

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-12-2006

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.34923 of 2006

And

M.P.Nos.1 and 2 of 2006

Annai J.K.K.Sampoorani Ammal  
Charitable Trust rep., by its  
Chairman and Managing Trustee  
Thookkanaickenpalayam Post,  
Gobi Taluk,  
Erode District-638 506. ... Petitioner

Vs.

Bharathiyar University rep., by  
Registrar,  
Coimbatore-641 046. ... Respondent

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, calling for the records comprised in proceedings No.364/A1/2006 on the file of the Registrar, Bharathiyar University, Coimbatore, dated 18.4.2006 and quash the same in so far as it relates to rejection of granting of affiliation to the petitioner's institution for the academic year 2005-2006 and consequently direct the respondent to grant affiliation to the petitioner's institution for the academic year 2005-2006 in respect of B.Ed., Course.

For Petitioner : Mr.V.Ayyadurai

For Respondent : Mr.M.Sekar,  
Special Government  
Pleader (Education)

ORDER

1. By an order dated 4.1.2006, the National Council for Teacher Education granted recognition to the petitioner to start a B.Ed. degree course for the academic year 2005-2006 and the State Government also issued a No Objection Certificate on 1.3.2006 for the same academic year 2005-2006.

2. But on an application dated 5.1.2006 submitted by the petitioner for the grant of affiliation, the Syndicate of the University, in its meeting held on 24.3.2006, decided to grant

affiliation only for the academic year 2006-2007 on the short ground that there would be lack of adequate term days, for the academic year 2005-2006. The said decision communicated by the University by its order dated 18.4.2006, is under challenge in this writ petition.

3. I have heard Mr.V.Ayyadurai, learned counsel for the petitioner and Mr.M.Sekar, learned Special Government Pleader (Education) for the respondent.

4. The sum and substance of the case of the petitioner in the writ petition is that since NCTE had granted recognition for the academic session 2005-2006, the University has to sign on dotted lines granting affiliation for the same academic session and that it shall have no concern of its own and no independent judgment of its own.

5. As stated above, the Syndicate decided to grant affiliation for the academic year 2006-2007, on the only ground that the students admitted to the institution would not be in a position to complete the requisite number of term days. An academic year as is normally understood commences from June of a particular year and ends with May of the next year. Such a pattern is actually distorted in the case of admission to Professional Courses, on account of the fact that the admission procedure to Professional Courses has become highly complicated and time consuming. Therefore, in many of the Professional Institutions, the academic year commences in July/August and sometimes in September also of a particular year. This is why, the Supreme Court said that admission to Medical Colleges shall not be made beyond 30<sup>th</sup> September of a year, for that academic year.

6. Even in respect of Teacher Training Institutes offering B.Ed., Degree, the admissions commence in October/November, in view of Single Window Counselling, but in any case, they can not spill over beyond the first of January. Therefore, the reason stated in the impugned order that if affiliation is granted in March 2006 for that particular academic year (2005-2006), the students would not be able to complete the requisite number of term days, is a genuine apprehension on the part of the University. Hence what remains to be considered is, as to whether the University was bound to close its eyes to the lack of term days, and grant affiliation, for the same academic year, merely because the NCTE had granted recognition for a particular academic year.

7. Mr.V.Ayyadurai, learned counsel appearing for the petitioner contended -

(a) that since the NCTE granted recognition by its order dated 4.1.2006 for the academic year 2005-2006, the University was bound to grant affiliation for the same academic year, in view of the mandatory provisions contained in Section 14(6) of NCTE Act, 1993 r/w Sections 17(3) and 17

(4) of the Act;

(b) that the format of undertaking to be executed by the applicant institute in Appendix

1-D Form under NCTE Regulations 2002 and the format of undertaking to be executed in Appendix 2-C Form by the University under the NCTE Regulations 2002, make it clear that an institute is entitled to admit students immediately after recognition and that the restriction placed by the University Act and Statutes that admissions shall be made only after affiliation is granted, is an encroachment into the occupied field of a Central Legislation;

(c) that in view of the judgments of the Supreme Court in Union of India vs. Shah Goverdhan L.Kabra Teachers' College ((2002) 8 SCC 228) and in State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others (2006 (3) Scale 675), the field of Teacher Education is fully occupied by the NCTE Act, 1993, enacted by the Parliament under Entry 66 of List-1 and any encroachment made by any of the provisions of the relevant University Act shall be deemed to be inoperative; and

d) that after the judgment of the Division Bench of this Court in Vinayaka Mission's College of Nursing and Para-Medical Sciences vs. The T.N. Nurses and Midwives Council (2006 (4) CTC 162), the University has no power to reject an application on the ground of a cut off date or on the ground that it is belated, once an expert body under the Central Legislation had granted recognition.

