approved by the Director of Primary Education before the commencement of the academic session. It is, therefore, clear that even in case of such institution, the certificate of the Director of Primary Education was not received by the NCTE. Hence, the petitioner-institutions have been meted out discriminatory treatment in violation of their fundamental rights.

9.4 If the petitioners are not permitted to run the PTC course from the current academic year, not only the investments of Rs.70 to 80 lacs made by each of the petitioners will remain idle for one year, but 150 students of Gujarat who are seeking admissions to PTC course out of about one lakh applicants will be deprived of training in PTC course and this loss will be permanent because the seat intake will remain limited for years to come.

10. On the other hand, Mr PK Jani, learned counsel for the NCTE has submitted that -

10.1 The matter of recognition is covered by the statutory provisions called "NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 as amended by the Amendment Rules of 2003. As per Regulation 7, the application for recognition to start a course or training in teacher education is required to be made on or before 31st December for the course proposed to be commenced in the next academic session.

It is submitted that since the petitioners had not submitted all the documents alongwith the application by 31.12.2002, there was no valid application. However, such time limit was extended by the Chairman, NCTE till 15.3.2003 for the limited purpose of removing the defects. Since the petitioner in SCA No. 17078/03 submitted the registered lease dated dated 24.2.2003 only on 25.3.2003, it cannot be said that the application was complete in all respects before 25.3.2003 i.e. the duly completed application alongwith the documents could be stated to have been submitted on 25.3.2003 and not by 15.3.2003. Similarly the other institutions removed their defects on 11.5.2003 and 13.6.2003 respectively. Hence, the petitioners have no right to make any claim for commencement of the course from the academic sessions 2003-04.

10.2 The NCTE had not received the certificates from the Director of Primary Education about the teaching staff appointed by the petitioner-institutions. Hence, recognition for the course from the year 2004-05 was made conditional upon production of such certificate by each institution. The NCTE had not received any certificate from the Director of Primary Education till the filing of these petitions and, therefore, there is no illegality or arbitrariness on the part of the NCTE in not granting the petitioner-institutions recognition for the academic year 2003-04.

10.3 If other institutions had removed the defects in their applications by 15.3.2003, their cases were considered for recognition for 2003-04. Hence, there is no discrimination.

10.4 If admissions are granted at this late stage, syllabus would not be completed.

11. As far as the State Government and the Director of Primary Education are concerned, Ms Nandini Joshi,

learned AGP has stated that the Director of Primary Education does not send the certificates for approval of the staff i.e. staff profile certificate directly to the NCTE, but such a certificate is sent to the concerned institution and the institution is required to forward the same to the NCTE. It is further stated that in the past, the NCTE has never raised any objection that it has not received the staff profile certificate directly from the Director of Primary Education as the consistent practice is that such certificates are sent by the Director of Primary Education to the concerned institutions which in turn forward the same to the NCTE.

It is further stated that this year on account of various litigations, for the centralized admissions to the PTC colleges (Government colleges, Government unaided colleges and self-financed colleges) applications were invited in November, 2003 and the last round of admissions has been completed on 24.12.2003. It is also stated that admissions to the PTC college of Samast Patidar Education Trust of Karamsad were given in December, 2004. It is also stated that normally the Director of Primary Education gives the advertisement inviting applications from students and fifteen days' time is required to be given for making applications. If there is delay in commencement of academic session, it may not be possible to complete the teaching.

12. Before dealing with the rival submissions, a brief reference may be made to the relevant statutory provisions. Under Sections 14 and 15 of the NCTE Act read with Section 32 thereof, the NCTE has made the "NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 which lay down detailed procedure. Regulation 3 provides that an application for grant of recognition of/permission such as PTC course shall be submitted to the Regional Committee concerned in the form given in Appendix 1A; the list of essential documents to be attached to the application shall be as given in Appendix 1B; the land title certificate by a local practicing lawyer shall be submitted as per the format at Appendix 1C; an undertaking on a non-judicial stamp paper shall be submitted as per the format at Appendix 1D. The application shall be submitted in triplicate, with copies of all enclosures. Regulation 6 prescribes the requirements of No Objection Certificate from the State Government.

[There is no dispute about such No Objection Certificate having been granted by the State Government to all the institutions in December, 2002].

Regulation 7 provides for time limit of 31st December for making application for recognition for a course which is to commence next year. Regulation 8 prescribes the norms and standards for various teacher education programmes including those for elementary teacher education program in Appendix 5. Regulation 9 prescribes the conditions of recognition which read as under :-

"9. Conditions of recognition.

