

ST. JOHNS TEACHERS TRAINING INSTITUTE

A

v.

REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHERS
EDUCATION AND ANR.

FEBRUARY 7, 2003

B

[S. RAJENDRA BABU, D.M. DHARMADHIKARI AND
G.P. MATHUR, JJ.]

*National Council for Teacher Education Act, 1993—Section 14(3)—
National Council for Teacher Education (application for recognition, the
manner for submission, determination of conditions for recognition of
institutions and permission to start new course or training) Regulation, 1995—
Regulations 5(e) and (f)—Requiring institution intending to offer course in
teacher education to submit application for recognition with No Objection
Certificate from State Government or Union Territory—Validity of—Held: D
Regulations are valid and intra vires the provisions of 1993 Act since the
main purpose of obtaining NOC is to get material and data on which Regional
Committee has to be satisfied before granting recognition.*

The question which arose for consideration in these matters was
whether Regulations 5(e) and (f) of the National Council for Teacher
Education (application for recognition, the manner for submission,
determination of conditions for recognition of institutions and permission
to start new course or training) Regulation, 1995 requiring submission of
application for recognition with No Objection Certificate from State/Union
Territory in which the institute is located are ultra vires the provisions of
National Council for Teacher Education Act, 1993. E F

Appellants contended that Section 14 of the Act lays down that every
institution intending to offer a course or training in teacher education shall
make an application to the Regional Committee which may pass an order
granting recognition to such institution if it is satisfied and this shows that
the entire exercise has to be done by the Regional Committee itself, G
however, Regulations 5(e) and (f) which require obtaining of a NOC from
the State Government also confer jurisdiction on the State Government
for grant of recognition, which is wholly outside the purview of the Act;
that the 1993 Act does not contemplate any role for the State Government

H

A but by insisting for obtaining a NOC from the State or Union Territory, Regulations have created another body to consider the application moved by an institution for grant of recognition which is not at all contemplated by the Act; that in view of Section 14(3) of the Act, the satisfaction is to be that of the Regional Committee alone and no other authority or body, much less the State Government, can have any say in the matter which

B may have a bearing on the satisfaction of the Regional Committee; that under the guise of framing the Regulations, the power of recognition itself has been given to the State Government as in the event a NOC is not granted by the State Government, the application made to the Regional Committee is treated as incomplete and is not even considered on merits;

C that the power is an arbitrary or unchanelled power; that the impugned Regulations have the effect of conferring the power of consideration of the application for the grant of recognition upon the State Government, as in the event of rejection of NOC the application is not even registered by the Council; that in some cases the State Government for a very long period has not taken any decision either to grant a NOC or declined to grant the same and thereby the right to establish an institution for teachers' training or start a course was completely defeated; and that no guidelines have been given in the impugned Regulations to indicate the circumstances under which a NOC could be granted and, therefore, for all these reasons the impugned Regulations are wholly ultra vires and

E invalid.

Respondent-Council contended that it is not only desirable but also essential for an institution to obtain a NOC from the concerned State Government or Union Territory where it is situate; that there are only four Regional Committees in the whole country and it is physically not possible for them to obtain the relevant data which has to be appraised and considered before grant of recognition and this exercise can only be performed by the concerned State Government; that the main purpose of obtaining a NOC from the State Government is to get the material and data on which the Regional Committee has to be satisfied before taking a decision on the question of grant of recognition; that there is no abdication of responsibility by the Regional Committee which alone shall pass an order either granting or refusing recognition to an institution; that no arbitrary power has been conferred on the State Government as the Council has issued guidelines for establishment of Teachers Training Institutes and introduction of new programmes and the State Governments

H are required to consider the matter in the light of the aforesaid guidelines

while giving a NOC, therefore, the impugned Regulations are perfectly valid and *intra vires*. A