8. All the above contentions basically stem from the law now settled that the field occupied by NCTE Act, 1993, shall not be encroached by the University, in view of the relevant Entries in the Seventh Schedule to the Constitution. Entry 66 in List I (Union List) relates to "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." Entry No.25 in List III (Concurrent List) relates to "Education, including Technical Education, Medical Education and Universities".

9. Therefore, it is the stand taken by the petitioner that once the Parliament enacted a Legislation relating to a particular field of education, the expert body constituted under the said Legislation shall have supremacy over the affiliating bodies like the Universities, which are created only by the Acts of the Legislatures of the States.

10. In order to test the reach of the said contention, it is necessary to take a bird's eye view of the provisions of the NCTE Act, 1993, and the Regulations framed thereunder, as well as the University Act and Statutes.

<https://mcservices.ecourts.gov.in/mcservices/>

11. The NCTE Act, 1993, came into force on 1.7.1995 and the



object of the Act as stated in the preamble is as follows:-

"An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system through out the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

Thus, the Act was enacted with the twin objects of:-

- (a) Achieving planned and coordinated development of teacher education system through out the country and
- (b) Regulation and proper maintenance of norms and standards in the teacher education system.

12. For the purpose of achieving the above objects, the Act provided for the establishment of a National Council, whose functions were laid down under Section 12 of the Act. Section 12 imposed a duty upon the Council to take steps to achieve the twin objectives of the Act and empowered the Council to do certain things for the purpose of performing its functions under this Act. Interestingly, one of the functions imposed upon the National Council under Section 12 (m), is "to take all necessary steps to prevent commercialisation of teacher education." This duty imposed upon the Council, is to be kept in mind while deciding the issue, since the main grievance of the petitioner is that the huge investment made by them in the infrastructure, would not get a return for the year 2005-2006, if affiliation is postponed to 2006-2007.

13. Chapter IV of the Act dealing with "Recognition of Teacher Education Institutions" makes provisions for recognition of institutions offering courses or training in teacher education, permission for any new course or training, the affiliation to be granted, the contravention of the provisions of the Act and its consequences and appeals.

14. The sheet anchor of the case of the petitioner is on the basis of the tone and tenor of sub Section (6) of Section 14, which reads as follows:-

"(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."

<https://hcservices.ecourts.gov.in/hcservices/>

15. The word "examining body" appearing in the aforesaid

Section 14(6), is defined under Section 2(d) to mean "an University, Agency or Authority to which an institution is affiliated for conducting examinations in teacher education qualifications."

16. Therefore the contention raised on behalf of the petitioner is that once an order of recognition is granted by NCTE, the University (which is the examining body) is obliged to simply follow suit, on account of the clear mandate of the Section that it "shall grant affiliation".

17. Other than Section 14, there are also other provisions in the Act, to which my attention was drawn by the learned counsel for the petitioner. Section 16 of NCTE Act, 1993 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 recognised institution,

Unless the institution concerned has obtained recognition from the Regional Committee concerned, under Section 14 or permission for a course or training under Section 15."

Sections 17(3) and 17(4) of the NCTE Act, 1993, read as follows:-

"17. Contravention of provisions of the Act and consequences thereof.-- (3) Once the recognition of a recognised institution is withdrawn under sub-section(1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section(1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section(1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such

course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government."

18. A combined reading of Sections 14(6), 16, 17(3) and 17(4) shows that what is primarily required by NCTE Act, 1993 is that the National Council and the University should act in tandem and not at a tangent. The plain and simple message that is sought to be conveyed by these Sections of the NCTE Act, 1993, is that the University shall grant affiliation only if NCTE grants recognition and shall refuse affiliation if NCTE refuses recognition. Similarly if NCTE withdraws recognition, the University shall also withdraw affiliation and the qualification acquired from an unrecognised institute shall not be treated as a valid qualification for employment in any State or Central Government or Government Body. In other words, the decision of the University to grant or not to grant or to withdraw affiliation, should coincide with the decision of the NCTE to grant or not to grant or to withdraw recognition. What is actually sought to be achieved by Sections 14(6), 16, 17(3) and 17(4) of NCTE Act, 1993, is an identity of mind and uniformity of objective to ensure that there is proper maintenance of norms and standards, as spelt out in the Statement of Objects and Reasons. The same cannot be stretched to such an extent, as to make affiliation, a mere counterfoil to an order of recognition.

19. The object of the above provisions of NCTE Act, 1993, is only to ensure coordination and co-existence with mutual respect between NCTE and the affiliating University and I am unable to see any intention on the part of the Parliament, to dwarf the Universities, by incorporating these Sections, in NCTE Act, 1993.

