

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C). NO.10717 OF 2013

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Centurion University of Technology and
Management, represented through
Pro-Vice Chancellor, Ardhendu Mouli Mohanty,
aged about 60 years, S/o. Raj Kishore Mohanty,
At: Ramchandrapur, P.O. Jatani,
Dist: Khurda

... Petitioner

-Versus-

State of Odisha and others

... Opp.Parties

For Petitioner : Mr. Y. Das, Senior Advocate,
M/s. Rajjeet Roy & S.K. Singh

For Opp. Parties : Mr. Satya Sundar Das,
[For O.P. Nos.2 and 3]

Mr. S.K. Samal,
[For O.P. No.1-SME]

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment : 27.09.2013

B.N. MAHAPATRA, J. This Writ Petition has been filed with a prayer for quashing letter dated 13.08.2012 issued by opposite party No.1-Special Secretary to Government, Department of School and Mass Education (Annexure-15), letter dated 29.11.2012 issued by opposite party No.2-Eastern Regional Committee, National Council for Teachers' Education (Annexure-16) and

letter dated 01.03.2013 issued by opposite party No.3-Member Secretary, National Council for Teachers' Education (Annexure-17).

2. Petitioner's case in a nutshell is as follows:-

Petitioner-Centurion University of Technology and Management (for short, "petitioner-University") was established under the Centurion University of Technology and Management Act, 2010 (for short, 'the CUTM Act, 2010') which came into force vide Government Notification dated 27.08.2010. It has its campus at Ramchandrapur, Jatni and at Rasur village of Parlakhemundi in the district of Gajapati. The Department of Higher Education, Government of Odisha in exercise of its power under Sub-section (1) of Section 6 of the CUTM Act, 2010 established a University to be known as Centurion University of Technology and Management of Odisha vide Notification dated 23.12.2010 (Annexure-10). The said Notification dated 23.12.2010 was also published in the Orissa Gazette bearing Nos.2160 and 2161 dated 24.12.2010 under Annexures-4 and 5. In partial modification of the earlier Notification dated 23.12.2010 of Higher Education Department and in exercise of powers conferred under Section 6(1) of the CUTM Act, 2010, the State Government established the University at Rasur of Parlakhemundi in the district of Gajapati. The existing programmes and courses are running in its campus at Parlakhemundi and Bhubaneswar. The Joint Secretary to Government in Industries Department vide his letter dated 01.03.2011 (Annexure-7) intimated the Chairman, AICTE, New Delhi that CUTM has been established under CUTM Act, 2010; the Notification as

regards formation of the said University has been published in the extraordinary Orissa Gazette vide No.338 dated 11.02.2011; the affiliated Colleges, viz., JITM and CIT of BPUT have been de-affiliated from BPUT vide Order No.3402 dated 25.02.2011 issued by the Industries Department, Government of Odisha and have become the constituent Colleges of CUTM. Therefore, the AICTE was requested to treat the aforesaid Colleges as constituent Colleges of CUTM as they ceased to be affiliated Colleges of BPUT. Opposite party No.4-Department of Higher Education in Government of Odisha in exercise of power conferred under Section 29(1) of the CUTM Act, 2010 approved the first statute of the petitioner-University, vide Notification dated 19.10.2011 published in the extra-ordinary issue of Odisha Gazette.

3. Further case of the petitioner is that the petitioner-University vide letter dated 18.04.2011 sought approval from opposite party No.1-Department of School and Mass Education to begin Bachelor of Education (B.Ed.) degrees and Certified Teacher (C.T.) training courses to produce quality and quantity professional teachers for Primary and Secondary Schools in Odisha and outside. In the said letter it was also mentioned that the petitioner-University has the power to establish Academic and Research facilities in such branches of learning as it may deem fit under Section 8(a) and (e) of the CUTM Act, 2010. As per the provision and regulations of National Council for Teachers' Education Act, 1993 (for short, 'NCTE Act, 1993'), the petitioner-University vide letter dated 21.09.2011 submitted an online application for establishment of a B.Ed. institution for the academic

year 2012-13 at Pitamahal in the district of Rayagada. The petitioner-University had also deposited an amount of Rs.5,00,000/- for B.Ed and Rs.3,00,000/- for C.T., apart from Rs.40,000/- towards application fees. Opposite party No.1 informed the petitioner vide its letter dated 17.10.2011 that before starting Training Courses on Teachers' Education, permission and recognition for the said courses on Teachers' Education was required from Regional Committee, NCTE as per Sections 14 and 15 of NCTE Act, 1993. After submission of the application by the petitioner-University for grant of recognition to start B.Ed. course for the academic year 2012-13, the Regional Director, NCTE vide letter dated 25.11.2011 requested opposite party No.1 to furnish the recommendation within the stipulated time period of 45 days as per Regulations 7(3) of NCTE Regulations, 2009. Opposite Party No.1 vide letter dated 17.01.2012 (Annexure-12), rejected the proposal of the petitioner-University for grant of recognition to provide B.Ed. Degree and C.T. Training courses. Challenging the said order of opposite party No.1 passed under Annexure-12, the petitioner-University approached this Court in W.P. (C) No.2656 of 2012, which was disposed of on 16.05.2012 by this Court setting aside the said rejection letter dated 17.01.2012 and directed the State Government to consider the letters of NCTE dated 25.11.2011 and 07.05.2012 within a period of two weeks from the date of production of certified copy of the said order and furnish their recommendation or comments on the proposal of the petitioner-University as per Regulation 7(3) of the Regulations, 2009. Opposite party No.2 vide its letter dated 07.05.2012

also requested opposite party No.1 to send his recommendation within 30 days. Despite order dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 and the reminder letter dated 07.05.2012 of opposite party No.2, opposite party No.1 has not sent his recommendation for which the petitioner once again approached this Court by filing W.P.(C) No.13637 of 2012 and the same was disposed of on 19.11.2012 with a direction to the Regional Director of the NCTE to take a decision, if not taken already in the meantime in the matter within a period of four weeks from the date of production of certified copy of the order.

4. Opposite party No.2 in its 145th Meeting held on 07/08 November, 2012 taking into consideration, the letter dated 13.08.2012 (Annexure-15) of opposite party No.1, had refused recognition to the petitioner under Section 14(3)(b) of the NCTE Act, 1993, under Annexure-16. However, this fact was not brought to the notice of this Court for which the above order dated 19.11.2012 was passed in W.P.(C) No.13637 of 2012. Being dissatisfied with the order of opposite party No.2-Regional Committee passed under Annexure-16, the petitioner preferred an appeal before the National Council for Teachers' Education, New Delhi under Section 18 of the NCTE Act, 1993. The Member Secretary of the NCTE vide order dated 01.03.2013 under Annexure-17 remanded the matter to the Eastern Regional Committee with direction to process the application of the petitioner-University as and when it submits NOC from the State Government. It further directed the ERC to present a status report of the case

with reference to the Court cases and orders thereon, so that any legal directions in the matter may also be looked into by NCTE. Pursuant to the said order of opposite party-NCTE, opposite party No.2 has communicated to the petitioner vide its letter dated 18.04.2013 under Annexure-18 to take up the matter with the State Government directly with regard to issuance of NOC. Hence, the present Writ Petition.

