



GAHC010029142024



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
Principal Seat at Guwahati

Writ Petition (Civil) No. 821/2024.

HAM-AK College of Higher Education,
Represented by its Director Inamul Hassan,
S/o Abdul Mazid,
R/o Hatizuzua,
P.O. – Hatizuzua,
P.S. – Jajori,
Dist. – Nagaon, Assam.

..... Petitioner.

-Versus-

- 1.** The State of Assam,
Represented by Secretary to the Government of Assam Education
Department, Dispur, Guwahati (Assam),
PIN – 781006.
- 2.** State Council of Education Research and Training (SCERT), Assam,
Represented by its Director, DPI, Kahilipara, Guwahati (Assam),
PIN – 781019.
- 3.** National Council for Teacher Education (NCTE),
Represented by Regional Director, Eastern Regional Committee, G – 7,
Sector – 10 Dwarka,
Landmark – Near Metro Station, New Delhi, 110075.
- 4.** The Gauhati University,
Represented by the Registrar of Gauhati University,
Gopinath Bordoloi Nagar,
Guwahati, Assam,
PIN – 781014.
- 5.** Secretary to the Government of Assam,



Higher Education Department, Dispur, Guwahati – 06.

..... Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the petitioner	:-	Mr. A.C. Buragohain, Sr. Adv., Ms. J. Tamuli.
Advocate for the respondent Nos. 1 & 5	:-	Mr. S. Das.
Advocate for the respondent No. 2	:-	Mr. B. Gogoi.
Advocate for the respondent No. 3	:-	Mr. I. Alam.
Advocate for the respondent No. 4	:-	Mr. P.J. Phukan.
Date of Hearing	:-	14.05.2025.
Date of Judgment & Order	:-	24.07.2025.

JUDGEMENT & ORDER (CAV)

Heard Mr. A.C. Buragohain, learned senior counsel assisted by Ms. J. Tamuli, learned counsel for the petitioner; Mr. S. Das, learned standing counsel of Higher Education Department for the respondent Nos. 1 & 5; Mr. B. Gogoi, learned standing counsel of SCERT for the respondent No. 2; Mr. I. Alam, learned standing counsel of NCERT for the respondent No. 3; and Mr. P.J. Phukan, learned standing counsel for Gauhati University, the respondent No. 4.

2. In this petition, under Article 226 of the Constitution of India, the petitioner college has prayed for issuing direction to the respondent No. 4 to issue consent for affiliation/No Objection Certificate (NOC hereinafter) so as to enable it to apply 'online' to NCTE to get recognition for B.Ed. College as applied for; and to direct the other respondents to give affiliation and final recognition as the NCTE authority had already accepted a sum of Rs. 4,84,000/- being the fee; and also to issue direction to the respondent Nos. 1 & 4 not to give effect or to abstain from giving effect to the Notification, dated 24.05.2022 (Annexure – 3), in view of the



E.C. Resolution No. R/EC-02/2022/15(b), dated 29.03.2022; and also to quash the same.

Background Facts:-

3. The background facts, leading to filing of the present petition, are adumbrated herein below:-

“The petitioner college is an Educational Institution run by HAM-AK Rural Development Foundation at HAM-AK Mahol, Hatizuzua in the district of Nagaon and it has been working in the field of imparting education since the year 2011 and with a view to undertake the teacher education, applied to the Gauhati University (GU hereinafter) for NOC/consent of affiliation and to secure affiliation for B.Ed. and B.P.Ed. 2nd year courses and the said application was made as per stipulation of the National Council for Teacher Education (NCTE hereinafter) Regulations, 2014, on 23.03.2022, which was received by the University on 28.03.2022.

But, thereafter, the University authority has issued the impugned notification dated 24.05.2022, after the application was made, stating that an Executive Council Resolution was passed on 29.03.2022, bearing No. R/EC-02/2022/15(b), to the effect that any institution has to seek a NOC first from the Government in order to obtain a NOC/consent of affiliation from the GU.

