

(2006) 06 CAL CK 0035

In the Calcutta High Court

Case No : Writ Petition No. 11247 (W) of 2006

Anjan Bhattacharya and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Constitution of India, 1950 — Article 254(1)
National Council for Teacher Education Act, 1993 — Section 12, 13, 14, 15, 16
Vidyasagar University Act, 1981 — Section 5(3)

Citation : (2006) 3 CHN 669

Hon'ble Judges : V.S. Sirpurkar, C.J.;Aniruddha Bose, J

Bench : Division Bench

Advocate : A.G. Gutgutia, Subrata Talukdar and K. Banerjee, for the Appellant; Manish Sen and S.K. Paria for respondent Nos. 7, 31 and 32, Balai Chandra Roy, Debasish Kar Gupta, Somnath De and Biswarup Bhattacharjee for respondent Nos. 2, 3, 8 and 9, Debjani Sengupta and B. Bhattacharjee for respondent Nos. 4 and 5 and Sovanlal Hazra, Tapabrata Chakraborty and Goutam Banerjee, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, C.J.—This writ petition, which is in the nature of Public Interest litigation, has been filed by two petitioners, who are the practising Advocates of the Calcutta High Court and assert themselves as the responsible citizens with social obligations having duty to see that there is no violation of statutory provisions particularly in the field of education. They also give out a purpose of eradicating illegal, collusive and damaging activities of the university authorities in Calcutta University, Vidyasagar University, Burdwan University and Kalyani University in granting affiliation to number of unrecognized colleges in the State of West Bengal for running teacher training courses, which colleges have not obtained recognition from the National Council for Teacher Education under the National Council for Teacher Education Act, 1993. The petitioners have joined all the abovenamed universities as parties and also have further joined the

individual colleges. Their concern shown for filing the petition is to save the students who would not be able to get a valid B.Ed. degree from the respondent colleges on account of the fact that the colleges in which they are taking training are not recognized by the National Council for Teacher Education (NCTE for short). It is pointed out that huge expenditure is made by the guardians of these students for all the education, particularly for prosecuting the B.Ed. course and all that would be wasted on account of the fact that the colleges in which they are educated are unrecognized colleges and, therefore, the universities would not be in a position to confer upon them a valid B.Ed. degree which is a valid qualification for getting the employment as a teacher. Shortly stated, the petitioners contend that in the absence of such a recognition from the NCTE under the NCTE Act, 1993, no affiliation could have been granted by any of these universities to such colleges and, therefore, the certificates issued by the concerned universities to the students of such institutes after the examination, would be simply invalid in terms of the statutory provisions, more particularly, u/s 16 of the NCTE Act. The petitioners have pointed out that the Calcutta University had granted affiliation to 11 colleges which was not recognized by the NCTE, the Vidyasagar University also had granted affiliation to approximately 8 unrecognized colleges, Burdwan University had also given affiliation to 8 colleges while Kalyani University has given affiliation to one or more unrecognized colleges, which act was completely illegal in the absence of the recognition of such colleges by the NCTE. It is reiterated that unfortunately, the students have no knowledge that the certificates granted by the university for prosecuting the course of B.Ed. would be of no consequence.

2. The petitioners have also filed a list of recognized colleges under the NCTE Act affiliated to these very universities. According to the petitioners, the unrecognized institutes and the affiliating universities are misleading the students by imparting the course, holding examination and granting certificates without any authority under the law and as such, the certificates of the students would be simply rendered as of no value. Various provisions u/s 16 etc. are relied upon by the petitioners and quoted in the petition.

3. It is also pointed out that the NCTE, Eastern Regional Committee, Bhubaneswar has published and circulated a public notice and sent it to the universities of the Eastern Region and also got it published in the newspaper on 7th October, 2005, itself suggesting that the teacher education qualification obtained from the institutions not recognized by the NCTE is not valid for employment under Central Government or any State Government or university or any school, college or other educational body aided by the Central Government or any State Government. It is pointed out that in that notice the NCTE has also advised the students to verify the status of recognition of the institution for conducting a particular teacher education programme by the NCTE, before applying for the admission in the institution. In the very notice, the NCTE had also advised all the examining bodies to follow the central statute and not to grant affiliation for imparting teacher training course which are not recognized by

the NCTE. Further in the same notice, the affiliating universities were also advised not to allow the students of such unrecognized colleges to appear in the B.Ed. final examination.

4. It is further pointed out that the petitioners had submitted the representations on 18.4.2006 before the Principal Secretary, Higher Education Department, Government of West Bengal as well as the Vice-Chancellors of the Calcutta University, Vidyasagar University, Burdwan University and Kalyani University regarding these irregularities in granting affiliation. It is pointed out that such representation was also made to the Chairperson of the NCTE as also to the Eastern Regional Director, NCTE to take necessary steps.

