
(2003) 07 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18272 of 2002

B. Rajendra Prasad and Another

APPELLANT

Vs

Controller of Examinations, Nagarjuna University

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 1 ALD 80 : (2004) 2 ALT 196

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Ch. Jagannatha Rao, B. Mahender Reddy, Chandraiah, Sunkara, P. Vishnuvardhan Reddy, M. Ramgopal Rao, M. Surenders Rao, M. Brahma Reddy, A. Ravinder Reddy, M. Venkatram Reddy, S. Ravinder Reddy, K. Lakshmanachary, A. Satya Prasad, K. Anji Reddy, C. Rajasekhar Reddy, K. Sarvabhousma Rao, S. Srinivasa Rao, K. Venkat Reddy and K. Nageswar Reddy, for the Appellant; T.S. Harnath, SC for Nagarjuna University, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.

Introduction

1. All these writ petitions throw up a common question of law of considerable importance insofar as teacher education in general and teacher education offered by Nagarjuna University, Guntur, for the purpose of B.Ed., third Methodology Course in particular, and hence they are being disposed of by a common order. Be it noted, after National Council for Teacher Education Act, 1993 (Central Act No. 73 of 1993) (hereinafter called, NCTE Act), the entire field of teacher education is occupied by Parliamentary Legislation. As per the provisions of the NCTE Act, no educational institution can offer a course in teacher education without prior permission/ recognition of such institution nor any educational institution can offer B.Ed., course with the syllabus or curriculum which is contrary to the one prescribed by National Council for Teacher Education (NCTE).

As at present, B.Ed., course consists of theory papers as well as practicals. The practical course is with reference to teaching methodology in two school subjects, like English, Telugu, Hindi as one subject and either Physical Sciences, Biological Sciences or Mathematics or Social Sciences as another. Every candidate aspiring for a Degree of B.Ed., (Graduate in Teacher Education) is required to study and pass practicals in two subjects, which otherwise called two methodologies.

Background Facts

2. From the year 2002-2003, it appears at least three Universities in the State of Andhra Pradesh, namely, Andhra University, Visakhapatnam, Kakatiya University, Warangal, and Nagarjuna University, Guntur, started offering a course in B.Ed., third Methodology to those persons who already hold B.Ed., Degrees. The purpose appears to be to enable B.Ed., graduates to complete third Methodology course so that they can have better prospects in their career. For instance, B.Ed., graduate with English and Mathematics as methodology subjects may feel stagnated in his employment and he may desire to do a third Methodology course say in Physical Sciences for which he is qualified. By passing third Methodology of their choice, candidates generally perceive that it is sure method of getting promotion earlier than what is expected either as B.Ed., Assistant if he is working as Secondary Grade Assistant, or Selection Grade B.Ed., Assistant if he is already working as B.Ed., Assistant.

3. Nagarjuna University (hereinafter called, the University), sole respondent in many of the writ petitions, issued a Notice/ Notification dated 10.8.2002, which was published in all the leading newspapers. The University invited applications from eligible candidates for grant of exemption from production of prescribed attendance certificate so as to appear privately for B.A., B.Com., M.A., M.Com., M.Sc., (Mathematics), LL.M., P.G. Diploma in Law and B.Ed., (Third Methodology) examinations to be held in March/ April, 2003. The last date for submission of duly filled prescribed application forms was 16.10.2002. All the petitioners are either Graduates or Post Graduates. They also have B.Ed. Degree from various Universities. In some cases the petitioners have obtained M.Ed Degree. Most of them are also working as teachers in various schools. All of them obtained prescribed applications from the University for private appearance in B.Ed., (Third Methodology). Along with the applications they also received private study prospectus (hereinafter called, prospectus regulations) sent by the University which gives details regarding qualifications and eligibility criteria for granting exemption for private study in various courses mentioned hereinabove. Insofar as B.Ed. Third Methodology is concerned, the prospectus contained the following regulation:

The candidate must be a B.Ed. Graduate of Nagarjuna University. B.Ed. Graduates of other Universities are not eligible. The candidate should be a graduate in the subject concerned for which he/she applying for Third Teaching Method.

