

GAHC010026982023



2025:GAU-AS:13471

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/794/2023

HAM AK COLLEGE OF HIGHER EDUCATION
PACHIM KAWAIMARI, DHING ROAD, P.O. HAIBARGAON, DIST.- NAGAON,
PIN- 782002, REP. BY ITS DIRECTOR INAMUL HASAN, AGED ABOUT 37
YEARS, S/O- ABDUL MOZID, VILL AND P.O. HATIZUZUA, DIST.- NAGAON,
ASSAM, PIN- 782122

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION DEPTT., DISPUR, GHY-06

2:THE REGISTRAR
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
GUWAHATI-14
ASSAM
KAMRUP (M)

3:THE DIRECTOR OF STATE COUNCIL OF EDUCATION RESEARCH AND
TRAINING (SCERT)
ASSAM
KAHILIPARA
GHY-19

4:THE SECRETARY
TO THE GOVERNMENT OF ASSAM.
HIGHER EDUCATION DEPTT.
ASSAM

5:THE DIRECTOR
HIGHER EDUCATION

ASSAM
KAHILIPARA

GUWAHATI-781019

6:THE NATIONAL COUNCIL FOR TEACHERS EDUCATION.
REPRESENTED BY ITS CHAIRMAN

Advocate for the Petitioner : MR. P MAHANTA, MS. P SAHARIA

Advocate for the Respondent : SC, ELEM. EDU, MR. I ALAM, SC, NCTE (R- 6),MR S DAS, SC, HIGHER EDUCATION (R-4,5),MR. M. B. CHOUDHURY, SC, SCERT, ASSAM (R-3),SC, G U

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 22.09.2025

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. P.N. Sarma, learned standing counsel for the respondent No. 1; and Mr. P.J. Phukan, learned standing counsel for the respondent No. 2; and Mr. S. Bhuyan, learned standing counsel for the respondent Nos. 4 and 5. None appears for the respondent Nos. 3 and 6.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the letter, bearing reference No. GU/AFF/Inspection/2022, issued by the Registrar, Gauhati University communicated, vide memo No. GU/AFF/Inspection/2022/5238-41, dated 18.08.2022 and another letter, bearing reference No. GU/AFF/Inspection/2022, issued by the Registrar, Gauhati University, communicated vide memo No. GU/AFF/Inspection/2022/5242-45, dated 18.08.2022, requesting the concerned inspectors to jointly inspect the petitioner college for opening integrated B.A.B.Ed. and B.Sc.B.Ed. course and to submit the inspection report in triplicate for consideration of the University

within a period of ten days from the date of inspection as one satisfactory joint inspection report by the inspectors of Gauhati University, pursuant to the earlier letter dated 31.05.2019, and on accepting the same by the affiliation committee meeting of the Gauhati University and subsequent depositing of Rs. 4,84,000/- by the petitioner, pursuant to the letter issued by the respondent No. 3 for final NOC to be granted by the EC of the Gauhati University.

3. Mr. Mahanta, learned counsel for the petitioner submits that the petitioner college had proposed to start four years integrated B.A.B.Ed. and B.Sc.B.Ed. courses and applied to the Gauhati University for inspection for affiliation/permission and NOC for applying to NCTE, and on receipt of the application, the respondent no. 2, vide letter dated 31.05.2019, requested two inspectors to conduct a joint inspection of the petitioner college on the points as laid down in the "Ordinance on Affiliation of College" for affiliation/permission and to submit the inspection report in triplicate for consideration of the University within a period of ten days from the date of inspection at the cost of the petitioner. Mr. Mahanta also submits that pursuant to the said letter, the inspectors inspected the petitioner college and submitted a satisfactory report, on the basis of which the respondent No. 2 directed the petitioner to deposit the fee of Rs. 4,84,000/- for obtaining NOC for applying to NCTE for recognition of four years integrated B.A.B.Ed and B.Sc.B.Ed programme, vide letter dated 28.12.2020, and accordingly, the petitioner deposited the said fee on 08.02.2022 and was waiting for the NOC from the University, but, the respondent No. 2 had issued subsequent two letters, bearing reference Nos. GU/AFF/Inspection/2022 communicated on 18.08.2022 and GU/AFF/Inspection/2022, communicated on 18.08.2022, for conducting inspections of the petitioner college by incurring a heavy amount of money

including TA/DA and other expenses against the six persons, being appointed by the Gauhati University, which the petitioner had already incurred in earlier joint inspection conducted by the Gauhati University, vide letter dated 31.05.2019, and being aggrieved, the petitioner has approached this Court by filing the present petition.