5. A reliance has also been made on the Division Bench judgment to which one of us was a party (V.S.S., C. J.), of this Court dated 19th April, 2006 wherein the Court had, in case of University of North Bengal in the State of West Bengal, held that the eight unrecognized colleges which were illegally affiliated by the university would not be allowed to admit any students and the university would immediately cancel the affiliation and students would not be allowed to appear in the B.Ed. Examination for the academic session 2005-2006.

6. The petition was sought to be opposed by the universities and the colleges by filing affidavits. The defence taken by the various universities is that those universities were incorporated /constituted under the West Bengal Legislature and under the same enactment, the university alone had the power to inspect or investigate the affairs of the colleges or institutions. It had also the exclusive power to grant affiliation to the various colleges and further it had power to confer degree, titles, diploma and certificates after holding examination. It also had the power to withdraw /cancel degree, titles, diploma etc. under the said enactment and that the universities had granted the affiliations to all the B.Ed. colleges relying on this power in the State Legislation. It is also reiterated that under the various provisions of the University Act (incorporating a particular university), the university acted through its Board of Studies, Teachers' Councils, Executive Councils etc. and that it had formulated the regulations covering the matters like (a) powers and functions of the Board of Studies, (b) functions and duties of the Teachers' Councils, (c) conditions for admission to different courses of study and examination of students, (d) rules for conduct of university examinations, (e) for deciding the courses of study and division of subjects upon the recommendations of the Faculty Council for post-graduate and undergraduate studies, (f) for prescribing minimum qualifications for Principals, Teachers of the university etc, and the other residuary matters. It is then the assertion, particularly of the respondent Kalyani University, that it had affiliated three B.Ed. colleges by following the due procedure. The defence raised is the Central Legislation like NCTE Act cannot override the State Acts incorporating universities and cannot interfere with the university administration as regards the colleges affiliated by the universities. It is further suggested that the State Acts are valid piece of legislation and since the NCTE Act operates in a common field its

provisions would not be binding vis-a-vis the universities and the affiliated colleges.

7. Reference is made by some colleges and the universities to the inspections made by the Government team for granting the affiliations in favour of the colleges. A comparative table is given suggesting the norms and standards for teachers education programmes, commonly known as B.Ed., as required under the University Act and NCTE Act. This comparative table is also in respect of the eligibility for admission, curriculum transaction and requirement of teaching staff, qualification of teaching staff and administrative staff, infrastructural facilities, instructional facilities, terms and conditions of the service of staff etc. in order to suggest that the requirements for affiliation by university were comparably rigorous with the requirements for recognition under the NCTE Act by the NCTE. It is then reiterated that the colleges affiliated by universities were having high standard though there was no recognition granted under the NCTE Act, thereby suggesting that recognition by NCTE is an empty formality. This is the second defence.

7.1. Number of other colleges also reiterated their claim that they were having very good standards in terms of the infrastructural facilities, the teaching staff, the instructional facilities etc. However, all the universities had to admit that number of B. Ed. colleges affiliated by them did not have the recognition by the NCTE.

8. Some other universities like Burdwan University found fault with the NCTE for not considering the applications made by various colleges in time. According to the said university, out of the 16 colleges affiliated to that university, only five had already obtained recognition from NCTE while 11 colleges were affiliated without recognition from the NCTE, The university tried to find fault with the NCTE on the ground that though the applications were made by these colleges, they were not properly considered or considered in time. The defence generally raised is almost identical to one said earlier, that is, the colleges were affiliated as per the norms and practice within the authority of university. It was also urged that the formality of recognition in its literal sense should not matter and that the students who have accomplished the course under the guidance of the unrecognized colleges, should have to take the examination through the recognized colleges and institutes. It was also urged that the partial observance of the Regulations under the NCTE Act should be taken into account in the interest of the students. It is suggested that after the affiliations were given, the colleges also started in good faith. Objection was also raised that this could not be a Public Interest Litigation. As stated earlier, it is suggested that the education being a subject in the Concurrent List, the authority of the State agencies could not be taken away by enacting the Central Act.

9. The Regional Director, who joined as the respondent, had also filed an affidavit giving the complete list of the concerned colleges, who had filed the applications on various dates and also pointed out the present status of the colleges.

10. Vidyasagar University also filed an affidavit pointing out that after its establishment, a number of colleges affiliated to the Calcutta University were transferred under the Vidyasagar University and they were deemed to be affiliated u/s 5(3) (a)(i) of the Vidyasagar University Act and they continued to operate and conduct B.Ed. courses. It is then pointed out that three new colleges applied for the affiliation and were granted the same. It claimed that it was subsequently detected that number of colleges affiliated had not obtained recognition from the NCTE and, therefore, a meeting was called by the Vice-Chancellor on 30th March, 2006 wherein the said colleges were directed to apply immediately for the NCTE recognition. It was also expressed that the affiliation of 15,000 B.Ed. colleges in the country would be reviewed following the intervention of the Hon'ble Prime Minister's office. The university, therefore, sought a change in law by making the necessary amendments to save the future of the students.