It is the pleaded case of the petitioner college that the impugned order was issued in violation of the guidelines stipulated under NCTE Regulations, 2014 and judgment passed by Hon'ble Supreme Court in the case of **State of Maharashtra vs. Sant Dynaeshwar Shikshan Shastra Mahavidyalaya & Others**, in **Civil Appeal No. 1859/2006**, wherein it was held



that NOC from the State Government is absolutely not required for the University to provide NOC/consent for affiliation.”

4. The respondent No. 4 (GU) has filed its affidavit-in-opposition, wherein a stand has been taken that the petitioner college had earlier filed one writ petition, being W.P.(C) No. 794/2023, on 06.02.2023, challenging two communications of the GU, being Memo No. GU/AFF/Inspection/2022/5238-41, dated 18.08.2022 and Memo No. GU/AFF/Inspection/2022/5242-45, dated 18.08.2022, as regards inspection of the petitioner college, with the interim prayer '*to give NOC to the petitioner's college for applying to NCTE for recognition of 4 years Integrated B.A. B.Ed. & B.Sc. B.Ed. Programme*'.

4.1. In addition to the aforementioned writ petition, the petitioner college has also filed two other writ petitions, being W.P.(C) No. 3782/2022 and W.P.(C) No. 4212/2024 in the similar subject matters which are pending before this court without any interim order and that there is material suppression of facts by the petitioner and on this count alone the petition is liable to be dismissed, in view of the principles of res-judicata.

4.2. It is also stated that HAM-AK Rural Development Foundation has one more institute namely, HAM-AK Rural College of Education, which is already affiliated to the GU in the same locality, with the same Director, for the same purpose of running B.Ed. Programme and on 23.06.2022, a communication has been received from the aforesaid petitioner college requesting to issue NOC for B.A. B.Ed. and B.Sc. B.Ed. courses and the said communication was not indicated in the said writ petitions and in the meantime, a communication has been received from the office of the Additional Director General of Police, CID, Assam, on 01.07.2022, requesting to provide documents/information whether the institutes namely:- (a) HAM-AK Rural College of Education at Chalchali, Nagaon



Dhing Road; (b) HAM AK National Secondary & Senior Secondary School at Chalchali, Nagaon Dhing Road; (c) HAM-AK Rural ITI at Chalchali, Nagaon Dhing Road; and (d) HAM-AK Group of Institution at Chalchali, Nagaon Dhing Road; are affiliated or not and also requested to provide official documents in this regard and the said communication was sent in connection with a case, registered in the Nagaon Sadar Police Station, being Case No. 1845/2020, under Sections 406/420/468/471/34 of the IPC. Thereafter, another communication has been received from the said office of the Additional Director General of Police, CID, Assam, on 05.08.2022, requesting to provide documents relating to HAM-AK Group of Institution at Chalchali, Nagaon Dhing Road.

4.3. Thereafter, two communications have been issued for Joint Inspection, under Memo No. GU/AFF/Inspection/2022/5238-41, dated 18.08.2022, and GU/AFF/Inspector/2022/5242-45, dated 18.08.2022, that GU is an affiliating state funded institute and it could issue direction applicable to all colleges under its jurisdiction, in tune with the provisions of the Gauhati University Act, 1947 as well as the Statutes/Ordinances/Rules, etc. framed there under.

4.4. It is also stated that the petitioner college has not applied before the GU for inspection, which is misleading in the context of the instant matter and that the permission fees have been deposited by the petitioner college after more than one year, possibly due to the lodging of the FIR in connection with the Nagaon Sadar P.S. Case No. 1845/2020, under Sections 406/420/468/471/34 of the IPC and it has also come to light that the Director of the petitioner college, is also the Secretary of aforesaid HAM-AK Rural Development Foundation and that the aforesaid Nagaon Sadar P.S. Case was lodged against the said Director and his brother (Principal) and that they were granted pre-arrest bail on 20.10.2020, in AB No. 2633/2020 in connection with the aforesaid case and that the GU



authorities have kept in abeyance the affiliated status of the petitioner college by a communication, being No. GU/AFF/2023/7064-69, dated 01.09.2023, and regarding the said affiliation status under the University is still pending before this court.

4.5. It is also stated that the GU Notification dated 24.05.2022 and the EC Resolution dated 29.03.2022, regarding submitting NOC from the Government is completely in tune with the relevant laws of the land and under such circumstances, it is contended to dismiss the petition.

