

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3936 of 2019

National B. Ed College of Higher Education Village- Murgichak, Street/
Road- Mohammadpur, Taluka/ Mandal- Janipur, Town/ City- Murgichak,
District- Patna, Bihar- 801505 through Secretary, Madhuri Kumari (Female),
Daughter of Late Ram Chandra Jha, administrative office- Apurva Radha
Complex, 3rd Floor, Office No.- 303, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department Government of Bihar, New Secretariat (Bikas Bhawan), Patna.
3. The Director, Primary Education Education Department, Government of Bihar, New Secretariat (Bikas Bhawan), Patna.
4. The Director, Research and Training, Education Department Government of Bihar, New Secretariat (Bikas Bhawan), Patna.
5. The Bihar School Examination Board, Sinha Library Road Patna through the Secretary.
6. The Chairman, Bihar School Examination Board, Sinha Library Road Patna.
7. The Secretary, Bihar School Examination Board, Sinha Library Road Patna.
8. The Director (Academic), Bihar School Examination Board Patna- 17.
9. The Eastern Regional Committee National Council for Teachers Education, 15 Neelkantha Nagar, Nayapalli, Bhubaneswar- 751012, Odisha through Regional Director.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Niranjan Kumar, Adv.
For the Respondent/s : Mr.Kameshwar Kumar (Gp17)
For NCTE : Mr. Sunil Kr. Singh, Adv.
Mr. Ranvijay Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 13-08-2020

The present writ petition has been filed by the petitioner- college, namely, National B. Ed. College of Higher Education for directing the respondent authorities to grant affiliation from the academic session 2017-19 instead of Session 2018-20 pursuant to grant of recognition dated 02.05.2017



issued by the respondent no.9 i.e. the Eastern Regional Committee- National Council for Teachers Education, Bhubaneswar in exercise of powers vested under Section 14(3) (b) of the NCTE Act, 1993 as well as under Clause-7 (16) of NCTE (Recognition Norms & Procedure) Regulations, 2014 (In short “Regulations 2014”), for the purposes of conducting D. EL. Ed. Programme of two years duration with an annual intake of 100 students (two basic Unit) from the academic session 2017-19. It is further prayed that the concerned respondents be directed to accept examination fee and form of the students of the petitioner college for D.EL. Ed. course for the academic session 2017-19.

2. The brief facts of the case are that the petitioner college is a recognized unit by the respondent no.9 for conducting D.EL. Ed. Programme from academic session 2017-19 with an annual intake of 100 (two basic unit) students. It is stated that the petitioner- college, in accordance with the regulations, had made an application to the respondent no.5 i.e. the Bihar School Examination Board for grant of ‘No objection certificate’ for imparting D.EL. Ed. Programme, whereafter ‘no objection certificate’ was granted by the Secretary, Bihar School Examination Board (hereinafter referred to as “the Board” vide



letter dated 18.05.2016 in favour of the petitioner- college, whereafter the petitioner had applied online on 30.05.2016 before the respondent no. 9 for grant of recognition/ permission to the petitioner college for conducting D.EL. Ed. Programme in terms of the NCTE Act, 1993 and the aforesaid Regulations, 2014. The respondent no. 9 had then sent an inspecting team to the petitioner college and inspection was conducted, whereafter the case of the petitioner was placed in 239th meeting of the respondent no. 9 for the purposes of grant of recognition/ permission to the petitioner college for conducting the D.EL. Ed. Programme. After scrutiny of the application of the petitioner college and after full satisfaction, the respondent no.9 had issued a letter dated 02.05.2017 granting recognition to the petitioner college for conducting D. EL. Ed. Programme for two years duration with an intake of 100 students from academic sessions 2017-19. Accordingly, the petitioner had then made an application on 31.07.2017 before the Board, annexing a copy of the recognition order granted by the NCTE, praying therein for grant of recognition to the college from the academic sessions 2017-19, whereafter the NCTE had sent a letter dated 14.09.2017 to the petitioner college asking it to deposit affiliation fee along with spot verification fee, which the



petitioner college had deposited promptly. It is submitted that the case of the petitioner college was being kept pending by the respondent Board without any reason inasmuch as it was incumbent upon the respondent Board to honour the affiliation granted by the NCTE being the examining body and grant affiliation to the petitioner college in pursuance to the recognition granted by the NCTE. Ultimately, the respondent no.8 vide letter dated 03.01.2018 granted affiliation to the petitioner college from the academic sessions 2018-20 instead of the academic sessions 2017-19. It is submitted that the respondent Board has issued a communique dated 15.02.2019 in the daily newspaper for registration of the D.EL. Ed. students for academic sessions 2014-16, 2015-17 and 2016-18. As far as in service candidates are concerned, their registration has to be completed in between 16.02.2019 to 22.02.2019 and the last date of registration of D.EL. Ed. students for academic sessions 2017-19 with late fine was fixed as 22.02.2019.