20. Coming to the case law on the issue, it is seen that in State of Tamil Nadu vs. Adhiyaman Educational and Research Institute (1995 4 SCC 104), the Supreme Court had an occasion to consider the role of the All India Council for Technical Education (AICTE) vis-a-vis the role of the University, with reference to Entry 66 of the Union List and Entry 25 of the Concurrent List. After comparing the Central Act viz., AICTE Act, and the Madras University Act, the Supreme Court found that there was a conflict between and overlapping of the functions of the AICTE and that of the University. Therefore, after listing out the "field occupied by the Central Act", in para-30 of the judgment, the Supreme Court sustained the role of the University in so far as the grant of affiliation is concerned. The following observations in para-30 of the said judgment, is of significance:-

<https://hcservices.ecourts.gov.in/hcservices/> "The Central Act has been enacted by Parliament under Entry 66 of the List I to coordinate with and determine the standards of



technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

21. While elucidating the ratio laid down under the said judgment, the Supreme Court made it clear in para-41(iv) that the question whether there was any repugnancy will have to be analysed from the facts of each case. Para 41(iv) of the judgment in Adhiyaman's case, reads as follows:-

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

22. The next case arose under the Indian Medical Council Act, 1956, in Thirumuruga Kirupananda Variyar Thavathiru Sundaraswamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu ((1996) 3 SCC 15). The Supreme Court held in that case that after the introduction of Section 10-A in the Indian Medical Council Act, the provision contained in Section 5(v) of the Tamil Nadu Dr. M.G.R. Medical University Act, requiring prior permission of the State Government for establishing a Medical College, became repugnant.

23. In Jaya Gokul Educational Trust vs. Commissioner of Secretary to Government (2000 (5) SCC 231), the Supreme Court again reiterated the principles laid down in Adhiyaman's case. But even while doing so, the Supreme Court did not reduce the role or status of the University, in so far as matters not covered by the Central Act were concerned. As a matter of fact, the Supreme Court took note in para-28 of the said judgment that under Regulation 8 of AICTE Regulations, the University is one of the Agencies consulted by the Council and hence the University had an opportunity even at that stage, (before the grant of recognition) to bring to the notice of the AICTE any default on the part of the college seeking recognition. Unfortunately, there is no provision in NCTE Regulations 2002, which is analogous to Regulation 8 of the AICTE Regulations. Therefore, no consultation takes place with the University, before the grant of recognition by NCTE. In para-30 of the judgment, in Jaya Gokul Educational Trust's case, the Supreme Court held that the "University should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or Statutes, which are

not inconsistent with AICTE Act or its regulations." In other words, the Supreme Court not merely directed the University to go by the permission granted by AICTE, but also take into account "other relevant factors in the University Act or Statutes which are not inconsistent with the AICTE Act or Regulations." In para-31 of the same judgment, while issuing necessary direction to Mahatma Gandhi University, the Supreme Court made matters explicitly clear in the following terms:-

"The direction to Mahatma Gandhi University to consider the application of the appellant for final affiliation or continuance of affiliation is confirmed and this has to be done on the basis of the approval granted by AICTE dated 30.4.1995 or any other relevant factors in the University Act or its Statutes, which are not inconsistent with the AICTE Act or its Regulations."

24. Thus, it is clear that the University need not necessarily act as an invalid creature, simply following the dictates of its Master namely NCTE. All the judgments of the Supreme Court arose out of cases where either the State Government insisted upon a prior approval from them or the University Acts contained a provision for prior approval from the State Government. The repugnancy noticed in almost all cases was only in the matter of the requirement of No Objection Certificate from the State Government and not with respect to the academic standards prescribed by the University.

25. Much reliance is placed upon the judgment of the Supreme Court in State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others (2006 (3) Scale 675). My attention was particularly drawn to paragraphs 6, 32, 35, 51, 52, 61, 62, 67, 73, 76 and 77 of the said judgment. As seen from paragraph 6 of the judgment, the case before the Supreme Court arose out of the University insisting upon a permission from the State Government, as a condition precedent for the grant of affiliation, by relying upon the provisions contained in Maharashtra Universities Act, 1994. The permission to be obtained from the Government had nothing to do with the maintenance of norms and standards or for attaining the excellence in the field of education. It is in this background, which is made out very clearly in paragraph-6 of the judgment that we have to read the contents of the other paragraphs of the said judgment. While paragraphs-32 and 35 extracted the provisions contained in the Act and the Regulations, paragraphs-51 and 52 of the judgment dealt with the law laid down in St. John Teacher Training Institute's case. In paragraph-61, the Supreme Court held that in so far as the coordination and determination of standards in institutions for Higher education and Research, Scientific and Technical Institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of the Parliament. In paragraph-62, the Supreme Court laid emphasis that "it is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII." But the last line of



paragraph-62 made it clear that the law laid down by the Supreme Court therein, was in the context of State Government refusing permission by relying upon a State Act.

26. In paragraph-67, the Supreme Court again held that the final authority vested with the NCTE. But again in the last line of the said paragraph, the Supreme Court made it clear that the absence or non-production of NOC was immaterial and irrelevant so far as the power of NCTE is concerned.

27. In paragraph-74, the Supreme Court held that "in accordance with the provisions of 1993, Act, final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all authorities in the light of the provisions of the Act and the law declared by this Court". But the context in which the supremacy of NCTE was upheld by the Supreme Court in the said case, is made clear in paragraphs-76 and 77 of the said judgment, by holding Sections 82 and 83 of Maharashtra Universities Act, 1994, to be inconsistent with the provisions of NCTE Act, 1993. Thus, the State of Maharashtra case entirely related to the insistence by the University, of permission from the State Government to start a Teacher Training Institute, by taking umbrage under Sections 82 and 83 of the Maharashtra Universities Act, 1994. In that case, the Supreme Court was not concerned with a tussle between NCTE and University in the implementation of academic standards or any other matter connected with the improvement of norms and standards in the field of teacher education. As a matter of fact, if there is any provision in the University Act, the application of which would aid the process of achieving the twin objects for which NCTE was created, those provisions cannot be looked at, as being repugnant but should be looked at as being supplemental and supportive to the NCTE Act. For example, if the University prescribes certain number of term days for a particular curriculum, it cannot be said that the absence of such an prescription under the NCTE Act, would make it repugnant to the NCTE Act.

28. Once the NCTE Act has made it clear that its object is to achieve planned and coordinated development of teacher education system and to regulate and maintain the norms and standards, the prescription of a specified number of term days would only aid NCTE in achieving those norms. To hold otherwise, would tantamount to ridiculing the very object of the NCTE Act.

29. In so far as the judgment of the Supreme Court in Union of India vs. Shah Goverdhan L.Kabra Teachers' College ((2002) 8 SCC 228) is concerned, the same arose under different circumstances. In the said case, the validity of Section 17(4) of the NCTE Act, was put to test on the touchstone of the independence of the State Government to prescribe its own standards for employment to the State Services. It was argued in the said case that Section 17(4) of the NCTE Act amounted to a law dealing with employment, infringing upon the right of the State Government. In paragraph-8 of the said judgment, the Supreme Court made it clear that any interpretation to any Act, should actually subserve the object for which the Act was enacted, in

the following words:-

"Both Entries 65 and 66 of List I empower the Central Legislature to secure the standards of research and the standards of higher education, the object behind them being that the same standards are not lowered at the hands of the particular State or States to the detriment of the national progress and the power of the State Legislature must be so exercised as not to directly encroach upon power of the Union under Entry 66".

30. If we do not loose track of the objects for which NCTE Act was enacted, we would find that any provision contained in the University Act that would improve the norms and standards of teacher education, cannot be held to be repugnant to the NCTE Act. If by applying the doctrine of pith and substance, we find that a particular provision in the University Act is intended for improving the quality of teacher education, it should be taken as subservient to the cause sought to be achieved by NCTE and not subversive of the objects sought to be achieved.

31. Applying the above test, I find that the insistence by University for a particular number of term days, is only to improve the quality of education and hence it cannot be taken to be an encroachment into a field occupied by NCTE Act, 1993.

32. Coming to the Division Bench judgment in Vinayaka Mission's College of Nursing and Para-Medical Sciences vs. The T.N. Nurses and Midwives Council (2006 (4) CTC 162), it is seen that the said case arose out of the blind refusal of the Pondicherry University to grant affiliation on the ground that the cut off date for submission of application prescribed under Clause 5(a) of the Academic Ordinance was over. The University did not apply its mind to the number of term days available, at that time of the year. Therefore, the Division Bench was not prepared to accept a cut off date, not supported by any valid reason. Hence, the said judgment has to be understood only in the context of the reason stated in the order impugned in the said case.

33. Looking from a more practical angle, I am unable to find an answer to a hypothetical question viz., as to what would happen if the NCTE grants recognition for a particular year, on a particular date, which falls within a month or so of the date of commencement of examinations by the University for that particular year. Can it be said even under that situation that the University is bound to give affiliation for the same academic year, despite the fact that only 30 days or so are left behind for the commencement of the examination schedule itself. NCTE itself does not appear to have any scientific basis for determining the academic year in respect of which recognition is to be granted. I have come across several orders of NCTE, granted even in February and March of a particular year, for the academic year which had already commenced 6 to 8 months earlier. Therefore, to say that the University should throw to the wind, the

requirement of a prescribed number of term days, would tantamount to converting Teacher Education into a Correspondence Education or Open University System of Education.