11. Calcutta University also filed an affidavit-in-opposition denying respondent Nos. 15 and 17 to have been affiliated by it. It pointed out that out of the 9 other colleges, which were affiliated, four were already in existence prior to the coming into the effect of the NCTE Act while the five others were new colleges, which were granted affiliation after coming into the effect of this Act. It pointed out that while granting affiliation, it was clearly indicated that the colleges would have to get the approval from the NCTE and that was a mandatory requirement. It pointed out that one of the colleges was already granted the NCTE recognition and some others were granted recognition for the subsequent years, like 2006-2007. The university admitted that it had received the correspondence from the Eastern Regional Committee, NCTE. It also admits that it had received the resolution passed by the West Bengal State Council for Higher Education to the effect that no university should take responsibility of conducting any exercise relating to the admission to the students in the B.Ed. colleges, not recognized by the NCTE. It is pointed out further that it had written to the Principal/Teacher-in-Charge of all the 31 colleges under the said university seeking a report regarding fulfilment of the provisions of the said Act. However, no college had yet written back to the university. In the further part of the affidavit, what has been found on the part of the NCTE that it did not monitor the institute running the teachers training courses and that had it monitored, then such situation would not have arisen where thousands of students would suffer. In paragraph 6 of the affidavit, it is clearly admitted:

Despite such orders if the colleges failed to comply with such orders it is for those colleges to suffer the consequences. I do not say that the university absolutely has no role but at the same time it is the duty of the colleges concerned to obtain recognition from the NCTE.

11.1 A supplementary affidavit was also filed by the Registrar of the Calcutta University. In this affidavit, resiling from the earlier admission, the Calcutta University has reiterated that though it was written in the earlier affidavit that

colleges did not write back in pursuance of the letter written to them by the university, now the records were again inspected and it was found that as many as 16 colleges had written back informing the university about their status and from that it was pointed out that as many as about four colleges, which were not added as the parties, also were not recognized by the NCTE.

12. Some colleges have also filed affidavits to show that they are extremely well-equipped colleges and that they had tried to obtain the NCTE recognition. But their application has not been granted by the NCTE nor considered and, therefore, they proceeded on the basis of the affiliations granted by the university to them and that they got the affiliation only after they complied with all the norms by the concerned university. In short as stated by us, the universities and the colleges have unequivocally admitted that majority of the colleges affiliated by them did not have the NCTE recognition.

12.1. Secondly, an attempt is tried to be made by all the colleges that even the unrecognized colleges were equally well-equipped and were good enough so that the recognition by the NCTE was merely an empty formality.

12.2. Thirdly, it is suggested that the NCTE itself did not consider the applications in time and, therefore, the colleges were required to proceed ahead with the admissions since they enjoyed the affiliations by the university and now since the admissions were over for the year 2005-2006 and examinations were fixed by the various universities in B.Ed. course, to cancel the admissions as also the affiliations, would be a very harsh treatment to those students and their parents who have spent thousands of rupees. The universities also admitted that those colleges, which were already in existence, had also failed to comply with Section 14 of the Act of applying to the NCTE for the recognition within a particular time-frame and get the recognition.

12.3. It also comes out that the universities and the colleges have now claimed that sympathetic attitude should be taken by the Court.

13. On this backdrop, the following questions fall for consideration:

Question No. 1:

Whether the affiliation is a valid affiliation and whether the examination of B.Ed. to be held by the these universities can be said to be a valid examination entitling the students passing in the examination to a valid degree or diploma?

Question No. 2:

What is the effect of the affiliation granted by the various universities to the new unrecognized colleges claiming to have infrastructural and education facilities? Can the students passing out from such colleges claim valid degrees qualifying them to be the teachers?

Question No. 3:

What is the significance of the various Universities Act vis-a-vis the NCTE Act and what is the effect of the breach of the provisions of the NCTE Act?

Question No. 4:

Can the writ petition be treated as a Public Interest Litigation?

Question No. 5:

What is the order to be passed?