3. The learned Senior counsel for the petitioner college has submitted that after completion of the D.EL. Ed course for academic sessions 2017-19, the petitioner college had deposited the forms of the students to the respondent Board, but the Board has denied to register the students of the petitioner college from



the sessions 2017-18. It is submitted that similarly situated students of other colleges have been granted affiliation by the respondent Board from the academic session of recognition by the NCTE.

4. The learned Senior counsel for the petitioner has further submitted that as per Regulations 5(5) of the aforesaid regulation, 2014, duly completed application in all respects are required to be submitted to the Regional Committee concerned between 1st March to 31st May of the preceding year of the concerned academic session for which recognition is sought, hence, the petitioner, after getting 'no objection certificate' from the respondent Board on 18.05.2016 had applied within time before the respondent no.9 on 30.05.2016 itself and the same was processed, which took some time and ultimately affiliation was granted to the petitioner college by the NCTE vide letter dated 02.05.2017 regarding the D.EL. Ed. Programme from the Session 2017-19, which was for an annual intake of 100 students. It is further submitted that as per Regulation 5(6) of the aforesaid regulation, 2016, all the applications received online from 1st March to 31st May of the year are required to be processed by the NCTE for the next academic session and the final decision, regarding grant or refusal of recognition is to be



communicated to the applicants on or before 3rd day of March of the succeeding year, however, in the present case some delay was caused by the NCTE for which the petitioner cannot be penalized.

5. The learned Senior counsel for the petitioner has further referred to Regulation 7(14) (d) of the aforesaid Regulation, 2014 wherein it has been provided that all the applicant institutions shall launch their own website and various information, as stipulated therein, shall be made available on the website including the details regarding the names of students along with qualification, percentage of marks in the qualifying examination and in the entrance test, if any, the date of admission etc. Thus, it is submitted that the Regulation, 2014 itself provides for the applicant institutions to take admission in the sessions for which application has been made before the NCTE for grant of affiliation and as such the petitioner college had admitted students for the Sessions 2017-19, since the application for the said sessions had been made before time before the NCTE.

6. The learned Senior counsel has further referred to Regulation 8(10) of the aforesaid Regulation, 2014 to contend that the University or examining body, (respondent Board in the



present case) shall grant affiliation only after issue of formal recognition order under sub-regulation (16) of Regulation 7 and Admission by the Institution shall be made only after affiliation by the respondent University or affiliating body. Thus, it is submitted that the respondent Board i.e. the examining body had no option but to grant affiliation from the Sessions 2017-19, after the petitioner College had been granted recognition by the NCTE i.e. the respondent no.9 under Section 14(3) (b) of the NCTE Act, 1993 for conducting D.EL. Ed. Programme, having strength of 100 students for the academic sessions 2017-19 under Section 20(6) of the aforesaid Regulation, 2014, however, the respondent Board had belatedly and illegally granted affiliation on 3.1.2018 and that too from the Session 2018-20 instead of 2017-19.

7. The learned senior counsel for the petitioner has further referred to the provisions contained in the Bihar School Examination Board, D. L. Ed. Course affiliation/ Regulation, 2016 and has submitted that as per Regulation 5(B) (v), the Bihar School Examination Board is required to take decision on the point of affiliation and notify the same within a period of one month of filing of the application, however, in the present case although the petitioner college had filled the application



form and applied before the respondent Board on 31.8.2017 but the respondent Board took about five months to process the application of the petitioner college, whereafter instead of granting affiliation for the Session 2017-19, it has granted affiliation from the Session 2018-20. Lastly, the learned Senior counsel for the petitioner college has relied upon a judgment dated 28.03.2019 rendered by the learned Division Bench of this Court in the case of **Rajendra Kishore B. Ed. College & ors. vs. The Bihar School Examination Board and others** (CWJC No. 19046 of 2018) and other analogous cases, relevant paragraphs whereof are reproduced herein below:-

