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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th February, 2019

+ W.P.(C) 5965/2018

ROHITASH INSTITUTE OF ELEMENTARY EDUCATION

..... Petitioner

Through: Mr. Sanjay Sharawat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION AND
ANR. Respondents

Through: Ms. Arunima Dwivedi, SC-
NCTE with Ms. Preeti Kumra,
Adv. for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. The National Council for Teacher Education Act, 1993 (hereinafter referred to as "The Act"), which came into force on 29th December, 1993, provided for the establishment of a National Council for Teacher Education (hereinafter referred to as "NCTE"), aimed, *inter alia*, at achieving planned and coordinated development of the teachers' education system in the country, regulation and proper maintenance of norms and achievement of appropriate standards in the system of education of teachers.

2. On 26th November, 2012, the NCTE issued a Public Notice, inviting applications for recognition of teachers' education courses, for the academic session 2013-2014. The applications were required

to be submitted online to the concerned Regional Committee (in the present case, the Northern Regional Committee, referred to, hereinafter, as “the NRC”), accompanied by the relevant documents.

3. It may be noted, here, that, though the initial processing of the applications, submitted in response to the aforementioned Public Notice, was in accordance with the National Council for Teacher Education Regulations, 2009 (hereinafter referred to as “the 2009 Regulations”), learned Counsel are *ad idem* that, by virtue of an order, dated 10th September, 2013, passed by the Supreme Court in SLP(Civil) 4247-48/2009 in ***Rashtrasant T.M.S. & S.B.V.M.C.A.Vid. v. Gangadhar Nilkant Shende***, the application of the petitioner was required to be processed in terms of the National Council for Teacher Education Regulations, 2014 (hereinafter referred to as “the 2014 Regulations”).

4. The requirements, as postulated under the 2009 and 2014 Regulations, were somewhat different.

5. Rule 7(1) of the 2009 Regulations, titled “Processing of Applications”, read thus :

“7. Processing of Applications-

(1) The applicant institutions shall ensure on-line submission of applications complete in all respects along with hard copy of the application and other documents specified below. However, in case of any inadvertent omissions or deficiencies in the documents submitted, the

office of the Regional Committee shall point out the deficiencies within 45 days of the receipt of the applications, which the applicants shall remove within 60 days from the date of receipt of communication of deficiencies, if any. The on-line application with separate submission of the following documents only, shall be considered as complete application.

- i. Application in triplicate on the prescribed format.
- ii. Processing Fees as provided under Rule 9 of the National Council for Teacher Education Rules, 1997 as amended from time to time.
- iii. Fixed Deposit Receipt for Rs.5.00 lacs and 3.00 lacs of a Nationalised Bank towards Endowment and Reserve Funds, respectively.
- iv. Certified copy of the registered land documents issued by the competent authority.
- v. Approved building plan by the competent civil authority.
- vi. Notarized copy of Change of Land Use Certificate issued by the competent authority.
- vii. Affidavit in the prescribed form on ₹100/- stamp paper duly attested by Oath Commissioner or Notary Public, stating the precise location of the land (village, district, state etc), the total area in possession, the permission of the competent authority to use the land for educational purposes and mode of possession i.e. ownership or lease.”

The 2009 Regulations, therefore, required the applications to be accompanied by (i) certified copies of the registered land documents issued by the competent authority, (ii) building plan approved by the competent civil authority, (iii) notarized copy of Change of Land Use (hereinafter referred to as “CLU”) Certificate issued by the competent authority and (iv) an affidavit, stating (a) the precise location of the land, (b) the total area in possession, (c) the permission of the competent authority to use the land for educational purposes and (d) mode of possession of the land.

6. Additionally, clauses (7) to (10) of Regulation 8 of the 2009 Regulations prescribed thus :

“(7) (i) No institution shall be granted recognition under these Regulations unless the institution or society sponsoring the institution is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than 30 years. In cases where under relevant State or Union Territory laws the maximum permissible lease period is less than 30 years, the State Government or Union Territory Administration law shall prevail. However, no building shall be taken on lease for running any teacher training course.

(ii) The society sponsoring the institution shall have to ensure that proposed teacher education institution has a well demarcated land area as specified by the norms. The teacher education institution shall not be allowed to have any other institution within its demarcated area or building

and shall not have any other course(s) in its building.

(iii) The physical education institution shall similarly be required to have a separate demarcated area or building and shall not house any other course including other teacher education courses.

(iv) The society sponsoring the institution shall be required to transfer and vest the title of the land and building in the name of the institution within a period of six months from the date of issue of formal recognition order under sub-regulation (11) of Regulation 7. However, in case, the society fails to do so due to local laws or rules or bye-laws, it shall intimate in writing with documentary evidence, of its inability to do so. The Regional Office shall keep this information on record and place it before the Regional Committee for its approval.

(8) The institution or society shall furnish an affidavit on Rs. 100 stamp paper duly attested by Oath Commissioner or Notary Public stating the precise location of the land (khasra number, village, district, state, etc.), the total area in possession and the permission of the competent authority to use the land for educational purposes and mode of possession i.e. ownership or lease. In case of Government institutions, the said affidavit shall be furnished by the Principal or the Head of the Institution or any other higher authority. The affidavit shall be accompanied with the certified copy of land ownership or lease documents issued by the registering authority or civil authority, permission of the competent authority to use the land for educational purposes and approved building plan as per provision contained in Regulation 7 clause (vi) of sub-regulation (1) of these Regulations.

(9) The copy of the affidavit shall be displayed by the institution on its Official website. In case, the contents of the affidavit are found to be incorrect or false, the society or trust or the institution concerned shall be liable for civil and criminal action under the relevant provisions of the Indian Penal Code and other relevant laws, and shall also be liable for withdrawal of recognition by the Regional Committee concerned.

(10) At the time of inspection, the building of the institution shall be complete in the form of a permanent structure on the land possessed by the institution in terms of sub-regulation (7) of Regulation 8, equipped with all necessary amenities and fulfilling all such requirements as prescribed in the norms and standards. The applicant institution shall produce the original completion certificate issued by the competent Government Authority or local body authority, approved building plan in proof of the completion of building and built up area and other documents to the visiting team for verification. No temporary structure or asbestos roofing shall be allowed in the institution, even if it is in addition to the prescribed built up area.

Further, at the time of inspection for new course or enhancement of intake, visiting team shall also verify the facilities for existing teacher education courses already accorded recognition by National Council for Teacher Education and would ascertain the fulfillment and maintenance of Regulations and Norms and Standards for the existing courses as well.”

7. The petitioner, which desired to commence a D.El.Ed. (Diploma in Elementary Education) Course, applied, in pursuance to the aforementioned Public Notice, on 29th December, 2012. The

application contained all requisite details. I may mention, here, that Ms. Arunima Dwivedi, learned Counsel appearing for the respondents, advanced a faint objection, during arguments, to the “Plot Number” of the petitioner being mentioned, in the application, as “00”. No such objection was ever raised by the respondent, to the petitioner’s application, however, at any point of time; moreover, Mr. Sanjay Sharawat, learned Counsel for the petitioner, pointed out that, with the petitioner being located in a rural area, assigned Plot Numbers were non-existent. In any case, following the well-entrenched dictum, postulated by the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405*, that an order has to stand, or fall, on the reasons contained therein, and cannot be sought to be supported by arguments devised in pleadings in the court, I am not inclined to take any cognizance of the said objection, which is accordingly rejected.

8. The application of the petitioner was accompanied by an affidavit, dated 23rd December, 2012, in which it was, deposed, *inter alia*, that (i) the land on which the petitioner institute was situated, was on ownership basis, (ii) the land was free from all encumbrances, (iii) the land was exclusively meant for running the educational institution, for which permission had been obtained, by the competent authority *vide* a letter no. 2658 dated 23rd April, 2008 (copy of which was enclosed) and (iv) the premises would not be used for running any educational activity or institute other than the teacher’s education programme for which recognition was being sought.

9. The letter, dated 23rd April, 2008, to which reference was made in the aforementioned affidavit, may be reproduced thus :

“From

Senior Town Planner,
Gurgaon Circle Gurgaon.

To

Smt. Sarti Devi Educational Charitable Trust
(Regd)

H-48/4, Shankar Vihar
New Delhi- 110010.

Memo No. 2568

Dated 23-4-2008

Subject:- No objection Certificate to Smt. Sarti Devi Educational Charitable Trust (Regd) Village Khor Tehsil Narnaul Distt. Mohindergarh.

That Khasra No. 40//6,15,16,17, 41//10/2, 11, 12/1, 1, 10/1, 27//20,21 total Area 48 Kanal 11 Marla of revenue estate of village Khor Tehsil Narnaul Distt. Mohindergarh does not fall in any controlled area declared by the Town & Country Planning Deptt but falls in Urban Area. There is no violation of the Urban Areas Act 1975 and the proposed site falls on 13 karam wide Mohindergarh-Ateli road. Therefore N.O.C. is hereby issued subject to the following conditions: -

1. That the applicant will seek Permission for CLU as per the provisions of the controlled area Act No. 41 of 1963 as and when the controlled area is notified by the Government.
2. That the applicant will be liable to pay the fee and development charges as and when demanded by the Govt.
3. The building plans can be considered at the request of the applicant.

4. That this NOC does not provide any immunity from the applicability of any other Act/Rules on this land.

Senior Town Planner,
Gurgaon Circle Gurgaon”

10. On 20th March, 2013, the NCTE wrote to the NRC, informing the NRC that the Government of Haryana had taken a policy decision against opening of new colleges in the State of Haryana, and directing the NRC accordingly, to return all applications received for setting up teacher’s education institutions in the State of Haryana, along with the processing fee submitted for the said purpose. Following the said diktat, the NRC returned the application dated 29th December, 2012 (*supra*), submitted by the petitioner, alongwith the processing fee filed therewith, under cover of a letter dated 19th September, 2013. The merits of the petitioner’s application were not, therefore, considered at that stage.

11. The petitioner, as well as several other institutions located in the State of Haryana, whose applications for commencing teachers’ education courses, had been returned by the NRC, moved this Court by way of writ petitions. Among these was WP(C) 4762/2015, filed by the petitioner.

12. These writ petitions were allowed, by a learned Single Judge of this Court, *vide* judgment dated 19th May, 2015 with a direction to the NCTE to process the applications of the petitioner before this Court

(including the present petitioner) for the academic session 2016-2017, in accordance with law. The petitioners were, therefore, directed to re-submit their applications, along with the requisite fee, on or before 31st May, 2015, for the said purpose.

13. In accordance with the said directions, the petitioner re-submitted its application to the NRC, under cover of a letter dated 28th May, 2015.

14. On 21st August, 2015, a show cause notice was issued to the petitioner, by the NCTE, under Section 14/15(3)(b) of the Act. Various objections, to the petitioner's application, were raised, in para 2 of the said communication, which may be reproduced as under :

“The Northern Regional Committee after due deliberation and consideration of the case in detail decided that before taking final decision the institution is required to submit the requisite documents as per provisions of the NCTE Regulations, 2014 including the following:

(i) A proof/evidence to the effect that it is a composite institution as per provisions of the NCTE Regulations, 2014.

(ii) In case the institutions which are not composite at present shall ensure that they have become composite institutions before commencement of the academic session 2016-17. An affidavit to this effect is required to be submitted by the institution to the NRC, NCTE.

(iii) No Objection Certificate issued by the concerned affiliating body as required under Section 5(3) of the NCTE Regulations, 2014.”

15. The petitioner was directed to respond to the said communication.

16. The petitioner responded, *vide* letter dated 19th September, 2015, forwarding, as enclosures to the said letter, the relevant documents. The list of the said documents, as noted on the body of the said letter may be reproduced thus :

- “1) NOC of STP Gurgaon (CLU)
- 2) Land Gift deed sign by Sub registrar Ateli
- 3) NEC
- 4) Affidavit
- 5) Undertaking
- 6) Trust Resolution Copy
- 7) Building Completion Certificate
- 8) NOC request submitted of Affiliation body
- 9) NOC of affiliated body not required being case of 2012
- 10) Proof of Composite Institution of Degree College attached.”

17. The respondents do not dispute the receipt of the said communication dated 19th September, 2015, accompanied by documents stated to be enclosed therewith.

18. On 18th December, 2015, the NRC issued a “refusal order”. A reading thereof discloses that there was no consideration, whatsoever to the documents submitted by the petitioner. Rather, noting that “the institution has not submitted reply of SCN issued by NRC office”, the order refused to grant recognition to the petitioner institution, for the D.El.Ed. Course.

19. The petitioner, in the circumstances, addressed an e-mail, dated 6th January, 2016, to the NRC, drawing the attention of the NRC to the fact of submission, by the petitioner, of its reply dated 19th September, 2015, to the show cause notice dated 21st August, 2015, as well as to the documents that had been filed therewith. These documents were again submitted, by the petitioner, to the NRC on 19th January, 2016 and 18th March, 2016. In the circumstances, the NRC was requested to re-examine the matter. However, it appears that the NRC expressed its inability to do so, on the ground that it had no power to recall/review a decision taken by it.

20. In the circumstances, the petitioner moved the Appellate Authority under the NCTE Act which, *vide* order dated 4th August, 2016, remanded the matter to the NRC, with liberty to the petitioner to re-submit the documents mentioned in the show cause notice dated 21st August, 2015 (*supra*), within 15 days from the date of the order in appeal.

21. The petitioner, accordingly, re-submitted the documents, to the NRC, under cover of its letter dated 9th August, 2016, which was acknowledged by the NRC *vide* Diary No. 150117 dated 10th August, 2016. Even so, in its 257th Meeting, held between 5th and 11th September, 2016, the NRC again directed the petitioner to re-submit the documents mentioned in the show cause notice dated 21st August, 2015 (*supra*). In compliance therewith, the petitioner re-submitted the documents, already submitted on 19th September, 2015 and, later, on

10th August, 2016, yet again under cover of a letter dated 15th September, 2016, which was also diarized and acknowledged by the NRC on the same date.

22. The NRC, however, went on to issue a second “refusal order”, dated 20th October, 2016, refusing to grant recognition to the petitioner’s institution, for the D.El.Ed. Course. The said order merits reproduction, *in extenso* thus :

“File. No. NRC/NCTE/NRCAPP-5834/258 Meeting /2016/161192

REFUSAL ORDER

WHEREAS, in terms of section 14/15(3)(b) of the NCTE Act **Smt. Sarti Devi Educational Charitable Trust, Plot No-00, Street Road-Ateli Mahendragarh Road, Village-Ateli Mandi, P.O.-Ateli Mandi, Tehsil Narnaul, Town-Ateli Mandi, District-Mahendragarh, State-Haryana, Pin code 123021** had submitted an application to the Northern Regional Committee of NCTE for grant of recognition to **Rohitash Institute of Elementary Education, Plot/Khasara no.40/17, Land title-Gift Deed, Plot No.-0, Street No.-Ateli -Mgr, Village- Khod, P.o.-Ateli Mandi, Tehsil- Narnaul, Town-Ateli Mandi, District-Mahendragarh, Haryana-123021** for **D.El. Ed Course of Two years** for an intake of **50 seats** students on **29.12.2012**.

AND WHEREAS, the matter was considered in NRC in its 257th (Part-3) meeting and the committee decided to issue show cause notice under clause 14/15(3)(b) of NCTE regulations, 2014. Accordingly show cause notice was issued on 27.09.2016 on following grounds: -

- **As per decision of the appellate authority, the institution is directed to submit all the documents mentioned in show cause notice dt. 21.08.2015.**

AND WHEREAS, the institution has submitted a reply on 21.09.2016 based upon Show Cause Notice dated 22.07.2016 in another matter. The matter was considered in NRC in its 258th Meeting held from 04th to 06th October, 2016 and the committee decided to refuse the recognition to the institution on the following grounds: -

- The non-encumbrance certificate has not been issued by the Competent Authority.
- The institution has not submitted the certified copies of the registered land documents.
- The building plan submitted does not show the total built-up area, Khasra no. of the land and total land area etc.

NOW THEREFORE, in exercise of the powers vested under section 14(3)(b) of NCTE Act, 1993, the Northern Regional Committee hereby refuse the recognition sought by the institution i.e. **Rohitash Institute of Elementary Education, Plot/Khasara no. 40/17, Land title-Gift Deed, Plot No.-0, Street No.- Ateli Mgr, Village— Khod, P.O.,- Ateli Mandi, Tehsil-Narnaul, Town- Atteli Mandi, District-Mahendragarh, Haryana 123021** for the **D.El.Ed.** Course on the grounds mentioned above.

If the Institution is not satisfied with order, it may prefer an appeal under sections 18 of NCTE Act, 1993 in the “online mode” available on NCTE’s website www.ncte-india.org within 60 days from the date of this order.

S.No.	FDR No.	Amount Name of the Bank	Remarks
1	-	-	FDR are not

2	-	-	submitted
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By order,
Sd/-
(Dr. I.K. Mansoori)
Regional Director”

23. A reading of the aforesaid refusal order makes it clear that the refusal, by the NRC, to the request of the petitioner, for grant of recognition to commence the D.El.Ed. Course was for three reasons, viz. (i) that the petitioner had not submitted a non-encumbrance certificate, (ii) that the petitioner had not submitted certified copies of the registered land documents, and (iii) that the building plan submitted by the petitioner did not show the total built up area, the khasra no. of the land and the total land area, etc.

24. At this stage, before proceeding further, it may be noted that, during the aforementioned period, the order dated 10th September, 2013 (*supra*), of the Supreme Court, in ***Rashtrasant T.M.S. & S.B.V.M.C.A.Vid. (supra)*** came to be passed, in which, while, permitting applicants, who were desirous of establishing teachers education colleges/institutions to make applications in accordance with the new regulations, i.e. the 2014 Regulations, further directions were issued, to the effect that “all the pending applications shall also be decided in accordance with the new regulations”. Inasmuch as the petitioner’s application was pending before the NRC, at the time of passing of the said order by the Supreme Court, it is not disputed that the petitioner’s application was required to be considered in

accordance with the 2014 Regulations, though the objections originally raised against the applicant were in terms of the 2009 Regulations, being the Regulations in force on the date of the first submission, by the petitioner, of its application.

25. Significantly, the show cause notice dated 21st August, 2015, too, deals with the petitioner's application in the light of the 2014 Regulations, as is apparent from para 13 (*supra*).

26. There can be no manner of doubt, therefore, that the petitioner's application was required to be considered by the NRC/NCTE in terms of the 2014 Regulations, and that the present dispute would also, therefore, be required to be adjudicated in the light of the said Regulations.

27. It becomes necessary to advert to some of the provisions of the 2014 Regulations, though, to a large extent the requirements in the said Regulations were similar to those contained in the 2009 Regulations. For ready reference, Regulation 5 and Sub-Regulation (1) to (8) of Regulation 8 of the 2014 Regulations may be reproduced thus :

“5. Manner of making application and time limit—

(1) An institution eligible under regulation 4, desirous of running a teacher education programme may apply to the concerned Regional Committee for recognition in the prescribed application form along with processing fee and requisite documents.

Provided that an institution may make simultaneous applications for shifting of premises or additional intake,

or additional teacher education programmes as the case may be:

Provided further that an existing institution may make an application for closure or discontinuation of one or several teacher education programmes recognised by the Council.

(2) The application form may be downloaded from the website of the Council, namely, www.ncte-india.org and different forms may be downloaded for programmes offered through open and distance learning.

(3) The application shall be submitted online electronically alongwith the processing fee and scanned copies of required documents such as no objection certificate issued by the concerned affiliating body. While submitting the application, it has to be ensured that the application is duly signed by the applicant on every page, including digital signature at appropriate place at the end of the application.

(4) While submitting the application online a copy of the registered land document issued by the competent authority, indicating that the society or institution applying for the programme possesses land on the date of application, shall be attached alongwith the application.

(5) Duly completed application in all respects may be submitted to the Regional Committee concerned between 1st March to 31st May of the preceding year from the academic session for which recognition is sought:

Provided that the aforesaid period shall not be applicable for submission of application to innovative programmes of teacher education.

(6) All applications received online from 1st March to 31st May of the year shall be processed for the next academic session and final decision, either recognition

granted or refused, shall be communicated to the applicant on or before the 3rd day of March of the succeeding year.

8. Conditions for grant of recognition—

(1) New Teacher Education Institutions shall be located in composite institutions and the existing teacher education institutions shall continue to function as stand-alone institutions; and gradually move towards becoming composite institutions.

(2) An institution shall fulfill all the conditions pertaining to norms and standards for conducting the programme or training in teacher education. These norms, inter alia, provide conditions relating to financial resources, accommodation, library, laboratory, other physical infrastructure, qualified staff including teaching and non-teaching personnel.

(3) An institution which has been recognized by the Council shall obtain accreditation from an accrediting agency approved by Council within five years of such recognition.

(4) (i) No institution shall be granted recognition under these regulations unless the institution or society sponsoring the institution is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than thirty years. In cases where under relevant State or Union territory laws the maximum permissible lease period is less than thirty years, the State Government or Union territory administration law shall prevail and in any case no building shall be taken on lease for running any teacher training programme.

(ii) The society sponsoring the institution shall have to ensure that proposed teacher education institution has a well demarcated land area as specified by the norms.

(iii) The society sponsoring the institution shall be required to transfer and vest the title of the land and building in the name of the institution within a period of six months from the date of issue of formal recognition order under sub-regulation (16) of regulation 7. However, in case, the society fails to do so due to local laws or rules or bye-laws, it shall intimate in writing with documentary evidence of its inability to do so. The Regional Office shall keep this information on record and place it before the Regional Committee for its approval.

(5) The institution or society shall furnish an affidavit on Rs.100 stamp paper duly attested, by Oath Commissioner or Notary Public stating the precise location of the land (Khasra number, village, district, state, etc.), the total area in possession and the permission of the competent authority to sue the land for educational purposes and mode of possession, i.e., ownership or lease. In case of Government institutions, the said affidavit shall be furnished by the Principal or the Head of the Institution or any other higher authority. The affidavit shall be accompanied with the certified copy of land ownership or lease documents issued by the registering authority or civil authority, permission of the competent authority to use the land for educational purposes (and approved building plan) as per provision contained in sub-regulation (4) of the Regulation 5.

(6) The copy of the affidavit shall be displayed by the institution on its official website. In case, the contents

of the affidavit are found to be incorrect or false, the society or trust or the institution concerned shall be liable for civil and criminal action under the relevant provisions of the Indian Penal Code and other relevant laws, and shall also be liable for withdrawal of recognition by the Regional Committee concerned.

(7) At the time of inspection, the building of the institution shall be complete in the form of a permanent structure on the land possessed by the institution, equipped with all necessary amenities and fulfilling all such requirements as prescribed in the norms and standards. The applicant institution shall produce the original completion certificate issued by the competent authority, approved building plan in proof of the completion of building and built up area and other documents to the visiting team for verification. No temporary structure or asbestos roofing shall be allowed in the institution, even if it is in addition to the prescribed built up area.

(8) At the time of inspection for new programme or enhancement of intake, visiting team shall also verify the facilities for existing teacher education programmes already accorded recognition by the Council and ascertain the fulfillment and maintenance of regulations and norms and standards for the existing programmes as well.”

28. A reading of the afore-extracted 2014 Regulations reveals that, under these Regulations, the application for starting of a new course, by an applicant, was required to be accompanied by (i) “No Objection Certificate (NOC)” issued by the concerned affiliating body, (ii) a copy of the registered land document issued by the competent

authority, indicating that the applicant possessed land, on the date of the application, (iii) evidence to show that the institution was composite in nature, (iv) evidence to show that the land was free of encumbrances, (v) a duly attested affidavit, stating (a) the precise location of the land (b) the total area in possession (c) the permission of the competent authority to use the land for educational purposes, and (d) mode of possession, and (vi) permission of the competent authority to use the land for educational purposes (which would be akin to the CLU Certificate) and (vii) approved building plan of the institution.

29. Reverting to the facts, the petitioner chose to challenge the aforementioned refusal order dated 20th October, 2016, passed by the NRC, by way of a statutory appeal to the Appellate Authority under the NCTE Act.

30. The said appeal was rejected, by the Appellate Authority, *vide* order dated 18th April, 2017 which, too, merits reproduction, in extenso thus :

“F.NO.89-822/2Q16 Appeal/6th Meeting - 2017
NATIONAL COUNCIL FOR TEACHER EDUCATION
Hans Bhawan, Wing II, 1, Bahadurshah Zafar Marg, New
Delhi - 110 002

ORDER

WHEREAS the appeal of Rohitash Institute of Elementary Education, Ateli Mandi, Mahendragarh, Haryana dated 12/12/2016 is against the Order No.

NRC/NCTE/NRCAPP-5834/258st Meeting/2016/161192 dated 20/10/2016 of the Northern Regional Committee, refusing recognition for conducting D.El.Ed. Course on the grounds that "the non-encumbrance certificate has not been issued by the Competent Authority. The institution has not submitted the certified copies of the registered land documents. The building plan submitted does not show the total built-up area, Khasra No. of the land and total land area etc."

AND WHEREAS Shri. R.S. Yadav, Chairman and Shir. Hukam Singh, Administrative Officer, Rohitash Institute of Elementary Education, Ateli Mandi, Mahendragarh, Haryana presented the case of the appellant institution on 24/03/2017. In the appeal and during personal presentation it was submitted that "the requisite certificate issued by Competent Authority is submitted. The registered land documents were submitted earlier and now again is submitted. The building plan showing total built-up area, khasra no. and total land area etc. is obtained and is submitted. The requisite appeal fee D.D. bearing serial No. 451338 dt. 09/12/2016 issued by Canara Bank Ateli of Rs. 25,000/- (Rupees twenty-five thousand only) in original is also being submitted with the application".

AND WHEREAS Appeal Committee noted that consequent upon issue of the Appeal order dated 04.08.2016 and the appellant institution being asked to submit documents as mentioned in the SCN dated 21.08.2015, the appellant institution submitted two letter dated 15.09.2016 and 20.09.2016 to NRC Jaipur. Appeal Committee noted that appellant institution submitted copy of NOC and affiliation letter issued by Director General, Higher Education, Haryana and Maharishi Dayanand University, Rohtak affiliating degree college in the name of Rohitash Degree College, Atehi Mandi, Mohidgarh. As such the deficiency relating to composite status of the appellant institution is settled. As the application for D.El.Ed. programme was made by appellant in the year 2012, there is no way that appellant

institution could have submitted NOC from affiliating body as this condition was imposed under NCTE Regulations, 2014.

AND WHEREAS Appeal Committee further noted that appellant in its reply dated 15.09.2016 and 20.09.2016 has not complied with all the points raised in the SCN dated 21.08.2015. None of the replies stated above contain valid and acceptable (1) change of land use certificate (ii) copy of land documents issued by registering authority (iii) Non-Encumbrance Certificate. The certificate dated 23.04.2008 issued by Sr. Town Planner (STP) Gurgaon is conditional and subject to the applicants seeking permission for CLU as per rules; Non-Encumbrance certificate is not issued by competent authority and rather it is a self-declaration; affidavit is just a copy; the Sr. Town Planner, Gurgaon had certified vide its letter dated 2304 2008 that the concerned area falls in Urban area. Building plan indicating full address of the property with total land area and proposed built up area or already existing built up area was required to be submitted.

AND WHEREAS Appeal Committee noted that appellant institution has twice appeared before the Appeal Committee where he was directed to submit clarification and documentary evidence on each point of the repeated show cause notices. Appellant institution has not been able to submit (i) building plan containing necessary details (ii) Non-Encumbrance Certificate (iii) CLU (iv) copy of documents issued by registering authority. Appeal Committee, therefore, decided to confirm the impugned refusal order dated 20.10.2016.

AND WHEREAS after perusal of the memorandum of appeal, affidavit, the documents available on records and considering the oral arguments advanced during the hearing, the Committee concluded that the NRC was justified in refusing recognition and therefore, the appeal deserved to be rejected and the order of the NRC is confirmed.

NOW THEREFORE, the Council hereby confirms the Order appealed against.”

31. The present writ petition is directed against the refusal, by the respondents to grant recognition for establishment of the D.El.Ed. Course in the petitioner-Institution, and the dismissal, by the Appellate Authority under the NCTE Act, of the appeal preferred thereagainst, *vide* the afore-extracted order dated 18th April, 2017.

32. A reading of the impugned order dated 18th April, 2017 discloses the following :

(i) The Appellate Authority has noted the submission, of the petitioner, that (a) the non-encumbrance certificate, issued by the competent authority, was submitted, (b) the registered land documents, which were submitted, were again being submitted, and (c) the building plan showing total built up area, khasra no. and total land area, etc. had been obtained and was also submitted.

(ii) The petitioner had submitted a copy of the NOC issued by the Director General, Higher Education, Haryana and the Maharishi Dayanand University, Rohtak, affiliating the degree college in the name of Rohitash Degree College, Ateli Mandi, Mahendragarh, Haryana. This cured the deficiency relating to the composite status of the petitioner institution.

(iii) Inasmuch as the requirement of submitting NOC from the affiliating body, as contained in the 2014 Regulations were concerned, as the application by the petitioner had been made in

2012, there was no way for the petitioner to have submitted the said NOC, the condition of such submission having been introduced in the 2014 Regulations.

(iv) Even so, the petitioner had not complied with/rectified all the deficiencies noted in the show cause notice dated 21st August, 2015. This was explained thus:

(a) None of the replies, submitted by the petitioner, contained a valid and acceptable CLU certificate, copy of land documents issued by the registering authority and non-encumbrance certificate.

(b) The certificate dated 23rd April, 2008 (*supra*) issued by the Senior Town Planner was conditional and subject to the applicants seeking permission for CLU as per rules,

(c) Non-encumbrance certificate had not been issued by the competent authority and was in the nature of a self declaration.

(d) The affidavit was just a copy.

(e) The Building plan, indicating the full address of the property with total land area and proposed built up area or already existing built up area, was required to be submitted.

33. I have heard Mr. Sanjay Sharawat, learned counsel appearing for the petitioner, as well as Ms. Arunima Dwivedi, learned counsel appearing for the respondents, at considerable length.

34. Mr. Sharawat contends that the impugned decision, as contained in the appellate order dated 18th April, 2017, was completely erroneous on facts as well as in law. On the issue of submission of non-encumbrance certificate, Mr. Sharawat relies on the judgment of a learned Single Judge of this Court in WP(C) 3390/2016 (***Royal Institute of Science and Management v. NCTE***). On the issue of submission of certified copies of registered land documents, Mr. Sharawat has drawn my attention to para 27 of the present writ petition, in which it is categorically averred that the petitioner had submitted certified copies of the Gift Deeds, whereunder the land in question had been gifted to the petitioner and had come into its possession, on 3rd December, 2007, alongwith its application. Regarding the requirement of submission of the CLU certificate, Mr. Sharawat, while objecting to the said finding of the Appellate Authority, on the ground that the said objection was not one of the grounds on which the refusal order, dated 20th October, 2016 (*supra*) had been passed by the NRC, submitted, nevertheless, that the said requirement also, stood satisfied, in view of the communication dated 23rd April, 2008 (*supra*) from the Senior Town Planner, Gurgaon, which stands reproduced in para 9 (*supra*). The requirement of submission of the approved building plan, too, Mr. Sharawat points out, stands satisfied, for which purpose he invites my attention to the communication dated 9th August, 2016 (*supra*), whereunder the documents had been re-submitted by the petitioner, consequent to the appellate order dated 4th August, 2016 (*supra*). Para 2 of the said communication notes that “a copy of site plan and building plan and affidavit stating total area of land” was enclosed with the said

communication. The receipt of the said communication, which is manifested by the dated stamp of the NRC, showing that it had been diarized on 10th August, 2016, Mr. Sharawat points out, is not disputed by the respondents.

35. In these circumstances, the contention of Mr. Sharawat is that there could be no justifiable reason for the NRC to refuse recommendation of the D.El.Ed. Course for which the requisite application, accompanied with all relevant documents, had been submitted by his client.

36. Ms. Arunima Dwivedi, arguing *per contra*, draws my attention to the fact that, while, in the application submitted by the petitioner, the area in which the institution was located was stated to be a rural area, the competent authority for approval of building plan and issuance of completion certificate being stated to be the Gram Panchayat of the Village, the communication dated 23rd April, 2008 (*supra*) or the Senior Town Planner, noted that the area was an urban area. She emphasized the objections contained in the show cause notice dated 21st August, 2015 (*supra*), which already stand reproduced hereinabove, and submits that the said objections had not been rectified by the petitioner. She otherwise relies on the findings of the Appellate Authority submitting that in view thereof, the decision of the Appellate Authority, to reject the petitioner's application, could not be faulted in any manner.

Analysis

37. Having considered the material on record and the arguments advanced by learned counsel on either side before me, I am of the view that the impugned order dated 18th April, 2017, of the Appellate Authority, as well as the decision, of the respondents to refuse recognition for the D.El.Ed. Course, for which the petitioner had applied, cannot sustain, either on facts or in law.

38. The issue of submission of NOC from the affiliating body, as well as of the requisite composite nature of the petitioner's institution does not survive for consideration, as the Appellate Authority has, in the impugned order dated 18th April, 2017, held that both these requirements stand fulfilled as "deficiency relating to composite status of the affiliated institution is settled" and that "there is no way that appellate institution could have submitted NOC from affiliating body as this condition was imposed under NCTE Regulation 2014".

39. The grounds on which the Appellate Authority has confirmed the decision, of the NRC to refuse recognition to the petitioner are, at the cost of repetition, (i) non-submission by the petitioner, of CLU certificate, (ii) non-submission, by the petitioner, of copies of the land documents issued by the registering authority, (iii) a fact that the non-encumbrance certificate submitted by the petitioner was merely an affidavit and in the nature of a self-declaration, (iv) a fact that the certificate dated 23rd April, 2008 (*supra*), issued by the Senior Town Planner was conditional and subject to the applicant seeking

permission as per rules, and (v) the perceived deficiencies in the building plan submitted by the petitioner.

40. None of these, in my considered opinion, should constitute a legitimate basis to reject the petitioner's application. In normal cases, the respondent would be the best authority to take a view on whether an institution ought or ought not, to be permitted to commence the course, as applied for, by it. However, if such an application is rejected, it has to be rejected on legal, valid and tenable grounds as right to education is a fundamental right and, it has been repeatedly emphasised, by judgment after judgment, that the endeavour should always be to maximise the reach of education to the teeming millions of this country, as much as possible. I am of the view, therefore, that the decision of the Appellate Authority cannot said to be well founded.

41. I may advert, in this context, to each of the objections contained in the impugned order, dated 18th April, 2017, of the Appellate Authority.

42. The first objection relates to the CLU certificate. In juxtaposition therewith, I would consider the observations, of the Appellate Authority, that the communication dated 23rd April, 2008 (*supra*) of the Senior Town Planner was conditional and subject to the petitioner seeking permission for CLU as per rules.

43. The communication dated 23rd April, 2008 (*supra*), issued by the Senior Town Planner, discloses that, as the area in question,

wherein the petitioner-Institution was situated, did not fall in any “controlled area” as declared by the Town and Country Planning Department, but fell in an urban area, NOC was being granted, subject to various conditions, one of which was that the petitioner would seek permission for CLU certificate as per the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (referred to in the communication dated 23rd April, 2008 as the “Controlled Area Act No. 41 of 1963”) as and when the controlled area was notified by the Government. Mr. Sharawat has handed over, across the bar, a copy of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the “1963 Act”). Clause 5 of Section 2 of the 1963 Act defines “controlled area” to mean “an area declared under Section 4”. Sections 4, 6 and 7 of the said Act, to which Mr. Sharawat has drawn my attention, may usefully be reproduced thus :

“4. Declaration of controlled area. —

(1) The Government may, by notification in the Official Gazette, declare any area outside the limits of municipal town or any other area, which in its opinion has the potential for building activities, industrial, commercial, institutional, recreational estates/ activities and uses subservient to the above, to be a controlled area for the purposes of this Act.

(2) The Government shall also cause the contents of the declaration made under Sub-section (1) to be published in at least two newspapers printed in a language other than English.

xxx

6. Erection or re-erection of buildings etc. in controlled areas. —

Except as provided hereinafter, no person shall erect or-erect any building or make or extend any excavation or lay out any means or access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director:

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for agricultural purpose or purposes subservient to agriculture:

Provided further that nothing in this section shall apply to a building constructed along the extension of the scheduled road located in the limit of the local authority and which was in existence immediately before the commencement of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development (Haryana Amendment) Ordinance, 2009, on payment of such fee, as may be prescribed.

7. Prohibition on use of land in controlled areas.—

(1) No land within the controlled area shall, except with the permission of the Director, and on payment of such conversion charges as may be prescribed by the Government from time to time be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery kiln, lime-kiln, brick-kiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in

accordance with the conditions of a license from the Director on payment of such fees and under such conditions as may be prescribed:

Provided that any fee or charges leviable, if not paid within the specified period, shall be recoverable as arrears of land revenue.

(1A) Local authorities, firms and undertakings of Government, colonisers and persons exempted from obtaining a license under the Haryana Development and Regulations or Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application under section 8 of this Act.

(2) The renewal of such licences may be made after three years on payment of such fees as may be prescribed.

7A. Power of relaxation. - The Government may, in public interest, relax any restrictions or conditions in so far as they relate to land use prescribed in the controlled area in exceptional circumstances.”

44. A reading of the aforesaid provisions of the 1963 Act discloses that the requirement of obtaining permission for use of land, for purposes other than those for which it was used on the date of publication of the notification under Section 4(1) of the said Act, i.e. for a CLU certificate, is to be obtained only in respect of land which was within the controlled area. The communication dated 23rd April, 2008, the correctness of which has not been called into question by any of the authorities, or even in the counter affidavit filed in response to the writ petition in the present case, clearly states that the land, in which the petitioner’s institution was situated, was located in an urban

area and not in any controlled area as declared by the Town and Country Planning Department. Applying Section 7 of the 1963 Act, therefore, the said communication dated 23rd April, 2008 would, in my view, satisfy the requirement of a CLU certificate. Indeed, given the proscriptions contained in the 1963 Act, it was well impossible for the petitioner to obtain any other CLU certificate, as any such certificate, if issued, would be in the teeth of the provisions of the said Act. Needless to say, the provisions of the 2014 Regulations can hardly be so interpreted as to require an applicant to produce a document which was not in consonance with the applicable statutory prescriptions. Insistence on production of the said certificate being produced by the petitioner would, be requiring him to perform the impossible, which, it is trite, no law could require (*Lex non cogit ad impossibilia*).

45. For these reasons, the objection, in the impugned appellate order dated 18th April, 2017 (*supra*), to the effect that the petitioner had not furnished the requisite CLU certificate, is rejected as devoid of substance.

46. The next objection, of the Appellate Authority, is that the petitioner had not produced copies of land documents issued by the registering authority. Mr. Sharawat has drawn my attention to a list of documents, as enclosed with the communication dated 19th September, 2015 (*supra*) as reproduced hereinabove, which refers to “land gift deed signed by Sub-Registrar, Ateli”. To the same effect, is para 2 of the communication dated 9th August, 2016, whereby the documents were again submitted by the petitioner, also recites that “a copy of

land gift deed signed by the Sub-Registrar, Ateli” was annexed therewith. Mr. Sharawat is also correct in his submission that there is a positive averment, in the writ petition, to the effect that certified copies of the land documents had been submitted by his client, to which there is no rebuttal in the counter affidavit filed by the respondents. Mr. Sharawat further states that, if the respondents are still not satisfied, his client can re-submit the certified copy of the land documents, i.e. the gift deed dated 3rd December, 2007, whereunder the land in question was gifted to the trust by the erstwhile owners thereof.

47. I may also note that, in the second paragraph of the impugned appellate order dated 18th April, 2017, the Appellate Authority has taken note of the petitioner’s submissions in the appeal as well as “during personal presentation” to the effect that “the registered land documents were submitted earlier and now again is submitted”.

48. In view of the above, the finding, of the Appellate Authority to the effect that the replies submitted by the petitioner did not contain copies of the land documents issued by the registering authority, in my view, suffers from total non-application of mind and cannot sustain. The said objection of the Appellate Authority is also, therefore, rejected.

49. The finding/observation of the Appellate Authority to the effect that the “certificate dated 23rd April, 2008 as issued by Senior Town Planner (STP) Gurgaon is conditional and subject to the applicants

seeking permission for CLU as per rules”, is also in the nature of a half truth. A reading of the communication dated 23rd April, 2008 discloses that it is not *conditional* to the petitioner obtaining CLU from the authorities, but only incorporates a requirement that, as and when the controlled area is notified by the Government, the petitioner would seek permission for CLU, as per the provisions of the 1963 Act. Mr. Sharawat submits, to a query from the Court, that the area in question has not yet been notified under the 1963 Act and that, therefore, the stage for applying to the authorities, under the 1963 Act, for obtaining CLU, has yet to arise. This observation of the Appellate Authority, as contained in the impugned order dated 18th April, 2017 (*supra*) cannot also, therefore, sustain.

50. The next objection, as contained in the impugned order of the Appellate Authority, is to the non-submission of a “non-encumbrance certificate” by the petitioner. Mr. Sharawat submits that he has, for the sake of abundant caution, obtained a non-encumbrance certificate, but draws my attention, nevertheless, to the judgment of this Court in *Royal Institute of Science and Management (supra)*, which would militate against the necessity of furnishing such a certificate. Paras 3, 7, 11, 15 and 16 of the said judgment may be reproduced, for ready reference, thus :

“3. Record shows that the petitioner institute has submitted his application with respondent no.2 seeking recognition to the D.El.Ed. course in the academic session 2013-14. On 04.9.2015 a show cause notice was issued by respondent no.2 to the petitioner wherein two

deficiencies were pointed out. These deficiencies read as under:

“(i) The copy of approved building plan indicating name of institution, name of course, khasra number/plot number of land, total land area and earmarked built up area, size of multipurpose hall and class rooms etc. for the proposed course is required to be submitted.

(ii) Non Encumbrance certificate as required under clause 8(4) (1) of the NCTE Regulations, 2014 not submitted.”

7. The document submitted by the petitioner qua this aspect was annexed along with his reply to the show cause notice. This document is a building completion certificate in the formatted version of the respondent. Clause 11 reflects that the building plan has been approved by the Gram Panchayat Village Wazirpur. It bears the stamp and signatures of Gram Panchayat Village Wazirpur. The map of the building had also been annexed. This position is not in dispute. Learned counsel for respondent on this count submits that this building plan has not been approved by any Civic Authorities and there is no separate letter.

11. The building completion certificate having been certified by Gram Panchayat thus appears to be a valid document. Objection of the respondent on this issue is frivolous. It is set aside.

15. A reading of this Regulation show that what the institution has to provide is information that the land is free from all encumbrances. There is no mention of a certificate as has rightly been pointed out by learned counsel for petitioner. The petitioner had on his affidavit stated that the land is free from all encumbrances and the fact that such an affidavit had been filed before the respondent no.2 is not in dispute. There being no mention of a “certificate” it had not been filed. It was only later on

that the petitioner learnt that a certificate is the requirement and accordingly he obtained a certificate from his advocate and filed the said non-encumbrance certificate as well (page 61 of the paper book). Learned counsel for respondent really has no dispute on the provisions of Regulation 8(4)(1). Regulation 8(4)(1) does not make a mention of any “certificate”; it only states that the petitioner institute must state that the land is free from all encumbrances. The fact that this has been so stated by the petitioner institute on an affidavit not being in dispute and the Regulation being silent on the word “certificate” the petitioner did not file the certificate for this reason. He had thereafter furnished a certificate obtained from his advocate. The Appeal Committee having rejected the application for the reason that non-encumbrance certificate had not been filed suffers thus from an infirmity. At the cost of repetition the word “certificate” does not find mention in Regulation 8(4)(1).

16. On both grounds, the order passed by the Appeal Committee is liable to be set aside. The orders dated 28.12.2015 and 18.4.2016 passed by the Appeal Committee are set aside. The case of the petitioner institute be considered afresh in the light of the above noted observations and the petitioner institute be granted recognition. Needless to state that this will be for the next academic year 2018-19.”

51. The above extracted passages from the judgment of this Court in *Royal Institute of Science and Management (supra)* make it clear that there is no prescribed format for submitting a non-encumbrance certificate and that a self declaration, in the form of an affidavit submitted by the applicant would suffice for the said purpose. It is acknowledged, even in the impugned Appellate order dated 18th April, 2017, that such an affidavit was actually filed by the petitioner. The relevant passages from the said affidavit have also been reproduced

hereinabove. A copy of the said affidavit has also been filed with the writ petition.

52. Ms. Dwivedi points out, at this juncture, that what was submitted by the petitioner was a copy of the affidavit, to which Mr. Sharawat points out that the original affidavit had already been submitted by him as far back as in 2012 and again re-submitted in 2015. Needless to say, there cannot be more than one original, ergo, the submission of the copy of the affidavit has to be taken as satisfying the requirements of the non-encumbrance certificate submission.

53. The last objection, of the Appellate Authority is regarding the building plan submitted by the petitioner, which was found to be deficient, as it did not indicate the full address of the property with total land area and the proposed built up area or the already existing area. I may note in this regard that the communication dated 9th August, 2016 (*supra*) clearly states that a copy of the site plan and building plan, as well as affidavit, stating the total area of the land was submitted by the petitioner. Significantly, para 2 of the impugned appellate order dated 18th April, 2017 also notes the submission, by the petitioner, of the building plan, *showing total built up area*, khasra no. and total land area. There is no finding, in the impugned order, to the effect that this submission was erroneous or incorrect. All that the Appellate Authority has deigned to note is that the building plan with the said details was required to be submitted. This finding is directly contrary, in my view, to the observation, in the second para of the

same order which indicates that a building plan containing the said details *was* submitted by the petitioner.

54. Even otherwise, under Regulation 8(5) of the 2014 Regulations, what was required to be submitted was only an “approved building plan”. An approved building plan, undisputedly, was submitted by the petitioner. A reading of the said clause reveals that the building plan was not required to contain the aforementioned details relating to the location of the land, khasra no, village, district, area in possession etc., but that these details were required to be incorporated only in the affidavit, to be submitted by the petitioner with the application. A reading of the affidavit dated 23rd December, 2012, submitted by the petitioner, which stands reproduced hereinabove, *in extenso*, discloses that all the said details are contained therein.

55. There was, therefore, in my view, full compliance, by the petitioner, with all the requirements contained in the 2014 Regulations.

56. In view thereof, the rejection, of the petitioner’s application for permission to start the D.El.Ed. Course in its institution, cannot sustain on facts or in law and is required, therefore, to be set aside.

57. Ms. Arunima Dwivedi has raised an objection of delay, as the impugned Appellate order was passed on 18th April, 2017, whereas the writ petition was filed before this Court only in May, 2018. There is no prescribed period of limitation for filing a writ petition. No doubt,

in specific cases, invocation of Article 226 of the Constitution of India may be discountenanced on the ground of inordinate delay and laches. However, given the facts of this case, the fact that the writ petition was filed about a year after the passing of the appellate order, and that allowing of the writ petition would be in furtherance of maximizing the reach of education to the citizens of the country, and also keeping in view the merits of the matter, I am of the view that this writ petition does not deserve to be dismissed on the ground of delay and laches.

58. For all the aforementioned reasons, the impugned refusal orders, dated 20th October, 2016, of the NRC as well as the consequent appellate order dated 18th April, 2017, of the NCTE, are quashed and set aside. The petitioner's application for grant of recognition to start the D.El.Ed. Course is therefore, entitled to be considered on merits in accordance with law and keeping in view the provisions of the NRC Act and the 2014 Regulations, unhindered by the impugned orders dated 20th October, 2016 and 18th April, 2017. The respondents are directed to process and take a decision on the applications as expeditiously as possible and, at any rate within four months from today.

59. The writ petition stands allowed to the above extent, with no order as to costs.

C. HARI SHANKAR, J

FEBRUARY 27, 2019/kr