



GAHC010157992022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5221/2022

MUCHABBIR ALI
S/O LATE TAHIR ALI, PRINCIPAL OF BALESWAR HIGHER SECONDARY
SCHOOL, JALALPUR, CACHAR, P/R/O VILL- NIZ KATIGORAH PART-I, P.O.-
GANGAPUR, DIST- CACHAR, ASSAM, PIN-788804

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE STATE SELECTION BOARD
THROUGH THE CHAIRMAN
I.E.
THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6

4:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

5:THE INSPECTOR OF SCHOOLS
CACHAR DISTRICT CIRCLE



SILCHAR
ASSAM

6:THE NATIONAL COUNCIL FOR TEACHER EDUCATION
THROUGH THE CHAIRPERSON
HANS BHAWAN
(WING II)
1 BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002

7:MOFUR UDDIN
SUBJECT TEACHER
BALESWAR HIGHER SECONDARY SCHOOL
JALALPUR
DIST- CACHAR (ASSAM)
PIN-78881

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : **WP(C)/1740/2020**

GEETASHREE DAS
M.A. B.ED.
SUBJECT TEACHER (ENGLISH)
SWARNA LAKSHMI HIGHER SECONDARY SCHOOL
NARSHINGPUR
P.O. NARSHINGPUR
DIST. CACHAR
ASSAM
PIN-788115

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM
EDUCATION (SECONDARY) DEPTT. DISPUR
GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
3:STATE SELECTION BOARD



ASSAM
REP. BY THE CHAIRMAN CUM COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT. DISPUR GUWAHATI-6
4:THE NATIONAL COUNCIL FOR TEACHER EDUCATION (NCTE)
EASTERN REGIONAL COMMITTEE REP. BY ITS REGIONAL DIRECTOR
15
NEELKANTHA NAGAR
NAYAPALLI
BHUBANESWAR
ORISSA
PIN-751012
5:THE ASSAM UNIVERSITY
SILCHAR REP. BY ITS REGISTRAR
SILCOORIE GRANT
SILCHAR
PIN-788001
6:DR. SHASHI BHUSHAN INSTITUTE OF EDUCATION
REP.BY ITS PRINCIPAL PO. LAKHIRBOND PT II
HAILAKANDI (T)
HAILAKANDI DIST. ASSAM
PIN-788155

Advocate for : MR. S K DAS
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 5 ORS.

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri M. K. Choudhury, Sr. Advocate.
Shri I. Saikia, Advocate.
Shri S. K. Das, Advocate.

Advocate for the respondents : Ms. S. Terangpi, SC, Secondary Education,
Shri N. H. Barbhuiyan, Advocate, NCTE,
Shri S. K. Goswami, Advocate, R-7

Date of hearing : 21.09.2023 & 26.09.2023

Date of judgment : 19.10.2023

JUDGMENT & ORDER

Though the principal issue is with regard to appointment to the post of Principal in the respective Higher Secondary Schools, the issue would relate to the validity of the B.Ed. degree of the incumbent which is an essential requirement to be appointed as Principal. Though the subject matter in both these two cases are similar, for the sake of convenience, WP(C) No. 5221/2022 is taken up first.

2. The petitioner in WP(C) No. 5221/2022 was the Principal of the Baleswar Higher Secondary School in the district of Cachar. The Department had earlier held the B.Ed. degree of the private respondent no.7 as invalid which was the subject matter of challenge in WP(C) No.3551/2021. The said writ petition was disposed of vide an order dated 09.08.2021 by remanding the matter to the Department. Thereafter, an order was passed on 17.08.2021 by the Director, Secondary Education, Assam whereby the petitioner was allowed to assume charge.

3. In the meantime, there was a dispute with regard to the applications to be submitted by various institutions imparting the degree of B.Ed. before the National Council for Teachers Education (NCTE) for its recognition. In this connection, a communication was issued by the Department of Secondary Education to the Director on 02.06.2022 whereby based on a judgement of this Court in the case of ***Pranita Sarma Vs State of Assam [Judgement dated 25.02.2021 in WP(C) No. 3289/2020]***, the last date of submission of

application for such recognition was fixed as 18.08.1997. It is the case of the petitioner that the Institute from which the respondent no.7 had obtained the B.Ed. degree had made such an application on 12.08.1997.

