

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 10677-10678 OF 2018
(arising out of SLP(Civil) Nos. 13743-13744 of 2017)**

NEHRU GRAM BHARATI UNIVERSITY

.....APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

.....RESPONDENT(S)

W I T H**CIVIL APPEAL NOS. 10679-10680 OF 2018
(arising out of SLP(Civil) Nos. 14259-14260 of 2017)****A N D****CIVIL APPEAL NOS. 10681-10682 OF 2018
(arising out of SLP(Civil) Nos. 3480-3481 of 2018)****J U D G M E N T****A.K. SIKRI, J.**

Leave granted.

- 2) These appeals arise out of impugned common judgment and order dated March 31, 2017 in Special Appeal No. 1877 of 2012 and Special Appeal No. 1878 of 2012 passed by the High Court of Judicature at

Allahabad in Civil Misc. Writ Petition No. 57527 of 2010 (*Shashi Kumar Dwivedi & Ors. v. State of U.P. & Ors.*) connected with Civil Misc. Writ Petition No. 493 of 2012 (*Chandra Prakash Kanyakubj & Ors. v. State of U.P. & Ors.*).

- 3) The first petition i.e. Civil Misc. Writ Petition No. 57527 of 2010 was filed by the students who were admitted to two years Basic Teachers Certificate Course (hereinafter referred to as the 'BTC' Course) in the Academic Session 2008-09 in Nehru Gram Bharati University (hereinafter referred to as the 'Deemed University') for quashing of the order dated July 14, 2010 passed by the Director, State Council of Educational Research and Training (hereinafter referred to as the 'SCERT') and further for a direction upon the SCERT to recognise the BTC Course and the certificates granted by the Deemed University as legal and valid for selection and appointments as teachers in Parishadiya Vidyalayas/Junior Basic Schools.
- 4) Another petition i.e. Civil Misc. Writ Petition No. 493 of 2012 was filed by the students who were admitted by the same Deemed University for two years BTC Course in the Academic Session 2009-10. The relief prayed for in this petition was more or less identical to the one in Civil Misc. Writ Petition No. 57527 of 2010.
- 5) These writ petitions were dismissed by the single Judge of the High

Court. Thereagainst, intra-court appeals were filed. The Division Bench, under the impugned judgment dated March 31, 2017, has dismissed the Special Appeals holding that the Deemed University was not legally authorised to start the BTC Course for the Academic Session 2008-09 and 2009-10 respectively in the absence of strict compliance of the letter of recognition dated August 16, 2005 as also in view of it having itself asked for recognition from the examining body, i.e. State/SCERT and recognition, in fact, was granted under the letter dated May 29, 2013 for the Academic Session 2012-13. However, the Division Bench took into account the plight of the students caused due to negligence on the part of the Deemed University and, therefore, directed that each respondent-student be paid Rs.50,000/- by the Deemed University in addition to refund of the entire fee which was paid for the two years BTC Course in 2008-09 and 2009-10 respectively. The Division Bench also directed that the money be paid through account payee cheque within two months from the date of the judgment.

6) Facts in short relevant for deciding the present appeals are as follows:

Rajiv Gandhi Post Graduate College, Kotwa, Jamunipur, Allahabad (hereinafter referred to as the 'Post Graduate College') was established by the Society, duly registered under the provisions of the Societies Registration Act, 1860 in the name and style of Nehru Gram Bharati. It was a Post Graduate College affiliated to Chhatrapati Shahu Ji Maharaj

University, Kanpur (hereinafter referred to as the 'Kanpur University'). The Post Graduate College made an application before the NCTE for grant of recognition for starting two years BTC Course under the provisions of NCTE Act. The North Regional Committee of NCTE vide its letter dated August 16, 2005 granted permission to the Post Graduate College under Section 15(3) of the NCTE Act for starting two years BTC Course subject to fulfillment of the terms and conditions as contained in the said letter. It is admitted on record that the Post Graduate College did not take requisite steps for complying with the terms and conditions as mentioned in the permission letter dated August 16, 2005 for years together.