“The grievance of the respective Colleges as advanced by learned Senior Counsel appearing on their behalf is that the amendment Regulation is a class legislation for it seeks to deprive the petitioner Colleges of the same benefits of deemed affiliation which has been extended to similarly placed 44 Colleges. According to learned Senior Counsel appearing on behalf of the Colleges and the students, the Regulation violates Article 14 of the Constitution of India for there is no distinction between the 44 Colleges who have been granted deemed affiliation in comparison to the case of the petitioner Colleges who also seek similar relief rather have a case on a better footing because they have approached the Examination Board well within time for grant of affiliation but merely on a delayed action by the Board that the session has gone past. It is submitted that even when the High Court and the Supreme Court has directed the oard to consider the claim of these Colleges for grant of affiliation for Session 2016-18 subject to fulfillment of their criteria required



and even when a No Objection has been granted by the Board well in advance of the Session 2016-18 after recording satisfaction to the fulfillment of criteria and which is followed by grant of recognition by the NCTE for the Session 2016-17, there was no occasion for the Board to have delayed grant of recognition under the pretext of a pending Regulation. It is submitted that the Regulation notified vide Notification No. 695 dated 7.7.2018 proceeds to grant deemed affiliation to 44 Colleges who in violation of the statutory prescriptions, did not only admit students without grant of affiliation but also had the support of the Board to permit these students to appear in the examination which has been carrying on since 1997-98 or thereafter. It is contended that on the other hand, the petitioners have followed the law, applied well in advance for grant of affiliation, got recognition well in time but are being punished by the Board for their own lapses. It is submitted that the action of the Board in not extending the benefit of similar affiliation to these Colleges even though their application for such grant is pending since 2016, is arbitrary and discriminatory. Learned Senior Counsel have referred to the following judgments in support of their contentions:

(i) (2013)2 SCC 617 (Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P. & ors.)- Paras 70, 71 and 72

(ii) 2018(4) PLJR 821 (the V.C., Aryabhatta Knowledge University & anr. v. the State of Bihar & ors.)- para 6 to 8.

In substance, each of the writ petitioners, i.e. whether the Teachers Training Colleges or the students who have undertaken their teachers training course in the Session 2016-18 from the Colleges, have a prayer in common and i.e. a direction to the Examining/ Affiliating Body i.e. Bihar School Examination Board to grant affiliation to the respective Colleges for the Session 2016-18 in tune with the recognition given by the NCTE for the Session 2016-17. The grievance of the petitioners in this batch of writ



petitions is that even though the College in question have obtained recognition from the NCTE for the academic Session 2016-17 well within time period so prescribed and whereafter they have also followed it up by depositing the required fee for grant of affiliation but it is because the respondent Bihar School Examination Board have delayed grant of affiliation on the pretext of Regulation being amended that the session has gone by. It is also their submission that since as per amendment to the Regulation whereby Clause (xiii) is added to Regulation 8, the Bihar School Examination Board has decided to grant affiliation to 44 Teachers Training Colleges with effect from the date they have obtained recognition from the NCTE, they should apply such principle uniformly across the Board to consider the case of the petitioners- Colleges in the same manner and the attempt by the Bihar School Examination Board to restrict the benefit only until the Session 2014-16 in respect of 44 Teachers Training Colleges whose students were allowed to appear in the examination held by the Board even in absence of grant of affiliation, is patently discriminatory and in case the respondent Board has taken a decision to validate the courses with retrospective effect then such retrospectivity needs to be extended in the case of the petitioners- Colleges as well, in tune with the recognition granted by the NCTE for the academic Session 2016-17 and accordingly.

We thus choose to read down Clause (xiii) which is sought to be added to Regulation 8 of '2016 Regulations' by removing the bar of session i.e. 2014-16, to cover all training sessions as until the date on which the notification was published i.e. 7.7.2018 and since on principle the Board has resolved to grant affiliation to the Training Colleges from the session the said Colleges have obtained recognition from the Eastern Regional Committee, the National Council of Teachers Education, Bhuvaneshwar/ National Council of Teachers Education, New



Delhi, applying the same principles the Board would grant affiliation to these petitioners institutions as well from the sessions they have obtained recognition from the NCTE. That the respondent Board have at paragraph 20 of the counter affidavit showed intentions to hold examination for the academic Session 2014-16, 2015-17 and 2016-18 for the Colleges, whose past

examination have been validated, the Board shall allow the students of the petitioners institutions also to participate in the Session 2016-18 unless otherwise found ineligible to participate. Let the exercise of grant of affiliation be completed by the Board within four weeks of receipt/ production of a copy of the judgment.

Let a writ in the nature of mandamus issue accordingly.

The writ petitions are allowed with the directions aforementioned. The interlocutory applications are disposed of accordingly”.

8. *Per contra*, the learned counsel appearing for the respondent Board, referring to the counter affidavit filed in the present case, has at the outset, referred to a judgment rendered by the Hon’ble Apex Court in the case of ***Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh and Others*** reported in ***(2013) 2 SCC 617***, relevant paragraphs whereof are reproduced hereinbelow :-

“87. Compelled by these circumstances and to ensure that there exists no ambiguity, uncertainty and confusion, we direct and prescribe the following Schedule upon a cumulative reading of the Regulations and judgments of this Court in relation to recognition and affiliation:

87.1 Schedule for Recognition and Affiliation



87.1.1	<i>Submission of applications for recognition in terms of Regulation 5(4)</i>	<i>1st September to 1st October of the year immediately preceding the relevant academic year</i>
87.1.2	<i>Communication of deficiencies, shortcomings or any other discrepancy in the application submitted by the applicant to the applicant in terms of Regulation 7(1)</i>	<i>Within 45 days from the date of receipt of the applications</i>
87.1.3	<i>Removal of such deficiencies by the applicant</i>	<i>Within 60 days from the date of receipt of communication</i>
87.1.4	<i>Forwarding of copy of the application to the State Government/UT Administration for its recommendations/ comments in terms of Regulation 7 (2)</i>	<i>Within 90 days from the date of receipt of the application</i>
87.1.5	<i>Recommendations/ comments of the State Government/UT Administration to be submitted to the Regional Committee under Regulation 7(3)</i>	<i>Within 30 days from the date of issue of letter to it</i>
87.1.6	<i>If recommendations/ comments are not received within 30 days, the Regional Committee shall send to the State Government/ UT Administration a reminder letter for submission of the recommendations/ comments</i>	<i>Within seven days from the date of expiry of the period of 30 days</i>
87.1.7	<i>State Government/ UT Administration shall furnish the recommendations/ comments</i>	<i>Within 15 days from the date of receipt of such reminder letter</i>
87.1.8	<i>Intimation regarding inspection by the Regional</i>	<i>Within 10 days from final scrutiny of the</i>



	<i>Committee to the applicant under Regulation 7(4)</i>	<i>application</i>
87.1.9	<i>Report by the Inspection Committee under Regulation 7(5)</i>	<i>20 days thereafter</i>
87.1.10	<i>Letter of intent to the institution with respect to grant or refusal of recognition in terms of Regulation 7(9)</i>	<i>10th of February of the succeeding year/relevant year</i>
87.1.11	<i>Time to comply with certain specified conditions, in terms of Regulations 7(10) and 7(11)</i>	<i>20 days from the date of issuance of letter of intent</i>
87.1.12	<i>Issuance of formal order of recognition</i>	<i>By 3rd March of each year</i>
87.1.13	<i>Last date for submitting proposal for affiliation</i>	<i>By 10th March of each year</i>
87.1.14	<i>Forwarding of proposal by the University to the State Government/UT Administration after inspection by expert team</i>	<i>By 10th March of each year</i>
87.1.15	<i>Comments to be submitted by the State Government/UT Administration, if any</i>	<i>By 10th March of each year</i>
87.1.16	<i>Final date for issuance/ grant of affiliation for the relevant academic year</i>	<i>By 10th March of each year</i>

87.2 All notices/orders/requirements/letters in terms of the above schedule or under the provisions of the Act or terms and conditions of already granted recognition/affiliation shall be sent by the authority concerned by speed post/e-mail on the address given in the application for correspondence, etc. and shall be posted on the website of the Authority/ Committee/ Council/ Government concerned.

87.3 The recognition and affiliation granted as per the above Schedule shall be applicable for the current academic year. For example,



recognition granted up to 3-3-2013 and affiliation granted up to 10-5-2013 shall be effective for the academic year 2013-2014 i.e the courses starting from 1-4-2013. For the academic year 2013-2014, no recognition shall be issued after 3-3-2013 and no affiliation shall be granted after 10-5-2013. Any affiliation or recognition granted after the above cut-off dates shall only be valid for the academic year 2014-2015.

87.4 We make it clear that no Authority/ person/Council/ Committee shall be entitled to vary the Schedule for any reason whatsoever. Any non-compliance shall amount to violating the orders of the Court”.

9. The learned counsel for the respondent Board has, therefore, submitted that the aforesaid time schedule determined by the Hon'ble Supreme Court for grant of recognition and affiliation has to be adhered to and on failure to comply with the said schedule, the same would amount to violating the orders of the Hon'ble Apex Court. In this background it is submitted that the petitioner institution was granted recognition by an order dated 2.5.2017 passed by the NCTE (respondent No.9) for conducting D. EL. Ed. programme from the academic session 2017-19 onwards, however, the petitioner institution applied before the respondent Board after a delay of 3 months i.e. on 04.08.2017, whereafter the Board immediately vide its letter dated 14.09.2017 required the petitioner college to deposit the requisite fee, which was deposited on 11.10.2017 and



16.10.2017, again after a lapse of more than a month. The Board had thereafter, taken necessary steps for conducting spot verification and grant of affiliation to the college and had then issued the affiliation letter dated 03.01.2018 for sessions 2018-20. It is submitted that since the petitioner college has failed to adhere to the time schedule, as determined by the Hon'ble Supreme Court, in the case of **Maa Vaishno Devi Mahila Mahavidyalaya** (supra), the petitioner college has not been granted affiliation from session 2017-19.

10. It is further submitted by the learned counsel for the respondent Board that from perusal of the letter bearing no. ERC/ 239.6.49 (Part-2)/ D. El. Ed./ 2017/ 52839 dated 02.05.2017 (Annexure- 2 of the writ petition), it clearly transpires that a conditional recognition has been granted to the petitioner institute by the Eastern Regional Committee of the NCTE in terms of NCTE (Recognition Norms & Procedure) Regulation, 2014, which is subject to fulfillment of the conditions as stipulated therein; wherein sub-clause (iii) of clause 3 reads as follows- "*The Institution shall make admission only after it obtains affiliation from the examining body in terms of clause 8(1) of the NCTE (Recognition Norms & Procedure) Regulation 2014*", therefore the institution cannot claim to have



admitted students for the academic session 2017-19, without affiliation from the Board.

11. The learned counsel for the respondent Board has further relied upon the judgment rendered by the Hon'ble Apex Court in the case of *Anuragi Devi Degree College vs. State of U.P. (2016) 12 SCC 517*, paragraphs No. 16 to 21 whereof are reproduced herein below:-

“16. We are obliged to state here that there is justification for reproducing the above paragraphs from the aforesaid decision in Maa Vaishno Devi Mahila Mahavidyalaya case. The Court has taken pains to explain the scheme of the Act, role of the university and the purpose of fixing a time schedule for each purpose. Certain action of the authorities can be flawed and eventually fall in the sphere of illegality. It has to be so declared by the Court. In the case at hand, the benefit could not be extended as the appellants have not maintained the time schedule fixed by the State Government pursuant to the judgments of this Court. Therefore, the order passed by the learned Single Judge¹ as well as the Division Bench cannot be found fault with.

17. The controversy does not end here. The stand of the University is that the appellant College has admitted students without having the necessary affiliation for the academic session 2015-2016. This kind of conduct has become a disease, and when the conduct becomes a disaster, it is a disastrous phenomenon. While dealing with admissions without affiliation from CBSE, the Court in Sunil Oraon v. CBSE-referred to earlier decisions and was constrained to state thus: (SCC p. 682, para 23)

“23. Time and again, therefore, this Court had deprecated the practice of educational institutions admitting the



students without requisite recognition or affiliation. In all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities. As the factual scenario delineated against goes to show that the school has shown scant regards to the requirements for affiliation and as rightly highlighted by learned counsel for CBSE, the infraction was of very serious nature. Though the ultimate victims are innocent students that cannot be a ground for granting relief to the appellant.”

18. In *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale*¹⁰ the Court has laid down that: (SCC p. 487, para 87)

“87.(xv) The students admitted by unrecognised institution and institutions which are not affiliated to any examining body are not entitled to appear in the examination conducted by the examining body or any other authorised agency.”

The Court further proceeded to direct: (SCC p. 488, para 88)

“88. (ii) The result of the students admitted by an unrecognised institution or by an institution which had not been granted affiliation by the examining body shall not be declared. The result of the students who were admitted without qualifying the entrance examination shall also not be declared. In other words, the students admitted by the private institutions on their own shall not be entitled to declaration of their result. If any private institution had not complied with the requirements of completing the prescribed training, then the result of students of such institution shall also not be declared.”

19. In *NCTE v. Venus Public Education Society* the two-Judge Bench ingeminating the



*anguish of the Court was compelled to observe:
(SCC p. 242, para 33)*

“33. ... It is urged by him that NCTE had procrastinated its decision at every stage and such delay was deliberate and, therefore, the Society was compelled to admit the students and impart education, regard being had to the fact that there were really no deficiencies. As has been laid down in many a pronouncement of this Court that without recognition from NCTE and affiliation from the university/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. If we allow ourselves to say so, the institution had given admission in a nonchalant manner. Possibly, its functionaries harboured the idea that they had incomparable fertile mind. The students who had taken admission possibly immersed with the idea that ignorance is a bliss. It is also necessary to state that the institution had the anxious enthusiasm to commercialise education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law.”

20. Coming to the present case. As is evincible, the University has not granted affiliation as the schedule for the same was over. No appeal was preferred by the appellant College. The High Court rightly held that it cannot issue a writ contrary to the judgment of this Court. However, we observe that the University shall consider the application for affiliation, if not considered already, within a span of four weeks and if the affiliation is



granted the students who had been granted admission shall be treated as students as admitted for the academic session which would be covered by the affiliation to be granted in future. We have so directed so that the appellant College would not be in a position to admit any other student after affiliation is granted.

21. Consequently, the appeal stands dismissed. There shall be no order as to costs.

12. It is further submitted by the learned counsel appearing for the respondent Board that it was in order to regularize the recognition conferred upon the non-affiliated colleges/ institutions, though which were granted recognition by the National Council of Teachers Education up to the training sessions 2014-16, i.e. even prior to the promulgation of the National Council of Teachers Education, Regulation 2014 and to whom affiliation had not been accorded by the Board earlier, although the regular examination of the admitted students of the said institutes/ colleges were organized up till the academic session of 2013-15 and their results had also been published by the Board; that an amendment had been brought vide Bihar School Examination Board (issuance of no objection certificate, application norms and procedure (Amendment) Regulation 2018, modified vide T.T. Pre 695 dated 07.07.2018, and now it was postulated that such training colleges of the State of Bihar, which have got recognition from the National Council of



Teacher's Education upto training session 2014-2016, before promulgation of the National Council of Teacher's Education Regulation 2014 and could not have been given affiliation from the Board due to certain reasons and although the regular examination of the admitted students of the said colleges / institutes in question had been organized and result of the same had also been published by the Board, shall be deemed to be affiliated from the Board under Bihar School Examination Board (issuance of Teachers Education no objection certificate, affiliation norms and procedure) Regulation, 2016, from the session of getting recognition from the Eastern Regional Committee, the National Council of Teacher's Education, Bhubneshwar/ the National Council of Teacher's Education, New Delhi.

13. Thus, it is submitted that such institutions, which were covered by the aforesaid Amended Regulation, 2018, i.e. the institutions which had been given recognition by the NCTE for the academic session 2014-16, prior to promulgation of NCTE Regulation, 2014, but were not given Affiliation by the Board, nonetheless, examination of students of such institutions had earlier been conducted by the Board up to the academic session 2013-15, a proposal, fixing the date of examination for



different previous academic session thereafter, i.e. for the academic sessions 2014-16, 2015-17 and 2016-18, had been passed, only for such institutions, vide letter dated 15.02.2019.

14. It is further submitted that the case of the present petitioner institution/ college is completely different and distinguishable inasmuch as the petitioner institution/ college had been granted recognition by the NCTE in the year 2017 for the academic session 2017-2018 after promulgation of NCTE Regulation, 2014 and no examination pertaining to D.El. Ed. Course of the petitioner institute had earlier been conducted by the Board, therefore, apparently the petitioner institution does not come under the ambit of the 'Amendment Rule' as promulgated vide "Bihar School Examination Board (issuance of no objection certificate, application norms and procedure) (Amendment) Regulation 2018. Hence, after processing the case of the petitioner institution, the Board has granted affiliation to the petitioner institute on 03.01.2018 (Annexure-5) for the academic session 2018-20; thus the claim of the petitioner institute/ college for grant of affiliation from an ante period i.e. for the session 2017-19 is not tenable.