34. An identical situation as in the present case arose in *Rahul Dhaka Vikas Society vs. Guru Gobind Singh Indraprastha University and Others* (AIR 2001 Delhi 154). In the said case, the petitioner therein was granted recognition by the NCTE. Though Guru Gobind Singh University provisionally granted affiliation for 1999-2000, the University refused to continue the affiliation for 2000-2001. The refusal of the University to extend the affiliation was challenged on the ground that once NCTE has granted recognition, University cannot refuse affiliation. The argument in the said case was also advanced on the basis of the language used in Section 14(6) of the NCTE Act, 1993, with particular emphasis on the word "shall" appearing in Section 14(6). In paragraphs-11 and 12 of its judgment, the Division Bench of the Delhi High Court looked at the consequences of such an argument in the following words:-

"11. It is, keeping in view the provisions of the Indraprastha Vishwavidyalaya Act, 1998 that provisions of Section 16 of the NCTE Act are to be given an interpretation. If the interpretation as suggested by Institute is given, following would be the consequences:

a) Grant of recognition would mean grant of automatic affiliation with any University.

b) Depriving the University of its power to give affiliation or refuse affiliation.

c) Possessed with the order of recognition and institution can go to any University for affiliation. In other words, it would be the sole prerogative of the institution to decide the University with which it wants to be affiliated and such University has no choice but to grant affiliation.

d) University will have to grant affiliation even if the particular institution does not conform to the standards or meets the requirements of the Act, Statutes, Ordinances and Regulations of that University.

12. Naturally, such an interpretation as suggested by the Institute which leads to the aforesaid appalling and blighting consequences and may have effect of destroying the very autonomy of an University and may give licence to an institution to violate the provisions of the Acts, Statutes, Ordinance etc. of the University with impunity, cannot be accepted.



Merely because the NCTE Act is a Central Statute, does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore need is to interpret the provisions of the two Acts, one Central and other State, harmoniously so that both are able to survive in their respective fields and also able to achieve their respective objectives. It is only when the provisions of the State Act are repugnant to that of Central Act that the provisions of State Act have to give way to the provisions of Central Act. Article 254 of the Constitution of India deals with the situation where there is inconsistency between laws made by the Parliament and laws made by the legislatures of States interpreting the principle of repugnancy contained in this Article, following principles can be culled out from various judgments:-

1. The State law does not become void and soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the State legislature to legislate with respect to a Concurrent subject merely because there is a Union law relating to the same subject. Article 254(2) is attracted only if the State law is 'repugnant' to the Union Act, which means that the two cannot stand together. The doctrine of 'occupied field' has no application in the interpretation of the present Article.

2. There is no question of applying Article 254, unless the State law is, in its 'pith and substance' a law relating to the Concurrent List. If it is covered by an Entry in the State List, but only touches the Concurrent List incidentally, there is no application of Article 254.

3. The onus of showing the 'repugnancy' and the extent thereof is on the party who attacks the validity of the State law."

35. In paragraph-13 of the same judgment, the Division Bench of the Delhi High Court also made it clear that if an institution is refused recognition by NCTE, the University has no discretion except to refuse affiliation. But the reverse was not true viz., that there would not be an automatic affiliation if there was

recognition by the NCTE.

36. Dealing with the word "shall" appearing in Section 14 (6) of the NCTE Act, 1993, the Division Bench of the Delhi High Court held in paragraph-14 as follows:-

"No doubt once the word 'shall' is used in a provision, it raises a presumption that the particular provision is mandatory. However, this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequence flowing from such construction. Keeping in view this consideration we are of the opinion that the word 'shall' occurring in sub-section (6) of Section 14 should be construed as merely directory and not mandatory as the context and the intention of legislature demands this construction. Instances are not lacking where Courts have given such interpretation to the word 'shall' appearing in the provisions of a Statute by carefully attending to the whole scope of the Statute."

37. In conclusion, the Division Bench of the Delhi High Court upheld the role of the University in the following words in paragraph-15 of its judgment as follows:-

"Therefore normally affiliation should not be refused on the grounds which are covered by Section 14(3) of NCTE Act and Council has already satisfied itself that the Institute meets these requirements. However, this would not be an absolute rule and the University shall still have the right to satisfy itself about the fulfillment of conditions for affiliation by the Institute in accordance with its Act, Statutes etc. But if the affiliation is refused on any of these grounds, it will be for the University to justify its decision that notwithstanding the 'recognition by the Council, the institution lacked any of the aforesaid facilities and the Council had not acted properly in granting the recognition. Moreover, apart from the considerations mentioned in Section 14(3) of the NCTE Act, there may be other valid considerations which may compel the University to still refuse affiliation. After all it is the University which confers the degree. It is the credibility, reputation or the goodwill of the University which is at stake."

The above dicta, in my considered view, applies in all force to the case on hand.

38. In Bharathidasan University vs. Dhanalakshmi Srinivasan (2005 W.L.R. 368) also it was held that the Central Act covers the entire field of teacher education. In paragraph-24 of the said judgment, the Division Bench of this Court held that the University being one of the agencies under NCTE Act, is obligated to grant affiliation on receipt of the order of recognition in terms of Section 14(4) and Section 14(6) of the NCTE Act. Therefore it was contended that as per the decision of the Division Bench of this Court, affiliation should be automatically granted, once NCTE grants recognition.