- 7) It so happened that the Central Government vide notification dated June 27, 2008 declared the Post Graduate College as a Deemed University with the change of name as Nehru Gram Bharati Deemed University. The College was deaffiliated from the Kanpur University. The Deemed University made a request to the North Regional Committee to change the name of the institution as mentioned in the permission letter dated August 16, 2005. Such change in name was granted by the North Regional Committee and communicated to the Deemed University vide its letter dated December 02, 2008. The Deemed University is stated to have published an advertisement inviting applications for admission to two years BTC Course for the Academic Session 2008-09 and similarly

issued advertisement for the Academic Session 2009-10.

- 8) While the Deemed University started its process of admission to BTC Course, it simultaneously entered into correspondence with SCERT to grant recognition to said two years BTC Course offered by the Deemed University as the same was reflected through the letter dated February 10, 2010 forwarded by the Deemed University to SCERT with a request to approve the two years BTC Course and include the name of the Deemed University in the list of approved institutions so that the students with BTC certificate granted by the Deemed University had no difficulty in employment as Assistant Teachers in Junior Basic Schools. One of the students is also stated to have sent similar request to SCERT. He was informed by the Director, SCERT vide letter dated July 14, 2010 that his papers were being returned as they did not concern SCERT. This led to the filing of two writ petitions mentioned below:
- (a) Civil Misc. Writ Petition No. 57527 of 2010 was filed by some of the candidates who were admitted to the two years BTC Course in the Academic Session 2008-09 in the Deemed University for quashing the order dated July 14, 2010 passed by the Director, SCERT and for a direction upon the SCERT to recognize the BTC Course and the certificates awarded by the Deemed University.
- (b) Civil Misc. Writ Petition No. 493 of 2010 was filed by some of the candidates who had been granted admission by the Deemed University

to the BTC Course in the next Academic Session 2009-10 and the relief claimed was for a direction upon the respondents to recognize the BTC Certificate awarded by the Deemed University so that the candidates can be considered eligible for appointment as Assistant Teachers in the Junior Basic Schools.

- 9) It is the case of the appellants that once the University acquired the status of Deemed University, it became an 'examining body' under Section 2(d) of the NCTE Act. Section 2(d) of the NCTE Act defines an 'examining body' to mean a University, agency or authority to which an authority is affiliated for conducting examination in teacher education qualification. The plea is that since it is a Deemed University and it conducts its own examination, there was no need to seek affiliation from any other agency. It is also pointed out that the State had taken a policy decision dated September 21, 2006 not to permit private institutions to run the BTC Course. The High Court of Judicature at Allahabad vide judgment dated July 31, 2009 upheld the single Judge's decision dated May 08, 2007 striking down the State Government's policy, and held that policy makers are under an obligation to formulate a policy that is in consonance with the law of the land and that there was no rational basis for the monopoly of training teachers created by the State Government.

- 10) It may also be mentioned at this stage that on application by the

Deemed University, the State Government vide Government order dated May 29, 2013, granted recognition to the BTC Course offered by the Deemed University from the Academic Session 2012-13. This order of recognition was, however, modified vide Government order dated July 07, 2014 and it was provided that in place of Academic Session 2012-13 for the purposes of recognition of BTC Course, the same may be read as Academic Session 2010-11 onwards. The Government order dated July 07, 2014 has since been revoked under the Government order dated September 27, 2016. These Government orders dated May 29, 2013, July 07, 2014 and September 27, 2016 were not subject matter of challenge before the High Court.

- 11) On behalf of the students, the basic contention raised before the Court was that once permission was granted under Section 15(3) of the NCTE Act in favour of the Post Graduate College which was subsequently converted into a Deemed University for starting of the two years BTC Course, the issue of seeking affiliation/recognition from the examining body became redundant after issuance of the notification dated June 27, 2008 whereby the Post Graduate College was declared as a Deemed University. It was contended that the Deemed University has a right to conduct its own examination, therefore, no approval is required from any authority for conduct the examinations in respect of two years BTC Course offered by the Deemed University subsequent to

the notification dated June 27, 2008 and in view of the law laid down by this Court in the case of ***State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.***¹ as also in view of the Division Bench judgment of the High Court of Judicature at Allahabad in Special Appeal No. 1639 of 2007 (***State of U.P. & Ors. v. Dau Dayal Mahila P.G. College & Ors.***) decided on July 31, 2009 and in the case of ***State of U.P. & Ors. v. Furqan Ali & Ors.***².