15. Lastly, it is submitted that the judgment referred to by the learned Senior counsel for the petitioner in the case of



Rajendra Kishore B.Ed. College (supra) is distinguishable in the facts and circumstances of the present case inasmuch as the said judgment seeks to read down *clause 8 (13) of the Bihar School Examination Board, Diploma Elementary Education Course Affiliation/ Regulation, 2016* by removing the bar of session i.e. 2014-16 and instead cover all training sessions as until the date on which the notification was published i.e. 07.07.2018 i.e. up to the Session 2016-18, hence the present case would not be covered inasmuch as the petitioner college seeks affiliation for the session 2017-19.

16. I have heard the learned counsel for the parties and perused the materials on record. The first question to be determined is as to whether once recognition has been granted by the NCTE, whether the respondent Board is bound to grant affiliation. In this regard, this Court is of the view that issuance of “No objection Certificate” by the respondent Board on 18.05.2016 to the petitioner college for the purposes of conducting D. El. Ed. Programme, before getting recognition, itself is a certificate of the fact that the Board was satisfied that the petitioner training institution satisfies all statutory requirements and the same also is the foundation of grant of recognition by the NCTE under the NCTE (Recognition Norms



& Procedure) Regulation, 2014 whereupon the NCTE i.e. the respondent no.9 herein vide order dated 2.5.2017 had also granted affiliation to the petitioner training institution in exercise of powers vested under **Section 14(3) (b) of the NCTE Act, 1993** for conducting D. El. Ed. Course of two years' duration, having strength of 100 students from the academic session 2017-19. This Court further finds that Regulation 8(10) of the aforesaid Regulation, 2014 postulates granting of affiliation by the University or the examining body only after issuance of formal recognition order by the NCTE. Similarly, Section 16 of the NCTE Act, 1993 provides for grant of affiliation to an institution by the examining body, only after the institution concerned has obtained recognition from the concerned Regional Committee of the NCTE under Section 14 of the Act, 1993. This Court further finds that Section 14 (6) of the NCTE Act, 1993 provides for grant of affiliation by the examining body (respondent Board in the present case) to the concerned institution only where recognition has been granted by the NCTE under Section 14(4) of the NCTE Act, 1993. Thus, this Court is of the clear and unambiguous opinion that the respondent Board cannot refuse to grant affiliation, once recognition has been granted by the NCTE. This opinion of the



Court is further fortified by a judgment rendered by the learned Division Bench of this Court in a case reported in 2018(4) PLJR 821 (**The Vice- Chancellor, Aryabhata Knowledge University & Anr. The State of Bihar & Ors.**), paragraphs No. 8 and 9 whereof are reproduced herein below:-

“8. As rightly observed, once the recognition has been granted by the N.C.T.E., thereafter, the University has to grant affiliation. However, it will always be open for the University to take up the matter with the N.C.T.E., in case the University is of the view, on the basis of any inspection carried out and/or information received, that the concerned institution does not fulfil the conditions for grant of recognition/affiliation. Paragraph 18 of the impugned order reads as under: -

“18. If what is being contended on behalf of the University is accepted and the universities are allowed to refuse affiliation, on the ground that an institution does not fulfil the requisite conditions, despite there being recognition by the N.C.T.E, this will amount to giving them jurisdiction to tinker with the decision of the N.C.T.E. of granting recognition under Section 14(6)(a) of the Act and thereby diluting the clear legislative intent. This, in my view, cannot be allowed. If the University, on the basis of any inspection carried out and other information received, is of the view that the concerned institution does not fulfil the conditions for grant of recognition/affiliation, it can take up the



matter with the N.C.T.E. and in that circumstance, N.C.T.E. only can take a final decision. In any event, refusal by the University to grant affiliation or to extend affiliation, during the currency of recognition by the N.C.T.E., will be in breach of Section 14(6) of the Act.”