3.1. Mr. Mahanta further submits that this Court has already disposed of a similar writ petition by directing the respondent/Gauhati University to grant NOC in terms of the NCTE guidelines and regulation, and that the present case is also squarely covered by the aforesaid judgment and order dated 24.07.2025, in WP(C) No. 821/2024, and therefore, Mr. Mahanta has contended that similar relief may be granted to the present petitioner also.

4. The respondent No. 2 has filed its affidavit-in-opposition, wherein a stand has been taken that a communication from the Office of the Additional Director General of Police, CID, Assam dated 30.06.2022, has been received on 01.07.2022, requesting to provide documents/information whether the institutes, namely, (a) HAM AK Rural College of Education at Chalchali, Nagaon Dhing Road; (b) HAM AK National Secondary and Sr. Secondary School at Chalchali, Nagaon Dhing Road; (c) HAM AK Rural ITI at Chalchali, Nagaon Dhing Road; and (d) HAM AK Group of Institution at Chalchali, Nagaon Dhing Road are affiliated and requested to provide official documents in this regard, and the same was required in connection with Nagaon Sadar Police Station Case No. 1845/2020, under Sections 406/420/468/471/34 of the IPC, and thereafter, another communication has been received from the said Office of the Additional Director General of Police, CID, Assam, dated 05.08.2022, requesting to provide documents relating to HAM AK Group of Institution at Chalchali, Nagaon Dhing Road. It is also stated that thereafter two communications have been issued for

further Joint Inspection, vide memo No. GU/AFF/Inspection/2022/5238-41, dated 18.08.2022, and GU/AFF/Inspection/2022/5242-45, dated 18.08.2022, and that the Gauhati University could issue such direction under the provision of Gauhati University Act, 1947, and that the police case pending against the petitioner college is also against the relevant law, and as such, this petition is liable to be dismissed.

5. The respondent No. 6 has also filed affidavit-in-opposition, wherein a stand has been taken that new Regulations came into force w.e.f. 28.11.2014 and Section 5 of the said Regulations provides for manner and making of application and time limit for recognition of new colleges, and that in terms of the amended notification, application for recognition must be submitted with NOC issued from the concerned affiliating body i.e. University along with other required documents as prescribed in the Regulations.

6. The respondent No. 2 has also filed an additional affidavit, wherein it is stated that a joint inspection was carried out on 11.09.2022, to ascertain the present status of the petitioner college and the HAM AK Rural College of Education, and the said report was prepared and submitted on 13.09.2022, and thereafter, the then Registrar of Gauhati University had issued another communication dated 14.08.2023, for the purpose of joint inspection of the aforementioned institution, and since the entire matter has been sub-judice before this Court, the same could not be taken to its logical conclusion. It is also stated that the Executive Council of the Gauhati University in its meeting dated 29.03.2022, had decided to issue a circular as per the said office memorandum of the Government of Assam and thereafter, a notification, bearing No. GU/AFF/2022/4903-08, dated 24.05.2022, had been issued to all kinds of educational institutions including private colleges for the purpose of obtaining

Government No Objection Certificate prior to granting affiliation/permission/NOC by the Gauhati University, and as the NOC has not been submitted by the Government of Assam, the case of the petitioner college could not be submitted, and therefore, it is contended to dismiss this petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record, and also perused the letter dated 18.08.2022, and the notification issued by the respondent/Gauhati University dated 24.05.2022.

8. The issue of requirement of NOC from the Government of Assam, pursuant to the Office Memorandum issued by the Government of Assam, dated 25.02.2019, has already been dealt with by this Court in its judgment and order dated 24.07.2025 in WP(C) No. 821/2024, wherein this Court has held as under:

“11. Here in this case, from the documents placed on record, it appears that the affiliating body is Gauhati University, the respondent No. 4. It appears that the petitioner college had applied for the NOC/consent of affiliation, to the respondent No. 4 and to secure affiliation for B.Ed. and B.P.Ed. 2nd year course. The said application was made under the NCTE Regulations, 2014 on 23.03.2022, and the same was received by the respondent No. 4 on 28.03.2022. But, thereafter, the respondent No. 4, instead of processing the application as per procedure for granting temporary affiliation had issued a notification, dated 24.05.2022, stating that the Executive Council has adopted a resolution that any prospective institution has to seek a NOC from the Government in order to obtain a NOC/Consent for affiliation from the respondent No. 4, on 29.03.2022. Regulation 7(4), itself mandated that a written communication along with a copy of the application form, submitted by the institution shall be sent by the office of

Regional Committee to the State Government or the Union territory administration as the case may be.

12. Under the given facts and circumstances, I find sufficient force in the submission of Mr. Buragohain, the learned counsel for the petitioner. The Acts and Regulations, as discussed herein above, does not provide for obtaining any NOC from the State Government at the time of processing of application for No Objection Certificate by the affiliating body i.e. respondent No. 4.

