

# SUPREME COURT OF INDIA

Bhagwan Budha Prathmik Technical Training College Nirmali

Vs.

State of Bihar

C.A.No.9896 of 2010

(R.V. Raveendran and H.L. Gokhale )

23.11.2010

## JUDGMENT

### GOKHALE J.

1. Leave Granted.

2. These two appeals raise the questions as to whether after coming into force of the National Council for Teacher Education Act 1993 (hereinafter referred to as 'the NCTE Act') the State Governments have the power to grant recognition to the colleges which train the teachers, and whether students from the colleges not recognized by National Council for Teacher Education (in short NCTE) can be permitted to appear for the requisite examination to become teachers. Since both these appeals are filed by the same institution, they are being disposed of by a common judgment.

3. Both these matters have had a chequered history. There have been several rounds of litigation which are being recorded herein below.

4. The appellant claims to be an institution set up by the minority Buddhist religious community. The appellant has established a Teachers' Training College at Nirmali, District Supaul (Bihar), in the year 1987. It claims that the Chief Minister's Secretariat instructed the Director, Research and Training, Primary Education, Patna (vide a letter dated 13.02.1987) to issue a permission to the appellant to establish this minority educational institution. Thereupon, the appellant proceeded to admit students pending the approval/recognition of its course, by the State Government for training of the students to become primary teachers.

5. The appellant waited for the order of recognition for more than three years, and thereafter filed a Writ Petition bearing CWJC No. 5084 of 1990 in the High Court of Patna, seeking a direction to the State Government to grant the recognition. The prayers in the petition were two-fold. Firstly, a direction to the State Government to consider and finally dispose of the matter regarding recognition, and secondly, a direction to the Bihar School Examination Board (for short-Board) to allow the students of the appellant institution to appear for the ensuing primary teachers training examination. The appellant claimed that two batches of its students had completed their course in

the meanwhile, i.e. 1987-89 and 1988-90. A Division Bench of the High Court issued three-fold directions on that petition vide its order dated 3.11.1990 :

(i) to the State Government to decide one way or the other the question of recognition of the institution and

(ii) to the Board, if it was so satisfied, as to the bona fides and genuineness of the claims of the students of the two batches, to allow them to appear for the examination.

(iii) to the Secretary of the appellant college also, to submit full particulars of its students (not exceeding 100 in number for each session) within 10 days from the date of the order. The High Court, however, made it clear that the students appearing in the examination will be appearing at their own risk and no right shall enure to them merely on that basis. Their results will not be published until the question of recognition of institution is finally decided by the State Government, and the publication of results will abide by the final decision in the recognition matter, that is to say, results will be published only in case recognition is granted.

6. Accordingly, students of the appellant institution appeared for the examination conducted by the Board in January 1991. However, the decision of the State Government on the aspect of recognition was not forthcoming, and hence the appellant institution filed the second Writ Petition bearing CWJC No.293 of 1992. When this Writ Petition was heard, it was pointed out on behalf of respondents that the appellant had yet not submitted the application for inspection and grant of recognition in proper proforma, and other requirements were also not fulfilled. In view of this position, the Division Bench declined to pass any direction in this behalf. It, however, granted liberty to the appellants to apply afresh in proper proforma, which shall be considered and disposed of by the concerned authorities in accordance with law. Thus, this petition was disposed of by order dated 28.8.1992.

7. It is the case of the appellant that they did furnish the necessary particulars with an application on 27.03.1993, followed by a reminder dated 27.11.1994, with a request to carry out the inspection of the institution for necessary approval.

8. It appears that the inspection was accordingly carried out, and a report recommending grant of approval was made by the Director, Research and Development, Education Department on 28.05.1995. He recommended grant of approval from 1987 till 1995-97. Another three member committee carried out one more inspection and made a similar recommendation to the Special Secretary to the Government.