5. Mr.Y.Das, learned Senior Advocate appearing for the petitioner submits that the letter dated 13.08.2012 (Annexure-15) passed by opposite party No.1 rejecting the proposal for grant of NOC in favour of the petitioner to open B.Ed. course programme is completely illegal, arbitrary and *non est* in the eye of law. Similarly orders dated 29.11.2012 and 01.03.2013 passed by opposite parties 3 and 4 respectively having been passed on irrelevant considerations and not in accordance with the mandates of law are illegal, perverse and outcome of exercise of excessive jurisdiction. Power to recognize “Institutions offering Courses/Training in Teachers’ Education” anywhere in the Country has been given by the Parliament to the Regulatory Body called National Council for Teachers’ Education and the Regional Committees established under the NCTE Act, 1993. Sub-section (3) of Section 14 of NCTE Act, 1993 provides that it is obligatory on the part of the Regional Committee to pass an order granting recognition to such institution only if the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and fulfils other required conditions for proper functioning of the institution for a course or training in teachers’ education

and refuse such recognition in absence of fulfillment of such requirements. Thus, NCTE Act certainly does not assign any role to the State Government. In sharp contrast to the requirement of the Regulations, 2005 an amendment has been carried out wherein the requirement of the Regional Committee of obtaining an NOC from the State Government or Union Territory has been abandoned. On the contrary all that is required by the Regional Committee is the recommendations or comments of the State Government or Union Territory on the application of the institution. Processing of the application by the Committee shall not be deferred on account of non-receipt of recommendations or comments of the State Government or U.T. and the application is to be considered on its own merit. The changes in the Regulations have been deliberately made as grant of recognition rests solely with the National Council for Teachers' Education under the NCTE Act, 1993. In case the State Government or Union Territory is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which are to be taken into consideration by the Regional Committee while disposing of the application. Reasons given by opposite party No.1 in its letter dated 13.08.2012 (Annexure-15) while recommending refusal for grant of recognition in favour of the petitioner are completely false and irrelevant and without any basis and contrary to the principles of law. The Odisha State Legislature having given clear mandate to the petitioner to establish 'School of Vocational Education and Training' offering courses of 'Vocational Education and Training' in the CUTM Act, 2010, the opposite

party No.1 is acting contrary to the legislative intent by placing reliance upon Section 7-E and 7-F of the Orissa Education Act, 1969 (for short, “the Act, 1969”). Chapter-VII of the first statutes of the petitioner-University clearly provides for the award of B.Ed. and M.Ed. degrees. For recognition to the institution offering course or training institution in the country, the NCTE Act has been legislated and it being a special Act covering teachers’ education in the country it would prevail over any other general law pertaining to Private Training Colleges. In the event of any conflict/repugnancy between two Acts, Article 254 of the Constitution of India provides that the Parliament legislation on any subject would prevail over the State Act.

6. Mr. Das submitted that reasoning given by the opposite party No.1 while referring to Section 7-E and 7-F of the Act, 1969 has been struck down by this Court by its order dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 holding the same to be not correct. Therefore, once again resorting to the same provisions, opposite party No.1 has squarely tried to overreach the order of this Court and is guilty for having willfully and deliberately flouted the said order of this Court. Reasons given by opposite party No.1 that it has decided to increase the intake capacity of the existing Teacher Training Institute in the State and the ST and SC Development Department has established one B.Ed. College at Kandhamal and has also decided to establish five new Training Colleges in the district of Malkangiri, Nabarangpur, Rayagada, Mayurbhanj and Sundargarh for which the requirement of B.Ed. qualified candidates can be met adequately by the

Government B.Ed. Colleges in the State of Odisha are completely without any basis and discriminatory. Such statement not only smacks mala fides on its part in the absence of any supportive documents giving the accurate statistics as to the posts of teachers lying vacant in the Primary and Upper Primary Schools, the requirement of trained teachers vis-à-vis the population of the State. The State Government has admitted in the recent past that there is a huge shortage of School teachers and the State Government is in need of trained teachers. There are instances where the Government has been hiring teachers who have got degree from outside the State. As it appears from the news article, the Government has formulated a policy for engaging retired teachers to meet the urgency.

7. It was further submitted that opposite party no.2 should have applied its independent mind and got the institutions inspected by a team of experts for assessing the level of preparedness of the institution to commence the course as required under the Regulations 7(4), 7(5) and 7(6) of Regulations, 2009 irrespective of recommendation or comments of opp. party no.1. Opposite party No.2 shall take a decision with regard to granting recognition only after conducting inspection with regard to fulfilment of all conditions prescribed by the NCTE. Therefore, opposite party No.2 has committed gross illegality by issuing show cause notice to the petitioner vide ERC Letter No.13988 dated 17.09.2012 under Section 14(3)(b) of the NCTE Act, 1993.

8. As per the requirement under law the limited role of the State Government is to provide its recommendations or comments supported with statistics to NCTE which is to be considered by it for ascertaining the veracity and correctness of such recommendations with an independent mind.

In support of his contention, Mr. Das, learned Senior Advocate placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra vs. Sant Dnyaneshwar Shiskhan Shastra Mahavidyala and others*, (2006) 9 SCC 1. Referring to paragraph-31 of the said judgment, it was submitted that Section 12 imposes duty on the Council to take necessary steps for ensuring planned and coordinated development of teachers' education and for determination and maintenance of standards for teachers' education. Referring to paragraph-40 of the said judgment, Mr. Das submitted that while considering an application for grant of an NOC the State Government or the Union Territory is to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialties like computer education, use of electronic media etc. and also for specialty education for the disabled and vocational education etc. It is the NCTE which is the sole and ultimate authority to grant or refuse recognition to an institution for opening B.Ed. College or running a teachers programme.

Placing reliance on the judgment of the *St. John Teachers Training Institute vs. Regional Director, NCTE and Another*, AIR 2003 S.C. 1533, Mr. Das submitted that the State Government/Union Territory is to confine itself to the regulations issued by the Council vide Notification dated February 2, 1996; they are required to provide statistics regarding population of the State who are going to be educated and the Schools available in the State. The negative recommendation of opp. party No.1 under Annexure-15 is not in conformity with the requirement of Regulations, 2009. Right to impart education is a fundamental right as has been held by the Hon'ble Supreme Court in the Case of *TMA Pai Foundation and other vs. State of Karnataka and others*, (2002) 8 SCC 481. The action of opposite party No.1 is violative of Articles 14 and 19(1)(g) of the Constitution.

It was vehemently argued that the observations made in the order dated 16.05.2012 passed by this Court in W.P.(C) No.2656 of 2012 with reference to Sections 7-E and 7-F of the Act, 1969 were neither obiter dicta nor per incuriam nor in sub silentio as contended by opp. party no.1.

9. Per contra, Mr. Satya Sundar Das, learned counsel appearing for the NCTE, opposite party Nos.2 and 3-Regional Committee submitted that in W.P.(c) No.2656 of 2012, NCTE was not impleaded as a party. The State Government submitted comments before NCTE assigning reasons for refusal to grant recognition to the petitioner-institution under Annexure-15. On 07.09.2012 the NCTE issued show cause notice to the petitioner-institution to explain the State's refusal. On 12.09.2012, the petitioner-institution filed

representation before NCTE *inter alia* stating therein that Sections 7-E and 7-F of the Act, 1969 have no application to the Centurion University Act, 2010. On 19.11.2012, W.P.(C) No.13637 of 2012 was disposed of with a direction to NCTE to consider the case of the petitioner-institution and take a decision. On 29.11.2012 the Regional Committee, NCTE took a decision and refused recognition under Annexure-16. The petitioner-institution preferred statutory appeal under Section 18 of the NCTE Act challenging the order of refusal by NCTE before the Member Secretary, NCTE, New Delhi. On 01.03.2013 order in appeal was passed remanding the matter to Regional Committee, Eastern Regional Committee (ERC) holding that the appellant has raised an important question regarding the applicability of the Act, 1969 and further holding that the matters need to be sorted out at the level of the State Government with direction to ERC to process the application of the petitioner for grant of recognition. While the matter stood thus, the present writ application has been filed by the petitioner with a prayer to quash Annexures-15, 16 and 17. Therefore, the present writ petition is not maintainable.