- 12) The claim set up by the students was opposed by the State of Uttar Pradesh through its Advocate General. With reference to the notification dated June 27, 2008 itself, it was submitted that the Deemed University could offer only such courses as were being offered immediately before the conferment of the status of the Deemed University or alike courses thereto. Deemed University could award degrees only for conventional/general degree programs leading to B.A./B.SC./B.Com or M.A./M.Sc. degrees covered under Section 22(3) of the Universities Grants Commission Act, 1956 (hereinafter referred to as the 'UGC Act'). On behalf of the State, it was explained that BTC Course is not a Degree Course nor a course recognized by the Universities Grants Commission (UGC). Therefore, merely because the Post Graduate College has been declared as a Deemed University, it cannot be presumed that it gets a right to act as an examining body for

1 (2006) 9 SCC 1
2 2011 (1) ADJ 480

BTC Course, which is not provided for or taken care of under the UGC Act.

- 13) Learned Single Judge vide its common judgment dated October 11, 2012 held that it was not possible for the Court to grant the relief as has been prayed for. Referring to the provisions of Sections 2, 3 and 4 of the Guidelines framed by the UGC under the UGC Act and to the grant of status of Deemed University and clause 1 of the notification dated June 27, 2008, it was held that in view of Section 22, a University can only grant such degrees which have been specified by the UGC in the Official Gazette and that BTC is not one of the degrees mentioned therein. With reference to the provisions of NCTE Act and Regulations of 2007, it was held the College, even after grant of permission by the North Regional Committee of the NCTE, kept silent and did not take steps for starting two years BTC course for long duration and after confirmation of the status of the Deemed University, invited applications for the Academic Session 2008-09 and similarly for 2009-10. Deemed University cannot act as an examining body for the BTC Course and it had to obtain necessary permission from the examining body, namely, SCERT which was the examining body for the BTC course. It was further held that the candidates were not possessed of a BTC certificate from an institution having due authority of law to be the examining body for the course, therefore, such certificates did not make them eligible for

appointment as Assistant Teacher in Junior High Schools.

- 14) Aggrieved students filed Special Appeals before Division Bench of the High Court. As noted above, the High Court, vide its impugned judgment dated March 31, 2017, has dismissed the appeals and affirmed the judgment of the learned Single Judge and directed the Post Graduate College to refund the fees of the students and also to pay a sum of Rs.50,000/- to each student. It has further directed that it is open for the concerned authority of University to take appropriate action against all those responsible for creating the situation and to recover the money lost due to payment to the students.
- 15) A perusal of the impugned judgment would show that the High Court has rested its decision on the premise that non-compliance of statutory conditions is more or less admitted. Further, mere grant of permission by NCTE does not amount to automatic affiliation for running the BTC Course, until and unless the institution fulfills the norms which are prescribed by the NCTE. The High Court also noted that it was virtually admitted that formalities required for admission from the examining body have not been completed and it is only now that BTC Course is running as per the norms of NCTE. The High Court has also observed that, on the one hand, the Deemed University claimed that after conferment of the status of Deemed University upon the Post

Graduate College, it became the examining body for all courses including BTC Course, but, on the other hand, it continued to write letters to the Director, SCERT to grant recognition to the certificate issued by it and to include the name of the University in the list of approved institutions for the purpose of treating its certificate to be a valid qualification for appointment as Assistant Teachers in Junior High Schools recognised under the U.P. Basic Education Act, 1978. In nutshell, the High Court has held that mere grant of permission by NCTE does not amount to automatic affiliation for running the BTC Course, until and unless the institution fulfills the norms which are prescribed by the NCTE. Therefore, there was no question of any recognition being granted to a private institution upto January 15, 2010 for the BTC Course in the State of Uttar Pradesh. Since the Deemed University was not legally authorised to start the BTC Course for the Academic Sessions 2008-09 and 2009-10 respectively, in the absence of strict compliance of letter of recognition dated August 16, 2005 as also in view of having itself asked for recognition from the examining body, the BTC Course for these two sessions could not be treated as recognised.