4. The petitioner has highlighted certain dates by submitting that those are relevant to the issue.

01.07.1995	The NCTE Act, 1993 came into force
17.08.1995	Appointed date
31.12.1995	Shashi Bhusan College was established (Presently Hailakandi College)
12.08.1997	The College had applied for recognition
13.01.2000	The College was recognised
June, 1997	The respondent no. 7 had appeared for the B.Ed. Examination

5. The petitioner contends that even before the College in question had applied for the recognition, the examination in which the respondent no. 7 had appeared and obtained the B.Ed. degree was already over. It is the contention of the petitioner that such decree obtained by the respondent no. 7 is not tenable in law as per the Rules and Regulations of the NCTE.

6. On the other hand, the version of the respondents is that the challenge is wholly untenable and in any case the issue has been finally determined by the Hon'ble Division Bench in WA No. 354/2018.

7. I have heard Shri M. K. Choudhury, learned Senior Counsel assisted by Shri I. Saikia, learned counsel for the petitioner in WP(C) No. 5221/2022. I have also

heard Ms. S. Terangpi, learned Standing Counsel, Secondary Education Department whereas Shri M. H. Barbhuiya, learned counsel has appeared for the NCTE. The private respondent no. 7 is represented by Shri S. K. Goswami, learned counsel. Shri S.K. Das, learned counsel has appeared for the petitioner in WP(C) No. 1740/2020.

8. Shri Choudhury, the learned Senior Counsel by referring to the NCTE Act, 1993 (hereinafter called the Act), more specifically Section 14 thereof has submitted that under the said Section, applications for recognition are to be made. Under the proviso to the said section, 6 (six) months time was granted to apply for all existing colleges. It is the submission of the learned Senior Counsel that the college in question would not come within the meaning of an existing college.

9. Reference has also been made to Sections 16 and 17 (4) as per which, after the appointed date, no examination can be held without recognition and qualification without recognition would also be invalid. As per Section 2 of the amended Act, special treatment was given for Government Institution and extension would also be granted. On 29.07.1997, the NCTE had granted extension to the Assam University upto 18.08.1997. It is the submission of Shri Choudhury, learned Senior Counsel that such benefit of extension are only meant for existing Institutes and the Shashi Bhushan Institute was not an existing Institute.

10. With regard to the judgement dated 29.04.2019, passed by the Hon'ble Division Bench in WA No. 354/2018, it is submitted that the facts are distinguishable and even in the affidavit-in-opposition of the NCTE filed on

08.08.2023, full facts have not been disclosed. The learned Senior Counsel for the petitioner has submitted that the stand of the NCTE are wavering from case to case and therefore it would not be safe to rely upon the said affidavit.

11. In support of his submission, the learned counsel for the petitioner has relied upon the following case laws:-

- i. ***National Council for Teacher Education & Another Vs Venus Public Education Society & Ors*** reported in ***(2013) 1 SCC 223***
- ii. ***Mukta Ram Deka and Ors. Vs State of Assam and Ors.*** reported in ***2013 (4) GLT 528.***
- iii. ***State of Orissa & Ors. Vs Prasana Kumar Sahoo*** reported in ***AIR 2007 SC 2588.***
- iv. ***Rajasthan State Industrial Development & Investment Corporation Vs Subhash Sindhi Cooperative Housing Society & Ors*** reported in ***(2013) 5 SCC 427.***
- v. ***D. Navinchandra and Company, Bombay Vs Union of India*** reported in ***(1987) 3 SCC 66.***
- vi. ***Undavilli Nagarathnam Vs Reddi Satyanarayana Murthi*** reported in ***(1976) 4 SCC 20.***
- vii. ***B. Premanand & Ors. Vs Mahan Koikal & Ors.*** reported in ***(2011) 4 SCC 266.***
- viii. ***State of UP & Ors Vs Bhupendra Nath Tripathi & Ors.*** reported in ***(2010) 13 SCC 203.***

12. In the case of ***Venus Public Education Society*** (supra), a submission

was made that the NCTE had procrastinated its decision and therefore the society was compelled to admit the students and impart education. The Hon'ble Supreme Court, however did not accept the submissions as those were not legally supported. It may also be noticed that the admissions in that case were of the year 2012-13 i.e. much after coming into force of the NCTE Act and Regulations.

