

Bright Future Teacher Training Vs. State

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Court : Rajasthan

Decided On : Dec-12-2008

Reported in : RLW2009(2)Raj1197

Judge : Prem Shanker Asopa, J.

Appellant : Bright Future Teacher Training

Respondent : State

Disposition : Appeal allowed

Judgement :

Prem Shanker Asopa, J.

1. By the aforesaid writ petitions, the petitioners have challenged the impugned orders of rejection of No Objection vide orders dated 7/10.11.2008 which were passed after the final order passed by this Court in the writ petitions earlier filed by the present petitioners as well as other connected writ petitions on 5.11.2008.
2. Since common questions of fact and law are involved in these writ petitions, therefore, they are again clubbed together and are being decided together.
3. For the purpose of decision of these writ petitions, the facts of S.B. Civil Writ Petition No. 13038/2008 Bright Future Teachers' Training College v. State of Rajasthan and Ors. are taken as the leading facts.

4. The petitioner applied to the National Council for Technical Education (for short the N.C.T.E.) for grant of recognition/permission for starting B.Ed. Course of one year duration with annual intake of 100 students. On 29.4.2008, the petitioner deposited the requisite fee/charges and made request to the University of Rajasthan for granting affiliation to the petitioner for B.Ed. Course. On 30.9.2008, the N.C.T.E. granted recognition/permission for starting B.Ed. Course of one year duration with annual intake for the academic year 2008-2009 subject to certain conditions and in case of non-fulfilment of the same, the recognition would be deemed to be for the next academic year i.e. 2009-2010. On 30.9.2008, the petitioner made a request to the State of Rajasthan to issue the No Objection in favour of the petitioner, and to allow the petitioner to participate in the counselling for B.Ed. Course.

5. Since the petitioner was not allowed to participate in the counselling for admission in the B.Ed. Course, which was about to be held, the petitioner filed S.B. Civil Writ Petition No. 12241/2008 before this Court for issuance of necessary direction to the respondents to allow the petitioner to participate in the counselling for admission of students in B.Ed. Course. It is pertinent to mention here that the aforesaid remaining writ petitions have been filed prior to 5.11.2008 and all of them have been disposed of on 5.11.2008 taking note of the fact that the counselling has been notified on 1.11.2008 and the same was to be over by 14.11.2008 but the applications of the petitioners were not decided.

6. By the aforesaid order dated 5.11.2008, the respondent State of Rajasthan was directed by this Court to examine the application of each of the petitioners and to pass appropriate orders by 10.11.2008 and on the same day, copies of the orders so passed be made available to the respective petitioner institution. Other necessary directions were issued to the University of Rajasthan as well as the Coordinator, P.T.E.T. with the further observation that in case of difficulty, it will be permissible for the State Government to co-ordinate with the other respondents and reasonably extend any date for completion of the formalities for the counselling.

7. On 7/10.11.2008, the respondent State of Rajasthan passed order that in order to provide equal opportunity, it would not be appropriate to grant admission to the persons lower in merit in the new Institutions and further in Science and Commerce, the students who obtained 30% marks in P.T.E.T. 2008 have been admitted, therefore, keeping in view the standards of education and unavailability of the students above 30% marks, it would not be in the interest of the State to allow the College to participate in the counselling; In the said order, it has also been stated that considering the mandatory provision of completion of minimum 180 teaching days, the new Institutions cannot be allowed to participate in the counselling. Ultimately, it was concluded that for the academic year 2008-2009, participation of the petitioner in the counselling is not possible. For academic year 2009-2010, after examining the requisite eligibility, the participation of the respective Institutions in the counselling would be allowed as per the Rules.