10. Mr. S. Das further submitted that the stand of the petitioner that once NCTE Act, 1993, which is a Central Act came into force, the State has no role to play in the matter of grant of recognition is wholly misconceived. Placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *National Council of Teachers Education and others v. Shri Shyam Shiksha Prashikhan and others*, AIR 2011 SC 932 and *Adarsh Shiksha Mahavidyalaya and Ors. vs. Subhash Rahangdale and Ors.*, (2012) 2 SCC 425

: AIR 2012 SC 1097, Mr. S. Das submitted that the State has vital role to play before NCTE takes a final decision in the matter of grant of recognition. Apart from that, the State Act and Central Act operate in different fields and both are independent of each other. Therefore, the question of repugnancy between two Acts does not arise. Further, referring to the judgment of the Hon'ble Supreme Court in the case of *St. Johns Teachers Training Institute (supra)*, Mr. S. Das submitted that the role of the State Government is vital in the matter of grant of recognition to the petitioner-University. With regard to statistics, population, survey, demand and supply and development etc. the State has to lay down some reasonable restrictions to check mushroom growth of ill-equipped and sub-standard institutions, so that they may not create chaotic situation in future. The State authorities alone can decide about the educational facilities and needs of the locality. Entry 25 of the Concurrent List gives power to the State Legislature to make laws regarding education, including teachers' education inasmuch as for general welfare of citizen of the State and also in discharge of the constitutional duty enumerated under Article 41 of the Constitution. Rule 7(3) of the Regulations, 2009 is mandatory in nature and therefore, the State cannot be ignored before processing of application. Sections 7-E and 7-F of the Act, 1969 which begins with non-obstante clause does not in any way encroach upon the power of the authorities under the Central Act.

11. Mr. S.S. Das referring to the counter affidavit filed on behalf of opposite party Nos.2 and 3 submitted that Section 14 of the NCTE Act lays

down certain parameters for grant of recognition. Those are pre-conditions and sine quo non for grant of recognition. The same should be complied with. As per the provisions of NCTE and guideline dated 02.02.1996 laid down by the NCTE, the State Government has important role to play in the field. The Council was directed to ensure that in future no institution is granted recognition unless it fulfills the conditions laid down in the Act and Regulations. The Regional Committee established under Section 20 of the Act is duty bound to ensure that no private institution offering or intending to offer a course of training in teachers' education is granted recognition unless it satisfies the conditions specified in Section 14 (3) (a) of the Act, 1993 and Regulations 7 and 8 of the Regulations, 2009.

12. Mr. Samal, learned Standing Counsel appearing for opposite party No.1-School & Mass Education Department submitted that opening of private B.Ed. Colleges and Secondary Training Schools in the State had been restricted w.e.f. 14.08.1989 after insertion of Sections 7-E and 7-F in the Act, 1969 by way of amendment during the year 1989. Since the petitioner-University is a private University, the School and Mass Education Department vide letter No.1526 dated 17.01.2012 under Annexure-12 had rightly rejected the proposal of the petitioner-University for grant of permission for opening of Bachelor of Education (B.Ed.) degrees and Certified Teacher (C.T.) training courses in the petitioner-University in consonance with the statutory restriction contained in Section 7E of the Act, 1969. The contention of the petitioner that Sections 7-E and 7-F of the Act, 1969 are

not applicable to petitioner-University which has been established by an enactment of the Legislature of Orissa is not correct since the said University cannot acquire the status of a Government institution. Referring to the meaning of “University” as defined in the Cambridge International Dictionary, and Section 3(f) and Section 3(o) of the Act, 1969, it was submitted that the petitioner-Institution comes within the definition of Private Educational Institution. The constitutional validity of Section 7E of the Orissa Education Act was challenged before this Court in the case of *Sri Jayanarayan Mohanty vs. State of Orissa and others*, 72(1991) CLT 161 and this Court did not incline to declare Section 7E of the Act ultra vires either on account of legislative incompetency or violation of the constitutional guarantees.

13. The State Government is required to grant permission for opening of B.Ed. course as per the Act, 1969 but for recognition the institution may approach the NCTE for the purpose of imparting B.Ed. course. Pursuant to order of this Court dated 16.05.2012 passed in W.P.(C) No.2656 of 2012, and as required under clauses 7(2) , 7(3) and 7(4) of the Regulations, 2009, opposite party No.1 vide letter dated 13.08.2012 (Annexure-15) communicated to the Regional Director, NCTE that recognition for starting new B.Ed. course may not be granted in favour of Jagannath Institute for Technology and Management Trust, Paralakhemundi, Gajapati in view of Sections 7-E and 7-F of the Act, 1969. The letter dated 13.8.2012 (Annexure-15) was passed by opp. party no.1 in response to letters dated 25.11.2011 and 7.5.2012 of NCTE. Even if first statute of the petitioner-

University, which provides for award of B.Ed. and M.Ed. Degrees is approved by the Government that cannot supersede the statutory provisions contained in Sections 7-E and 7-F of the Orissa Education Act, 1969. The settled position of law is that there cannot be estoppel against the statute. In support of his contention, Mr. Samal relied upon the decision of the Hon'ble Supreme Court in the case of *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others*, AIR 1999 SC 2468. Since the State Government is not in favour of recognition, it has assigned detailed reasons in its recommendations/comments for not granting recognition of B.Ed. course on the application of the petitioner-University. Therefore, there is no need to furnish grounds with statistics as required under Regulation 7(3) of Regulations, 2009. Under Regulation 7(3) the State or Union Territory if is not in favour of the recognition, it shall either provide detailed reasons or grounds with necessary statistics which shall be taken into consideration by the Regional Committee concerned while disposing of the application for recognition. Moreover, the reasons given in Clauses-4, 5 and 6 of Annexure-15 also clearly indicate that requirement of B.Ed. qualified candidates can be met by the Government B.Ed. Colleges running in the State of Odisha. In view of the very fact that recommendations/comments of the State Government/Union Territory are necessary as per Regulation 7(3) to consider petitioner's application for grant of recognition to open B.Ed. or C.T. training course by the Regional Committee, the said field is not occupied by the Central legislation, i.e., NCTE Act, 1993.

14. Mr. Samal further submitted that various observations made in the order dated 16.05.2012 in W.P.(C) No.2656 of 2012 are obiter dicta. Placing

reliance upon the judgment of the Hon'ble Supreme Court in the case of *Shri Shyam Shiksha Prashikhan (supra)*, it was submitted that the requirement of recommendation/comment of the State Government/Union Territory is mandatory.

15. This Court vide order dated 16.5.2012 in W.P.(c) No.2656 of 2012 passed an innocuous order and while setting aside the rejection letter dated 17.1.2012 (Annexure-12), directed the State Government to consider the letters issued by the NCTE on 25.11.2011 and 7.5.2011 within a period of two weeks from the date of receipt of a certified copy of the order and furnish their recommendation or comments on the proposal of the petitioner-University as per Regulation 7(3) of the Regulations, 2009 within a period of two weeks thereafter.

16. Mr. Samal submitted that while passing the above innocuous order, this Court made certain observations with regard to Sections 7-E and 7-F of the Act, 1969. Since the provisions of Sections 7-E and 7-F of the Act were not the subject matter of dispute in W.P.(C) No.2656 of 2012, the said observation of the Court was only an obiter dicta and not binding upon the parties. The Hon'ble Court also did not take into consideration the judgment of this Court in the case of *Jay Narayan Mohanty (supra)* and other provisions of the Statute for which the judgment dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 is a judgment per incuriam. In support of his contention he relied upon the judgment of the Hon'ble Supreme Court in the case of *Sunita Devi vs. State of Bihar and another, AIR 2005 SC 498*.

17. It was further submitted by Mr. Samal that the Government of Orissa in School and Mass Education Department has opened 14 B.Ed. Colleges and the Commissioner-cum-Secretary to Government, S&ME Department vide letter dated 23.5.2003 requested the Principal Secretary, NCTE, New Delhi for inclusion of additional intake in the existing teachers training institutions in Orissa. The IGNOU has also entered into an MoU with the State Government to impart B.Ed. Course and utilize the institution for tutorial classes for 100 numbers of students in each Government College. Besides that the S.T. and S.C. Development Department has already opened B.Ed. College at Kandhamal. The Commissioner-cum-Secretary to Government in S&ME Department vide letter dated 29.7.2013 has requested the Principal Secretary to Government in Higher Education Department to take necessary decision for opening of B.Ed. Course in the University and Autonomous Colleges. The Head of the Department in case of University and the Principal of Autonomous Colleges may submit online application within the stipulated period to Eastern Regional Committee, NCTE.