Re: Question Nos. 1 & 2

14. We will consider Question Nos. 1 and 2 together. This Court in W.P. No. 21101(W) of 2005 (Tulshi Bakshi and Anr. v. State of West Bengal and Ors.) by a judgment dated 19th April, 2006 [to which one of us (V.S.S., C.J.) was a party] had already dealt with this subject. That was a writ petition filed in the nature of Public Interest Litigation questioning the grant of affiliation, continuation and taking the course of B.Ed. by 8 colleges affiliated to the North Bengal University, which colleges were not recognized by the NCTE. Out of those colleges few were in existence before the NCTE Act came into existence and some were new institutions. It was an admitted position that these colleges which were already in existence or had failed to obtain NCTE recognition and so also the new colleges had not even applied for the NCTE recognition or if applied they were not granted the recognition for the B.Ed. course of 2005-06. The petitioners in the present case have specifically relied on that judgement to suggest that the factual situation is no different in the present writ petition also. This Court after dealing exhaustively with the provisions of the NCTE Act including definitions and other important provisions like Sections 12 to 17 came to the conclusion and held that in the wake of a positive language of Section 16 read with Section 14(6) of the NCTE Act, the universities cannot grant affiliation to the concerned colleges in the absence of the recognition by the NCTE and resultantly students studying in such colleges cannot sit for the examinations. While holding this, this Court has also taken the stock of the various regulations passed under the NCTE Act like National Council for Teacher Education (Form of Application for Recognition, the Time Limit of Submission of Application, Determination of Norms and Standards for Recognition of Teacher Education Programmes and Permission to Start New Course or Training) Regulations, 2002. It was also noted that an undertaking had to be given while applying for the recognition that the admission of the student would be made only after the recognition is granted by the concerned regional committee of NCTE. It was noted in that judgment that in spite of such undertaking having been given by some of the colleges to the NCTE while making the application for recognition they yet had admitted students for the session 2005-06 without any recognition having been granted. It was also noted in that judgement that the last date for making the application was 31st of December of the previous year, i.e., if the course had to be started in 2005-06, the application for recognition had to be made by 31st of December, 2004 which application should be complete in all respects. The Court had also adversely

commented on the hurried exercise on the part of the colleges to open the educational shops for picking up brisk business and the illegal "go ahead" signal by the university by offering illegal affiliation. Ultimately in that decision it was unequivocally held that it was not possible for those colleges to be affiliated by the universities nor could the universities allow the students of those colleges (institutions) to sit for the examination of B.Ed. course for the session 2005-06 since the colleges were not recognised by the NCTE before that course. On the question as to what decision should be taken in case of the students who had already completed the course by 2005-06 and whether they should be sent for the examination, the Court after referring to various decisions, namely *Maharshi Dayanand University v. MLR Saraswati College of Education, State of Punjab and others Vs. Renuka Singla and others*, *L. Muthukumar and Another Vs. The State of Tamil Nadu and Others*, and *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others*, etc. etc., came to the conclusion that the affiliation to those colleges would have to be cancelled and in result students could not be sent for the examination. The Court further came to the conclusion that it would be dangerous to allow such colleges to be allowed to conduct teachers training course and send students for examination because that would be against the interest of the society in general and children in particular and in sending such students for the examination, the caution sounded by the Supreme Court for more than 12 years would be rendered illusory. Even as per the learned Advocate General the judgment in the case of *Tulsi Bakshi (supra)*, so far not having been challenged, stands in the field.

15. The judgment is undoubtedly binding on us insofar as the first two questions are concerned. In the same judgment the request made by the institutions for a direction to the NCTE to complete their inspection within one month in view of the applications already having been made have also been considered and it was held that all those applications were beyond the time limit permissible under the regulation and that the body like NCTE could not be asked by the High Court to bend or break the rules. The learned Advocate General, who appeared for the Calcutta University and other learned Counsel on behalf of other universities also could not comment insofar as the binding force of this decision is concerned. Therefore, the first two questions must be answered against the respondents and in favour of the petitioners by holding that the affiliation granted to the respondent institutions or as the case may be the continued affiliation in cases of old institutions, in the absence of the recognition would be non est and as a result no examination of B.Ed. could be held in case of the students of the unrecognised institutions since the admission of students and examination itself is prohibited by Section 16.

16. In this behalf it would be illusory to consider the claim that these colleges or institutions, as the case may be, had comparable, if not better, infrastructure available to them in terms of the norms as provided under the NCTE Regulation and therefore the NCTE recognition would be an empty formality. This Court, in the judgement referred to above, has clearly held that in the wake of the positive

language of Section 14(6) read with Section 16 that there can be no question of any affiliation to these institutions even if the universities were satisfied about the infrastructural facility with these colleges before granting affiliation in their favour. We do not see any reason to take a different view and as such there would be no question of holding that the recognition by the NCTE is an empty formality. In fact no such material was presented before us, nor were any provision of NCTE Act or any regulations framed thereunder pressed into service. In view of the binding judgement of this Court, referred to above, Question Nos. 1 and 2 would have to be decided in consonance with the decision and hence it would have to be held that the affiliation granted by the various universities to these colleges is non est and as a result the students of these institutions cannot sit for the examination.

17. Before we close this subject a feeble argument was raised before us that Section 17(4) would be applicable only to the pre-existing old colleges or institutions and therefore in view of the language of Sub-sections (1), (2) and (3) thereof, the students of the new colleges which have come up after the passing of the Act would be spared of the rigour of Section 17(4) in the sense that the certificates or diplomas granted in their favour could still be treated a valid certificate or diploma. Such argument was also raised before this Court in the earlier writ petition, judgement on which we referred to above. We have mentioned this argument only for rejecting the same for two reasons. The first reason is that there could not be any discrimination in between the students of the existing old colleges and new colleges, both being without any recognition from the NCTE. Secondly, and which is more basic reason is that because of the language of Section 16, if there is no recognition of the NCTE to these colleges / institutions there could not be any question of the university being allowed to offer affiliation and hold the examination in respect of the students of those colleges. It is trite under the various Universities Acts that unless the college is affiliated, its students cannot sit for the examination and therefore such students cannot claim to appear for the examination conducted by the university so as to earn a degree or diploma or certificate to that effect and thereby there cannot be any validity to those degrees or diplomas or certificates which cannot be conferred by the university in the absence of the affiliation. Once the fact is established that affiliation in favour of these institutions/colleges was non est, there cannot be any question of their earning any degree or diploma or certificate. That argument also must, therefore, be rejected.

Re: Question No. 3

18. This takes us to consider Question No. 3, which argument in that form was not put before this Court, when this Court disposed of W.P. No. 21101(W) of 2005 (Tulshi Bakshi and Anr. v. State of West Bengal and Ors.): According to the Advocate General the question of legislative competence was not argued before this Court which decided the case in Tulshi Bakshi (supra). He, therefore, advances an argument that the Central legislations like NCTE Act cannot override

the provisions of the State Act incorporating the universities like Calcutta University, Vidyasagar University, Kalyani University, Burdwan University, etc. The substance of the argument is that it is for the universities alone to decide the question of affiliation to the B.Ed. colleges and it is for them alone to decide upon regarding the infrastructure and/or the educational facilities in this colleges. For buttressing this argument the Advocate General points out that the NCTE Act. is referable to Entry 66 of Central List (List I), while the State Acts are referable to Entry 32 of the State List (List II). It is pointed out by the Advocate General further by the 42nd Amendment of the Constitution Entry 11 in List II was split and the subject of education was brought in the Concurrent List (List III) by way of Entry 25. The Advocate General further says that though the subject of education is comprised in Entry 25 of the Concurrent List and though via that entry the Central Government has the power read with the power under Entry 66 of the Central List to legislate over the subject, still the State Government would not be divested of its power where there is an overlapping in the entries comprised in the Central List and State List. The precise proposition of the learned Advocate General can be stated as "when there is an overlapping between the entries in the Central List and State list which are exclusive entries, the overlapped portion of the entry need not be read only in favour of the Parliament but also in favour of the State Legislature as otherwise the principle of exclusivity of legislative power would be defeated." According to the Advocate General the principle of exclusivity can only be made applicable in case of the subjects or entries in the Concurrent List.

19. As against this, Mr. Talukdar, learned Counsel appearing for the petitioner argues that the subject of education, after the 42nd Amendment of the Constitution, which was at Entry No. 11 in the State List has been brought in the Concurrent List at Entry 25 and Entries 63 to 66 in the Central List. According to him there would be an exclusive power in favour of the Parliament to legislate particularly on the subjects referred to in Entry 66 which is set out as under:

Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

20. He further points out that once that power is conceded to the Parliament the statutes made under that entry would cover the field exclusively for the Parliament and to that extent the State Legislations would be ineffective. This argument was also supported by Ms. Gutgutia, appearing for the NCTE. She pointed out that this question is no more *res integra* and has been adequately answered by the Supreme Court in *Zaverbhai Amaldas Vs. The State of Bombay*, ; *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, ; *R. Chitralekha and Another Vs. State of Mysore and Others*, and *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, and *Prof. Yashpal and Another Vs. State of Chhattisgarh and Others*, . Mr. Talukdar invited our attention to the reported decisions in *State of Bombay Vs. Narothamdas Jethabai and Another*, ; *The J.K. Cotton Spinning*

and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, ; The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another, ; Goodricke Group Ltd. and Others Vs. State of W.B. and Others, and P.N. Krishna Lal and Ors. v. Govt. of Kerala and Ors. 1995 Suppl. (2) SCC 187.

21. Learned Advocate General very fairly accepted that the question was apparently covered against the State more particularly in the decisions reported in The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, ; R. Chitralekha and Another Vs. State of Mysore and Others, as also in Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., . However, according to him the Supreme Court had considered the question only in respect of the entry in the Concurrent List and had come to the conclusion in favour of the primacy of the Central Legislation. However, according to him, the question was not considered iris-avis legislative power between subjects in Central List and State List particularly where there was an overlapping of subjects in the two lists. According to the Advocate General there is an overlapping area in Entry 66 and Entry 32 which pertains to the universities and therefore he argues that in respect of the overlapping area there can still be valid legislation by the State Legislature. It would be now for us to test this proposition in the light of the aforementioned decisions. The concerned Entry 32 in the State List is as under:

Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

22. It would not be out of place at this stage to refer to Entry 25 of List III which comes in place of original Entry 11 in List II on account of the 42nd Amendment of the Constitution. Entry 25 is as under:

Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

23. The contention of the Advocate General is that there is overlapping in Entry 66, which we have already quoted above, and Entry 32 which pertains to the universities. According to the Advocate General full scope would have to be given to Entry 32 and giving such scope there would be an overlapping area particularly in respect of higher education which is also covered by Entry 66. The contention of the Advocate General is that if full scope is given to the language of Entry 32 and particularly to the words "and universities" then the States can legislate even on the aspect of higher education provided by the universities as the higher education is only given through the universities and as such the universities would also have the power to provide for norms and standards of higher education particularly in teacher education. The other argument is that the words "and universities" would have to be read independently because of the

comma at the end of the word and figure "List I" and those words cannot be read in the light of the earlier words, "incorporation, regulation and winding up of corporation, other than those specified in List I".

24. It is to be seen in this behalf that as per Entry 25 in List III the subject of education including technical education, medical education and universities has been made subject to the provisions of Entries 63 to 66 of List I. Therefore, it is obvious that insofar as educational aspect of the universities is concerned, it would be subject to Entries 63 to 66 of List I. It can be seen from the language of Entry 66 that it pertains to co-ordination and determination of standards in institutions for higher education and there cannot be a dispute that the B.Ed. course which is a post-graduate course would be covered under higher education and therefore it would be for the Parliament under Entry 66 to determine the standards of the institutions engaged in teacher education which would also include B.Ed. colleges. Therefore, ordinarily it would be for the Parliament alone to legislate over the subject and to that extent the power of the State Legislatures would be excluded. However, the Advocate General suggests going one step further that while it may be true in respect of List III entries, it may not be true in respect of List II entries where there is an overlapping in between List I and List II. It would be, therefore, for us to see whether there is in reality any overlapping.

25. The Advocate General suggests that we should read the words "and universities" separately and independently without reference to the earlier words in Entry 32 of List II as there is a comma provided after the words "other than those specified in List I". It is true that the words "and universities" follow after that comma. It is on account of this that the Advocate General suggests giving full scope to the words "and universities" meaning thereby that the State Legislatures would have the power to legislate in respect of determination of standards in institutions for higher education which is essentially covered by the "universities" under the State List.

26. In our opinion the argument is incorrect. We do not see any overlapping or any common ground in Entry 66 of List I and Entry 32 in List II. It cannot be forgotten that after the words "and universities" there is a semicolon suggesting thereby that the earlier whole clause has to be read distinctly and separately from the remaining part of Entry 32 which is "unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies". In our opinion the earlier part before the semicolon has to be read as a whole. If so read it would provide that the State Legislatures would have the power to legislate regarding incorporation, regulation and winding up of corporation and universities. Therefore, the State Legislatures' power would be applicable only to the aspects of incorporation, regulation and winding up of corporation and universities. The Parliament would always have the power in terms of Entry 66 of List I to legislate on co-ordination and determination of standards in institutions like B.Ed. colleges which undoubtedly provide higher education. Once that power

is read in favour of the Parliament it becomes an exclusive power to the exclusion of the State Legislatures" power. We therefore, do not see any overlapping once we decide to read together the words beginning from "incorporation" and ending with the word "universities" in Entry 32 of List II. Therefore, the further argument that where there is an overlapping in two lists, the power should be read in favour of both the legislatures, that is Parliament and State Legislatures must fail.

27. Undoubtedly, in the case of *Gujarat University v. Krishna* (supra), the Supreme Court had made observation that Entry 66 of List I and Entry 11 of List II undoubtedly overlapped. Entry 11 of List II at the time when the judgement was delivered was as under:

11. Education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List III.

28. However, this observation would not apply now in view of the 42nd Amendment of the Constitution whereby the said entry was deleted and dissected. By that amendment the word "Education" was included in Entry 25 of List III while the rest of the entry regarding the university was qualified by the words "incorporation, regulation and winding up of corporation, other than those specified in List T and converted as Entry 32 of List II. This change would be significant. It is now difficult to see any overlapping in Entry 66 of List I and Entry 32 of List II as suggested by the Advocate General.

29. Even otherwise, this argument is not available because it would undoubtedly hit against the exclusivity of the power to legislate in favour of the Parliament and the State Legislatures. Once a subject is covered by the Entry in List I the power to legislate over that subject becomes exclusive and no power can be read in favour of the State Legislatures to legislate on such subject. Few decisions of the Supreme Court would clinch the issue. In *Prof. Yashpal and Another Vs. State of Chhattisgarh and Others*, , this question fell for consideration. In this case challenge was made to a statute called "Chhattisgarh Niji Kshetra Viswavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 whereby the State was empowered to incorporate and establish universities by issuing notification in the Gazette. Under the Act simply by issuing notification in the Gazette 112 universities were established. The complaint made was that they were so established in indiscriminate and mechanical manner and without having regard to the infrastructure, teaching facility or financial resources. The legislation was further challenged on the ground that it was enacted in a manner which had done away with any kind of control of the University Grants Commission over these private universities and guidelines issued by the University Grants Commission on the courses being taught and award of academic degrees had been given a complete go-by. The defence raised by the State of Chhattisgarh was that in view of Entry 32 of List II of the 7th Schedule, States had legislative competence to make an engagement regarding incorporation and the Act has been passed to facilitate establishment of private universities with a view to create supplementary

resources for assisting the State Government in providing quality higher education. It was also pointed out that by way of remedial steps the State Government had denotified 59 on account of their failure to comply with the amended provisions of the Act. In paragraph 10 of the judgment the Supreme Court referring to the decision of the Privy Council in the case of (1948) 16 ITR 240 (Privy Council) and noting the observations therein, held:

Where Parliament has conferred a power to legislate on a particular topic it is permissible and important in determining the scope and meaning of the power to have regard to what is ordinarily treated as embraced within that topic in the legislative practice of the United Kingdom. The object is to ascertain the general conception involved in the words in the enabling Act.

(Emphasis supplied)

30. In paragraph 11 the learned Judges of the Apex Court observed that though a most liberal construction should be put upon the words while interpreting an entry yet the restricted meaning can be given to the words if it was necessary to prevent a conflict between two exclusive Entries. In paragraphs 13, 14 and 15 the learned Judges highlighted the academic functions of the universities and thereafter in paragraph 16 the learned Judges turned to the conflict in between the entries in List I and List II. Referring to the decision in the case of *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, , the learned Judges in their judgement quoted paragraphs 23, 24 and 25 of the said judgement where the Supreme Court had referred to the overlapping of Entry 66 of List I and Entry 11 (Entry 11 has since been deleted from List II and included in List III as Entry 25 of List II) and had concluded that to the extent of overlapping the power conferred by Entry 66 in List I must prevail over the powers of the States under Entry 11 of List II. The Supreme Court in *Gujarat University's* case (supra) in paragraph 24 had highlighted the supremacy of the legislation made by the Parliament with reference to Entry 66, wherein it was observed:

In other words, the validity of State Legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union Legislation directed to achieve that purpose. If there be Union Legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State Law by virtue of the first part of Article 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State Law trenching upon the Union field must be invalid.

31. In paragraph 25 of the judgement in *Gujarat University's* case (supra), the Supreme Court had observed that Entry 66 would not be given a narrow or restricted interpretation and the power to legislate would normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject.

32. The Supreme Court in the case of Prof. Yaspal v. State of Chattisgarh (supra) then relied on a decision in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , where the term "co-ordination" was explained.

33. The learned Judges also relied on another decision of the Supreme Court in the case of Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another, . In this case while considering a conflict between Entry 66 of List I and Entry 25 of List III, the Supreme Court made the following observations:

If a subject of legislation is covered by Items 63 to 66 even if it otherwise falls within the larger field of "education including universities" power to legislate on that subject must be with the Parliament.

34. The learned Judges also referred to the decision in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , wherein also the conflict between Entry 66 of List I and Entry 25 of List III was considered.

35. Ultimately the learned Judges stated the law in the following words:

The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific Entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standard is maintained.

36. These observations were made in relation to the Parliamentary Legislation like University Grants Commission Act, 1956. The observation with equal force would apply to the NCTE Act also. In this behalf we must quote the Preamble of the NCTE Act, which is as under:

An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

37. The Preamble itself suggests that the Act is referable to Entry 66 of List I. This is apart from the fact that Section 12, which provides for functions of the Council as under:

Chapter III Functions of the Council

12. It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may-

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

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

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

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

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

(f) lay down guidelines for compliance by recognised institutions, for starting new course or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;

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

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

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

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

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

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

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

38. All these functions and more particularly the functions at clauses (c), (d),

(e), (f), (g), (i), (j), (k) and (1) are clearly suggesting about the objects of the NCTE Act because of which the Act becomes directly referable to the legislative power of the Parliament in Entry 66 of List I. Sections 14, 15, 16 and 17 also hint the same objective of betterment of teacher education. This Court has already clarified in the case of *Tulshi Bakshi (supra)* as well as in the opening part of this judgement that without the recognition of the Council the universities cannot grant affiliation or hold examinations for the course of teacher training as being conducted by the institutions. It will have, therefore, be held that there is no question of reading any power in the universities to affiliate any B.Ed. college in total disregard of the provisions of the NCTE Act, There is also no question of the provisions of any of the University Act stealing a march over the provisions of the NCTE Act.