Dismissing the appeals and writ petitions, the Court

HELD: 1.1. The preamble of the National Council for Teacher Education Act, 1993 shows the main object for enacting the Act is to achieve planned and coordinated development of the teacher education system and also the regulation and proper maintenance of norms and standards therein. Section 14(3) of the Act casts a duty upon the Regional Committee to be satisfied with regard to large number of matters before passing an order granting recognition to an institution which has moved an application for the said purpose. There are only four Regional Committees in the whole country and each Regional Committee has to deal with applications for grant of recognition from several States. Therefore, it will not only be difficult but almost impossible for the Regional Committee to itself obtain complete particulars and details of financial resources, accommodation, library, qualified staff, laboratory and other conditions of the institution which has moved an application for grant of recognition. The institution may be located in the interior of the district in a far away State. The Regional Committee has to necessarily depend upon some other agency or body for obtaining necessary information. Therefore the assistance of the State Government or Union Territory in which that institution is located is taken by the Regional Committee and this is achieved by making a provision in Regulations 5(e) and (f) that the application made by institution for grant of recognition has to be accompanied with a NOC from the concerned State or Union Territory. Thus the impugned Regulations facilitate the job of the Regional Committees in discharging their responsibilities. [988-D, F-H; 989-A-B] B C D E F

1.2. The Regulations do not contravene any one of the conditions inasmuch as Section 32 of the Act empowers the Council to make Regulations generally to carry out the provisions of the Act and thus they come within the scope and purview of the power of the authority framing the Regulations. The Regulations also conform to the provisions of the Act and are not in excess of the authority of the Council as no essential legislative function has been delegated to the State Government. [993-F, G] G

1.3. Council has issued guidelines to the State Government for the issuance of a NOC. The submission that there are no guidelines and consequently the State Governments may refuse to grant a NOC on wholly H

- A** irrelevant considerations is without substance. A perusal of these guidelines would show that while considering an application for grant of a NOC the State Government or the Union Territory has to confine itself to the various matters enumerated therein. These guidelines pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. Therefore the submission that the power conferred on the State Government or Union Territory, while considering an application for grant of a NOC, is an arbitrary or unchanneled power cannot be accepted. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of a NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of a NOC, it will be open to the institution concerned to challenge the same in accordance with law. But that by itself, cannot be a ground to hold that the Regulations which require a NOC from the State Government or the Union Territory are *ultra vires* or invalid. [1989-B-C; 1991-A-G]

- 1.4.** The submission that the impugned Regulations have the effect of conferring the power of consideration of the application for the grant of recognition under Section 14 of the Act upon the State Government, as in the event of rejection of a NOC the application is not even registered by the Council no longer survives on account of a subsequent development that the Council has made fresh Regulations which are known as the NCTE (Form of application for recognition, the time 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. Regulation 6(ii) shows that even if the NOC is not granted by the concerned State Government or Union Territory and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of a NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by

the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under sub-section (3) of Section 14 of the Act. Therefore, no exception can be taken to such a course of action.

[1991-H; 992-A, B; 993-F, G]

1.5. There can be no manner of doubt that the State Government must take a decision on the application moved by an institution for grant of a NOC within a reasonable time. If the State Government does not take a decision within a reasonable time it will obviously defeat the right of an institution to have its application considered by the Regional Committee. It will, therefore, be proper that the Council frames appropriate Regulations fixing the time limit within which a decision should be taken by the State Government on the application moved by an institution for grant of a NOC. However, it is directed that the State Governments/Union Territories shall pass final order on the applications which are pending before it for grant of a NOC within four months of the presentation of certified copy of this order, failing which it will be deemed that a NOC has been granted. [1994-B-E]

Kunj Behari Lal Butail and Ors. v. State of H.P. and Ors., [2000] 3 SCC 40, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1068 of 2003.

From the Judgment and Order dated 9.10.2000 of the High Court of Karnataka in W.P. No. 31435/99.