The Regional Committee, before passing an order for grant of recognition/permission under Section 14 or Section 15 of the Act, shall satisfy itself, on the basis of scrutiny and verification of facts as contained in the application for recognition/grant of permission and/or inspection of the institution, where considered necessary or any other manner deemed fit, that the institution fulfills the Norms and Standards laid down for the relevant teacher education course as given in the Appendices 3 to 14 of these Regulations."

Appendix-1B contains the following List of Documents :-

List of Essential Documents

Application for grant of recognition including permission for additional intake should be submitted in triplicate in the format given at Appendix 1A to the concerned Regional Committee alongwith the following essential documents.

- (i) Prescribed Application fee
(non-refundable) in the form of a crossed Demand Draft drawn in favour of the concerned Regional Committee, NCTE payable at the place of the Regional Committee concerned.
- (ii) "No Objection Certificate" from the State Govt./UT Administration (in original).
- (iii) Copies of valid land documents alongwith a "Land Title Certificate" by a local

practising lawyer (as per the format at
Appendic-1C).

(iv) Copy of Approved Building Plan.

(v) Fixed deposit receipt in original for
Rs.5.00 lacs (Rupees five lacs only)
towards endowment fund.

(vi) A copy each of the Certificate of
Registration, Memorandum of Association
and Bye-laws in case the institution is
managed by a Society/Trust/Board.

(vii) Undertaking in non-judicial stamp paper
(As per the format at Appendix-1D).

(viii) A sworn affidavit verifying the contents
given in the application form and the
documents attached therewith. The
affidavit must be attested through a
First Class Magistrate/SDM/ADM.

Note : (1) If the application is found
incomplete i.e. without all the
essential documents, the
institution may be asked to make
good deficiencies in the
application on or before the last
date prescribed in the
regulations.

(2) In the event when deficiencies in
an application get removed only
after the last date, the
application of institution shall
be carried forward by the
Regional Committee for
consideration for the subsequent
academic year i.e. for the course
that would be offered on year
later."

13. In case of the petitioner in SCA No.17078/03,
according the NCTE, the application was incomplete as the
documents at Appendices (ii), (iii) and (iv) were not
received alongwith the application received on
30.12.2002. However, there is no dispute about the fact
that the no objection certificate from the Director of
Primary Education and the copy of the approved building
plans were admittedly received before 15.3.2003. The

deficiency only remained in respect of the valid land documents although even those documents were supplied on 10.3.2003. It appears that the lease deed for the land on which the entire building was constructed was not registered lease deed and, therefore, the NCTE raised a query. Unfortunately, that letter dated 10.3.2003 was despatched on 15.3.2003 and was received by the petitioners on 22.3.2003 and 23.3.2003 was a Sunday, hence the petitioner-institution got the lease deed registered on 24.3.2003 and submitted the same to the NCTE on 25.3.2003. When the Chairman of the NCTE had already extended the time limit for removing the defects till 15.3.2003 and all the documents were furnished personally to the NCTE on 5.3.2003 and the undertaking on affidavit was also furnished on 10.3.2003; only if the NCTE administration had been a little more responsive to the petitioner-institution and called upon them to supply the registered lease deed; only if the administrative officers of the NCTE had called up the petitioners either on 5.3.2003 or 10.3.2003 or sent any communication by fax or telephone, the petitioners would have been able to submit their registered lease deed by 15.3.2003. It is surprising as to why the NCTE having extended the time limit till 15.3.2003 did not care to find out whether the letter dated 10.3.2003 asking for the registered lease deed was despatched immediately so as to give the applicant atleast three days' time. Atleast on 25.3.2003 when the applicant submitted the registered lease deed alongwith the letter specifically stating that the NCTE letter dated 10.3.2003 was despatched from Bhopal on 15.3.2003 and was received at Surat on 22.3.2003 and 23.3.2003 was a Sunday and, therefore, the lease deed was registered on 24.3.2003 and was submitted to the NCTE on 25.3.2003, the NCTE ought to have considered the application of the petitioners for granting recognition for the academic year 2003-04 as the petitioner cannot be blamed or penalized for the delay in despatch of the NCTE letter dated 10.3.2003 from Bhopal on 15.3.2003 and for one week's time taken by the postal department for delivering the letter to the petitioner at Surat on 22.3.2003.

Hence, the inaction on the part of the NCTE in not considering the petitioner's application for the year 2003-04 has to be considered as unreasonable and not in keeping with the object with which the NCTE has been established.

