

HIGH COURT OF DELHI**Bench: Justice C. Hari Shankar****Date of Decision: 31st May 2024****CIVIL APPELLATE JURISDICTION****W.P.(C) 5398/2024, CM APPL. 22303/2024, and CM APPL. 22304/2024****W.P.(C) 5679/2024 and CM APPL. 23470/2024****W.P.(C) 5741/2024 and CM APPL. 23709/2024****W.P.(C) 5976/2024 and CM APPL. 24791/2024****W.P.(C) 6644/2024****W.P.(C) 6658/2024**

- 1. DELHI COLLEGE OF SPECIAL EDUCATION & ORS. ...Petitioner(s)**
- 2. SHANTI NIKETAN COLLEGE OF SPECIAL EDUCATION & ANR.**
- 3. SIKKIM PROFESSIONAL UNIVERSITY DEPARTMENT OF SPECIAL
EDUCATION**
- 4. MANGALAYATAN UNIVERSITY**
- 5. KARNIMATA COLLEGE OF EDUCATION**
- 6. SANJEEVANI COLLEGE OF EDUCATION**

Versus**REHABILITATION COUNCIL OF INDIA ...Respondent(s)**

Legislation:

Rehabilitation Council of India Act, 1992 (RCI Act)

Rehabilitation Council of India Regulations, 1997 (RCI Regulations)

Section 29 of the RCI Act

Subject: Writ petitions challenging the decision of the Rehabilitation Council of India (RCI) to return applications submitted by institutions for commencing various special education courses for the academic session 2024-2025, and to permit enhancement of seats in existing institutions offering similar courses.

Headnotes:

Education Law – Promissory Estoppel – Legitimate Expectation – Return of Applications for Special Education Courses – RCI’s Decision – Judicial Review – Writ Petitions Against RCI Circulars

Representation and Reliance - Circulars issued by RCI invited fresh proposals from institutions for conducting special education courses for the academic session 2024-2025, including diploma and degree courses. The petitioners, acting on the representations, invested substantial resources to conform to RCI norms. Subsequently, RCI’s decision to return these proposals, based on a letter from the Ministry, was challenged as arbitrary and lacking legal justification. [Paras 1-23]

Promissory Estoppel and Legitimate Expectation - Held, RCI’s circulars amounted to a clear representation inducing petitioners to submit proposals and invest resources. The decision to resile from this

representation without adequate justification or supervening public equity was not permissible. Petitioners could not restore status quo ante, making the initial representation irrevocable against RCI. [Paras 60-79]

Arbitrariness and Lack of Statutory Basis - The decision to return the proposals was based solely on a ministerial letter without due consideration by the Executive Committee of RCI. No statutory provision or amended regulation justified the return of applications for diploma and degree courses. The ongoing need for special educators further negated any public interest justification for the decision. [Paras 66-74]

NEP 2020 Considerations - The NEP 2020 recognized the urgent need for additional special educators, contradicting the rationale for not considering new proposals. Enhancing seats in existing institutions while refusing new proposals was inconsistent with the stated objectives of NEP 2020. [Paras 80-81]

Decision - The impugned circulars dated 4 January 2024 and 8 March 2024 were quashed to the extent they returned the petitioners' applications for starting D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses. The RCI was directed to process the proposals in accordance with law. The challenge to the circular allowing enhancement of seats in existing institutions was dismissed. [Paras 83-85]

Referred Cases:

- Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P., (1979) 2 SCC 409
- Pt. Prasadi Lal Kakaji Teacher Training College v. N.C.T.E., 2024 SCC OnLine Del 2854

- Devesh Sharma v. U.O.I., 2023 SCC OnLine SC 985
- Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia, (2004) 2 SCC 65
- Inderpreet Singh Kahlon v. State of Punjab, (2006) 11 SCC 356
- Zenit Metaplast v. State of Maharashtra, (2009) 10 SCC 388
- Noida Entrepreneurs Association v. Noida, (2011) 6 SCC 508
- State of Punjab v. Gurdial Singh, (1980) 2 SCC 471
- Shrijee Sales Corporation v. U.O.I., (1997) 3 SCC 398

Representing Advocates:

- Mr. Sanjay Sharawat and Mr. Ashok Kumar for petitioners in W.P.(C) 5398/2024
- Mr. Amitesh Kumar, Ms. Priti Kumari, and Mr. Mrinal Kishor for petitioners in W.P.(C) 5679/2024, W.P.(C) 5741/2024, and W.P.(C) 5976/2024
- Mr. Mayank Manish and Mr. Ravi Kant for petitioners in W.P.(C) 6644/2024 and W.P.(C) 6658/2024
- Ms. Niharika Jauhari and Mr. J.P. Nahar for RCI

JUDGMENT

The Controversy

1. The petitioners are institutions running rehabilitation professional courses, also known as “Special Education courses”. The students who

undergo the said courses emerge as rehabilitation professionals, also known as Special Educators, who educate Persons with Disabilities (PwDs).

2. Pursuant to invitations contained in circulars issued by the respondent Rehabilitation Council of India (RCI), the petitioners applied for commencing various courses for providing special education. These applications have been returned by the RCI without consideration. Parallely, the RCI has permitted enhancement of intake in colleges, which are already providing such similar Special Education courses. Both these decisions, which were issued on 8 March 2024, are under challenge in these writ petitions.

3. The petitioners contend that, as they set up their infrastructure on the basis of invitations held out by the respondents and as their institutions conform to the norms and standards prescribed by the RCI, the respondent could not have legitimately returned their applications without processing. It is also pointed out that there is admittedly a dearth of special educators, which is why the respondents have permitted existing institutions to enhance intake. Besides the fact that the enhanced intake is in violation of the norms and standards prescribed by the RCI, it is contended that the objective of allowing additional intake in existing institutions could as well have been achieved by permitting the petitioners to provide the said courses.

4. The Court is, therefore, required to consider whether the respondents acted legally in refusing to process the petitioners' applications and in allowing increase in the seat intake for special educators in existing institutions.

Facts

5. The issue in controversy being common to all these writ petitions, the facts are taken from WP (C) 5398/2024 for ease of reference.

6. The RCI is a creature of the Rehabilitation Council of India Act, 1992 (“the RCI Act”). In exercise of the powers conferred by Section 29 of the RCI Act, the RCI framed the Rehabilitation Council of India Regulations, 1997 (“the RCI Regulations”), which came into effect on 27 March 1997. Regulation 24 requires every institute, seeking to start a Special Education course to obtain prior approval of the RCI or of the Central Government. Sub regulation (4) of Regulation 24 requires the management of every such institute to adopt the standards recommended by the RCI.

7. The RCI, therefore, issues periodical guidelines which govern applications for establishing institutions providing Special Education courses and associated matters. Such guidelines are stated to have been issued with effect from the 2020 – 2021 academic session. It is not necessary to refer to the specifics contained in the guidelines as the petitioners’ assertion that they conform to the guidelines is not denied by the respondent.

8. The grievance of the petitioners emanates from two circulars issued by the RCI, which reflect a remarkably vacillating stand on the part of the RCI.

9. On 9 March 2023, the RCI issued a circular, pursuant to its 87th meeting conducted on 15 February 2023. It was noted in the said circular

that, at that point of time, one institution could conduct only a maximum of ten rehabilitation courses programs, even if it possessed the infrastructure for conducting more. It was, therefore, decided that the conditions of restriction of the number of programs to ten be relaxed for the institutions which had requisite infrastructural facilities subject to inspection, as there was an acute shortage of HumanResource in the disability sector.

10. Following the 88th meeting of the Executive Committee (EC) of the RCI, held on 11 April 2023, the RCI, on 27 April 2023, circulated the decision of the RCI “to discontinue inviting fresh proposals in respect of the special education courses at diploma level from the academic session 2024-2025”.

11. *Vide* circular dated 1 June 2023, the RCI circulated the minutes of the 89th meeting of its EC. Item 9 thereof read as under:

“Item No . 9 : Continuation of Diploma Courses

After deliberations, it was decided that Executive Committee members may offer their comments/suggestions as per the value of RCI approved Diploma level courses in various States. In case there is demand, it will continue.