- 16) Mr. Rakesh Dwivedi, learned senior counsel appearing for the Deemed University, reiterated the submission which was raised before the High Court, namely, once it was granted deemed status, it became an examining body by itself by virtue of Section 2(n) and Section 2(d) of

the NCTE Act. It was submitted that Section 22 of the UGC Act gives right to a Deemed University to confer degrees which would imply that such Deemed University would itself become an examining body by virtue of Section 2(n) and Section 2(d) of the NCTE Act as the degree can be awarded only by the examining body. It was also submitted that the NCTE Act is a complete and exhaustive code for teachers education and is made by Parliament with respect to Entry 66 List I read with Entry 25 List III. It lays down all norms and standards including qualification for teachers and curriculum. Only examinations are to be conducted by Universities or competent authority established by the State. So far as Universities are concerned, they hold examinations for their students themselves and need no affiliation. Even where an institution seeks affiliation from State's competent authority, the said authority cannot have a relook at matters which are considered by NCTE while granting recognition to the institution or course. Mr. Dwivedi also submitted that the NCTE Regulations of 2009 which were notified vide notification dated August 31, 2009 could not be applied in this case as Deemed University was granted recognition by NCTE on August 16, 2005. He submitted that relevant regulations which were applicable on that date were of the year 2002 known as NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes

and permission to start new course or training) Regulations, 2002 (hereinafter referred to as 'Regulations, 2002'). The Regulations, 2002 were repealed by NCTE (Recognition, Norms and Procedure) Regulations, 2005 dated December 27, 2005. However, action already taken under the Regulations, 2002 were protected and saved by Regulation 11(2) of the Regulations, 2005. He submitted that the Regulations, 2002 contemplated an NOC from the State Government at a pre-recognition stage vide Regulation 6. Sub-clause (x) of this Regulation dispensed with the requirement of NOC with regard to institutions already recognized by NCTE for running a B.Ed. course. Admittedly, the Deemed University was running B.Ed. when recognition for BTC course was given. Therefore, the said requirement did not apply to the Deemed University. However, this requirement of NOC has been held by this Court to be immaterial and irrelevant, so far as the power of NCTE is concerned, in ***Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***:

“63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is *fully* and *completely* occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State

Legislature to encroach upon the said field. Parliament *alone* could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on “policy consideration.”

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on “policy consideration”. As already observed earlier, policy consideration was negated by this Court in *Thirumuruga Kirupananda Trust* [(1996) 3 SCC 15 : JT (1996) 2 SC 692] as also in *Jaya Gokul Educational Trust* [(2000) 5 SCC 231 : JT (2000) 5 SC 118].

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68. In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of no-objection certificate by the State Government/Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.”

- 17) On this count, submission of Mr. Dwivedi was that the present matters does not concern with this aspect since the said provision deals with a pre-recognition stage and whereas these cases related to affiliation which is post-recognition stage. The learned senior counsel also referred to the judgments of this Court in ***Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh & Ors.***³ and ***State of Rajasthan v. LBS B.Ed. College & Ors.***⁴.

- 18) Dealing with the issue of non-compliance with the conditions contained in the recognition letter issued by NCTE, Mr. Dwivedi argued

3 (2013) 2 SCC 617

4 (2016) 16 SCC 110

that it is an erroneous finding. In this behalf, his submission was that, in the first instance, the conditions contained in the letter dated August 16, 2005 of NCTE were to be complied 'before the commencement of the academic session'. The Deemed University had commenced its BTC Course only in the year 2008 and, therefore, question of complying these conditions before 2008, in any case, did not arise. Secondly, this policy of fulfilling the conditions ceased to apply to this University once it obtain the status of Deemed University. Thirdly, this policy was set aside by the High Court (by the single Judge vide judgment dated May 08, 2007 which was affirmed by the Division Bench on July 31, 2009). Therefore, argued the learned senior counsel, by the time University commenced BTC Course in 2008, there were no such conditions which remained to be complied. Mr. Dwivedi also argued that so far as faculty is concerned, Deemed University through its Additional Registrar had written a letter to NCTE on July 22, 2009 submitting a list of faculty members for BTC, B.Ed. and M.Ed. along with minutes of selection committee dated August 14, 2008 selecting seven teachers. These appointments were approved by Board of Management vide resolution dated August 25, 2008 pursuant to which appointment letters were issued which are also placed on record. It is also important to state here that the seven faculty members who were appointed were already teaching in the B.Ed. course run by the predecessor of the Deemed