14. In Special Civil Application No.17383 of 2003 filed by Ekta Trust in Sabankantha district for establishing a PTC college at village Navi Metral in

Sabarkantha district, the petitioner had submitted the application along with the State Government NOC in December 2002 to the NCTE. Thereafter, it also received the NCTE letter dated 27.1.2002 calling for the following documents :-

- "(1) No objection certificate issued by the
State Govt./UT Administration in
original.
- (2) Legally valid Land Document.
- (3) Copy of the approved building plan.
- (4) Fixed deposit receipt in original for
Rs.5.00 lakhs towards Endowment Fund.
- (5) Sworn affidavit verifying the contents
given in the application form and the
documents duly attested by a First Class
Magistrate STM/ADM."

The petitioner submitted the following documents
along with the letter dated 10.3.2003:-

Sr. Name of Documents
No.

1. Sworn Affidavit
2. NOC issued by the Govt. of Gujarat
(Original copy of NOC was enclosed
earlier with main application form
submitted in NCTE office on 31.12.2002)
3. Legally valid Land Documents
4. Copy of the approved building plan
5. Fixed deposit receipt in original for
Rs.5.00 lakhs towards Endowment Fund.
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The petitioner has, however, pointed out that when the representative of the petitioner-trust took all the aforesaid documents for personally handing them over at the NCTE office at Bhopal and reached Bhopal on 14th March 2003, it was found that it was a public holiday on account of Shivaratri, 15th March was a closed Saturday and 16th March was Sunday and, therefore, the petitioner-trust could submit the documents to the NCTE only on 17th March 2003 by personally handing over the documents to the NCTE office at Bhopal.

The petitioner trust also sent letter dated 30.5.2003 to the NCTE, Bhopal inviting them for inspection and informing them that the petitioner-trust

has made all arrangements for the facilities like Library, Laboratory, Class rooms, Activity room, Facility room, Learning resource center, office room, first Aid room, Principal room, Lunch box room and vast play ground and also furniture for the building. The petitioner-trust also informed that one hostel for boys and another for girls were also constructed and that if there was any deficiency, the petitioner may be informed urgently.

The inspection team of the NCTE visited the college in September 2003 and found teaching staff having been appointed by the petitioner trust. If at all the inspection team had any doubt, the approval certificate dated 11.8.2003 of the Director of Primary Education could have been asked for. As already indicated above, the NCTE itself had required the visiting team (the inspection team) to call for such certificates at the time of inspection. In the facts of this petition also, the inaction on the part of the authorities in not considering that 14th, 15th and 16th March were public holidays and, therefore, the papers presented on 17th March 2003 were required to be treated as submitted within the time limit of 15th March 2003.

15. Similarly in Special Civil Application No.17382 of 2003 filed by Shakuntal Education Trust for recognition of Shree Sharda Primary Teachers Training College at Village Rajpur in Kadi taluka, the petitioner-trust had submitted the application along with the State Government NOC in December, 2002. Thereafter, when the petitioner received the NCTE letter dated 27.1.2003, the petitioner submitted the following documents along with its letter dated 10.3.2003:-

Sr.	Name of Documents
No.	

1.	Sworn Affidavit
2.	NOC issued by the Govt. of Gujarat in original
3.	Trust Deed-Memorandum of Association
4.	Legally valid Land Documents
5.	Approved Building Plan
6.	Land, Title, Certificate in original with Enrolment Number of the lawyer.
7.	Fixed Deposit Receipt in original

The petitioner has, however, pointed out that when the representative of the petitioner-trust took all the aforesaid documents for personally handing them over at the NCTE office at Bhopal and reached Bhopal on 14th March 2003, it was found that it was a public holiday on account of Shivaratri, 15th March was a closed Saturday and 16th March was Sunday and, therefore, the petitioner-trust could submit the documents to the NCTE only on 17th March 2003 by personally handing over the documents to the NCTE office at Bhopal. Thereafter, the petitioner-trust did not hear anything until May 2003 when the petitioner-trust received NCTE letter dated 5.5.2003 calling for the original approved building plan for the proposed PTC college, an attested true copy of which was already submitted to the NCTE on 17th March 2003 as aforesaid. The petitioner sent the original approved building plan along with its letter dated 11.5.2003 to Bhopal by Speed post. When the inspection team visited the college, the inspection team found that approved teaching staff was already appointed and the petitioner had also shown the approval certificate dated 1.8.2003 of the Director of Primary Education.