It was further decided that a cross disability syllabus may be prepared at the Diploma level. Shri Kamla Kant Pandey will provide more inputs and shall be one of the Expert group members to develop this syllabus.”

These minutes of the 89th meeting of the EC of the RCI which took place on 29 May 2023 were circulated by the RCI under cover of a circular dated 1 June 2023.

12. Thus, as against the decision communicated by the RCI by the circular dated 27 April 2023, to discontinue diploma courses, the decision contained in 89th meeting of the RCI, as communicated by the circular dated 1 June 2023, was that diploma level courses would continue in case there was demand.

13. Following the said decision taken by the RCI in its 89th meeting, fresh proposals were invited from institutions for grant of approval for conducting RCI approved training programs for the academic session 2024-2025, *vide* circular dated 30 May 2023, which read as under:

“REHABILITATION COUNCIL OF INDIA

**A Statutory Body of Ministry of Social Justice and
Empowerment**

**Department of Empowerment of Persons with Disabilities (Divyangjan),
Government of India**

F. No.8-A/Policy/(Recog)/2009/RCI 30th May, 2023

CIRCULAR

**Sub.: Invitation of Fresh Proposals for the Academic Session
2024-25: - reg.**

The Council invites fresh proposal from the institutions for grant of approval to conduct RCI approved training programme(s) for the academic session 2024-25. The prescribed last dates for submission of proposal are as under:

Fresh Proposals:

(i)	Opening date for submission of fresh proposals through online portal	01/08/2023
	Last date of submission of fresh proposals	30/09/2023
(ii)	Last date of submission of fresh proposals with late fee of Rs.10,000/-	15/10/2023

It is also to be informed that separate circular will be issued in respect of proposals for extension of approvals.

(Vineet Singhal)
Member Secretary

Copy to:

Computer Section, RCI to uploading on the website.”

It is seen, therefore, that the invitation to institutes to submit fresh proposals for the academic session 2024-2025, as extended by the circular dated 30 May 2023, was irrespective of whether the course which was to be undertaken was a degree course or a diploma course.

14. The minutes of the 90th meeting of the EC of the RCI held, on 3 August 2023, were circulated by the RCI *vide* circular dated 9 August 2023.

Item 2 of the said minutes dealt with follow-up action on the minutes of the 89th meeting of the EC, and Para II thereunder read thus:

“II Regarding Item No. 9 of Follow-up-Action, it was decided that the Diploma courses in Special Education will continue till further decision. In this regard, the invitation of proposals for diploma level courses in special education may be considered from the academic session 2024-25. However, if a diploma course in special education is already being conducted in a district, then special inspection as deemed appropriate, will be carried out for the same new courses applied for by other institutions in the same district.

It was also decided to open portal for invitation of proposals for Fresh and Extension of approval for the academic year 2024-25 from 17th August to 30th September 2023 and with late fees from 1st October to 15th October 2023.”

15. Thus, the RCI, in its 90th meeting, took a firm decision that diploma courses in special education would continue till further action and that invitation of proposals for diploma level courses in special education could be considered from the 2024-2025 academic session. For this purpose, it was also decided that the RCI should open its portal for inviting fresh proposals and extension of approval for the academic year 2024-2025 during the period stipulated in the minutes.

16. Following this, on 18 August 2023, the RCI, in the context of invitation of proposals for conducting RCI approved special education training programs for the academic session 2024-2025, issued guidelines. Guideline Nos. 3 to 7 may be reproduced, thus:

“Rehabilitation Council of India

**(A Statutory Body Under the Ministry of Social Justice & Empowerment
Govt. of India)**

**Department of empowerment of Persons with Disabilities B-
22, Qutab Institutional Area, New Delhi-110016**

F.No. 8-A/Policy(Recog)/2019/RCI Dated: 18.08.2023

**Invitation of proposals (fresh and
extension) for grant of approval to conduct
RCI approved training programmes in field
of special education and disability
rehabilitation for the academic session
2024-25**

General Guidelines

* 3. For the academic session 2024-25, the NOC from the State Government is essential for fresh proposal. The NOC is required to be submitted on prescribed format as per Council's Circular No. 8-A/Policy(Recog.)/2009/RCI dated 17/10/2017 & 07/03/2018, available on the website of RCI.

4. The Council will consider a maximum of two fresh proposals from any institution/organization/society, except National Institutes, CRCs, Universities, Central / State level Government institutions/organizations.

5. As per Council's decision, institutions already running 10 (ten) or more courses/Courses of RCI need not to apply for any fresh course from the academic session 2019-20 onwards. However, it has also been decided that this condition to be relaxed for those institutions having all the required infrastructural facilities to run these course(s) subject to the inspection as there is an acute shortage of Human Resource in disability sector. Accordingly, if proposal found eligible, the Council will conduct special inspection for such requests comprising of 3-4

members. If inspection report is found satisfactory, the decision in each such case to be taken by the Executive Committee.

6. The management of the Institute shall adopt the standards of staff, space and equipment as prescribed by the Council and give an undertaking for their phased implementation within the stipulated period.

7. The management of the Institute must ensure that they possess required training facilities to undertake the Degree / Master Degree/ P.G. Diploma/ M.Phil./ Diploma /Certificate level courses.

17. The norms applicable for institutions seeking to provide special education courses were annexed to the guidelines and may be reproduced, thus:

2.	<p>Institution desirous for seeking approval of the Council for any of its approved training programmes must ensure that they have requisite experience in disability in addition to the fulfilment of the following requirements:-</p> <p>a. The institution must have its own three year old functional special school / inclusive school for teacher training programmes and laboratory/rehabilitation centre/clinical services for other training programmes such as Prosthetic & Orthotics, Speech & Hearing, Clinical Psychology, Rehabilitation Psychology etc. as prescribed in the respective syllabi.</p> <p>(i) In case of inclusive school the institute should have minimum 50 students with disabilities including 40 students with specific disability at primary and/or secondary level required as per the norms of the training programme. This will be substitute to the requirement of own special school and will strengthen the inclusive schooling within the campus of RCI approved institutes. This will</p>
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	<p>also eliminate the need to have an MOU with an inclusive school outside the campus.</p> <p>(ii). The special school must have minimum 50 children with special needs (CSWN) in the respective area of disability.</p> <p>b. The special/inclusive school should be within campus of the institute. UDID numbers or UDID enrolment number with disability certificate of all CWSN is mandatory.</p> <p>c. UDISE number for all Special schools & Inclusive schools is essential.</p> <p>d. Valid Registration Certificate issued by the respective State Commissioner (Disabilities) as per provisions of PwD Act, 1995/ RPwD Act, 2016.</p> <p>e. In case of University / Govt. organization, the condition of having own special school is exempted.</p>
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	<p>However, an MOU duly signed with a special school within 5 KM for practice teaching & a copy of the same to be submitted to the Council along with proposal. However, all National Institutes / CRCs/ University Departments / Govt. organizations will be permitted to continue/conduct the teacher training programme on provisional basis by signing MoU with local special school/inclusive school provided that special school/inclusive school is available within a radius of 5 kms. Henceforth, these institutes need to setup their own special school for the respective disability area or an inclusive school within a period of 02 years, failing which no further extension will be granted.</p> <p>f. The institution must ensure availability of minimum infrastructure and human resources viz: qualified & experienced full time Core faculty, provision to invite guest faculty, adequate space, library, equipment, furniture etc., to conduct the professional training programme in accordance with the Council's norms</p>
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	<p>as prescribed in the respective syllabus.</p> <p>g. University affiliation is mandatory to conduct the Undergraduate/Post Graduate Diploma /Degree / Master level / M.Phil. level training programmes.</p>
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18. Institutions fulfilling these eligibility conditions were invited to submit proposals online, along with the documents envisaged in the norms attached to the proposals. The norms also prescribe the financial requirements which the concerned institutions had to possess. The petitioners claim to be conforming to the norms prescribed in the guidelines dated 18 August 2023, and the respondent does not deny this assertion.