University. The appellant also maintained regular attendance register which shows that the teachers were, in fact, teaching. Similarly, vide letter dated July 28, 2010, details of existing faculty members were sent to NCTE 2009. Even the inspection report of the UGC Committee which was accepted by UGC on November 19, 2009 stated that appointment of teachers were made by following the rules and norms of UGC and regulatory bodies from time to time. It also noted that, by and large, the University had adequate and qualified faculty. The representative of NCTE was satisfied with the professional development of the teachers. In view of the above material, it is incorrect to state that the Deemed University did not appoint faculty and that there was non-compliance by the Deemed University.

- 19) As regards the Endowment Fund, argument is that the sum of Rs.5 lakhs in the form of Fixed Deposit was, in fact, deposited with the NCTE on February 19, 2004 itself and renewed from time to time but it was to be converted into a joint account on October 28, 2015. It is contended that it is an admitted position that the amount of Rs.5 lakhs towards the endowment fund was deposited by the University and the Fixed Deposits have also been annexed in the Additional Affidavit. In view thereof, there is substantial compliance by the Deemed University and non-conversion into a joint account is only a minor lapse and even the NCTE did not object to the same. This cannot be a ground for denying

recognition of BTC Course to students of the Academic Sessions 2008-09 and 2009-10.

20) Mr. Dwivedi pleaded, in the alternative, that in the event this Court is pleased to hold that the University required to seek affiliation from State, the direction to refund the fees and pay further amount of Rs.50,000/- may be set aside since it involves a huge cost of above one crore. It was stated that the University is catering to rural masses and such a direction will cause grave hardship. Moreover, the present is not a case where the course was being run without recognition of NCTE.

21) Mr. Parekh, learned senior counsel appearing for the students, while supporting the arguments raised by Mr. Dwivedi, additionally argued that the Deemed University was not required to seek affiliation under Section 16 of the Act as it was declared as deemed-to-be-University under Section 2(f) of the UGC Act as per notification dated June 27, 2008 issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education published in Gazette of India, Part-I. Therefore, it was eligible to conduct its own examinations and grant its own degrees. He also referred to Section 17 of the NCTE Act which, according to him, protects the interest of the students. On that basis, his submission was that as the students had undertaken two years course and had been declared

successful after clearing examination, it is not permissible for the State to punish the students. In equity also, nothing is attributed against the students and their career should not be affected when they have acted on the recognition given by Section 15(3)(a) to the University. Under these circumstances, students are entitled for recognition of their BTC certificate in law. Mr. Parekh also submitted that insofar as students are concerned, in any case, they are entitled to the relief because of subsequent development, namely, UP Gazette No. 210/79-5-2018-105-2014 dated February 08, 2018, the substituted Rule No. 8 *inter alia* provides as under:

“...two year Diploma in Elementary Education (by whatever name known) in accordance with National Council of Teacher Education (Recognition, Norms and Procedure), Regulations or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in Primary Education...”

- 22) Learned counsel appearing for the State of Uttar Pradesh refuted the aforesaid submissions of the Deemed University as well as students. He drew the attention of the Court to notification dated June 27, 2008 vide which University was granted status of ‘deemed-to-be-university’ under Section 3 of the UGC Act for a period of three years with effect from the date on which the college is deaffiliated from its affiliating university, namely, Kanpur University. He also pointed out that it was subject to the condition that the status conferred would be reviewed by UGC with the help of expert committee before the expiry of three years

period. Further contention was that:

“The status shall be confirmed only on the basis of the inspection and assessment report of UGC’s Expert Review Committee and subjected to nullification of its present short coming as pointed out by the Expert Committee.”

- 23) He also pointed out that copy of this notification was forwarded to various authorities including President, Nehru Gram Bharati. While making endorsement to the President, Nehru Gram Bharati, it was mentioned that the notification would be further subject to conditions which were specifically mentioned therein. As many as 14 conditions were stipulated. Conditions (v), (vi) and (vii) which are relevant for the purpose of this case is reproduced below:

“(v) The academic programmes being offered or to be offered by Nehru Gram Bharati will conform to the norms and standards prescribed by the relevant Statutory Councils such as the UGC, AICTE etc. Nehru Gram Bharati shall not offer/award as the case may be any degrees that are not specified by the UGC. Nehru Gram Bharati shall also ensure that the nomenclatures of the degrees, etc. to be awarded by it are specified by the UGC under Section 22 of the UGC Act, 1956.