5. The petitioner college has submitted its reply to the aforementioned affidavit filed by the respondent No. 4 denying the statements and averments made in the same and it is also stated that the subject matter of W.P. (C) No. 794/2023, relates to the B.Sc. B.Ed. and B.A. B.Ed. courses. Similarly, the subject matter of W.P.(C) No. 3782/2022 relates to the courses of LL.B & B.A. LL.B and W.P.(C) No. 4212/2024 relates to the matter of deleting the name of the affiliated colleges from the list of affiliated colleges to GU, without notice.

5.1. It is further stated that the criminal cases lodged against the Director, is no way relevant to the present case and that several criminal cases/police cases are pending against the GU and its officials including its former Vice-Chancellor, who retired on 20.08.2024, also.

5.2. It is also stated that the allegation leveled against the petitioner college is vague and therefore, it is contended that this petition may be allowed.

Submissions:-

6. Mr. Buragohain, learned senior counsel for the petitioner submits that the petitioner college had applied to the respondent authorities for application for NOC/consent of affiliation for B.Ed. and B.P. Ed. 2nd year



courses and the said institution was registered under Societies Registration Act and the respondent Gauhati University, vide impugned notification dated 24.05.2022, had notified that henceforth Gauhati University will accord permission to open new colleges/streams/subjects after obtaining NOC from the Government by respective institutions and as such, all concerned who have applied for the same, but pending for decision are requested to submit Government's NOC to the office of the Director, College/Development/Council and without NOC the same cannot be processed and the said Notification was issued vide EC Resolution No. R/EC-02/2022/15(b), dated 29.03.2022. Mr. Buragohain further submits that the aforementioned notification came to be issued on the basis of one OM issued by the Government, vide OM No. AHE.843/2017/52, dated 25.02.2019, which relates to granting of permission to affiliation accorded by the university and that as per guideline of NCTE, to start a B.Ed College/Institution, permission is not required from the State Government and that as the Gauhati University refused to grant permission for want of NOC, thereby violated Regulation 5(3) of the NCTE Notification dated 28.11.2014 and the amended Regulation, notified vide Notification being F. No NCTE-Regl012/13/2021- Reg. Sec.-HQ., dated the 4th May, 2022, whereby it is provided that the application submitted to NCTE requires NOC issued by the concerned affiliation body only and not from the State Government and as such, the impugned Notification is unsustainable and it violates the provision of NCTE Act, 1993. Therefore, Mr. Buragohain has contended to set it aside and to issue direction to the university to grant affiliation to the petitioner college.

6.1. In support of his submission, Mr. Buragohain has referred following decisions:-



- (i) **State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others, in Civil Appeal No. 1859/2006;**
- (ii) **Pharmacy Council of India vs. Rajeev College of Pharmacy and Others, in Civil Appeal No. 6681/2022;**
and
- (iii) **Thirumurruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust vs. State Of Tamil Nadu and Others, reported in (1996) 3 SCC 15.**

7. On the other hand, Mr. Phukan, learned standing counsel for the respondent Gauhati University has vehemently opposed this petition and submits that the Executive Council, the highest authority of the university has taken a policy decision and being a State University, the Gauhati University is bound by the Rules and Regulations of the State Government and unless NOC is obtained, as per OM issued by the State Government, the university is not in a position to grant affiliation to the petitioner college. Under such circumstances, Mr. Phukan has contended to dismiss the petition.

7.1. In support of his submission, Mr. Phukan has referred following decisions:-

- (i) **Adarsh Shiksha Mahavidyalaya and others vs. Subhash Rahangdale and others, reported in (2012) 1 SCC 425;**
- (ii) **Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh and Others, reported in (2013) 2 SCC 617;**



- (iii) **Rasid Javed and Others vs. State of Uttar Pradesh and Another**, reported in (2010) 7 SCC 781;
- (iv) **State of Punjab vs. Anshika Goyal and others**, reported in (2022) 3 SCC 633; and
- (v) **Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (Supra)**.