18. Mr. Samal further submitted that Annexure-20 relied upon by the petitioner also reveals that the Government had invited application for appointment of 17820 Sikshya Sahayaks in the Primary Schools. However, the recruitment process was stayed by the High Court, which directed Government to start the process afresh and such information was uploaded in the website on 12.3.2010. The announcement of the Minister on the floor of the House was in respect of shortage of teachers but not in respect of

B.Ed. Graduates. During the period between 2010-13 the Government has already recruited 17820 numbers of Sikshya Sahayaks in the State for Primary School and High School to meet the requirement. Since the State itself is taking the responsibility of meeting the need of B.Ed. teachers, Annexure-21 also does not come in aid of the petitioner.

19. Mr. Samal further submitted that there is absolutely no conflict between NCTE Act, 1993 and the Act, 1969. The action taken by the State Government as per Sections 7-E and 7-F of the Act is in conformity with the authority or power given by the Central Act i.e. Regulation 7(3) of the Regulations, 2009. Since NCTE Act, 1993 seeks for necessary recommendation of the concerned State Government and also provides that the State Government may communicate if it is not in favour of the recognition with reasons there is no conflict between NCTE Act, 1993 and Section 7-E and 7-F of the Act, 1969.

20. Mr. Samal further submitted that if the petitioner had been convinced that after the order of this Court passed in W.P.(C) No. 2656 of 2012, there was no scope for opp. party No.1 to consider the application of the petitioner and give a negative recommendation it should have resorted to a contempt proceeding instead of filing fresh writ petition. Further, if the contention of the petitioner is to be accepted that the dispute has been set at rest vide order dated 16.5.2012 in W.P.(c) No. 2656 of 2012 and there is no scope for the opp. party to reject the application of the petitioner-institution for recommendation then the present writ petition cannot be maintainable

because it would be a successive writ petition claiming the self same relief. Concluding the argument Mr. Samal submitted for dismissal of the writ petition.

21. On the rival contentions of the parties, the following questions fall for consideration by this Court:

- (i) Whether under the NCTE Act, 1993, the State Government does not have any role for grant or refusal of recognition by the Regional Committee to an institution for a course or training in teachers' education as contended by the petitioner?
- (ii) Whether grant of recognition for a course or training in teachers' education rests solely with the National Council for Teachers' Education under NCTE Act, 1993 and in the matter of processing any application for such recognition the State has no vital role to play or has a very limited role of providing statistics vis-à-vis the population of the State and requirement of trained teacher ?
- (iii) Whether it is obligatory on the part of opposite party No.2-Regional Committee to proceed with the application of an institution for recognition of B.Ed. and C.T. Courses in terms of Regulations 7 and 8 of Regulations, 2009 and conduct inspection despite the State Government's recommendations or comments not to grant such recognition for valid reasons?
- (iv) Whether the detailed reasons given by the State Government in its recommendations or comments on the application of the petitioner for not granting recognition to open B.Ed. and C.T. Courses in the petitioner's institution are valid reasons?

- (v) Whether opposite party No.2-Regional Committee is justified in refusing to grant recognition to the School of Bachelor of Education to the petitioner-institution in terms of Section 14(3)(b) of the NCTE Act, 1993?
- (vi) Whether opposite party No.3-NCTE has committed any error in directing opposite party No.2-Regional Committee to process the application of the petitioner only after getting recommendation/NOC from the State Government?
- (vii) What order ?

22. Question Nos.(i) and (ii) being inter-linked, they are dealt with together.

23. One of the strong grounds of contention of the petitioner is that grant of recognition for a course or training in Teachers' Education rests solely on the NCTE. The recommendations or comments of the State Government are formal in nature and the same do not carry much importance in the process of grant of recognition by the Regional Committee to an institution for a course or training in Teachers' education under NCTE Act, 1993. It is further contended that irrespective of the nature of recommendations or comments of the State Government, the Regional Committee should conduct independent inspection and it is obligatory on the part of the Regional Committee to pass an order granting recognition to such institution if the institution has adequate financial resources, accommodation, Library, qualified staff, Laboratory and fulfills other required conditions for proper functioning of the institution and for courses and training in teachers' education. These contentions of learned counsel for the

petitioner are wholly untenable in the eye of law. Under Regulations 7(2) and 7(3) of the NCTE Regulations, 2009, the State Government or UTs are required to furnish recommendations or comments to Regional Committee on the application of the petitioner for grant of recognition and the said recommendations or comments are required to be considered by the concerned Regional Committee before taking a final decision on the application. The requirement of recommendations or comments of the State Government/UT administration as required under Regulations 7(2) and 7(3) are mandatory in nature. This is also the stand of NCTE.

24. At this juncture, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***National Council for Teachers' Education & Ors. vs. Shri Shyam Shiksha Prashikshan Sansthan & Ors., etc. etc.*** (2011) 3 SCC 238, wherein it has been held as under:

“33. The consultation with the State Government/Union Territory Administration and consideration of the recommendations/suggestions made by them are of considerable importance. The Court can take judicial notice of the fact that majority of the candidates who complete BEd and similar courses aspire for appointment as teachers in the government and government-aided educational institutions. Some of them do get appointment against the available vacant posts, but a large number of them do not succeed in this venture because of non-availability of posts. The State Government/Union Territory Administration sanctions the posts keeping in view the requirement of trained teachers and budgetary provisions made for that purpose. They cannot appoint all those who successfully pass BEd and like courses every year. Therefore, by incorporating the provision for sending the applications to the State Government/Union Territory Administration and consideration of the recommendations/suggestions,

if any made by them, the Council has made an attempt to ensure that as a result of grant of recognition to unlimited number of institutions to start BEd and like courses, candidates far in excess of the requirement of trained teachers do not become available and they cannot be appointed as teachers. If, in a given year, it is found that adequate numbers of suitable candidates possessing the requisite qualifications are already available to meet the requirement of trained teachers, the State Government/Union Territory Administration can suggest to the Regional Committee concerned not to grant recognition to new institutions or increase intake in the existing institutions. If the Regional Committee finds that the recommendation made by the State Government/Union Territory Administration is based on valid grounds, it can refuse to grant recognition to any new institution or entertain an application made by an existing institution for increase of intake and it cannot be said that such decision is ultra vires the provisions of the Act or the Rules.

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41.We further hold that the provisions contained in Section 14 and the Regulations framed for grant of recognition including the requirement of recommendation of the State Government/Union Territory Administration are mandatory and an institution is not entitled to recognition unless it fulfils the conditions specified in various clauses of the Regulations. The Council is directed to ensure that in future no institution is granted recognition unless it fulfils the conditions laid down in the Act and the Regulations and the time schedule fixed for processing the application by the Regional Committees and communication of the decision on the issue of recognition is strictly adhered to.”

(Underlined for emphasis)

25. The Hon'ble Supreme Court in the case of ***Adarsh Shiksha Mahavidyalaya and Ors. vs. Subhash Rahangdale and Ors., (2012) 2***

SCC 425, has held as under:

“87. As a sequel to the above discussion, we hold that the impugned orders do not suffer from any legal infirmity warranting interference by this Court. We also reiterate that:

(i) The Regional Committees established under Section 20 of the 1993 Act are duty-bound to ensure that no private institution offering or intending to offer a course or training in teachers’ education is granted recognition unless it satisfies the conditions specified in Section 14(3)(a) of the 1993 Act and Regulations 7 and 8 of the Regulations. Likewise, no recognised institution intending to start any new course or training in teachers’ education shall be granted permission unless it satisfies the conditions specified in Section 15(3)(a) of the 1993 Act and the relevant Regulations.

(ii) The State Government/UT Administration, to whom a copy of the application made by an institution for grant of recognition is sent in terms of Regulation 7(2) of the Regulations, is under an obligation to make its recommendations within the time specified in Regulation 7(3) of the Regulations.

(iii) While granting recognition, the Regional Committees are required to give due weightage to the recommendations made by the State Government/UT Administration and keep in view the observations made by this Court in *St. Johns Teachers Training Institute v. National Council for Teachers’ Education* and *National Council for Teachers’ Education v. Shri Shyam Shiksha Prashikshan Sansthan*, which have been extracted in the earlier part of this judgment.