39. However, it is seen from paragraph-23 of the same judgment, that the emphasis made by the Division Bench was only with regard to the No Objection Certificate insisted upon by the University to be obtained from the Government. After quoting a passage from the judgment of the Supreme Court in St. John's Teacher Training Institute's case, the Division Bench held in paragraph-23 as follows:-

"It is clear from the above decision that even if NOC is not granted by the State Government or Union Territory concerned and the same is refused, it is for the Regional Committee to take a decision on the application for recognition irrespective of the decision of the State Government or Union Territory. The above decision also makes it clear that the Regional Committee is empowered to consider the claim for recognition even in a case where the State Government has refused to NOC. In view of the said position of law as stated supra, if this Regional Committee is satisfied with regard to the fulfillment of requirements for grant of recognition, it is the duty of the examining body, namely, Universities to grant affiliation without insisting upon the institutions to produce the prior permission of the State Government. Inasmuch as the Universities passed orders requiring the education institutions to get prior permission of the State Government based on the resolution of their Syndicate in accordance with their respective University Act and Statutes and Tamil Nadu Private Colleges (Regulations) Act is illegal and contrary to the law laid down by the Supreme Court of India."

40. Thus, the judgment of the Division Bench in Bharathidasan University's case has to be understood only in the context of the condition imposed by the University for obtaining No Objection Certificate from the State Government. To be precise the grant of No Objection Certificate by the State Government, was not one of the functions of the University intended to achieve excellence in the particular field of education. The act of obtaining NOC from State Government had nothing to do with the functions to be performed



by the University, with regard to the grant of affiliation and hence the provision relating to the requirement to obtain No Objection Certificate alone was held to be repugnant to the NCTE Act and nothing more can be read into the judgment of the Division Bench, to scale down the role of the University in so far as the maintenance of norms and standards in institutions are concerned.

41. The matter relating to affiliation and approval of colleges is dealt with, under Chapter XXIV of the Statutes of the Bharathiyar University. Clause 31 of Chapter XXIV of the Statutes of the University reads as follows:-

"31. Affiliation cannot be granted retrospectively.-----Affiliation or approval shall in no case be granted with retrospective effect. Attendance at courses of instruction provided in colleges or in subjects before the grant of affiliation or approval shall not qualify for the grant of certificates of attendance; and such attendance shall not entitle any candidate to exemption from the production of certificates of attendance."

42. That a college does not have the right to admit students even before the grant of affiliation, has been clearly laid down by the Division Bench of this Court in The University of Madras vs. Loordhu Ammal Educational Trust (2005 W.L.R. 395). In para-18 of the said judgment, the Division Bench held as follows:-

"18. We are of the opinion that any college or institution admitting students for a degree in a University even before the University accords it affiliation is really committing fraud on those students and is cheating those students who are given admission, because those students can be left in the lurch if ultimately affiliation is not granted".

43. In Sree Arumugam Teacher Training College vs. Thiruvalluvar University, W.P.Nos.8685, 8687, 8869 and 8186 of 2006 dated 4.4.2006, Mr. Justice D.MURUGESAN, considered the effect of Clause 46 Chapter XXVI of the Statutes of the Madras University and held that there cannot be any retrospective affiliation and that the attendance before affiliation would not be taken into consideration. In para-12 of the said judgment, the learned Judge referred to the provisions of Section 14 of the National Council for Teacher Education Act and held as follows:-

"12. The power to grant recognition to start Teacher Training Course including the degree level shall vest only with the National Council for Teacher Education (in short NCTE). The National Council for Teacher Education Regulations and the conditions on which the recognition is granted in

terms of Section 14(1) of the National Council for Teacher Education Act are binding on the institutes availing such recognition. Condition No.3(a) of the conditions of recognition contemplates that the institution shall ensure that eight exclusive faculty members duly approved by the affiliating University are in a position for an intake of 100 students and a report to this effect shall be sent to the Southern Regional Committee immediately and in any case before commencement of admissions for the course. A plain reading of the above condition shows that before admission to the course is commenced, the institution should get the approval of the affiliating University as to the faculty members. The fact of approval shall be communicated to the NCTE by the colleges by way of reports. Unless these two conditions are complied, the institution cannot admit the students. Condition No.4 further contemplates that the recognition is subject to the fulfillment of all such other requirements as may be prescribed by other regulatory bodies like the State Government, etc. So far as the grant of affiliation is concerned, the respondent University is alone empowered. The grant of affiliation entitles the colleges not only to admit the students but also enables the students so admitted to write the examination subject to the training in the prescribed syllabi and fulfilling the attendance norms. If both the Condition Nos.3(a) and 4 are read together, it is obvious that even as per the conditions of recognition, no student can be admitted before the approval of the faculty members and a report to that effect is sent to the NCTE, and further no student would be entitled to write the examination unless he/she earns the minimum attendance as per the norms. As per Condition No.4, grant of affiliation is also one of the requirements and without which a mere attendance in the class without there being a conferment of degree would be of no use."