8. In view of the contentions, being canvassed by the parties the core issue, to be decided by this Court is

- (i) **Whether on the basis of Executive Council's Resolution No. R/EC-02/2022/15(b), dated 29.03.2022 and subsequent Notification dated 24.05.2022, adopted and issued on the basis of the Office Memorandum dated 25th February, 2019 the petitioner College has to obtain NOC from the State Government?**

9. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also the decisions referred by both the parties. Also, I have carefully gone through the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014, notified on 28th November, 2014 specially Regulation 5(3) and the amended Regulation, notified vide Notification being F. No NCTE-Regl012/13/2021- Reg. Sec.-HQ., dated the 4th May, 2022. Before a discussion is directed to the issue in question, it would be in the interest of justice to understand the legal framework presently occupying the field.

The Legal Framework :-

10. The National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 read as under:-



“Regulation 5:- Manner of making application and time limit:-

- (1) An institution eligible under regulation-4, desirous of running a teacher education programme may apply to the concerned Regional Committee for recognition in the prescribed application form along with processing fee and requisite documents.

Provided that an institution may make simultaneous applications for shifting of premises or additional intake, or additional teacher education programme as the case may be.

Provided further that an existing institution may make an application for closure or discontinuation of one or several teacher education programmes recognized by the Council.

- (2) The application form may be downloaded from the website of the Council, namely, www.ncte-india.org and different forms may be downloaded for programmes offered through open and distance learning.
- (3) The application shall be submitted online electronically along with the processing fee and scanned copies of required documents



such as no objection certificate issued by the concerned affiliating body. While submitting the application, it has to be ensured that the application is duly signed by the applicant on every page, including digital signature at appropriate place at the end of the application.

- (4) While submitting the application online a copy of the registered land document issued by the competent authority, indicating that the society or institution applying for the programme possesses land on the date of application, shall be attached along with the application.
- (5) Duly completed application in all respects may be submitted to the Regional Committee concerned between 1st March to 31st May of the preceding year from the academic session for which recognition is sought: Provided that the aforesaid period shall not be applicable for submission of application to innovative programme of teacher education.
- (6) All applications received online from 15th March to 31st May of the year shall be processed for the next academic session and final



decision, either recognition granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year.

Regulation 6:- Processing Fees:-

The processing fee as prescribed under rule 9 of the National Council for Teacher Education Rules, 1997 as amended from time to time, shall be paid by the applicant for processing of an application for grant of recognition to an institution to conduct a teacher education programme or addition to programme or intake in the existing programme, online to the designated banks as may be notified by the Council.

Regulation 7:- Processing of applications:-

- (1) In case an application is not complete, or requisite documents are not attached with the application, the application shall be treated: incomplete and rejected, and application fees paid shall be forfeited.
- (2) The application shall be summarily rejected under one or more of the following circumstance:-
 - (a) Failure to furnish the application fee, as prescribed under rule 9 of the National Council for Teacher Education Rules, 1997 on or before the date of submission of online application;
 - (b) Failure to submit print out of the applications made online along with



the land documents as required under sub-regulation (4) of Regulation 5 within fifteen days of the submission of the online application.

- (3) Furnishing any false information or concealment of facts in the application, which may have bearing on the decision making process or the decision pertaining to grant of recognition, shall result in refusal of recognition of the institution besides other legal action against its management. The order of refusal of recognition shall be passed after giving reasonable opportunity through a show cause notice to the institution.
- (4) A written communication along with a copy of the application form submitted by the institution shall be sent by the office of Regional Committee to the State Government or the Union territory administration and the affiliating body concerned within thirty days from the receipt of application, in chronological order of the receipt of the original application in the Regional Committee.
- (5) On receipt of the communication, the State Government or the Union territory administration concerned shall furnish its recommendations or comments to the Regional Committee concerned within forty five days from the date of issue of the letter to the State Government or Union territory, as the case may be. In case, the State Government or Union Territory Administration is not in



favour of recognition, it shall provide detailed reasons or grounds thereof with necessary statistics, which shall be taken into consideration by the Regional Committee concerned while disposing of the application.

(6) If the recommendation of the State Government is not received within the aforesaid period, the Regional Committee concerned shall send a reminder to the State Government providing further time of another thirty days to furnish their comments on the proposal. In case no reply is received, a second reminder shall be given for furnishing recommendation within fifteen days from the issue of such second reminder. In case no reply is received from the State Government within aforesaid period the Regional Committee shall process and decide the case on merits and placing the application before the Regional Committee shall not be deferred on account of non-receipt of comments or recommendation of the State Government.