WITH

Civil Appeal Nos. 1069-1097/2003 and 1098-1109/2003, W.P. © Nos. 522, 553, 554, 555, 556, 557, 558, 559, 562, 566, 591, 592, 593, 594, 595, 596, 598, 599, 602, 613, 614, 615/2002.

K. Subramanian, L. Nageshwar Rao, Mahesh Agarwal, Rishi Agarwal, Rabu Manohar, E.C. Agrawala, K.V. Viswanathan, Kunwar Ajit Mohan Singh, K.V. Venkataraman, P. Chandrasekaran, Arvind Nayar, Ms. Promila, T. Raja, Ms. Kiran Suri, B. Partha Sarthy, S. Nanda Kumar, V. Vijayan, Yogesh

A Khanna and Rakesh K. Sharma, for the Appellants.

S. Balakrishna, M.N. Krishnamani, Mrs. Revathy Raghavan, T.V. Ratnam, Radha Shyam Jena, Ms. Hemantika Wahi, Ms. Anu Dubey, Ms. Rachna Srivastava, Ms. A. Subhashini, Mrs. V.D. Khanna, S.K. Shandilya, V.G. Pragasam, R.K. Singh, K.V. Mohan, Ms. Deepa Rai, Ashok Mathur, **B** P.N. Ramalingam, Krishna Sarma, Ms. Asha G. Nair and V.K. Sidatharan, for M/s. Corporate law Group, Gopal Singh, A. Mariarputham, Ms. Aruna Mathur, Satinder S. Gulati, Sanjay R. Hegde and Satya Mitra for the Respondents.

C The Judgment of the Court was delivered by

G.P. MATHUR, J. Leave granted.

The question which requires consideration in this bunch of special leave petitions and writ petitions is whether Regulations 5 (e) and (f) framed by National Council for Teachers Education (hereinafter referred to as 'the Council') are ultra vires the provisions of National Council for Teachers Education Act, 1993 (hereinafter referred to as 'the Act'). **D**

We will briefly refer to the facts of SLP No. 2421 of 2001 which is the leading case. The appellant claims to be a Christian Minority Teacher Training Institute and is run and managed by the Tamilnadu Educational Trust which is engaged in the field of education since 1989. The petitioner made an application to the Regional Director, National Council for Teachers Education (Southern Committee) Bangalore, seeking permission for starting a course in Elementary Education Training in the year 1999-2000. The respondents sent a letter dated August 18, 1999 stating that unless the State Government issued a "No Objection Certificate" (hereinafter referred as 'NOC') the application of the petitioner shall be treated as incomplete and shall not be considered. The petitioner then filed a writ petition before the High Court of Karnataka praying that a writ of certiorari be issued for quashing the order dated August 18, 1999 issued by Regional Committee and further that Regulations 5(e) and (f) in so far as they direct obtaining of a NOC from the State Government be struck down as unconstitutional and a direction be issued to the Regional Director to consider the application of the appellant without insisting upon a NOC from the State Government. A Single Judge of the Karnataka High Court had held that Regulations 5 (e) and (f) were ultra vires in another matter and against the said judgment the Council had preferred **E** an appeal before the Division Bench of the High Court. The writ petition **F** **G** **H**

preferred by the appellant was heard along with the aforesaid appeal. After hearing the parties the Division Bench allowed the appeal filed by the Council and set aside the order of the learned Single Judge by which the Regulations were held to be ultra vires and invalid. Consequently, the writ petition filed by the appellant was also dismissed. The connected writ petitions have been filed under Article 32 of the Constitution praying that the Regulations 5(e) and (f) be declared as unconstitutional and invalid and a direction be issued to the respondents to consider the application moved by the petitioners for grant of recognition for starting a teacher training course without insisting upon a NOC from the State Government as provided in the aforesaid Regulations.