13. In the case of ***Mukta Ram Deka*** (supra) this Court was trying to distinguish between the B.Ed degree obtained through distance mode and those under the NCTE Act. Further, the credentials of the B.Ed degree in question under certain Parishad and a University were itself doubtful in the said case.

14. The case of ***Prasana Kumar Sahoo*** (supra), has been cited to bring home the contention that even a policy decision by the State under Article 162 of the Constitution of India would be subservient to the Recruitment Rules framed by the State by a legislative Act or as per the proviso to Article 309 of the Constitution of India.

15. In the case of ***Subhash Sindhi Cooperative Housing Society*** (supra), the Hon'ble Supreme Court has held that executive instructions cannot override the law.

16. The case of ***D. Navinchandra & Company*** (supra) has been cited in support of the submission that the principle of estoppel would not apply against law.

17. In the case of ***Undavilli Nagarathnam*** (supra), it has been laid down that when a person with full knowledge of the law, ignores the same, ignorance of such law would be no excuse and he would have to face the consequences.

18. In the case of ***B. Premanand*** (supra), it has been held that when there is

a conflict between law and equity, it is the law which would prevail. It is further been held that if the law is plain and clear, literal rule of interpretation will apply to it.

19. In the case of ***Bhupendra Nath Tripathi*** (supra) the Hon'ble Supreme Court was dealing with a case of the application of the NCTE regulation *vis-à-vis* the B.Ed Course. The said decision is however, not on the period of transition but much thereafter of the year 2007.

20. Shri N. H. Barbhuiyan, learned counsel appearing for the NCTE has referred to the affidavit-in-opposition filed on 08.08.2023 in WP(C) No. 5221/2022. He submits that the NCTE had made communications to all the Universities to get the Colleges under them to seek recognition from the NCTE. He submits that the present dispute pertains to the transition period. In the said affidavit, it has been stated that the Assam University under which the College in question is functioning had informed the NCTE that there were five colleges and that the dates were extended from time to time. As per the first extension, applications were to be made within 18.08.1997. The learned counsel has however categorically submitted that after the issue in question has been determined by the Hon'ble Division Bench, the NCTE would not like to make any further comment on the same and would abide by it.

21. Ms. Terangpi, the learned counsel for the Department submits that the issue pertains to the validity of the B.Ed. degree in which the Department would not have much to say as the action of the Department is only a consequential one.

22. Shri S. K. Goswami, learned counsel appearing for the respondent no. 7

has submitted that in the instant case, an IA No. 1185/2023 has been filed which is required to be treated as the affidavit-in-opposition. It is submitted that along with the said IA, a number of documents have been annexed which would be relied upon.

23. He submits that the matter was remanded by this Court vide order dated 09.08.2021. Reference has been made to order dated 05.04.2022 passed by this Court, in the case of **Swapan Kumar Singha Vs The State of Assam & Ors.** in WP(C) No. 3214/2019 in which the respondent no. 7 was one Shri Govinda Chakraborty, who is from the same college and same batch as that of the respondent no. 7 in the present case pursuing BEd. By referring to the aforesaid judgement, more specifically the observations made in paragraphs 31, 34 and 38, the learned counsel has submitted that this Court has held the degree of the said respondent no.7 in that case to be valid. Shri Goswami, the learned counsel has submitted that the aforesaid judgement dated 05.04.2022 was the subject matter of challenge in an appeal being WA No. 154/2022, which was disposed of vide order dated 28.04.2023. The Hon'ble Division Bench had dismissed the appeal and concurred with the findings of the judgement of the learned Single Judge. The penultimate paragraph of the said judgement of the Hon'ble Division Bench has been pressed into service. Specific reference has also been made to paragraphs 2 and 8 wherein the names of the present respondent nos. 7 and 8 were also mentioned.

24. With regard to the different dates, it is submitted that though the date of the Notification of the NCTE was 01.07.1995, the Regional Committee was constituted only on 06.01.1996. He submits that the Rules were published only

on 03.12.1997 and the recognition procedure was prescribed only in the Rules, including the fees for such application. Shri Goswami, the learned counsel has also referred to the communications dated 29.07.1997 from the NCTE to the Assam University and the application made by the Institute seeking permission on 12.08.1997.