8. It is stated in the writ petition that all the petitioner Institutions have submitted their applications either in the last week of September, 2009 or in the beginning of the month of October, 2008 but the respondent State, which has no effective role to play, after grant of the recognition by, the N.C.T.E. has deliberately delayed the same and thereafter rejected their application(s) contrary to the recognition order of the N.C.T.E. of the respective Institution, more particularly Para 3.1 without consulting the University of Rajasthan and without further examining the fact that the students of the last counselling notified on 1.11.2008 were directed to report for admission in the respective Institutions on 14.11.2008 will complete 180 teaching days then how the students who would now be admitted in the next week starting from 17.11.2008 will not complete 180 teaching days. It is also stated that the said order has been passed by the State Government as an Appellate Authority over the respective recognition certificates granted by the N.C.T.E. and without consulting the University of Rajasthan, and that too, totally oblivious of the fact that both the aforesaid statutory bodies -N.C.T.E. and the University of Rajasthan which are the expert bodies established to maintain high standards in the education have not placed any bar for counselling.

9. Lastly, it has been stated in the writ petition that while granting the recognition in the last week of September, 2008, the N.C.T.E. never intended that the petitioner

Institutions will not be allowed to participate in the counselling and further fact of affiliation with the University of Rajasthan and notifying the dates of academic calendar for B.Ed. Course is the prerogative of the University of Rajasthan.

10. The State of Rajasthan has neither filed reply in the earlier writ petitions nor in the present bunch of writ petitions. Ultimately, vide order dated 27.11.2008 all the aforesaid writ petitions were ordered to be listed on 2.12.2008 for final disposal. Thereafter also, time was available with the State Govt. to file reply. However, the State has defended its impugned orders on the same grounds mentioned in the respective orders of refusal to give the No Objection for the academic session 2008-2009.

11. University of Rajasthan has filed detailed reply and submitted therein that for P.T.E.T. 2008-2009, about 3 lacs candidates have applied and around 85,000 candidates have been declared eligible for counselling of B.Ed. and that the petitioner Institutions, except Great India T.T. College (SBCWP No. 13076/2008) are to be affiliated with the University of Rajasthan, for which the University of Rajasthan has received the fees either in time or with late fees along with permission of the N.C.T.E. except in the cases of Bright Future Teachers' Training College (SBCWP No. 1-3038/2008) and Alwar Teachers' Training College (SBCWP No. 13041/2008), the University of Rajasthan has submitted that they have not received the permission granted by the N.C.T.E. as yet but since the same have been annexed with the writ petitions, the University of Rajasthan is yet to take decision on the applications submitted by the said Institutions.

12. It is stated at the bar by the counsel for the University of Rajasthan that for B.Ed. Courses, the University of Rajasthan has notified the start of the academic year from 26.9.2008 but since the State notified the last counselling on 1.11.2008, which was to be completed on 14.11.2008, the University of Rajasthan is considering extension of the date of start of the academic session 2008-2009.

13. Counsel appearing for the University of Rajasthan has categorically stated that the examinations will be held on completion of required minimum 180 teaching days from the date of commencement of the B.Ed. Course, in the light of the Rules and Regulations of the N.C.T.E. It is stated in the reply to the writ petition by the

University of Rajasthan that as regards the examination, it is to be decided by the University of Rajasthan which is an expert body.

14. On raising the query whether there was any minimum qualifying marks in the P.T.E.T. Counsel for the University submitted that there is no minimum qualifying marks for B.Ed. either prescribed by the statute or by any other order by the University. There is also no order on record prescribing any minimum qualifying marks for P.T.E.T. by the State. The PTET was held to short list 3 lacs candidates for admission for few thousand seats and 85000 candidates have been declared eligible in the PTET as per the University's reply. Under Ordinance 320 and 322 framed by the University of Rajasthan, relevant for the purpose of admission and examination of B.Ed. no minimum qualifying marks have been prescribed, therefore, the passing marks is the only relevant criteria for admission in B.Ed. For one more reason the State cannot prescribe the minimum qualifying marks as in case the students are lesser in number than the available seats, then there was no need of holding the P.T.E.T. Therefore, from all angles, the eligibility clause of Ordinance 320 and 322 of the University of Rajasthan are relevant in case of eligibility of the candidates.

