

[2011] 12 S.C.R. 941

SWAMI VIVEKANAND COLLEGE OF EDUCATION &
ORS.

v.

UNION OF INDIA & ORS.
(Civil Appeal No. 5961 of 2010)

OCTOBER 12, 2011

[R. V. RAVEENDRAN, A.K. PATNAIK AND SUDHANSU
JYOTI MUKHOPADHAYA, JJ.]

*National Council for Teacher Education (Recognition
Norms and Procedure) Regulations, 2007:*

*Regulations 8(4) and 8(5) – Educational Institutions
imparting teacher training course in B.Ed – Prior to coming
into force of Regulations of 2007, the institutions permitted by
National Council for Teacher Education (Council) additional
intake of students without seeking accreditation and Letter
Grade B from National Assessment and Accreditation
Council (NAAC) – Regulations 8(4) and 8(5) of Regulations
2007, requiring the institutions to be accredited with NAAC
with a Letter Grade B – Challenged – Held: In view of ss.12(k),
15 and 32(2)(h) of NCTE Act, the ‘Council’ is empowered to
frame Regulations laying down ‘conditions’ for proper conduct
of a new course or training under clause (a) of sub-s. (3) of
s.15 – Under Regulation 8(4), the ‘Council’ having prescribed
a ‘condition’ of accreditation and Letter Grade B by NAAC for
recognition, it can not be held to be sub-delegation of power
– National Council for Teacher Education Act, 1993 – ss.
12(k), 15, and 32(2)(h) – Administrative Law – Delegation /
sub-delegation of power– National Council for Teacher
Education (Recognition Norms and Procedure)
Regulations, 2009–Regulations 8(4) and 8(5).*

*Regulation 8(5) – Institution granted additional intake,
required to be accredited with NAAC with a Letter Grade B –*

A Held: “The norms and standards” were prescribed under
 Regulation 8 of Regulation 2002 and were notified by NCTE
 Regulations 2005 and retained in the NCTE Regulations,
 2005 – Thus, Regulations 8(3) and 8(4) remained in force
 even after amended Regulations 2006, but with a rider that
 B in case new norms are published for any such teacher
 training course after notification of Regulations of 2005, the
 conditions prescribed in Regulations 8(3) and 8(4) of the
 Regulations, 2005 shall not be applicable for such course –
 Subsequently, when Regulations 2007 were enacted, the
 C Regulations 8(3) and 8(4) of Regulations 2005 were retained
 – In the circumstances, by Regulation 8(5) it was clarified that
 if any institution has been granted additional intake in B.Ed.
 and B.P.Ed. courses after enactment of Regulations 2005 i.e.
 13.1.2006, such institution is required to be accredited with
 D NAAC with a Letter Grade-B – Regulations 8(3) and 8(4) of
 Regulations 2005 having been retained, it was always open
 to NCTE to remind the institutions that they were required to
 follow Regulations 8(3) and 8(4), if were allowed additional
 intake after 13.1.2006 – Therefore, Regulation 8(5) cannot be
 E held to be retrospective – Interpretation of Statutes –
 Retrospective operation of Regulations.

The Appellants-institutions recognised by the
 National Council for Teacher Education (Council) and
 imparting teacher training course (B.Ed.), were permitted
 F by the Council additional intake of students for the
 course without seeking accreditation and Letter Grade B
 from National Assessment and Accreditation Council
 (NAAC). The ‘Council’ framed “National Council for
 Teacher Education (Recognition, Norms and Procedure)
 G Regulations, 2007 requiring the institutions to be
 accredited with NAAC with a Letter Grade B. The
 institutions which had been granted additional intake
 were also required to get themselves accredited with the
 NAAC with a Letter Grade-B before 1.4. 2010. The
 H appellants challenged the Regulations of 2007 before the

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High Court, which declined to interfere. Aggrieved, the institutions filed the appeal. Meanwhile, the 'Council' framed the "National Council for Teacher Education (Recognition Norm and Procedure) Regulations, 2009 containing identical Regulations 8(4) and 8(5) so far as B.Ed. course was concerned. The Court permitted the appellants to challenge also the validity of Regulations 8(4) and 8(5) of Regulations of 2009.

It was contended for the appellants that the Council could not sub-delegate its functions and duties conferred upon it by the NCTE Act, 1993 to an outside institution, namely, NAAC, in absence of express authorisation by the Act and, as such, Regulation 8(4) was ultra vires the NCTE Act, 1993; and that since the Act did not authorise the Council to frame the Regulations retrospectively, Regulation 8(5) being ex-facie retrospective was violative of Article 19(1)(g) of the Constitution of India.

Dismissing the Appeal, the Court

HELD: 1.1 A delegate of the legislature is conferred with the power to make rules and regulations to carry out the purposes of the legislation and such rules and regulations are called delegated legislation or subordinate legislation. [para 26] [958-H; 959-A]

Hamdard Dawakhana and Another v. Union of India and Others 1960 SCR 671 = AIR 1960 SC 554; *Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and Others* 1985 (2) SCR 287 = (1985) 1 SCC 641; *Clariant International Ltd. and Another v. Securities & Exchange Board of India* 2004 (3) Suppl. SCR 843 = (2004) 8 SCC 524; *Vasu Dev Singh and Others v. Union of India and others.* 2006 (8) Suppl. SCR 535 = (2006) 12 SCC 753 – referred to.

1.2 If Regulation 8(4) is in broad conformity with the

A objects and policy of the NCTE Act, 1993, and is not in conflict with any statutory or constitutional provisions, the regulation made by the delegate, namely, the Council, will have to be held to be valid. [para 30] [960-B]

B 1.3 The NCTE Act, 1993 was enacted with the objects: (i) to achieve planned and co-ordinated development of the teacher education system throughout the country and (ii) for laying down the proper maintenance of norms and standards in the teacher education system. The 'Council' has been empowered by C the parent Act to regulate development of teacher education, proper maintenance of norms and the standards. A combined reading of s. 12(k), s.15 and D s.32(2)(h), makes it clear that the 'Council' is empowered to frame Regulations laying down 'conditions' for proper conduct of a new course or training under clause (a) of sub-s. (3) of s.15. [para 31- 33] [960-D-H; 961-A]

E 1.4 What will be the 'condition' to be laid down for starting a new course or training or for increase in the intake of students can be determined only by the 'Council' in view of clause (h) of sub-s. (2) of s. 32. It can prescribe such 'condition', as it deems fit and proper with only rider that such 'condition' should not be against any of the provisions of the NCTE Act, 1993 or Rules framed F thereunder. [para 34] [961-B]

G 1.5 Under s. 12(k) the 'Council' is required to evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions. In fulfilment of the provisions u/s 12(k) of H NCTE Act, 1993 and for quality assurance of Teacher Education Institutions, the NAAC entered into a "Memorandum of Understanding" with the 'Council' for executing the process of assessment and accreditation of all Teacher Education Institutions coming under the provisions of NCTE Act, 1993. NAAC is an autonomous

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body established by the University Grants Commission (UGC) of India to assess and accredit institutions of higher education in the country. It is an outcome of the recommendations of the National Policy in Education (1986) that laid special emphasis on upholding the quality of higher education in India. The efforts of 'Council' and NAAC are to ensure and assure the quality of Teacher Education Institutions in the country complementary to each other. Combining the teacher education and quality assurance, the NAAC developed the methodology for assessment and accreditation of Teacher Education Institutions as appears from the "Manual for Self-appraisal of Teacher Education Institutions". [para 25] [958-A-C]

"Manual of Accreditation" (Revised Edition, January, 2004) published by National Board of Accreditation All India Council for Technical Education, I.G. Sports Complex, I.P. Estate, New Delhi –referred to.

1.6 In the case in hand under Regulation 8(4) the 'Council' having prescribed a 'condition' for recognition that an institution accredited by NAAC with a Letter Grade B is entitled to apply for enhancement of intake in Secondary Teacher Education Programmes of B.Ed. and B.P.Ed., it can not be held to be sub-delegation of power. [para 34] [961-E]

2.1 Regulations 8(3) and 8(4) were already in vogue since 13.1.2006 when Regulations dated 27.12.2005 came into effect. As per Regulation 8(3) only after three academic sessions an institution was eligible to apply for enhancement of intake of students in the course. Under Regulation 8(4) only such institution which had accredited itself with NAAC with a Letter Grade B+ was entitled to apply for enhancement of intake of students in the Secondary Teacher Education Programme, B.Ed. and B.P.Ed. [para 36] [963-H; 964-A-B]

A *State Bank's Staff Union (Madras Circle) vs. Union of India and others* 2005 (3) Suppl. SCR 200 = (2005) 7 SCC 584 – referred to.

B 2.2 Thus, Regulations 8(3) and 8(4) remained in force for all the Teachers Education Courses, e.g. Elementary Teachers Education Programme, Bachelor of Elementary Education (B.El.Ed.), Standard for Secondary Teacher Education Programme, Master of Education (M.Ed.) Programme etc., even after amended Regulations 2006, but with a rider that in case new norms are published for any such Course after notification of Regulations dated 27.12.2005, the conditions prescribed in Rule 8(3) and 8(4) of the Regulations, 2005 dated 27.12.2005 shall not be applicable for such course. [para 38] [966-C-D]

D 2.3 Subsequently, when Regulations 2007 were enacted, the Regulations 8(3) and 8(4) of Regulations 2005 were retained. In the circumstances, by Regulation 8(5) it was clarified that if any institution has been granted additional intake in B.Ed. and B.P.Ed. teachers training courses after enactment of Regulations 2005 i.e. 13.1.2006, such institution is required to be accredited with NAAC with a Letter Grade B. Regulations 8(3) and 8(4) of Regulations 2005 dated 27.12.2005 having been retained, it was always open to NCTE to remind the institutions that they were required to follow Regulations 8(3) and 8(4), if were allowed additional intake after 13.1.2006. Therefore, Regulation 8(5) cannot be held to be retrospective. Regulations 8(3), 8(4) and 8(5) having nexus with maintenance of standards of teacher education and to make qualitative improvement in the system of teacher education by phasing out sub-standard teaching, the validity of Regulation 8(4) and 8(5) cannot be questioned. [para 39-40] [966-E-H; 967-C]

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Case Law Reference:

1960 SCR 671	referred to	para 26	A
1985 (2) SCR 287	referred to	para 27	
2004 (3) Suppl. SCR 843	referred to	para 28	B
2006 (8) Suppl. SCR 535	referred to	para 29	
2005 (3) Suppl. SCR 200	referred to	para 35	

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From the Judgment and Order dated 23.04.2009 of the High Court of Delhi at New Delhi in W.P. (C) No. 8433 of 2009.

T.S. Doabia, Sanjay Sharawat, Amitesh Kumar, Ravi Kant, Gopal Singh, R. Malhotra, D.S. Mehra, S.S. Rawat and Naveen R. Nath for the appearing parties. D

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. E
Appellants-institutions, which are recognised by the National Council for Teacher Education (hereinafter referred to as the 'Council'), impart teacher training course (B.Ed.). On their request the 'Council' permitted additional intake of students for such course without seeking accreditation and Letter Grade B from National Assessment and Accreditation Council (NAAC). F
Subsequently, the 'Council' framed "National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 (hereinafter referred to as 'Regulations, 2007) by notification dated 10th December, 2007 introducing Regulation 8(4) and 8(5) which the appellants unsuccessfully G
challenged before the High Court.

2. As per Regulation 8(4) an institution is required to be accredited with the NAAC with a Letter Grade B, whereas as per Regulation 8(5) those institutions which had been granted H

A additional intake in B.Ed. and B.P.Ed. teacher training courses after promulgation of the Regulations, 2005 i.e. 13th January, 2006 are required to get themselves accredited with the NAAC with a Letter Grade B before 1st April, 2010.

B 3. The validity of Regulation 8(4) and 8(5) was challenged by the appellants on the following grounds:

(i) Their right to establish and run their institutions enshrined under Article 19(1)(g) of the Constitution of India stands curtailed;

C (ii) they will suffer constitutional injury on account of the 'Council' outsourcing its statutory functions in the absence of statutory authorisation for sub-delegation of the delegated power;

D (iii) by giving a retrospective effect to the Regulations and

(iv) due to non-performance of statutory duties by the 'Council'.

E 4. The Division Bench of the Delhi High Court held that the Regulation 8(4) merely puts a 'condition' for making an application that the applicant should have itself accredited with the NAAC with a Letter Grade B; the Court further held that the Regulation 8(5) is prospective in nature, being a 'condition' imposed in continuation of additional intake.

F 5. During the pendency of the present appeal the 'Council' framed the "National Council for Teacher Education (Recognition Norm and Procedure) Regulations, 2009 w.e.f. 31st August, 2009 (hereinafter referred to as the "NCTE Regulations, 2009") but as Regulation 8(4) and 8(5) is identically worded so far as B.Ed. course, this Court by order dated 15th March, 2010 permitted the appellants to challenge the validity of new Regulation 8(4) and 8(5) of Regulations, 2009.

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STAND OF THE APPELLANTS

6. Learned counsel for the appellants while contending that there was no requirement for any approved institutions to get them accredited with NAAC for enhancement of intake of seats in the course, the following submissions were made:

(i) The 'Council' cannot sub-delegate its functions and duties conferred upon it by the parent Act i.e. NCTE Act, 1993 to an outside institution namely NAAC in absence of express authorisation by the parent Act. Therefore, Regulation 8(4) ultra vires the NCTE Act, 1993 and Article 14 of the Constitution of India being against the principle "delegates non potest delegare".

(ii) The NCTE Act, 1993 does not authorise the 'Council' to frame Regulations retrospectively; in absence of such power the delegatee the 'Council' cannot make subordinate legislation retrospectively. The requirement, therefore, contemplated under Regulation 8(5) being ex-facie retrospective, taking away the right of the appellants to continue with the additional seats of B.Ed. course, is violative of Article 19(1)(g) of the Constitution.

(iii) Regulation 8(5) and paragraph 6 of notice dated 1st October, 2008 issued by the 'Council' asking all institutions which were already granted additional intake in B.Ed./ B.P.Ed. courses after 1st January, 2006 to get themselves accredited with NAAC with Grade B certificate ultra vires the NCTE Act, 1993 disturbing and altering the vested and accrued fundamental rights of the institutions.

7. Learned counsel for the appellants referred to provisions of NCTE Act, 1993 and relevant Rules and the decisions of this Court which will be discussed at an appropriate stage.

A **Stand of respondent-NCTE**

B 8. Per contra, according to the learned counsel for the respondent-‘Council’ Regulation 8(4) does not amount to delegation of any of the powers of the ‘Council’. It merely imposed a ‘condition’ required for opening a new course or intake for students as empowered under the NCTE Act, 1993. The Regulation 8(5) does not amount to giving effect from retrospective date, as such power was already extending under Regulations, 2005.

C 9. He would further submit as follows:

D (i) The condition as stipulated in impugned Regulation 8(4) was already existing even earlier in Regulations, 2005. Regulation 8(3) and 8(4) of Regulations, 2005 was relaxed for certain period vide notification dated 20th July, 2006 and 10th December, 2007. Some of the institutions had made applications to the Regional Committees of the ‘Council’ for grant of permission or recognition for additional intake of seats in favour of recognised course during the period from 21st July, 2006 to 10th December, 2007. Their applications were processed and decided without insisting upon the requirement of having three academic sessions of running the course as was stipulated under Regulation 8(3) or having accredited with NAAC with a Letter Grade B as was stipulated under Regulation 8(4). Since, the conditions under Regulation 8(3) and 8(4) were brought into force by Regulations, 2007, it was decided that those institutions which have been granted recognition for enhancement of seats without insisting upon the condition of having accredited with the NAAC, have been directed to get themselves accredited with NAAC.

H (ii) The condition stipulated under Regulation 8(4) does not amount to sub-delegation of power but merely a ‘condition’ laid down for grant of recognition of new course or for

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enhancement of additional intake in the existing course. So far as processing, scrutinising and deciding upon an application for recognition/permission for conducting teacher training course is concerned, it is the 'Council' and its Regional Committees which are alone responsible and entrusted with discharging such functions as enshrined under the Act.

(iii) The Regulation 8(5) only provides that the institutions who have been granted recognition for enhancement of additional intake of seats during the period of relaxation to obtain accreditation before 1st April, 2010 and the same is prospective in nature.

10. In this case the questions arise for determination are:

(i) Whether under Regulation 8(4) the 'Council' has sub-delegated any of its functions and duties conferred by parent Act to NAAC; and

(ii) Whether Regulation 8(5) is retrospective in nature affecting fundamental rights of appellants guaranteed under Article 19(1)(g) of Constitution of India.

11. Before examining the contentions raised by the learned counsel for the parties, it would be convenient to notice the relevant provisions of the NCTE Act, 1993 and the Regulations framed thereunder.

12. The NCTE Act, 1993 was enacted to maintain standards of teacher education with a view to achieve planned and co-ordinated development of the teacher education system throughout the country. It was decided that the 'Council' would be provided with necessary resources and capability to accredit institutions of teacher education and provide guidance regarding curricula and methods. It was also decided to provide statutory powers to the 'Council' with the objective of determination, maintenance and co-ordination of standards in

A teacher education, laying down norms and guidelines for various courses, promotion of innovation in this field and to establish a suitable system of continuing education of teachers (see: Statement of Objects and Reasons of the National Council for Teacher Education Act, 1993).

B 13. Section 12 of the NCTE Act, 1993 empowers the 'Council' to take all steps for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards of teacher education. For the purposes of such functions the Council is
 C empowered to evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions under Section 12(k) which is as follows:

D "12(k) evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions;"

E 14. For the purpose of ascertaining whether the recognised institutions are functioning in accordance with the provision of the Act, the Council is empowered to cause inspection of any such institution in such manner as may be prescribed under Section 13 of the NCTE Act, 1993.

F 15. The 'Council' is empowered to recognise institutions offering course or training in teacher education under Section 14. For opening a new course or training by recognised institutions the 'Council' is empowered under Section 15 to grant permission in such form and in such manner as may be determined by regulations.

G 16. Under Section 32 the 'Council' is empowered to make regulations not inconsistent with the provisions of the NCTE Act, 1993 and the rules made thereunder. Clause (f) and (h) of sub-section (2) of Section 32 empowers the 'Council' to frame regulations and to lay down 'conditions' for the proper
 H functioning of the institution and 'conditions' for granting

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recognition under clause (a) of sub-section (3) of Section 14 and clause (a) of sub-section (3) of Section 15 respectively, as evident from the said provisions and reproduced hereunder: A

“32.POWER TO MAKE REGULATIONS

(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. B

(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 :- C

xxx xxx xxx

(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; D

xxx xxx xxx

(h) conditions required for the proper conduct of a new course or training and conditions for granting permission under clause (a) of sub-section (3) of Section 15; E

xxx xxx xxx”

17. In exercise of powers conferred under Section 32 the ‘Council’ framed Regulations National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2005 (hereinafter referred to as the “NCTE Regulations, 2005”) notified by Notification No.F.49-42/2005-NCTE (N&S) dated 27th December, 2005 published on 13th January, 2006. The NCTE Regulation, 2005 were applicable to all matters relating to teacher education programme, covering norms and standards and conditions for grant of such recognition. Clause (3) and Clause (4) of Regulation 8 of NCTE Regulations, 2005 were as follows: F
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A "8(3) An institution shall be permitted to apply for enhancement of intake in a teacher education course already approved after completion of three academic sessions of running the course.

B (4) An Institution shall be permitted to apply for enhancement of intake in Secondary Teacher Education Programme – B.Ed & B.P.Ed. Programme, if it has accredited itself with the National Assessment and Accreditation Council (NAAC) with a Letter Grade B developed by NAAC."

C 18. It was stipulated that pending finalisation of new norms and standards, the existing norms were to continue till then.

D 19. Subsequently, by notification dated 20th July, 2006 the 'Council' framed "National Council for Teacher Education (Recognition Norms & Procedure) (Amendment) Regulations, 2006 (hereinafter referred to as the "Amendment Regulations, 2006) as under:

E "Now, therefore, in exercise of the powers conferred under sub-section (2) of Section 32 of the National Council for Teacher Education Act, 1993 (73 of 1993), the National Council for Teacher Education hereby makes the following regulations, namely:-

F 1. **Short Title and Commencement:**

(1) These regulations may be called the "National Council for Teacher Education (Recognition Norms & Procedure)(Amendment) Regulations, 2006."

G 2. **Applicability**

H (1) These regulations shall be applicable to all matters pertaining to grant of recognition/ permission to conduct a secondary teacher education programme in face to face mode leading to B.Ed. degree or equivalent.

(2) They shall come into force from the date of their publication in the Official Gazette. A

3. Extent of Amendment

(i) The appendix – 7 of the norms and standards which was notified by NCTE Regulations, 2002 and retained in the NCTE Regulations, 2005 shall be replaced by the appendix – 1 to this amendment and be read as part thereof. B

Note:- For enhancement of intake in the course where new norms have been published after notification of the Regulations dated 27.12.2005, the conditions prescribed in Rule 8(3) and 8(4) of the said Regulation shall not be applicable.” C

It was followed by Regulations, 2007 framed by the 'Council' bringing back the condition of accreditation of institution with NAAC with the Letter Grade B as was prescribed under Regulation 8(4) of NCTE Regulations, 2005. Those institutions who were granted additional intake in B.Ed and B.P.Ed. teacher training courses after NCTE Regulations, 2005 i.e 13th January, 2006 were also asked to get themselves accredited with NAAC with a Letter Grade B. Apart from the impugned Regulation 8(4) and 8(5), Regulation 8(3) of NCTE Regulations, 2007 being also relevant are quoted hereunder: D

“8(3) An institution shall be permitted to apply for enhancement of course wise intake in teacher education courses already approved, after completion of three academic sessions of running the respective courses. E F

(4) An Institution shall be permitted to apply for enhancement of intake in Secondary Teacher Education Programme – B.Ed & B.P.Ed. Programme, if it has accredited itself with the National Assessment and Accreditation Council (NAAC) with a Letter Grade B developed by NAAC. G H

A (5) *An institution that has been granted additional*
intake in B.Ed. and B.P.Ed. teacher training courses after
promulgation of the Regulations, 2005, i.e., 13.1.2006
shall have to be accredited itself with the National
 B *Assessment and Accreditation Council (NAAC) with a*
Letter Grade B under the new grading system developed
by NAAC before 1st April, 2010 failing which the additional
intake granted shall stand withdrawn w.e.f. the academic
session 2010-2011.”

C 20. As stated earlier, during the pendency of the present
 civil appeal the NCTE Regulations, 2009 was enacted with
 similar worded provisions under Regulation 8(3), 8(4) and 8(5).

D 21. The National Assessment and Accreditation Council
 (NAAC) is an autonomous body established by the University
 Grants Commission (UGC) of India to assess and accredit
 institutions of higher education in the country. It is an outcome
 of the recommendations of the National Policy in Education
 (1986) that laid special emphasis on upholding the quality of
 higher education in India, as appears from “Manual of
 E Accreditation” (Revised Edition, January, 2004) published by
 National Board of Accreditation All India Council for Technical
 Education, I.G. Sports Complex, I.P. Estate, New Delhi – 110
 002.

F 22. The system of higher education in India has expanded
 rapidly during the last fifty years and in spite of built-in regulatory
 mechanisms that ensure satisfactory levels of quality in the
 functioning of higher education institutions, there have been
 criticisms that the country has permitted the mushrooming of
 G institutions of higher education with fancy programme and
 substandard facilities and consequent dilution of standards. To
 address the issues of deterioration in quality, the National
 Policy on Education (1986) and the Plan of Action (POA-1992)
 was made which spelt out the strategic plans for the policies
 and advocated the establishment of an independent national

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accreditation body. Consequently, the NAAC was established in 1994 with its headquarters at Bangalore. A

23. The Methodology for the assessment of a unit, the NAAC follows a three-stage process which is a combination of self-study and peer review, as follows: B

- (1) *The preparation and submission of a self-study report by the unit of assessment.*
- (2) The on-site visit of the peer team for validation of the self-study report and for recommending the assessment outcome to the NAAC. C
- (3) The final decision by the Executive Committee of the NAAC.

The self-study report validated by peers is the backbone of the whole exercise. Manuals have been developed to suit different units of higher education, with detailed guidelines on the preparation of the self-study report and the other aspects of assessment and accreditation. D

24. Section 12 of NCTE Act, 1993 deals with function of the Council. Under Section 12(k) the 'Council' is required to evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions which reads as under: E

"12. Functions of the Council.- It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may – G

(k) evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions; H

A 25. In fulfilment of the provisions under Section 12(k) of the
 NCTE Act, 1993 i.e. to evolve suitable performance appraisal
 systems, norms and mechanisms for enforcing accountability
 on recognised institutions and for quality assurance of Teacher
 Education Institutions, the NAAC entered into an “Memorandum
 B of Understanding”(MOU) with the ‘Council’ for executing the
 process of assessment and accreditation of all Teacher
 Education Institutions coming under the provisions of NCTE Act,
 1993. The efforts of ‘Council’ and NAAC are to ensure and
 assure the quality of Teachers Education Institutions in the
 C country complementary to each other. Combining the teacher
 education and quality assurance, the NAAC developed the
 methodology for assessment and accreditation of Teacher
 Education Institutions as appears from the “Manual for Self-
 appraisal of Teacher Education Institutions”. The aforesaid facts
 D can be noticed from the documents supplied by the parties
 which prescribe the methodology of assessment required to be
 followed by the NAAC as per strategic plans, policies and
 memorandum of understanding reached between NAAC and
 the ‘Council’.

E 26. Before we decide on the validity of Regulations 8(4)
 and 8(5), we must first deal with the law as laid down by this
 Court in different decisions with regard to the power of a
 delegate of a legislature, such as the Council in this case, to
 make rules and regulations. In *Hamdard Dawakhana and*
 F *Another v. Union of India and Others* [AIR 1960 SC 554], this
 Court held:

G “.....Thus when the delegate is given the power of making
 rules and regulations in order to fill in the details to carry
 out and subserve the purposes of the legislation the
 manner in which the requirements of the statute are to be
 met and the rights therein created to be enjoyed it is an
 exercise of delegated legislation.....”

H Thus, a delegate of the legislature is conferred with the power

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to make rules and regulations to carry out the purposes of the legislation and such rules and regulations are called delegated legislation or subordinate legislation.

27. This Court has also laid down the grounds on which such delegated legislation or subordinate legislation can be challenged in the Court. In *Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and Others* [(1985) 1 SCC 641], this Court has observed in Para 75 at page 689:

“A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.....”

28. Again in *Clariant International Ltd. and Another v. Securities & Exchange Board of India* [(2004) 8 SCC 524], this Court held in Para 63 at page 547:

“When any criterion is fixed by a statute or by a policy, an attempt should be made by the authority making the delegated legislation to follow the policy formulation broadly and substantially and in conformity therewith.”

29. The grounds on which the validity of a delegated legislation can be challenged have also been discussed at length in *Vasu Dev Singh and Others v. Union of India and*

A *others* [(2006) 12 SCC 753] in which the Court has reiterated the aforesaid law.

B 30. The aforesaid law laid down by the Court on the grounds of judicial review of delegated legislation or subordinate legislation will have to be borne in mind while deciding the validity of Regulation 8(4) made by the Council. In other words, if the Regulation 8(4) is in broad conformity with the objects and policy of the Act and is not in conflict with any statutory or constitutional provisions, the regulation made by the delegate, namely, the Council, will have to be held to be valid.

C 31. We find that the NCTE Act, 1993 was enacted with the object (i) to achieve planned and co-ordinated development of the teacher education system throughout the country and (ii) for laying down the proper maintenance of norms and standards in the teacher education system; the 'Council' has been empowered by the parent Act to regulate development of teacher education, proper maintenance of norms and the standards.

E Section 12(k) empowers the 'Council' to maintain teacher education, its performance appraisal system and to lay down norms and mechanism for enforcing accountability on recognised institutions.

F Under Section 15 the 'Council' can determine as to which institution be allowed to offer new course or training in teacher education; for which the 'Council' is empowered under Section 32(2)(h) to prescribe 'condition' for grant of such permission and recognition.

G 32. The 'Council' is also empowered to cause inspection of any institution through any person under Section 13 of the NCTE Act, 1993.

H 33. Combined reading of Section 12(k), Section 15 and Section 32(2)(h), makes it clear that the 'Council' is empowered to frame a Regulation laying down 'conditions' for

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proper conduct of a new course or training under clause (a) of sub-section (3) of Section 15. A

34. What will be the 'condition' to be laid down for starting a new course or training or for increase in the intake of students can be determined only by the 'Council' in view of clause (h) of sub-section (2) of Section 32. It can prescribe the such 'condition', as it deems fit and proper with only rider that such 'condition' should not be against any of the provisions of the NCTE Act, 1993 or Rules framed thereunder. B

For example the 'Council' may prescribe a condition that the qualification of a teacher should be a degree of a particular subject obtained from a recognised University, to grant recognition to start a new course. If such condition is prescribed it will not amount to delegation of its power to an University to grant such degree. C D

In the case in hand under Regulation 8(4) the 'Council' having prescribed a 'condition' for recognition that an institution accredited by NAAC with a Letter Grade B is entitled to apply for enhancement of intake in Secondary Teacher Education Programme-B.Ed. &B.P.Ed., it can not be held to be sub-delegation of power, as contended by the appellants. The first question is, thus answered in negative against the appellants. E

35. In the case of *State Bank's Staff Union (Madras Circle) vs. Union of India and others* reported in (2005) 7 SCC 584, Supreme Court noticed and defined the expression "retrospective" as under: F

"19. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes the power to give it retrospective effect. Craies on Statute Law (7th Edn.) at p. 387 defines retrospective statutes in the following words: G

"A statute is to be deemed to be retrospective, H

A which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.”

B 20. Judicial Dictionary (13th Edn.) by K.J. Aiyar,
 Butterworth, p. 857, states that the word “retrospective”
 when used with reference to an enactment may mean (i)
 C affecting an existing contract; or (ii) reopening up of past,
 closed and completed transaction; or (iii) affecting accrued
 rights and remedies; or (iv) affecting procedure. Words and
 Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines
 a “retrospective or retroactive law” as one which takes
 away or impairs vested or accrued rights acquired under
 existing laws. A retroactive law takes away or impairs
 D vested rights acquired under existing laws, or creates a
 new obligation, imposes a new duty, or attaches a new
 disability, in respect to transactions or considerations
 already past.

E 21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd
 Edn., 2005) the expressions “retroactive” and
 “retrospective” have been defined as follows at p. 4124,
 Vol. 4:

F “Retroactive.—Acting backward; affecting what is
 past. (Of a statute, ruling, etc.) extending in scope
 or effect to matters that have occurred in the past.
 — Also termed retrospective. (Black’s Law
 Dictionary, 7th Edn., 1999)

G “Retroactivity” is a term often used by lawyers but
 rarely defined. On analysis it soon becomes
 apparent, moreover, that it is used to cover at least
 two distinct concepts. The first, which may be called
 “true retroactivity”, consists in the application of a
 H new rule of law to an act or transaction which was

completed before the rule was promulgated. The second concept, which will be referred to as “quasi-retroactivity”, occurs when a new rule of law is applied to an act or transaction in the process of completion.... The foundation of these concepts is the distinction between completed and pending transactions....’ T.C. Hartley, Foundations of European Community Law, p. 129 (1981).

* * *

Retrospective.—Looking back; contemplating what is past.

Having operation from a past time.

‘Retrospective’ is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing.” (Vol. 44, Halsbury’s Laws of England, 4th Edn., p. 570, para 921.)”

Therefore, it is to be seen as to whether Regulation 8(5) takes away any right of the appellants or impairs any vested right acquired by appellants under the existing law or has created any new obligation in their part.

36. Regulations 8(3) and 8(4) were already in vogue since

- A 13th January, 2006 when Regulations dated 27th December, 2005 came into effect. As per Regulation 8(3) only after three academic sessions an institution was eligible to apply for enhancement of intake of students in the course. Under Regulation 8(4) only such institution which had accredited itself with the NAAC with a Letter Grade B+ was entitled to apply for enhancement of intake of students in the Secondary Teacher Education Programme, B.Ed. and B.P.Ed.

C 37. "The norms and standards" were prescribed under Regulation 8 of Regulation 2002 as follows:-

"Norms and Standards for various teacher education programmes

- D (i) The Norms and Standards for various teacher education courses are given in the Appendices 3 to 14 as indicated below which an institution offering the said course is required to comply with.

E	(i)	Norms and Standards for Pro School Teacher Education Programme	Appendix-3
	(ii)	Norms and Standards for Nursery Teacher Education Programme	Appendix-4
	(iii)	Norms and Standards for Elementary Teacher Education Programme	Appendix-5
F	(iv)	Norms and Standards for Bachelor of Elementary Education (B.El.Ed)	Appendix-6
	(v)	Norms and Standards for Secondary Teacher Education Programme	Appendix-7
G	(vi)	Norms and Standards for Master of Education (M.Ed.) Programme	Appendix-8
	(vii)	Norms and Standards for Master of Education (M.Ed.) Programme (Part time)	Appendix-9
H	(viii)	Norms and Standards for Certificate in Physical Education (C.P.Ed.) Programme	Appendix-10

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(ix)	Norms and Standards for Bachelor of Physical Education (B.P.Ed.) Programme	Appendix-11	A
(x)	Norms and Standards for Master of Physical Education (M.P.Ed.) Programme	Appendix-12	
(xi)	Norms and Standards for B.Ed. (Open and Distance Learning System)	Appendix-13	B
(xii)	Norms and Standards for M.Ed. (Open and Distance Learning System)	Appendix-14	

- (ii) The norms and standards herein notified are minimum and essential. The institution may strengthen further the physical and instructional infrastructure.”

The aforesaid “norms and standards” were notified by NCTE Regulations 2002 and retained in the NCTE Regulations, 2005. Appendix-7 was related to “norms and standards for Secondary Teacher Education Programme”:

The norms related to Secondary Teacher Education Programme leading to B.Ed. Degree (face-to-face) were in process of change. After finalization of such norms relating to revision of Secondary Teacher Education Programme leading to B.Ed. Degree Course (face-to-face) the NCTE enacted National Council for Teacher Education (Recognition Norms and Procedure) (Amendment) Regulations, 2006. By amended Regulation 3 the “norms and standards”, as was stipulated in Appendix-7 was replaced by Appendix-1 of the Amended Regulations, 2006. The said Appendix-1 was made a part of the main Regulations, 2005 dated 27th December, 2005. By a ‘Note’ below the said amended Regulation 3 it was clarified that conditions prescribed under Regulation 8(3) and 8(4) shall not be applicable in certain cases, as shown hereunder:

3. Extent of Amendment

- (i). The appendix – 7 of the norms and standards which was notified by NCTE Regulation, 2002 and retained in

A the NCTE Regulations, 2005 shall be replaced by the appendix-1 to this amendment and be read as part thereof.

Note:- For enhancement of intake in the course where new norms have been published after notification of the Regulations dated 27.12.2005, the conditions prescribed in Rule 8(3) and 8(4) of the said Regulation shall not be applicable.”

38. Thereby, the Regulations 8(3) and 8(4) remained in force for all Teachers Education Courses, e.g. Elementary Teachers Education Programme, Bachelor of Elementary Education (B.El.Ed.), Standard for Secondary Teacher Education Programme, Master of Education (M.Ed.) Programme etc., even after amended Regulations 2006, but with a rider that in case new norms are published for any such Course after notification of Regulations dated 27th December, 2005, the conditions prescribed in Rule 8(3) and 8(4) of the Regulations, 2005 dated 27th December, 2005 shall not be applicable for such course.

39. Subsequently, when Regulations 2007 were enacted, the Regulations 8(3) and 8(4) of Regulations 2005 were retained. In the aforesaid circumstances by Regulation 8(5) it was clarified that if any institution has been granted additional intake in B.Ed. and B.P.Ed. teachers training courses after enactment of Regulations 2005 i.e. 13th January, 2006, such institution is required to be accredited itself with NAAC with a Letter Grade B.

It is needless to say that Regulations 8(3) and 8(4) of Regulations 2005 dated 27th December, 2005 having retained, it was always open to NCTE to remind the institutions that they were required to follow Regulations 8(3) and 8(4), if were allowed additional intake after 13th January, 2006. For the reason aforesaid the Regulation 8(5) cannot be held to be retrospective. The second question is, thereby, answered in

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negative against the appellants.

40. Further, as plain reading of the Regulations 8(3), 8(4) and 8(5) makes it clear that right of exemption, if any, accrued to an institution in view of 'Note' below Regulation 3 of amended Regulations 2006, has not been taken away nor impaired any vested right acquired by any institution and as no new obligation on the part of any institution has been created, they being governed by Regulations 8(3) and 8(4) since 13th January, 2006, the Regulation 8(5) cannot be held to be retrospective. The Regulations 8(3), 8(4) and 8(5) having nexus with maintenance of standards of teacher education and to make qualitative improvement in the system of teacher education by phasing out sub-standard teaching, the validity of Regulation 8(4) and 8(5) cannot be questioned. In absence of any merit, the appeal is dismissed but there shall be no order as to costs.

R.P.

Appeal dismissed.

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