19. Following this, *vide* circular dated 22 August 2023 issued by the RCI, all concerned were informed of the decision of the RCI that the diploma courses in special education would continue till further decision and that, therefore, the RCI was inviting proposals for diploma level courses in special education from the 2024-2025 academic session. The circular read thus:

**“REHABILITATION COUNCIL OF INDIA
A Statutory Body of Ministry of Social Justice and
Empowerment
Department of Empowerment of Persons with Disabilities
(Divyangjan), Government of India**

F.No.8-A/Policy/(Recog)/2009/RCI 22.08.2023

CIRCULAR

In continuation of the Council’s Circular of even number dated 27.04.2023 (copy enclosed) it is for information to all concerned that the Council has decided that Diploma courses in Special Education will continue till further decision and accordingly, Council will invite proposals for diploma level course in special education from the academic session 2024-25. However, if a diploma course in special education is already being conducted in a district, then special inspection as deemed appropriate will be carried out for the same new course applied by other institution in the same district.

(Dr. Honnareddy. N.)

Member Secretary Encl: As

above

Copy to:

Computer Section, RCI to upload on the website.”

20. Relying on the invitation held out by the RCI, by the aforementioned circulars, the petitioner applied on 30 October 2023 to the RCI for conducting the D.Ed.Spl Edu [HI] and D.Ed.Spl.Ed [IDD] courses. It may

be mentioned, here, that, though the Delhi College of Special Education applied only for conducting diploma level courses, the petitioners in 5679/2024, 5741/2024, 5976/2024, 6644/2024 and 6658/2024 also applied for conducting B.Ed.Spl.Ed. courses.

21. The RCI – shockingly, as the petitioner would submit – issued a circular on 1 December 2023, which reads thus:

**“REHABILITATION COUNCIL OF INDIA
A Statutory Body of Ministry of Social Justice and
Empowerment
Department of Empowerment of Persons with Disabilities
(Divyangjan), Government of India**

F.No.8-A/Policy/(Recog)/2009/RCI 01.12.2023

CIRCULAR

This is for information to all concerned that the Council vide Circular of even number dated 27.04.2023 decided to discontinue inviting fresh proposals in respect of special education courses from the academic session 2024-25. Further, the Council vide Circular of even number dated 22.08.2023 invited proposals for diploma level courses in special education for the academic session 2024-25 (copies enclosed).

Now, the Council has upheld the decision taken on 27.04.2023 for discontinuation of diploma courses in special education and accordingly the Circular of even number dated 22.08.2023 stands cancelled.

This issue with the approval of the competent authority (**Dr. Honnareddy. N.)**

Member Secretary Encl: As

above

Copy to:

1. PS to Chairperson, RCI
2. RCI approved institutions
3. Computer Section, RCI to upload on the website”

22. This was followed by the impugned circulars dated 4 January 2024 and 8 March 2024, which read thus:

“Circular dated 4 January 2024

REHABILITATION COUNCIL OF INDIA
A Statutory Body of Ministry of Social Justice and
Empowerment
Department of Empowerment of Persons with Disabilities
(Divyangjan), Government of India

F.No.8-A/Policy/(Recog)/2009/RCI 04 January, 2024

CIRCULAR

In order to upgrade the competency of teachers, the National Council for Teacher Education (NCTE) has launched the Integrated Teacher Education Programme (ITEP) under the New Education Policy (NEP) 2020 in which the duration of B.Ed.

programme has been increased from two years to four years and discontinued giving approval of two years B.Ed. programme from the academic session 2023-24.

This Council has decided not to grant new approvals to any institutions for running two year B.Ed. (Special Education) programme(s) from the academic session 2024-25. The Council is in the process of developing a new training programme on the pattern of NCTE soon, as per NEP 2020.

All the institutions/colleges/universities who desire to run the. Integrated B.Ed. Special Education of 4 year duration (in line of the Integrated Teacher Education Programme-ITEP of NCTE) may apply afresh for the next academic session once the online portal is opened.

Sd.
(Vikas Trivedi)
Member Secretary

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1st Circular dated 8 March 2024

REHABILITATION COUNCIL OF INDIA
A Statutory Body of Ministry of Social Justice and
Empowerment
Department of Empowerment of Persons with Disabilities
(Divyangjan), Government of India

F.No.8-A/Policy/(Recog)/2009/RCI 08 March, 2024

CIRCULAR

The Council has received representation with regard to enhancement of seats in the existing institutions of this Council offering D.Ed.Spl.Ed/B.Ed.Spl.Ed. courses. It has been decided to enhance the seats in existing institutions to bridge the gap of special educators as the Council has discontinued to consider the fresh proposal of D.Ed.Spl.Ed./B.Ed.Spl. 1.Ed./B.Ed. Spl.Ed. courses from the academic session 2024-25.

2. As per the approval of the Competent Authority the seat may be enhanced on a pilot basis as per the proposal received for 33 institutions belonging to the State of Rajasthan. The other institutes pan India may also be considered provided they apply. The approval for seat enhancement is limited to 50 institutions during the pilot project. However, the following conditions are to be met before granting them approval for seat enhancement:

Sl N o.	Category	Required infrastruct ure for enhancem ent of 10 additional seats for B.Ed.Spl.E d/ D.Ed Spl.Ed.	Required infrastruct ure for enhancem ent of 20 additional seats for B.Ed.Spl. Ed/ 20 additional seat for D.Ed Spl.Ed.	Required infrastructur e for enhanceme nt of additional 30 seats for B.Ed.Spl.Ed /35 additional seats for D.Ed Spl.Ed.

1	Special School	55 Children with disabilities in concerned area of disability	65 Children with disabilities in concerned area of disability	75 Children with disabilities in concerned area of disability
2	Classroom	2 classrooms (50 Sq. mtrs. Each)	2 classrooms (65 Sq. mtrs. Each)	2 Classrooms (80 Sq. mtrs. Each)
3	Multipurpose Hall	80 Sq. Mtrs.	100 Sq. Mtrs	120 Sq. Mtrs
4	Library	80 Sq. Mtrs.	100 Sq. Mtrs	120 Sq. Mtrs
5	Lab for Psychology/ ICT	40 Sq. Mtrs.	50 Sq. Mtrs	60 Sq. Mtrs
6	Minimum Text Books	70 Titles	85 Titles	100 Titles
7	Reference Books	200 Reference Books	250 Reference Books	300 Reference Books

(i) The concerned institute must have commensurate infrastructure such as building space students with disabilities

with UDID number, library, lab for psychology/ICT, textbooks and reference books.

(ii) The decision to grant approval will be based on verification of above requirement, accordingly, the Council will conduct inspection before the enhancement of seats.

(iii) The approval may be given on pilot basis for one academic session and after one year, it will be reviewed for further continuation after the approval of the competent authority.

(iv) Fee for increased seats may be deposited by the institute as per RCI norms.

(v) No enhancement of seats may be granted to those institutions which are having any complaints or legal inquiries by any legal body of the Govt.

(vi) The application for request for enhancement of seats may be considered on a first come first serve basis, a seniority roll of the same be maintained and only the top 50 institutions may be considered in phase-I of enhancement of seats. In case any institution does not qualify, the chance may be given to the next till the attainment of the cap of 50 institutions in the academic year 2024-25.

This issues with the approval of competent authority.

Sd.

(Dr. Rajesh Kr. Verma)

Deputy Director

Copy to:

1. P.S. to Chairperson, RCI for kind information please
2. PA to Member Secretary, RCI for kind information please
3. Recognition Section, RCI
4. Computer Section, RCI for uploading on Council's website and email to all approved institutions

2nd Circular dated 8 March 2024

REHABILITATION COUNCIL OF INDIA

**A Statutory Body of Ministry of Social Justice and
Empowerment**

**Department of Empowerment of Persons with Disabilities
(Divyangjan), Government of India**

F.No.8-A/Policy/(Recog)/2009/RCI 08th March, 2024

CIRCULAR

**Sub: Status of Fresh Proposals received for the Academic
Session 2024-25:-reg.**

This is in continuation of Council's earlier Circular of even no, dated 11.08.2023 with regard to invitation of fresh proposals for the academic session 2024-25.