15. On raising further query whether similar situation arose earlier and what was the stand of the University, counsel for the University stated that to meet out such type of contingency, the University may allow the Institutions to complete required minimum 180 teaching days either by holding extra classes on holidays or over time classes on teaching days and further counting one teaching day as two teaching days or by shortening the summer vacations in order to ensure that the examinations are held before the start of new academic session.

16. Mr. Katta appearing for the University has given the details of the applications as well as grant of affiliation to some of the colleges but despite that the State Govt. has not granted No Objection. The relevant column showing the writ petition number, name of the college, whether permission of NCTE was received and name of the college sent to the PTET as mentioned in the said Schedule is annexed and marked as Schedule-1 to this judgment which may be treated as part of this judgment.

17. Mr. Gopal Garg, counsel for the University of Kota has adopted the reply as well as the submissions made by Mr. R.A. Katta, counsel for the University of Rajasthan with the further submission that they will follow the academic calendar of the University of Rajasthan.

18. Main submission of counsel for the petitioners is that to meet out the requirement of infrastructure, library and the staff, all of them have invested huge amount and have further completed all other necessary formalities of affiliation and No Objection. The N.C.T.E. after inspection had granted recognition and the University has also sent names of some of the colleges for allowing them to participate in the counselling but the State Government has acted arbitrarily as an Appellate Authority over the recognition orders granted by the N.C.T.E. and the list sent by the University. The State is bound to honour the orders of the aforesaid statutory expert academic ' bodies as per the judgment of the Supreme Court in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Ors. : (2006)9SCC1 . The aforesaid judgment has been further followed by the Punjab and Haryana High Court in Vaish College of Education, Rohtak v. State of Harayana and Ors. CWP No. 9270/2007 and other connected petitions, decided on 7.8.2007 whereby three directions have been issued which are relevant for the purpose of decision of these writ petitions.

19. Counsel for the petitioners submit that in the case before the Supreme Court the academic session was almost over, therefore, the case was ordered to be considered for the next academic session but in the instant cases, it is the beginning of the academic session 2008-2009 and this Court has also issued directions to dispose of the application for No Objection on 5.11.2008 during the process of counselling with the further observation that it would be permissible for the respondent to reasonably extend the date of counselling but the respondent State was pre-determined to reject the application on one ground or the other.

20. The respondent State has defended its order on the ground that in order to provide equal opportunity, it would not be appropriate to grant admission to the person lower in merit in the new institution and further in Science and Commerce the students who have obtained 30% marks have been admitted. Therefore,

keeping in view the standards of education and non availability of the students above 30% marks, it would not be in the interest of the State to allow the College to participate in the counselling. Further, in case the students are now admitted then they would not be able to complete 180 teaching days, which is the mandatory requirement of the NCTE Regulations.

21. I have gone through record of the writ petitions and further considered rival submission of counsel for the parties.

22. Before proceeding further, I would like to quote relevant portion of Ordinance 320 and 322 of the University of Rajasthan, Para 3 of the recognition order and paras 5, 13, 15, 16, 62, 63&74, 64, 67&68, 76, 77 and 80 of the judgment of the Supreme Court in State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Ors. (supra). The same are as under: Ord. 320. The objectives and the learning outcomes of the B.Ed. course are:

Objectives:

(a) to help future prospective teachers to develop competence to teach subjects of their specialisation on the basis of an adequate theory of learning and a sound knowledge of the subjects.

(b) To develop interests, attitudes and knowledge which will enable them (i) to foster the all round growth and development of children under their care and (ii) to provide guidance to individual pupils.

(c) To develop an understanding of the aims and objectives of education in the Indian back-ground and to promote an awareness of the role of the school and the teacher in realising these aims and ideals.

(d) To develop an understanding of the close relationship between society and the school between life and school work.

(e) To build up a professional consciousness.