(Underlined for emphasis)

26. From the above decisions of the Hon’ble Supreme Court, it is amply clear that the role of the State giving recommendations or comments is a very valid consideration of the State. This is a very vital aspect which needs to be addressed. The State Government is not a mere Post Office. The undisputed position is that the State Government has to recommend or

comment on the application of an educational institution for grant of B.Ed. or C.T. Training programme; while so doing, the State Government has to keep in view several factors as indicated in above decisions of the Hon'ble Supreme Court.

27. The judgment of the Hon'ble Supreme Court in the case of ***Sant Dnyaneshwar shikshan Shastra Mahavidyalaya and others*** (supra), is of no help to the petitioner as the facts of that case are different from the facts of the present case. In that case, NCTE granted recommendation for starting B.Ed. course and therefore, the Hon'ble Supreme Court held that the State Government could not refuse permission on the plea that it has taken a policy decision not to grant NOC to any institution for starting new B.Ed. College during the relevant academic year. The Hon'ble Court further held that the State was rather devoid of power to refuse permission in such a case or to over rule the decision of the NCTE. In the present case NCTE has not granted recognition to the petitioner-University to start B.Ed. and C.T. courses taking into consideration the views of the State Government. Thus, there is no question of overruling the decision of the NCTE by the State. Further, in the present case, the State Government has not taken any policy decision for not starting new B.Ed. College during any academic year. It is relevant to note that under Sections 7-E and 7-F of the Act, 1969 after 01.08.2009 permission shall not be granted to any Private Educational Institution to impart B.Ed. and C.T. Courses. It is not stated that B.Ed. and CT Courses shall not be imparted in the State during any academic year, but those

courses shall be imparted in Government Educational Institutions by opening new Government Colleges and also enhancing intake capacity of the existing institutions. So far recognition of the courses are concerned, it is always with the NCTE.

28. In ***St. John Teachers Training Institute*** (*supra*), the provisions of Regulations 5(e) and 5(f) of the Regulations, 1995 fell for consideration before the Hon'ble Supreme Court. In the present case Regulation 7(3) of the Regulations, 2009 is under consideration.

Further, the Hon'ble Supreme Court in the case of ***Shri Shyam Shiksha Prashikhan*** (*supra*) and ***Subhash Rahangdale and Ors.***, (*supra*), taking note of its large number of earlier judgments including the case of ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others*** (*supra*) and ***St. John Teachers Training Institute*** (*supra*) held as extracted above.

29. In view of the above, I am of the considered view that role of the State Government in the matter of processing application for grant of recognition to any educational institution by the Regional Committee for a course or training in Teachers' Education as required under Regulations 7(2) and 7(3) is mandatory; it is very vital/important and while granting such recognition, the Regional Committee is required to give due weightage to the recommendations or comments made by the State Government/UTs administration. If the Regional Committee finds that the recommendation made by the State Government/UT administration is based on valid reasons

it can refuse grant of recognition of any new institution or for increase of intake capacity in any existing institution.

30. So far question no.(iii) is concerned, in view of the answer to question Nos.(i) and (ii) and the provisions contained in Regulations 7 and 8 of the Regulations, 2009, this Court is of the opinion that it is obligatory on the part of opposite party No.2-Regional Committee not to proceed with the application for recognition of B. Ed. and C.T. programme in case the recommendations or comments of the State Government to Regional Committee are not to grant such recognition on valid reasons or grounds with statistics. It is only when the reasons or grounds with the statistics given by the State Government/UT in its recommendations or comments are not valid or that no recommendation or comment is received from the State Government/UT as required under Regulation 7(3) of Regulations, 2009, the Regional Committee may conduct inspection in terms of those Regulations to find out fulfilment of prescribed conditions inter alia pertaining to financial resources, accommodation, library, laboratory, other physical infrastructure, qualified staff including teaching and non-teaching personnel etc.

31. Question No.(iv) is whether the detailed reasons given by the State in its recommendation or comments on the application of the petitioner for not granting recognition to open B.Ed. and C.T. Courses in the petitioner-Institution are valid reasons.

Annexure-15 reveals that the State Government considering various facts has given the following detailed reasons for not granting recognition to the petitioner-institution to open B.Ed. Course.

- “1. The Centurion University of Technology and Management is a self financed private University.
2. Opening of private B.Ed. Colleges and Secondary Training Schools in the State has been banned with effect from 14.08.1989 under the provisions of Sections 7-E and 7-F of the Orissa Education (Amendment) Act, 1989. Sections 7-E and 7-F stipulate the following:

“Section 7-E: Notwithstanding anything to the contrary contained in this Act, on and after the commencement of Orissa Education (Amendment) Act, 1989, the State Government shall not accord permission for establishment of any private Secondary Training School or private training College or recognize any such school or college established, if any, prior to the said date.

Section 7-F : Notwithstanding anything contained in this Act or the Rules made thereunder or any judgment, Decree or order of any Court the State Government shall not be bound to accord permission for establishment of any such private secondary training school or private training college or recognize any school or college established, if any, prior to the 14th day of August, 1989 and non recognition of such school or college shall not be questioned in any court of law or otherwise be opened to challenge.”

3. In view of the aforesaid statutory provisions, the proposal for grant of NOC in favour of the petitioner-University was rejected by the School and Mass Education Department vide letter No.1526/SME dt. 17.01.2012.
4. School & Mass Education Department, Government of Odisha, have also decided to increase the intake capacity of the existing Teacher Training Institutes in the State of Odisha.

In this connection, Letter No.10763 dated 25.04.2012 addressed to Director, TE & SCERT, Odisha with copy to Regional Director, ERC, NCTE, Bhubaneswar may please be referred to.

5. Apart from the above, ST & SC Development Department, Government of Odisha have established one B.Ed. College at Kandhamal and have also decided to establish 5 new Training Colleges in the districts of Malkanagiri, Nawarangpur, Rayagada, Mayurbhanj and Sundargarh.

6. Thus, the requirement of B.Ed. qualified candidates can be met by the Government B.Ed. Colleges in the State of Odisha.”

32. The petitioner has challenged the validity and legality of the above reasons given by opp. party no.1 for not granting recognition to petitioner-Institution to open B.Ed. Course basically on three grounds. Those are; (i) the petitioner-institution being not a private educational institution, the provisions of Sections 7-E and 7-F have no application to the petitioner-Institution; (ii) in view of the order of this Court dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 holding that the NCTE Act, 1993 will supersede Sections 7-E and 7-F of the Act, 1969, it is not open to the State Government and /or Regional Committee to reject the petitioner’s application for grant of recognition to open B.Ed. and CT Courses in its institution in view of the restrictions contained in Sections 7-E and 7-F of the Act, 1969 and that the observations made in the said order with reference to Sections 7-E and 7-F of

the Act, 1969 are neither obiter dicta, nor *per incuriam* nor in sub silentio of any statutory provision. The NCTE Act, 1993 being a special Act covering the teachers education in the country, it will prevail over any other general law pertaining to private training colleges; (iii) since in Annexure-15, opposite party No.1 has not given grounds with necessary statistics as required under Regulation 7(3) of the Regulations, 2009, opposite party No.2-Regional Committee is wrong in rejecting the petitioner's application for grant of recognition to open B.Ed. Course. The very reasons given by opposite party No.1 for running teachers training institute and taking a decision to open new teachers training institute and to enhance the existing intake capacity go to suggest that there is huge dearth of trained teachers in the Primary and Upper-Primary Schools. As per the data of NCTE, there is additional demand of teachers. Thus, on the basis of statistics available with the NCTE it was free to receive application for recognition of teachers training courses in Odisha.

33. The first ground of attack of the petitioner is that the prohibition contained in Sections 7-E and 7-F by way of the Orissa Education (Amendment) Act, 1989 does not apply to the petitioner as it is not a private educational institution as the petitioner-Institution has been created by a separate statute of the State Legislature explicitly granting power to the University to offer educational training by establishing school or vocational education and training under Sections 8 and 9 of the CUTM Act, 2010. Chapter 7 of the first statute of the petitioner-University provides for

awarding of B.Ed. and M.Ed. Degree. The said statute has been approved by the State Government on 19.10.2011 in exercise of power conferred by sub-section (1) of Section 29 of the CUTM Act, 2010.