2. In light of the Council's circular of even no. dated 01.12.2023 and 04.01.2024 by which the Council has decided not to consider fresh proposal in respect of D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses respectively. Accordingly, the fresh proposals in respect of D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses are not re-scrutinized. These fresh proposals are enclosed at Annexure-A. In

light of the above, it has been decided that the processing fee submitted by the institutions in respect of D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses may be returned to the respective institutions/university departments. The concerned institutes are hereby requested to send the account details for refund of processing fee.

3. With regard to rest of fresh proposals of other courses (except D.Ed.Spl.Ed./ B.Ed.Spl.Ed. courses), the scrutiny report is attached at **Annexure B** in which no fresh proposals were found eligible and the reason are mentioned. Discrepancies, if any, in respect of ineligible fresh proposals (except D.Ed.Spl.Ed./ B.Ed.Spl.Ed. courses), the institutions may submit their representation through email at recogrci-depwd@gov.in within 10 days of issuance of this circular.

This issues with the approval of Competent Authority.

Sd.

(Dr. Rajesh Kr. Verma)
Deputy Director

Encl: as above

Copy to:

1. All Concerned Institutions
2. Computer Section, RCI to uploading on the website” In order to facilitate reference, the first circular dated 8 March 2024 *supra* shall be referred to, hereinafter, as the “Enhanced Seats Circular” and the second circular dated 8 March 2024 shall be referred to as the “Fresh Proposals Circular”.

23. Aggrieved, both by the return of their applications for being permitted to commence the new special education courses, and by the decision to increase the number of seats in the existing institutions, the petitioners have instituted these writ petitions, seeking issuance of a writ of certiorari, quashing and setting aside both the said decisions, as contained in the impugned circulars dated 4 January 2024 and 8 March 2024, and for a writ of mandamus, directing the respondent RCI to decide the petitioners' applications on merits.

Rival Contentions

24. I have heard Mr. Sanjay Sharawat, learned Counsel for the petitioners and Ms. Niharika Jauhari, learned Counsel for the respondent at length.

Submissions of Mr. Sharawat

25. Mr. Sharawat submits that there is no statutory provision which permits the respondent to return the petitioners' applications. He submits that as many as 571 institutions which had, at their own cost and expense, set up the requisite infrastructure, as per the requirements of the Norms, for commencing the special education courses, on the basis of the invitations held out by the respondents, had been placed in jeopardy as a result.

26. With respect to the status of the Norms, Mr. Sharawat draws my attention to the RCI Regulations, which were issued in exercise of the powers conferred by Section 29 of the RCI Act, with the previous sanction of the Central Government. He has specifically drawn attention to Regulations 7, 12 and 24, which read as under:

“7. Annual General Meeting- (1) An annual meeting of the Council shall be held at least once in a year and at such time and place as the chairperson may decide.

(2) General meetings of the Council may be held at any time during the year and at such time and place as the Chairperson may decide and shall be called forthwith on a requisition signed by seven members of the Council.

(3) The council May-

- (a) consider the Annual Report;
- (b) consider the Balance Sheet and the Audited accounts for the previous year;
- (c) receive and consider budget proposals for the following year;
- (d) regulate the training policies and programmes in the field of rehabilitation of disabled people;
- (e) bring out standardisation of training courses for professionals dealing with disabled persons;
- (f) prescribe minimum standards of education and training for various categories of professionals dealing with disabled persons;
- (g) the standards in Governmental institutions, Central as well as the State;
- (h) recognise institutions training/professionals in the field, and to recognise the degree/diplomas/certificates awarded by these institutions, and to withdraw such recognition;
- (i) recognise foreign degrees/diplomas/certificates awarded by these institutions, and to withdraw such recognition;

(j) collect information on a regular basis on education and training in the field of rehabilitation of disabled persons from institutions in India and abroad;

(k) consider such other matter or matters as the

Chairperson may raise;

(l) consider any other business on the agenda.

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12. Powers and functions of the Executive Committee-

(1) Subject to the general control and directions of the Council, the Executive Committee shall be responsible for the management and administration of the affairs of the Council and shall :-

(a) lay down broad policy to carry out the purpose of the Council;

(b) review and sanction budget estimates;

(c) sanction expenditure as defined in financial rules; (d) invest the funds of the Council;

(e) borrow on terms and conditions expedient:

(f) create posts, recruit and appoint staff

(2) Creation of all posts with a basic pay of Rs. 30U(J and above shall be done with prior approval of the Central Government.

(3) Creation of, appointment and promotion to other posts shall be made by the Executive Committee.

(4) When the matter is so urgent that its decision cannot wait till the holding of next meeting of the Executive Committee the

same may be decided by circulation to all members of the Executive Committee.

(5) When the matter is so urgent that even the reference to members of the Executive Committee by circulation shall defeat its object, the Chairperson may exercise the power of the Council provided that in such cases the action taken by the Chairperson shall be required to be ratified by the Executive Committee in its next meeting :

Provided that where the Executive Committee modifies or reverses the decision taken by the Chairperson. such modification or reversion shall be without prejudice to the validity of any action taken before such modification or reversion.

(6) All decisions taken by Executive Committee shall be placed before the Council at its next meeting.

(7) The Executive Committee of the Council may by resolution delegate to the Chairperson or the Member Secretary or jointly to both of them such of its administrative and financial powers as it may deem fit for the conduct of day to day business.

(8) The Chairperson of the Executive Committee shall have the power to invite representative or representatives of such other organisations or institutions and individuals at the meetings. as he deems desirable in the interest of the Committee. *

24. Norms for starting a Rehabilitation Professional Course—

(1) No Institute of rehabilitation professional course shall be started without the prior approval of Council/the Central Government.

- (2) To obtain approval of the council, the institution desirous of starting the Degree/Diploma/ certificate courses shall approach the council through the respective State Government/Union Territory Administration. The State Government/Union Territory Administration shall be requested to assess the requirements of various professionals.
- (3) The state Government/Union Territory Administration must indicate in clear terms whether they are or not in favour of starting of a college/or institutions managed by a NonGovernmental Organisation.
- (4) The management of the institute shall adopt the standards of Staff, space and equipments as recommended by the Council and give an undertaking for their phased implementation within the stipulated period.
- (5) the management of institute, must submit in writing, the willingness of university/Board who can grant affiliation if the council permits the degree/diploma course to be started.
- (6) The management of the institute must satisfy the council about possessing enough training facilities to undertake the degree/diploma course.
- (7) The management must provide adequate facilities of administrative and teaching staff required for the degree/diploma course as per the recommendations of the council.
- (8) The management of the Institute must submit a plan for the construction of fullfledged division and appoint competent personnel to man the same.

(9) On receipt of an application from an organisation for permission to start new rehabilitation professional course, the Council shall call for if not done by the Organisation. the recommendations/views of the State Government. In case the recommendations/ views of the State Government are not received within a period of ninety days, the council shall be entitled to process the application on its own with the support of his committees and thereafter take such decision as it deem necessary.”

Apropos the requirements envisaged by Regulation 24, Mr. Sharawat submits that all the petitioners had obtained NOCs from the State Government, as required by Regulation 24(9).

27. Mr. Sharawat submits that there is no reason forthcoming whatsoever, on the record, to justify the decision to return the petitioners’ applications, except a reference to the fact that, consequent on the NEP 2020, the National Council for Teacher Education (NCTE) was starting a new Integrated Teacher Education Programme (ITEP) program. No other ground is professed. The fact that the respondent is allowing increase in the seats in special education courses provided by existing institutions indicates that there is no decision to discontinue the courses.

28. In fact, submits Mr. Sharawat, the impugned decisions seem entirely to be based on a communication dated 27 December 2023 received from the office of the Hon’ble Minister of Social Justice and Empowerment (“the Hon’ble Minister”, hereinafter), which read thus:

“OFFICE OF HON’BLE MINISTER OF SOCIAL JUSTICE AND EMPOWERMENT

Kindly refer to the letter from Akhil Bhartiya Vishesh Shikshak Prashikshan Sangha (letter no ABIH-2023 dated 20.12.2023, copy enclosed) addressed to HMSJE, regarding discontinuance of two year B.Ed course under New Education Policy.

2. In order to upgrade the competency of teachers, National Council for Teacher Education (NCTE) has launched the Integrated Teacher Education Programme (ITEP) under New Education Policy through which the duration of B.Ed course has been increased from two years to four years and discontinued giving approval of two years B.Ed course from 2023-24.

3. As RCI is also running similar teacher training programs i.e. B.Ed. (Special Education) & D.Ed. (Special Education) in corollary to guidance of NCTE. D.Ed (Special Education) course of two years has already been discontinued by RCI vide letter no. A/Policy/(Recog)/2009/RCI dated 27th April, 2023. 8-

4. As NCTE has discontinued B.Ed program of two year duration since 2023, hence HMSJE has directed that RCI should also not give new approvals to any institutions for running two year BEd (Special Education) program for academic year 202425 and develop a new course on pattern of NCTE soon in this regard.

Necessary order should be issued in this regard soon, pl.

(Dr. Santanu Kumar Agrahari)

PS to Hon'ble Minister SJE
dt. 27.12.2023"

Mr. Sharawat submits that the issuance of the above letter has no sanction in law, and is completely outside the parameters of the RCI Act. He submits that the Ministry could not issue executive directions, where the field is occupied by legislation. He seeks to point out that, in para F of the counter-affidavit, the respondent has acknowledged the fact that the decision to return the petitioners' applications was solely based on the letter dated 27 December 2023 received from the office of the Hon'ble Minister. Mr. Sharawat submits that the RCI Act does not envisage or tolerate any interference by the Central Government in the matter of grant of approval to institutions seeking to start Special Education courses. The only power with the Central Government, as envisaged in the RCI Act, he submits, is to be found in Section 28, whereunder the Central Government can frame Rules.

29. This is not a case, he submits, in which a conscious independent decision has been taken by the RCI, also taking into account the view of the Hon'ble Minister. He submits that the decision to return applications for starting new courses was taken blindly on the basis of the letter received from the office of the Hon'ble Minister, without any independent application of mind. To support the submission that such a letter cannot constitute the basis of the decision to return the petitioners' applications, Mr. Sharawat relies on the judgment of the Supreme Court in ***Devesh Sharma v. U.O.I.***¹, specifically emphasising para 55, 60, 70 , 73 , 74 , 77 , 78, 80 and 81 thereof. He submits that, in ***Devesh Sharma***, the Supreme Court was concerned with the NCTE Act. There is, however, no such provision in the RCI Act. He additionally cites paras 24 to 28 of ***Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia***², paras 55, 56, 72, 73 and 84 of ***Inderpreet Singh Kahlon v. State of Punjab***³, paras 27, 28, 39 and 40¹ **2023 SCC OnLine SC 985** ² (2004) 2 SCC 65³ (2006) 11 SCC 356 of ***Zenit***

Metaplast v. State of Maharashtra¹, paras 28 to 30 of ***Noida Entrepreneurs Association v. Noida***⁵ and paras 9 and 10 of ***State of Punjab v. Gurdial Singh***².

30. Besides, submits Mr. Sharawat, there is a statutory cap, contained in Clause 10.0 of the Norms, on the intake of students each year, which is limited to a maximum of 35. The respondent could not, therefore, by an executive decision as reflected in the impugned Circular dated 8 March 2024, allow intake of 75 seats by any institution. The deficit in Special Educators could not be sought to be made up by permitting an increase in seats in existing institutions in violation of the statutory limit. Drawing a parallel, Mr. Sharawat queries (obviously “to himself”), as to whether the Bar Council of India could be permitted to take a decision that it would not include any more advocates, as there are already too many. (Attempting to answer this query may, however, open a Pandora’s box – ergo, I propose to leave the query unanswered.)

31. Mr. Sharawat submits that the Norms are silent on the infrastructural requirements which an institution would have to comply with, in the event of increase in the seat intake in any Special Education course beyond 35 in the academic session. Thus, he submits that existing institutions had been permitted to enhance their seat intake to 70 for the 2024-2025 academic session without any Norms governing the requirements that they would have to fulfil to cater to such additional intake. There is, therefore, in such a circumstance, every likelihood of compromise with academic standards.

¹ (2009) 10 SCC 388 ⁵(2011) 6
SCC 508

² (1980) 2 SCC 471

32. In this context, Mr. Sharawat has referred to decision (iv) in the Circular dated 9 March 2023 issued by the RCI, which reads thus:

“(iv) At present, there is upper limit to conduct maximum 10 programmes for one institution. As a result, the institutions/ Universities having pre-requisite infrastructure facilities to conduct more than upper limit programmes are deprived from offering more courses. Therefore, it has been decided that this condition to be relaxed for those institutions that are having all the required Infrastructural facilities to run these programmes subject to the inspection as there is an acute shortage of Human Resource in disability sector. It is proposed to have a special inspection for such requests comprising of 3-4 members. If inspection report is found satisfactory, the decision in each such case to be taken by the Executive Committee.”

Mr. Sharawat submits that, by the time decision was taken, the NEP 2020 had already weathered three summers. That apart, even as per this decision, additional seats in a course were to be allowed only if the norms for the course were satisfied. There are, in fact, no norms catering to a situation in which an institution is allowed an intake of more than 35 seats in an academic session.

33. Mr. Sharawat further draws attention to the counter-affidavit of the respondent, in which it is stated that the revised Circular dated 9 April 2024, which sought “to enhance the seats in the existing institutions to bridge the gap of special educators as the Council has discontinued to consider the fresh proposal of D.Ed.Spl.Ed./B.Ed.Spl.Ed. courses from the academic session 20242025”. He emphasises that the Circular dated 8 March 2024, whereby

increase in seats in existing institutions was permitted, did not even seek to justify the decision on the ground that the existing institutions possesses the requisite infrastructure to cater to the additional intake.

34. While the impugned circular dated 8 March 2024 returns the applications for commencing D.Ed.Spl.Ed and B.Ed.Spl.Ed. courses, in respect of other courses, the reasons adduced in Annexure B to the circular, points out Mr. Sharawat, are blank in many cases and, in others, are mere repetitions of the same reason i.e., “ The details of CWSN are false hence returned back not eligible”. He submits that there has been no compliance with the principles of natural justice before returning the applications.

35. Mr. Sharawat also faults the impugned decisions as having been taken in haste. A decision taken in haste is, even on that ground, he submits, liable to be quashed. Save and except in emergent situations, all decisions of the executive are required to be preceded by proper application of mind, and a decision taken in haste stands *ipso facto* vitiated.

36. The NEP 2020, points out Mr. Sharawat, was approved on 29 July 2020. Applications for new Special Education courses, invited thereafter could not, therefore, had been returned citing the NEP 2020.

37. The impugned decisions are, therefore, in Mr. Sharawat’s submissions, plainly arbitrary, and accordingly unsustainable in law. He relies, in this regard, on para 14 of the decision in **S.G. Jaisinghani v. U.O.I.**⁷ Rules and norms, he submits, cannot be changed midstream. Between the circulars inviting applications from institutions proposing to

start new Special Education courses in the academic session 2024-2025, and the impugned letters dated 4 January 2024 and 8 March 2024, he submits that the only intervening development was the letter dated 27 December 2023 from the Hon'ble Minister. There is, therefore, in fact no other reason for the respondents decision to return applications from institutions seeking to start new D.Ed.Spl.Ed or B.Ed.Spl.Ed courses.

38. Thus, submits Mr. Sharawat, the impugned decisions cannot sustain the scrutiny of law and deserves, therefore, to be set aside.

Submissions of Ms. Niharika Jauhari for the respondent

39. Ms. Jauhari commences her submissions by drawing attention to the composition and constitution of the EC of the RCI, as envisaged by Section 3(3)⁸ of the RCI Act, specifically clauses (a), (b) and (e)

⁷ **(1967) 65 ITR 34 (SC)**

⁸ (3) The Council shall consist of the following members, namely:—

- (a) a Chairperson, from amongst the persons having experience in administration with professional qualification in the field of rehabilitation, disabilities and special education, to be appointed by the Central Government;
- (b) such number of members not exceeding seven, as may be nominated by the Central Government, to represent the Ministries of the Central Government dealing with matters relating to persons with disabilities;
- (c) one member to be appointed by the Central Government to represent the University Grants Commission;

- (d) one member to be appointed by the Central Government to represent the Directorate General of Indian Council of Medical Research; thereof. She submits that, as the decision to return applications seeking commencement of new Special Education courses was taken after due deliberation by the EC of the RCI, it cannot be said to have been initiated by non-application of mind, and was also largely immune from judicial review.

40. Ms. Jauhari also contests Mr. Sharawat's submission that the Hon'ble Minister could not have issued the letter dated 27 December 2023. She submits that the RCI Act itself envisages participation of the Central Government and refers, in this context, to Section 11(2)⁹, 18¹⁰, 28¹¹ and 29 (i)¹² thereof. She also places reliance on Rule 2¹³ of the Allocation of Business Rules, promulgated under Article 77 of the Constitution of India. To a query from the Court as to the specific

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- (e) two members to be appointed by the Central Government to represent the Ministry or department of the States or the Union Territories dealing with Social Welfare by rotation in alphabetical order;
- (f) such number of members not exceeding six as may be appointed by the Central Government from amongst the rehabilitation professionals working in voluntary organisations;
- (g) such number of members not exceeding four as may be appointed by the Central Government from amongst the medical practitioners enrolled under the Indian Medical Council Act, 1956 (109 of 1956) and engaged in rehabilitation of the handicapped;
- (h) three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;

- (i) such number of members not exceeding three as may be nominated by the Central Government from amongst the social workers who are actively engaged in assisting the disabled; (j) the Member-Secretary, ex officio.

⁹ (2) Any University or other institution which grants qualification for the rehabilitation professionals not included in the Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Council may, by notification, amend the Schedule so as to include such qualification therein and any such notification may also direct that an entry shall be made in the last column of the Schedule against such qualification only when granted after a specified date.

¹⁰ **18. Minimum standards of education.** – The Council may prescribe the minimum standards of education required for granting recognised rehabilitation qualification by Universities or institutions in India. ¹¹ **28. Power to make rules.** – The Central Government may, by notification, make rules to out the purposes of this Act.

¹² **29. Power to make regulations.** – The Council may, with the previous sanction of the Central Government, make, by notification, regulations generally to carry out the purposes of this Act, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(i) the courses and period of study or of training, to be undertaken, the subjects of examination and standards of proficiency therein to be obtained in any University or any institution for grant of recognised rehabilitation qualification;

¹³ **2. Allocation of Business** – The business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all of which provision in the Allocation of Business Rules which would authorise the issuance of the

letter dated 27 December 2023 by the Hon'ble Minister, Ms Jauhari's only response is that the RCI had necessarily to act as per the said letter.

41. Nonetheless, she submits, the decision not to accept applications for starting D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses was, before it was communicated by the impugned letters dated 8 March 2024, put up before the EC in its 92nd meeting on 19 January 2024, as Supplementary Agenda Items 1 and 2. The decision was, therefore, conscious and informed.

42. Ms. Jauhari further places reliance on para 15.4 of the NEP 2020, which read thus:

“15.4 As teacher education requires multidisciplinary inputs, and education in high-quality content as well as pedagogy, all teacher education programmes must be conducted within composite multidisciplinary institutions. To this end, all multidisciplinary universities and colleges - will aim to establish, education departments which, besides carrying out cutting-edge research in various aspects of education, will also run B.Ed. programmes, in collaboration with other departments such as psychology, philosophy, sociology, neuroscience, Indian languages, arts, music, history, literature, physical education, science and mathematics. Moreover, all stand-alone TEIs will be required to convert to multidisciplinary institutions by 2030, since they will have to offer the 4-year integrated teacher preparation programme.”

43. Ms. Jauhari finally submits that the petitioner has no *locus standi* to challenge the grant of permission to enhance seats in existing institutions, as it does not impact the petitioner, positively or negatively. Besides, she submits that the said decision was, before it are hereinafter referred to as "departments").

was communicated by the impugned circular dated 8 March 2024, placed before the EC. It was, therefore, in the nature of an academic policy decision, with which the Court ordinarily would not interfere.

44. Ms. Jauhari would, therefore, pray that the writ petition be dismissed.

Submissions of Mr. Sharawat in rejoinder

45. First adverting, in rejoinder, to the NEP 2020, Mr. Sharawat submits that the provisions cited by Ms. Jauhari are actually inapplicable, as Para 5.21 of the NEP 2020 specifically dealt with Special educators, and read as under: “Special educators

5.21. There is an urgent need for additional special educators for certain areas of school education. Some examples of such specialist requirements include subject teaching for children with disabilities/Divyang children at the Middle and Secondary school level, including teaching for specific learning disabilities. Such teachers would require not only subject-teaching knowledge and understanding of subject-related aims of education, but also the relevant skills for understanding of special requirements of children. Therefore, such areas could be developed as secondary specializations for subject teachers or generalist teachers, during or after pre-service teacher preparation. They will be offered as certificate courses, in the pre-service as well as in-service mode, either full time or as part-time/blended courses again, necessarily, at multidisciplinary colleges or universities. Greater synergy will be enabled between the course curriculum of NCTE and RCI to ensure

adequate availability of qualified special educators who can handle subject teaching as well.”

46. Mr. Sharawat submits that the justification being sought to be advanced for the decision to return applications for starting new D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses was facile. He draws attention to the fact that the RCI has, in May 2023, issued fresh norms governing the D.Ed.Spl.Ed. (IDD) course, w.e.f.³ the 2023-2024 academic session and, for the parallel Bachelor level course, i.e. B.Ed.Spl.Ed. (IDD) course, has issued fresh norms in 2024 w.e.f. the 2024-2025 academic session. The issuance of these norms, he submits, militates against the professed intent of the RCI to be migrating towards an integrated course on par with the ITEP. He submits that there is no assertion or averment, in the counter-affidavit filed by the RCI, as to when the integrated Special Education course would come into being.

47. For the submission that an executive decision taken on the basis of a direction from another authority stands *ipso facto* vitiated, Mr. Sharawat additionally cites paras 12 and 13 of **Anirudhsinhji Karansinhji Jadeja v. State of Gujarat**⁴⁵, para 41 and 42 of **Kumagai Skanska HCC Itochu Group v. Commissioner of Value Added Tax**¹⁶, paras 20 to 23 and 26 of **Raj Prakash Varshney v. Additional District Magistrate**⁶⁷ and paras 115 to 121 of **ACME Heergarh Powertech Pvt Ltd v. Central Board of Indirect Taxes**¹⁸. He further submits that the Central Government cannot interfere in its executive discretion where the field is occupied by legislation and cites, for this purpose, paras 51 and 52 of

³ with effect from

⁴ (1995) 5 SCC 302

⁵ SCC OnLine Del 2492

⁶ AIR 1978 Del 17

⁷ SCC OnLine Del 3360

***Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd v. State of Rajasthan*⁸ .**

Analysis

Re. Para 3 of impugned Fresh Proposals Circular dated 8 March 2023

48. The Fresh Proposal Circular deals, in paras 2 and 3, with different circumstances. Para 2 conveys the decision of the RCI not to consider fresh proposals for the D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses. Para 3 deals with fresh proposals for other courses which were found ineligible and refers to Annexure B to the Circular which is said to contain the reasons therefor.

49. Though Mr. Sharawat addressed certain submissions with respect to both paras 2 and 3 of the Fresh Proposal Circular, none of the petitioners in these writ petitions submitted proposals for any course other than D.Ed.Spl.Ed. and B.Ed.Spl.Ed.. None of these petitioners are therefore affected by para 3 of the Fresh Proposal Circular. No occasion, therefore, arises for this Court to pronounce on the legality or otherwise of the said para, or on the grounds on which proposals for starting courses other than D.Ed.Spl.Ed and B.Ed.Spl.Ed were returned. The submissions of Mr. Sharawat with respect to para 3 of the impugned Fresh Proposal Circular dated 8 March 2024 are not, therefore, being dealt with.

⁸ (2013) 11 SCC 1

Re. Challenge to Enhanced Seats circular

50. The enhancement of seats in existing institutions does not form subject matter of challenge in WP (C) 6644/2024 and WP (C) 6658/2024, though it has been challenged in the other writ petitions.
51. To my mind, the petitioners have no *locus standi* to challenge the said enhancement of seats as it does not affect them one way or the other. This is all the more so as this judgment finds the decision to return the petitioners' applications to be unsustainable in law.
52. Moreover, the existing institutions, which have been benefited by the permitted enhancement of seats by the impugned Enhanced Seats Circular dated 8 March 2024, have not been impleaded in any of these writ petitions. No challenge to the beneficial dispensation in favour of the said institutions can be laid without impleading at least some of the affected institutions.
53. I do not, therefore, propose to examine the challenge to the Enhanced Seats Circular, apropos the proposal to enhance D.Ed.Spl.Ed. and B.Ed.Spl.Ed. seats in the existing institutions.
54. The discussion that follows is, therefore, restricted to the legality of the decision to return the petitioner's applications.

Re. Challenge to the decision to return the fresh proposals

Academic policy decisions insulated, but not immune, from challenge

55. It is true that matters of academic policy are substantially insulated from judicial intervention. Among the considerations that guide this principle are the fact that such policies affect the entire educational edifice of the country, and that the authorities entrusted with the task of formulating such policies are often the best equipped to do so. The fact that such policies are framed after comprehensive discussion at high levels is also one of the factors which persuade the Courts to exercise restraint when dealing with challenges by persons who are affected by the policy.

56. That said, like any policy decision, academic policy decisions are also not immune from challenge. Where the policy decision has no legal justification to sustain it, or has been arrived at without taking into account all relevant considerations, or operates in a markedly arbitrary and inequitable manner, Courts would be failing in their task if they sit back and allow the policy to continue.

Circumstances – Representation held out to the public

57. The circumstances preceding the submissions by the petitioners, of proposals to start D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses, are of considerable significance in the present case.

58. The EC of the RCI in its 88th meeting held on 11 April 2023 took a decision to discontinue Diploma Level Special Education courses from the academic session 2024-2025 and therefore not to invite fresh proposals from institutions in that regard. On 29 May 2023 in the 89th meeting of the EC of the RCI, it was decided to invite comments/suggestions from the EC

members regarding the value of the RCI approved Diploma Level Courses in various States so as to be able to ascertain that there was demand, in which case the Diploma Level courses could continue. Following this, on the very next day i.e. 30 May 2023, the RCI invited fresh proposals from institutions for grant of approval to conduct RCI approved training programmes for the academic session 2024-2025 without any limitation with respect to the nature of the programme in respect of which approval was being sought. As such, the Circular dated 30 May 2023 invited fresh proposals from institutions intending to start Special Education courses of all types, including D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses. In its 90th meeting held on 3 August 2023, the EC of the RCI again reiterated its decision that Diploma Level Courses in Special Education would continue till further decision and that, therefore, proposals for Diploma Level Courses could be invited for consideration from the academic session 2024-2025. For this purpose, it was also decided to open the respondent's portal from 17 August 2023 to 30 September 2023. Further, on 18 August 2023, the RCI circulated guidelines for institutions submitting fresh proposals to conduct Special Education Courses. These guidelines, too, were applicable across the board for all courses, including D.Ed.Spl.Ed. and B.Ed.Spl.Ed. The institutions fulfilling these eligibility criteria were invited to submit proposals online. The petitioners assert that they satisfy all these criteria and this assertion is not traversed by the respondent. Following this, *vide* Circular dated 22 August 2023, *all concerned were informed that the RCI has decided that Diploma Level Courses in Special Education would continue till further decision and, accordingly, proposals were being invited for conducting Diploma Level Courses in Special Education from the 2024-2025 academic session.*

59. There is no ambivalence whatsoever in the factual position held out to the petitioners and other institutions intending to start Diploma Level

Special Education courses – or for that matter any category of Special Education courses – from the academic session 2024-2025. Despite an initial tentative decision not to continue with Diploma Level Courses in Special Education with effect from 2024-2025 academic session in the 88th meeting of the EC of the RCI which took place on 11 April 2023, thereafter, on fresh deliberation, it was clearly decided to continue with such courses. Not only were proposals invited from interested institutions; detailed guidelines were also framed and circulated. These guidelines required the institutions to possess specific infrastructural and financial resources. The petitioners contend that, acting on the promise held out by these communications, the petitioners invested considerable amounts in setting up their institutions and making them approval-friendly.

60. In these circumstances, the chagrin experienced by the petitioners, consequent on the issuance of the first impugned Circular dated 4 January 2024, followed by Circulars dated 8 March 2024, was undoubtedly justified.

Applicability of the principle of promissory estoppel

61. The justifiability of the impugned decision has to be tested on the principles enunciated by the Supreme Court in ***Shrijee Sales Corporation v. U.O.I***⁹. In that case, the Supreme Court held that the principle of promissory estoppel *does* apply against the Government as well and also set out the circumstances in which the Government could be allowed to change its stand. Paras 3 and 4 of the report in that case set out the law: “3. It is not necessary for us to go into a historical analysis of the case-law relating to promissory estoppel against the Government. *Suffice it to say that the principle of promissory estoppel is*

⁹ (1997) 3 SCC 398

*applicable against the Government but in case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. However, the Court must satisfy itself that such a public interest exists. The law on this aspect has been emphatically laid down in the case of **Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.**¹⁰. The portion relevant for our purpose is extracted below:*

“It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise ‘on giving reasonable

¹⁰ (1979) 2 SCC 409

*notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position' provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide **Emmanuel Ayodeji Ajayi v. Briscoe**¹¹."*

4. Two propositions follow from the above analysis:

- (1) The determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest".
- (2) It is the Court which has to determine whether the Government should be held exempt from the liability of the "promise" or "representation".

(Emphasis supplied)

62. Thus, the Government is ordinarily bound by a promise made by it, or a representation held out, to the citizens. It can, however, change its stand, provided there is either a supervening public equity, or, even if there is no such equity, the members of the public to whom the earlier representation was made, are in a position to restore their *status quo ante* without having been placed in an irreversible position. If the person who has acted on the representations held out by the Government cannot be restored to the *status quo ante* and placed in the position in which he was

¹¹ (1964) 3 All ER 556

earlier, the Government is bound by its earlier representation on the principle of promissory estoppel and cannot resile therefrom.

63. Three facts are therefore required to be examined when, in the facts of the given case, this issue arises. They may be posed in the form of queries thus:

(i) Was any promise held out by the Government? (ii) Was the decision to resile from the earlier stand based on supervening public equity?

(iii) Even if it were not so, were the persons who had acted on the basis of the representation held out by the Government, in a position to restore the *status quo ante* or had they placed themselves in an irreversible position?

64. When one examines facts of the present case in the backdrop of these three aspects, the conclusion is evident.

Whether any promise was held out

65. The minutes of the 89th meeting of the EC of the RCI, as circulated *vide* circular dated 1 June 2023, conveyed the decision that if there was a demand for RCI approved Diploma Level courses they would continue. The circular dated 30 May 2023 invited proposals from institutions for conducting RCI approved training programmes for the academic session 2024-2025 without any limitation regarding the nature of the programme. On 18 August 2023, guidelines for institutions seeking to submit fresh approvals for conducting Special Education programmes were also circulated. The succeeding Circular dated 22 August 2023 clearly stated that the proposals for Diploma Level Courses in Special Education were being invited for the academic session 2024-2025. A clear promise was, therefore, held out to the public that anyone who desire to submit a fresh

proposal for a Special Education course, including a Diploma Level Special Education course, could do so, and had only to conform with the guidelines circulated on 18 August 2023. Thus, the petitioners had clearly acted on the basis of representation held out by the RCI to all of them.

Did any supervening public equity exist?

66. The next issue to be considered is whether the decision not to consider fresh proposals for the D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses was impelled by any consideration of supervening public equity, as has been held in ***Shrijee Sales Corporation***. The onus is on the executive authority to satisfy the Court in this regard, and it is for the Court to be satisfied that such a supervening public equity exists.