(vi) Nehru Gram Bharati shall not start new academic courses without obtaining prior approval of Ministry of Health and Family Welfare and/or the concerned Statutory Councils such as MCI, AICTE etc. as the case may be.

(vii) Nehru Gram Bharati, as a deemed-to-be-university shall award degrees in respect of the courses run by the institution mentioned in para 4 of this notification only to those students who are admitted subsequent to the date of this notification. Accordingly, it shall make admission and enrolment of students to the academic courses of the said college under it (i.e. under Nehru Gram Bharati only with effect from the ensuing academic year (i.e. from 2008-2009).”

- 24) From the aforesaid conditions, the argument of the learned

counsel was that the Deemed University was specifically required to conform to the norms and standards prescribed by relevant statutory councils. It was also categorically mentioned that the Deemed University shall not offer/award any degrees that are not specified by the UGC. Moreover, it was to ensure that the nomenclature of the degrees etc. to be awarded by it are specified by the UGC under Section 22 of the UGC Act. Based on the aforesaid conditions specified in the notifications, argument of the learned counsel was that the Deemed University failed to fulfill those conditions which has been recorded by the High Court as well. He submitted that the judgment of the High Court is correct as without the fulfillment of these conditions, it was not open to the Deemed University to start such a course and confer the degrees. Learned counsel referred to the judgment in the case of ***Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro & Ors.***⁵.

- 25) Taking the aforesaid argument further, he submitted that the Deemed University has itself stated in the writ petition filed before the High Court that BTC Course is a Teacher Training Programme for primary level school and NCTE grants the recognition to the Teacher Training Programme. The right to formulate the guidelines/standards with reference to courses run in the teacher education training

institutions, such as the procedure for admission of the students in such institutions, minimum qualifications for the admission, period of the Training Programme and the determination of the course, is done by the NCTE. After the recognition is obtained from NCTE, Section 14(6) of the NCTE Act stipulates that every examining body, on receipt of the order under sub-section (4) thereof, shall grant affiliation to the institution where recognition has been granted. Further, the appendix 1 to 13 about the norms and standards of different Teacher Training Programmes has been mentioned in para 9 of the notification dated August 31, 2009 of NCTE. Appendix 2 is related to the course of D.El.Ed. in the aforesaid and the provision has been made in Point 1 of Appendix 2:

“(1) The aim of elementary education is to fulfill the basic learning needs of all children in an inclusive school environment bridging social and gender gaps with the active participation of the community. The program aims at preparing teachers for elementary stage of education that is Classes 1 to VII/VIII.

(2) The elementary teacher education programme carries different nomenclatures like BTC Diploma in Education, TTC and so on. Both the duration of training and entry qualification of the course are same, hence, nomenclature of the course shall be same (D.El.Ed.) across all states. The copy of Appendix 2 is marked and annexed herewith as Annexure CA-06.”

- 26) He also sought sustenance from the following provision that has been made about the admission in Point 3(3) of Appendix – 2 mentioned above:

“...Admissions shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/UT Administration.”

27) The argument on the basis of the aforesaid provision was that the admission had to be made not only on merits but ‘as per the policy of the State Government/UT Administration’. Here, according to learned counsel, the Deemed University faltered and, therefore, cannot seek any benefit. The counsel for the NCTE supported the aforesaid submissions put forth by the learned counsel for the State.

28) From the aforesaid arguments of the learned counsel for the appellants as well as Deemed University, it becomes clear that the entire case primarily rests upon the submission that after it became Deemed University by virtue of notification dated June 27, 2008 issued by UGC under Section 3 of the UGC Act, Deemed University had right to hold examinations on its own as it became the ‘examining body’ for BTC Course. However, as noticed above, notification dated June 27, 2008 granting status of Deemed University was subject to certain conditions. Section 22 of UGC Act gives right upon such Deemed University to confer degrees. However, sub-section (3) thereof defines the meaning of degree under that provision which reads as under:

“(3) For the purposes of this section, ‘degree’ means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.”