9. Since, the recognition was still not forthcoming, some of the students, namely one Vidyanand Choupal and others filed a Writ Petition bearing CWJC No. 517 of 1998 and prayed for a writ of mandamus that their results be declared for the examination which was conducted on 24.01.1991 for the training session of 1987-89. The Learned Single Judge who heard the matter noted that the college was not recognized in spite of the earlier order dated 3.11.1990 in CWJC No.5084 of 1990, which order had also made it clear that the results can not be declared until recognition is granted. The Learned Single Judge, therefore, disposed of this third Writ Petition by order dated 28.01.1998 with a direction to the Government to pass a final order on the question of recognition.

10. In the meanwhile, the NCTE Act had already come into force on 1.7.1995, but the appellant did

not take any steps to seek recognition thereunder. It merely made one more representation on 05.08.2005, that is some ten years later to the State Government for grant of recognition. The students who were stated to be waiting for the results filed one more Writ Petition at this stage bearing CWJC No.1829 of 2006. That petition came to be dismissed by a Single Judge, and hence those students viz. Ajay Kumar Narala and others filed LPA No. 609 of 2006. The Division Bench disposed of that appeal by order dated 13.02.2007 in view of the statement by the counsel on behalf of the Government that the recognition will be processed very soon and in all probability, the decision shall be taken finally latest by four weeks.

11. The appellants accordingly made another representation on the same day i.e. 13.02.2007 to the Education Commissioner pointing out this order in LPA No.609 of 2006. The Commissioner for the Human Resource Development Department thereupon issued order Memo No. 57 on 16.03.2007. He recorded in this order that the departmental inspection committee had requested for the grant of recognition to the college from 1987-89 onwards. In paragraph 3, of his order the Commissioner in fact noted that in the meanwhile, the NCTE Act had come into force, but the college had not made any application to NCTE for its recognition as required under that Act. The approval/recognition was no longer within the power of the State Government. However, since the approval ought to have been granted in view of the inspection report, he recommended that college can be considered to be a recognized one w.e.f. 1987-89. Para 3 of this order reads as follows: - "(3) In this process, from 17 August 1995 the

National Council for Education Teachers education bill 93 was passed. Under the act, the right to grant approval to the training colleges is now given to the National Council for Teachers Education. Thus in the aforesaid circumstances the concerned college has to make an application for permission before the National Council for Teachers Education (Eastern Zone, Bhubneshwar). The matter pertaining to approval/recognition is not within the power of the State Govt. But the college can be considered to be recognized one with effect from 1987-89 to 1995, because the approval ought to have been granted in view of the inspection report."

12. Inasmuch as, the results were still not being declared, the appellant filed another Writ Petition bearing CWJC No.7055 of 2007. A Single Judge of the Patna High Court who heard the matter referred to Sections 14 and 16 of the NCTE Act. He noted that under Section 14 of the Act, the institute which is giving teachers training has to apply for its recognition to NCTE within six months of the Act coming into force. The appellant had not so applied after the appointed day. The students of an institution recognized by NCTE alone can appear for the qualifying examination as per Section 16 of the Act. The Learned Single Judge, therefore, dismissed the petition by his order dated 24.08.2007.

13. The appellant filed LPA No.780 of 2007 to challenge the order dated 24.08.2007. The State Government, however, reviewed the recommendation for recognition dated 16.03.2007 and cancelled that order memo by its order dated 02.09.2008, which was on the basis of the above referred Sections 14 and 16. Having referred to the facts of the case and the two Sections, this order dated 02.09.2008 recorded as follows: - "Under the aforesaid facts it becomes clear that after the application of the National teachers training council (N.C.T.E.) Act 1993, the right to grant recognition to the training colleges is the authority of the regional council, National council for Teacher education and not of the State Government or of any other authority. It is also laid down in the order memo 57 dated 16.03.07 that now it is not within the authority of the State Government to consider matters relating to recognition. Hence it is clear that the order memo 57 dated 16.3.2007 is

not relevant to the provisions of the N.C.T.E. act 1993. Henceforth, after reviewing the order memo 57 dated 16.3.07 is being cancelled as per the order of the Government."