In view of the above, it is clear that when 14th, 15th and 16th March 2003 were public holidays, the submission of the documents on 17th March 2003 cannot be said to be beyond the stipulated time limit of 15th March 2003. The approved building plan which was subsequently called for by the NCTE letter dated 5.5.2003 was already submitted by the petitioner to the NCTE on 17th March 2003 being the document at Sr. No.5 indicated above. Merely because what was submitted on 17th March 2003 was an attested true copy of the approved building plan and not the original approved building plan, the petitioner could not have been shunted out of consideration for the academic year 2003-04, more particularly, when the inspection team which visited the college in September 2003 had found that the norms and conditions were complied with.

Since there are remarks against this petitioner-institution regarding library facilities to be provided, Mr Shastri for the petitioners states that those remarks made in the letter dated 5.11.2003 were made pursuant to the remarks of the inspection team which had also orally conveyed such remarks to the petitioners in September 2003 and, therefore, the petitioners have taken due care to provide all the necessary library facilities in September/October, 2003 in accordance with the suggestions made by the inspection team and so also

the Principal has been appointed as per the NCTE norms.

16. Coming to the objection regarding non-production of the staff approval list, reference is required to be made to letter No. WRC/5-23/Vol.X/2002-03/3813 dated 8.8.2003 by which the Regional Director, WRC, NCTE had required that -

"The visiting team will invariably collect the certified list of all staff selected/identified for appointment compulsorily and submit the same with the report."

Even when the inspection team, which visited the colleges in September, 2003, found that all the facilities were ready and even the teaching staff was appointed in each college, the said team could have asked for the certificate of the Director of Primary Education approving the teaching staff or the staff profile certificate as this information could have been asked for perusal at the time of inspection in September, 2003. According to the petitioners, the said lists were shown to the inspection team, and the staff was physically seen by the committee. Failure on the part of the Director of Primary Education in sending the staff profile certificates directly to NCTE (according to the learned AGP such objection was never raised by the NCTE earlier) or if at all, failure on the part of the inspection team to require production of such certificate of the Director of Primary Education for approval of the teaching staff cannot be visited with such serious consequences on the petitioner-institutions which had made all the arrangements before visit of the inspection team in September 2003 including appointment of approved teaching staff, more particularly when admissions had not even commenced when the NCTE sent letters dated 5/7.11.2003 to the petitioners for recognition from 2004-05 and when the petitioner-institutions had already invested Rs.70 to 80 lacs even before the inspection team visited the college and ultimately causing the loss of training to as may as 150 students which loss will be permanent because the seats in the PTC colleges are limited and the applicants run into thousands, if not a lakh, of applications as pointed out by the learned counsel for the petitioners.

17. The injustice to the petitioners and the prospective students becomes more apparent when one considers that another institution from Gujarat (Samast Patidar Education Trust of Karamsad) had also applied alongwith the petitioners or after the petitioners and by letter dated 3.11.2003 they have been granted recognition

for the year 2003-04 and even in the recognition letter given for that institution it is stated that the recognition for the academic session 2003-04 is granted subject to production of the certificate from the Director of Primary Education approving the teaching staff meaning thereby in case of that institution also the NCTE had not received the certificate from the Director of Primary Education.

18. Even so, the Court would have been slow in granting any relief at this stage i.e. in December, 2003. However, in the State of Gujarat, none of the PTC colleges could grant admission as there were litigations and the centralized admission committee commenced the admission process only in November, 2003. In fact after this Court struck down three Government Resolutions relating to admission process, the applications were again invited in November 2003 and the process continued till 24.12.2003. Even Samast Patidar Education Trust at Karamsad gave admissions to its PTC course only in the first week of December, 2003 and commenced imparting instructions around 15.12.2003. It cannot, therefore, be said that it is too late for the Court to grant any relief to the petitioners who, for not fault of theirs, have been penalized by not being granted recognition for the PTC course for the current academic session, but are granted conditional recognition for the year 2004-05 upon production of the certificate of the Director of Primary Education which certificates were granted by the Director as far back as on 19.5.2003, 1.8.2003 and 11.8.2003 respectively in case of the three petitioner-institutions.

19. Mr AJ Shastri, learned counsel for all the three petitioners has stated that the petitioners are making endeavour to commence the academic session from the current year not for their private gains or for any return on investments but only in order to ensure that 150 students of the State are able to seek admissions to this professional course and the infrastructure and facilities provided by the petitioners do not remain unutilised without any advantage to any person. All the seats shall be treated as seats to be filled in by the State Government and shall not be treated as payment seats. Even hostel fees and food bills may be paid by the students to the Director of Primary Education and all the amounts may be appropriately managed by the Director of Primary Education in order to ensure that the petitioner-managements do not have any access to the funds to be collected from students. If there is any deficit for payment of salaries and allowances to the

staff or for other payments like electricity charges, telephone charges and payment of statutory dues to other authorities, the deficit shall be borne by the petitioner-managements.