34. In order to decide as to whether petitioner-University is a private educational institution or not, it is necessary to refer to some of the statutory provisions of the Orissa Education (Amendment) Act, 1989. As per Section 3(f) of the Orissa Education Act, “educational institution” means “any College or a junior college or a Higher Secondary School or any of the Schools” defined under the Orissa Education Act or any institution imparting technical and professional education, special education and includes any movable and immovable properties of such school or college, as the case may be. Thus, there is no doubt that the petitioner-University comes within the definition of ‘educational institution’.

Further, Section 3(o) defines that private educational institution means any educational institution which is not established and managed by Government of Odisha, the Union Government or Govt. of any other State. Admittedly, the petitioner –University is not established and managed by the Government of Orissa. In view of the above, the petitioner-institution is coming under the definition of private educational institution and accordingly the first ground of challenge to the reasons given by opposite party No.1 fails.

35. The second ground of attack of the petitioner is that in view of the order of this Court dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 holding that the NCTE Act, 1993 being a Special Act will supersede Sections

7-E and 7-F of the Act, 1969, it is not open to the State Government and/or Regional Committee to reject the petitioner's application for grant of recognition to the petitioner-Institution to open B.Ed. and CT Courses in its Institution in view of the restrictions contained in Sections 7-E and 7-F of the Act, 1969. Therefore, the State Government as well as the Regional Committee is wrong in taking into consideration the provisions of Sections 7-E and 7-F of the Act, 1969 while considering the petitioner's application for grant of recognition to its institution to open B.Ed. and CT Courses. The further contention of the petitioner is that observations made in the order dated 16.5.2012 passed in W.P.(C) No. 2656 of 2012 are neither *obiter dicta* nor *per incuriam* nor in *sub silentio* of any statutory provision as contended by the State.

36. The above stand of the petitioner was strongly opposed by the opposite party-Regional Committee. It was submitted that the stand of the petitioner that once the NCTE Act, 1993 which is a Central Act came into force, it supersedes Sections 7-E and 7-F of the Act, 1969 is wholly misconceived. The State has a very vital role to play before the NCTE takes a decision in the matter of grant of recognition in view of the judgment of the Hon'ble Supreme Court in the case of *Shri Shyam Shiksha Prashikhan (supra)* and *Subhash Rahangdale and Ors.,(supra)*. Both the State and the Central Acts operate in different fields and are independent of each other; there is no repugnancy between two Acts. With regard to statistics, population, survey and demand, supply and development etc. the State has to lay down some

reasonable restrictions to check mushroom growth of ill-equipped and sub-standard institutions, so that they may not create chaotic situation in future. The State authorities alone can decide about the educational facilities and needs of the locality. Regulation 7(3) of the Regulations, 2009 is mandatory in nature. Section 14 of the NCTE Act lays down certain parameters for grant of recognition and stipulates certain conditions which are pre-conditions and sine qua non for grant of recognition. The Regional Committee established under Section 20 of the Act is duty bound to ensure that no private institution offering or intending to offer a course or training in teachers' education is granted recognition if it does not satisfy the conditions specified in Section 14 (3) (a) of the Act, 1993 and Regulations 7 and 8 of the Regulations, 2009.

37. Learned Additional Government Advocate while reiterating the reasons given by opposite party No.1 submitted that the petitioner-University is a private educational institution which is neither getting any grant-in-aid from the Government of Orissa nor managed by the Government of Orissa. The constitutional validity of Sections 7-E and 7-F of the Act, 1969 was challenged before this Court in the case of **Jay Narayan Mohanty** (supra) and this Court did not incline to declare Section 7-E ultra vires either on account of legislative incompetence or violation of the constitutional guarantees. The recommendation of the State Government is necessary in the matter of grant of recognition to private institution by the Regional Committee to impart B.Ed. and C.T. Courses. Since there is no conflict

between Sections 7-E and 7-F of the Act, 1969 and NCTE Act, 1993, the question of NCTE Act superseding the State Act, 1969 does not arise. The observations made in the order dated 16.5.2012 passed in W.P. (c) No.2656 of 2012 are obiter dicta; those observations are per incuriam and passed in sub silentio being passed without taking into consideration various judgments of the Hon'ble Supreme Court as well as this Court and relevant statutory provisions.

It was further submitted by learned Additional Government Advocate that the requirement of B.Ed. qualified candidates can be met by the B.Ed. Colleges in the State of Odisha.

38. Perusal of the order dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 reveals that in the said writ petition, challenge had been made to the letter No.1526 dated 17.1.2012 issued by the Government in School and Mass Education Department rejecting the proposal of the petitioner-institution for grant of N.O.C. to open B.Ed. and C.T. Courses without assigning any reason. A contention was taken by the petitioner before the learned Single Judge that after coming into force of the Regulations, 2009, on receipt of an application for recognition of a teachers' education course/institution, the State Government or Union Territory administration concerned shall furnish its recommendations or comments to the office of the Regional Committee concerned within 45 days from the date of issue of a letter to the State Government or Union Territory. It was also provided that in case the State Government or Union Territory Administration is not in

favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics which shall be taken into consideration by the Regional Committee concerned while disposing of the application. Therefore, the State Government after receiving letter from NCTE dated 25.11.2011 should not have rejected the application to grant NOC without assigning any reasons.

However, in paragraph 8 of the counter affidavit filed by opp. Party No.1, it has been stated that Sections 7-E and 7-F of the Orissa Education Act provide that the State Government under no circumstances can give permission to private secondary training schools or private training colleges on or after the commencement of Orissa Education (Amendment) Act, 1989 or recognition to any such school or college established, if any, prior to 14th August, 1989.

39. On the above back ground the Hon'ble Single Judge has held as follows:

“The aforesaid contention of the opposite parties is not correct in view of the fact that Orissa Education Act has not been amended after Regulation, 2009 came into force. Section 7 of the Orissa Education Act was amended in the year 1989 and the education policy of the country has changed manifold in the mean time. The National Council for teachers Education Act, 1993 has been enacted with a view to achieving planned and co-ordinated development of the teachers' education system throughout the country, the regulation and proper maintenance of norms and standards in the teachers' education system and for matters connected therewith.

That apart, the functions of the NCTE enumerated in Section 12 of the Act, recognition of teachers education institutions provided in Section 14, 15 and 16 of the Act, the procedure for grant of recognition is prescribed

under the Regulations. Once the power is exercised by the Parliament, it would supersede all State laws on the subject and hence the eligibility procedure for training institutions will be covered under the central Statute and the State laws to that extent would be inoperative. Any other view is taken will be conflict between the State laws made under Entry 25 of the Concurrent List, which empowers the State to legislate and the central law enacted under Entry 66 of the Union List.

Therefore, from the above provisions, it appears that the NCTE being the controlling authority for imparting teacher's training education, they have to decide to give recognition to a particular institute/University depending on the statistics regarding population of the State, who are going to be educated and the schools established in the State as well as the training institutions available in the State. All the above statistics are not available with the NCTE till date as per Regulation 7(3) of the Regulation, 2009. Therefore, this Court while setting aside the rejection letter dated 17.1.2012 under Annexure-12, directs the State Government to consider the letter issued by NCTE on 25.11.2011 and 7.5.2012 within a period of two weeks from the date of receipt of a certified copy of this order and furnish their recommendation or comments on the proposal of the petitioner-University as per Regulation 7(3) of the Regulation, 2009 within a period of two weeks thereafter."

40. Now, the question arises whether there is any conflict between Section 7-E and Section 7-F of Act, 1969 and provisions of NCTE Act, 1993.

41. There is no quarrel over the legal proposition that in the event of any conflict/repugnancy between Central Act and State Act, Parliament legislation on any subject would prevail over the State Act in view of the constitutional mandate enshrined in Article 254 of the Constitution of India.

42. The subject 'Education' finds place in Entry 25 of the Concurrent List-III under Seventh Schedule of the Constitution of India. Therefore, laws

can be made on the subject 'Education' by Parliament as well as State Legislature. Thus, there is no legislative incompetence for enactment of Sections 7-E and 7-F of the Act, 1969. Therefore, except the protection to minor communities which is their fundamental right, there cannot be any objection for any law being made by the State Legislature prohibiting any type of education in private educational institutions. It is also nobody's case that the provisions of Sections 7E and 7F of the Act, 1969 violate any mandate of the Constitution. Under Section 7E, only establishment of Private Secondary Training School or Private Training Colleges in the State has been prohibited.