14. Therefore, when LPA No.780 of 2007 reached before the Division Bench on 12.11.2008, the Division Bench noted that the order Memo No. 57 dated 16.03.2007 had been withdrawn by the subsequent order dated 02.09.2008. In view thereof, the Division Bench had no option but to dismiss the LPA. It is this order dated 12.11.2008 which is challenged in the first Special Leave Petition No.6511 of 2009.

15. While dismissing LPA No.780 of 2007, the Division Bench made it clear that the order of the Division Bench will not preclude the appellant from challenging the legality and correctness of the order dated 02.09.2008 by means of an independent substantive proceeding.

16. The appellant accordingly filed another Writ Petition bearing CWJC No.18181 of 2008 to challenge this order dated 02.09.2008. Two points were raised before the Division Bench. Firstly, with respect to the legality of the NCTE Act. On this aspect the Division Bench noted that the subject of education was listed at Entry No. 25 in List No. III (concurrent list in the 7th Schedule to the Constitution of India) and, therefore, the enactment was within the powers of the Central Government and could not be held to be bad on account of legislative competence. Secondly, it was argued that the State Government could not have rescinded the impugned order. The Division Bench noted that after coming into force of the NCTE Act, there is no power to grant recognition retained with the State Government, and therefore the order rescinding the earlier recommendation for recognition could not be said to be illegal. The Court dismissed the petition by its order dated 9.2.2009 with cost quantified at Rs.30,000/- to be paid to the State Government, the Union Government and NCTE in equal proportion. It is this order dated 09.02.2009 which is challenged in the second Special Leave Petition No. 9378 of 2009.

17. As stated earlier, the only question which is to be considered in both these matters is whether the State Government had the authority to issue the order dated 16.03.2007 granting recognition for the period 1987-95 when the NCTE Act had already come in force way back in July 1995. Consequently, whether there was any error on the part of the State Government in rescinding the order dated 16.03.2007 by its subsequent order dated 02.09.2008.

18. Mr. K.V. Vishwanathan, learned Senior Counsel appearing for the appellant assailed the two impugned orders in the two appeals and particularly the High Court's order dated 09.02.2009 on various grounds. He submitted that the High Court has erred in not interfering with the order of the State Government dated 02.09.2008, withdrawing the earlier order of recognition dated 16.03.2007. He pointed out that during the period when the order of recognition dated 16.03.2007 was subsisting, the appellant had filed one more Writ Petition CWJC No.6991 of 2007 for the declaration of the results of the two batches of 1987-89 and 1988-90, and that direction had been given by a Learned Single Judge on 06.05.2008, and the same was left undisturbed by a Division Bench by dismissing the appeal filed by the Board being LPA No.550 of 2008 by its order dated 22.08.2008. He submitted that, in fact, because of the non-implementation of the order dated 06.05.2008, the appellant has filed a contempt petition bearing MJC No. 1747 of 2008, and with a view to avoid the action in contempt the respondents have withdrawn the recognition order dated 16.03.2007, and the withdrawal was mala fide.

19. Now, as far as this submission is concerned, a power to issue an order includes a power to

withdraw the same for valid reasons. In the instant case it is material to note that even the order dated 16.03.2007 recorded that after coming into force of the NCTE Act, it was no longer within the authority of the State Government to consider the matters relating to recognition. Yet, it was further recorded that because the approval ought to have been granted in view of the inspection report, the college can be considered to be recognized one with effect from 1987-89 to 1995. In the subsequent order of withdrawal dated 02.09.2008, the above fact has been recorded, and then it is noted that after the application of the NCTE Act 1993, the right to grant recognition is no longer with the State Government or with any other authority. It is for this reason that the State Government has withdrawn the earlier order dated 16.03.2007. If an administrative order is based under an erroneous assumption of one's own power and if it goes to the root of the matter, the authority concerned can certainly review it for valid reasons, and if that is so done, the withdrawal can not be called to be a mala fide one. The appellant had challenged Government's order dated 2.9.2008 withdrawing its earlier order dated 16.3.2007, and the order dated 2.9.2008 having been left undisturbed by the High Court by its subsequent order dated 9.2.2009, now a submission cannot be entertained on the basis of previous orders in Writ Petition CWJC 6991/2007 passed at a time when the earlier order dated 16.3.2007 was subsisting.