Shri K. Subramanian, learned Senior Counsel appearing for the appellants, has submitted that Section 14 of the Act lays down that every institution intending to offer a course or training in teacher education shall make an application to the Regional Committee concerned and the Regional Committee may pass an order granting recognition to such institution if it is satisfied that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution and this shows that the entire exercise has to be done by the Regional Committee itself. However, Regulations 5 (e) and (f) which require obtaining of a NOC from the State Government also confer jurisdiction on the State Government in the matter of grant of recognition, which is wholly outside the purview of the Act. It is urged that the Act does not contemplate any role for the State Government but by insisting for obtaining a NOC from the State Government or Union Territory in which the institution is located, the Regulations have created another body to consider the application moved by an institution for grant of recognition which is not at all contemplated by the Act. Learned Counsel has submitted that in view of the express language used in Sub-section (3) of Section 14 of the Act, the satisfaction is to be that of the Regional Committee alone and no other authority or body, much less the State Government, can have any say in the matter which may have a bearing on the satisfaction of the Regional Committee. It is contended that under the guise of framing the Regulations, the power of recognition itself has been given to the State Government as in the event a NOC is not granted by the State Government, the application made to the Regional Committee is treated as incomplete and is not even considered on merits. Lastly it has been urged that no guidelines have been given in the impugned Regulations to indicate the circumstances under which a NOC could be granted and therefore the impugned Regulations

A are wholly ultra vires and invalid. In support of his submission learned counsel has placed strong reliance on a decision of this Court in *Kunj Behari Lal Butail and Ors. v. State of H.P. and Ors.*, [2000] 3 SCC 40.

B Shri MN Krishnamani, learned Senior Counsel appearing for the Council has submitted that having regard to the objects for which the Act has been enacted and the responsibility cast upon the Regional Committee under Sub-section (3) of Section 14 of the Act to be satisfied about the matters enumerated therein, namely, that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills other conditions required for proper functioning of the institution for a course or training in teacher education, it is not only desirable but also essential for an institution to obtain a NOC from the concerned State Government or Union Territory where it is situate. Learned counsel has submitted that there are only four Regional Committees in the whole country and it is physically not possible for them to obtain the relevant data which has to be appraised and considered before grant of recognition and this exercise can only be performed
C by the concerned State Government which is in a far better position to do so. The main purpose of obtaining a NOC from the State Government, it is contended, is to get the material and data on which the Regional Committee has to be satisfied before taking a decision on the question of grant of recognition under Sub-section (3) of Section 14 of the Act and this is more
D in the nature of an input. Learned counsel has also submitted that no arbitrary power has been conferred on the State Government as the Council has issued guidelines for establishment of Teachers Training Institutes and introduction of new programmes and the State Governments are required to consider the matter in the light of the aforesaid guidelines while giving a NOC. It has thus been urged that as the function to be performed by the State Government is
E more in the nature of collection of relevant facts and material, there is no abdication of responsibility by the Regional Committee which alone shall pass an order either granting or refusing recognition to an institution and therefore the impugned Regulations are perfectly valid and *intra vires*.

G In the counter-affidavit filed on behalf of the Council it is averred that for long the need for ensuring certain standards and excellence of education in teachers' training institutes, and establishing institutes with the high objectives of training teachers and educationists who have upon them the task of moulding the future of the nation was being felt. The life-less stereotyped and dull teaching methods had to be replaced with a system that
H infuses dynamism and vibrance in the methods of imparting education. To

achieve this it is necessary that only such institutes which are equipped with all the necessary inputs to train and produce teachers who are capable of instilling aesthetic excellence in the life of their pupil be established and permitted to run the teachers' training course. It was towards this end that the National Council for Teacher Education came to be established under the Act in the year 1993. In para 6 it is averred that the requirement of a NOC from the State Government was one of the issues that was deliberated upon by the members of the Council, including the experts from the field of education and academics. The State Governments have been assigned an important role in the task of development and improvement of teacher education and also in the matter for grant of recognition and permission. The States are also vitally interested in education and especially the professional courses. It is further averred that it is only the States which could correctly assess and know the extent of requirement of trained manpower and the supply of trained teachers keeping in view retirements, change of occupation etc. The State Government would also keep a track of number of trained teachers registered with the Employment Exchanges awaiting employment and the possibility of their deployment in the near future. It is for this reason that the Council insists on a NOC from the State Government, both when a fresh institution wants to start teacher training courses or when the recognised ones want to increase the intake of the students in the course. The States having trained teachers more than they are able to absorb may not want to be further burdened while those having shortage of trained teachers may encourage establishment of more institutions. Therefore, the input from the State Government by way of a NOC is vital for enabling the Council to discharge its functions of regulating the standards of teacher education since State Governments are the principal stakeholders in the field of teacher education. Without the involvement of the State Governments and availability of this vital input from the State Governments the Council would be greatly handicapped in discharging its functions. In para 9 it is averred that surplus of trained teachers without there being any possibility of absorbing them as teachers would lead to unnecessary drain on the state economy. In such a situation it would be wholly unjust to increase the burden on the State Government by training and throwing in market more trained teachers without there being any adequate avenues for their employment. The training of teachers cost both the State Governments and the trainees huge amount of money by way of fees and grants without there being any adequate scope for utilising their skills to compensate the costs involved in their training. The State Government is vitally interested in the development of its education system and therefore it must be given a decisive role and a voice in the overall development of

A

B

C

D

E

F

G

H

A teacher education system in the country. It is only to prevent the undesirable situation wherein the Government is faced with the problem of having surplus trained teachers with no or little chance of their getting employment in the near future that the requirement of a NOC from the State Government has been incorporated. It is further averred that it is an enabling provision under the Act and does not pose any impediment or any disability in the effective discharge of the statutory responsibilities by the Council as the State Government has only been given the responsibility of determining the extent to which trained manpower is required in a particular State.

Before examining the contentions raised by the learned counsel for the parties, it will be convenient to briefly notice the relevant provisions of the Act. Section 2(c) defines the "Council" and it means the National Council for Teachers Education established under sub-section (1) of Section 3. Section 2(e) defines "institution", which means an institution which offers courses or training in teacher education. Section 2(j) defines "Regional Committee" which means a Committee established under Section 20. Section 2(k) defines "regulations" which means regulations made under Section 32. Section 2(l) defines "teacher education" which means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools and includes non-formal education, part-time education, adult education and correspondence education. Section 3 provides for establishment by the Central Government, of a Council, called the National Council for Teachers Education and Section 12 provides for the functions of the Council. Section 14 lays down that every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under the Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by Regulations. Section 15 contains a similar provision where under any recognised institution intending to start any new course or training in teacher education, has to make an application seeking permission therefor to the Regional Committee concerned. Section 16 lays down that notwithstanding anything contained in any other law for the time being in force no examining body shall, on or after the appointed day, grant affiliation, whether provisional or otherwise, to any institution or hold examination, whether provisional or otherwise for a course or training conducted by a recognised institution unless the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course or training under Section 15. Section 17 gives power to Regional Committee to withdraw the recognition of such recognised

institutions if it is satisfied that some provisions of the Act or the rules or regulations or any condition subject to which recognition was granted has been contravened. Section 20 lays down that there will be four Regional Committees, namely, Eastern, Western, Northern and Southern Regional Committees. Section 31 confers power on the Central Government to make rules to carry out the provisions of the Act and sub-section (2) thereof enumerates the matters on which rules may be framed. Section 32 is important for the controversy in hand and the relevant part thereof is being reproduced below:-

“Section 32 (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a)
 - (b)
 - (c)
 - (d)
 - (e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of section 14;
 - (f) conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub-section (3) of section 14;
 - (g) the form and the manner in which an application for permission is to be made under sub-section (1) of section 15;
-”

In exercise of powers conferred by Section 32 of the Act the Council has framed Regulations known as National Council for Teachers Education (application for recognition, the manner for submission, determination of conditions for recognition of institutions and permission to start new course or training) Regulations, 1995 on December 29, 1995. Regulation 5 deals with the manner of making application and Regulation 8 deals with condition

A for recognition. Regulations 5 (e) and (f) and 8 read as under:

“(e) Every institution intending to offer a course or training in teacher education but was not functioning immediately before 17th August, 1995, shall submit application for recognition with a no objection certificate from the State or Union Territory in which the institution is located.

B

(f) Application for permission to start new course or training and/or to increase intake by recognised institutions under Regulation 4 above shall be submitted to the Regional Committee concerned with no objection certificate from the State or Union Territory in which the institution is located.

C

8. Condition for recognition

(a) Regional Committee shall satisfy itself on the basis of scrutiny and verification of facts as contained in the application for recognition and or recognition of the institution where considered necessary of any other manner deemed fit, that the institutions has adequate financial resources, accommodation, library, qualified staff, laboratory and such other conditions required for the proper functioning of the institutions for the course of training in teacher education which are being offered or intending to offer.

D

E

(b) Regional Committee shall ensure that every institution applying for recognition fulfil the conditions given in Appendix-III.”

F

The provision in the above quoted Regulations for submitting the application for recognition with a NOC from the State Government or Union Territory in which the institution is located is challenged as ultra vires and invalid.

G

A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may,

H

after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the Rule, after coming in to force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and Regulations made by reason of the specific power conferred by the Statutes to make Rules and Regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the Statute. The process of legislation by departmental Regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of Rules and Regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being over burdened and the needs of the modern day society being complex it can not possibly foresee every administrative difficulty that may arise after the Statute has begun to operate. Delegated legislation fills those needs. The Regulations made under power conferred by the Statute are supporting legislation and have the force and affect, if validly made, as the Act passed by the competent legislature. (See *Sukhdev Singh v. Bhagatram*, AIR (1975) SC 1331.

It will be useful to reproduce here a passage from Administrative Law by Wade & Forsyth (Eighth Edition 2000 at page 839) :

“Administrative legislation is traditionally looked upon as a necessary evil, an unfortunate but inevitable infringement of the separation of powers. But in reality it is no more difficult to justify it in theory than it is possible to do without it in practice. There is only a hazy borderline between legislation and administration, and the assumption that they are two fundamentally different forms of power is misleading. There are some obvious general differences. But the idea that a clean division can be made (as it can be more readily in the case of the judicial power) is a legacy from an older era of political theory. It is easy to see that legislative power is the power to lay down the law for people in general, whereas administrative power is the power to lay down the law for them, or apply the law to them, in some particular situation.....”

The question whether any particular legislation suffers from excessive

A delegation has to be decided having regard to the subject matter, the scheme, the provisions of the Statutes including its preamble and the facts and circumstances in the background of which the Statute is enacted. (See *Registrar Co-operative Societies v. K. Kanjabmu*, AIR (1980) SC 350 and *State of Nagaland v. Ratan Singh*, AIR 1967 SC 212. It is also well settled that in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the courts must adopt that construction which makes it valid and the legislation can also be read down to avoid its being declared *ultra vires*.

C The preamble of the Act is as under:-

To provide for the establishment of National Council for Teachers Education 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."

As the preamble shows the main object for enacting the Act is to achieve planned and coordinated development of the teacher education system and also the regulation and proper maintenance of norms and standards therein.