43. In exercise of power conferred by sub-section (2) of Section 32 of NCTE Act, 1993, the National Council of Teachers Education made the National Council for Teachers' Education, Regulations, 2009. Regulations 5(1), 7(2) and 7(3) of Regulations, 2009 read as follows :

“5(1). An institution eligible under Regulation 4, desirous of running a teachers' education programme may apply to the concerned Regional Committee of National Council for Teachers' Education for recognition in the prescribed form in triplicate along with processing fee and requisite documents.

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7(2). A written communication alongwith a copy of the application form submitted by the institution(s) shall be sent by the office of Regional Committees to the State Government or Union Territory Administration concerned within 30 days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.

7(3). On receipt of the communication, the State Government or Union Territory Administration

concerned shall furnish its recommendations or comments on the applications to the office of the Regional Committee concerned within 45 days from the date of issue of the letter to the State Government or Union Territory. In case, the State Government or Union Territory Administration is not in favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application.”

44. Perusal of Sections 7-E and 7-F of the Act, 1969 does not reveal that it opposes the objects sought to be achieved by the NCTE Act, 1993. Sections 7-E and 7-F of the Act, 1969 provide that the Government shall not accord permission for establishment of any private secondary training schools and colleges or recognize any such school or college established, if any, prior to the said date i.e. 14th day of August, 1989. We are not concerned with recognition of any private secondary training school or private training college established prior to 14th August, 1989. We are concerned with the grant of permission for establishment of any private secondary training school or private training college after 14.08.1989. Thus, the Sections 7E and 7F of the Act, 1969 as well as Regulation 7(3) of the Regulations, 2009 speak about grant of permission to educational institutions to run teachers' education programme. Therefore, there is no conflict between the provision of Sections 7-E and 7-F of the Act, 1969 and the provisions of Regulation 7(3) of the Regulations, 2009. As stated above, Sections 7-E and 7-F of the Act, 1969 do not speak of grant of recognition of any private educational institution after 14.8.1989 which is vested in NCTE Act, 1993. It may be

pertinent to note here that the Hon'ble Supreme Court in the case of **Shri Shyam Shiksha Prashikhan and others**, (supra) held that if the Regional Committee finds that the recommendation made by the State Government/Union Territory administration is based on valid grounds, it can refuse to grant recognition to any new institution or entertain application made by an existing institution for increase of intake and it cannot be said that such decision is *ultra vires* the provisions of the Act or the Rules.

45. At this juncture, it may also be relevant to know what are the Objects and Reasons for enacting the NCTE Act, 1993 and Sections 7-E and 7-F inserted by the Orissa Education (Amendment) Act, 1989.

Paragraph 4 of the Statement of Objects and Reasons for enacting the NCTE Act, 1993 reads as follows:

“4. The Bill seeks to empower the Council to make qualitative improvement in the system of teachers' education by phasing out sub-standard institutions and courses for teacher education. The NCTE would also be empowered to grant recognition to institutions for teachers' education and permission to recognized institutions for new course or training in teacher education. The Bill also provides for delegation of various powers to Regional Committees and other Committee for effective implementation of the function of the Council.

Statement of Objects and Reasons for enacting Sections 7-E and 7-F of the Orissa Education (Amendment) Act, 1989.

Un-restricted growth of Educational Institutions has also resulted in deterioration in the academic standards. Lecturers and teachers appointed in private colleges/schools are selected by the respective managements without adhering to academic standards of the teachers. That an educational system cannot maintain academic standards without the active support of teachers selected on merit needs no over emphasis.

Keeping all these objectives in view in order to make good the above deficiencies in the Orissa Education Act, 1969 and to provide for some administrative changes, the Orissa Education (Amendment) Ordinance, 1989 was promulgated on 14.8.1989. In order to retain the above objectives permanently the said Ordinance is needed to be replaced by an Act of the Legislature.”

46. If one will closely look at the Objects and Reasons for inserting Sections 7E and 7F in the Act, 1969 by Orissa Education (Amendment) Act, 1989 and NCTE Act, 1993, he will find that the Objects and Reasons for enacting both Statutes are similar in nature. Thus, there is no conflict between the two Acts. Consequentially, the question of NCTE Act, 1993 superseding Sections 7-E and 7-F of the Act, 1969 does not arise.

47. Apart from the above, both Regulation 7(3) of the Regulations, 2009 and Sections 7-E and 7-F of Act, 1969 co-exist. They have to be given a meaning in the context they have been used. That being the position one provision cannot be rendered nugatory. Had the field been occupied by the Central Legislation in a manner canvassed by the petitioner then there would have been no necessity for having a provision like Regulation 7(3) of the Regulations, 2009. Therefore, the State Government cannot act in a manner contrary to what is provided in the statute, i.e., Sections 7-E and 7-F inserted by the Orissa Education (Amendment) Act, 1989 so long as they exist therein.

Moreover, the constitutional validity of Section 7-E of the Act, 1969 was challenged before this Court in the case of **Jay Narayan Mohanty** (supra) and this Court did not incline to declare Section 7-E *ultra vires* either

on account of legislative competency or violation of constitutional guarantee. Therefore, in view of Section 7-E of the Act, 1969, the State Government cannot grant permission for opening of Private B.Ed. Colleges and Secondary Training Schools as the same is a statutory prohibition.

48. The above aspects have not been considered by the Hon'ble Single Judge. Further, as it appears, the decisions of the Hon'ble Supreme Court in the cases of **Shri Shyam Shiksha Prashikshan Sansthan** (*supra*) and **Adarsh Shiksha Mahavidyalaya** (*supra*) have not been brought to the notice of the Hon'ble Single Judge. Since all the above aspects have not been taken into consideration by the Hon'ble Single Judge, order dated 16.05.2012 passed in W.P.(C) No.2656 of 2012 is *per incuriam*.

49. The concept of "*per incuriam*" is those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned i.e. previous decisions of the Court i.e. its own Court or by a Court of co-ordinate or higher jurisdiction or in ignorance of a term of a statute or by a rule having the force in law. "Incuria" literally means "carelessness". In practice, *per incuriam* is taken to mean *per ignorantium*.

50. The Hon'ble Supreme Court in the case of **Sunita Devi vs. State of Bihar and another**, (2005) 1 SCC 608 : AIR 2005 SC 498 has held as under:

"19. "Incuria" literally means "carelessness". In practice *per incuriam* is taken to mean *per ignorantium*. English courts have developed this principle in

relaxation of the rule of stare decisis. The “quotable in law”, as held in *Young v. Bristol Aeroplane Co. Ltd.*⁷ is avoided and ignored if it is rendered “*in ignoratium* of a statute or other binding authority”. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. The above position was highlighted in *State of U.P. v. Synthetics and Chemicals Ltd.*⁸ To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.”

51. So far 3rd ground of attack is concerned, the contention of Mr. Y. Das is that since in Annexure-15, opposite party No.1 has not given grounds with necessary statistics as required under Regulation 7(3) of the Regulations, 2009, opposite party No.2-Regional Committee should not have rejected petitioner’s application for grant of recognition to open B.Ed. course. This contention of Mr. Y. Das is wholly misconceived. As per Regulation 7(3) of Regulations, 2009 “in case, the State Government or Union Territory administration is not in favour of the recognition, it shall provide detailed reasons **or** grounds thereof with necessary statistics which shall be taken into consideration by the Regional Committee concerned while disposing of the application.”