25. By referring to the Act of 1993, Shri Goswami, the learned counsel has submitted that as per Section 14, it has been categorically laid down that the recognition of institutions would be as per the Regulations. He has submitted that the NCTE Regulations were notified on 24.02.1996 and thereafter on 03.12.1997, the NCTE Rules were notified. The respondent no. 7 had obtained the B.Ed. degree in June, 1997, which was before the framing of the Rules. He submits that the proviso to section 14 stipulates six months from the appointed date and as per Rule Section 2 (a) the appointed day has been defined. It is submitted that the Regional Committee before whom the application were to be filed was not even there at that time. He submits that at the relevant point of time, the authority was the SCERT, which had given due recognition to the Institute in question on 31.12.1995 and the Assam University had also given due affiliation on 05.07.1996.

26. By referring to the case of ***P. Kasilingam & Ors vs P.S.G. College Of Technology & Ors*** reported in ***(1995) 2 SCC 348*** he submits that it is a settled position of law that in absence of Rules, the provisions of an Act cannot be enforced. Reliance has also been placed upon the case of ***Bhupendra Nath Tripathi*** (supra). It is submitted that the Assam University gave recognition and degrees were conferred by the said University and therefore such degrees

cannot be treated as invalid.

27. On the submission made on behalf of the petitioner regarding contrary affidavits by the NCTE, Shri Goswami, the learned counsel has submitted that the said issue has been adequately dealt with by the learned Single Judge in the order dated 05.04.2022 passed in WP(C)/ 3214/2019. It is further submitted that the respondent no. 7 had stood first in the selection and that aspect cannot be ignored. He further submits that only an inter-Department communication dated 22.06.2022 is under challenge, which will not give any relief to the petitioner.

28. Shri Choudhury, the learned Senior Counsel for the petitioner in his rejoinder has submitted that both the facts and the issue involved in WA No. 154/2022 were not similar. It is submitted that the case of **P. Kasilingam** (supra) was not related to NCTE and in the case of **Bhupendra Nath Tripathi** (supra), the facts were different.

29. Shri S. K. Das, learned counsel appearing for the petitioner in WP(C) No. 1740/2020 while supporting the case projected by Shri S. K. Goswami, learned counsel, has submitted that he has put to challenge an order dated 24.01.2020 passed by the Department holding the B.Ed. degree of the petitioner as invalid. As a result thereof, he could not be considered for appointment to the post of Principal of the Swarna Lakshmi Higher Secondary School. By adopting the argument of Shri Goswami, the learned counsel, Shri Das has submitted that by a common order dated 06.09.1996, permission was granted by the Inspector of Schools, Cachar District Circle to three incumbents to pursue their B.Ed. degree who are:

1. Mofur Uddin (respondent no.7 in WP(C)No. 5221/2022)
2. Govinda Chakraborty (respondent no.7 in WP(C) No. 3214/2019).
3. Present petitioner.

30. It is submitted that it is only after three rounds of litigation that the Director of Secondary Education had ultimately issued a communication dated 20.09.2019 to the Department to give approval to the selection of petitioner. However, since there was a delay, the petitioner has filed a contempt case and only to avoid/circumvent the same, the impugned order dated 24.01.2020 has been passed.

31. Shri Das, the learned Counsel has however informed this Court that there is an interim order not to make regular appointment and the same is continuing.

32. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

33. The thrust of the challenge made by the petitioner on the validity of the B.Ed. degree of the respondent no. 7 is mainly on the provisions of the Act of 1993. The relevant dates have already been noted by this Court above. This Court is also of the view that it would be convenient if the relevant provisions of the said Act are extracted in this judgement. The same are as follows:

“14. Recognition of institutions offering course or training in teacher education.

(1) Every institutions 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.

[Provided further that such institutions, as may be specified by the Central Government by notification in the Official Gazette, which—

- (i) are funded by the Central Government or the State Government or the Union Territory Administration;*
- (ii) have offered a course or training in teacher education on or after the appointed day till the academic year 2017-2018; and*
- (iii) fulfil the conditions specified under clause (a) of sub-section (3),*

shall be deemed to have been recognised by the Regional Committee.]

(2) The fee to be paid along with the application under sub-section (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 institutions concerned such other particulars as it may consider necessary, it shall.

(a) If it is satisfied that such institutions has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institutions for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institutions, subject to such conditions as may be determined by regulations; or

(b) If it is of the opinion that such institutions does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institutions for reasons to be recorded in writing:

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

(4) Every order granting or refusing recognition to an institutions 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.

(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).

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

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

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

16. Affiliating body to grant affiliation after recognition or permission by the Council.

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

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

(b) Hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution,

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

17. Contravention of provisions of the Act and consequences thereof.

(1) Where the Regional committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under sub-section (1),-

(a) Shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and

(b) Shall be published in the Official Gazette for general information.

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

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

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

NCTE (The National Council For Teacher Education) Amendment Act, 2019

Section 2. In The National Council For Teacher Education Act, 1993 (Hereinafter Referred To As The Principal Act), In Section 14, In Sub-Section (1), After The Proviso, The Following Proviso Shall Be Inserted, Namely:—

“Provided Further That Such Institutions, As May Be Specified By The Central Government By Notification In The Official Gazette, Which— (I) Are Funded By The Central Government Or The State Government Or The Union Territory Administration; (Ii) Have Offered A Course Or Training In Teacher Education On Or After The Appointed Day Till The Academic Year 2017-2018; And (Iii) Fulfil The Conditions Specified Under Clause (A) Of Sub-Section (3), Shall Be Deemed To Have Been Recognised By The Regional Committee.”

34. According to the petitioner, since the college in question namely, the Shashi Bhushan College which has been renamed as the Hailakandi College of Education was not an existing Institution, the extension granted by the NCTE would not be applicable. Emphasis has been given to the fact that while the said college was established on 31.12.1995 and the respondent no. 7 had appeared for the B.Ed. Examination in June 1997, the college had applied for recognition under the NCTE only on 12.08.1997. It is therefore submitted that such degree of B.Ed. obtained by the respondent no. 7 cannot be held to be valid. In this connection, the aforesaid case laws have also been cited.

35. When the validity of the degree of B.Ed. is the subject matter of challenge,

the stand of the NCTE becomes of paramount importance. In the affidavit-in-opposition filed by the NCTE on 08.08.2023 in WP(C) No. 5221/2022, it has been clearly stated that there was not only one extension, but such extensions were made from time to time as the same was a transitory period. It has also been clearly submitted that the issue has been answered by the Hon'ble Division Bench in WA No. 154/2022 by judgement dated 28.04.2023 and therefore, the NCTE would not make any comment on the same. The respondent no. 7 has contended that it was not possible for an Institute to fulfil all the formalities when the requirements under the Act were itself not fulfilled by the authorities. This Court has noted that though the date of the notification is 01.07.1995, the Regional Committee was constituted only on 06.01.1996 and the Rules framed under the Act were published on 03.12.1997. This Court has also noticed that the procedure for recognition is prescribed only in the Rules including the aspect of prescribed fees for application. This Court has also noted that prior to coming into force of the NCTE Act, the degrees of B.Ed. were granted by the Institute which was recognised by the SCERT on 31.12.1995, which was the appropriate authority at that point of time. This Court has also noticed that the prescribed authority i.e. the Assam University had granted affiliation to the institute on 05.07.1996. Under those circumstances, whether the degree of the respondent no.7 can be questioned becomes doubtful.

36. Notwithstanding all the aforesaid discussions and the grounds tried to be projected by the petitioner in WP(C) No. 5221/2022, this Court has noticed that the issue involved in this present case was exactly the issue in WP(C) No. 3214/2019 wherein the B.Ed. degree of one Govinda Chakraborty, who was the respondent no. 7 in that case was put to challenge. This court has noticed that the permission by the Inspector of Schools, Cachar District Circle given to the

said Shri Govinda Chakraborty was a common permission dated 06.09.1996 to the respondent no. 7 in the instant case as well as the petitioner in WP(C) No. 1740/2020. The learned Single Judge in the judgement dated 05.04.2022 in paragraph 38 has held the degree to be valid. The said judgement has also been affirmed by the Hon'ble Division Bench in WA No. 154/2022 vide judgement and order dated 28.04.2023. In paragraph 2 of the said judgement, there is even a specific reference to the name of the respondent no. 7 herein and in paragraph 8, the Hon'ble Division Bench had remarked that at the relevant time, the rules were not even notified.