E Sub-section (3) of Section 14 casts a duty upon the Regional Committee to be satisfied with regard to large number of matters before passing an order granting recognition to an institution which has moved an application for the said purpose. The factors mentioned in sub-section (3) are that the institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education as may be laid down in the Regulations. As mentioned earlier there are only four Regional Committees in the whole country and, therefore, each Regional Committee has to deal with applications for grant of recognition from several States. It is therefore obvious that it will not only be difficult but almost impossible for the Regional Committee to itself obtain complete particulars and details of financial resources, accommodation, library, qualified staff, laboratory and other conditions of the institution which has moved an application for grant of recognition. The institution may be located in the interior of the district in a far away State. The Regional Committee cannot perform such herculean task and it has to necessarily depend upon some other agency or body for obtaining necessary information. It is for this reason

that the assistance of the State Government or Union Territory in which that institution is located is taken by the Regional Committee and this is achieved by making a provision in Regulations 5(e) and (f) that the application made by institution for grant of recognition has to be accompanied with a NOC from the concerned State or Union Territory. The impugned Regulations in fact facilitate the job of the Regional Committees in discharging their responsibilities.

The contention that there are no guidelines for the State Governments regarding grant of a NOC and consequently the State Governments may refuse to grant a NOC on wholly irrelevant considerations is without substance. It is averred in para 7 of the counter-affidavit filed by the Council that it has issued certain guidelines to the State Governments on February 2, 1996 for issuance of a NOC and a copy whereof has also been annexed. The relevant part of the guidelines is being reproduced below:-

“1. The establishment of Teacher Training Institutions by Government, private managements or any other agencies should largely be determined by assessed need for trained teachers. This need should take into consideration the supply of trained teachers from existing institutions, the requirement of such teachers in relation to enrolment projections at various stages, the attrition rates among trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and the possibility of their deployment. The States having more than the required number of trained teachers may not encourage opening of new institutions for teacher education or to increase the intake.

2. States having shortage of trained teachers may encourage establishment of new institutions for teacher education and to increase intake capacity for various levels of teacher education institutions keeping in view the requirements of teachers estimated for the next 10-15 years.

3. Preference might be given to institutions which tend to emphasize the preparation of teachers for subjects (such as Science, Mathematics, English etc.) for which trained teachers have been in short supply in relation to requirement of schools.

4. Apart from the usual courses for teacher preparation, institutions

A which propose to concern themselves with new emerging specialities (e.g. computer education, use of electronic media, guidance and counselling etc.) should receive priority. Provisions for these should however, be made only after ensuring that requisite manpower, equipment and infrastructure are available. These considerations will also be kept in view by the institution intending to provide for optional subjects to be chosen by students such as guidance and counselling special education etc.

B
C 5. With a view to ensuring supply of qualified and trained teachers for such specialities education of the disabled nonformal education, education of adults, preschool education, vocational education etc. special efforts and incentives may be provided to motivate private managements/voluntary organisations for establishment of institutions, which lay emphasis on these areas.

D 6. With a view to promoting professional commitment among prospective teachers, institutions which can ensure adequate residential facilities for the Principal and staff of the institutions as well as hostal facilities for substantial proportion of its enrolment should be encouraged.

E 7. Considering that certain areas (tribal, hilly regions etc.) have found it difficult to attain qualified and trained teachers, it would be desirable to encourage establishment of trained institutions in those areas.

F 8. Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate material and manpower resources in terms, for instance, of qualified teachers and other staff, adequate buildings and other infrastructure (laboratory, library, etc.) a reserve fund and operating funds to meet the day to day requirement of the institution, including payment of salaries, provision of equipment etc. Laboratories, teaching science methodologies and practicals should have adequate gas plants, proper fittings and regular supply of water, electricity, etc. They should also have adequate arrangements. Capabilities of the institution for filling norms prepared by NCTE may be kept in view.

G
H 9. In the establishment of an institution preference need to be given to locations which have large catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and undertake practice teaching. A training institution which

has a demonstration school where innovative and experimental approaches can be demonstrated could be given preference." A

A perusal of the guidelines would show that while considering an application for grant of a NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media, etc. and also for speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of a NOC, is an arbitrary or unchanelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of a NOC. In case the State Government does not take into consideration the relevant factors enumerated in Sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of a NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require a NOC from the State Government or the Union Territory are ultra vires or invalid. B
C
D
E
F
G

Learned counsel for the appellants has also submitted that the impugned Regulations have the effect of conferring the power of consideration of the H

A application for the grant of recognition under Section 14 of the Act upon the State Government, as in the event of rejection of a NOC the application is not even registered by the Council. This contention no longer survives on account of a subsequent development. Shri MN Krishnamani, learned senior counsel appearing for the respondents, has submitted that the Council has made fresh Regulations on November 13, 2002 which are known as the

B NCTE (Form of application for recognition, the time 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. Regulation 6 thereof reads as under:

C “Regulation 6

*Requirement of No Objection Certificate from the State Government/
U.T. Administration*

- D** (i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the institution is located.
- E** (ii) The endorsement of the State Government/UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.
- F** (iii) If the NOC issued by the State Government/UT Administration does not indicate the intake, it will be for the Regional Committee to determine the intake taking into account the infrastructural and instructional facilities available in the institution and other relevant provisions in the Norms and Standards applicable to the relevant teacher training programme.
- G** (iv) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.
- (v) The NOC will be deemed to have lapsed if the institution fails to get recognition within three years from the date of its issue.
- H** (vi) Requirement of NOC shall not apply to Government Institutions.

(vii) Requirement for NOC shall not apply to University Department for taking up innovative teacher education programme for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee.”

Regulation 6(ii) of these Regulations provides that the endorsement of the State Government/Union Territory Administration in regard to issue of NOC will be considered by the Regional Committee while taking a decision on the application for recognition. This provision shows that even if the NOC is not granted by the concerned State Government or Union Territory and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of a NOC by the State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. In view of these new Regulations the challenge raised to the validity of Regulations 5(e) and (f) has been further whittled down. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under Sub-section (3) of Section 14 of the Act. Therefore no exception can be taken to such a course of action.

In *Kunj Behari Lal Butail and Ors. v. State of H.P. and Ors.*, (supra) cited by learned counsel for the appellant, it has been held that a delegated legislation must conform to the provisions of the Statute under which it is framed and that it must also come within the scope and purview of the rule making power of the authority framing the rule and in the event either of these two conditions are not fulfilled, the rule so framed would be void. As discussed earlier, the impugned Regulations do not contravene any one of the conditions inasmuch as Section 32 of the Act clearly empowers the Council to make Regulations generally to carry out the provisions of the Act and thus they come within the scope and purview of the power of the authority framing the Regulations. The Regulations also conform to the provisions of the Act and are not in excess of the authority of the Council as no essential legislative function has been delegated to the State Government.

Learned counsel for the appellant has strongly urged that in some cases the State Government has sat over the matter for very long period without taking any decision either to grant a NOC or declining to grant the same and

- A** on account of this inaction of the State Government the application moved by the institutions before the Regional Committee was not even registered for consideration and thereby the right of the appellants to establish an institution for teachers' training or starting a course in teacher education was completely defeated. There can be no manner of doubt that the State Government must take a decision on the application moved by an institution for grant of a NOC within a reasonable time. If the State Government does not take a decision within a reasonable time it will obviously defeat the right of an institution to have its application considered by the Regional Committee. It will therefore be proper that the Council frames appropriate Regulations fixing the time limit within which a decision should be taken by the State Government on the application moved by an institution for grant of a NOC. In the present cases, we are of the opinion that till such Regulations are made the decision should be taken by the State Governments within four months, failing which it shall be deemed that the NOC has been granted.

- D** For the reasons mentioned above, we are of the opinion that the impugned Regulations are perfectly valid and *intra vires* the Act. The appeals and writ petitions are consequently dismissed. It is however directed that the State Governments/Union Territories shall pass final order on the applications which are pending before it for grant of a NOC within four months of the presentation of certified copy of this order, failing which it will be deemed that a NOC has been granted.

E

N.J.

Appeals/Petitions dismissed.