52. At this juncture, it would be relevant to refer to the judgment of the Hon’ble Supreme Court in ***Fakir Mohd. (dead) by LRs. Vs. Sita Ram***, (2002) 1 SCC 741, wherein it has been held that the word ‘**or**’ is normally disjunctive. The use of the word ‘**or**’ in a statute manifests the legislative intent of the alternatives prescribed under law. Hon’ble Supreme Court in the case of ***Indian Medical Association Vs. Union of India and others***, (2011) 7 SCC 179 held that the word

‘**or**’ is used to denote an alternative in a series of exclusive arrangements. Thus, the word ‘**or**’ used between ‘detailed reasons’ **or** ‘grounds thereof with necessary statistics’ is to be read disjunctively; accordingly either of the parts is to be satisfied not both the parts. If the word “**and**” had been used in place of word ‘**or**’, then both parts of the conditions would have been satisfied. Therefore, since in the said regulation ‘**or**’ has been used, it is to be read disjunctively, and if the first part is satisfied then there is no requirement to satisfy the second part. Had it been the intention of Regulations, 2009 that necessary statistics is mandatory, then they could have stated that detailed reasons thereof with necessary statistics shall be provided instead of using the word ‘**or**’ between ‘detailed reasons’ **or** ‘grounds thereof with necessary statistics’. Further if it is to be construed that providing necessary statistics is mandatory then the purpose of using the word ‘**or**’ between “detailed reasons” **or** “grounds thereof with necessary statistics” would become redundant. Thus, it is clear that if detailed reasons are given then there is no need of giving grounds with necessary statistics. Therefore, the use of the word ‘**or**’ in between the expressions, ‘detailed reasons’ **or** ‘grounds thereof with necessary statistics’, makes it amply clear that in case the State Government or Union Territory is not in favour of the recognition, it shall either provide ‘detailed reasons’ **or** ‘grounds thereof with necessary statistics’ for not granting recognition. Hence, once detailed reasons are provided by the State Government, there is no need to provide grounds with necessary statistics for not granting recognition to the petitioner-institution to open B.Ed. course.

53. It may be relevant to note here that in Regulation 7(3) of the Regulations, 2005, it is provided that if the recommendation is negative, the State Government/UTs administration shall provide detailed **reasons/grounds thereof** which could be taken into consideration by the Regional Committee concerned while deciding the application. But Regulation 7(3) of the Regulations, 2009 provides that in case State Government/UT administration is not in favour of recognition, it shall provide 'detailed reasons' **or** 'grounds thereof with necessary statistics', which shall be taken into consideration by the Regional Committee concerned while disposing of the application. Thus, while under Regulation 7(3) of the Regulations, 2005 detailed **reasons/grounds** thereof are necessary, in contrast to the same under Regulations, 2009, the 'detailed reasons' **or** 'grounds thereof with necessary statistics' are necessary. This is a remarkable difference between Regulations, 2005 and Regulations, 2009. Therefore, if detailed reasons have been furnished by the State Government, there is no need to give grounds with necessary statistics while not recommending for grant of recognition to the private institutions to open B.Ed./CT courses.

54. It may be noted that under Annexure-15 the reason given by the State Government to ERC for not granting recommendation to the petitioner-University for opening B.Ed. course is not confined to the restriction imposed under Sections 7-E and 7-F of the Act, 1969. There are many other valid reasons. Some of them are as follows:

“School and Mass education Department, Government of Odisha, have also decided to increase the intake capacity of the existing Teacher Training Institutes in

the State of Odisha. In this connection, letter no.10763 dated 25.4.2012 (copy enclosed), addressed to Director, TE & NCERT, Odisha, with copy to Regional Director, ERC, NCTE, Bhubaneswar may please be referred to.”

“Apart from the above, ST & SC Development Department, Government of Odisha have established on B.Ed. College at Kandhamal and have also decided to establish 5 new Training Colleges in the districts of Malkangiri, Nawarangpur, Rayagada, Mayurbhanj and Sundargarh.”

“Thus, the requirement of B.Ed. qualified candidates can be met by the Government B.Ed. Colleges in the State of Odisha.”

55. Strong reliance is also placed on public notice stated to have been issued by NCTE for recognition of teachers’ training courses for the academic session 2012-13 with a view to achieving the planned and coordinated development of teachers’ education system and in order to regulate the growth of teachers’ education at all levels on the basis of state-wise study conducted on ‘Demand and Supply’ of teachers and also in consultation with the State Governments/UT(s) categorically indicating the States and Union Territories from where application would not be received. In the public Notice the name of the State of Odisha does not figure. Therefore, it was argued that opp. party no.1 has the requirement of trained teachers.

It is nowhere stated that it cannot be done by the State Government by opening Government Colleges or by increase of seats in the existing Colleges. It cannot certainly be concluded that NCTE was of the view that non-Government Colleges shall be permitted to be opened. It is for the

State Government to take a decision as to in what way the view stated to have been expressed by NCTE shall be given effect to.

56. The following letters of Government also show that it takes sincere steps to meet the requirement of trained teachers in the State.

Letter No.10763/SME, date 25.04.2012 of Government of Odisha, School and Mass Education Department addressed to the Director TE & SCERT, Odisha reveals that the Additional Secretary to Government has intimated the Director, TE & SCERT, Odisha that after careful consideration, the Government have decided to make good the deficiencies in respect of infrastructure and manpower in the existing DIETs, DRCs, CTEs, IASEs and Training Colleges in the shortest possible time so as to make these Teacher Training Institutes NCTE compliant and further requested to take up the matter with the ERC, NCTE, Bhubaneswar for grant of permission and steps also may be taken up for admission of students against the proposed enhancement of seats from the next academic session 2012-13.

The Commissioner-cum-Secretary to Government, Department of School and Mass Education, Odisha vide letter No.12190/SME dated 23.05.2013 wrote to the Member-Secretary, NCTE, that in Odisha 73 Government Institutions having intake capacity of 4390 (1240 seats at Secondary Level and 3150 seats at Elementary Level) are imparting B.Ed. and D.El. Ed. Courses. These are Government managed institutions. The State Government commits to provide all facilities as required. Therefore, request was made to grant relaxation for submission of application through

offline mode, so that the Government can run the course with enhanced intake capacity from the academic session 2013-14.

Letter No.17754 dated 29.07.2013 issued by the Commissioner-cum-Secretary to Government, Department of School & Mass Education reveals that the University having M.A. in Education and Autonomous Colleges having Education (Hons) at graduation level may impart B.Ed. course.

57. Question No.(v) is as to whether opposite party No.2-Eastern Regional Committee is justified in refusing to grant recognition to the College of Bachelor of Education to the petitioner-institution in terms of Section 14(3) (b) of NCTE Act, 1993. Perusal of the said order dated 29.11.2012 passed under Annexure-16 reveals that opposite party No.2 after taking into consideration the materials available on record and letters dated 3.9.2012 and 12.9.2012 of the petitioner-institution filed in response to show-cause notice in terms of the provision of NCTE Act, 1993 and the reasons assigned by the State Government in its recommendations or comments for not granting recognition to the petitioner-institution, rejected the petitioner's application for grant of recommendation to B.Ed. Course in terms of Section 14(3) (b) of NCTE Act. I do not find any infirmity or illegality in the said order of opposite party No.2-Eastern Regional Committee passed under Annexure-16.

58. Question no.(vi) is whether there is infirmity or illegality in the order dated 1.3.2013 passed by opp. Party no.3-NCTE under Annexure-17.

Perusal of the order of Member-Secretary, NCTE dated 1.3.2013 Annexure-17 reveals that the Council after going through the memorandum of appeal, perusing the documents, affidavits and considering oral arguments advanced by the parties and the recommendation/comments of the State Government, remanded the matter back to the ERC with a direction to process the application of the petitioner as and when it submits NOC from the State Government.

In view of the judgment of the Hon'ble Supreme Court in the case of **Shri Shyam Shiksha Prashikhan and others** (supra), I do not find any infirmity or illegality in the said order of the Secretary, NCTE dated 01.03.2013 passed under Annexure-17.

59. In the instant case, the State Government while refusing to recommend the case of the petitioner has taken note of all the relevant facts; and the conclusion of the State Government cannot be said to be without basis and has been arrived at without consideration of relevant factors and materials. That being so, the decision of the State Government not recommending the case of the petitioner for grant of recognition to petitioner-University to open B.Ed. course as well as the decision of ERC and NCTE cannot be interfered with.

60. In the result, the writ petition is dismissed.

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B.N.Mahapatra, J.