29) It is clear that the right which was given to the Deemed University to confer degrees pertain to those degrees which are specified by the UGC in the Official Gazette. Admittedly, BTC is not one of the degrees mentioned therein. The reason is obvious. Insofar as BTC is concerned, it is a Teachers Training Course which was regulated entirely and exclusively by NCTE Act and the Regulations framed therein. First thing which follows, therefore, is that mere conferment of Deemed University status did not entitle this University to give BTC degrees to its students. Having regard to the same, the judgments cited by Mr. Dwivedi will have no application to the present case.

30) This brings us to the provisions of NCTE Act and Regulations therein. A University was granted permission by the NCTE to start two years BTC Course vide letter dated August 16, 2005. However, this was subject to fulfillment of eight conditions mentioned therein. These conditions are summarised by the High Court, in the impugned judgment, which reads as under:

“Condition 'a' required appointment of the faculty members and staff duly qualified as per the norms of NCTE/State Government/SCERT to be completed before the commencement of the course. It is not in dispute that at the relevant time SCERT was the examining body for the BTC course. Therefore, it was but necessary for the Post Graduate Degree College to have appointed qualified teachers and staff as per the SCERT norms read with NCTE norms.

Under clause 'b' countersigned statement of faculty members from the Director, SCERT was required to be submitted before the commencement of the academic session.

Under clause 'c' the institution had to agree to adhere to all other regulations and guidelines as framed by NCTE from time to time.

Under clause 'd' the institution had to within one month of the receipt of Recognition order, convert the Endowment Fund account into a Joint Account in the form of FDR for a period of not less than 60 months (five years) in a Nationalized Bank only to be operated along with an official of the Regional Committee.

Under clause 'e' the Reserve Fund for an amount equalant to three months salary of the Teachers & Staff had to be created within one month from the date of issuance of the letter and maintained in the form of FDR in favour of the management/institution, for a period not less than sixty months (five years) in a Nationalized Bank.

Under clause 'f' prior permission of the competent authority for conducting the entrance exam and approval of the curriculum for the course had to be obtained.

Under clause 'g' it is specified that in case the institution starts the training programme without prior permission of the competent authority/examining body regarding the curriculum they have adopted and conducts examination for award of Diploma/certificate the recognition of such institution shall be withdrawn.

Under clause 'h' it was specified that non-compliance of the above mentioned conditions shall cause action under section 17(1) of the NCTE Act, 1993.”

- 31) The High Court has concluded that many of the aforesaid conditions were not fulfilled by the Deemed University which position could not be disputed even before us inasmuch as non-compliance was admitted in the supplementary affidavit filed before the High Court. Discussion in the impugned judgment in this behalf reads as under:

“Paragraph 4 contemplated that recognition is subject to fulfillment of all such other requirements as may be prescribed by other regulatory bodies like SCERT/State Government etc. The institution was obliged to submit a Self-Appraisal Report at the end of each academic year along with a copy of the approval of affiliating body/State Directorate of Education. It was again reiterated that any

violation of the above mentioned conditions or of the NCTE Act would result in withdrawal of the recognition under the provisions of NCTE Act.

Such non-compliance of the statutory conditions is more or less admitted in paragraph 5 to 9 of the supplementary affidavit filed by the Deemed University dated 5.10.2016. It is stated that under the policy decision of the State of U.P., private colleges were not given recognition for running of BTC course despite there being permission by the NCTE. The issue in that regard came to be settled under the judgment of the Division Bench of this Court dated 31.07.2009 wherein a direction was issued requiring the State Government to formulate a policy and not to create any impediment in running of BTC course by private institutions also who fulfill the norms prescribed by NCTE.

It is needless to emphasize that under the same Division Bench judgment, it has clarified that mere grant of permission by NCTE does not amount to automatic affiliation for running the BTC course, until and unless the institution fulfills the norms which are prescribed by the NCTE.

From paragraph 9 of the short counter affidavit of Deemed University, it is admitted that the State Government in terms of the Division Bench judgment of this court took a policy decision to grant recognition/affiliation to private institutions also for imparting training of BTC course under Government Order dated 15.01.2010.

What logically follows is that the question of any recognition being granted to a private institution up to 15.01.2010 for the BTC course in the State of U.P. does not arise.

It is further admitted by the Deemed University in paragraph 20 of the same affidavit that during the transition period i.e. between 2005 to 2008, formalities as required for recognition from the examining body had not been completed and now BTC course is being run as per the norms of NCTE. In paragraph 21 of the same affidavit, it is admitted that teachers were duly appointed in 2010 and onwards and entrance examination of the students was conducted after making advertisement in the newspaper."

- 32) Mr. Dwivedi has tried to argue that insofar as this University is concerned, Regulations, 2002 applied and not Regulations, 2009. He has submitted that Regulation 6 of Regulations, 2002 contemplated an NOC from the State Government at a pre-condition stage and

sub-clause (x) of this regulation dispense with the requirement of NOC with regard to institution already recognised by NCTE for running a B.Ed. Course. This argument, according to us, is totally extraneous. The case of the respondents is not about non-fulfillment of conditions contained in Regulations, 2009 or Regulations, 2005. As noticed above, the gravamen of the charge is that the very conditions which were laid down by the NCTE in giving the recognition have not been fulfilled.

33) Conscious of this fact, attempt was also made by Mr. Dwivedi to project that the findings of the High Court about the non-compliance with the conditions contained in the recognition letter issued by NCTE is an erroneous finding. We have already held above that merely because the college was conferred the status of Deemed University, these conditions did not cease to apply as BTC is not one of the degrees mentioned in the degrees specified by the UGC in the Official Gazette and that insofar as BTC is concerned, it would still be governed by the NCTE Act and regulations. It would be pertinent to mention here that the Deemed University has later on fulfilled the conditions and got recognition from NCTE in respect of BTC Course itself but it has happened only from the year 2012 onwards.

34) It hardly needs to be re-emphasised that insofar as issue of non-fulfillment of conditions is concerned, the High Court has rightly

pointed out that it is more or less stands admitted by the Deemed University in its supplementary affidavit dated October 5, 2016.

- 35) We also do not agree with the contention of Mr. Dwivedi that since the policy of fulfilling the conditions was set aside by the single Judge of the High Court vide judgment dated May 8, 2007 and this decision was affirmed by the Division Bench on July 31, 2009, it no more remained an obligation upon Deemed University to fulfill those conditions. On this very aspect, the High Court in the impugned judgment had rightly pointed out that in the aforesaid judgment dated July 31, 2009 rendered by the Division Bench of the High Court, a direction was issued requiring the State Government to formulate a policy and not to create any impediment of running a BTC Course by private institutions also, who fulfill the norms prescribed by NCTE. Thus, fulfillment of norms prescribed by NCTE was necessary. The impugned judgment also points out that the Division Bench in the aforesaid judgment dated July 31, 2009 has clarified that mere grant of permission by NCTE does not amount to automatic affiliation for running the BTC Course, until and unless the institution fulfills the norms which are prescribed by the NCTE. This Deemed University had also admitted in its counter affidavit filed before the High Court that the State Government, in terms of the Division Bench judgment dated July 31, 2009, took a policy decision to grant recognition/affiliations to private institutions also for imparting

training of BTC Course under Government order dated January 15, 2010. As a corollary, it follows that there was no question of granting recognition to the private institutions upto January 15, 2010 for BTC Course in the State of Uttar Pradesh. As this was the legal position prevailing, coupled with the fact that the Deemed University approached the NCTE/SCERT for recognition of BTC Course and is given the said recognition only from the year 2012 onwards, the admission of students in BTC Course for the Academic Sessions i.e. 2008-09 and 2009-10 was not permissible and such degrees cannot be treated as validly recognised. It may be harsh for the students who took admission in the Academic Sessions 2008-09 and 2009-10. However, the Court cannot countenance the position where the unrecognised course is given imprimatur of validity only on the ground of equity. Because of this reason itself, the High Court has awarded compensation to the students. Therefore, we find it difficult to agree to the submissions advanced by Mr. Parekh on behalf of the students as well.

- 36) In view of the aforesaid discussion, it is not possible to accede to the request of the Deemed University to waive the order of compensation made by the High Court. As a result, all these appeals are bereft of any merit and are accordingly dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
OCTOBER 24, 2018.