(7) After consideration of the recommendation of the State Government or on its own merits, the Regional Committee concerned shall decide that institution shall be inspected by a team of experts called visiting team with a view to assess the level of preparedness of the institution to commence the course. In case of open and distance learning programmes, sampled study centres shall be inspected. Inspection shall not be subject to the consent of the institution, rather the decision of the



Regional Committee to cause the inspection shall be communicated to the institution with the direction that the inspection shall be caused on any day after ten days from the date of communication by the Regional Office. The Regional Committee shall ensure that inspection is conducted ordinarily within thirty days from the date of its communication to the institution. The institution shall be required to provide details about the infrastructure and other preparedness on the specified proforma available on the website of the Council to the visiting team at the time of inspection along with building completion certificate issued by the competent civil authority, if not submitted earlier:

Provided that the Regional Committee shall organise such inspections strictly in chronological order of the receipt of application for the cases to be approved by it:

Provided further that the members of the visiting team for inspection shall be decided by the Regional Committee out of the panel of experts approved by the Council and in accordance with the visiting team policy of the Council.

- (8) At the time of the visit of the team of experts to an institution, the institution concerned shall arrange for the inspection to be videographed in a manner that all important infrastructural and instructional



facilities are videographed along with interaction with the management and the faculty, if available at the time of such visit. The visiting teams, as far as possible, shall finalise and courier their reports along with the video recordings on the same day:-

Provided that the videography should clearly establish the outer view of the building, its surroundings, access road and important infrastructure including classrooms, labs, resource rooms, multipurpose hall, library and others. The visiting team shall ensure that the videography is done in a continuous manner, the final unedited copy of the videography is handed over to them immediately after its recording and its conversion to a CD should be done in the presence of visiting team members:-

Provided further that at the time of inspection for new courses or enhancement of intake of the existing course, the visiting team shall verify the facilities for existing recognized teacher education courses and ascertain the fulfillment and maintenance of regulations and norms and standards for the existing courses as well.

- (9) The application and the report along with the video recordings or CDs of the visiting team shall be placed before the Regional Committee concerned for consideration and appropriate decision.
- (10) The Regional Committee shall decide grant of recognition or permission to an



institution only after satisfying itself that the institution fulfills all the conditions prescribed by the National Council under the Act, rules or regulations, including, the norms and standards laid down for the relevant teacher education programmes.

(11) In the matter of grant of recognition, the Regional Committees shall strictly act within the ambit of the Act, the regulations made there under including the norms and standards for various teacher education programmes, and shall not make any relaxation thereto.

(12) The Regional Director, who is the convener of the Regional Committee, while putting up the proposals to the Regional Committee, shall ensure that the correct provisions in the Act, rules or regulations including norms and standards for various teacher education programmes are brought to the notice of the Regional Committee so as to enable the Committee to take appropriate decisions.

(13) The institution concerned shall be informed, through a letter of intent, regarding the decision for grant of recognition or permission subject to appointment of qualified faculty members before the commencement of the academic session. The letter of intent issued under this clause shall not be notified in the Gazette but would be sent to the institution and the affiliating body with the request that the process of appointment of qualified staff as per



policy of State Government or University Grants Commission or University may be initiated and the institution be provided all assistance to ensure that the staff or faculty is appointed as per the norms of the Council within two months. The institution shall submit the list of the faculty, as approved by the affiliating body, to the Regional Committee.

(14)(i) All the applicant institutions shall launch their own website with hyperlink to the Council and corresponding Regional Office websites soon after the receipt of the letter of intent from the Regional Committee, covering, inter alia, the details of the institution, its location, name of the programme applied for with intake; availability of physical infrastructure, such as land, building, office, classrooms, and other facilities or amenities; instructional facilities, such as laboratory and library and the particulars of their proposed teaching faculty and nonteaching staff with photographs, for information of all concerned. The information with regard to the following shall also be made available on the website, namely:-

- (a) sanctioned programmes along with annual intake in the institution;
- (b) name of faculty and staff in full as mentioned in school



certificate along with their qualifications, scale of pay and photograph;

- (c) name of faculty members who left or joined during the last quarter;
- (d) names of students admitted during the current session along with qualification, percentage of marks in the qualifying examination and in the entrance test, if any, date of admission and such other information;
- (e) fee charged from students;
- (f) available infrastructural facilities;
- (g) facilities added during the last quarter;
- (h) number of books in the library, refereed journals subscribed to, and additions, if any, in the last quarter.

(ii) The institution shall be free to post additional relevant information, if it so desires.

(iii) Any false or incomplete information on its website shall render the institution liable for withdrawal of recognition.

(15) The institution concerned, after appointing the requisite faculty or staff as per the provisions of norms and standards of respective programmes, and after fulfilling the conditions under regulation 8, shall formally inform



about such appointments to the Regional Committee concerned.

(16) The letter granting approval for the selection or appointment of faculty shall also be provided by the institution to the Regional Committee with the document establishing that the Fixed Deposit Receipts of Endowment Fund and Reserve Fund have been converted into a joint account and after receipt of the said details, the Regional Committee concerned shall issue a formal order of recognition which shall be notified as provided under the Act.

(17) In cases, where the Regional Committee, after consideration of the report of the visiting team and other facts on record, is of the opinion that the institution does not fulfill the requirements for starting or conducting the course or for enhancement of intake, after giving an opportunity of being heard to the institution pass an order refusing to allow any further opportunity for removal of deficiencies or inspection for reasons to be recorded in writing:-

Provided that against the order passed by the Regional Committee, an appeal to the Council may be preferred as provided under section 18 of the Act.

(18) The reports of inspection of the institutions along with the names of the visiting team experts shall be made available on the official website of the Regional Committee concerned after the



same have been considered by the Regional Committee.

(19) The Regional Committee shall process the application for closure in the manner prescribed for the processing of applications for new programmes or additional programmes or additional intake.

10.1. National Council for Teacher Education (Recognition Norms and Procedure) Amendment Regulations, 2022 notified vide Notification being F. No. NCTE-Regl012/13/2021- Reg. Sec.-HQ., dated the 4th May, 2022 provides as under:-

“Regulation 5(3) was amended in the year 2022, vide Notification dated the 4th May, 2022 which read as under:-

6. In the Principal regulations, in regulation 5, (i) (ii) sub-regulation (2) shall be omitted; for sub-regulation (3), the following sub-regulation shall be substituted, namely:-

(3) The application shall be submitted online electronically on National Council for Teacher Education portal along with the processing fee, as applicable, and scanned copies of required documents including no objection certificate issued by the concerned affiliating body, original registered land document and the document indicating that the society or institution applying for the programme possesses land on the date of application issued by competent authority.”



10.2. University Grants Commission [Affiliation Of Colleges By Universities] Regulations, 2009 provides as under:-

“4.5. Procedure for granting Temporary Affiliation.

- (i) The University shall make a preliminary scrutiny of the application submitted within time as specified by the NCTE or by law, and if found satisfactory, issue a letter of intent, within two weeks from the date of receipt of the application by the University to course an inspection within a period of seven days for physical verification of all submissions made to the NCTE.
- (ii) The college shall be subjected to an inspection by the University through a committee of experts consisting of:
- 1) Dean, Faculty of Education /Dean, Students Welfare -Chairperson;
 - 2) One Head of the P.G. Department nominated by the Vice Chancellor;
 - 3) Assistant Registrar (Examination / Permission) nominated by the Vice Chancellor or any person;
- (iii) The report of the inspection committee shall be submitted by the Chairperson to the University within three working days. The University shall process the report through its appropriate bodies and decide to grant, or not grant, temporary affiliation to the College, recording the reasons in writing for its decision within a fortnight.
- (iv) The University shall be the ultimate to decide granting, or not granting affiliation.



- (v) The University shall communicate the decision of the University to the State Government for grant of approval of affiliation to the College/ Institution within the stipulated date. The State Government will grant approval of affiliation on the basis of recommendations of the Committee constituted for examining the proposals.
- (vi) The approval of grant of affiliation received from the State Government will be communicated to the college/institution within the date prescribed by law by the University.”