44. Again in paragraph-14 of the judgment, the learned Judge held as follows:-

"A mere grant of recognition or NOC would be of no use as students cannot be imparted training and consequently, obtain degree in the absence of affiliation. A University which is obligated to its statutes shall ensure as to whether the students had put in minimum attendance and had undergone the course in the prescribed syllabi and had been imparted training by qualified teachers before

allowing such students to write the examination. It would be only in conformity with the regulations of the University if the attendance secured by students, after the affiliation was granted is taken into consideration to arrive the minimum required number of days to write the examination. Any other conclusion shall not be in tune to the object requiring affiliation from the University for registering the candidates to write the examination."

45. Regulation 8 of NCTE Regulations, 2002 prescribes the Norms and Standards for various Teacher Education Courses, as per Appendices 3 to 14. Appendix-7 therein relates to the Norms and Standards for Secondary Teacher Education Programme. Clause 2(a) and 4(a) of the Norms and Standards for Secondary Teacher Education Programme read as follows:-

"2. Duration and Intake.-- (a) The B.Ed. programme shall be of a duration of at least one academic year."

"4. Curriculum Transaction and Requirement of Teaching Staff.--(a) There shall be at least 150 teaching days in a year exclusive of period of admission, examination, etc. Besides, every teacher trainee shall be required to undergo internship-in-teaching (including practice teaching and skill development) for at least 30 days in nearby secondary/senior secondary schools."

46. There can be no dispute that the NCTE itself is concerned with a particular number of term days, which is referred to in Appendix-7 Clause-4 under Regulation-8 of NCTE Regulations 2002 as "at least 150 teaching days in a year". This prescription is in addition to an internship in teaching for at least 30 days. Therefore, it is clear that NCTE also wants the candidates admitted to teacher training institutions to undergo the curriculum for a prescribed number of days. What is referred to in NCTE Regulations as "teaching days" is referred to as "term days" by the University. Hence the concern expressed by the University under the impugned order that the students of the petitioner-institute may not be able to complete the term days, is perfectly in tune with the requirement under NCTE Regulations 2002.

47. By referring to the clauses contained in the format of undertaking to be executed in Appendix-1D Form by the applicant and Appendix-2C Form by the University, learned counsel for the petitioner contended that the petitioner is entitled to admit students immediately after recognition and the same need not be postponed beyond the date of recognition. In other words, the contention of the learned counsel for the petitioner is that the prescription under the University Statutes that attendance would be counted only from the date of affiliation, would militate against the clauses contained in the undertakings executed by the institute and



the University.

48. I am unable to countenance the said contention of the learned counsel for the petitioner. Clause-4 of the undertaking in Appendix-1D Form reads as follows:-

"(4) That admission to the classes will be made only after recognition is granted by the concerned Regional Committee of the NCTE."

Similarly, Clause-4 of the undertaking in Appendix-2C Form reads as follows:-

"(4) That admission to the Course will be made only after recognition is granted by the concerned Regional Committee of the NCTE."

49. The aforesaid Clauses are only enabling provisions indicating the date on which the institute becomes eligible. But that eligibility is also subject to other conditions. This is why the order of recognition itself contains a condition in paragraph-4 which reads as follows:-

"Further, recognition is subject to fulfillment of all such other requirements as may be prescribed by other Regulatory Bodies like the Affiliating University, U.G.G., State Government etc."

Thus, the recognition granted by the NCTE is made specifically subject to the fulfillment of all such other requirements as may be prescribed by other Regulatory Bodies. Therefore, the enabling provision contained in Clause-4 of the undertakings in Appendix-1D and 2C Forms will have to be read in the context of Condition No.4 in the recognition order itself.

50. Interestingly, the argument that the petitioner gets a right to admit students immediately after the grant of the order of recognition, does not appear to be correct even from the other Clauses contained in the undertaking itself. For example, Clause-2 of the undertaking in Appendix-1D Form to be executed by the institute reads as follows:-

"(2) That admission of students satisfying the eligibility conditions will be made either on the basis of marks obtained in the qualifying examination or in the entrance examination conducted by the State Government/University as per its policy."

This undertaking clearly indicates that after an order of recognition is granted by NCTE, admission of students can be made only on the basis of merit determined on the basis of the qualifying examinations or in an entrance examination conducted by the State Government or University. Suppose, there is a system of conducting a common entrance examination, how is it possible for the institute to admit

students immediately after recognition, on the basis of Clause-4 of the undertaking in Appendix-1D Form, ignoring the aforesaid Clause-2 in the same Appendix 1-D undertaking.

51. The question in the previous paragraph is not raised merely on hypothetical lines. As we have seen above, the NCTE Regulations 2002 prescribes the Norms and Standards for various Teacher Education Programmes under Regulation 8 r/w Appendix 3 to 14. Appendix-7 relates to B.Ed., Courses. Para-3(b) of the Appendix-7 Norms and Standards also reiterates that the University or State Government is entitled to hold an entrance examination for admission to B.Ed., degree course and admission shall be made on the basis of the marks obtained in the said examination. The said para-3(b) reads as follows:-

"Admission should be made either on the basis of marks obtained in the qualifying examination or in the entrance examination conducted by the University/State Government as per the policy of the State Government/University to which the institution is affiliated."

Therefore the right to admit students is not meant to be the immediate consequence of an order of recognition, but can be interrupted by a process of selection prescribed by the University. If this is so, it is unthinkable that even before affiliation, a student can be admitted.

52. As a matter of fact, the reference made to Appendix-2C undertaking has no relevance at all, since the said undertaking is to be executed by a University under Regulation No.3(ii) of the NCTE Regulations 2002, where the University makes an application for recognition. Even then, I have considered the effect of para-4 of the undertaking and found that it does not confer a right to admit students even before the grant of affiliation, merely because of the grant of recognition.

53. It is interesting to note that Appendix-7 Norms and Standards prescribed for B.Ed., Course under Regulation 8 of NCTE Regulations 2002 prescribes the qualifications of teaching staff under para-5(a) and (b). In para-5(d), the NCTE Regulations give a leverage to the other Regulatory Bodies, even to prescribe such other qualifications apart from the qualifications prescribed in para-5(a) and (b). Thus, it is clear that the petitioner has a right to admit students only after an order of recognition is granted by NCTE followed by an order of affiliation by the concerned University. The absence of any one of the two would vitiate the admission of a student.

54. Learned counsel for the petitioner advanced an argument that the Vice Chancellor of the Bharathiyar University has the power to exempt students of unaffiliated collages also to take the examinations. It is true that Section 13(8) of the Bharathiyar University Act, 1981, confers powers upon the Vice Chancellor to

exercise such other powers and perform such other duties as may be prescribed by Statutes. But Chapter VI of the Statutes of the University Act, does not appear to contain any provision conferring powers upon the Vice Chancellor to grant exemption. However, in so far as admission of a person to University Course is concerned, the Syndicate of the University has the power to grant exemption for admission of a person to a Course of study in the University, under Section 38(2) of the Act. But, the said power of exemption is to be exercised only on the recommendation of the Standing Committee on Academic Affairs. Similarly, the Syndicate has the power to grant exemption to a person from the requirement of enrollment to affiliated or approved college, under Section 39 of the Act. This is also subject to the recommendation of the Standing Committee on Academic Affairs. Section 39 Reads as follows:-

"39. Admission to University examination - No candidate shall be admitted to any University examination unless he is enrolled as a member of a University college or laboratory or of an affiliated or approved college and has satisfied the requirements as to the attendance required under the regulations for the same or unless he is exempted from such requirements of enrollment or attendance or both by an order of the Syndicate passed on the recommendation of the Standing Committee on Academic Affairs made under the regulations prescribed. Exemptions granted under this Section shall be subject to such condition, as the Syndicate may think fit."

55. In order to highlight the power of the Vice Chancellor or the Syndicate to grant exemption, learned counsel for the petitioner relied upon the judgment of the Supreme Court in *Bhartiya Homoeopathy College, Bharatpur vs. Students' Council of Homoeopathy Medical College, Jaipur and Others* ((1998) 2 SCC 449).

56. There is no difficulty in accepting the proposition that any order of exemption issued by the Vice Chancellor or the Syndicate in exercise of the power conferred by the Statute or the Act, cannot be assailed, if the power to grant exemption had been exercised in a proper manner. But in this case, the petitioner has neither sought for exemption nor was given exemption under Section 38 or Section 39 of the University Act. Therefore, that question does not arise for consideration.

57. In fine, I summarise the conclusions as follows:-

(a) Any requirement or prescription in the University Act or Statute, which has the effect of improving the Norms and Standards and which also seeks to achieve the objects of NCTE Act, 1993, cannot be taken to be repugnant to NCTE Act, 1993.

(b) The prescription by the respondent-



University that the institute should be able to work for the required number of term days after the grant of affiliation, is perfectly in tune with the object sought to be achieved by the NCTE Act, 1993 and it is intended to attain excellence in Teacher Education. Hence, it is not repugnant to the provisions of NCTE Act, 1993.

58. For the above reasons, the writ petition fails and it is dismissed. However, it is open to the petitioner to approach the Vice Chancellor or the Syndicate of the University for the grant of exemption and if the petitioner chooses to do so, the Appropriate Authority may consider the same in accordance with law. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Svn

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar,  
Bharathiyar University,  
Coimbatore-641 046

ONE CC TO MR.V. AYYADURAI, ADVOCATE SR 64541

ONE CC TO MR.M. SEKAR, ADVOCATE SR 64570

ONE CC TO G.P, SR 64987

Order  
in WP 34923/2006

VC(CO)

BP/22.12

22.12.2006

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