Ord. 322. A candidate who after taking a Bachelor's/Shastri Degree of the University or of any other University recognized for the purpose by the Syndicate,

with two teaching subjects (as defined in Note No. (i) below) has completed a regular course of study in a college affiliated to the University for one academic year and has during the course of the year delivered at least 40 lessons in a recognized school under the supervision of the staff of the college shall be eligible for admission to the examination for the degree of Bachelor of Education....' Para 3 of the recognition order dated 30.9.2008.

3. NOW, THEREFORE, in exercise of the powers vested under Section 15(3) (a) of the NCTE Act, 1993, the Northern Regional Committee hereby grants recognition/permission to Bright Future Teachers Training College, D-Block, Gautam Marg, Nirman Nagar, Jalpur-302019, Rajasthan for conducting B.Ed. Course of Secondary (level) of one year duration an annual intake of 100 (One hundred) students from the academic session 2008-09 under clause 7(11) of NCTE Regulation, 2007 notified on 10.12.2007 subject to fulfillment of the following:

(i) The admission in the institution so recognised for the academic session 2008-09 shall be made only after affiliation by the examining body, before the commencement of the academic year and the admission of the students shall be completed well before the cut off date prescribed by the examining body for the academic year 2008-2009, failing which the recognition will be deemed to be for the next year academic year that is 2009-2010.

(ii) Formal orders for recognition/permission will operate for 2008-2009 only if requirement of 180 teaching days in the session would be fulfilled as per calendar of the University/affiliating body. The decision of the University in this record shall be final.

(iii) The institution shall, within one month of the receipt of recognition order, convert the endowment fund and reserve fund accounts into joint accounts to be operated along with an officer of the Northern Regional Committee.

(iv) The institution shall comply with the various other norms and standards prescribed in the NCTE regulations, as amended from time to time.

(v) The institution shall make admission only after it obtains affiliation from the examining body in terms of clause 8(12) of the NCTE Regulations, 2007 notified on 10.12.2007.

Relevant portion of various paras of the judgment of Supreme Court (2006) 9 SCC 1

5. 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 BED course. To meet with the requirements 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 30.10.2004 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 31.12.2003 in the prescribed format for grant of permission to start BED 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 and 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 lakhs towards endowment fund.

13. 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 BED 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 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 BED 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.' '15. 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 BEd 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 the 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 BEd 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 the 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 reiving on a decision of the State Government. In the light of the above findings the High Court allowed the petitions filed by the institutions and dismissed the writ petition of the State Government.

16. 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 the name of the petitioner Institute in the list of Central admission process for the year 2005-2006 BEd course consequent to the petitioner being allowed to start BEd college. The University considering Section 14(6) of the National Council for Teacher 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.

62. So far as coordination 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 the 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 the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

63 & 74 Parliament has enacted the 1993 Act, which is in force. With a view to achieve the object mentioned in the preamble of the Act, the National Council for Teacher Education has been established at four places by the Central Government. Thus, the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. it was, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. Moreover, the Central Government has considered the subject of secondary education and higher education at the national level. In such circumstances, it was not open to the State Government or to the university to refuse such permission relying on a State Act or on a 'policy consideration'. In fact, the State Government had 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 was rightly set aside by the High Court.' '64. Even otherwise, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State

Government on policy consideration.

67 & 68. Although Regulation 6 of the NCTE (Form of Application for Recognition, the Time-limit of Submission of Application, Determination of Norms and Standards for Recognition of Teacher Education Programmes and Permission to Start New Course or Training) Regulations, 2002 insisted that application should be accompanied by NOC from the State Government/Union Territory, the final authority lay with NCTE. NCTE could not 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.

76. NCTE 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 the 1993 Act, final decision could be taken only by NCTE and once a decision was taken by NCTE, it had to be implemented by all authorities.

77. The respondents are also right in relying upon the provisions of Articles 19 and 21-A of the Constitution. In the instant case, applications had been made by colleges to NCTE under the 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. Moreover, Article 21-A would cover primary as well as secondary education and the petitioners could claim benefit of Part III of the Constitution as well.