39. In view of the authoritative pronouncement of the Supreme Court in the case of *Prof. Yaspal v. State of Chattisgarh (supra)* in which earlier law on the subject has been considered extensively, it really not necessary for us to consider the other cases relied on by the learned Counsel appearing for the parties.

Re: Question No. 4

40. It was suggested that the present case cannot come within the purview of Public Interest Litigation. We cannot forget in this behalf that hundreds of students were admitted in these colleges which were without the recognition from the NCTE and as such did not deserve even the affiliation by the universities. We have also explained that the universities could not, in the absence of legal and valid affiliation, hold the examination of these students as a result even if they now pass the examination their certificates would be of no avail and cannot be treated to be a valid certificate in terms of Section 17(4) of the NCTE Act because if there is no power to award the certificate and even such certificates are awarded they would be non est. The parents of these students must have spent thousands of rupees for educating their children in such educational shops. It is really unfortunate that these students should have awakened by the notices published by the Regional Council of NCTE from time to time asking them not to take admission in the unrecognised B.Ed. colleges. All the colleges have thus acted in flagrant disregard of the NCTE Act and the universities have also granted affiliation to such unrecognised colleges. The universities were bound to be aware of the provisions of the NCTE Act and the colleges could not have merely on the basis of affiliation admitted the poor students. These colleges have thus caused injury to the large section of the public. This is against apart from the fact that if these unrecognised colleges are allowed to roll out half-baked teachers that would be to the prejudice of the young students who will be deprived of getting quality education at the secondary and higher secondary level. These colleges are virtually the manufacturing industry for half-baked teachers since the infrustructural facility and educational standard has not been tested by the NCTE at all. The issue taken up in this writ petition, therefore, is a vital issue requiring Court's intervention.

The affected class would be the student class who has passed from this unrecognised colleges /institutions would not even get a valid degree. The students for B.Ed. courses normally come from middle class families and even lower middle class families, since they cannot afford to take the lucrative careers like engineering, medical or other professional careers. In this writ petition what the writ petitioner seeks is to prevent the injury to the public, therefore, will be clearly covered by the celebrated decision in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, , the Supreme Court had observed:

Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the Government...Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties.

41. Even otherwise, insofar as the bona fides of the petitioners are concerned, nothing was argued before us questioning their bona fides. The writ petition has not been filed for any personal gain or profit nor it is politically motivated or there is any other oblique motive behind it. We, therefore, cannot accept the argument that the present writ petition cannot be treated as public interest litigation. We answer the question No. 4 accordingly.

Re: Question No. 5

42. As regards the last question we must take note that these unrecognised colleges have admitted poor students who would lose one precious year of their young lives. However, the law must prevail. If the students had been a little more careful they would not have sought admission in these unrecognised colleges. In the judgement of Tulshi Bakshi (supra) this Court directed the unrecognised colleges to return all the fees recovered to each of the students and the unrecognised colleges were also directed to pay the compensation of Rs. 5000/- to each of the students.

43. We are quite aware that the measly sum of Rs. 5,000/- cannot bring back the lost one year of the students but considering the number of students covered in this writ petition we adopt the same course as was adopted in the case of Tulshi Bakshi (supra). However, it would help the students in some way. The compensation as well as the amount collected on account of fees by these unrecognised colleges shall be returned by these unrecognised colleges within three months from the date of the judgment. While passing this order we take recourse to the suggestion made by the Supreme Court in paragraph 39 of the celebrated decision in the case of Maharshi Dayanand University v. MLR Saraswati College of Education , which is reproduced as under:

It is the time that the Courts evolve a mechanism for awarding damages to the students whose careers are seriously jeopardized by unscrupulous management

of colleges/schools which indulge in violation of all rules. This is not the occasion to go deep into that aspect but one day it has to be done.

44. We should follow the same course as suggested by the Supreme Court in the above judgement. In the result, the writ petition succeeds and is disposed of in the light of the observations and finding recorded by us in this judgement. There will be no order as to costs.

45. Urgent xerox certified copy of this judgement may be supplied to the parties on usual undertaking.

Aniruddha Bose, J.

46. I agree.