37. For ready reference, the relevant paragraphs of the judgments of the learned Single Judge and the Hon'ble Division Bench are extracted herein below:

OBSERVATIONS OF THE LEARNED SINGLE JUDGE

“34) Moreover, the petitioner has only assailed the B.Ed. degree of the respondent nos. 6 to 8 as invalid. Nonetheless, although the respondent nos. 5 and 6 had pleaded that the NCTE had granted extension of time for the applications to be filed for recognition upto 18.08.1997 vide communication dated 29.07.1997 (Annexure-C to affidavit-in-opposition filed by the respondent no. 5), the said communication has not been assailed. Moreover, in the absence of any challenge to the decision taken by the Executive Committee of the NCTE in its second meeting held on 17.10.1997 to extend the date of making application for recognition, the Court is unable to hold that the decision of NCTE to extend the date for making application for recognition till 18.08.1997, which can be presumed to be a sort of post facto approval, cannot be said to be not in accordance with law. Once such communication dated 29.07.1997, was made to

Assam University for circulation amongst concerned colleges, it would mean that the period of 6 (six) months provided in the proviso to Section 14(1) of NCTE Act stood extended till 18.08.1997.

OBSERVATIONS OF THE HON'BLE DIVISION BENCH

“2. Learned counsel Mr. I.H. Saikia, representing the appellant vehemently and fervently contended that the admitted position, as portrayed from the record, is that the institution named Silchar College of Education, from which the respondent no. 6 obtained B.Ed. degree was not having requisite NCTE recognition/approval for the academic session 1997-1998. However, provisional recognition was granted to the said institution for the session 1998-1999. Hence the B.Ed. degree of the respondent no. 6 is invalid. Likewise, challenge is laid to the B.Ed. degrees obtained by the respondent nos. 7 and 8 on the very same ground that the institution from which such B.Ed. degrees were granted was not having NCTE recognition and B.Ed. degrees of these respondents were invalid and would not qualify them for the post of Principal of Higher Secondary School. Mr. Saikia, learned counsel submitted that the appellant herein stood just below in merit after the respondent nos. 6, 7 and 8 in the selection process held pursuant to the advertisement dated 16.06.2016 inviting applications for filling up the post of Principal of the Desha Bhakta Tarun Ram Phukan Higher Secondary School, Silchar. Since the B.Ed. degree held by the respondent nos. 6, 7 and 8 were not valid, even though they stood higher in merit, none of them could have been selected and appointed as Principal. Mr. Saikia placed reliance on the judgment of the Hon'ble Supreme Court in the case of Gambhirdan K. Gadhvi vs. State of Gujarat & Ors., reported in (2022) 5 SCC 179 and urged that by the said judgment, the controversy that all the educational institutions are bound by the UGC Regulations has been laid to

rest. It was thus contended that as the respondent Nos. 6, 7 and 8 did not acquire their B.Ed. degrees from an institution recognised by the NCTE, they were not qualified to hold the post of Principal and their selection against such post is liable to be struck down.

4. *The controversy that has emerged for adjudication by this Court is as to whether the NCTE had the jurisdiction to extend the date for filing of application for affiliation. Needless to say that as per Section 14 of the NCTE Act the application seeking grant of recognition was required to be submitted to the Regional Committee concerned in such form and in such manner as may be determined by regulations. Manifestly, such application could only have been filed as per the procedure prescribed by the Regulations. There is no dispute that the NCTE Regulations were notified on 03.12.1997. Thus, before coming into force of the regulations there was no prescribed procedure for an educational institution to have filed application seeking affiliation with the NCTE.*

8. *The Hon'ble Supreme Court, in the case of P. Kasilingam & Ors. vs. P.S.G. College of Technology & Ors., reported in (1995) 2 SCC 348 observed that many provisions of the Act (NCTE Act) could be put into operation only after the relevant provisions or forms came to be prescribed in the Rules/Regulations. In the absence of the Rules, the Act cannot be enforced. As the NCTE Regulations were notified on 03.12.1997, it would not have been possible for the colleges to apply for recognition during this period which was thereafter extended from time to time."*

38. A submission was tried to be made by the petitioner that the NCTE had taken contrary stands in two different affidavits. The aforesaid aspect was also specifically taken in the earlier litigation and the Hon'ble Single Judge in

paragraphs 35 & 36 has not only discussed the issue but has also held that such stands were taken based on the situation and would not be fatal in the process of adjudication. For ready reference the aforesaid paragraphs are extracted herein below:

F. Contrary affidavit filed by NCTE in previous proceedings, whether would preclude the NCTE from altering their stand in this case:

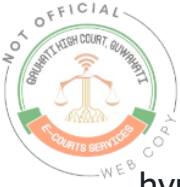
“35) It is not in dispute that a contradictory stand of the NCTE was taken in their affidavits filed in the proceeding of (i) W.P.(C) 4674/2017 – Sirazul Ambia v. The State of Assam & Ors., and (ii) in the proceedings of W.A. No. 354/2018 - Shelley Das Chowdhury (Smt.) v. Sirazul Ambia & Ors. In the said proceedings, the NCTE stand was to the effect that B.Ed. degree granted by the Silchar College of Education prior to 11.08.2003 was invalid.

36) In this case, the NCTE had given an explanation that on 11.05.2001, after the NCTE had refused to grant recognition to the said college, the concerned file no. AS-S/E-12/97 was closed. Thus, the degree obtained by students till the year 2001 was valid. It was further explained that after Silchar College of Education applied again for recognition, the said application was taken up by a different file bearing File no. APE00167 and after finding requisite compliance of all the deficiencies, recognition was granted for the session 2003- 04, and that for all purpose, the case of Silchar College of Education was considered as a new recognition and all subsequent records were maintained in the said File no. APE00167. It was stated that the previous file was not considered by NCTE while submitting their affidavit-in-opposition, for which the NCTE had tendered unconditional apology. The Court is unable to wholly discard said explanation as unbelievable because of the maxim “to err is human”.

37) Thus, under the peculiar facts and circumstances of this case, the Court is inclined to accept the contention of the NCTE and their stand in this present case is held to be acceptable. However, the Court hastens to add that no comment is being made on the affidavit-in- opposition filed by NCTE in the previous two proceedings, nor any opinion whatsoever has been expressed in respect of the judgment and/or orders that were passed by this Court in the said two proceeding of (i) W.P.(C) 4674/2017 – Sirazul Ambia v. The State of Assam & Ors., and (ii) in the proceedings of W.A. No. 354/2018 - Shelley Das Chowdhury (Smt.) v. Sirazul Ambia & Ors. The present decision is rendered qua the petitioner and respondent no. 6, 7 and 8 in W.P.(C) 3214/2019.”

38) Thus, the point of determination is answered in the negative and against the petitioner in W.P.(C) 3214/2019 by holding that the B.Ed. Degrees of the respondent nos. 6, 7 and 8 is not liable to be declared as invalid as the institutions conferring such degrees are found to have the approval / recognition from the National Council for Teachers Education.

39. This Court finds force in the contention of Shri Goswami, learned counsel for the respondent no. 7 who has cited the case of **Bhupendra Nath Tripathi** (supra). This Court is of the opinion that when the earlier degrees before the NCTE Act coming into force were granted by the Assam University which was the prescribed authority as per the recognition by the SCERT, such degrees by Institutes cannot have to be invalid or even different than those issued by Institutes after coming into force of the NCTE Act, which are recognised under the said Act. This Court has also noted that the period in question was the period of transition which requires a practical assessment. An incumbent who has obtained the B.Ed. degree should not be made to suffer because of certain



hyper technicalities more so when an identical situation has already been dealt with by this Court in the case of the incumbent Shri Govinda Chakraborty.

40. In view of the above, this Court is of the view that the petitioner has failed to make out any case for interference and accordingly WP(C) No. 5221/2022 is dismissed and WP(C) No.1740/2020 is allowed. Consequently, interim order passed in WP(C) No. 5221/2022, stands vacated and the petitioner in WP(C) No. 1740/2020 is to be given the benefit of allowing the writ petition whereby the order dated 24.01.2020 passed by the Department is held to be invalid and accordingly set aside.

41. Both the writ petitions stand disposed of in the aforesaid terms.

42. No order as to costs.

JUDGE

Comparing Assistant