80. However, the observations of the High Court to the effect that Sections 82 and 83 of the Maharashtra Universities Act were null and void is not correct. It appears that the High Court meant that the provisions of Sections 82 and 83 would not apply to an institution covered by the 1993 Act. As per the scheme of the Act, once recognition is 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.

23. It is also pertinent to mention here that while dismissing the State Appeal against the judgment of Bombay High Court on 31.3.2006 vide Para 83, the

Supreme Court has taken note of the fact in para 82 that the session 2005-2006 is almost over and as such, it is not possible to grant the prayer of the respondent Colleges to allow them to admit students for the academic year 2005-2006 and therefore, it was directed that the order passed by the N.C.T.E. would operate from the next academic year i.e. from the year 2006-2007. Paragraphs 82 and 83 of the aforesaid Supreme Court judgment in the State of Maharashtra are as follows:

82. We may, however, state that the academic year 2005-2006 is almost over and as such it is not possible to grant the prayer of the respondent colleges to allow them to admit students for the year 2005- 2006. It is, therefore, directed that the order passed by NCTE would operate from the next academic year i.e. from the year 2006- 2007.

83. 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.

In the present writ petitions, the academic session 2008-2009 begins on 26.9.2008 and the University is considering the case for postponement of the date of start of academic session for the reason that the admissions as per the last counselling held by the State were given on 14.11.2008. Therefore, submissions of the petitioners for present academic session 2008-2009 require consideration.

24. The summary of the. directions of the Bombay High Court, which was upheld by the Supreme Court, as referred in paras 15 and 16 and mentioned at page 3 of the aforesaid Journal(2006)9 SCC I is as under:

(i) in the light of the provisions of the Act, the only authority which could take a decision regarding opening of new colleges or increasing the intake capacity was the N.C.T.E. and such decision could not be ignored either by the State authority or by the University;,,

(ii) The function of the State Government was in the nature of supply of necessary data and materials so as to enable the NCTE to undertake the process of coming

to an appropriate decision but the State had no power to take policy decision not to grant permission to open the new B.Ed. colleges for a particular period.

(iii) It was incumbent on the University to implement the decision of N.C.T.E. and it could not take any action overlooking the decision of the N.C.T.E. and relying on a decision of the State Government.

Thus, the supremacy of the N.C.T.E. has been upheld by the Supreme Court.

25. Following the aforesaid Judgment of the Supreme Court in State of Maharashtra (supra) and other Supreme Court Judgments, the Punjab and Haryana High Court in Vaish College of Education, Rohtak (supra) passed the following three directions on 7.8.2007:

1. The NCTE and the State must lay down clear policy about the time schedule specifying the duration of the course, date of commencement of the course and the last date for admissions within three months from the date of receipt of a copy of this order.
2. Respondent No. 2 is directed to grant affiliation to the petitioners.
3. The State is directed to either conduct admissions for the petitioners or permit them to make their own admissions subject to appropriate conditions, so that infrastructure set up by the petitioners, which has been duly recognized by the NCTE, is not wasted for this year.

26. In the present cases, the State Govt. has first delayed the decision in the matter which ought to have been taken prior to 1.11.2008 and thereafter, when the direction was issued by this Court, then without honouring the decision of recognition of the N.C.T.E. and without consulting the University of Rajasthan, has passed orders for non-grant of No Objection in the cases of respective Institutions. As regards delay, this Court has taken note of the same in its decision passed in Prince Academy of Higher Education v. The State of Rajasthan and Ors. SBCWP No. 1 1978/2008 decided on 12.11.2008 wherein earlier directions dated 5.1.1.2008 in the said case have also been considered. Paras 11 to 14 of the aforesaid judgment are as under:

(11) Before proceeding further, I would like to refer paras 10 to 13 of the judgment dated 5.11.2008 in Anuradha Mahila Shikshak v. State and Ors. (supra), which are as follows:

(10) In my view, the State Government ought to have passed appropriate orders on the application before the aforesaid notification dated 1.11.2008 but on account of the inaction, it is not clear whether the petitioners fulfilled all the aforesaid requirements or not and are further entitled to admit students for the session 2008-09 or not.

