$~J(1 & 2)

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

Judgment Reserved on: 05.02.2021

% ***Judgment Pronounced on***: 27.05.2021

\+ W.P.(C) 11304/2019

ASSOCIATES OF NCTE APPROVED COLLEGES TRUST ..... Petitioner

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION ..... Respondent

AND

\+ W.P.(C) 12655/2019

HARYANA SELF FINANCE PRIVATE COLLEGES ASSOCIATION ..... Petitioner

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION ..... Respondent

Present: Mr.Sanjay Sharawat, Advocate for the petitioner in W.P.(C) No.11304/2019.

Mr.Parag P.Tripathi, Sr.Adv. with Mr.Amitesh Kumar, Ms.Binisa Mohanty and Ms.Priti Kumari, Advs. for the petitioner in W.P.(C) No.12655/2019.

Mr.Tushar Mehta, Solicitor General of India with Mr.Shivam Singh, Mr.Harpreet Singh Gupta, Mr.Jaideep Khanna and Mr.Sahil Raveen, Advs. for the respondent.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. These writ petitions alongwith a batch of writ petitions raise common issues and questions of law. However, the facts as urged in W.P.(C) No.11304/2019 are narrated herein.

2. The said writ petition is filed by the petitioner seeking a writ of certiorari to quash the public notice dated 22.09.2019 issued by the respondent as the same is said to be unconstitutional being *ultra vires* Articles 14 and 19 of the Constitution of India and the National Council for Teacher Education Act, 1993 (*hereinafter referred to as the 'NCTE Act'*). A writ is also sought to quash para 4 (clause ii) of the said public notice dated 22.09.2019 issued by the respondent to the extent it requires all the recognized private Teacher Training Institutes to pay Rs.15,000/- per annum as the same is said to be unconstitutional and *ultra vires* Articles 14, 19 and 265 of the Constitution of India and the NCTE Act.

3. It is stated that the petitioner is a trust formed and registered in 2015. Eleven colleges duly recognized by the respondent/ National Council for Teacher Education (*hereinafter referred to as the 'NCTE')* had formed the said trust to protect the rights and the interests of all NCTE approved colleges. There are said to be about 500 NCTE approved/recognized colleges throughout the country who are the members of the petitioner.

4. The respondent/NCTE is a statutory board under the NCTE Act. On 29.12.1993, Parliament had enacted the said NCTE Act to provide for establishment of NCTE with a view to achieve planned and co-ordinated development of teacher education system throughout the country.

5. Some relevant statutory provisions i.e. sections 3, 12, 14 and 17 of the NCTE Act are as follows:

> "3. **Establishment of the Council**.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Council to be called the National Council for Teacher Education.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to contract and shall, by the said name, sue and be sued.

(3) The head office of the Council shall be at Delhi and the Council may, with the previous approval of the Central Government, establish regional offices at other places in India.

(4) The Council shall consist of the following Members, namely:—

(a) a Chairperson to be appointed by the Central Government;

(b) a Vice-Chairperson to be appointed by the Central Government;

(c) a Member-Secretary to be appointed by the Central Government;

(d) the Secretary to the Government of India in the Department dealing with Education, ex officio;

(e) the Chairman, University Grants Commission established under section 4 of the University Grants Commission Act, 1956 or a member thereof nominated by him, ex officio;

(f) the Director, National Council of Educational Research and Training, ex officio;

(g) the Director, National Institute of Educational Planning and Administration, ex officio;

(h) the Adviser (Education), Planning Commission, ex officio;

(i) the Chairman, Central Board of Secondary Education, ex officio;

(j) the Financial Adviser to the Government of India in the Department dealing with Education, ex officio;

(k) the Member-Secretary, All-India Council for Technical Education, ex officio;

(l) the Chairpersons of all Regional Committees, ex officio;

(m) thirteen persons possessing experience and knowledge in the field of education or teaching to be appointed by the Central Government as under, from amongst the—

(i) Deans of Faculties of Education and Professors of Education in Universities —Four;
(ii) experts in secondary teacher education —One;
(iii) experts in pre-primary and primary teacher education —Three
(iv) experts in non-formal education and adult education —Two;
(v) experts in the field of natural sciences, social sciences, linguistics, vocational education, work experience, educational technology and special education, by rotation, in the manner prescribed —Three;

(n) nine Members to be appointed by the Central Government to represent the States and Union territory Administrations in the manner prescribed;

(o) three Members of Parliament of whom one shall be nominated by the Chairman of the Council of States and two by the Speaker of the House of the People;

(p) three Members to be appointed by the Central Government from amongst teachers of primary and secondary education and teachers of recognised institutions.

(5) It is hereby declared that the office of the Member of the Council shall not disqualify its holder for being chosen as or for being a member of either House of Parliament.

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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—

(a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;

(b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;

(c) co-ordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teachermin recognised institutions;

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

(f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for

providing physical and instructional facilities, staffing pattern and staff qualification;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

(h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;

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

(l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialisation of teacher education; and

(n) perform such other functions as may be entrusted to it by the Central Government.

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14. Recognition of institutions offering course of training in teacher education.—(1) Every institution offering or intending to offer a course or training in teacher education on or after the

appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

Provided further that such institutions, as may be specified by the Central Government by notification in the Official Gazette, which—

(i) are funded by the Central Government or the State Government or the Union territory Administration;

(ii) have offered a course or training in teacher education on or after the appointed day till the academic year 2017-2018; and

(iii) fulfil the conditions specified under clause (*a*) of sub-section (3),

shall be deemed to have been recognised by the Regional Committee.

(2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,—

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or

training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4),—

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.

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17. Contravention of provisions of the Act and consequences thereof.—(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under sub-section (1),—

(a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and

(b) shall be published in the Official Gazette for general information.

(3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed

under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government."

6. On 22.09.2019, NCTE/respondent issued a public notice requiring all Teacher Education Institutions (TEIs) to annually file a Performance Appraisal Report (*hereinafter called to as the 'PAR'*). Non-submission of PAR would attract strict action under Section 17 of the NCTE Act i.e. withdrawal of recognition. All private un-aided TEIs were also asked to pay Rs.15,000/- each per annum.

7. The said public notice dated 22.09.2019 reads as follows:

"**PUBLIC NOTICE**

The National Council for Teacher Education is a statutory body that came into existence in pursuance of the National Council for Teacher Education Act 1993(No.73 of 1993) on the 17th August, 1995 to achieve planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of Norms and Standards in the Teacher education system and for matters connected therewith.

2. As part of one of the conditions of recognition, NCTE insists on submission of a Performance Appraisal Report annually which includes annual statement of accounts duly audited by a Chartered Accountant. Similarly, in section 12(j) and (k) of the NCTE Act, 1993, the following is mandated:-

> "(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;
>
> (k) evolve suitable performance appraisal system, norms and mechanisms for enforcing accountability on recognised institutions;"

Furthermore, Section 17 of the NCTE Act, 1993 situates as under:-

> "17(1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing: ……."

3. Therefore, all Teacher Education Institutions running NCTE recognized Teacher Education Courses are required to annually file a Performance Appraisal Report which is required for regulatory examination of the physical infrastructure teacher faculty and other stipulations as per NCTE rules, regulation or the NCTE Act.

4. The Performance Appraisal Report (PAR) is now required to be mandatorily submitted by all TEIs online on the specially designated portal

(http://ncte.gov.in/Website/PARsystemaspx). PAR should be submitted for the academic year 2018-2019 through online method and make necessary payments as under:

(i) Central and State Govt. institutions are required to pay Rs.5000/- per institution regardless of number of courses being run.

(ii) All other categories to pay Rs.15000/- per institution, regardless of number of courses being run.

5. Timeline to submit the online PAR shall be from 23rd September 2019 to 31st December 2019 (mid-night).

6. None-submission of PAR will attract action under section 17(1) of NCTE Act, 1993."

8. It is the case of the petitioner that the said public notice dated 22.09.2019 is without jurisdiction and violative of the NCTE Act. It is urged that the Member Secretary who has issued the said impugned notice dated 22.09.2019 does not have the power to exercise any of the said functions under the NCTE Act. The Council is authorized to perform the function under Section 12 of the NCTE Act. Since the Council has not taken any such decision nor the Council has delegated any such power to the Member Secretary, therefore, the Member-Secretary lacks power to take such a decision.

In alternative, it is pleaded that the petitioner is aggrieved by para 4 (clause ii) of the said public notice which requires private unaided TEIs to pay Rs.15,000/- as a fee for submitting the PAR every year as the same is a compulsory extraction of money in violation of Articles 19 and 265 of the Constitution of India and further the said provision travels beyond the

scope of the NCTE Act. There are said to be more than 18,000 recognized institutions throughout the country. Thus the amount that is sought to be appropriated by the respondent/NCTE every year by the said public notice is about Rs.28 crores. The said extraction is by an executive action without any legislative sanction.

9. The writ petition notes five questions of law, which are sought to be raised, which are as follows:

(a) Whether the Public Notice dated 22.09.2019 issued by the Member Secretary, NCTE is not without jurisdiction as the functions under section 12 of the NCTE Act can be lawfully exercised only by the Council/NCTE and not by any of its Members individually?

(b) Whether clauses (ii) of para 4 of the said Public Notice dated 22.09.2019 which requires the private unaided Teacher Education Institutions [TEI] to pay Rs. 15,000/- as a fee for submitting the Performance Appraisal Report every year is not compulsory extraction of money in complete violation of Articles 19 and 265 of the Constitution of India?

(c) Whether clauses (ii) of para 4 of the said Public Notice dated 22.09.2019 is ultra vires the NCTE Act as it seeks to create new policy heads not contemplated under the NCTE Act and is thus not contrary to law declared by the Hon'ble Supreme Court in Agricultural Market Committee Vs Shalimar Chemical Works Ltd [(1997) 5 SCC 516] and Kunj Behari Lal Butail Vs State of H.P [(2000) 3 SCC 40]?

(d) Whether the impugned impost stipulated in the Public Notice does not suffer from jurisdictional error as the NCTE Act and Regulations does not empower NCTE to do so?

(e) Whether impugned impost stipulated in the Public Notice does not violate the mandate of Article 19(l)(g) and 19(6) of the Constitution of India which requires the State Authorities to impose restrictions

on exercise of Fundamental Rights only by means of "law" and not be executive instructions?

10. The respondent/NCTE has filed a counter affidavit. In the counter affidavit, it has been pointed out that on 28th March, 2017, agenda No.10 of the 46th meeting of the Council was for discussion regarding renewal of recognition by the NCTE. The Council approved a system of annual renewal of registration and payment of annual fees which in the case of private institutions was Rs.15000/-.

11. In the 48th Meeting of the Council via agenda No.3 the Council noted that annual renewal of registration would not be feasible and hence approved filing of annual Performance Appraisal Report (PAR).

12. Hence, it is pleaded that from perusal of the records, it is clear that in the 46th and 48th meetings of the Council of NCTE, a decision was taken that there will be an annual Performance Appraisal System (PAR) for recognized institutions. The said decision was communicated vide the impugned public notice dated 22.09.2019 issued by the Member Secretary.

13. Reliance is also placed on the judgment of the Division Bench of this court in the case of ***Laxmi College of Education vs. National Council of Teacher Education & Anr.,*** 2019 SCC Online Del 10357 to contend that NCTE has the power to issue public notices. Hence, it is pleaded that the power was so exercised by the respondent Council in exercise of its functions/powers under Section 12 of the NCTE Act and the decision was communicated vide public notice issued by the Member Secretary.

14. Regarding the challenge to the filing of annual PAR along with nominal fees, it is pleaded that the power to impose the impugned steps/issue the impugned notice is traceable to Entry 66 of List-I of the VII

Schedule of the Constitution of India. It is further stated that the same are issued under NCTE Act. Reliance is placed on Section 12(c), (f), (j), (k) and (m) of the NCTE Act. Reliance is also placed on Section 17 of the NCTE Act. Reliance is also placed on the judgments of the Supreme Court in ***Bidi Leaves' & Tobacco Merchants Association & Ors. vs. State of Bombay, AIR 1962 SC 486*** and the case of ***Vasantlal Maganbhai Sanjanwala vs. State of Bombay & Ors., AIR 1961 SC 4*** to plead that the said stipulations are legal and valid.

It is further stated that the requirement of submission of PAR along with nominal fees is a reasonable restriction and not violative of Article 19 of the Constitution of India.

It is also denied that charging of nominal fees is contrary to Article 265 of the Constitution of India.

15. I may note that when this matter came up before this court on 02.12.2019, this court directed that the respondent will not take any coercive measure against the petitioners merely because PAR is not submitted by December, 2019.

16. I have heard learned counsel for the petitioner in W.P.(C) No. 11304/2019, learned senior counsel for the petitioner in W.P. (C) No. 12655/2019 and the learned Solicitor General of India for the respondent. I have also perused the written submissions filed by the petitioner in W.P.(C) 12655/2019 and by the respondent.

17. Learned counsel for the petitioner in W.P.(C) No.11304/2019 has made the following submissions:

(i) The impugned notice dated 22.09.2019 which was issued by Member Secretary of NCTE is vitiated and *ultra vires* the NCTE Act. It is

stated that no delegation was exercised in favour of the Member Secretary under Section 27 of the NCTE Act. Hence, the said notice is illegal, null and void. Reliance is placed on judgments of the Supreme Court in the case of ***Ramchandra Keshav Adke (Dead) by LR's & Ors. vs. Govind Joti Chabare & Ors.***, **(1975) 1 SCC 559** and the judgment in the case of ***Union of India & Ors. vs. B. V. Gopinath***, **(2014) 1 SCC 351** to urge that, it is only a delegate to whom power has been delegated who can exercise such a power.

(ii) It is further pleaded that the impugned notice dated 22.09.2019 to the extent that it seeks to charge fees from the constituent colleges is *ultra vires* Article 265 of the Constitution of India and the NCTE Act. There are more than 18,000 such institutions functioning in India. The respondent would end up collecting a sum of Rs.27 crores per year without any authority whatsoever.

Reliance is placed on Section 31 (f) and Section 31 (g) of the NCTE Act to stress that the power to charge fees rests only with the Central Government, NCTE has no power to charge fees. There is no separate provision in the NCTE Act giving power to levy fees for submitting PAR as per the impugned notice.

Reliance is placed on the judgment of the Supreme Court in the case of ***Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla & Ors.,*** **(1992) 3 SCC 285** to plead that a delegated authority can't impose tax or fee. Reliance is also placed on judgment of a Co-ordinate Bench of this court in the case of ***Ramesh Chandra & Anr. vs. MCD*** **2006 SCC Online Del 873** where parking fees charged by the respondent municipal corporation was struck down as

being fees imposed without any authority of law. Reliance is also placed on judgment of Bombay High Court in the case of ***Maharashtra Certified Auditors Association (Regd.) Solapur vs. State of Maharashtra & Anr., AIR 2005 Bom 70*** to the same effect;

(iii) It is further stated that the impugned notice dated 22.09.2019 is *ultra vires* the NCTE Act and is a colorable exercise of power. Reliance is placed on the judgment of the Supreme Court in the case of ***Agricultural Market Committee vs. Shalimar Chemical Works Ltd.,*** **(1997) 5 SCC 516** to plead that there cannot be delegation of essential legislative function. Reliance is also placed on the judgment of the Supreme Court in the case of ***Kunj Behari Lal Butail & Ors. vs. State of H.P. & Ors.***,**(2000) 3 SCC 40**.

It is further pleaded that Section 13 of the NCTE Act provides a mechanism to check the functioning of the constituent colleges. The respondent are free to cause inspection of the institution to ascertain whether the recognised institutions are functioning as per the provision of the Act. There is no reason why a new procedure contrary to the statutory provision should be prescribed for the same purpose. Any other procedure is *ultra vires* of the statutory provisions. Reliance is placed on the judgment of the Supreme Court in the case of ***Ramchandra Keshav Adke(Dead) by LRs & Ors. v. Govind Joti Chavare & Ors.***, (Supra) to contend that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are forbidden.

(iv) It is further stated that the demands sought in PAR for Aadhar, e-mail etc. are all illegal and contrary to the law as laid down by the

Supreme Court in the case of ***K.S.Puttaswamy & Anr. v. Union of India & Ors., (2017) 10 SCC 1***.

18. Learned senior counsel appearing for the petitioner in W.P. (C) No. 12655/2019 has reiterated the above submissions.

(i) It has been reiterated that the NCTE Act does not empower charging of fees for any other purpose such as submission of PAR under Section 12 (k) of the Act. Reliance is placed on a number of judgments including the judgment of this court in the case of ***Sam Higginbottom University of Agriculture, Technology & Science vs. University Grants Commission,*** (**2015) 225 DLT 638**, judgments of the Supreme Court in the cases of ***Association of Management of Private Colleges vs. All India Council for Teacher Education & Ors.,*** **(2013) 8 SCC 271**; ***Babu Verghese & Ors*** vs. ***Bar Council of Kerala & Ors.,*** **(1999) 3 SCC 422**; ***PTC India Ltd. vs. Central Electricity Regulatory Commission,*** (**2010) 4 SCC 603** and ***National Council for Teacher Education & Anr. vs. Vaishnav Institute of Technology Management,*** (Supra) to plead that the impugned notice is neither a rule nor a regulation. It is stated that the impugned notice could not be effective except by way of a rule or regulation which is required to be laid before each House of Parliament.

(ii) It is reiterated that the fees is *ultra vires* Article 265 of Constitution. Reliance is placed on the judgment of the Supreme Court in the case of ***Ahmedabad Urban Development Authority Vs. Shardkumar Jayantikumar Pasawalla & Ors.,*** (**1992) 3 SCC 285**.

(iii) It is further urged that the concept of PAR is contrary to the report of Justice Verma. It is pointed out that the Supreme Court on 13.05.2011 approved the constitution of a Committee headed by Justice J.S.Verma to

review existing provisions like withdrawal of recognition of institutions etc. One of the important recommendations of Justice Verma Commission Report filed in August, 2012 was that NCTE should set up a Teacher Education Assessment and Accreditation Centre (TEAAC) which would inter- alia develop and enforce a system of self-appraisal, develop a framework of mandatory accreditation of all TEIs (Teacher Education Institution), cause accreditation by the existing agencies specializing in this field [NAAC(National Assessment and Accreditation Council), NBA (National Board of Accreditation)] or by setting up of a body to accredit TEIs and to place the Accreditation report in the public domain. The said report was accepted in toto by the Supreme Court vide order dated 10.10.2012. Supreme Court not only accepted the report but also required NCTE to file affidavits specifying the steps to implement the same. Hence, it is stated that the recommendations of Justice Verma Commission having been sanctified by the imprimatur of the Supreme Court were binding on NCTE and on this court. Hence, the impugned notice which is contrary to the report is liable to be struck down.

19. The learned Solicitor General of India appearing for the respondent has submitted as follows:

(i) On the issue of the impugned notice dated 22.09.2019 having been signed by the Member Secretary, reliance has been placed on the meetings of the respondent Council of its 46th meeting dated 28.03.2017 and 48th meeting dated 05.02.2019 to plead that it is the decision of the Council to issue the notice dated 22.09.2019 and its contents including levy of the impugned fees of Rs.15,000/-. It is reiterated that the NCTE was not required to be vested with any specific power, in order to be competent to

issue the impugned public notice. Further issuance of the public notice was an integral part of the regulatory regime, and did not require any specific enabling provision. It is pleaded that the power was exercised by the Council, the member secretary merely communicated the decision of the Council. In this context reliance is placed on the judgment of a Division Bench of this court in the case of ***Laxmi College of Education vs. National Council of Teacher Education & Anr.***(supra).

(ii) On the issue of levy fees of Rs.15,000/- and the plea of the petitioner that it is *ultra vires* Article 265 of the Constitution of India and the NCTE Act, reliance is placed on entry 66 of List 1, Seventh Schedule of the Constitution of India read with Sections 12 and 14(2) of the NCTE Act. Reliance is also placed on judgments of the Supreme Court in the case of ***Vijayalakshmi Rice Mill & Ors. vs. Commercial Tax Officers, Palakol & Ors., (2006) 6 SCC 763*** and in the case of ***State of Tamil Nadu and Anr vs. TVL South Indian Sugar Mills Association & Ors., (2015) 13 SCC 748*** to plead that levy of the fees is within the powers of the respondent and is constitutional.

(iii) On the plea that the stipulation of PAR and levy of fees is in excess of the powers of NCTE and goes beyond the Act, learned Solicitor General relied upon the preamble of the NCTE Act and Section 3(4), Section 12(c),(f),(j),(k) and (m) and Section 25 of the Act to plead that the respondent/NCTE has powers to issue the impugned notice. It is further pleaded that even assuming there was no specific power in the statutory provision, the said power is implied in the Act. Reliance is also placed on judgments of the Supreme Court in the case of ***Bidi Leaves And Tobacco Merchant Association & Ors. vs State of Bombay***(supra) and ***Vasantlal***

Maganbhai Sanjanwala vs. State of Bombay & Ors.(supra) to plead that the respondent has powers to regulate and cannot be toothless.

(iv) On the plea raised by the petitioner pertaining to the report of Justice Verma Commission, it was stated that it is the bounden duty of the respondent to follow the same as it is a decision of the Supreme Court. However, it is stated that the impugned notice dated 22.09.2019 does not in any manner whatsoever violate or prescribe any procedure which is contrary to Justice Verma Commission Report. The said report recommends setting up of an autonomous Teacher Education Assessment and Accreditation Center (TEAAC). PAR is distinct from TEAAC. The PAR is only to ensure basic minimum checks are in place for Teacher Education Institutions. Hence, PAR is not in conflict with Justice Verma Commission Report.

20. I will now deal with the aforenoted pleas raised by the petitioners.

I. THE IMPUGNED NOTIFICATION IS ISSUED BY THE MEMBER SECRETARY OF NCTE WHO HAS NO POWERS TO ISSUE THE SAME.

21. As noted above, the respondent Council in its 46th meeting held on 28.03.2017 and then thereafter in its 48th meeting held on 05.02.2019 approved the requirements of accredited institutes to file PAR along with the said fees of Rs.15,000/-.

22. The relevant portion of the agenda dated 28.03.2017 of the 46th meeting of the Council reads as follows:

"**Regarding renewal of recognition by NCTE every year**

The NCTE Act, 1993 has been established for the purpose of achieving planned and coordinated development of teacher education system and for regulating and maintaining norms and standards in teacher education system.

Over a period of time, it has been felt that after obtaining recognition from NCTE, Teacher Education Institutions(TEls) do not adhere to the conditions of recognition and generally fail to maintain proper discipline and standard in that regard, NCTE has been struggling with this problem for some time now.

Therefore, to ensure that TEIs continue to abide by the NCTE Norms regarding physical and academic infrastructure and facilities and keep themselves up to date with NCTE Regulations made from time to time, it would be appropriate to accord recognition initially for a period of one year and therefore renewal of recognition is given on yearly basis, through an online method to be prescribed by the NCTE.

Annual renewal will ensure that the TEIs are working in strict accordance with NCTE Act, 1993 and Regulations. For the said purpose a processing fee of Rs.20000/- (Rs. Twenty thousand only) may be charged from self financed TEIs on yearly basis. The Central Govt. and State Govt Universities and institutions shall pay only Rs.5000/- (Rs. Five thousand only) as processing charges. This would facilitate in securing the object and purpose of NCTE Act, 1993, in particular reference to sections 12(c), (f), (j), (k) and (m) of NCTE Act, 1993, Earlier NCTE proposed monitoring of the website of the institution through Quality Council of India and asked them to deposit a fee of Rs.3150/-.

For this purpose since the renewal of recognition will involve monitoring of their websites as well, the amount paid by any TEl earlier for this purpose shall be adjusted in the total fee of Rs.20,000/- proposed to be charged for renewal fee in the first year.

Decision of the Council:

The proposal was approved as proposed with the caveat that the renewal will be fixed at Rs.5000/- for Government Institutions and Rs.15000/- for private aided and non-aided institutions instead of the proposed Rs. 20000/-"

23. The relevant portion of the agenda dated 05.02.2019 of the 48th meeting of the Council reads as follows:

"**Consideration of the Performance Appraisal Report (PAR)**

Linked Renewal of Recognition/Permission of

The Council in its 46th meeting held on 28th March 2017 vide agenda- item No. 10 approved the Annual Renewal of Recognition of Teacher Education Institutions recognized by NCTE. Before the decision could be implemented a large number of TEIs filed court cases across the country in various High Courts.

A study of the various petitions filed in Courts revealed that a regime of annual renewal of recognition would not be feasible. Accordingly, it is proposed to insist on Performance Appraisal Report (PAR) at this stage to put in place a system of Managing Information System (MIS), which was intended with the Agenda Item No.10, as placed before the 46th GB Meeting. Accordingly, with same terms and conditions as already approved, the "PAR" may be substituted for "Annual Renewal of Recognition". Proforma to be developed by NCTE.

The PAR, being part of the condition of recognition, will be insisted upon Course wise and with fees chargeable (as already approved in 46th GB) accordingly.

The Council may consider the issue and accord its approval.

DECISION OF THE COUNCIL:

The agenda item was approved as proposed authorising NCTE to proceed in the matter through a proforma to be developed by NCTE for this purpose."

24. Clearly, the impugned notice has been issued pursuant to a decision of the NCTE Council taken as per the NCTE Act. It is not a decision taken by the Member Secretary.

25. In the above context reference may be had to the judgment of the Division Bench of this court in the case of ***Laxmi College of Education vs. National Council of Teacher Education & Ors.***(supra). The respondent herein in the said case had urged as follows:

> "27.(i)(j) The NCTE was not required to be vested with any specific power, in order to be competent to issue the impugned Public Notice dated 20th May, 2019. Issuance of Public Notices were an integral, part of any regulatory regime, and did not require any specific enabling provision. By issuing such Public Notice, transparency, and outreach to the maximum number of persons, was achieved. Moreover, the power to issue the impugned Public Notice could also be related to the power to prescribe norms, and .standards, which was, in any case, statutorily vested in the NCTE."

26. On the said plea, the court held as follows:

> "82….. We cannot subscribe to the extreme submission, advanced by Mr.Sharawat that the NCTE was entirely incompetent to issue a Public Notice, and we agree with the learned ASG, to the extent of his submission that issuance of a Public Notice does not require any enabling statutory provision. ….."

Hence, issue of a public notice in the stated facts required no enabling provision.

27. Clearly what follows is that the impugned notice merely communicates the decision taken by the Council in its two meetings noted above. No specific power is required by the Secretary to communicate a decision taken by the Council or to issue a public notice which merely communicates the decision taken by the Council. It is important to note that the impugned notice is not the decision of the Secretary himself. There is hence no merit in the said plea of the petitioner that the Secretary of the respondent could not have signed the said public notice or issued the same.

II. LEVY OF FEES IS *ULTRA VIRES* ARTICLE 265 OF TE CONSTITUTION OF INDIA AND THE NCTE ACT.

28. I will now deal with the aforesaid contention raised by the petitioner that levy of the fees of Rs.15,000/- per annum by the public notice dated 22.09.2019 is *ultra vires* Article 265 of the Constitution of India and the NCTE, Act. It is also the case of the petitioner that when a fees is to be levied specific provisions are provided in the NCTE Act, namely, Section 14 (2), Section 15 (2) and Section 18 (3) read with section 31(f) and 31(g) of the Act. The impugned notice is not issued in exercise of powers of the said provisions. Hence, the fees is *ultra vires* the NCTE Act. Further, it is stated that the fees is akin to a tax and is liable to even otherwise be struck down.

29. The respondent refers to Entry 66 of List- I of Schedule VII of the Constitution of India to plead the source of power to levy the fees. It is also stated that power to levy fees is also traceable to Section 12 (h) read

with Section 14 of the NCTE. It is stated that the said provisions must be read in a wide manner and not restrictively. It is also stated that the said fees as levied by the impugned notice cannot be said to be a tax in any manner. It is a fees based on *quid pro quo*.

30. On the issue of distinction between tax and fees, reference may be had to the relevant judgments.

31. Reference may be had to the judgment of the Supreme Court in the case of ***Vijayalakshmi Rice Mill & Ors. vs. Commercial Tax Officers, Palakol & Ors.***(supra). That was a case in which a challenge was to the levy of cess under the Andhra Pradesh Rural Development Act, 1996 which levy was in addition to the sales tax being paid by the petitioner. The Supreme Court held as follows:

> "15. It is well settled that the basic difference between a tax and a fee is that a tax is a compulsory exaction of money by the State or a public authority for public purposes, and is not a payment for some specific services rendered. On the other hand, a fee is generally defined to be a charge for a special service rendered by some governmental agency. In other words there has to be *quid pro quo* in a fee vide *Kewal Krishan Puri* v. *State of Punjab* [(1980) 1 SCC 416] .
>
> 16. The earlier view of the Supreme Court was that to sustain the validity of a fee some specific service must be rendered to the particular individual from whom the fee is sought to be realised. However, subsequently in *Sreenivasa General Traders* v. *State of A.P.* [(1983) 4 SCC 353] , the Supreme Court observed:
>
> > "*31*. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common

> burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. …
>
> *32*. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities."

17. Similarly in *City Corpn. of Calicut* v. *Thachambalath Sadasivan* [(1985) 2 SCC 112] , which has placed reliance on an earlier decision of the Supreme Court in *Amar Nath Om Prakash* v. *State of Punjab* [(1985) 1 SCC 345] , it was held that:

> "*7*. It is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

18. Subsequently also, the same view has been reiterated that there has been a sea change in the concept of a fee and now it is no longer regarded necessary that (*i*) some specific service must be rendered to the particular individual or individuals from whom the fee is being realised, and what has to be seen is whether there is a broad and general correlationship between the

totality of the fee on the one hand, and the totality of the expenses of the services on the other, vide *State of H.P.* v. *Shivalik Agro Poly Products* [(2004) 8 SCC 556] ; (*ii*) there need not be an exact or mathematical correlation between the amount realised as a fee and the value of the services rendered. A broad correlation between the two is sufficient to sustain the levy."

32. Reference may also be had to the judgment of the Supreme Court in the case of ***State of Tamil Nadu & Anr vs. TVL South Indian Sugar Mills Association & Ors.***(supra). That was a case in which the state government under the concerned rules increased administration service fees to Rs.1 from 50 paise per bulk litre for industrial alcohol produced by distillers located in the state. The petitioner contended that this exercise had to be meticulously calculated on the premises of *quid pro quo*. The Supreme Court held as follows:

"**7.** Over the years, the inflexibility with which the principle of quid pro quo was to be applied, which may have been sired from a pedantic perusal of *Synthetics and Chemicals Ltd.* [(1990) 1 SCC 109], has been clarified and crystallised by this Court. We shall reproduce these paragraphs from *B.S.E. Brokers' Forum* v. *SEBI* [(2001) 3 SCC 482] to enable their fruitful consideration:

> "*30*. This Court in *Sreenivasa General Traders* v. *State of A.P.* [(1983) 4 SCC 353] has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or class. In that process

if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in *Kewal Krishan Puri* v. *State of Punjab* [(1980) 1 SCC 416] is only an obiter.

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38. As noticed in *City Corpn. of Calicut* [*City Corpn. of Calicut* v. *Thachambalath Sadasivan*, (1985) 2 SCC 112] the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in *Sirsilk Ltd.* [*Sirsilk Ltd.* v. *Textiles Committee*, 1989 Supp (1) SCC 168] if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the statute under Section 11 of the Act requires the Board to undertake

various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(*k*) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone."

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11. It seems to us, facially, that if administrative or service charges are sought to be recovered from the respondent Distilleries to cover nefarious activities carried out by third parties such as smuggling and countryside brewing, etc. which have no causal connection with the production of industrial alcohol, or for collection of excise duties from other industries carrying out distinctly different production or manufacture, the fee would metamorphose into a tax. We must hasten to explicate that the illegal or illicit diversion of industrial or ethyl alcohol is possible at the stage where it is rectified spirit or industrial alcohol, contrary to the argument of the respondents. Therefore, so long as expenses are incurred by the State Government in ensuring that industrial alcohol is not used as potable alcohol, recovery thereof shall be permissible."

33. Reference may also be had to the judgment of the Supreme Court in the case of ***Delhi Race Club Ltd. v. Union of India & Ors., (2012) 8 SCC 680***. The court distinguished between fees imposed for regulatory purposes i.e. fees for license and fees for *quid pro quo*, namely, fees for services. The court held as follows:

"37. It is pertinent to note that in *Liberty Cinema* [AIR 1965 SC 1107] the Court had identified the existence of two distinct kinds of fee and traced its presence to the Constitution itself. It was observed that in our Constitution, "fee for licence" and "fee

for services" rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a bare reading of Articles 110(2) and 199(2) of the Constitution, where both the expressions are used, indicating thereby that they are not the same. Quoting *Shannon* v. *Lower Mainland Dairy Products Board* [AIR 1939 PC 36] , with approval, it was observed thus: (*Liberty Cinema case* [AIR 1965 SC 1107] , AIR p. 1113, para 8)

> "*8*. … if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province, or for both purposes. … It cannot, as Their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.' (*Shannon case* [AIR 1939 PC 36] , AC pp. 721-22)"

38. The same principle was reiterated in *Secunderabad Hyderabad Hotel Owners' Assn. case* [(1999) 2 SCC 274] where the existence of two types of fee and the distinction between them has been highlighted as follows:

> "*9*. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. *Licence fee can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive*."

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41. On the question whether the element of quid pro quo, as it is understood in common legal parlance, was applicable to a regulatory fee, as in that case, speaking for the Bench, D.P. Mohapatra, J., concluded thus: (*A.P. Paper Mills Ltd. case* [(2000) 8 SCC 167] , SCC pp. 179-80, para 32)

> "*32*. From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, stricto sensu the element of quid pro quo does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the licence fee and the purpose for which the provisions of the Act and the Rules have been enacted/framed. As noted earlier, the High Court has answered the question in the affirmative. We have carefully examined the provisions of the Act and the Rules and also the pleadings of the parties. We find that the High Court has given cogent and valid reasons for the findings recorded by it and the said findings do not suffer from any serious illegality. It is our considered view that the licence fee has correlation with the purpose for which the statute and the rules have been enacted."

42. Thus, it is clear that a licence fee imposed for regulatory purposes is not conditioned by the fact that there must be a quid pro quo for the services rendered, but that, such licence fee must be reasonable and not excessive. It would again not be possible to work out with arithmetical equivalence the amount of fee which could be said to be reasonable or otherwise. If there is a broad correlation between the expenditure which the State incurs and the fees charged, the fees could be sustained as reasonable."

34. The legal position that follows from the above is that distinction between tax and fees primarily lies in the fact that a tax is levied as

compulsory extraction for public purposes as part of a common burden while fees is payment for a specific benefit or privilege. The primary purpose of the fees is to render specific service to the specified area or class. The fees charged should not be excessive. If the fees charged is for the benefit of the entire industry there is sufficient quid pro quo between the levy recovered and the services rendered to the industry as a whole. A fees can also be charged for regulatory purpose in which case there need not be *quid pro quo* for the services rendered.

35. The counter affidavit filed by the respondents clearly states that the decision taken by the respondent for charging the nominal fee is for promoting research, innovation and standards of teacher education in India and for securing the object and purpose of the NCTE Act in particular. Reference is made to Sections 12 (c), (f), (j), (k) and (m) of the NCTE Act. Clearly, the fees is to reimburse the expenses for service provided. Clearly, in this case the respondent is rendering a service and charging a fee based on quid pro quo namely to ensure planned and coordinated development of the teacher education system and enforcing performance appraisal mechanism for enforcing accountability on recognized institutions. The levy is not a compulsory extraction for public purpose.

36. What follows from the above is that the impugned notice/circular dated 22.09.2019 seeks to levy a fee and not a tax in any manner whatsoever.

37. Regarding the power of the respondent to levy fees, I may note that Section 14 (2) of the Act provides that a fee will be paid along with an application for recognition as filed under Section 14(1) of the Act. Under Section 14 (3) an institution which is found to be adhering to the requisite

terms and conditions, the respondent can grant an order giving recognition to such institution subject to terms and conditions as may be determined by the regulations. Regulation 8 (12), (13) and (14) of National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 (*hereinafter referred to as the 'Regulations'*) read as follows:

> "8…
>
> (12) The institution shall make the information or documents available to the Council or its authorised representatives as and when required by them and failure to produce or show any of the required documents, shall be treated as a breach of the conditions of recognition.
>
> (13) The institution shall maintain records, registers or other documents, which are essential for running an educational institution especially those prescribed under the relevant rules or regulation and norms and standards and guidelines or instructions of the Central or State or Union territory administrations, affiliating or examining bodies.
>
> (14) The institution shall adhere to the mandatory disclosure in the prescribed format and display up-to-date information on its official website."

38. Clearly as a pre-condition of recognition granted under Section 14 of the Act, the recognized institution is obliged to make information and documents available to the Council, to maintain records, registers, documents as may be prescribed, the institution has to adhere to mandatory disclosure in the prescribed format and display up-to-date information on its official website. Failure to comply with the said directions may imply withdrawal of recognition under section 17 of the NCTE Act.

39. PAR that will be filed annually by the stated 18,000 plus institutions will be part of the process of performance appraisal and enforcing accountability on recognised institutions by the respondent. It will require the respondent to process, screen and evaluate the information, material and data filed to exercise stipulated functions of planned and co-ordinated development of teacher education system. This entire detailed exercise will entail expenses by the respondent. Clearly, stipulation of PAR and the fees as prescribed by the impugned notice dated 22.09.2019 is apart from others, an exercise of powers under Section 14 of the Act. It is part of the process of grant of recognition and continuation of the recognition as provided for under Section 14 of the NCTE Act.

40. On a meaningful reading of the NCTE Act especially Sections 12 and 14, it is clear that the respondent has power to levy the impugned fees for the services rendered. I may note that there is no submission made to the effect that the stated fees is unreasonable or exorbitant.

41. There is another aspect regarding the power of NCTE to levy the said fees via the impugned circular dated 22.09.2019. It is also the plea of the respondent that the power to levy fees is implied in the nature of functions entrusted to the NCTE under the Act for the services being rendered by the respondent.

42. In this context, reference may be had to the judgment of the Supreme Court of a Bench comprising of Seven Judges in the case of ***Synthetics and Chemicals Limited & Ors. Vs. State of U.P. & Ors.*** (**1990) 1 SCC 109**. The main question in that case was the constitutional validity of levies imposed by the respondent / State on industrial alcohol. Apart from excise duty various levies like vend fee, transport fees were

being imposed by the State Government. The main contention of the petitioners was that states have no legislative authority in view of Entry 84 List I to Schedule VII of the Constitution of India. In those facts, the Supreme Court held as follows:

> "86. The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol:
>
> *(a)* It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.
>
> *(b)* It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.
>
> *(c)* The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.
>
> *(d)* However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of *Indian Mica case* [(1971) 2 SCC 236]."

Hence, the court held that where a state is rendering any service, fees based on *quid pro quo* can be charged.

43. I may again refer to the judgment of the Supreme Court in the case of ***State of Tamil Nadu and Anr. Vs. TVL South Indian Sugar Mills Association and Ors.***(supra). As noted above that was the case in which the petitioners before the writ court had assailed the legality of the demand of Rs.1 per bulk liter of industrial alcohol manufactured by them. Earlier the said petitioners / respondent before the Supreme Court had unsuccessfully assailed the levy of 50 paisa per bulk liter as duty. The Supreme Court held as follows:

> "6. We do not propose to make this judgment prolix by once again minutely analysing the several decisions of this Court, which have clarified that administrative or service charges can be recovered, but nothing over and above them; that while it would be unfair to insist on mathematical exactitude in the calculation of administrative service charges, there must be a perceptible correlation between the expenses and the collections; that it will not be permissible for the State to collect fees in respect of expenses incurred in its Excise Department, except those bearing a reasonable nexus with the administrative steps taken to ensure that there is no misutilisation or diversion of industrial alcohol for the purposes of producing potable alcohol. The extracted paragraph from *Synthetics and Chemicals Ltd.* [(1990) 1 SCC 109] which distils the precedents on the State's legislative powers with regard to industrial alcohol, deserves careful consideration:
>
> > "*86.* The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol:

(a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.

(b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.

(c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.

(d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo."

44. Hence, the court reiterated the proposition laid down in the earlier judgment of the Supreme Court in the case of ***Synthetics and Chemicals Limited & Ors. Vs. State of U.P. & Ors.*** (supra). The court clarified that the administrative / service charges can be recovered but nothing over and above them. The court will also not insist on a mathematical exactitude in calculation of administrative service charges but there must be a perceptible co-relation between the expenses and collections. The fees must have a reasonable nexus with administrative steps taken. Hence, it follows that when a state is rendering any service it may charge fees based on *quid pro quo*.

45. Clearly what follows is that a body where it is rendering service, fees based on *quid pro quo* can be charged. Fees can also be charged for regulatory purpose. The NCTE Act require the respondent to plan and co-

ordinate development of the teacher education system. The exercise of calling for PAR and the subsequent exercise of processing and evaluating the said material filed by the institutions is a step in co-ordination and development of teacher education. It is a service/*quid pro quo* being provided by the respondent under the NCTE Act. The fees for *quid pro quo* is legal and valid.

46. I may now look at the judgments relied upon by the learned counsel for the petitioner in W.P.(C) No.11304/2019.

47. Reference may be had to the judgment of the Supreme Court in the case of ***Ahmedabad Urban Development Authority vs. Shardkumar Jayantikumar Pasawalla & Ors.***(supra). I may note in that case the submission of the appellant was noted that the development fees in question was being imposed for the development affected in the area in question and the person coming under the scheme will have to make such payment irrespective of the fact that whether or not such person had intended for such development. The plea of the appellant was also noted that unlike other local authorities like Municipalities or Panchayats, the appellant had no power or authority to collect any tax even though it is essentially necessary to augment its revenue for desired purpose and development of the area in question. In those facts and submissions, the Supreme Court held as follows:

> "7. After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that

> the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. The facts and circumstances in the case of District Council of Jowai are entirely different. The exercise of powers by the Autonomous Jaintia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for a specific purpose by the autonomous District was justified and such power was implied. The said decision cannot be made applicable in the facts of this case or the same should not be held to have laid down any legal proposition that in matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in Khargram Panchayat Samiti case [(1987) 3 SCC 82] also deals with the exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee."

The said judgment would not apply to the facts of this case. There the appellant clearly accepted that the fees was to augment its revenues.

48. Reference may also be had to the judgment of a Co-ordinate Bench of this court in the case of ***Ramesh Chandra vs. Municipal Corporation of Delhi & Anr.***(supra). In that case, the issue was a challenge to the levy and recovery of amounts by the Municipal Corporation of Delhi towards parking charges. The court held as follows:

> "9. The issue which arises for consideration is whether the imposition of a parking fee, at the time of purchase of a motor vehicle, as in the present case, amounts to a "tax" or a "fee" properly leviable in terms of the Act.
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12. It is apparent that the provisions relating to taxation do speak of taxation of vehicles, but not of the kind and nature which concerns the present dispute; Section 113 contains a description of all heads of taxation. They do not refer to parking. The power to frame bye-laws similarly, does not extend to making bye-laws to recover fees for parking, or levy taxes in that regard.

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16. An analysis of the above case law would show that:

(1) The taxing power of a sovereign legislative body, i.e. the State or the Union (i.e. Parliament) is untrammelled by considerations of quid pro quo. The power of taxation is to collect revenue; it can be used to regulate an industry or activity.

(2) Levy and collection of a fee, on the other hand, denotes an element of quid pro quo. The extent of such co-relationship between the levy of the fee, and the nature of service rendered, however, would not be gone into by the Court, if it satisfied about existence of such quid pro quo.

(3) Power to regulate, develop or control would not include within its sweep a power to levy tax or fee except when it is only regulatory. Power to tax or levy for augmenting revenue shall continue to be exercisable by the legislature in whom it vests i.e. the State Legislature in spite of regulation or control having been assumed by another legislature i.e. the Union.

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20. The needs of the city to create parking facilities, and modernize existing parking spaces, is undeniable. The MCD cannot be faulted in its intention to find out ways and means to achieve that end; it is legitimate. Nevertheless, neither the MCD, nor any other body, whose powers are expressly delineated by provisions of law, can overstep those limits, and

> constitutional limitations. One of the guarantees of the Constitution is that there can be no taxation without authority of law (Article 265). Legitimate ends have to be achieved through legitimate means, which in this case, means by appropriate legislation, or amendment to existing legislation. Absent that, the recourse to a mere resolution of the Corporation is impermissible, both under the Act, and the Constitution of India."

49. Hence, the court came to a finding that the provisions relating to taxation speak of taxation of vehicles but not of the nature envisaged. The said section 113 of the Act contains a description of all heads of taxation but did not refer to parking. The court noted the dicta of the Supreme Court in the case of ***Synthetics and Chemicals Limited & Ors. vs. State of U.P. & Ors.***(supra), namely, that fees can be levied when it is based on *quid pro quo*. The court concluded that the levy of parking charges is not for specific service rendered but to augment its finances. The said judgment has no application to the facts of this case.

50. What follows is that the levy in question is a fees. In view of the provisions of the NCTE Act and consequent steps taken by the respondent under the provisions of the Act, a clear case of *quid pro quo* is made out. The respondent would have the power to levy the stated fees under Sections 12 and 14 of the NCTE Act.

III. DIRECTIONS TO FILE PAR AS PER PUBLIC NOTICE DATED 22.09.2019 IS *ULTRA VIRES* THE NCTE ACT.

51. I will now deal with the plea raised by the petitioners that the directions to file PAR as per impugned public notice dated 22.09.2019 is ultra vires the NCTE Act. It was strongly urged that the action of the

respondent must confirm to the statute under which it has been taken and must be within the rule making power of the authority. The petitioners have also placed reliance upon Section 13 of the NCTE Act to urge that it provides powers to carry out inspection of the affiliated institutes. It has been urged that when a statute provides a manner to check the functioning of recognized institutes then that is the only way, the respondent can exercise the power. Devising new methods to allegedly check the functioning of the recognized institutions not envisaged in the NCTE Act are illegal and *ultra vires* the said Act. Hence, it is stated that the requirement to file PAR is *ultra vires* the NCTE Act and the Rules. In any case, Rule 7(14) of the Rules provides that all information is to be put on the website. In these facts, the impugned notice is redundant and irrelevant.

52. I may once again look at the relevant provisions of the NCTE Act in this regard.

> "**Preamble:-**
>
> An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development for the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system including qualifications of school teachers and for matters connected therewith.
>
> xxxxx
>
> **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 coordinated 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—

xxxxx

(*j*) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council and to suitably advise the recognised institutions;

(*k*) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognised institutions;

xxxxx

(*m*) take all necessary steps to prevent commercialisation of teacher education; and

(*n*) perform such other functions as may be entrusted to it by the Central Government.

xxxxx

13. **Inspection**—

(1) For the purpose of ascertaining whether the recognised institutions are functioning in accordance with the provisions of this Act, the Council may cause inspection of any such institution, to be made by such persons as it may direct, and in such manner as may be prescribed.

(2) The Council shall communicate to the institution the date on which inspection under sub-section (1) is to be made and the institution shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the said institution, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that institution, recommend to

that institution the action to be taken as a result of such inspection.

(4) All communications to the institution under this section shall be made to the executive authority thereof, and the executive authority of the institution shall report to the Council the action, if any, which is proposed to be taken for the purpose of implementing any such recommendation as is referred to in sub-section (3)."

53. The statutory provisions show that the NCTE Act is established with a view to achieving planned and co-ordinated development of teacher education system, regulation and proper maintenance of the norms and standards. Section 12 of the NCTE Act states that it is the duty of the Council to take all steps as it may deem fit to ensure planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and also for the purpose of performing its functions under this Act. Section 12 further provides that the Council may take all steps as elaborated in sub clauses (a) to (n). Section 12(j) provides that the respondent Council may examine and review periodically the implementation of norms etc. laid down by the Council and suitably advise the recognised institutions. Section 12(k) provides that the Council may evolve suitable performance appraisal systems, norms and mechanisms by enforcing accountability of all the recognized institutions. Similarly, the regulations, especially Regulations 12 to 14 noted above obligate the recognized institutions to make available information and documents, maintain records, register etc., as prescribed.

54. What follows is that it is the duty of the Council to take all necessary steps for development of teacher education system and

regulation and proper maintenance of norms and standards. Section 12 of the NCTE Act permits providing appropriate performance appraisal system, norms and mechanism for enforcing accountability of all the recognized institution. Clearly, the requirement for the recognised institutions to submit annually PAR is obviously nothing else but a performance appraisal system enforcing accountability on recognized institutions. The necessary information sought under PAR will help the Council to keep a watch on the standards and norms being maintained by the recognized institutions and to see that appropriate necessary guidelines and directions issued by the Council are being duly complied with by all the recognized institutions. Clearly, NCTE Act, especially section 12 permits the petitioner to direct filing of PAR by recognized institutions. There is no merit in the plea of the petitioner that there are no powers with NCTE to direct filing of PAR.

55. Another plea that was strongly urged by the petitioner was that section 13 of the NCTE is for the purpose of ascertaining as to whether the recognized institutions are functioning in accordance with the provisions of the Act. The Council may cause inspection of institutions to be made for the said purpose. It was urged that as a specific mechanism is provided under section 13 to ensure that the recognized institutions are functioning in accordance with the provisions of the NCTE Act, that is the only mechanism, the Council can use for keeping a tab on the recognized institutions.

In my opinion, the plea is misplaced. A reading of sections 12 and 13 of the NCTE Act do not show that the statute intends that the respondent Council can only through a mechanism of inspection ascertain

as to whether the recognized institutions are functioning in accordance with the provisions of the NCTE Act. A reading of the said statutory provisions does not support such an interpretation. As noted above Section 12(k) specifically provides that the Council may evolve suitable Performance Appraisal System. Further as rightly pointed out by the learned Solicitor General, there are 18000 such teacher education institutions in the country. It is not possible for the respondent to physically inspect all the 18000 institutions annually to ascertain that these institutions are complying with the statutory provisions and other directions of the respondent Council. This plea is without merit.

56. In the above context reference may also be had to the judgment of the supreme Court in the case of ***Vasantlal Maganbhai Sanjanwala vs. State of Bombay & Ors.,*** (Supra) where the Court held as follows:-

> "4**.** It is now well-established by the decisions of this court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well-settled. The legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. As has been observed by Mahajan, C.J., in *Harishankar Bagla* v. *State of Madhya Pradesh* [(1955) 1 SCR 381, 388] "the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases, and must provide a standard to guide the officials or the body in power to

execute the law". In dealing with the challenge to the vires of any statute on the ground of excessive delegation it is, therefore, necessary to enquire whether the impugned delegation involves the delegation of an essential legislative function or power and whether the legislature has enunciated its policy and principle and given guidance to the delegate or not. As the decision in *Bagla case* [(1955) 1 SCR 381, 388] shows, in applying this test this court has taken into account the statements in the preamble to the Act, and if the said statements afford a satisfactory basis for holding that the legislative policy and principle has been enunciated with sufficient accuracy and clarity the preamble itself has been held to satisfy the requirements of the relevant tests. In every case it would be necessary to consider the relevant provisions of the Act in relation to the delegation made and the question as to whether the delegation is intra vires or not will have to be decided by the application of the relevant tests."

57. Reference in this context may also be had to the judgment of the Supreme Court in the case of ***Bidi Leaves & Tobacco Merchants' Association, Gondia & Ors. vs. State of Bombay & Ors.,*** (Supra) where the Supreme Court held as follows:-

"20**.** "One of the first principles of law with regard to the effect of an enabling act", observes Craies, "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view". The principle on which this doctrine is based is contained in the legal maxim "*Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa ease non potest*". This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect". Dealing with this doctrine Pollock, C.B., observed in *Michael Fenton and James Fraser* v. *John Stephen Hampton* [(1857-1859) 117 R.R. 32 at p. 41] "it becomes therefore all important to consider the true import of this maxim,

> and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus: Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be also done, then that something will be supplied by necessary intendment". This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means, as are essentially necessary to its execution". In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied. This position in regard to the scope and effect of the doctrine of implied powers is not seriously in dispute before us. The parties are at issue, however, on the question as to whether the doctrine of implied powers can help to validate the impugned clauses in the notification.

58. Clearly, if a legislature enables something to be done, it gives powers at the same time by necessary implication to do what is necessary to convey out the purpose of the Act. Hence, even for the sake of argument, if it is assumed that there is no specific reference in the said Act for directing the petitioners to file the PAR, the same can be implied from the statutory scheme of the NCTE. PAR is only an attempt to regulate the

recognised institutions in terms of the Act and cannot be said to be dehors the statutory provisions.

59. I may also look at the judgments of the Supreme Court relied upon by the learned counsel for the petitioner. In this context, I may first look at the judgment of the Supreme Court in the case of ***Agricultural Market Committee vs. Shalimar Chemical Works Ltd.(supra)***. That was a case which related to "copra" (dried coconut kernel). The Agricultural Market Committee had a right to levy and realise market fee on all transactions of sale or purchase provided the transactions took place within the notified area of the Committee. Copra was a notified agricultural produce. The impugned bye-laws contained a statutory presumption that if a notified agricultural produce was weighed or measured within the notified area of the Committee, it shall be deemed to have been purchased or sold within that area. The concerned authority held that since copra was imported from the State of Kerala and was weighed at Hyderabad, it shall be deemed to have been sold to the respondent at Hyderabad. Consequently, the respondent was held liable to pay the market fee. In those facts, the court held as follows:-

> "26**.** The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to taxing statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary rules and regulations has to work within the scope of

its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act.

xxx

28. The Government to whom the power to make rules was given under Section 33 and the committee to whom power to make bye-laws was given under Section 34 widened the scope of "presumption" by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the legislature and not by a delegate in exercise of the rule-making power. We are, therefore, in full agreement with the High Court that Rule 74(2) and Bye-law 24(5) are beyond the scope of the Act and, therefore, ultra vires. The reliance placed by the assessing authority as also by the appellate and revisional authority on these provisions was wholly misplaced and they are not justified in holding, merely on the basis of weighment of "copra" within the notified area committee that the transaction of sale took place in that market area."

60. Hence, as noted above, a delegate which has been authorised to make subsidiary rules and regulations has to work within the scope of its authority and cannot widen the scope of the Act or the policy laid down. The Court struck down the presumption that agricultural produce if weighed, measured or counted within the notified area shall be deemed to have been sold or purchased in that area. In the present case, there is no legal fiction being created. There is no essential legislative function

usurped by the respondent. The above judgment would not be applicable to the facts of this case.

61. Reference may now be had to the judgment of the Supreme Court in the case of ***Kunj Behari Lal Butail and Ors. vs. State of H.P. and Ors.(supra).*** That was a case relating to the Himachal Pradesh Ceiling on Land Holdings Act. The concerned proviso read as follows:-

> "..... Provided that no land, treated as subservient to tea plantation under this sub-rule and exempted from the operation of the Act under Section 5(*g*) thereof, shall be transferred by the landowner in any manner, without the permission of the State Government. ....."

In those facts, the Supreme Court held as follows:-

> "13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act. (See: *Sant Saran Lal* v. *Parsuram Sahu* [AIR 1966 SC 1852] , AIR para 19.) From the provisions of the Act we cannot spell out any legislative intent delegating expressly, or by necessary implication, the power to enact any prohibition on transfer of land. We are also in agreement with the submission of Shri Anil Divan that by placing complete prohibition on transfer of land subservient to tea estates no purpose sought to be achieved by the Act is advanced and so also such prohibition cannot be sustained. Land forming part of a tea estate including land subservient to a tea plantation have been placed beyond the ken of the Act. Such land is not to be taken in account either for calculating the area of surplus land or for calculating the area of land which a person may retain as

falling within the ceiling limit. We fail to understand how a restriction on transfer of such land is going to carry out any purpose of the Act. We are fortified in taking such view by the Constitution Bench decision of this Court in *Bhim Singhji* v. *Union of India* [(1981) 1 SCC 166] whereby sub-section (1) of Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976 was struck down as invalid insofar as it imposed a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building which was within the ceiling area. The provision impugned therein imposed a restriction on transactions by way of sale, mortgage, gift or lease of vacant land or buildings for a period exceeding ten years, or otherwise for a period of ten years from the date of the commencement of the Act even though such vacant land, with or without a building thereon, fell within the ceiling limits. The Constitution Bench held (by majority) that such property will be transferable without the constraints mentioned in sub-section (1) of Section 27 of the said Act. Their Lordships opined that the right to carry on a business guaranteed under Article 19(1)(*g*) of the Constitution carried with it the right not to carry on business. It logically followed, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to citizens under Article 19(1)(*f*) carried with it the right not to hold any property. It is difficult to appreciate how a citizen could be compelled to own property against his will though he wanted to alienate it and the land being within the ceiling limits was outside the purview of Section 3 of the Act and that being so the person owning the land was not governed by any of the provisions of the Act. Reverting back to the case at hand, the learned counsel for the State of Himachal Pradesh has not been able to satisfy us as to how such a prohibition as is imposed by the impugned amendment in the Rules helps in achieving the object of the Act.

14**.** We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or

obligations or disabilities not contemplated by the provisions of the Act itself."

62. Hence, the court on a reading of the statutory provisions as applicable to the facts of that case held that the court could not spell out any legislative intent delegating the power to enact provisions on prohibition on transfer of land. Further the prohibition on transfer of land did not serve any purpose. No purpose of the Act was sought to be advanced. The facts of the present case are quite different. As noted above, the statutory provisions, namely the preamble and section 12 of the NCTE Act clearly provide for the Council to take steps for determination and maintenance of standard for teacher education. The impugned notice is a step towards maintenance of standards of teacher education. The said judgment would not apply to the facts of this case.

63. Hence, what follows is that the NCTE has power to issue the impugned public notice as is apparent from Section 12 of the NCTE Act and other statutory provisions. Dehors the above submission, even otherwise, if there is no specific power under Section 12 of the NCTE Act to mandate requirement of PAR along with a nominal fee, the said power can be implied from the provisions of the NCTE Act itself. The impugned notice is in accordance with the object of the NCTE Act and is an attempt to achieve planned and co-ordinated development of teacher education. There is clearly no merit in the plea raised by the petitioners.

IV. VIOLATION OF THE RECOMMENDATION OF JUSTICE VERMA COMMISSION

64. Another plea raised by the petitioner relates to non - implementation of the Justice Verma Commission Report filed in August, 2012. Learned senior counsel appearing for the petitioner in W.P. (C) 12655/2019 had also strenuously urged that the recommendations of the said Justice Verma Commission had not been fulfilled and the present impugned notice dated 22.09.2019 is contrary to the recommendations of the Justice Verma Commission/order of the Supreme Court.

65. The background in which the said Justice Verma Commission Report was given and the proceedings that took place in the Supreme Court which led to forming of the commission and filing of the report and acceptance of the report by the Supreme Court have been dealt with in detail by the Division Bench in its judgment dated 01.10.2019 in the case of ***Laxmi College of Education vs. National Council of Teacher Education & Anr.***(supra). The relevant portion of the judgement dealing with the Justice Verma Commission Report reads as follows:

> "31. The pre-existing National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 were replaced by the 2014 Regulations, which came into effect on 28th November, 2014. The genesis of the dispute, which led to the necessity for replacing the 2009 Regulations, is to be found in a decision, taken by the Western Regional Committee (WRC) of the NCTE, during its 104th to 109th meetings, held in 2008, in which the WRC granted recognition to 291 colleges, situated in the State of Maharashtra, for starting the Diploma in Education (D.Ed.) programme, despite the recommendations, of the Government of Maharashtra, to the contrary. The Government of Maharashtra had clearly stated that it did not require more D.Ed. institutions, owing to want of job opportunities for students who graduated from such institutions. The decision of the WRC was challenged, by way of a public interest litigation, which came up before the Nagpur bench of the High Court of

Bombay which, *vide* its order dated 7th January 2009, quashed the decision of the WRC. The matter was carried, by the Colleges, before the Supreme Court by way of *SLP (C) 4247-4248/2009 (Rashtrasant T. M. S. & S. B. V. M. C. A. Vid. v. Gangadar Nilkant Shende).* During the said proceedings, *vide* order dated 13th May, 2011, the Supreme Court approved the Constitution of a Commission, headed by Hon'ble Mr. Justice J. S. Verma, former Chief Justice of India (hereinafter referred to as "the Verma Commission"), to examine the various contentious issues arising in the context of teacher education, especially in the context of the Right of Children to Free and Compulsory Education Act, 2009. Among the terms of reference of the Verma Commission, as approved by the Supreme Court on 13th May, 2011, were the following:

> "a) Whether in the context of the provisions of the Right of Children to Free and Compulsory Education Act, 2009, the Regulations on Recognition Norms and Procedure that lay down the norms and procedure for various teacher education courses which are adopted by the NCTE are adequate or need review.
>
> b) Whether further reforms are necessary to improve quality of teacher training and in-surface training.
>
> c) To review whether the Regulations on Recognition Norms and Procedure, currently in force as laid down by the NCTE are being properly enforced. If not, how to evolve a fair and transparent manner in which these norms and standards may be enforced.
>
> *****
>
> g) To determine what the methodology should be to examine/enforce quality in teacher training institutions."

32. The report of the Verma Commission was filed, before the Supreme Court, in ***SLP (C) 4247-4248/2009*** supra

which, *vide* its **order dated 10th October, 2012**, noted that it had carefully gone through the recommendations of the Verma Commission and were "of the view that the same deserves to be accepted". The following passages, from the order, dated 10th October, 2012, of the Supreme Court, merit reproduction:

> "The learned Solicitor General pointed out that the High-Powered Commission appointed pursuant to the directions given by the Court has submitted its report in three volumes. The report of the Commission has been taken on record.
>
> *We have carefully gone through the recommendations made by the Commission and are of the view that the same deserves to be accepted.*
>
> With a view to enable the Government of India and NCTE to indicate the steps proposed to be taken for implementation of the recommendations made by the Commission, we deem it proper to adjourn the case for two months within which affidavits of the competent authorities be filed on the issue of implementation of the recommendations of the Commission."
> (Emphasis supplied)

32. In its subsequent order, dated 29th January, 2013, the Supreme Court opined that it was "in the interest of the society in general and the students community in particular that a time bound schedule is framed by the Government and the NCTE for implementation of the recommendations made by the Committee headed by Hon'ble Sh. Justice J. S. Verma (Former Chief Justice of India)." Again, in order dated 28th February, 2013, the Supreme Court required the Central Government to file another affidavit, clearly specifying the concrete steps already taken for implementation of the recommendations made by the Verma Commission. Thereafter, on 3rd May, 2013, the Supreme Court opined that a small group, from the members of the Verma Commission, could be requested to supervise the implementation of the recommendations of the Commission.

Acting on the said direction, the Central Government constituted a sub-group, comprising four members of the Verma Commission, to monitor the progress, in the matter of implementation of the recommendations of the Verma Commission and to report, to the Supreme Court, with respect thereto. This action was appreciated by the Supreme Court, in its order dated 6th August, 2013, which went on to direct thus:

> "In order to facilitate further implementation of the report of the Verma Commission, we direct that the recommendations which may be made by the sub-Group shall be binding on the Government of India and the Governments of all the States and Union Territories as also NCTE and University Grants Commission and all of them shall implement the same without any objection and without modifying the same."

66. Hence, the Supreme Court accepted the Justice Verma Commission Report vide its order dated 10.10.2012.

67. The relevant portion of the report of the said Justice Verma Commission, which is relied upon by the petitioner, reads as follows:

> "5.4.23 Recognizing the importance of periodic accreditation as a tool of quality assurance, the NCTE must make it mandatory for all TEIs to obtain accreditation from an approved agency and get it renewed every five years. The NCTE should set up an autonomous Teacher Education Assessment and Accreditation centre (TEAAC) which would perform the following functions:
>
> (i) Setting of quality standards which institutions are required to adhere;
>
> (ii) Develop and enforce a system of self-appraisal by institutions which should be placed in public domain, both by the Institution, and by the NCTE;

(iii) Develop a framework for mandatory accreditation of all teacher education institutions;

(iv) Cause accreditation of the institutions by existing organizations specializing in this field (NAAC, NBA, etc) and by setting up a body to accredit teacher education institutions;

(v) Place accreditation reports in public domain for transparency, informed decision-making, etc.

5.4.24 The Commission recommends that the NCTE should constitute a committee to prepare a comprehensive framework of accreditation on the lines suggested above."

68. Hence, the grievance of the petitioner essentially is that despite the report of the Justice Verma Commission and the order of the Supreme Court accepting the report dated 10.10.2012, the TEAAC has not been established.

69. In my opinion, the non-establishment of TEAAC is not an issue which is subject matter of the present petition. The fact that the respondent has issued the impugned notice dated 22.09.2019 does not in any way conflict with nor is it contrary to the recommendations of the Justice Verma Commission. The mere fact that the TEAAC has not been set up would not mean that the impugned notice dated 22.09.2019 could not have been issued directing the affiliated institutes to file PAR annually and deposit the fees of Rs.15,000/-. I see no merit in the said plea raised by the petitioner.

70. A feeble plea was raised by the petitioner challenging some of the requirements of the PAR, namely, submission of Aadhar Card, e-mail etc. The plea was not fully elaborated upon. However, in grounds to the Writ

Petition No.11304/2019, the petitioner has stated that there are several errors in the format of PAR to be submitted but the petitioner at this stage does not wish to make submissions in this regard and craves leave of this court to urge the same in appropriate proceedings. Hence, this court has not made any adjudication on the format of PAR.

71. To avoid prolixity, I have not dealt with all the judgments cited by learned counsel for the parties. The same would have been a repetitive exercise.

72. Accordingly, there is no merit in the writ petitions. Petitions are accordingly dismissed. All pending applications, if any, are also dismissed. Interim orders stand vacated.

JAYANT NATH, J.

MAY 27, 2021/v