20. While the above concession made by the learned counsel on behalf all the three petitioner-institutions would take ample care of the Court's anxiety to see that 150 students will get admissions to the PTC course and the State will get 150 more qualified teachers, in order to ensure that admission to such 150 Government seats does not cause any further shuffling or reshuffling, it will be necessary to direct that those who are already admitted to the PTC course in other colleges will not be considered, whether their admissions were granted on Government seats or management seats and that no reshuffling is to take place, otherwise there will be no end to the admission process which is already delayed. It may be that some students who are already admitted so far on payment seats in self-financed colleges may feel that students who are less meritorious than them have got the advantage of being admitted to the Government seats with less fees but such a contingency cannot be helped in view of the peculiar facts and circumstances of these cases that on account of the communication gap between the parties and the respondent-authorities, it is only now that 150 more seats in PTC course are becoming available to the State of Gujarat.

21. In view of the above discussion, these petitions are allowed in terms of the following directions:-

(i) The Director of Primary Education shall issue a public advertisement in atleast two widely circulated newspapers in the State informing the candidates who are on the merit list for admissions to PTC course about availability of 50 seats in each of the three petitioner colleges and calling them for admission preferably on 5th January 2004 indicating that the admissions will be granted by the Centralized Admission Committee by treating them as Government quota seats and that the PTC courses will start at the respective colleges within three days of the date of interview. The admission process shall be completed by 7th January, 2004.

(ia) The cost of advertisements shall be borne by the management.

(ii) It will also be stated in the advertisement that

those who are admitted to PTC courses in other colleges will not be considered, whether their admissions were granted on Government seats or management seats and that no reshuffling is to take place.

(iii) The petitioner-colleges shall not be permitted to collect any fees from the students and all the fees shall be collected by the Centralized Admission Committee and shall be deposited in three separate bank accounts to be operated by the Director of Primary Education.

(iv) After the amounts of fees are received by the Centralized Admission Committee, the petitioner-college managements shall be permitted by the Director of Primary Education to utilize only the following amounts:-

(a) The salaries and allowances payable in accordance with the relevant rules and regulations shall be paid to the Principal, teaching and non-teaching staff of the three colleges directly by account payee cheques.

(b) The petitioner managements will be at liberty to submit bills for reimbursement of electricity bills, telephone bills and payment of any charges/taxes to any statutory authorities.

(v) If there is any deficit for payment of salaries and allowances to the staff or for other payments electricity charges, telephone charges and payment of statutory dues to other authorities the deficit shall be borne by the petitioner-managements.

(vi) The Director of Primary Education shall send the salary cheques to the concerned staff member at their residential address by RPAD.

(vii) The petitioner managements shall not directly recover any amount from the students under any head and whatever monetary dealings the petitioner-managements are to have with the students, the same shall be routed only through the Director of Primary Education.

(viii) Even hostel fees and food bills shall be paid by

the students to the Director of Primary Education and all the amounts shall be appropriately managed by the Director of Primary Education in order to ensure that the petitioner-managements do not have any access to the funds.

(ix) If any person has any complaint or grievance regarding fees or any other facilities it will be open to such person to make a complaint to the Director of Primary Education or to NCTE.

(x) It will be open to NCTE to depute any officer or team to inspect the library facilities and other facilities being provided by the petitioner-college managements.

(xi) The NCTE shall pass appropriate orders of recognition for the year 2003-04 and 2004-05 in light of the observations made in this judgment within one month from the date of receipt of the writ of this Court.

22. It is clarified that this arrangement is made for the current year and for the students who will be admitted this year and will continue to study in the second year but from the year 2004-05, the petitioner-managements shall be at liberty to fill in the seats in accordance with the relevant and applicable Government rules and regulations and circulars regarding the admission procedure and fees and of course subject to the orders of the NCTE.

23. It is also made clear that these directions are issued in the present petitions which were filed on 20th/21st November 2003 and some time was taken by the various parties to file their pleadings and in making submissions. Hence, this judgment is confined to the petitioners of these three petitions only.

Rule is made absolute to the above extent with no order as to costs.

(M.S. Shah, J.)

sundar/zgs-