Exam Centre :--The candidates have to appear for theory and practical examinations where they studied and completed B.Ed. Degree Course earlier.

4. A plain reading of the above would show that the B.Ed. Third Methodology course offered by University can be studied by private appearance only by B.Ed. Graduates of Nagarjuna University, and B.Ed. Graduates of other Universities are not eligible. All the petitioners are B.Ed., graduates either from Osmania University, Kakatiya University or other Universities. They admittedly have not obtained their B.Ed., Degree from Nagarjuna University. By reason of prospectus regulation insofar as B.Ed., is concerned, they could not send their applications to the University within due date. It is also alleged that when the petitioners attempted to submit applications along with requisite fees of Rs. 1,050/- (Rupees one thousand and fifty only), concerned officials of Nagarjuna University refused to receive applications on the ground that the applications of the petitioners cannot be accepted as they are not B.Ed. Graduates from the University.

5. The petitioners approached this Court by filing these writ petitions. In all the cases a writ of mandamus directing the respondent University to permit the petitioners to prosecute B.Ed. Third Methodology is sought. A declaration is also sought that the action of the respondent University in not entertaining the applications of petitioners on the ground that they are not B.Ed. Graduates from Nagarjuna University, is illegal and violative of Articles 14, 15, 16 and 29 of the Constitution of India. Initially, this Court passed interim orders in all the writ petitions directing the University to receive applications and fee of petitioners subject to result of the writ petitions. In Writ Petition No. 22956 of 2002 also a similar direction was issued by this Court in W.P. M.P. No. 28792 of 2002 on 15.11.2002. In the said writ petition another miscellaneous application, being W.P. M.P. No. 12285 of 2003 was moved in the Vacation Court by the petitioners therein praying this Court for a direction to the respondent University to take all necessary steps as a consequence of giving admission in B.Ed. Third Methodology course including holding of examinations forthwith. On 20.5.2003 this Court passed ex parte ad interim order directing the University to conduct examinations for B.Ed. Third Methodology course by fixing up programme immediately within a period of two months. The University and its Registrar filed W.V.M.P. No. 1975 of 2003 mainly contending that when a batch of about fifty writ petitions are pending where this Court passed interim orders to receive applications, an order passed by this Court on 20.5.2003 in W.P. M.P. No. 12285 of 2003 cannot be sustained. It is also contended by Sri T.S. Harinath, learned Standing Counsel for Nagarjuna University, that though he entered appearance at the time of admission of said Writ Petition and also filed counter-affidavit, while moving the Vacation Court the petitioners' Counsel did not serve any papers on the Standing Counsel (Sri T.S. Harinath) and therefore the order has to be vacated.

6. Of late such instances where learned Counsel obtain interim orders without serving papers or without serving all case papers properly on the learned

Standing Counsel/learned Government Pleaders are on the increase. It must be observed that having regard to the principles of fairness, it is the duty of every Counsel to be fair to the Court and also to be fair to the learned Counsel appearing for respondents. If an order is obtained without serving papers on the learned Counsel for respondents (which is in law valid service on the respondents), the same would have no effect and it must be treated as void order. Indeed, this Court has evolved a practice/ procedure of the Court that every Counsel for the petitioner/s should file a certificate that he has served all the papers on the Government Pleader/Standing Counsel. The application being W.P.M.P.No. 12285 of 2003 was filed without any such certificate and therefore the order cannot be sustained. However, with the request of all the learned Counsel appearing in Writ Petitions as well as the learned Standing Counsel, the matters were heard finally and therefore, this aspect of the matter need not be dilated much.

Submissions of the learned Counsel

7. M/s. M. Surender Rao, Ch. Jagannadha Rao, M. Venkat Ram Reddy, Koona Reddy Anji Reddy and Sunkara Chandraiah, learned Counsel for the petitioners, made submissions to the following effect. The impugned prospectus Regulation is violative of Articles 14 and 15 of the Constitution of India. Elaborating further the learned Counsel would submit that after NCTE Act came into force all the educational institutions offering B.Ed. course have to follow the same syllabus and curriculum. All the petitioners, from whichever University they obtained B.Ed., are on the same footing insofar as B.Ed. Third Methodology course is concerned. Therefore, treating equals unequally would offend Article 14 of the Constitution of India.

8. Secondly, all the petitioners obtained B.Ed. Degree from Osmania University, Kakatiya University and other Universities and are working in different Schools in Osmania University Local Area. As per A.P. Educational Institutions (Regulation of Admissions) Order, 1974 made by President of India under Article 371-D(1) and (2) entire Andhra Pradesh is divided into three University Local Areas, namely, Andhra University Area, Osmania University Area and Sri Venkateswara University Local Area. Therefore, if the petitioners are denied opportunity of private study for B.Ed. Third Methodology course, it would amount to discriminating on the basis of place of birth, which is not permissible under Clause (1) of Article 15 of the Constitution. It is their further submission that the classification of the B.Ed. Graduates into those B.Ed. Graduates of Nagarjuna University and into those B.Ed., graduates from other Universities is impermissible and unsustainable classification. Yet another submission of the learned Counsel for the petitioners is that the prospectus Regulation impugned in the Writ Petition is arbitrary and unreasonable. The petitioners also contend that the University is not empowered to prescribe such condition when the same was not mentioned in the Notification inviting applications for grant of exemption for private study.

9. The University has filed a counter-affidavit in all the Writ Petitions to the same effect. It is stated that Third Methodology in B.Ed., offered is private study and is not a course. It is different and distinct study to enable the B.Ed. Graduates of the University to acquire additional qualification/additional credit which would be incorporated in the B.Ed. Degree already obtained. By reason of studying B.Ed. Third Methodology, no candidate would be offered or given a separate B.Ed. Degree. If the students of other Universities are also permitted to privately study B.Ed. Third Methodology, it would be incongruous that Degree of B.Ed. with two methodology subjects would be from one University, and third methodology would be from another University. Such Degree cannot be accepted even according to NCTE Regulations. The counter-affidavit further states that B.Ed. is offered either as full time course with face-to-face class room instruction or correspondence/distance education method. In doing so, all the educational institutions, including the University, have to scrupulously follow the regulations framed by NCTE, which was constituted under the NCTE Act. The method and procedure for imparting B.Ed. course by correspondence/distance education is adopted for private study by the University. Hence, the Rules and procedure applicable to admission for B.Ed. course by way of correspondence/distance education method are applicable to third Methodology B.Ed. course also. In view of the same, while adopting the NCTE Regulations for correspondence course, the University keeping in view its territorial jurisdiction, has restricted the B.Ed. Third Methodology programme to B.Ed. graduates from the University. The same has nexus with the object sought to be achieved and it is a rational method. As completion of third Methodology is not compulsory for B.Ed. Degree, petitioners cannot complain any discrimination and there is no infraction of Article 14 of the Constitution. As per the impugned prospectus Regulation, the candidates of B.Ed. Third Methodology after attending required number of lectures and submitting various assignment records, have to appear for theory and practical examinations from the college where they have studied and completed B.Ed. Degree course earlier. If candidates who secured B.Ed. Degree from other Universities are admitted to study third Methodology in the University, it would not be practicable to arrange for theory and practical examinations to all the candidates.

10. Sri T.S. Harnath, learned Standing Counsel has placed before me National Council for Teacher Education (Guidelines for B.Ed., through Correspondence for regular serving teachers) Regulations, 1996 (for short, the Regulations) framed by NCTE u/s 32(2) read with Section 12 of the NCTE Act and also the brochure issued by NCTE, New Delhi, which contains the information to all the educational institutions offering B.Ed., Degree course through Correspondence, Distance Education mode or any mode other than face-to-face teaching. As per the said brochure, all the institutions conducting B.Ed., course in any mode akin to correspondence/distance mode have to take note of norms for correspondence course prescribed by NCTE, which is an Apex Body for planning, co-ordinated development and regulation of teacher education system throughout the country,

The Regulations and the brochure, it is submitted by learned Standing Counsel for Nagarjuna University, would justify the University prospectus regulations.

Points for consideration

11. The pleadings, the background facts and the rival submissions would throw up the following points for consideration:

(i) Whether Nagarjuna University is not justified in refusing to accept the applications of petitioners for grant of exemption from production of prescribed attendance certificate to appear privately for B.Ed. Third Methodology course, without any such prohibition in the Notification dated 10.8.2002 ?

(ii) Whether the impugned prospectus Regulation is discriminatory violating Article 14 of the Constitution and whether it is arbitrary and unreasonable ?

In Re Point No. (i)

12. It is no doubt true that all the petitioners obtained application forms from the University pursuant to Notification dated 10.8.2002. It is also true that said Notification does not specifically bar the B.Ed. Graduates of other Universities from availing B.Ed. Third Methodology study offered by the University. In the penultimate paragraph of the Notification, however, the University made it clear that the Rules relating to eligibility for sanction of Exemption are given in the prospectus. Therefore, the submission that the prospectus regulation cannot be used against the petitioners as it is not mentioned in the Notification, cannot be accepted. More often than not, in the notifications inviting applications for various courses, notices inviting tenders and in wide variety of circumstances, for reasons of space and cost involved in the process, the authorities merely invite participation and along with proforma application the details are furnished. The Notification may not contain all the details as to eligibility, qualifications etc. It does not therefore mean that whoever applies pursuant to notification would be deemed to have been admitted as eligible for doing the course. The submission is devoid of any merit.

In Re Point No. (ii)

13. B.Ed. Third Methodology offered by the University is not for B.Ed. Graduates of other Universities. The University resorted to classification of two categories of B.Ed. Graduates for the purpose of third Methodology. One category is those B.Ed. Graduates who obtained Degrees from the University presumably after completing the B.Ed. course in one of the Colleges affiliated to the University; and second category B.Ed. Graduates are those who did not study in any of the B.Ed. Colleges affiliated to the University and who obtained B.Ed. Degree from other Universities. The second category candidates are excluded from eligibility criteria. Whether such classification satisfies Article 14 of the Constitution and whether such "under inclusion" (by not including B.Ed. Graduates of other Universities) is arbitrary and unreasonable. These are the two subsidiary questions to be answered.

14. It is now well settled that when a challenge is made based on Articles 14 and 15 of the Constitution of India, it could be either that the classification is invidious or that the classification is arbitrary and capricious, (See *E.P. Royappa Vs. State of Tamil Nadu and Another*, , *In Re Special Courts Bill*, AIR 1975 SC 478 and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*,). Though the State is entitled to classify persons and things for the purpose of implementation of law, every classification has to satisfy the twin tests; namely, nexus test and rationality test (See *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , *The State of West Bengal Vs. Anwar Ali Sarkar*, , and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*,). Rationality test postulates that classification must be founded on intelligible differentia, which distinguishes those with group, who are left out of the classification for conferring the benefit. The nexus test requires that the differentia must have relation to the object sought to be achieved by classification. Every classification must also have to be unarbitrary.

15. As the decisions of the Apex Court dealing with the theory of classification are galore, it is not necessary to refer to all the judgments. It is suffice to refer to a latest judgment of the Supreme Court in *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, , wherein the Supreme Court reiterated the principle in the following terms:

What Article 14 of the Constitution prohibits is "class legislation" and not "classification for purpose of legislation". If the Legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.