10.3. The Office Memorandum No. AHE.843/2017/52, dated 25.02.2019, issued by the Government of Assam, Higher Education Department, Dispur provides that the Government of Assam had issued one Office Memorandum, dated 25.02.2019, requiring no objection for opening of a Degree College/introduction of New subjects/Major Courses of Study in Degree Colleges and granting of permission to affiliation accorded by the University and the said notification came into force with immediate effect.

10.4. Clause 2 of the aforesaid OM provides that prior no objection for opening of a new college/new subjects/major courses of studies shall be required. Clause 8 of the said O.M. provides that when the University concerned seeks prior no objection from the Government for opening a new faculty/new subjects of studies in an affiliated college, the Government will take necessary action for inspection of the college concerned through the Directorate of Higher Education. Clause 9 provides that physical verification of the college concerned will be made by an officer of the Director of Higher Education not below the rank of Deputy



Director and the physical verification will be conducted within the following parameters:-

- (i) Need of the proposed faculty/subjects/major course of study;
- (ii) Distance of the college from the other neighboring colleges where particular faculties/subjects/major courses are being taught together with the class wise enrollment in the faculty/subjects/major courses under reference;
- (iii) Arrangement in respect of additional accommodation required for instruction of new faculty/subjects/major courses;
- (iv) Provision for laboratories, museum, gas plan room, balance room, dark room, departmental tea room, supply of water and electricity as necessary;
- (v) Provision for expansion of the Library; and
- (vi) Financial Resources of the College to meet the actual expenditure as required for opening of new faculty/subjects/major courses of study.

10.5. And it appears from the stand taken by the respondent No. 4 in its affidavit-in-opposition that the resolution of the Executive Council, dated 29.03.2022, is based upon the Office Memorandum No. AHE.843/2017/52 dated 25.02.2019, issued by the Government of Assam, Higher Education Department, and thereafter, the impugned Notification No. GU/AFF/2022 dated 24/05/2022, was issued.

10.6. The Impugned Notification No. GU/AFF/2022, dated 24/05/2022, issued by the Gauhati University, read as under:-

NOTIFICATION



It is notified for information of all concerned that from now onwards Gauhati University will accord permission to open new college/stream/subject(s) after obtaining No Objection Certificate from the Govt. by respective institutions.

Therefore, all concerned who have already applied for the same but are pending for a decision are hereby requested to submit Govt. No. objection Certificate in the office of the Director, College Development Council. Also the College/concerned Bodies who are interested to open new college/stream/subject(s) are to submit Govt. No Objection Certificate along with necessary application without which the matter cannot be processed.

This is issued as per E.C. Resolution No. R/EC-02/2022/15(b) dated 29.03.2022.

Sd/-
Registrar
Gauhati University

Findings of this court:-

11. Here in this case, from the documents placed on record, it appears that the affiliating body is Gauhati University, the respondent No. 4. It appears that the petitioner college had applied for the NOC/consent of affiliation, to the respondent No. 4 and to secure affiliation for B.Ed. and B.P.Ed. 2nd year course. The said application was made under the NCTE Regulations, 2014 on 23.03.2022, and the same was received by the respondent No. 4 on 28.03.2022. But, thereafter, the respondent No. 4, instead of processing the application as per procedure for granting temporary affiliation had issued a notification, dated 24.05.2022, stating



that the Executive Council has adopted a resolution that any prospective institution has to seek a NOC from the Government in order to obtain a NOC/Consent for affiliation from the respondent No. 4, on 29.03.2022. Regulation 7(4), itself mandated that a written communication along with a copy of the application form, submitted by the institution shall be sent by the office of Regional Committee to the State Government or the Union territory administration as the case may be.

12. Under the given facts and circumstances, I find sufficient force in the submission of Mr. Buragohain, the learned counsel for the petitioner. The Acts and Regulations, as discussed herein above, does not provide for obtaining any NOC from the State Government at the time of processing of application for No Objection Certificate by the affiliating body i.e. respondent No. 4.