13. Notably, the National Council for Teacher Education Act, 1993 (73 of 1993), is a central legislation, and the same is binding upon the States. The State cannot enact any law or issue any Office Memorandum or Notification, contrary to the provision of the aforesaid Act and Regulations framed there under. And if it is in conflict with the law enacted by the State, including the Gauhati University Act, then also the NCTE Act and Regulations will prevail, in view of Article 254 of the Constitution of India. In holding so, this court derived authority from following decision of Hon'ble Supreme Court in the case of (i) State of T.N. vs. Adhiyaman Educational & Research Institute, reported in (1995) 4 SCC 104, wherein it has been categorically held that neither the State Government nor the University have got power to enact law on the subject which falls under Entry 66 of List I and that the existing law to the extent of inconsistency with the provisions made in the AICTE Act is ultra vires and unenforceable; (ii) Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust (Supra), wherein Hon'ble Supreme Court has held that prior permission of State Government to start a new Medical College is invalid on the ground of repugnancy. It is further held that Section 5(5) of the Medical University Act enacted by the State Act is held as repugnant to Section 10-A of Indian Medical Council Act; (iii) Jaya Gokul

Educational Trust vs. State of Tamil Nadu, reported in 2000 (5) SCC 231, wherein, by re-capitulating the dictum laid down in Adhiyaman's (Supra) case, the Supreme Court specifically ruled that the University cannot impose conditions for affiliation in contravention of the provisions contained in the Central Act, viz. AICTE Act. Thus, the position of law and the validity of existing law of the State enactments have been made crystal clear in the above stated judgments of the Supreme Court.

14. Though a stand has been taken by the respondent No. 4 in its affidavit dated 30.09.2024 that the Notification, dated 24.05.2022 (Annexure-3) of the writ petition, that said notification is in conformity with the Gauhati University Act, NCTE Act and Regulations, yet in view of the discussion and finding in respect of the procedure prescribed under the NCTE Act and Regulation, the said stand of respondent No. 4 cannot be accepted in view of Regulation 7(4) of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2014, notified on 28th November, 2014.

15. In the instant case, the application for no objection certificate from the affiliating body, i.e. respondent No. 4, as required under Regulation 5(3) of NCTE (Recognition Norms and Procedure) Regulations, 2014, was filed by the petitioner college on 23.03.2022, and the same was received by the University on 28.03.2022. And it also appears that the impugned Notification dated 24.05.2022 was issued thereafter. On receipt of the application, the respondent No. 4 ought to have processed the same following the procedure prescribed under Regulation 4.5, of the University Grants Commission [Affiliation of Colleges by Universities] Regulations, 2009. And it is the Office of Regional Committee of the NCTE, under Regulation 7(4), who is required to make a written communication along with a copy

of the application form submitted by the institution to the State Government or the Union territory administration.

16. In that view of the matter, the act of respondent No. 4, insisting upon NOC from the State Government, at that stage, appears to be bereft of logic and not in conformity with the NCTE Act and Regulations and therefore, the same is arbitrary and illegal and liable to be interfered with. The issue, as formulated herein above stands answered accordingly.

17. I have carefully considered the submission of Mr. Phukan, the learned standing counsel for the respondent No. 4, and in view of the discussion and findings recorded herein above, the submission of Mr. Phukan left this court unimpressed. It is, however, a fact that courts are not supposed to interfere policy decision of the state but, it is not an absolute proposition of law as because when the decisions are contrary to existing legal framework, and arbitrary and illegal, the courts are bound to exercise its jurisdiction. I have also gone through the decisions referred by Mr. Phukan and also by Mr. Buragohain, the learned counsel for the petitioner. But, this court is of the view that in order to decide the issue raised in the present writ petition, reference to all those decisions, is found to be not at all necessary.

18. Under the given fact and circumstances, this court finds sufficient merit in the petition and accordingly, the same stands allowed. By a mandamus of this court, the respondent No. 4 is directed to process the application dated 23.03.2022 received by the respondent No. 4, on 28.03.2022, filed by the petitioner college in accordance with the procedure prescribed under the NCTE Act and Regulations made there under and under the University Grants Commission [Affiliation Of Colleges By Universities] Regulations, 2009 within the time line prescribed under the

NCTE Regulations, 2014.”

9. Accordingly, taking note of the submissions of learned counsel for both the parties, and also considering the judgment and order passed by this Court in WP(C) No. 821/2024, and as agreed upon by learned counsel for both the parties, this Court is inclined to dispose of this petition by directing the respondent No. 2 to process the application filed by the petitioner college in terms of the direction issued by this Court in the aforesaid judgment and order, especially in para No. 18.

10. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant