A STATE OF MAHARASHTRA

v.

SANT DNYANESHWAR SHIKSHAN SHASTRA MAHAVIDYALAYA AND ORS.

MARCH 31, 2006

B

[Y.K. SABHARWAL, CJ., C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

C *National Council for Teacher Education Act, 1993;*

Section 14—Institution intending to offer a course or training in teacher education-recognition, grant of—State Government taking a policy decision not to grant 'No objection certificate' to any such intending institution—Held, the subject of planned and coordinated development of the teacher-
D *education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and matters connected therewith , fully covered by Entry 66 of List I of Schedule VII—not open to the State Legislature to encroach upon the said field as Parliament alone could have exercised the power by making appropriate law and, thus not open to State Government to refuse permission relying on*
E *a State Act or on 'policy consideration—Entry 66 of List I of Schedule VII of the Constitution of India.*

Constitution of India 1950;

Article 19(1) Clause (g)—Right to practise any profession, or to carry
F *on any occupation, trade or business subject to reasonable restrictions under Article 19(6)—Applications made by colleges to NCTE under 1993 Act and after complying with the provisions of the Act—Permission granted by NCTE—State Government citing a policy decision refused to grant 'No objection certificate'—Held, the State thereafter could not have interfered with the said*
G *decision.*

Article 21A—Held, would cover primary as well as secondary education.

Maharashatra University Act 1994;

H

Sections 82 and 83—applicability—grant of affiliation to an institution—Held, once recognition has been granted by NCTE under Section 14(6) of the Act, every University ('examining body') is obliged to and sections 82 and 83 of the University Act do not apply to such cases—Section 14(6) of the National Council for Teacher Education Act, 1993.

The petitioner, a public trust, desired to impart education for B.ED. course. To meet the requirement of infrastructure, library, staff etc., it spent more than rupees one crore. The petitioner then made an application to SNDT Women's University, Mumbai on October 30, 2004 by paying the requisite affiliation fees. A copy of the said application was forwarded to the Principal Secretary, Higher and Technical Education, Mantralaya, Mumbai. An application was also made by the petitioner to NCTE, Western Region Office, Bhopal on December 30, 2003 in the prescribed format for grant of permission to start B.ED. college for women in accordance with the provisions of the National Council for Teacher Eduction Act, 1993 (hereinafter referred to as 'the Act') and the National Council for Teacher Education (Norms & Conditions for recognition of Bachelor of Elementary Education) Regulations, 1995 (hereinafter referred to as 'the Regulations'). The Expert Committee of NCTE visited the petitioner's campus on June 6, 2005 and verified the adequacy of infrastructure, staff and other norms. The report was submitted by the Committee to NCTE which approved and granted recognition for B.Ed. College to be opened by the petitioner from academic year 2005-06 with an intake capacity of 100 students. After receipt of the said letter, the petitioner applied to the Government of Maharashtra on July 4,2005 for grant of permission to start the college and\or inclusion of the name of the college in the Central Admission Process for the year 2005-06 . The State Government neither acted on the said letter nor even replied. Under the Maharashtra Universities Act, 1994 (hereinafter referred to as 'the University Act') only after permission from the Government, B.Ed. College can be opened. Since the admission process was to be delayed and the petitioner had undertaken every exercise by getting necessary permission from NCTE and had invested huge amount of more than one crore on development, infrastructure and appointment of staff etc., it was constrained to approach the High Court by filing a petition for appropriate relief. An affidavit was filed by the State authorities asserting that the petitioner had to obtain NOC from the State Government. The State Government had an important role to play in the process of grant of permission by NCTE. It was stated that the State Government had been assigned an important task of development and improvement of teacher's education and thus it was vitally interested in education and specially in professional courses in the State. It was only the State Government which could correctly assess and know the extent of requrirment of trained manpower and

A supply of trained teachers keeping in view the requirements, change of occupation and demand of such teachers. The input from the State Government through NOC was thus vital for enabling NCTE to exercise its powers and discharge its functions properly and without involvement of the State Government and availability of necessary input by the State Government, NCTE could not grant permission. Being of the view that there were sufficient B.Ed. colleges and intake B capacity taking into account the need for teachers. A conscious decision was, therefore, taken by the Cabinet Sub-Committee on December 28, 2004 not to grant approval or issue NOC for starting any new institution or to increase intake capacity of existing institutions imparting B.Ed. course for the year 2005-06. In spite of the above decision, NCTE forwarded the recommendation for grant of C permission in favour of certain institutions. But, as policy decision had been taken by the State Government, the proposal of the petitioner institution for grant of NOC was not forwarded to NCTE. The State also made a complaint in the affidavit that NCET had not clarified in what circumstances it has issued permissions to the petitioner and other institutions without NOC from the State Government. It was, therefore, prayed by the respondent State that its decision was a policy decision D which was in consonance with law and the petition was liable to be dismissed. The State had also challenged, by filing Writ Petition No. 6172 of 2005, the action of NCTE of granting permission to open new B.Ed. college ignoring the policy decision of the State dated December 28, 2004 praying that the action of NCTE was illegal and unlawful and was liable to be set aside. The NCET also filed a E counter before the High Court. Relying on various provisions of the Act, NCTE stated that necessary sanction had been granted any NCTE and the said decision was legal, valid and in consonance with law. It was stated that since the final authority for granting such permission was only NCTE under the Act, SNDT University as well as the State Government ought to have respected the order passed by the NCTE by taking consequential actions and that the decision of the F State Government was not binding upon NCTE and accordingly NCTE had decided to grant permission to open 16 new B. Ed. colleges.

The High Court, therefore, was called upon to consider the role played by the State Government in the process of consideration of application by the G institutions seeking recommendation of opening B.Ed. colleges by NCTE in the light of the provisions of the Act in juxtaposition to the extent of trained manpower required by the State and to take policy decision on the basis of output of teachers by such colleges. The Court was also called upon to consider whether in absence of any material being made available by the State Government to NCTE whether the latter can process the application and take a decision contrary to the decision H of the State Government. A question had also arisen as to whether the State

Government can refuse permission to an institution which had been granted permission to start B.Ed. college by NCTE under the Act and whether policy decision of the State Government not to grant NOC would bind NCTE in the light of the provisions of the Act. The High Court allowed the writ petition filed by the Institutions and dismissed the writ petition of the State Government. Hence, these appeals by the state. A B

The appellant\state contended that the policy decision taken by the State Government was in consonance with law and could not have been ignored by NCTE. It was also submitted that it was within the power and authority of the State to take into account relevant and germane considerations. On a serious consideration, the Cabinet Sub-Committee took a conscious decision that for the year 2005-06, no NOC would be granted to open new B.Ed. colleges. It was also submitted that the Regulations framed and Guidelines issued by NCTE under the Act empowered the State Government to consider certain matters. The legality thereof came to be challenged before this Court in St. John Teachers Training Institute and they were held valid. When in exercise of the power conferred by NCTE on the State Government, an action was taken and decision has been arrived at, it is neither open to NCTE nor to a college to question the legality thereof, particularly when the State has taken into consideration planned and combined development of teacher education in the State. It was also contended that the provisions of the University Act and in particular Sections 82 and 83 would apply when the State grants NOC and NCTE permits new B.Ed. college to be opened or allows increase in intake capacity and the university will act in accordance with the decision of the State and NCTE. In the absence of grant of NOC, a college cannot insist on implementation of provisions of Sections 82 and 83 of the University Act merely on the basis that NCTE had granted permission under the Act. It was finally submitted that even if this Court is of the view that all the submissions made by the State are ill-founded and the decision of the High Court does not deserve interference, no permission may be granted to the colleges at least for the year 2005-06 since minimum requirement is presence of 180 days which would be impossible to comply with since B.Ed. Examination is scheduled to be held in March - April 2006. It was stated that the course is of one year only after graduation and as such there is no supplementary additional examination for B.Ed. C D E F G

It was contended by the NCTE that it is the final authority and has primary voice in establishing technical educational institutions. The Act has been enacted by Parliament in exercise of power under Entry 66 of List I of Schedule VII to the Constitution and the State has no power in such matters. It was also submitted H

A that like the State, University has also no power, authority or jurisdiction to ignore the decision taken by NCET or refuse to take action in pursuance of permission granted by NCTE. Sub- section (6) of Section 14 of the Act expressly requires university to act in accordance with the decision of NCTE and State Government cannot direct the university nor can university overlook the statutory scheme. It
B was also submitted that the policy decision of the State Government dated 28th December, 2004 was not legal and valid. Several aspects and relevant considerations were not kept in mind while taking the said decision. In the circumstances, NCTE was constrained to take an action in consonance with law. A decision was taken by NCTE to grant permission to new B.Ed. colleges which was legal and valid. Regarding Regulations and Guidelines framed by NCTE and
C the role to be played by the State Government in such cases, it was submitted that it is merely in the nature of supply of necessary data\ materials and is 'consultative' in character. As it may be difficult for NCTE to get necessary information before power is exercised by NCTE one way or the other the State is requested to furnish requisite details. That, however, does not mean that the State
D can refuse NOC after a decision has been taken by NCTE. Once the State is consulted and it supplied and made available necessary particulars to NCTE as required by it, the function of the State comes to an end. Thereafter it is only for NCTE to take an appropriate decision in accordance with law.

On behalf of the various colleges it was contended that the State has no
E *locus standi* to challenge the decision of NCTE. The State cannot be said to be "person aggrieved" or "aggrieved party" so as to challenge the decision of NCTE. If the decision is against the college, it is only the college which has 'standing' to impugn the said decision. It was also submitted that under the scheme of the Constitution, particularly Articles 245, 246, 248 and 254 read with Schedule
F VII thereof, only Parliament has power of co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions. State Legislatures have no authority to enact any law in the field covered by Entry 66 of List I of Schedule VII. Obviously, therefore, State Government has no authority to take a policy decision in respect of the subjects
G covered by Entry 66 of List I of Schedule VII for which a specific enactment has been made by Parliament and under the said Act authority has been granted to NCTE to take an action. As to Regulations and Guidelines, it was submitted that under the Act power has been conferred on NCTE. It is, therefore, only NCTE, which can consider the question and take appropriate decision under the Act and it is not open to NCTE to make Regulations or frame Guidelines empowering the
H State Government to undertake such exercise. The Regulations framed or

Guidelines made, therefore are not in consonance with the Act and there is abdication of power by NCTE in favour of State Government which is hit by the doctrine of impermissible and excessive delegation. Regulations permitting such excessive impermissible delegation must be declared inconsistent with the parent Act as also *ultra vires* and unconstitutional. It was also submitted that so-called policy decision of the State Government is arbitrary and unreasonable and would be hit by Clause (g) of Article 19(1) of the Constitution which allows all citizens to have the right to practise any profession, or to carry on any occupation, trade or business, otherwise legal and lawful. Article 19 (6) cannot be invoked by the State as total prohibition to open B.Ed. college can never be said to be in the interest of general public and would not fall within "reasonable restriction" permissible under the said provision. It is also violative of Article 21A as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. Over and above constitutional inhibitions, the order dated 28th December, 2004 is arbitrary and unreasonable inasmuch as considerations which weighed with the State Government relating to employment of B.Ed. teachers were totally irrelevant and extraneous. Taking education and getting employment are two different things. The colleges are not claiming any grant for financial aid from the State, nor do they give any assurance or guarantee to students admitted to B.Ed. college that the State will give them employment. It is therefore not open to the State Government to refuse to grant NOC because the State is not able to give employment to teachers after they get B.Ed. degree. Thus the so-called policy decision of the State Government not to grant NOC to B.Ed colleges is totally irrational. It was also submitted by the respondents that they had made huge investments and if at this stage they will be refused permission, irreparable injury and loss would be caused to them. Finally it was submitted that the decision of NCTE is legal, lawful and in consonance with the provisions of the Act as also consistent with the law laid down by this Court in several judgments. Once the action of NCTE is found to be lawful and the decision of the State Government bad, no prejudice should be caused to the institutions.

A B C D E F

Dismissing the appeals the Court

HELD: 1.1. So far as co-ordination and determination of standards in institutions for higher education or 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 Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as state Legislatures and appropriate Act can be by the State Legislature

G H

A subject to limitations and restrictions under the Constitution. The National Council of Teacher Education Act 1993 enacted by Parliament, provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and B standards in the teacher-education system and for matters connected therewith. 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. It is, therefore not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances it is not open to State Government to refuse permission relying on a State Act or on 'policy C consideration'. [677-C-G]

St. John Teachers Training Institute v. *Regional Director, NCTE & Anr.*, [2003] 3 SCC 321 : JT (2003) 2 SC 35; *State of Tamilnadu & Anr.* v. *Adhiyaman Educational & Research Institute & Ors.*, [1995] 4 SCC 104 : JT (1995) 3 SC D 136, *Jaya Gokul Educational Trust* v. *Commissioner & Secretary, Higher Education Department, Thiruvananthapuram, Kerala State & Anr.*, [2000] 5 SCC 231 : JT (2000) 5 SC 188 and *G.P. Stuart* v. *B.K. Roy Chaudhury*, AIR (1939) Cal 628: 43 Cal W.N 913, relied upon.

Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal E *Medical Educational & Charitable Trust* v. *State of Tamil Nadu & Ors.*, [1996] 3 SCC 15 : JT (1996) 2 SC 692, referred to.

1.2. In the case of every institution seeking recognition to start a course or training in teacher education or an existing institution seeking permission to F start a new course or training and/or increase in intake, the final authority lies with NCTE and NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of No, Objection Certificate, by the State Government/Union Territory. Absence or non-production of NOC by the Institution, therefore, was immaterial and irrelevant so far as the G power of NCTE is concerned. Therefore, it is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. [678-F-G; 684-B]

Vidharbha Sikshan Vyawasthapak Mahasangh v. *State of Maharashtra & Ors.*, [1986] 4 SCC 361, distinguished.

H

2.1. It is not necessary to enter into the larger question that it was open to

the respondents to challenge, for the first time, the constitutional validity of the regulations framed by NCTE, not challenged before the High Court, since they succeeded before the High Court on other points, it was not necessary for them to challenge the vires of Regulations but when the State had approached this Court, they can support the judgment on any ground available to them including unconstitutionality of Regulations and Guidelines. [685-A-B] A B

3.1. Under clause (g) of article 19 (1), all citizens have the right to practise any profession or to carry on any occupation trade or business, unless they are restrained by imposing reasonable restrictions under Article 19(6). In the instant case, applications had been made by colleges to NCTE under 1993 Act and after complying with the provisions of the Act, permission was granted by NCTE. The State thereafter could not have interfered with the said decision. It is also clear that Article 21A would cover primary as well as secondary education and petitioners could claim benefit of Part III of the Constitution as well. [685-E, F] C

4.1. Since the order passed and action taken by NCTE cannot be termed illegal or unlawful, it is not necessary to delve further into the contention of the respondents that they have spent huge amount and incurred substantial expenditure on infrastructure, library, staff, etc. and after satisfying about the necessary requirements of law, permission had been granted by NCTE, however if the said action is set aside on the basis of the decision of the State Government, irreparable loss will be caused to them. [685-G; 686-A] D E

5.1. The observations of the High Court that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. It appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university 'examining body' is obliged to grant affiliation to such institution and sections 82 and 83 of the University Act do not apply to such cases. [686-D; 687-A] F

6.1. Preliminary objection raised by the colleges that the State cannot be said to be 'person aggrieved' and therefore, has no *locus standi* to challenge the decision of NCTE, not dealt with, since the matter was decided on merits. G

7.1. It is not possible to grant the prayer of respondent-colleges to allow them to admit students for the year 2005-06 as the academic year 2005-06 is almost over and as such the order passed by NCTE would operate from the next academic year, i.e. from the year 2006-07. [688-A] H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1859 of 2006.

From the Judgment and Order of High Court of Bombay dated 28.9.2005 in W.P. No. 6172/2005.

WITH

B Civil Appeal No. 1860 of 2006.

T.R. Andhyarujina, Raju Ramachandran, Jaideep Gupta, Mukul Rohtagi, R. Venkataramani, Ravindra Keshavrao Adsure, Ms. Aprajita Singh, T. Mahipal, Anantbhushan Kanade, Dharam Bir Raj Vohra, V.K. Rao, Ms. Madhu Sikri, Sanjay Sen, Rana S. Biswas, M.P.S. Chauhan, Nitin Lalwani, Vishal Anand, C Ms. Diya D. Disuza, Ms. Sarla Chandra, Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah, Mansih Pitale, Chander Shekhar Ashri, Dhruv Mehta, Ms. Jayashree Wad, Ashish Wad, Neeraj Kumar, Arvind Gupta for M/s. J.S.Wad & Co., Sushil Karanjkar, K.N. Rai, Vinay Navare, Naresh Kumar, M.D. Adkar, Vijay Kumar, Vishwajit Singh, Nitin S. Tambwerkar, B.S. Sai, K. Rajeev, S. U.K. D Sagar, Ms. Bina Madhavan, Ms. Pooja N. Gupta for M/s Lawyers Knit & Co., C.K. Thomas and Ms. Asha G. Nair for the appearing parties.

The Judgment of the Court was delivered by

C.K. THAKKER, J. Leave granted.

E The present appeals are directed against the judgment and order passed by the High Court of judicature at Bombay, on September 28, 2005 in Writ Petition Nos. 6172 of 2005, 4769 of 2005 and cognate matters. Writ Petition No.4769 of 2005 was filed by Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya for an appropriate writ, direction or order, quashing and F setting aside the order dated December 28, 2004 passed by the State of Maharashtra by which the petitioner was informed that the State of Maharashtra had taken a policy decision not to grant 'No Objection Certificate' ('NOC' for short) to any institution for starting new B.Ed. college for the academic year 2005-06. It was also decided to communicate the said policy decision to the Maharashtra University stating that if necessity will arise in the next year, G applications for the institutions would be considered at that time. A decision was also taken to bring it to the notice of National Council for Teacher Education, Bhopal ('NCTE' for short) that in the State of Maharashtra, there was no need for new B.Ed. trained manpower and hence NCTE should not directly consider any application for grant of permission to start B.Ed. college. H In spite of the aforesaid policy decision by the State of Maharashtra, NCTE

granted permission to the petitioner institute. The State hence challenged the said action by filing Writ Petition No. 6172 of 2005 contending that the decision of NCTE ignoring the policy decision of the State Government dated December 28, 2004 was not in consonance with law and was liable to be set aside.

Both the petitions were heard together by a Division Bench of the High Court. By a common judgment, the High Court allowed the petition filed by the institution, set aside the order passed by the State Government on December 28, 2004 and issued direction to the State of Maharashtra as well as Maharashtra University to take appropriate consequential actions in accordance with law in the light of the decision taken by NCTE in favour of the institution permitting opening of a new B.Ed. college. Similar directions were issued in favour of other colleges also.

To appreciate the contentions raised by the parties to the proceedings, few relevant facts in Writ Petition No. 4769 of 2005 may now be stated.

The petitioner is a public trust registered under the Bombay Public Trusts Act, 1950 as also society registered under the Societies Registration Act, 1860. It was the case of the petitioner that it was running a secondary school at village Kondhapuri, Taluk Shirur, District Pune, having a strength of about 150 students. The petitioner desired to impart education for B.Ed. course. To meet with the requirement of infrastructure, library, staff etc., it spent more than rupees one crore. The petitioner then made an application to SNDT Women's University, Mumbai on October 30, 2004 by paying the requisite affiliation fees. A copy of the said application was forwarded to the Principal Secretary, Higher and Technical Education, Mantralaya, Mumbai. An application was also made by the petitioner to NCTE, Western Region Office, Bhopal on December 31, 2003 in the prescribed format for grant of permission to start B.Ed. college for women in accordance with the provisions of the National Council for Teacher Education Act, 1993 (hereinafter referred to as 'the Act') and the National Council for Teacher Education (Norms & Conditions for recognition of Bachelor of Elementary Education) Regulations, 1995 (hereinafter referred to as 'the Regulations'). The petitioner also deposited the original Fixed Deposit Receipt (FDR) of Rs.5 lacs towards Endowment Fund.

According to the petitioner, the University processed the application of the petitioner for affiliation and forwarded it to the State Government. It was averred in the petition that the application was recommended for the establishment of the proposed B.Ed. college to be opened by the petitioner.

A NCTE, vide its letter dated February 24, 2005 asked the petitioner whether it was ready for inspection as per the norms prescribed by the NCTE. Since the petitioner was ready for such inspection by the NCTE, the Expert Committee of NCTE visited the petitioner's campus on June 6, 2005 and verified the adequacy of infrastructure, staff and other norms. The report was submitted by the Committee to NCTE which approved and granted recognition for B.Ed. B college to be opened by the petitioner from academic year 2005-06 with an intake capacity of 100 students. After receipt of the said letter, the petitioner applied to the Government of Maharashtra on July 4, 2005 for grant of permission to start the college and/or inclusion of the name of the college in the Central Admission Process for the year 2005-06. According to the petitioner, C the State Government neither acted on the said letter nor even replied. Under the Maharashtra Universities Act, 1994 (hereinafter referred to as 'the University Act'), only after permission from the Government, B.Ed. college can be opened. Since the admission process was to be delayed and the petitioner had undertaken every exercise by getting necessary permission from NCTE and had invested huge amount of more than one crore on D development, infrastructure and appointment of staff etc., it was constrained to approach the High Court by filing a petition for appropriate relief.

An affidavit was filed on behalf of SNDT Women's University stating therein that it did not recommend the case of the petitioner to the State as E in terms of the Prospective Plan for 2002-07, the district-wise allocation for Pune was only one college. It was, therefore, not possible to recommend opening of a new B.Ed. college by the petitioner.

An affidavit was also filed by the State authorities, asserting that the petitioner had to obtain NOC from the State Government. According to the F respondents 3 and 4, the State Government had an important role to play in the process of grant of permission by NCTE and such role has been recognized by this Court in *St. John Teachers Training Institute* v. *Regional Director, NCTE & Anr.*, [2003] 3 SCC 321 : JT (2003) 2 SC 35 . It was stated that the State Government had been assigned an important task of development and improvement of teacher's education and thus it was vitally interested in G education and specially in professional courses in the State. It was only the State Government which could correctly assess and know the extent of requirement of trained manpower and supply of trained teachers keeping in view the requirements, change of occupation and demand of such teachers. The input from the State Government through NOC was thus vital for enabling H NCTE to exercise its powers and discharge its functions properly and without

involvement of the State Government and availability of necessary input by the State Government, NCTE could not grant permission. It was then stated that there were 216 B.Ed. colleges with an intake capacity of more than 20,000 students. Additionally, NCTE had sanctioned 40 new B.Ed. colleges on the basis of NOC issued by the State Government prior to 2005-06. The State Government had issued NOC to nearly 80 new institutions upto 2004-05. There was, thus, sufficient B.Ed. colleges and intake capacity taking into account the need for teachers. A conscious decision was, therefore, taken by the Cabinet Sub-Committee on December 28, 2004 not to grant approval or issue NOC for starting any new institution or to increase intake capacity of existing institutions imparting B.Ed. course for the year 2005-06. The said decision of the Government was communicated to all the Universities on February 4, 2005 and the Universities were directed to communicate the decision of the Government to institutions concerned. In spite of the above decision, NCTE forwarded the recommendation for grant of permission in favour of certain institutions. But, as policy decision had been taken by the State Government, the proposal of the petitioner institution for grant of NOC was not forwarded to NCTE. The State had also made a complaint in the affidavit that NCTE had not clarified in what circumstances it has issued permissions to the petitioner and other institutions without NOC from the State Government.

An additional affidavit was also filed reiterating the decision of the Cabinet Sub-Committee dated December 28, 2004. It was stated that it was also decided to withdraw/cancel NOC which had been issued by the State Government in favour of some institutions. Those institutions, therefore, filed writ petitions and the Division Bench set aside the decision of the State Government by granting liberty to the State to take appropriate action in accordance with law after giving an opportunity of hearing to the petitioners. The State Government, thereafter, afforded hearing to the institutions, but again it was decided to withdraw/cancel NOC in view of the policy decision of the Government. It was, therefore, prayed by the respondent State that its decision was a policy decision which was in consonance with law and the petition was liable to be dismissed.

By filing Writ Petition No. 6172 of 2005, the State had challenged the action of NCTE of granting permission to open new B.Ed. college ignoring the policy decision of the State dated December 28, 2004, praying that the action of NCTE was illegal and unlawful and was liable to be set aside.

A The NCTE also filed a counter before the High Court. Relying on various provisions of the Act, NCTE stated that necessary sanction had been granted by NCTE and the said decision was legal, valid and in consonance with law. It was stated that since the final authority for granting such permission was only NCTE under the Act, SNDT University as well as the State Government ought to have respected the order passed by the NCTE by taking consequential actions. It was stated that the State Government never informed NCTE about its general policy not to issue any NOC to new B.Ed. institution for academic year 2005-06 in view of output of existing B.Ed. colleges. It was further stated that NCTE considered the question but decided not to accept the decision of the State Government for the reason that the State while taking such decision, did not consider the education policy of the Government of India under *Sarv Shiksha Abhiyan* which required opening of large number of primary schools and thereafter secondary schools. It also did not take into account preferential needs of hilly and remote areas, requirement of teachers for Science, Mathematics and English, need of non-formal education of adults, disabled, tribals etc. and did not consider the need of trained teachers who do not seek employment in other institutions but wish to use the training in self employment such as opening of coaching classes, etc.

In an additional affidavit, NCTE stated that in the 73rd meeting, the agenda included consideration of letter of the State of Maharashtra dated May 7, 2005 in which it was stated that Government had decided not to issue any NOC for starting new B.Ed. college for the academic year 2005-06. The meeting was held between June 3 & 5, 2005 which was attended by the State representative but as the agenda could not be completed, the meeting continued on June 16 and 17 when State representative was not present. After considering the policy and views of the Government, the Committee decided that the decision of the State Government was not binding upon NCTE and accordingly NCTE had decided to grant permission to open 16 new B.Ed. colleges.

The High Court, therefore, was called upon to consider the role played by the State Government in the process of consideration of application by the institutions seeking recommendation of opening B.Ed. colleges by NCTE in the light of the provisions of the Act in juxtaposition to the extent of trained manpower required by the State and to take policy decision on the basis of output of teachers by such colleges. The Court was also called upon to consider whether in the absence of any material being made available by the State Government to NCTE whether the latter can process the application and

take a decision contrary to the decision of the State Government. A question had also arisen as to whether the State Government can refuse permission to an institution which had been granted permission to start B.Ed. college by NCTE under the Act and whether policy decision of the State Government not to grant NOC would bind NCTE in the light of the provisions of the Act.

The High Court considered the material provisions of the Act and the Regulations and the relevant decisions of this Court, particularly in *State of Tamilnadu & Anr.* v. *Adhiyaman Educational & Research Institute & Ors.*, [1995] 4 SCC 104 : JT (1995) 3 SC 136, *Jaya Gokul Educational Trust* v. *Commissioner & Secretary, Higher Education Department, Thiruvananthapuram, Kerala State & Anr.*, [2000] 5 SCC 231 : JT (2000) 5 SC 118 and *St. John's Teacher's Training Institute*, referred to above.

The High Court held that in the light of the relevant provisions of the Act as interpreted by this Court in various decisions, the appropriate authority to take decision regarding opening of new colleges was NCTE and neither the State Government nor the University can act contrary to the decision of NCTE. According to the High Court, under the Act, the only authority which could take a decision regarding opening of new B.Ed. college or increase in intake capacity was NCTE and such decision cannot be ignored either by the State authorities or by the University. So far as the function of the State Government was concerned, the High Court observed that it was in the nature of supply of necessary data and materials so as to enable NCTE to undertake the process of coming to an appropriate decision but the State had no power to decide that it had taken a policy decision not to grant permission to open new B.Ed. college for a particular period. Such decision was not in accordance with the provisions of the Act nor in consonance with law laid down by this Court. Regarding role of the University, the High Court held that it was incumbent on the University to take an appropriate decision and consequential action on the basis of decision of NCTE and the provisions of the University Act required the University to implement such decision. It was, therefore, not open to the University to take any action overlooking the decision of NCTE and relying on a decision of the State Government. In the light of the above findings the High Court allowed the petition filed by the institutions and dismissed the writ petition of the State Government.

The High Court, in the operative part, observed as under:

> "For the reasons stated in the judgment, we direct the Director of Higher Education, Government of Maharashtra to forthwith include

A the name of the petitioner institute in the list of Central Admission process for the year 2005-2006 B.Ed. Course consequent to the petitioner being allowed to start B.Ed. college. The University considering Section 14(6) of the National Council for Teaching Education Act, 1993 to grant first time affiliation to the petitioner college to enable the College to admit students. That affiliation would be subject to the petitioner college fulfilling the requirements as required by the University to grant first time affiliation in terms of the University Act, Rules and Statute to the extent that has to be complied with. It is made clear that those who have been admitted pursuant to the Central Admission Process are not eligible to apply against the seats now available and admissions already done will not be interfered with and the new seats will be filled in from amongst the candidates still on the merit list, by conducting a special round of admission.

Rule made absolute to that extent in Writ Petition No. 4769 of 2005.

Rule discharged in Writ Petition No. 6172 of 2005 subject to what we have set out in the body of the judgment."

As already stated, NOC had been granted earlier in favour of other colleges by the State Government on the basis of permission granted by NCTE. But it was subsequently withdrawn/cancelled in the light of the policy decision dated December 28, 2004 not to permit any new B.Ed. College to be opened. Those colleges filed petitions which also came to be allowed by the High Court.

The State has now approached this Court by filing the present appeals. The matters were placed for admission-hearing before this Court and on October 5, 2005 notice was issued. Stay was also granted against the judgment of the High Court as also the recommendation order passed by NCTE, Bhopal. In the order dated January 6, 2006 it was observed by this Court that the matters require elaborate submissions. The Registry was, therefore, directed to list them on 'a non-miscellaneous day' in the last week of January, 2006. That is how the matters had been placed before us.

We have heard the learned counsel for the parties.

Mr. T.R. Andhyarujina, Senior Advocate, appearing for the State contended that the policy decision taken by the State Government was in consonance with law and could not have been ignored by NCTE. It was also

submitted that it was within the power and authority of the State to take into account relevant and germane considerations that as against the demand of about 7,500 teachers per year, at present more than 25,000 teachers are available. The resultant effect is that every year there is excess of teachers to the extent of 18,000. There are more than 250 B.Ed. colleges in the State and if more colleges will be allowed to be opened, there will be unemployment of many more teachers. The said aspect was seriously considered by the Cabinet Sub Committee and a conscious decision was taken on the basis of demand of teachers in future and it was resolved that for the year 2005-06, no NOC would be granted to open new B.Ed. colleges. Such a decision, submitted Mr. Andhyarujina, by no means can be described as arbitrary, irrational or otherwise unreasonable. It was also submitted that the Regulations framed and Guidelines issued by NCTE under the Act empowered the State Government to consider certain matters. The legality thereof came to be challenged before this Court in *St. John Teachers Training Institute* and they were held valid. When in exercise of the power conferred by NCTE on the State Government, an action was taken and decision has been arrived at, it is neither open to NCTE nor to a college to question the legality thereof, particularly when the State has taken into consideration planned and combined development of teacher education in the State. It was also urged that the State kept in mind Prospective Plan for the period 2003-07 and was of the opinion that there should not be imbalance or excess of teachers so as to increase unemployment and unrest. According to Mr. Andhyarujina, the High Court ought to have considered the provisions of the University Act and in particular Sections 82 and 83 thereof in their proper perspective. It is only when the State grants NOC and NCTE permits new B.Ed. college to be opened or allows increase in intake capacity that the above sections will apply and the university will act in accordance with the decision of the State and NCTE. In the absence of grant of NOC, a college cannot insist on implementation of provisions of Sections 82 and 83 of the University Act merely on the basis that NCTE had granted permission under the Act. It was finally submitted that even if this Court is of the view that all the submissions made by the State are ill-founded and the decision of the High Court does not deserve interference, no permission may be granted to the colleges at least for the year 2005-06 since minimum requirement is presence of 180 days which would be impossible to comply with since B.Ed. Examination is scheduled to be held in March-April, 2006. It was stated that the course is of one year only after graduation and as such there is no supplementary/additional examination for B.Ed.

Mr. Raju Ramachandran, learned counsel for NCTE supported the order

A passed by the High Court. He submitted that NCTE is the final authority and has primary voice in establishing technical educational institutions. According to him, the Act has been enacted by Parliament in exercise of power under Entry 66 of List I of Schedule VII to the Constitution and the State has no power in such matters. He also submitted that the point is finally concluded by this Court in several cases referred to above. The High Court considered B the respective contentions of the parties in the light of the law laid down by this Court and held that it is only NCTE which has final voice and once a decision is taken by that body, neither the State Act nor any authority of State can interfere with such decision. The counsel also submitted that like the State, University has also no power, authority or jurisdiction to ignore the C decision taken by NCTE or refuse to take action in pursuance of permission granted by NCTE. Sub-section (6) of Section 14 of the Act expressly requires university to act in accordance with the decision of NCTE and State Government cannot direct the university nor university can overlook the statutory scheme. It was also submitted that the policy decision of the State Government dated 28th December, 2004 was not legal and valid. Several aspects and relevant D considerations were not kept in mind while taking the said decision. In the circumstances, NCTE was constrained to take an action in consonance with law. The matter was discussed in various meetings of NCTE. In the final meeting, the representative of the State was not present. A decision was taken by NCTE to grant permission to new B.Ed. colleges which was legal and E valid. Regarding Regulations and Guidelines framed by NCTE and the role to be played by the State Government in such cases, it was submitted that it is merely in the nature of supply of necessary data/materials and is 'consultative' in character. As it may be difficult for NCTE to get necessary information before power is exercised by NCTE one way or the other, the State is requested to furnish requisite details. That, however, does not mean that the State can F refuse NOC after a decision has been taken by NCTE. Once the State is consulted and it supplied and made available necessary particulars to NCTE as required by it, the function of the State comes to an end. Thereafter it is only for NCTE to take an appropriate decision in accordance with law. If such decision is otherwise objectionable, the party aggrieved may challenge the G same but so far as State is concerned, its role is over as soon as the consultation is over. Mr. Raju, therefore, submitted that the High Court was wholly justified in allowing the petition filed by colleges and in dismissing the writ petition of the State.

The learned counsel for various colleges supported Mr. Raju H Ramachandran on interpretation and application of the provisions of the Act

and final decision of the High Court. They, however, had taken other contentions as well. According to them, the State has no *locus standi* to challenge the decision of NCTE. The State cannot be said to be "person aggrieved" or "aggrieved party" so as to challenge the decision of NCTE. If the decision is against the college, it is only the college which has 'standing' to impugn the said decision. The High Court, therefore, in the submission of the learned counsel for colleges, ought to have dismissed the petition filed by the State as not maintainable without entering into the merits of the matter. It was also submitted that under the scheme of the Constitution, particularly Articles 245, 246, 248 and 254 read with Schedule VII thereof, only Parliament has power of co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions. State Legislatures have no authority to enact any law in the field covered by Entry 66 of List I of Schedule VII. Obviously, therefore, State Government has no authority to take a policy decision in respect of the subjects covered by Entry 66 of List I of Schedule VII for which a specific enactment has been made by Parliament and under the said Act authority has been granted to NCTE to take an action. As to Regulations and Guidelines, it was submitted that under the Act power has been conferred on NCTE. It is, therefore, only NCTE, which can consider the question and take appropriate decision under the Act and it is not open to NCTE to make Regulations or frame Guidelines empowering the State Government to undertake such exercise. According to the counsel, therefore, even if Regulations are framed or Guidelines made, they are not in consonance with the Act and there is abdication of power by NCTE in favour of State Government which is hit by the doctrine of impermissible and excessive delegation. Regulations permitting such excessive / impermissible delegation must be declared inconsistent with the parent Act as also *ultra vires* and unconstitutional. The counsel also submitted that so-called policy decision of the State Government is arbitrary and unreasonable and would be hit by Clause (g) of Article 19(1) of the Constitution which allows all citizens to have the right to practise any profession, or to carry on any occupation, trade or business, otherwise legal and lawful. Article 19(6) cannot be invoked by the State as total prohibition to open B.Ed. college can never be said to be in the interest of general public and would not fall within "reasonable restriction" permissible under the said provision. It is also violative of Article 21A as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. Over and above constitutional inhibitions, the order dated 28th December, 2004 is arbitrary and unreasonable inasmuch as considerations which weighed with the State Government relating to employment of B.Ed. teachers were totally irrelevant and extraneous. Taking education and getting employment are two

A B C D E F G H

A different things. The colleges are not claiming any grant or financial aid from the State, nor do they give any assurance or guarantee to students admitted to B.Ed. colleges that the State will give them employment. It is, therefore, not open to the State Government to refuse to grant NOC because the State is not able to give employment to teachers after they get B.Ed. degree. There are several Arts, Commerce and Science colleges in the State in which students B take education and get degrees of B.A., B.Com. or B.Sc. It is not even the case of the State that all those students got employment at one or the other place. Thus, the so-called policy decision of the State Government not to grant NOC to B.Ed. colleges is totally irrational. It was also submitted by the respondents that they had made huge investments and if at this stage they C will be refused permission, irreparable injury and loss would be caused to them. Finally, it was submitted that since the decision of NCTE is legal, lawful and in consonance with the provisions of the Act as also consistent with the law laid down by this Court in several judgments, the order passed by the High Court deserves to be upheld by allowing the institutions to open B.Ed. colleges from the year 2005-06 as has been done by NCTE. If this Court D considers it appropriate, specific direction may be issued to the respondents to conduct extra classes/lectures and to hold supplementary/additional examination. Once the action of NCTE is found to be lawful and the decision of the State Government bad, no prejudice should be caused to the institutions.

E Before we deal with the contentions of the parties, it would be appropriate if we refer to the relevant provisions of law. Part XI of the Constitution deals with relations between Union and States. Chapter I thereof relates to legislative relations and distribution of legislative powers. Article 245 enables Parliament to make laws for the whole or any part of territory of India. Similarly, a Legislature of a State has power to make laws for the whole F or any part of the State. Article 246 provides for distribution of legislative power between Parliament and Legislatures of States and reads thus:

> "246. *Subject-matter of laws by Parliament and by the Legislatures of States:*—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of G the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the H

Seventh Schedule (in this Constitution referred to as the "Concurrent List"). A

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List'). B

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List."

C

Whereas Article 248 provides for residuary power of Legislature, Article 254 covers cases of inconsistency between laws made by Parliament and by Legislatures of States.

Schedule VII to the Constitution comprises of three Lists: (i) Union List, (ii) State List and (iii) Concurrent List. While exclusive power to enact laws D lies with Parliament under List I, the power to enact laws under List II is with the State Legislatures. In respect of subjects falling under List III, it is open to Parliament as well as State Legislatures to enact laws subject to the provisions of Articles 254.

Entries 63 to 66 of List I of Schedule VII relate to higher education. E Entry 66 which is relevant reads thus:

"66. Co-ordination with determination of standards in institutions for higher education or research and scientific and technical intuitions"

Entry 11 of List II *inter alia* included university education. It was F omitted by the Constitution (42nd Amendment) Act, 1976 and became part of Entry 25 of List III (Concurrent List). Entry 25, as originally stood read as under:

"25. The vocational and technical training of labour."

G

After the amendment of 1976, the Entry as it stands now reads thus:

"25. Education, including technical education medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

H

A The National Council for Teacher Training Act, 1993 has been enacted by Parliament and deals with teacher's education. It came into force with effect from July 1, 1995. The Preamble of the Act is relevant and reads thus:

> "An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated
B development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

Section 2 is definition clause wherein various terms have been defined. "Council" is defined as the National Council for Teacher's Education
C established under sub-section (1) of Section 3 of the Act. "Institution" has been defined as "an institution which offers courses for training in teacher's education". "Teacher education" is defined thus:

> "Teacher education means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary,
D secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education."

Under that section, "University" means "University defined under clause
E (f) of Section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under Section 3 of that Act." Chapter II provides for establishment of Council and Chapter III deals with functions to be performed by the Council. Section 12 imposes duty on the Council to take necessary steps for ensuring planned and co-ordinated development of teacher education and for determination and maintenance of standards for
F teacher education. The said section is relevant and may be quoted in extenso:

> "12. It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions
G under this Act, the Council may-
>
> (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
>
> (b) make recommendations to the Central and State Governments,
H Universities, University Grants Commission and recognized

institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;

(c) co-ordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

(f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

(h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;

(k) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognized institutions;

(l) formulate schemes for various levels of teacher education and identify recognized institutions and set up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialization of teacher education; and

(n) perform such other functions as may be entrusted to it by the Central Government."

A Chapter IV is material and provides for "Recognition of teacher education institutions." While Section 14 deals with recognition of intuitions offering course or training in teacher education, Section 15 relates to permission of new courses or training by a recognized institution and they read thus:

> "14 (1) Every institution offering or intending to offer a course or
> B training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations;
>
> Provided that an institution offering a course or training in teacher
> C education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.
>
> (2) The fee to be paid along with the application under sub-section
> D (1) shall be such as may be prescribed.
>
> (3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,—
>
> E
>
> (a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting
> F recognition to such institution, subject to such conditions as may be determined by regulations; or
>
> (b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in
> G writing;
>
> Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.
>
> H (4) Every order granting or refusing recognition to an institution for

a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government. A

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3). B

(6) Every examining body shall, on receipt of the order under sub-section (4),— C

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused. D

15 (1) Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) The fees to be paid along with the application under sub-section (1) shall be such as may be prescribed. E

(3) On receipt of an application from an institution under sub-section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall,— F

(a) if it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulation; or G

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing permission to such institution, for reasons to be recorded in H

writing;

Provided that before passing an order refusing permission under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

(4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under sub-section (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority the State Government and the Central Government".

Section 16 opens with a non-obstante clause and requires an affiliating body to grant affiliation only after recognition or permission by the Council. Contravention of the provisions of the Act and consequences thereof have been specified in Section 17. Appellate provision is found in Section 18.

Section 31 of the Act enables the Central Government to make Rules to carry out the purposes of the Act. Likewise, Section 32(1) empowers the Council to make Regulations not inconsistent with the provisions of the Act and the Rules made thereunder for the purpose of carrying out of the provisions of the Act. Sub-section (2) of Section 32 expressly states that in particular and without prejudice to the generality of power to make Regulations, such Regulations may provide for the matters enumerated in clauses (a) to (p). Clauses (d), (e), (f) and (g) are relevant and read thus:

"(d) the norms, guidelines and standards in respect of-

(i) the minimum qualifications or a person to be employed as a teacher under clause (d) of Section 12;

(ii) the specified category of courses or training in teacher education under clause (e) of section 12;

(iii) starting of new courses or training in recognized institutions under clause (f) of section 12;

(iv) standards in respect of examinations leading to teacher education qualifications referred to in clause (g) of section 12;

(v) the tuition fees and other fees chargeable by institutions under clause (h) of section 12;

(vi) the schemes for various levels of teacher education, and identification of institutions for offering teacher development programmes under clause (1) of section 12;

"(e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of Section 14;

(f) Conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub-section (3) of Section 14;

(g) the form and the manner in which an application for permission is to be made under sub-section (1) of Section 15"

In exercise of the power conferred by Section 32 of the Act, the Council framed Regulations known as the National Council for Teacher Education (Form of application for recognition, the time-limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 1995. Regulation 5 deals with the manner of making application and Regulation 8 relates to conditions for recognition. Clauses (e), (f) and (g) of Regulation 5 read as under:

"5. (e) Every institution intending to offer a course or training in teacher education but was not functioning immediately before 17.8.1995, shall submit application for recognition with a no-objection certificate from the State or Union Territory in which the institution is located.

(f) Application for permission to start new course or training and/or to increase intake by recognized institutions under Regulation 4 above shall be submitted to the Regional Committee concerned with no-objection certificate from the State or Union Territory in which the institution is located.

The State Government shall make available to the concerned Regional Committee of NCTE its views/recommendations which will be considered by the Regional Committee while taking a decision on the application for recognition."

Regulation 8 imposes conditions for recognition and reads thus:

"8. *Condition for recognition:*— (a) Regional Committee shall satisfy itself on the basis of scrutiny and verification of facts as contained

A in the application for recognition and/or recognition of the institution where considered necessary or any other manner deemed fit, that the institutions have adequate financial resources, accommodation, library, qualified staff, laboratory and such other conditions required for the proper functioning of the institutions for the course of training in teacher education which are being offered or intending to offer.

B

(b) Regional Committee shall ensure that every institution applying for recognition fulfils the conditions given in Appendix III."

It appears that NCTE had framed Guidelines for the State Government/ Union Territory by a notification, dated February 2, 1996 for issuance of NOC.
C The relevant Guidelines read thus:

"1. The establishment of Teacher Training Institutions by Government, private managements or any other agencies should largely be determined by assessed need for trained teachers. This need should take into consideration the supply of trained teachers from existing
D institutions, the requirement of such teachers in relation to enrolment projections at various stages, the attrition rates among trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and the possibility of their deployment.
E The States having more than the required number of trained teachers may not encourage opening of new institutions for teacher education or to increase the intake.

2. States having shortage of trained teachers may encourage establishment of new institutions for teacher education and to increase
F intake capacity for various levels of teacher education institutions keeping in view the requirements of teachers estimated for the next 10-15 years.

3. Preference might be given to institutions which tend to emphasize the preparation of teachers for subjects (such as Science, Mathematics,
G English etc.) for which trained teachers have been in short supply in relation to requirement of schools.

4. Apart from the usual courses for teacher preparation, institutions which propose to concern themselves with new emerging specialities (e.g. computer education, use of electronic media, guidance and

H

counselling etc.) should receive priority. Provisions for these should however, be made only after ensuring that requisite manpower, equipment and infrastructure are available. These considerations will also be kept in view by the institution intending to provide for optional subjects to be chosen by students such as guidance and counselling special education etc.

5. With a view to ensuring supply of qualified and trained teachers for such specialities such as education of the disabled, non-formal education, education of adults, preschool education, vocational education etc. special efforts and incentives may be provided to motivate private managements/voluntary organizations for establishment of institutions, which lay emphasis on these areas.

6. With a view to promoting professional commitment among prospective teachers, institutions which can ensure adequate residential facilities for the Principal and staff of the institutions as well as hostal facilities for substantial proportion of its enrolment should be encouraged.

7. Considering that certain areas (tribal, hilly regions etc.) have found it difficult to attain qualified and trained teachers, it would be desirable to encourage establishment of trained institutions in those areas.

8. Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate material and manpower resources in terms, for instance, of qualified teachers and other staff, adequate buildings and other infrastructure (laboratory, library etc.), a reverse fund and operating funds to meet the day-to-day requirements of the institutions, including payment of salaries, provision of equipment etc. Laboratories, teaching science methodologies and practicals should have adequate gasplants, proper fittings and regular supply of water, electricity etc. They should also have adequate arrangements. Capabilities of the institution for filing norms prepared by NCTE may be kept in view.

9. In the establishment of an institution preference needs to be given to locations which have a large catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and undertake practice teaching. A training institution which has a demonstration school where innovative and

A experimental approaches can be demonstrated could be given preference."

In *St. John Teachers Training Institute,* the validity of the Regulations, particularly clauses (e) & (f) of Regulation 5 came to be challenged. It was contended that the provision for submitting an application for recognition B with NOC issued by the State Government or Union Territory in which the institution was situated was invalid and *ultra vires.* It was argued that Section 14 of the Act mandates NCTE to grant recognition if it is satisfied that the institution making an application for the grant of recognition has fulfilled the necessary requirements laid down in the said section. Clauses (e) C and (f) of Regulation 5, however, insisted the institution to obtain NOC from the State Government/Union Territory which was wholly outside the provisions of the Act. State Government/Union Territory was totally alien so far as the recognition was concerned and by insisting NOC from State Government / Union Territory, NCTE has created a parallel body unknown to the law and hence, clauses (e) and (f) of Regulation 5 were liable to be struck down D declaring them to be *ultra vires.*

NCTE filed a counter-affidavit and supported the Government contending that its action of taking assistance from the State Government / Union Territory could not be held illegal or *ultra vires.* It was conceded that sub-section (3) E of Section 14 imposed duty upon Regional Committees of NCTE to be satisfied about fulfillment of necessary conditions and grant of recognition of an institution which had made an application. The said provision, however, required the institution to have adequate financial resources, accommodation, library, qualified staff, laboratory, etc. for proper functioning of the institution for a course or training in teacher education. It was then stated that there were F only four Regional Committees in the whole country and hence each Regional Committee had to deal with application for grant of recognition from more than one State. It was, therefore, not only difficult but almost impossible for the Regional Committee to obtain complete particulars and full details of financial resources, accommodation, library etc. of the institutions applying G for recognition. Again, the institution might have been located in the interior part of a district or at a remote place of the State. It was, thus, a Herculean task for the Regional Committee to perform and to undertake the exercise and it was necessary to depend upon some other agency or body for such information. It was thought that the State Government / Union Territory in which the institution was situated would be in a better position to supply H such information so as to enable the regional committee to effectively exercise

powers in consonance with law. It was, therefore, made incumbent upon the institution to apply for NOC from the State Government/Union Territory concerned. The Regulations thus facilitated the job of the Regional Committee in discharging their statutory duties and responsibilities.

It was contended by the petitioners before this Court that there were no guidelines for the State Government / Union Territory for grant of NOC and it was open to such authority to grant or refuse NOC on wholly irrelevant considerations. The Court, however, referred to the affidavit filed by the State and perused the relevant Guidelines which ought to be considered for the grant of NOC and held that the State Government / Union Territory would confine to matters enumerated in those Guidelines. The Court observed:

> "A perusal of the guidelines would show that while considering an application for grant of an NOC the State Government or the Union Territory has to confine itself to the matters enumerate 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 speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely planned and coordinated development to teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary or

A unchannelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors B which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are *ultra vires* or invalid."

C Though it was urged that blanket power had been conferred on NCTE and there was abdication of essential function by NCTE in favour of State Government / Union Territory, the contention was negatived observing that the function performed by the State Government / Union Territory was more in the nature of collection of data and material. Referring to Regulation 6 as D amended in 2002, the Court negatived the contentions and observed:

"Regulation 6(ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision E shows that even if the NOC is not granted by the concerned State Government or Union Territory and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of a NOC by the State Government or Union Territory is not F conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data G which is essential for formation of opinion by the Regional Committee while taking a decision under Sub-section (3) of Section 14 of the Act. Therefore no exception can be taken to such a course of action."

The Court, however, held that the State Government must exercise power within "reasonable time". It was indicated that if the State Government H

would not take a decision within that period, it would defeat the right of the institution to have its application considered by the regional committee of NCTE. It was, therefore, proper for the Council to frame appropriate Regulation for fixing time limit within which a decision should be taken by the State Government on the application made by the institution for grant of NOC. In absence of such regulation and fixing of time limit, the Court held that such decision should be taken by the State Government/Union territory within "four months" failing which NOC would be deemed to have been granted.

It may be stated that after the decision in *St. John Teacher Training* Institute, the Regulations have been amended in 2003 and now the period has been prescribed as six months.

Mr. Andhyarujina strongly relied upon the above decision and submitted that the point is finally concluded in the above case and once the action has been taken by the State Government in pursuance of the Regulations framed by NCTE which were held *intra vires* and constitutional, the decision of the State Government cannot be ignored or overlooked by NCTE and is binding upon it. According to the learned counsel, the Cabinet Sub-Committee took into account relevant circumstances and decided not to grant NOC. The said decision cannot be held bad and NCTE cannot grant recognition to colleges to which NOC had not been granted by the State Government.

We may, however, state that NCTE and contesting respondents are right in relying upon a decision of this Court in Adhiyaman, referred to earlier. In *Adhiyaman,* this Court was called upon to consider the constitutional validity of some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder as also the Madras University Act, 1923 and the Rules made thereunder. It was contended that certain provisions of the State Acts were inconsistent with the provisions of the Central Act (All India Council for Technical Education Act, 1987) and hence were inoperative. This Court upheld the contention of the petitioners and ruled that State Legislature could not enforce an Act if it is inconsistent with the Central Act and to the extent of such inconsistency, the Central Act would operate and State Acts would be inoperative.

It is, no doubt, true that in that case, this Court considered the provisions of the Technical Education Act, 1987 but the provisions of that Act are almost similar to the provisions of 1993 Act with which we are concerned. The Preamble of the said Act is also similar to the one with which we are concerned and reads thus:

A "An Act to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith."

The Court considered the relevant provisions of the Constitution read with Lists I, II and III of Schedule VII and held that the subject of technical education rested with Parliament as it was covered by Entry 66 of List I of Schedule VII and it was not covered by List II or List III. Accordingly, it was held that if an Act of State Legislature was inconsistent with the provisions of an Act of Parliament, to the extent of such inconsistency, it would be inoperative.

Referring to the Preamble of the Act, the Court stated; "The Preamble of the Central Act states that it has been enacted to provide for the establishment of an All India Council for Technical Education with a view to (i) proper planning and coordinated development of the technical education system throughout the country, (ii) promotion of qualitative improvement of such education in relation to planned quantitative growth, (iii) regulation and proper maintenance of norms and standards in the technical education system, and (iv) for matters connected therewith."

In that case, the State Government granted permission to the petitioner Trust to start new Engineering College subject to fulfillment of certain conditions. Temporary affiliation was also granted by the University and the college started functioning from July, 1987. In 1989, a show cause notice was issued by the State on the basis of the report of High Power Committee that the Trust had not fulfilled the conditions imposed on it and as to why permission should not be withdrawn. University also issued a similar notice calling upon the Trust to show cause why affiliation should not be cancelled. The Trust, hence, approached the High Court by filing a petition under Article 226 of the Constitution contending *inter alia* that after passing of the Central Act, neither the State Government nor the University had power, authority or jurisdiction to take any action and the only power the State had was to refer the matter to the All India Council of Technical Education since the duty was imposed on the Council for recognizing or derecognizing any technical institution in the country. The contention was upheld by the High Court.

When the matter came up before this Court at the instance of the State Government, the Court observed that the larger question involved in the case was the conflict between the Central Act on the one hand and the State Acts on the other. Then considering the relevant provisions of the Constitution and the Central Act and State Acts, the Court stated:

> "The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical education system in all parts of the country uniformly; that there will be coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main

A objects of the statute. This country as is well known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centred around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also for the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well. What is further important to note is that the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before Parliament. *Hence, on the subjects covered by this statute, the State could not make a law under entry 11 of List II prior to Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty-second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy.* Such repugnancy would have to be adjudged on the

basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution." A

(emphasis supplied)

The Court then considered the provisions of the State Law and concluded; "The provisions of the State Act enumerated above show that if B it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality instruction C assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions and for introduction of new courses or programmes, taking steps to prevent commercialization of technical education, inspection of technical institutions, withholding or discontinuing grants in respect of courses and taking such D other steps as may be necessary for ensuring compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receive grants, the constitution of the Council and its Executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government on questions of policy etc. which matters are covered by the E Central Act. What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly F maintain the norms and standards in the technical education system which is subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the G provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court."

The same principle was applied to University Act and the Court held H

A that after coming into operation of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It was observed that the provisions of the University Acts regarding affiliation of technical colleges and the conditions for grant of continuation of such affiliations by the University would remain operative but the conditions that are prescribed by the University for grant and continuance
B of affiliation must be in conformity with the norms and guidelines prescribed by the Council.

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

Negativing the contention, the Court quoted with approval the following observations of B.N. Rau, J. *in G.P. Stuart* v. *B.K. Roy Chaudhury,* AIR (1939) Cal 628: 43 Cal W.N 913);

D

> "It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test;
> E there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one lay may say "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time." Here, it is
> F obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified."

G Reference was also made to a decision of this Court in *Jaya Gokul Educational Trust.* Relying on *Adhiyaman* and reiterating the principle laid down therein, the Court there held that once the field was occupied by an Act of Parliament, State Legislature could not have made a statute inconsistent with the provisions of Central Legislation. The Court, therefore, held that even if there was a State Law which required something to be done for the
H approval of the State Government for establishing a technical institution, such

law, if it is inconsistent or repugnant with the Central Law, it would be "void" to the extent of repugnancy to the Act of Parliament. A

In that case also, like here, the State Government sought to support its action of not permitting new Engineering College to be established on the ground of 'policy'. It was stated by the State of Kerala that it would not permit establishment of any more Engineering Colleges in the State in view of large number of already existing colleges bearing in mind the interest of the students and the employment condition. B

Relying on *Adhiyaman,* it was observed that the so called 'policy' of the State Government as mentioned in the counter-affidavit filed by the State, could not be made a ground for refusing approval. The Court held that 'essentiality certificate' cannot be withheld by the State Government on any 'policy consideration' because the policy in the matter of establishment of a new college rested essentially with the Central Government. C

The Court Stated : D

> "Therefore, the State could not have any 'policy' outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. *Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State.* We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action." E F

(emphasis supplied)

Our attention was also invited to *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust* v. *State of Tamil Nadu & Ors.*, [1996] 3 SCC 15 : JT (1996) 2 SC 692. There the question was of repugnancy between the provisions of the Indian Medical Council Act, 1956 and Tamil Nadu Medical University Act, 1987 renamed as Dr. M.G.R. Medical University, Tamil Nadu (Amendment and Validation) Act, 1989. Section 10A of the Indian Medical Council Act, 1956 as inserted by the G H

A Indian Medical Council (Amendment) Act, 1993, which was a Central Act enacted by the Parliament, required permission for establishing new medical colleges in the country "notwithstanding anything contained" in the said Act or any other law for the time being in force. Proviso to sub-section (5) of Section 5 of Dr. M.G.R. Medical University, Tamil Nadu Act, 1989 (State Act), however, enacted: "No college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained". In the light of the proviso to sub-section (5) of Section 5 of the State Act, it was contended by the State Government that unless permission of the Government to establish medical college had been obtained from the State Government, no medical college could be opened, even if such permission was granted by the Medical Council under the Central Act. In that case too, the State Government refused to grant permission to any private Trust to establish medical college by exercising power under the State Act, on the ground that it was the policy of the Government not to permit a private Trust or Management to start medical/dental college. Relying on proviso to sub-section (5) of Section 5 of the State Act, it was urged on behalf of the State Government that the action taken by the State Government was legal, valid and in accordance with law and an institution cannot make any grievance against the State Government. The Court thus was called upon to consider the question as to which Act would prevail. Whereas the Central Act conferred power on the Central Government on the basis of the recommendation made by the Medical Council of India to open a new medical college, the State Act required the permission of the State Government by enacting that no college shall be affiliated to the University unless such permission is granted by the State Government.

Referring to the relevant provisions of the Constitution, of both the Acts and the relevant case law on the point, this Court observed that the question which had arisen before the Court was as to the role of the State Government in the matter of establishment of a medical college.

Interpreting the statutory provisions, this Court held that by enacting Section 10A, Parliament had made "a complete and exhaustive provision covering the entire field for establishment of new medical college in the country". No further scope is left for the operation of the State Legislation in the said field which was *fully covered by the law made by Parliament*. The Court, therefore, held that the proviso to sub-section (5) of Section 5 of the State Act which required prior permission of the State Government for establishing a medical college was repugnant to Section 10A of the Central

Act and to the extent of repugnancy, the State Act would not operate. The Court noted that in the scheme that had been prepared under the Regulations for the establishment of new medical colleges, one of the conditions for the qualifying criteria laid down was 'essentiality certificate' regarding desirability and of having the proposed college at the proposed location which should be obtained from the State Government. Proviso to sub-section (5) of Section 5 of the Act, therefore, must be construed only as regards "*proposed location*". The 'essentiality certificate', however, could not be withheld by the State Government on any 'policy consideration' inasmuch as the policy and the matter of establishment of new medical college rested with the Central Government alone.

From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards in institutions for higher education or 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 Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be by the State Legislature subject to limitations and restrictions under the Constitution.

In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. 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. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament *alone* could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on 'policy consideration'.

Even otherwise, in our opinion, the High Court was fully justified in negativing the argument of the State Government that no permission could be refused by the State Government on 'policy consideration'. As already

A observed earlier, policy consideration was negatived by this Court in *Thirumuruga Kirupananda Trust*, as also in *Jaya Gokul Educational Trust*.

It is true that during the pendency of *St. John's Teachers Training Institute*, NCTE framed regulations called the NCTE (Form of application for recognition, the time limit of submission of application, determination of B norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002.

Regulation 6 required production of 'No Objection Certificate' from the State Government/Union Territory. Clause (1) thereof read thus;

C 6. *Requirement of No Objection Certificate from the State Government/U.T. Administration.*

(i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training D and/or increase in intake *shall be accompanied by a No Objection Certification (NOC)* from the State or Union Territory in which the institution is located.

(emphasis supplied)

E (ii) to (vii).... ....

The above Regulations came into force from November 13, 2002 and they insisted that application should be accompanied by NOC from the State Government/Union Territory in which the institution is located.

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

At the time of hearing, our attention was invited by the learned counsel for the contesting respondents to Perspective Plan 2003-07 published by the National Council for Teacher Education, New Delhi. It was, *inter alia*, observed H as under:

"In the 10th Plan Central Scheme on Teacher Education, it has been estimated that the country will need additional 4,58,000 primary school teacher and additional 6,08,857 upper primary school teachers. Therefore, the requirements of the professionally qualified teachers have to be met by increasing opportunities of pre-service elementary education based on manpower planning of teachers for each State/ Union Territory. For improving the quality of teacher education, the curriculum of pre-service programmes has to be renewed for making it relevant to the objectives of education and the directions contained in the Constitution. Above all, professional competence of teacher educators will have to be developed through in-service programmes and by introducing different M.Ed. courses with focus on pre-service education of stage-specific school education. It is planned to institute a National Eligibility Test for Teacher Educators based on skills and competencies required for the teaching profession."

Reference was also made to "Department of Secondary and Higher Education" published by the Government of India on January 25, 2006. The compilation relates to Secondary Education, Adult Education, Technical Education, Higher Education etc. In introduction, it has been stated :

"The Secondary Education which serves as a bridge between primary and higher education is expected to prepare young persons between the age group 14-18 in the world of work and entry into higher education. The Secondary Education starts with classes 9-10 leading to higher secondary classes 11 and 12. The relevant children population at the secondary and senior secondary level, as projected in 1996-97 by NSSO has been estimated at 9.66 crores. Against this population, the enrolment figures of the 1997-98 shows that only 2.70 crores attending schools. Thus, two-third of the eligible population remains out of the school system. To accommodate the children in schools at secondary level, we have at present 1.10 lakhs institutions (1998-99). With the emphasis on universalisation of elementary education and programmes like District Primary Education Programme, the enrolment is bound to increase and once this happens, we may require more than two lakhs institutions at the secondary level to accommodate them."

The counsel also referred to the "Annual Report : 2004-05" prepared by the Department of Elementary Education and Literacy, Department of Secondary and Higher Education, Ministry of Human Resource Development, Government of India. In the 'Planning', it was stated:

"Planning

The National Policy on Education, 1986, as modified in 1992 envisages the improvement and expansion of education in all sectors, elimination of disparities in access and laying greater stress on improvement in the quality and relevance of education at all levels, including technical and professional education. It also emphasizes that education must play a positive and interventionist role in correcting social and regional imbalance, empowering women and in securing a rightful place for the disadvantaged and the Minorities.

The nation is firmly committed to providing Education for all, the priority areas being free and compulsory primary education, covering children with special needs, eradication of illiteracy, vocationalisation, education for women's equality, and special focus on the education of SCs/STs and the Minorities.

The Central Advisory Board of Education (CABE), the highest advisory body to advise the Central and State governments in the field of education, was established in 1920 and dissolved in 1923 as a measure of economy. It was revived in 1935 and the tenure of the last constituted Central Advisory Board of Education (CABE) expired in March 1994. Despite the fact that in the past important decisions had been taken on the advice of CABE and it had provided a forum for widespread consultation and examination of issues relating to educational and cultural development, CABE was unfortunately not reconstituted after the expiry of its extended tenure in March 1994. Considering that CABE has a particularly important role to play at the present juncture in view of the significant socio economic and socio-cultural developments taking place in the country, and that the Central and State Governments, educationists and people representing all interests should increase their interaction and evolve a participative process of decision-making in education, CABE has since been reconstituted by the Government in July 2004. The Board consists of nominated members representing various interests in addition to representatives of the Government of India, State Governments and UT administrations, elected members form the Lok Sabha and the Rajya Sabha, etc. The first meeting of the reconstituted CABE was held on August 10-11, 2004, and seven CABE Committees have been set up on the subjects of:

(i) Free and Compulsory Education Bill and other issues related to Elementary Education

(ii) Girls Education and the Common School System

(iii) Universalisation of Secondary Education

(iv) Autonomy of Higher Education Institutions

(v) Integration of Culture Education in the School Curriculum

(vi) Regulatory Mechanism for Text Books and Parallel Text Books taught in Schools Outside the Government system

(vii) Financing of Higher and Technical Education

A meeting of the Education Ministers of all States/UTs dealing with school education was held on October 28, 2004, at Vigyan Bhawan under the chairmanship of the Minister of Human Resource Development.

In order to facilitate donations, including smaller amounts, both from India and abroad, for implementing projects/programmes connected with the education sector, the Government had constituted the "Bharat Shiksha Kosh" to receive donations/ contributions/endowments, from individuals and corporates, Central and State Governments, non-resident Indians and people of Indian origin for various activities across all sectors of education.

An Ordinance was promulgated on November 11, 2004, to enable setting up of a National Commission for Minority Educational Institutions to advise the Central Government or any State Government on any question regarding the education of Minorities, to look into complaints regarding violation of the rights of the Minorities, to establish and administer educational institutions of their choice and to permit a Minority educational institution to seek direct affiliation with a scheduled Central University. The Commission has started functioning with a Chairman and two Members."

'Teacher Education' has been dealt with thus;

"Teacher Education

The Centrally Sponsored Scheme of Teacher Education was launched in 1987-88 to create an institutional infrastructure to provide academic

A and technical resource support for continuous education and training of school teachers. While District Institutes of Education and Training (DIETs) set up under the Scheme provide academic resource support to formal and non-formal elementary school teachers, Colleges of Teacher Education (CTEs) and Institutes of Advanced Study in Education (IASEs) have been given the responsibility of organizing B pre-service and in-service training of secondary school teachers. IASEs are also expected to conduct programmes for the preparation of elementary school teacher educators.

The Scheme has been revised for the Tenth Plan and guidelines of the C revised Scheme were issued to States in January 2004, with emphasis on operationalising sanctioned DIETs, CTEs and IASEs in an optimum manner, and on improving the quality of teacher training programmes in them. Since the inception of the Scheme in 1987-88, a total of 550 DIETs/DRCs and 131 CTEs/IASEs have been sanctioned/approved up to December 2004."

D About 'Secondary Education', the Report states:

"Secondary Education

During the year, various schemes were implemented in the secondary education sector in addition to the continued support to major E institutions such as the NCERT, NIOS, and CBSE.

There has been a substantial increase in quality and magnitude of the academic activities of the Central Board of Secondary Education. During the year, CBSE introduced a course in Disaster Management in the school curriculum. A new course in Life Skills Education was F launched in classes VI and VII. It has also launched a new course in Fashion Studies. In collaboration with Intel India, CBSE organized the first science exhibition to evoke the interest of students in science.

The NIOS organized an international conference on promotion of Open Schooling in Goa. Countries like Sri Lanka, New Zealand, Canada G and UK participated in it. During 2004-05, several new courses were introduced and many video films on vocational education were completed. The NIOS has also developed audio and video programmes based on the curriculum in science, mathematics, etc.

H Support to Sarva Shiksha Abhiyan, Vocational Education, Education

of the Disadvantaged groups, Evolution of text books and examination reforms are priority areas of NCERT. A

Kendriya Vidyalaya (KVs) aim at providing uninterrupted education to children of Central Government/Defence employees, who are liable to frequent transfers. In 933 KVs, 7.50 lakh students have been enrolled (as on March 31, 2004). KVs have shown steady improvement in the performance of its students in board examinations. This is evident from the increase of pass percentage from 84.69 per cent to 99.44 per cent for Class X and 88.67 per cent to 92.75 per cent for Class XII during 1999 to 2004. B

Jawahar Navodaya Vidyalayas aim at providing good quality modern education, including imparting cultural values, environment awareness and physical education to talented children in rural areas, irrespective of their socio-economic conditions. There are now 509 schools in various States/UTs and 1,68,545 students were on the rolls of the NVs as on December 31, 2004. The pass percentage in Class X and XII in the year 2004 was 91.3 per cent and 87.68 per cent, respectively, when compared with the pass percentage of 88.50 per cent and 85.26 per cent in 2003. C D

The Integrated Education for Disabled Children (IEDC) scheme, started in 1974, provides 100 per cent funding to State Governments/UTs and NGOs. The scheme is proposed to be revised soon. Under the scheme of Access with Equity, two components strengthening of existing scheme of girl's hostels managed by NGOs and one-time assistance to reputed NGOs, Trusts, Societies and State Governments, etc., for setting up Secondary Schools are proposed. The scheme is therefore, being revised. The two schemes of Computer Literacy and Studies in Schools (CLASS) and Educational Technology have been merged I order to increase the effectiveness of the activities For the Tenth Plan, five schemes, namely, Environmental Orientation to School Education, Improvement of Science Education in School, National Population Education Project, Promotion of Yoga in School, International Science Olympiad are being merged into a composite scheme of Quality Improvement in Schools." E F G

It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the *national level.* The Act of 1993 also requires Parliament to consider Teacher Education System H

A 'throughout the country'. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove. State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.

C The decision relied on by Mr. *T.R. Andhyarujina in Vidharbha Sikshan Vyawasthapak Mahasangh* v. *State of Maharashtra & Ors.*, [1986] 4 SCC 361, has no application to the facts of the case. In that case, the power was with the State Government to grant or refuse permission to open B.Ed. college. Considering the fact that if permission would be granted, there would be a large scale unemployment, it was decided by the State Government not to allow new B.Ed. colleges to be opened. It was held by this Court that such policy decision could not be said to be arbitrary or otherwise unreasonable. The Court in that case was not concerned with the power or authority of State Government *vis-a-vis* Central Government and Act of Parliament. In the present case, as the field was fully occupied by Entry 66 of List I of Schedule VII to the Constitution and Parliament has enacted 1993 Act, it was not open to the State Legislature to exercise power by making an enactment. Such enactment, as per decisions of this Court, would be void and inoperative. It would be unthinkable that if State Legislature could not have encroached upon a field occupied by Parliament, it could still exercise power by executive fiat by refusing permission under the 'policy consideration'. The contention of the State Government, therefore, has to be negatived.

We may state at this stage that the contesting respondents have placed heavy reliance on Section 12 of the Act which relates to functions of the Council and submitted that it is incumbent on the Council to lay down norms and guidelines for ensuring planned and co-ordinated development of the teacher education and it is not open to the Council to delegate those 'essential functions' to the State Government. According to them, such delegation would be excessive and impermissible and abdication of power by the Council in favour of the State Government which is inconsistent with the provisions of the parent Act and must be held *ultra vires*. In reply, Mr. Andhyarujuna submitted that the constitutional validity of the Regulations or Guidelines had

not been challenged before the High Court and the respondents now cannot be permitted to raise such point in this Court in the absence of the challenge. The respondents, however, urged that since they succeeded before the High Court on other points, it was not necessary for them to challenge the vires of Regulations. But when the State had approached this Court, they can support the judgment on any ground available to them including unconstitutionality of Regulations and Guidelines. In our opinion, it is not necessary to enter into larger question since we are satisfied that in the facts and circumstances of the case, the High Court was justified in allowing the petitions filed by the colleges and setting aside the order dated December 28, 2004 passed by the State Government and also in dismissing the petition filed by the State holding that the order of the State was not legal. We may, however, observe that the learned counsel for NCTE, Mr. Raju Ramachandran is right in submitting that the Guidelines permitted the State Government to collect necessary data and materials and make them available to NCTE so as to enable NCTE to take an appropriate decision. 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. It has been so held in *St. John Teachers training Institute.*

The learned counsel for the respondents are also right in relying upon the provisions of Articles 19 and 21A of the Constitution. Under clause (g) of Article 19(1), all citizens have the right to practise any profession, or to carry on any occupation, trade or business, unless they are restrained by imposing reasonable restrictions under Article 19(6). In the instant case, applications had been made by colleges to NCTE under 1993 Act and after complying with the provisions of the Act, permission was granted by NCTE. The State thereafter could not have interfered with the said decision. It is also clear that Article 21A would cover primary as well as secondary education and petitioners could claim benefit of Part III of the Constitution as well.

The respondents have stated that they have spent huge amount and incurred substantial expenditure on infrastructure, library, staff, etc. and after satisfying about the necessary requirements of law, permission had been granted by the NCTE. If the said action is set aside on the basis of the decision of the State Government, irreparable loss will be caused to them. Since in our view, the order passed and action taken by NCTE cannot be termed illegal or unlawful and the State Government could not have passed the impugned order refusing permission on the ground of so called 'policy'

of not allowing new B.Ed. college to be opened, it is not necessary for us to delve into further the said contention.

Before parting with the matter, we may state that at one stage, the High Court has observed that "in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted under Section 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted under Section 82 of the Maharashtra University Act.

*To that extent the provisions of Section 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void".**

(emphasis supplied)

In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university

---

*82. (1) The university shall prepare a perspective plan, and get the same approved by the State Council for Higher Education for educational development for the location of colleges and institutions of higher learing in a manner ensuring equitable distribution of facilities for Higher Education having due regard, in particular, to the needs of unserved and under-developed areas within the jurisdiction of the university. Such plan shall be prepared by the Board of College and University Development, and shall be placed before the Academic Council and the Senate through the Management Council and shall, if necessary, be updated every year.

(2) No application for opening a new college or institution of higher learning, which is not in conformity with such plan, shall be considered by the university.

(3) The managements seeking permission to open a new college or insitution of higher learning shall apply in the prescribed form to the Registrar of the university before the last day of October of the year proceeding the year from which the permission is sought.

(4) All such applications received within the aforesaid prescribed time-limit, shall be scrutinized by the Board of College and University Development and be forwarded to the State Government with the approval of the Management Council on or before the last day of December of the year, with such recommendations (duly supported by relevant reasons) as are deemed appropriate by the Management Council.

(5) Out of the applications recommended by the university, the State Government may

('examining body') is obliged to grant affiliation to such institution and sections 82 and 83 of the University Act do not apply to such cases. A

Since we have decided the matters on merits, we have not dealt with preliminary objection raised by the colleges that the State cannot be said to be 'person aggrieved' and, therefore, has no *locus standi* to challenge the decision of NCTE. B

---

grant permission to such institution as it may consider right and proper in its absolute discretion, taking into account the State Government's budgetary resources, the suitability of the managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of higher learning: C

Provided, however, that in exceptional cases and for the reasons to be recorded in writing any application not recommended by the university may be approved by the State Government for starting a new college or institution of higher learning.

Provided further that, from the academic year 2001-2002, such permission from the State Government shall be communicated to the university on the before 15th July of the ytear in which the new college is proposed to be started. Permission received thereafter shall be given effect by the university only in the subsequent academic year. D

83. (1) On receipt of the permission from the State Government under section 82 of the Academic Council of the university shall consider grant of first time affilliation to the new college or institution by following the prescribed procedure given in sub-section (2) and after taking into account whether and the extent to which the stipulated conditions have been fulfilled by the college or institution. The decision of the Academic Council in this regard shall be final. E

(2) For the purpose of considering the application for the grant of affiliation the Academic Council shall cause an inquiry by a committee constituted for the purpose by it.

(3) The Academic Council shall decide-

(a) whether affiliation should be granted or rejected; F

(b) whether affiliation should be granted in whole or part;

(c) subjects, courses of study, the number of students to be admitted;

(d) conditions, if any which may be stipulated while granting or for granting the affiliation. G

(4) The Registrar shall communicate the decision of the Academic Council to the Management with a copy to the Director of Higher Education, and if the application for affiliation is granted, alongwith an intimation regarding:—

(a) the subjects and the courses of study approved for affiliation;

(b) the number of students to be admitted.

(c) the conditions, if any, subject to the fulfillment of which the approval is granted. H

A We may, however, state that the academic year 2005-06 is almost over and as such it is not possible to grant the prayer of respondent-colleges to allow them to admit students for the year 2005-06. It is, therefore, directed that the order passed by NCTE would operate from the next academic year, i.e. from the year 2006-07.

B For the foregoing reasons, all the appeals filed by the State are liable to be dismissed and are accordingly dismissed with costs. Interim stay granted earlier is hereby vacated.

B.K. Appeals dismissed.

5. The procedure referred to in section 82, except the second proviso to sub-section (5) thereof, shall *mutatis-mutandis*, apply for the permission to open new courses and additional Faculties. The procedure for permission for starting new subjects and additional divisions in the existing colleges and institutions shall be such as may be prescribed by the State Government, from time to time.

6. No student shall be admitted by the college or institution unless the first time affiliation has been granted by the university to the college or institution.

7. The procedure referred to in sub-sections (1) to (4) shall apply, *mutatis-mutandis*, for the consideration of continuation of affillation, from time to time.