13. Notably, the National Council for Teacher Education Act, 1993 (73 of 1993), is a central legislation, and the same is binding upon the States. The State cannot enact any law or issue any Office Memorandum or Notification, contrary to the provision of the aforesaid Act and Regulations framed there under. And if it is in conflict with the law enacted by the State, including the Gauhati University Act, then also the NCTE Act and Regulations will prevail, in view of Article 254 of the Constitution of India. In holding so, this court derived authority from following decision of Hon'ble Supreme Court in the case of (i) **State of T.N. vs. Adhiyaman Educational & Research Institute**, reported in (1995) 4 SCC 104, wherein it has been categorically held that neither the State Government nor the University have got power to enact law on the subject which falls under Entry 66 of List I and that the existing law to the extent of inconsistency with the provisions made in the AICTE Act is ultra vires and unenforceable; (ii) **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust**



(Supra), wherein Hon'ble Supreme Court has held that prior permission of State Government to start a new Medical College is invalid on the ground of repugnancy. It is further held that Section 5(5) of the Medical University Act enacted by the State Act is held as repugnant to Section 10-A of Indian Medical Council Act; (iii) **Jaya Gokul Educational Trust vs. State of Tamil Nadu**, reported in 2000 (5) SCC 231, wherein, by re-capitulating the dictum laid down in **Adhiyaman's (Supra)** case, the Supreme Court specifically ruled that the University cannot impose conditions for affiliation in contravention of the provisions contained in the Central Act, viz. AICTE Act. Thus, the position of law and the validity of existing law of the State enactments have been made crystal clear in the above stated judgments of the Supreme Court.

14. Though a stand has been taken by the respondent No. 4 in its affidavit dated 30.09.2024 that the Notification, dated 24.05.2022 (**Annexure-3**) of the writ petition, that said notification is in conformity with the Gauhati University Act, NCTE Act and Regulations, yet in view of the discussion and finding in respect of the procedure prescribed under the NCTE Act and Regulation, the said stand of respondent No. 4 cannot be accepted in view of Regulation 7(4) of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2014, notified on 28th November, 2014.

15. In the instant case, the application for no objection certificate from the affiliating body, i.e. respondent No. 4, as required under Regulation 5(3) of NCTE (Recognition Norms and Procedure) Regulations, 2014, was filed by the petitioner college on 23.03.2022, and the same was received by the University on 28.03.2022. And it also appears that the impugned Notification dated 24.05.2022 was issued thereafter. On receipt of the application, the respondent No. 4 ought to have processed the same following the procedure prescribed under Regulation 4.5, of the University



Grants Commission [Affiliation of Colleges by Universities] Regulations, 2009. And it is the Office of Regional Committee of the NCTE, under Regulation 7(4), who is required to make a written communication along with a copy of the application form submitted by the institution to the State Government or the Union territory administration.

16. In that view of the matter, the act of respondent No. 4, insisting upon NOC from the State Government, at that stage, appears to be bereft of logic and not in conformity with the NCTE Act and Regulations and therefore, the same is arbitrary and illegal and liable to be interfered with. The issue, as formulated herein above stands answered accordingly.

17. I have carefully considered the submission of Mr. Phukan, the learned standing counsel for the respondent No. 4, and in view of the discussion and findings recorded herein above, the submission of Mr. Phukan left this court unimpressed. It is, however, a fact that courts are not supposed to interfere policy decision of the state but, it is not an absolute proposition of law as because when the decisions are contrary to existing legal framework, and arbitrary and illegal, the courts are bound to exercise its jurisdiction. I have also gone through the decisions referred by Mr. Phukan and also by Mr. Buragohain, the learned counsel for the petitioner. But, this court is of the view that in order to decide the issue raised in the present writ petition, reference to all those decisions, is found to be not at all necessary.

18. Under the given fact and circumstances, this court finds sufficient merit in the petition and accordingly, the same stands allowed. By a mandamus of this court, the respondent No. 4 is directed to process the application dated 23.03.2022 received by the respondent No. 4, on 28.03.2022, filed by the petitioner college in accordance with the procedure prescribed under the NCTE Act and Regulations made there under and under the University Grants Commission [Affiliation Of Colleges



By Universities] Regulations, 2009 within the time line prescribed under the NCTE Regulations, 2014.

19. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant