
(1998) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6452 of 1995

Abdul Khuddus and Others

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10, 2
Constitution of India, 1950 — Article 226

Citation : (1998) 6 ALD 246 : (1998) 5 ALT 710 : (1998) 3 APLJ 374

Hon'ble Judges : Y.V. Narayana, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. T. Veerabhadrayya, for the Appellant; Government Pleader for Revenue (Assignment), for the Respondent

Judgement

This Judgment has been overruled by : State of Andhra Pradesh Vs. Abdul Khuddus (Dead) by LRs and Others, (2007) 13 JT 431 : (2007) 3 SCALE 546 : (2007) 12 SCR 709

Madhava Reddy, C.J.—Andhra Kesari Education Society, Ongole Prakasam District a Society registered, under the Societies Registration Act, seeks a writ of mandamus against the Government of Andhra Pradesh, the 1st respondent herein, and the District Educational Officer, Ongole, Prakasam District, the 2nd respondent herein, to grant permission to run the college of Education and the Teachers Training Institute at Ongole and to pass any other appropriate orders.

2. The Society was registered with the primary object of establishing and running a College of Education for graduates and the Teachers Training Institute for non-graduates. The Society made an application on 27-7-1982 for grant of permission to establish and run a B. Ed. College at Ongole with a view to help the Scheduled Castes, Scheduled Tribes, backward classes and economically backward classes of the society and secured a suitable and spacious building and provided it with furnitures, library, laboratories, playground and other facilities required to run the College of Education and the Teachers Training Institute

efficiently. The Society, was also, ready to undertake any financial burden and raise necessary further funds for the maintenance of the college. The Society proposed to run the college strictly within the parameters of Andhra Pradesh Education Code and the rules framed by the Government and conform to the rules of affiliation framed by the Andhra University within the jurisdiction of which, the society intended to establish the college. The petitioner Society also wrote a letter to the Andhra University on 28-8-1982 requesting it to send a team to inspect the facilities provided by the society for establishing the College of Education and to recommend for its affiliation. The application for grant of permission to start the college of Education was forwarded to the Secretary to Government, Education Department Government of Andhra Pradesh, Hyderabad; but the society was not informed as to the action taken by (he Government. The society made further requests through similar applications submitted to the Chief Minister and the Education Minister on 27-8-1982 and 20-10-1982 respectively. As there was no response even to these applications, the Society filed writ petition 7987/82 that writ petition was allowed by this court on 12-11-1982 and a direction was issued to the respondents to consider the application of the petitioner-society within four weeks from the date of the order. Though the said period of four weeks expired, no action was taken. In the meanwhile, the petitioner-society called for applications for appointment of the principal and lecturers, so that the college could start functioning in time. While so, the District Educational Officer, Ongole (2nd respondent) addressed a letter to the Superintendent of Police, Ongole (3rd respondent) on 7-12-1982 informing that, while the orders of the Government were awaited, the petitioner-society was proceeding to appoint principal and lecturers and was receiving donations from the candidates seeking admission to B. Ed., and T. T. I. courses and requested the Superintendent of Police to see that the admissions are stopped. A copy of that letter was forwarded to the Secretary and correspondent of the petitioner-society. The society denied that it had appealed for or collected any donations from the candidates and also asserted that the Revenue Divisional Officer and Sub-Divisional Magistrate, Ongole, had no jurisdiction to direct the Secretary and correspondent of the petitioner-society to appear before him and that the Superintendent of Police has no manner of right to prevent the petitioner-society from proceeding with the admissions. The petitioner-society claims that it has a right to establish the college and that, by withholding the grant of permission, the respondents cannot deprive it of its fundamental right to establish a college or prevent it from proceeding with the appointment of the Principal and the Lecturers and admission of the students. In obedience to the D. O. letter No. 658/83 dated 29-4-1983 of the Commissioner for Government Examinations, the District Educational Officer visited the Teachers Training Institute run by the petitioner-society on 5-5-1983 and inspected the facilities provided in that institution and submitted a report. It may be noticed at this stage that the petitioner-society had started this Teachers Training Institute during the previous year and some of its students were permitted along with the students of other unrecognised Teachers Training Institutes, to appear for the examination. The

District Educational Officer reported that the institute was running from 16-10-1982 with fully equipped staff, that there was accommodation for 150 candidates, that the furniture and sanitary conditions were satisfactory and that library and laboratory equipment was provided and that the grand total of eligible and approved candidates was 76 drawn from all classes forward classes, backward classes and scheduled castes candidates. From the report of the District Educational Officer, it would appear that there was no objection to the grant of permission to the Teachers Training Institute run by the petitioner-society. The Andhra University however, did not take any steps to send a team to inspect the facilities provided for the establishment of the college of Education and to recommend for its affiliation.

3. The case of the Andhra University is that unless the Government permits establishment of the College, the question of establishing the college does not arise. So far, the Government has not permitted the establishment of the College; consequently, there is no occasion for the University to send a team to assess the facilities provided in the college.

4. Pursuant to the directions of the High Court in the writ petition referred to above the Government considered the case of the petitioner-society for grant of permission to establish the B. Ed. college during the year 1982-83 and after calling for a report, from the Director of Higher Education, the Government in its memorandum No. 2264-S1/82-1 Edn. dated 9-11-1982, informed the petitioner-society as under :

"In the circumstances stated by the Director of Higher Education in his letters cited. Government after careful examination have decided not to open any more private B. Ed., Colleges during 1982-83 as there are already 13,066 unemployed B. Ed. in the State.

Sd. A. N. Naya Prakas, Dy. Secretary to Government."

5. The Government, in its counter-affidavit, while admitting that an application was made by the petitioner-society for grant of permission to establish a B. Ed. College and to run a Teachers Training Institute, stated that the petitioner-society had called for applications even before the grant of permission and, therefore, a press-note was issued informing the public not to be led away by such advertisement and not to seek admission or recruitment in the unauthorised institution. The Government also informed the Andhra University, Waltair, the Superintendent of Police, Ongole, and the District Educational Officer Ongole, to take appropriate action against the petitioner-society. It is the case of the Government that, as per G. O. Ms. No. 485, Education dated 24-5-1982, those who intend to open a private B. Ed., College shall have to make an application to the concerned University for a report as to the feasibility of the college. The University, in turn, is required to inspect and forward the application with necessary recommendations to the Government for its consideration. After the Government accords approval for starting the college, then only the college

should be started. The petitioner-society applied to the Government without following the said procedure and put in an advertisement in "Eenadu", a Telugu Daily, on 25-11-1982. However, as the Students were already admitted to the Teachers Training Institute and the examinations were scheduled to be held in May, 1983, the Government permitted them to appear for the examination subject to the condition that the private Teachers Training Institute :Shall not function during the year 1983-84 without obtaining prior permission and recognition under the rules. Pursuant to the direction of the High Court in the , above writ petition, the application made by the petitioner-society for opening a Teachers Training Institute for the year 1982-83 was considered and rejected by the Government. No fresh application for the year 1983-84 was made by the petitioner-society. So far as the B. Ed. College is concerned, it is the case of the Government that there are seven Government Colleges of Education. The total permitted strength of the students in the said colleges is 825. Apart from these seven Government Colleges, there are eleven recognised private colleges of Education in ? the State with a permitted intake of 2220 students. Thus, annually, about 3000 trained graduates are produced, while there are as it is 13,066 unemployed trained graduates. In view of this large number of unemployed trained graduates, the Government thought it inadvisable to grant permission to start any more private B. Ed., Colleges. Further, the shortened B. Ed. course was introduced for in-service candidates who were holding secondary Grade Basic Training Certificates and have subsequently improved their qualifications by doing graduation. Now, 12 Government Teachers Training Institutes are functioning in the State and 1800 students are admitted every year. The Government proposed to open 11 more Teachers Training Institutes with an intake of 150 students in each of the institutes. The total number of students that could be . admitted to Teachers Training Institutes every year would thus be 3,450 and according to the estimate of the Government, a maximum of 2500 secondary grade basic training teachers are required per year. The present institutes are more than sufficient to meet this requirement and if, at all, a few more teachers are required, the intake of each of the institutes would be increased. The Government, therefore feels that there is no necessity to start any more Teachers Training Institutes.

6. After hearing the parties at some length we thought it necessary to ascertain the statistics as to number of students in the age-group of 5 and 14 and the existing teacher-pupil ratio in the primary Schools, Upper Primary Schools and High Schools and also the number of trained graduates at present in service and the required number of trained teachers to man the several institutes now and in the near future. On behalf of the Government, an additional counter-affidavit was filed by the Assistant Secretary to Government Education Department, giving, certain figures.

Those figures are disputed by the writ petitioner and the writ petitioner has also filed a reply-affidavit giving the statistics in this behalf. We would advert to this at the appropriate stage.

7. So far as the application for the year 1982-83 is concerned, that has already been rejected and expression of any opinion with regard to the grant of permission for that year would serve no purpose. It must, however, be noticed that the Government have rejected the applications on the sole ground that there are already 13,066 unemployed trained graduates in the State. The students who were trained in the institute, were already permitted to appear for the examination irrespective of whether the institute was started with or without permission. The application for permission has already been made to the Government to start a B, Ed. College, and the Teachers Training Institute started during the previous year continued to run and permission is sought for that institute for the current and future years. The question as to how far the Government is justified in rejecting the application on the ground mentioned in the memorandum of the Government referred to above would have to be considered.

8. It is common ground that no educational institution can be started without the prior permission of the Government. The Andhra Pradesh Education Act, 1982 (hereinafter referred to as "the Act") has come into force on 18-7-1982. Section 20 of the Act lays down that no private institution shall be established except in accordance with the provisions of the Act or the rules made thereunder. It is necessary to read the provisions of Section 20, which are as follows :

"20. Permission for establishment of educational institution: (1) No private institution shall, after the commencement of this Act, be established except in accordance with the provisions of this Act or the rules made thereunder.

(2) Any local authority or any person or registered body of persons intending to-

(a) establish an institution imparting education, or

(b) open higher classes in an institution imparting primary education; or

(c) upgrade any such institution into a high school.

may make an application, within such period in such manner and to such authority as may be prescribed for the grant of permission therefor.

(3) while granting permission under Sub-section (2), the authority concerned shall have due regard to the following matters, namely :

(a) that there is need for providing educational facilities to the people in the locality;

(b) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority;

(c) that the institution is proposed to be located in sanitary and healthy surroundings;

(d) that the site for building, playground and garden proposed to be provided and the building in which the institution is proposed to be housed, conform to the

rules prescribed therefor;

(e) that the teaching staff qualified according to rules made by the Government in this behalf is appointed;

(f) that the application satisfies the requirements laid down by this Act and the rules and orders made thereunder." Section 20 does not totally prohibit the establishment of a private institution. In fact, it envisages the establishment of a private institution in accordance with the provisions of the Act and the rules made thereunder. But before such institution is established, the person or authority intending to establish such institution is required to make an application within such period and in such manner and to such authority as may be prescribed for the grant of permission. The authority prescribed under the Act is required by Sub-section (3) of Section 20 to have due regard to the matters enumerated in Clauses (a) to (f) thereof. In other words, if, after considering the application with reference to the matters enumerated in Clauses (a) to (f) of Sub-section (3) of Section 20, the authority is satisfied that the requirements thereof are fulfilled, it shall have to grant permission. It would be significant to note that the authority is not specifically empowered to reject the application. A reading of Section 20 would give an indication that the Legislature intended that the competent authority should grant permission if the conditions laid down by the Act are fulfilled. In fact, having regard to the fundamental rights guaranteed to a citizen to carry on any profession or business, the right to establish an educational institution must be deemed to be a fundamental right and only restrictions can be imposed on the exercise of such right as envisaged by Article 19(1)(g) of the Constitution of India.

9. The Supreme Court, in *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, considering the provisions of the Grant-in-aid Code (Maharashtra) affirmed the view taken by the Bombay High Court in *The Sakharkherda Education Society, Sakharkheda and Others Vs. The State of Maharashtra and Others*, in so far as the right of a citizen to establish an educational institution is concerned. In *Sakharkherda Educational Society v. State* (supra), dealing with the right of the minorities to establish an educational institution, the Division Bench of the Bombay High Court considered the scope of Article 19(1)(g) of the Constitution and observed ;

"The scope of Article 19(1)(g) and Article 30 very much differ. Article 19(1)(g) is a general guarantee of a particular kind of fundamental right in wide words, while Article 30 is intended to guarantee certain rights to minorities and unless in the enumeration of the rights, the right of education were mentioned, probably, it would have been excluded. Hence, merely because Article 30 refers especially to educational institutions, it cannot be said that Article 19(1)(g) does not intend to include such institution. The words "profession or occupation or business" are of wide import and whether or not gain is made by running an educational institution, it cannot cease to be business."

Though the Supreme Court confirmed the dismissal of the writ applications by the Bombay High Court, so far as this aspect is concerned, the Supreme Court clearly recognised the existence of a fundamental right in this behalf. However, the Supreme Court did not express any final opinion on that aspect, far the matter came up for consideration at a time when the emergency was in force when no citizen could enforce the fundamental right guaranteed under Article 19(1)(g) of the Constitution.

10. In *A.N. Parasuraman and Others Vs. State of Tamil Nadu and Another*, , a Division Bench of the Madras High Court, considering the provisions of the Madras Private Educational Institution (Regulation) Act, 1966 held:

"The power to grant or refuse permission vested in the competent authority for continuance or establishment of private Educational Institutions can only be exercised after taking into consideration the particulars contained in the application u/s 4 and where it proposes to refuse it can do so only after it has given an opportunity to the applicant of making his representations. Such particulars furnish the material in the light of which the discretion vested in the competent authority is to be guided and exercised; such vesting of power is, therefore, neither unreasonable nor arbitrary."

The imposition of any restriction on the citizen's right to start an Educational Institution was thus held to be reasonable restriction on the exercise of his fundamental Right only on the ground that the discretion to grant or refuse permission vested in the authority is guided by statute. In the light of the above, let us examine how far the impugned order satisfies the requirement of the Statute.

11. In this context, we may examine the ground on which the petitioner-society's application for starting a B. Ed. College is rejected. The Government states that it has taken a decision not to grant permission for starting any more private B. Ed. Colleges and accordingly informed the petitioner-society by its letter dated 18-1-1983. That letter reads as follows :

"I am directed to state that the request for opening a B. Ed. College at Ongole, Prakasam District is not feasible of compliance as Government after careful examination, have already taken decision not to open any more private B. Ed. Colleges in the State (vide Government Memo No. 2264/S1/82-1 Edn. Dated 9-11-1982.) The Memorandum of the Government dated 9-11-1982 was enclosed with that letter. In that memorandum, what all the Government stated is that,

".....the Government, after careful examination have decided not to open any more private B. Ed. Colleges during 1982-83 as there are already 13,066 unemployed B.Ed. in the State."

The factors relevant for granting or refusing permission are enumerated in Sub-section (3) of Section 20. The reason given by the Government for refusing

permission is not a ground specifically enumerated in Section 20 or any other provision of the Act. It is not stated that the petitioner-society does not satisfy the requirements mentioned in Clauses (a) to (f) of Sub-section (3) of Section 20. What was urged at the Bar by the learned Government Pleader Mr. Quadri who ably argued the matter and perhaps meant by the Government Memorandum referred to above is that the Government does not consider "that there is need for providing educational facilities to the people in the locality", which is one of the factors to which the authority concerned is required to have due regard in granting permission. In coming to that conclusion, the fact that 13,066 trained graduates are unemployed must have been taken into account. On the other hand the petitioner points out that nearly 400 applications were received for 150 seats. From this, it is clear that there are sufficient number of students in the locality seeking admission to the College for which permission was sought. It is obvious from the Memorandum of the Government that the total number of students that are seeking admission was not taken into account. The fact that 13.066 trained graduates are unemployed seems to be the only factor that weighted with the Government in rejecting the petitioner's application. It is not clear as to how many of these unemployed trained graduates are seeking employment, It is also not stated as to how many of them are eligible for being employed in Government Colleges. What Clause (a) of Sub-section (3) of Section 20 requires is to consider the need for providing educational Facilities to the people in the locality and not the number of trained graduates available or the number of trained graduates posts available under Government or private Schools or other institutions and offices.

12. The need for providing educational facilities to the people in the locality has to be judged in the light of the Directive principles of State Policy enshrined in Part IV of the Constitution. Article 45 enjoins that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years" Article 46 further enjoins that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation." Imparting education to all children upto the age of 14 years is thus made the special responsibility of the State. It does not make such endeavour. Even according to the figures given by the Government in the additional counter affidavit, the children in the age-group of 6 to 13 years are about 98 lakhs. The existing teacher-pupil ratio in the Primary Schools is 1:50, Upper Primary Schools 1:28 and High Schools 1:25. It is further stated that, in the Primary Schools, out of a total number of 81,210 teachers, 80,346 i.e. 98.9 percent are trained teachers. In the Upper Primary Schools, out of a total number of 36,662 teachers, 35,814 i.e. 98.7 per cent are trained teachers and in the High Schools out of a total number of 59,263 teachers, 58,456 i.e. 98.6 per cent. are trained teachers and in the High Schools attached to Junior Colleges out of a total

number of 6,614 teachers, 6,588 i.e. 99.6 per cent are trained teachers. Further as on to-day, after selections for 10,039 posts of teachers, which arose due to reduction in age of superannuation from 58 to 55 years, there are about 10,000 Teachers Training Certificate Holders, who are unemployed and there are about 4,500 candidates who appeared for the S. G. B. T. Examination and 12,000 B. Ed. graduates awaiting employment. In view of the existing Teachers Training Institutes and 11 more Teachers Training Institutes proposed to be started by the Government during the academic year 1983-84 and 19 Colleges of Education, there is no need for opening any more Teachers Training Institutes or Colleges of Education either by the State or by the Private managements. As already stated above, these figures are disputed by the writ petitioner. In the additional reply-affidavit filed by Sri J. Prasad, Secretary and Correspondent of the petitioner-society it is asserted that, for the total number of Schools now functioning, about 1,30,000 teachers are required, but only 1,13,757 teachers are available at present. Thus, there is a shortfall of more than 16,000 teachers for the existing Schools even during the academic year 1979-80. In view of the enormous increase in the population the Government was obliged to start new Schools between 1980 and 1983. If the Schools are to be started commensurate with the increase in the population, another 40,000 Schools are required to be started. Even if new Schools are not opened commensurate with the increase in the population, as admitted by the Minister for Education himself in his statement, while there is a demand for six lakhs teachers, there are only 1,75,000 teachers available. In G. O. Ms. No. 169 Education, dated 19th February, 1975 and the Government Memorandum No. 763/121-2/75-4; Education, dated 16-5-1975, it was decided to open 50 Teachers Training Institutes as there was, dire need for such institutes. Even to achieve the teacher-pupil ratio mentioned in the additional counter-affidavit filed on behalf of the State Government, it is asserted 30,000 trained teachers would be required.

13. In G. O. Ms. No. 169, Education, dated 19th February 1975, it was stated that each Teachers' Training Institute would admit 150, students in two sections of 75 each and it intended to train 7,500 teachers every year during the Fifth Plan period; but in fact, only 12 Institutes were opened and run during the Fifth Plan period. So much so, even 1/3rd of the requisite number of teachers were not trained. Evidently, realising the need for starting new 8. Ed; Colleges and realising its Own inability to provide funds for starting Government Colleges of Education, the Government permitted Panineeya Mahavidyalaya Dilsuknagar, to start a B. Ed. College with an intake of 150 students for the current academic year 1983-84 under G. O. Ms. No. 417 dated 4-10-1983. In G. O. Ms. No. 479 dated 11-11-1983, the Government also permitted Nagarjuna Educational Society to Start a B. Ed. College with an intake of 100 students during the academic year 1983-84. Again in G. O. Ms. No. 480 dated 14-11-1983 the Government permitted Montessori Mahilakalasala, Vijayawada, to start B. Ed. College with an intake of 100 students for academic year 1983-84. Hence the decision of the Government not to permit opening of new Colleges of Education

or Teachers Training institutes in view of 13,066 teachers with B. Ed. Degree being unemployed cannot hold good for the academic year 1983-84. From the record placed before us it does not appear that the factors viz. the increase in population, the large number of students in the age group of 5 and 14 years and providing educational facilities to them being the special responsibility of the State under the Directive Principles of State Policy, were taken into account by the Government in determining whether permission should be granted for opening new Teachers Training Institutes. The only factor that seems to have weighed with the Government was that 13,066 trained graduates were unemployed. As admitted by the Government, due to the reduction in the age of superannuation, as many as 10,039 teachers retired, while there are only 10,000 teachers training certificate holders, who are unemployed and registered with the Employment Exchanges. In the counter-affidavit, the figures of the students in the age-group of 5 and 14 years are not mentioned. Obviously, that also has not been taken into account.

14. The Supreme Court, in *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, even while holding that it is not for the Court to lay down a policy in the matter of providing educational facilities and it is essentially for the State, observed (at p. 592) :

"Such policy will depend upon, an over-all assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the Courts to interfere with the policy leading up to such assessment."

From the above discussion, it is clear that the only factor that seems to have weighed with the Government in laying down a policy not to permit opening of new educational institutions as there are 13,066 trained teachers unemployed. But what Clause (a) of Sub-section (3) of Section 20 requires the authorities concerned to take into account is the need for providing educational facilities for the people of the locality. If the people of a particular locality need such educational facilities, the starting of an educational institution cannot be denied. If the Government itself intends to start a college, it can, of course decide upon a policy not to permit opening of a private college. If, on account of financial constraints or for any other reason, the Government itself is unable to start a college, when there is need to provide educational facilities, it cannot refuse permission to an educational Society or individual citizens, when they come forward to provide educational facilities to the people in the locality. It is the right of every citizen to adopt the profession of teaching or to get himself trained or train teachers for adopting the profession of teaching: only he has to obtain permission to establish such an institution. Permission cannot be refused on extraneous grounds or without taking the factors referred to in Section 20 (3). There is nothing in the Order refusing permission to indicate that this factor was kept in view in rejecting permission to the petitioner-society. So far as the

petitioner's request for permission to start a B. Ed. College is concerned, it was urged at the bar on behalf of the Government that it should first approach the Andhra University and obtain a feasibility report from the university for establishment of the college. The stand taken by the Andhra University, in its counter-affidavit however is that unless the Government permits a college to be established, it would not send any team to visit the college and submit a report. In our view, the role of the University is only to examine the facilities provided and assess whether the facilities are sufficient so as to grant affiliation. Section 20 (2) of the Act requires that any person intending to establish a college should make an application to the appropriate authority. Obviously such application has to be made to the authority which is empowered to grant or refuse permission and only after that authority permits the establishment of the college, the petitioner-society can provide the requisite facilities. Only then, the University would be in a position to send a commission to visit the college and assess whether the facilities are up to the standards laid down by the university. The Government would therefore, be in error in refusing permission to the petitioner-society on the ground that the applicant had not submitted a feasibility report from the University. In fact, Section 20 lays down that any person intending to start a college should first approach the authority concerned for grant of permission. No provision of the Act or rule was brought to our notice which insists upon the applicants to first approach the University.

15. So far as the Teachers Training Institute is concerned, on the direction of the Commissioner of School Education, a report has already been submitted by the District Educational Officer after inspecting the institute. The District Educational Officer reported that there are adequate facilities for training the teachers evidently, acting upon that report, the teachers, who were already trained during the academic year 1982-83 were permitted to appear for the examination. The refusal of the permission in the instant case is without having due regard to the factors mentioned in Clause (a) of Sub-section (3) of Section 20 of the Act. If the authority required to consider the factors mentioned in Clauses (a) to (f) of Sub-section (3) of Section 20 ignores them and refuses permission without having due regard to these factors then such an order cannot be sustained. The percentage of literacy in the State of Andhra Pradesh is 29.4 while the national average is 34.5 per cent. So long as the percentage of illiterates in the population of the country in general and Andhra Pradesh in particular, which is less than the national average remains so abnormally low, no Court can accept that there is no need for providing educational facilities for the people of the locality and countenance refusal of permission to establish an educational institution. The necessity to provide educational facilities cannot be judged from the number of students seeking admission in Government Institutions alone; nor having regard only to the number of teachers required for being appointed in Government or private institutions. It has to be decided having regard to educational needs of the locality. While there are so many millions of illiterate, semi-literate and uneducated persons in the State of Andhra Pradesh itself, it

cannot be said that there is no need for further Schools or Colleges in any locality of the country; much less in Andhra Pradesh where the percentage of literacy is less than the National average. Either the Government itself must establish Schools, Colleges and Educational Institutions, or, if it is not in a position to establish them for reasons of finance or other constraints or reasons of policy-priorities, it cannot legally prevent the citizens of the country from establishing such Schools, Colleges or other Educational Institutions by refusing permission. So long as there is educational need in the locality and there cannot, be any doubt that there is such a need, any refusal on any grounds of policy, would be contrary to the statute and the fundamental rights of the citizens to educate themselves. While the citizens cannot insist upon the Government to provide educational facilities at the cost of the State and the State may very well be within its bounds in not starting Schools, Colleges and Educational Institutions it cannot deny the right of the citizens to educate themselves and to establish such Institutions. If it were to do so, it would give an impression that the State and the authorities have a vested interest in keeping the masses illiterate and uneducated by denying them even the right to educate themselves. A reading of Section 20 would lead us to the conclusion that the statute requires the authorities to see that requisite educational facilities are provided in the locality and if other requirements of the statute as laid down in Section 21 are satisfied by an applicant for grant of permission to start a School, College or Educational Institution, permission should be accorded. There may be a thousand educated unemployed but so long as large number of illiterate persons seek to educate themselves and apply for admission into Educational Institutions and when Educational Institutions are proposed to be started by those interested in making the Nation educated and are prepared to provide the facilities envisaged by the statute, the State cannot reject permission. The authorities cannot under the statute deny the educational facilities to the people of the locality. If the establishment of Schools or "Educational Institutions is otherwise feasible as proposed by the applicants and they are able to provide the requisite facilities as envisaged by the Act and sufficient number of students are seeking admission, in our view, the Government is legally bound to grant permission to start such Educational Institutions. In seeking permission to start Educational Institutions, they are not seeking employment with the Government or with the existing Educational Institutions. That the existing Schools and Colleges do not require any more trained teachers or trained graduates cannot be a valid criteria on which decisions to grant or refuse permission for establishing an Educational Institution may be based. Students may seek self-employment and not service under anybody. If such students want to educate themselves Schools, Colleges and other Educational Institutions must be available and persons or institutions proposing to start such institutions cannot be denied permission on the grounds now mentioned by the respondent or on the ground that there are already large number of unemployed. In the face of this vast illiteracy and need for establishing Schools, it would be futile to contend that there is no need to provide this educational facility for the people in the locality.

16. In view of the above discussion, we quash the order of the Government refusing permission on the ground mentioned therein and direct the authority to consider the application made by the petitioner-society for grant of permission to start and run the Teachers Training Institute and establish a College of Education to train the students for B. Ed. Examination of the Andhra University in the light of the provisions contained in Section 20 of the Act. We further direct that the application shall be disposed of within a period of one month from the date of receipt of this judgment. If necessary, the authority concerned will require the petitioner to submit such further particulars as may be necessary for the disposal of the application in the light of the observations made in the judgment.

17. Mr. Raghava Rao, the learned counsel for the petitioners, requests that the students, who have been already trained in the Teachers Training Institute may be permitted to appear for the examination. We must however, observe that even last year, while permitting the students to appear for the TTI. Examination, the Government had informed the petitioner-society that, unless the institute is recognised, the petitioner-society shall not run the same and the students will not be permitted to appear for the examination. So far as the graduates trained in the College of Education are concerned unless the College is affiliated to the Andhra University, the University cannot be directed to permit them to appear for the examination. It is, however, open to the authorities concerned to consider any request made by the petitioner-society or its students on its own merits. We do not think it appropriate to make any direction in this regard.

18. In the result, the writ petition is allowed to the extent indicated above. There shall be no order as to costs. Advocate's fee Rs. 250/-.

W. Ps. Nos. 3780 and 5471 of 1983:

19. These two writ petitions are filed by the students, who have undergone training either in the Teachers Training Institute or the College of Education started by the petitioner-society in W. P. No. 9137 of 1982. For the reasons recorded in writ petition No. 9137 of 1982 these two writ petitions are dismissed. No costs. Advocate's fee Rs. 250/- in each.