20. It was then submitted on behalf of the appellant that prior to the coming into force of NCTE Act, it was the State Government which was authorized to grant recognition and that the NCTE Act has been held to be a prospective legislation in *Sunil Kumar Parimal and Another Vs. State of Bihar and Others* reported in [2007 (10) SCC 150]. It is contended that the appellant is not asking for any recognition for a period subsequent to the act coming into force. In fact thereafter the appellant institution has been closed down. Appellant submits that since the Act is silent about the period prior to the NCTE Act coming into force, the State Government continues to be the authority to grant recognition for this earlier period. With respect to this submission we must note that in the case of *Sunil Kumar Parimal* (supra) the examination Board had failed to discharge its function of conducting examination of Tirhut Physical Education College, Muzaffarpur in spite of repeated directions from the State Government. As seen from para 19 of the judgment, the college had already been recognized by the State Government. The students had completed their course prior to the derecognition of the college by NCTE. It is due to the sheer inefficiency of the Board that the students were not permitted to take their examination. In view of these peculiar facts of that case this Court gave the direction to conduct their examination by specifically invoking Article 142 of the Constitution. As against that, in the instant case there was no such direction from the State Government at any point of time to allow the students of the appellant college to take their examination, nor was any formal order of recognition issued by the State Government prior to the NCTE Act coming into force. In the instant case, the appellant is asking for a direction for the students of batches from 1987-89 to 1995-97 to be permitted to appear in the examinations in the year 1994-97 or thereafter. This would amount to allowing the students to take their examination after the NCTE Act coming into force, when the institution conducting the course was never recognized either by the State Government or by NCTE. Obviously that can not be done in the teeth of Section 16 of the Act.

21. Nor can the State Government be directed now to recognize the appellant for the earlier period, since that power vests with the NCTE after the appointed day. The proviso to Section 14 of the Act however permits such an existing institution offering a course of training in teacher education, to apply within a period of six months from the appointed day for recognition to the Regional Committee of the NCTE. Appellant has not made any such application. Section 16 (b) lays down thereafter that after the appointed day no examining body shall hold examination for a course or

training conducted by an institution, unless it has obtained a recognition from the Regional Committee of NCTE. Sections 14 (1) and 16 read as follows:- "14. Recognition of institutions offering course or training in teacher education - (1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under 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 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."

"16. Affiliating body to grant affiliation after recognition of permission by the Council -

Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,-

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution, unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under section 15."

22. 'Appointed day' has been defined under Section 2 (a) of the Act as the date of establishment of National Council for Teacher Education. Section 3 (1) of the Act lays down that with effect from a date as the Central Government may by notification in the official gazette appoint, there shall be established a council to be called the National Council for Teacher Education. This being the position, after that date the State Government could not have conducted the examination and issued the certificate to the students of the appellant institution. Prior to 1995, the NCTE had existed since about 1973 as a government advisory body (and not as a separate institution) to look after development and progress of "teacher education". The NCTE was then only a department of the National Council of Educational Research and Training. The 14

National Council for Teacher Education, in its previous status since 1973, was an advisory body for the Central and State Governments on all matters pertaining to teacher education, with its Secretariat in the Department of Teacher Education of the National Council of Educational Research and Training (NCERT). Despite its commendable work in the academic fields, it could not perform essential regulatory functions, to ensure maintenance of standards in teacher education and preventing proliferation of substandard teacher education institutions. The National Policy on Education (NPE) 1986, and the Programme of Action thereunder, envisaged a National Council for Teacher Education with statutory status and necessary resources as a first step for overhauling the system of teacher education. The NCTE Act came into force on 1.7.1995, vide S.O. 620(E), dated 1.7.1995, published in the Gazettee of India, Ext. Pt. II, S.3(ii), dated 10.7.1995 by exercising the power under Section 1 (3) of the NCTE Act. The National Council for Teacher Education as a statutory body came into existence in pursuance of the NCTE Act, 1993 (No. 73 of 1993) on 17.8.1995.