(11) Accordingly, I direct the State Government to examine the application of each of the petitioners and pass appropriate orders by 10.11.2008 and on the same day, copies will be made available to the petitioner Institutions. On submission of the same to the University, appropriate orders will be passed by the University by 11.11.2008. The Coordinator, PTET is directed to act as per the orders passed by the State Government and the University and will further complete all the formalities on 12.11.2008 and allot the students accordingly.

(12) It is also observed that in case of difficulty, it will be permissible for the State Government to co-ordinate with the other respondents and reasonably extend any of the dates for completion of the formalities for counselling.

(13) The writ petitions are disposed of, as indicated above.

(12) In the instant cases, I am of the view that the respondents are responsible for the delay in disposal of the applications of the petitioners for consideration of the grant of 'No Objection' before initiation of the counselling process on 1.11.2008 despite interim directions dated 24.10.2008 to decide the applications by 31.10.2008, therefore, they cannot be allowed to contend that it is not possible to allow the petitioners to participate in the counselling for the academic year 2008-2009. As regards the ground of non-availability of the students and non-completion of 180 academic days for rejection of the applications of the petitioner institutions is not tenable for the reason that when the students of the present counselling who will report for admission on the last day of the current week i.e. on 14.11.2008 will complete 180 academic days then how in case the students admitted in the next

week by way of ongoing counselling will not complete 180 academic days. The ground of State interest taken by the respondents in the orders dated 4.11.2008 is also of no consequence as the applications were submitted by the petitioner institutions soon after the grant of 'No Objection' by the N.C.T.E. which granted No Objection' in the interest of the students and had also considered the aforesaid grounds of completion of 180 academic days. The applications of the petitioner institutions have also not been rejected on the ground of lack of any essential conditions for the grant of 'No Objection'. Therefore, the aforesaid grounds are also not tenable. The respondents ought to have considered the date of filing the applications relevant for the purpose of disposal of the same, which has not been considered as for any delay in disposal of the applications on the part of the State Govt. the petitioners cannot be allowed to suffer for the present Academic Session 2008-2009.

(13) In view of the above, both the orders dated 7/10.11.2008 are quashed and set aside. The respondents are directed to pass fresh orders on the applications of the petitioners on or before 14.11.2008.

(14) It is also observed that in case of difficulty, it will be permissible for the State Government to co-ordinate with the other respondents and reasonably extend any of the dates for completion of the formalities for counselling.

27. The aforesaid two writ petitions were disposed of with the direction to pass fresh order as the order of refusal was based on wholly untenable ground.

28. On 5.11.2008 when the writ petitions were heard and disposed of on 5.11.2008 and two other writ petitions on 12.11.2008, the aforesaid judgment of the Supreme Court in State of Maharashtra (supra) and Punjab and Haryana High Court (supra) were not brought to the notice of this Court which have now been brought to the notice of this Court, with the further submission of counsel of the petitioners that as per the aforesaid judgments the State Government has no right to withhold the No Objection after grant of recognition by the N.C.T.E. Therefore, in the present writ petitions, submissions have been considered on merit in the light of the aforesaid two judgments.

29. Thus, in refusing to grant the No Objection, the respondent State of Rajasthan has acted contrary to the grant of recognition by the N.C.T.E. the settled position of law and the past practice of the University, which is arbitrary also. The process of counselling could have been postponed for few days or the counselling could have been held afresh immediately subsequent thereto to honour the recognition order of N.C.T.E. and list of the University which includes some of the petitioner colleges also.

30. In the present cases, there is beginning of the academic session and the University is considering for postponement of the date of start of the session i.e. 26.9.2008 for the reason of completion of the counselling on 14.11.2008, whereas before the Supreme Court, on the date of decision i.e. 31.3.2006, the academic session 2005-2006 was almost over. The earlier writ petitions were also disposed of during the said counselling on 5.11.2008 but still the impugned orders refusing to grant the No Objection have been passed without considering the aforesaid Supreme Court judgment which lays down the law that the Government has no effective role in the matter of admission after recognition order by the N.C.T.E. Affiliation to the University is automatic on deposit of the requisite fees. In these writ petitions, the matter is being considered on merit for the current session 2008-2009 for the aforesaid reasons which are summarized as under:

(i) The State Government deliberately kept the applications for no objection pending and subsequently even after the judgment of this Court delivered during the process of last counselling, rejected the same with pre-determined mind without considering the fact that it was permissible for the State Government to postpone the counselling for few days or to hold new * counselling immediately subsequent thereto.

(ii) The State Government was acting as an appellate authority over the recognition granted by the NCTE and also did not consult the University for the purpose of extension of the academic session 2008-2009 as well as completion of 180 teaching days before the examination.

(iii) As regards minimum eligibility, the PTET was held to short list 3 lacs candidates for admission for few thousand seats and when 85000 candidates

have been declared eligible in the PTET wherein there is no minimum qualifying marks as per Ordinance 320 and 322 of the University of Rajasthan and past practice of completion of 180 teaching days before the examinations brought to the notice of this Court, therefore, the minimum eligibility of, passing Graduation with specified subjects fixed under Ordinance 320 and 322 of the University of Rajasthan would be relevant criteria for admission. In case the students are lesser in number than the available seats, then there was no need of holding the P.T.E.T. Therefore, from all angles, the eligibility clause Under Ord. 320 and 322 is relevant for admission in case of availability of the candidates declared eligible in the P.T.E.T. by the University even below 30% marks as purpose of the same is short listing the students. (iv) The University was not consulted for extending start of the academic calendar which was also necessary for the on-going counselling from 1.11.2008 and completed on 14.11.2008 as the academic session was started from 26.9.2008 and now the University is considering for extension of the same.

(v) In the present cases, 180 teaching days can be completed for the academic session 2008-2009 by holding extra classes on holidays, over time classes on working days by counting one teaching day as two teaching days or by shortening the summer vacations in order to ensure the examinations to be held immediately thereafter, which is the past practice of the University also to meet out such contingency.

31. In view of the above, the contentions of the petitioners which are supported by the provisions of law, settled legal position of the Supreme Court judgment in State of Maharashtra (supra) followed by the Punjab and Haryana High Court as discussed above, as also the past practice of the University, have force and the contentions of the respondent State of Rajasthan, have no force.

32. For the reasons mentioned here-in-above, all the aforesaid writ petitions are allowed and the respective impugned orders dated 7/10.11.2008 are quashed and set aside and the following directions are issued:

(i) The State Government is directed to fill up all the sanctioned seats, either sanction is for fresh seats or additional intake, in the petitioner private B.Ed. Colleges and other similarly situate colleges in whose cases writ petitions were

filed earlier, this Court passed final orders before 14.11.2008 i.e. the last date for reporting for admission as per the last counselling held by the Government, by holding counselling in the week starting from 15th December, 2008.

(ii) On failure to hold the counselling by the State up to 22.12.2008, all the private colleges are free to form a federation and hold counselling on merit of the eligible candidates qualified in the P.T.E.T. 2008. The private colleges are also directed to complete the admission process by 31.12.2008.

(iii) The private B.Ed. colleges may make a request to the University of Rajasthan/University of Kota to allow them to complete 180 days, either by holding extra classes on holidays or over time classes on teaching days and further counting one teaching day as two teaching days or by shortening the summer vacations in order to ensure that the examinations are conducted before the start of the academic session 2009-2010

(iv) No order as to costs.

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