67. In the present case, there is precious little available on record as could satisfy this Court that the decision to resile on the representation held out to the public that fresh proposals for Special Education courses for the 2024-2025 academic session would be considered was prompted by any supervening public equity. The respondent has not placed on record any document which can convince the Court in that regard. All that is said is that the NCTE had, consequent on the NEP 2020, started the ITEP and that the RCI was also intending to start a similar course.

68. Where the equity lies, is apparent. As I have already noted, there is no ambivalence regarding the position that was held out to the public by the Circulars dated 30 May 2023, 1 June 2023, 9 August 2023, 18 August 2023 (which set out the Norms for the courses) and 22 August 2023. These Circulars clearly induced the public – including the petitioners – to believe that fresh proposals for *all* Special Education courses –

including Diploma level courses – were welcome, and that the institutions had to conform to the Norms circulated on 18 August 2023. Fresh proposals were invited by the said Circulars, and it was in response thereto that the petitioners tendered their proposals. In the absence of supervening – in fact, in the facts of the case, overwhelming – public equity, therefore, the subsequent Circular dated 1 December 2023, which effaced, in one fell swoop, the Circulars dated 30 May 2023, 1 June 2023, 9 August 2023, 18 August 2023 and 22 August 2023, could not have been issued. This is all the more so as the prevailing consideration that impelled the decision to invite fresh proposals for all courses, which was the serious dearth of Special Educators, continued unremedied.

69. The parallel that is being sought to be drawn between this case and the position that obtained in the case of the NCTE, which started the ITEP, actually does not exist. In fact, this Court recently decided a batch of writ petitions in *Pt. Prasadi Lal Kakaji Teacher Training College v. N.C.T.E.*²³ involving a similar challenge to the decision of the NCTE to return applications for setting up institutions to provide Teacher Education courses, which had been submitted years earlier. The principles of promissory estoppel and legitimate expectation were²³ **2024 SCC OnLine Del 2854** also invoked by the petitioners in those petitions. However, the Court found that the entire consideration of the issue, culminating in the decision to return the applications, impugned in that case, had proceeded scientifically. There was a carefully considered decision to replace the institutions providing single courses with institutions providing more than one course and thereafter to multi-disciplinary institutions (MDIs). The entire modalities of the ITEP were drawn up, and, most significantly, the applicable National Council for Teacher Education Regulations 2014 were amended in 2021 to incorporate the ITEP, with a specific proscription, in Regulation 8(1), against accepting applications from institutions who

desired to provide only single courses. It was only thereafter that applications from institutions intending to provide single courses were returned. This Court, in fact, found that any direction to process the applications would have violated Regulation 8(1) of the 2014 NCTE Regulations as amended in 2021. It was in these circumstances that the Court held that no occasion to interfere with the decision to return the applications of the petitioners in those cases existed.

70. Moreover, unlike the present case, the applications of the petitioners in ***Pt. Prasadi Lal*** were not made on invitation. No circulars were issued, inviting applications. The applications were made in terms of Section 14 of the NCTE Act under which anyone could apply to set up a Teacher Education Institution. No explicit representation was held out to the effect that these applications would be considered or proceeded with. In the present case, however, specific and explicit representations have been extended to the public in the Circulars issued by the RCI to the effect that fresh proposals for all courses including Diploma Level courses, were being invited and considered. The detailed guidelines containing the prerequisites for institutions who intended to provide such courses were also circulated.

71. Unlike the situation which obtained in ***Pt. Prasadi Lal***, no Special Education course, parallel to ITEP, has been formulated till date, though the respondents state that it would be formulated at some time in future. There is no statutory provision justifying return of the petitioners' applications, unlike Regulation 8(1) of the NCTE Regulations 2014, as amended in 2021.

72. The only basis for the decision to return the petitioners' applications is, as Mr. Sharawat correctly points out, the letter dated 27 December 2023 from the office of the Hon'ble Minister.

73. There is substance in Mr. Sharawat's contention that such a letter could not have constituted the sole basis for the impugned decision to return the petitioners' applications. There is nothing to indicate that the said letter was deliberated upon by the EC of the RCI and all pros and cons considered before the decision to return the petitioners' applications was taken.

74. Besides the letter dated 27 December 2023 conveys the decision of the Hon'ble Minister only with respect to the B.Ed.Spl.Ed. programme, and not the D.Ed.Spl.Ed. programme, though para 3 of the letter refers to both programmes. A reading of para 3 of the letter only indicates that, in all probability, the Hon'ble Minister was not apprised of the actual ground reality, as para 3 states that D.Ed.Spl.Ed. course stood discontinued by the RCI *vide* letter dated 27 April 2023. The Hon'ble Minister appears not to have been apprised of the subsequent decisions taken in the 89th and 90th meetings of the EC of the RCI and the Circulars dated 30 May 2023, 18 August 2023 and 22 August 2023, whereby it had been specifically held out, to the public, that the fresh applications for Diploma Level Courses could also be submitted. The respondents have not chosen to place on record any deliberations which preceded the issuance of the letter dated 27 December 2023 from the office of the Hon'ble Minister as could indicate that the Hon'ble Minister was made aware of these facts.

75. In these circumstances, I am in agreement with Mr. Sharawat that in the overall facts and circumstances of the case, the respondents could

not have refused to consider the fresh proposals submitted by the petitioners for commencing the D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses for the academic session 2024-2025.

76. This is not, therefore, a case in which the decision to resile on the representations, held out to the public, that fresh proposals for all Special Education Courses, including D.Ed.Spl.Ed. and B.Ed.Spl.Ed., could be submitted for consideration, can be said to have been prompted by supervening public equity or public interest.

Could the *status quo ante* be restored?

77. The third question that arises for consideration is therefore whether as a consequence of the impugned decisions, the petitioners have been placed in an irreversible position or whether the *status quo ante* regarding the petitioners can be restored.

78. The answer to this question is also obvious. The petitioners have invested considerable amounts in setting up their institutions and marshalling the requisite infrastructure to satisfy the prescribed norms for conducting the D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses. The assertions to this effect in the writ petition filed by the petitioners are not traversed by the respondents in their counter-affidavit. Even otherwise, it is obvious that setting up an educational institution involves a considerable amount of financial outlay, and investing of extensive resources. The petitioners have therefore clearly altered their position to their disadvantage on the basis of the representation held out by the respondent. It cannot be said that the petitioners are now in a position to restore the *status quo ante* or bring themselves back to the position in which they were before the impugned

circulars had been issued by the RCI. The petitioners' institutions cannot be razed to the ground.

79. In that view of the matter, applying the law laid down in para 3 of ***Shreeji Sales Corporation***, the representation held out by the respondents in the form of the circulars dated 30 May 2023, 18 August 2023 and more specifically 22 August 2023 have become final and irrevocable against the respondent.

The NEP 2020

80. The reliance, by Ms. Jauhari, on the NEP 2020, is also not wholly convincing. Mr. Sharawat is correct in his submission that Special Educators are specifically dealt with in para 5.21 of the NEP 2020 which expressly recognizes the urgent need to augment the strength of Special Educators. This fact, coupled with the impugned Enhanced Seat Circular dated 8 March 2024, indicates that the dearth of Special Educators and the urgent need to augment the available strength of Special Educators was a consideration to which all were alive. It is for this purpose that existing institutions were permitted to enhance their seat intake for the D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses. As the urgent need for additional Special Educators stands thereby expressly expressed and recognized, even considerations of public interest cannot justify return of the petitioners' applications seeking starting of new D.Ed.Spl.Ed. and B.Ed.Spl.Ed. courses.

81. The impugned decision to return the petitioners' applications cannot sought to be justify even on the anvil of NEP 2020.

82. The position in law being clear, I do not deem it necessary to advert to other issues, or to the decisions cited by Mr. Sharawat.

Conclusion

83. The Circulars dated 4 January 2024 and 8 March 2024, which conveyed the decision to return the petitioners' proposals, is quashed and set aside to the extent it returns the petitioners' applications. The proposals would therefore be processed in accordance with law.

84. The challenge to the second Circular dated 8 March 2024, whereby the existing institutions have been permitted to increase the seats, is dismissed.

85. The writ petitions are partly allowed in the aforesaid terms with no orders as to costs.

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