REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8013 OF 2022

The State of Uttarakhand …Appellant

Versus

Nalanda College of Education and Others …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.09.2018 passed by the Division Bench of the High Court of Uttarakhand at Nainital in Special Appeal No. 144/2014, by which the Division Bench of the High Court has dismissed the Special Appeal preferred by the State of Uttarakhand and others and has confirmed the judgment and order dated 04.04.2014 passed by the learned Single Judge in Writ Petition No.2464 of 2013, by which the learned Single Judge quashed the order dated 16.07.2013 of the State Government by which the State Government opined/decided not to grant recognition to the new B.Ed. Colleges and consequently directed the

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Reason:

National Council for Teachers Education (for short, 'NCTE') to take appropriate decision on the application of respondent No.1 to increase the seats to B.Ed. course, the State of Uttarakhand has preferred the present appeal.

2. Respondent No.1 herein – original writ petitioner – Nalanda College of Education, Dehradun (for short, 'College') was granted recognition for B.Ed. course of one year duration with an annual intake of 100 students by the NCTE under Section 14(1) of the NCTE Act on 22.02.2008. After the recognition, the original writ petitioner was affiliated to the HNB University under the U.P. State University Act, 1973. For the academic session 2013-14, the College applied to the Northern Regional Committee of the NCTE to increase the intake seats of the students. The opinion of the State Government was sought as per NCTE Regulations, 2014. The State Government vide order/communication dated 16.07.2013 sent its opinion and informed the Northern Regional Committee of NCTE that about 13000 students are passing B.Ed. course per annum against the need of 2500 teachers and therefore most of the students passing B.Ed. course would be unemployed. Consequently, the State Government opined that no fresh recognition be granted undertaking B.Ed. course and also opined to cancel the recognition of respondent No.1 – original writ petitioner –

College. The communication/order dated 16.07.2013 of the State Government was the subject matter of writ petition before the High Court.

2.1 The learned Single Judge allowed the writ petition, quashed and set aside order/communication dated 16.07.2013 of the State Government by observing that the ground that the students after passing B.Ed. course are unemployed and the State Government is not in a position to grant employment to all of them and therefore institutions should be closed is nothing except the arbitrary exercise on the part of the State Government. The learned Single Judge also observed that on the contrary, instead of closing down the institutions, the State Government should promote institutions to come up in the State to provide education and a welfare State is not supposed to close down the institutions. The learned Single Judge directed the Northern Regional Committee to take appropriate decision on the application of the original writ petitioner to increase the seats of B.Ed. course. The judgment and order passed by the learned Single Judge was the subject matter of special appeal before the Division Bench. By the impugned judgment and order, the Division Bench of the High Court has dismissed the special appeal and has confirmed the judgment and order passed by the learned Single Judge. The impugned judgment and order passed by the

Division Bench of the High Court dismissing the special appeal and confirming the judgment and order passed by the learned Single Judge is the subject matter of the present appeal.

3. Shri Krishnam Mishra, learned counsel appearing on behalf of the appellant – State of Uttarakhand has vehemently submitted that in the facts and circumstances of the case both, the learned Single Judge as well as the Division Bench of the High Court have seriously erred in quashing and setting aside the communication/order dated 16.07.2013 holding the same as arbitrary.

3.1 It is submitted that a conscious policy decision was taken by the State Government not to grant recognition to the new Colleges for B.Ed. course and not to increase the intake capacity of the B.Ed. course for valid reasons/grounds, the same was not required to be interfered with by the High Court, in exercise of powers under Article 226 of the Constitution of India.

3.2 It is further submitted by the learned counsel appearing on behalf of the State that a conscious policy decision was taken by the State Government reflected in the communication/order dated 16.07.2013 taking into consideration the fact that against the need of 2500 teachers per annum, approximately 13000 students would be passing out the B.Ed. course, which ultimately would result into unemployment as the

State Government would not be in a position to offer employment to other pass out students completing B.Ed. course, over and above 2500 students. It is submitted that such a decision cannot be said to be in any way arbitrary, as observed and held by the learned Single Judge, confirmed by the Division Bench. In support of the above submission, reliance is placed on the decision of this Court in the case of ***Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra & Others, reported in (1986) 4 SCC 361 (paragraph 6)***.

3.3 It is further submitted by the learned counsel appearing on behalf of the State that even as per NCTE Regulations, before the Regional Committee takes a decision on grant of recognition/increase in the intake capacity, the opinion of the State Government is must, which includes the detailed reasons or grounds with necessary statistics. It is submitted that therefore the State Government was well within its rights in submitting the opinion and/or taking a decision against the recognition, which was with necessary statistics. On the requirement of submitting the opinion by the State Government on whether to grant recognition or not which shall be with necessary statistics, reliance is placed on the decision of the Bombay High Court in the case of ***Gangadhar and Another v. Union of India and others, 2009 SCC Online Bom. 17(paragraphs 36, 38, 41 & 42)***.

3.4 Making above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the Division Bench as well as that of the learned Single Judge.

4. Ms. Manisha T. Karia, learned counsel appearing on behalf of the NCTE has supported the appellant – State of Uttarakhand. She has also heavily relied upon Rule 7 of the NCTE Regulations, 2014, under which the State Government is required to furnish its recommendations or comments to the Regional Committee before any final decision is taken by the Regional Committee, which shall include to provide detailed reasons or grounds thereof with necessary statistics, in case the State Government opines not in favour of recognition.

4.1 It is submitted that when a conscious decision was taken by the State Government not to grant further recognition and/or not to increase the intake capacity along with the detailed reasons or grounds thereof with necessary statistics, considering the fact that against the need/requirement of 2500 students per annum, approximately 13000 students shall pass out the B.Ed. course, which will render them unemployed and the aforesaid can be said to be a valid ground, the High Court has committed a serious error in quashing and setting aside such a policy decision treating the same as arbitrary.

4.2 Learned counsel appearing for the NCTE has also heavily relied upon the order dated 18.07.2018 passed by this Court in M.A. No. 1175 of 2018 in Writ Petition (Civil) No. 276/2012 in the case of ***Maa Vaishno Devi Mahila Mahavidyalaya v. The State of Uttar Pradesh & Others***, by which this Court has not interfered with the similar decision of the State Government not to grant further recognition to the new Colleges. She has also relied upon the observations made by this Court in paragraph 16 in the case of ***State of Rajasthan v. LBS B.Ed. College & Others, (2016) 16 SCC 110***, in which this Court has observed that under the NCTE Regulations, the State has a say, may be a limited one, NCTE is required to take the opinion of the State Government into consideration, for the State has a vital role to offer proper comments supported by due reasoning. It is submitted that therefore the NCTE was required to take into consideration the views/opinion of the State Government contained in the communication/order dated 16.07.2013. It is submitted that therefore the High Court has committed a serious error in quashing and setting aside the communication/order dated 16.07.2013 which was in the form of a policy decision not to grant further recognition for B.Ed. course which was on a valid reasoning and the grounds, in exercise of powers under Article 226 of the Constitution of India.

5. Though served, no body appears on behalf of Nalanda College of Education.

6. We have heard Shri Krishnam Mishra, learned counsel appearing on behalf of the appellant – the State of Uttarakhand and Ms. Manisha T. Karia, learned counsel appearing on behalf of the NCTE. We have gone through the impugned judgment and order passed by the High Court, by which the High Court has quashed and set aside the policy decision taken by the State of Uttarakhand, opining/deciding not to grant recognition to the new B.Ed. colleges and consequently recommending the NCTE to take an appropriate decision on the application submitted by respondent No.1 to increase the seats of B.Ed. course. It appears that the State Government *vide* order/communication dated 16.07.2013 sent its opinion and informed the NCTE that as about 13000 students are passing B.Ed. course every year against the need of 2500 teachers and therefore most the students passing B.Ed. course would be unemployed, it is recommended not to grant any further recognition to the new B.Ed. colleges. By the impugned judgment and order, the High Court has set aside the said communication/policy decision terming the same as arbitrary. Therefore, the short question posed for consideration of this Court is, “whether the policy decision taken by the State

Government can be said to be arbitrary which calls for interference of the High Court under Article 226 of the Constitution of India?"

7. An identical question came to be considered by this Court in the case of ***Vidharbha Sikshan Vyawasthapak Mahasangh (supra)*****.** Before this Court, the challenge was the judgment of the Bombay High Court whereby the High Court dismissed the writ petition challenging the order of the Government of Maharashtra refusing to grant permission to the member institutions of the original writ petitioner to hold the first year classes in Diploma in Education. In the case before this Court, a policy decision was taken by the State Government not to grant further recommendation to start new D.Ed. colleges, *inter alia*, on the ground that in Nagpur and Bhandara Districts, a large number of applicants applied for starting new D.Ed. colleges from time to time. It was found that the number of the new D.Ed. colleges started in Nagpur and Bhandara Districts is proportionately much larger, about five times more than the estimated increased need of the two districts and therefore it was not desirable and feasible to permit the new D.Ed. colleges. It was the case of the State that to permit admission of 3000 students every year will result in a serious consequence of a large scale unemployment. The High Court dismissed the writ petition which has been confirmed by this Court by observing that the Government has taken the right decision

so as to save the young men from being exploited. This Court also negatived the contention on behalf of the management that the refusal to grant permission to hold D.Ed. classes will result in unemployment. This Court approved the stand on behalf of the State that if the permission is granted, there will be a large scale unemployment inasmuch as 3000 students will be admitted in the first year classes as against the requirement of 616 students. Therefore, this Court has approved the policy decision taken by the State not to grant further recognition to the new D.Ed. colleges as there was no requirement of the new D.Ed. colleges looking to the requirement of teachers.

8. Applying the law laid down by this Court in the aforesaid decision, the High Court has committed a serious error in holding that the decision not to recommend for the new B.Ed. colleges can be said to be arbitrary. At this stage, it is required to be noted that under the provisions of the NCTE Regulations, the State is well within its right to make suitable recommendations. As per Rule 7(5) of the NCTE Regulations, 2014, on receipt of the communication from the office of the Regional Committee to the State, the State Government is required to send its recommendations or comments to the Regional Committee. It further provides that in case the State Government is not in favour of the recommendation, it shall provide detailed reasons or grounds thereof

with necessary **statistics**, which shall be taken into consideration by the Regional Committee concerned while disposing of the application. Therefore, when the State Government is required to provide detailed reasons against grant of recognition with necessary **statistics**, it includes the need and/or requirement. Therefore, the State Government was well within its right to recommend and/or opine that the State Government is not in favour of granting further recognition to the new B.Ed. colleges as against the need of annually 2500 teachers approximately 13000 students would be passing out every year, therefore, for the remaining students, there will be unemployment. The aforesaid decision cannot be said to be arbitrary as observed and held by the High Court. The need of the new colleges looking to the requirement can be said to be a relevant consideration and a decision not to recommend further recognition to the new B.Ed. colleges on the need basis cannot be said to be arbitrary. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.

9. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 10.09.2018 passed by the Division Bench of the High Court in Special Appeal No. 144/2014, confirming the judgment and order dated 04.04.2014 passed

by the learned Single Judge in Writ Petition No. 2464/2013, quashing the order/communication dated 16.07.2013 of the State Government opining/deciding not to grant recognition to the new B.Ed. colleges and directing the NCTE to take appropriate decision on the application preferred by respondent No.1 to increase the seats to B.Ed. course, is hereby quashed and set aside. The instant appeal is allowed accordingly. However, there shall be no order as to costs.

……J.
[M.R. SHAH]

NEW DELHI;
NOVEMBER 10, 2022.

……J.
[M.M. SUNDRESH]