23. The appellant relied upon the judgment of this Court in Civil Appeal No. 8239-8240 of 2009 decided on 16.03.2010 in the case of Zakir Hussain Primary Education Vs. State of Bihar. In that matter also the relief sought was with respect to the period from 1979-81 to 1994-96. What is

however important to note is that in that matter the Director, Research and Training, Primary Education, Bihar had granted recognition to the said institution on 26.04.1995 which was prior to the Act coming into force, and the order dated 4.9.1999 withdrawing that recognition was challenged in that petition. In that matter, it was noted by this Court that the Writ Petition and LPA of the institution were dismissed by the High Court only on the ground of delay and laches, and since it was dismissed in limine, the Board did not get the opportunity to file its counter. It is for this reason that this Court interfered with the orders passed by the Single Judge as well as by Division Bench and remanded the matter to the High Court for reconsideration. That case is quite dis-similar to the present case. In the present matter although the inspection was carried out earlier, the order of recognition was not issued by the State Government prior to the NCTE Act coming into force, and after the act came into force it no longer had the authority to issue the same.

24. The counsel for the respondent on the other hand pressed into service the judgments of this Court in N.M. Nageshwaramma Vs. State of Andhra Pradesh reported in [1986 Supl. SCC 166] , St. John's Teachers Training Institute (For Women), Madurai and Others Vs. State of Tamil Nadu and Others reported in [1993 (3) SCC 595] and L. Muthukumar and Another Vs. State of Tamil Nadu and Others reported in [2000 (7) SCC 618]. In Nageshwaramma, this court observed in para 3 as follows:-

"The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organized and equipped Training Institute is probably essential before a teacher may be duly launched." The observations of this Court in para 12 of State of Maharashtra Vs. Vikas Sahebrao Roundale reported in [1992 (4) SCC 435] are also quite instructive:-

".....For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance with the statutory requirement is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education."

25. In L. Muthukumar's case (supra) this Court held that mere passing of a public examination is not enough. It must be coupled with proper training in a recognized institution. Candidates having undergone training in institutions which do not have recognition may at the highest get the declaration of their exam results, but would not be entitled to marks sheets, certificates or diplomas in teacher training. The Court observed in paragraph 14 that before the teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a recognized training institute satisfying the prescribed norms, otherwise the standard of education and careers of children will be jeopardized.

26. In the instant case, the prayer of the appellant is that the candidates of all these earlier years be permitted to give the board examination, and later on, be given the degree of Bachelor of Education and Training (BET). The very first order of the High Court dated 3.11.1990 had laid down two conditions for the same, viz. that the students were to be allowed for the examination only if the board was satisfied as to the bonafides and genuineness of the students, and secondly the results were not to be published until the question of recognition was decided finally by the State

Government. The order also made it clear that the students were to appear for the examination at their own risk and no rights were to enure therefrom. The training to become teachers consists of theoretical as well as practical aspects. The performance of the candidates is to be judged on both these aspects and a mere theoretical examination does not suffice. The students intending to become teachers have to undergo practical training. The institution is now closed down. The Board cannot ascertain the bonafides and genuineness of the claims of the students (including the entries concerning their practical training) after so many years to permit them to appear for the examination. What facilities were available in this institution at the relevant time can also not be now ascertained by NCTE. Thus the students of the appellant cannot be permitted to take the Board examination since the appellant does not have the recognition either from the State Government or from NCTE. Thus, the two requisite conditions are not fulfilled.