9. If the observations made in paragraph 18 are read along with the observations made by the Hon'ble Supreme Court in paragraphs 70 and 71 in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra), we are of the opinion that no interference by this Court is called for. Still it is observed and clarified that whatever observations are made by the learned Single Judge are with respect to the affiliation and, so far as the recognition is concerned, once the N.C.T.E. has granted the recognition, the University virtually has to grant affiliation, subject to the observations made by the Hon'ble Supreme Court in para 71 in the case of Maa Vaishno Devi Mahila Mahavidyalaya which reads as under: -

“71. The examining body can impose conditions in relating to its own requirements. These aspects are:

- (a) eligibility of students for admission;*
- (b) conduct of examinations;*
- (c) the manner in which the prescribed course should be completed; and*
- (d) to see that the conditions imposed by N.C.T.E. are complied with.*

Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the



university and the functions of the affiliating body should be complementary to the recognition of N.C.T.E. and ought not to be in derogation thereto.”

17. The next question to be considered is as to whether the petitioner college is entitled to be granted affiliation by the respondent Board for the session 2017-19 or the session 2018-20 ?

18. In order to answer this issue, it would be relevant to advert to the schedule fixed by the Hon'ble Apex Court in the case of **Maa Vaishno Devi Mahila Mahavidyalaya** (supra), according to which the formal order of recognition is to be issued by the NCTE by the 3rd March of each year, however, in the present case, the said order of recognition was issued by the NCTE only on 2.5.2017. Moreover, the aforesaid schedule, fixed by the Hon'ble Apex Court, prescribes the late date of submissions of proposal for affiliation as 10th of March of each year or within a period of 7 days of the issuance of formal order of recognition by the NCTE, however, in the present case, the petitioner college had sat over the matter and after a delay of about three months, had applied before the Board only on 4.8.2017 for grant of affiliation by the examining body, whereafter the same was processed by the respondent Board and the petitioner college was granted affiliation by the respondent



Board for the Session 2018-2020 vide letter dated 3.11.2018 inasmuch as last date fixed for grant of affiliation for the relevant academic year i.e. 10th March of each year, as fixed by the Hon'ble Apex Court, in the judgment, rendered in the case of **Maa Vaishno Devi Mahila Mahavidyalaya** (supra) had expired, hence the petitioner institution could not be granted affiliation for the Session 2017-18, since granting affiliation for the Session 2017-18 would have amounted to disobeying and violating the schedule fixed by the Hon'ble Apex Court. Nonetheless, this Court finds that the respondent Board has acted fairly in granting affiliation to the petitioner institution for the session 2017-18 in terms of the judgment rendered by the Hon'ble Apex Court in the case of Anuragi Devi (supra). This Court further finds that as per Regulation 5(B) (iv) of the Bihar School Examination Board, D.L. Ed. Course Affiliation/Regulation, 2016, the petitioner institution was required to file application for affiliation before the respondent Board within a period of 10 days from the date of grant of recognition by the NCTE, however, the petitioner institution took three months' time to file such application, hence, on this ground as well, the case of the petitioner is fit to be rejected and the petitioner college cannot claim equity for its students especially in view of the default and laches committed by the petitioner college itself. This Court further finds



that even the learned Senior counsel appearing for the petitioner College has not been able to dispute the well settled law to the effect that the schedule fixed by the Hon'ble Apex Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra) has to be adhered to strictly and the same cannot be violated by any authority for any reason whatsoever and any non-compliance of the same has been held by the Hon'ble Apex Court to be amounting to violation of the orders of the Hon'ble Apex Court. Thus, this Court is of the opinion that since the schedule fixed by the Hon'ble Apex Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra) has not been adhered to in the present case and on the contrary has been violated, even by the petitioner college, no relief can be granted to the petitioner college, as far as grant of affiliation by the respondent Board for the Session 2017-19 is concerned and in fact, this Court finds that the respondent Board has been quite reasonable in granting affiliation to the petitioner institution for the D.L. Ed. Programme for the Session 2018-20, despite the entitlement of the petitioner college for grant of affiliation for the session 2017-19 having expired on account of non-adherence to the schedule fixed by the Hon'ble Apex Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (supra). This Court further finds that Regulation 8(10) of the aforesaid Regulation, 2014 clearly provides that admission by the concerned institution can only be



made after affiliation is granted by the affiliating body. Thus, this Court is of the view that the petitioner institution had illegally taken admission for the Sessions 2017-19 pertaining to the B. EL. Ed. Programme even though it had not been granted affiliation by the respondent Board.

19. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence, the same stands dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	16.05.2019
Uploading Date	18.08.2020
Transmission Date	N/A