27. It was submitted on behalf of the appellant that the students of the appellant institution should not be made to suffer and it was pointed out that this Court by an interim order passed in these appeals on 25.05.2009 has allowed these students to appear in the examination in view of the decision in Sunil Kumar Parimal's case (supra). We must however note that this order also made it clear that the examination was to be conducted and the results were to be declared subject to the decision of the petition. That apart, as pointed out by the counsel for the respondents, in the event these candidates get the degrees or diplomas, they will claim seniority in Government Employment over teachers properly trained in recognized institutions and that would be certainly prejudicial to the public interest. As held in the case of L. Muthukumar (supra), if such candidates are issued mark-sheets, certificates or diplomas in teacher training, that will defeat the objective of having teachers with proper training as expected under the NCTE Act. It will cause serious damage to the education of the children who would be studying under these teachers. This Court has observed in para 18 in St. John's Teachers Training Institute (supra), that the teachers appearing for the examination on the basis of interim orders cannot derive any benefits on the basis of such interim orders. Whatever education and training these students have taken in the appellant's institution may help them get employment in some private schools as noted in L. Muthukumar's case (supra), or they may otherwise seek their remedy against the appellant.

28. As the preamble of the NCTE Act lays down it is enacted to achieve planned and coordinated development for teacher education system throughout the Country. The Act is also passed to bring about the regulation and proper maintenance of norms and standards in teacher education system. Sections 14 and 16 of Act are enacted with that purpose, and recognition of the teacher training institute vests with the NCTE after the appointed day. These provisions answer the two questions which are set out at the beginning of this judgment. Every institution offering a course of training in teacher education has to obtain a recognition from the Regional Committee of NCTE after the appointed date. That authority is vested only in the Regional Committee as per Section 14 of the Act. The State Government cannot exercise that power after the appointed date. Nor can the examining body hold examination of the students of a teacher training institute after the appointed day unless the institute is recognized by Regional Committee of the NCTE as laid down in Section 16 of the Act. These provisions have to be implemented with full force in the interest of the education of the children whom these teachers will be subsequently teaching, the teacher-candidates themselves, and for bringing about proper standard and norms in the field of teachers' education. In the present case the order granting recognition dated 16.3.2007 was outside the powers of the State Government and therefore the Government was quite right in rescinding the same by a subsequent order dated 2.9.2008.

29. It was contended by the appellant that its students should not be made to suffer on account of the delay on the part of the State Government in taking the decisions. We quite see the agony of the students who might have joined the appellant institute bona fide. We are told that the appellant institution is in a backward area and the students are coming from economically and socially backward classes of the society. An institution claiming to teach such students should conduct itself with all the more responsibility and ought to be more careful and diligent. When the NCTE Act came into force in 1995, the institution should have applied to the concerned authorities diligently within the time stipulated. Having not so applied thereunder, it is the appellant institution which is responsible for the situation in which the students have landed. From what is narrated earlier, it is seen that even prior to the NCTE Act coming into force, inspite of High Court's order dated 3.11.1990, the appellant did not submit the application for inspection of the institution and the required particulars in the prescribed proforma to the State Government until 27.3.1993. The students also sought their remedy belatedly in the year 1998 by filing Writ Petition No. CWJC 517 of 1998 for the declaration of the result of the examination of the 1987-1989 batch held on 24.1.1991 (conducted pursuant to the order of the High Court dated 3.11.1990). By the time this petition was filed, the NCTE Act had already come into force on 1.7.1995, and hence although the State Government considered the case of the appellant in pursuance to the direction dated 28.1.1998 in Writ Petition No. CWJC 517 of 1998 and order dated 13.2.2007 in LPA No. 609/2006 for the period 1987 to 1995, it rescinded the same on realizing that it no longer had the power to grant the recognition. Thus, it is very clear that the appellant and the students were also not diligent in furthering their cause, for reasons which are not stated. The State Government alone cannot be blamed for the fate of the students for its initial inaction.

30. Even so, in our view the part of the order in CWJC No.18181 of 2008 imposing cost of Rs. 30,000/- on the appellant was not called for. The same requires to be deleted.

31. In the circumstances, we do not find any error in the two impugned orders. Accordingly, both the appeals are dismissed. The order in CWJC No.18181 of 2008 is however modified to the extent of deleting the cost of Rs. 30,000/-. As far as the present proceedings are concerned, there will be no order to costs in both these appeals. In view of the dismissal of both appeals all the interim applications pending therein stand disposed of.