16. While dealing with these aspects, the Court, however, has to adopt different methods in different situations. In the case of "over inclusion" the Court has no other go to strike down the State action which has included those persons who do not fit into category of classification. However, if it is a case of "under inclusion" as is the case before us, the Court cannot give a mandamus to the State to include that category of persons, who are left out of the classification for it is axiomatic that it is for the public authority to make law or to make

regulations. If the Court comes to the conclusion that "under inclusion" is arbitrary though it may satisfy rationality test and nexus test, the Court has to remit the matter back to public authority to reconsider the whole issue. But, the Court cannot issue any direction to include persons who as a group are left out of defined class.

17. A reference may be made to the decision of the Supreme Court in *Sakhawat Ali Vs. The State of Orissa*, , Full Bench judgment of Rajasthan High Court rendered by Justice S.C. Agrawal (as His Lordship then was) in *Shankar Birmiwala and Another Vs. Union of India (UOI) and Others*, (FB), and a recent judgment of the Supreme Court in *B.R. Kapur v. State of Tamil Nadu*, (Jayalalitha "s case), which deal with the approach to be adopted by the Court of judicial review vis-a-vis the cases of "under inclusion" and cases of "over inclusion."

18. In *Sakhawat Ali v. State of Orissa* (supra), Section 16(1)(ix) of Orissa Municipalities Act disqualified advocate for municipality from contesting election to a seat in municipality. This provision was upheld by the Apex Court holding:

The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution,

19. A Full Bench of Rajasthan High Court in *Shanker Birmiwala v. Union of India* (supra) considered the scope of judicial review in the matter of classification which is either "under inclusive" or "over inclusive". Justice S.C. Agrawal (as he then was) observed as under:

A classification may suffer from the defect of being under inclusive or being over inclusive. A classification is said to be under inclusive when the State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit on others who are similarly situated. A classification is said to be over inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. While examining the validity of legislation on the touchstone of Article 14 the Courts have drawn a distinction between a classification which is over inclusive and a classification which is under inclusive. In cases where the classification is found to be over inclusive the Courts have interfered by striking down the offending part so as to exclude persons or groups who ought not to have been included in it. But the Courts have shown more tolerance towards laws which are challenged on the ground that the classification is under inclusive for the reason that the Legislature is free to recognize the degrees of harm and it may confine the benefits or burdens to those classes of cases where the need seems to be clearest. A distinction has to be drawn between the role of Legislature which "has

the affirmative responsibility" and the role of the Courts which have only the power to destroy, not to reconstruct,

20. In Jayalalitha's case (supra), a submission was made that Sub-section (4) of Section 8 of the Representation of Peoples Act, 1951 requires reading down so as to apply the same to a non-legislator and to render the same constitutionally valid. Section 8(4) of the Representation of Peoples Act, 1951 lays down that the disqualification u/s 8(3) thereof shall in the case of elected Member of Parliament or Legislature of a State, shall not take into effect until a final Court has confirmed the conviction and sentence. The submission was rejected by a Constitution Bench. It is apposite to refer to the observations made by the Supreme Court:

Section 8(4) opens with the words "notwithstanding anything in Sub-section (1), Sub-section (2) or Sub-section (3)", and it applies only to sitting Members of Legislatures. There is no challenge to it on the basis that it violates Article 14. If there were, it might be tenable to contend that Legislators stand in a class apart from non-Legislators, but we need to express no final opinion. In any case, if it were found to be violative of Article 14, it would be struck down in its entirety. There would be, and is no question of so reading it that its provisions apply to all, legislators and non-legislators, and that, therefore, in all cases the disqualification must await affirmation of the conviction and sentence by a final Court. That would be "reading up" the provision, not "reading down", and that is not known to the law.

21. As observed by the Supreme Court in Jayalalitha's case (supra) if a category of those persons who complained under inclusion is directed to be included, the same would amount to "reading up" and not "reading down" the provision of law. The Court under Article 226 of the Constitution of India is not entitled to resort to "reading up" and promulgate the impugned legislation or the impugned regulation.

22. Applying the principles noticed supra, it cannot be said that the impugned prospectus regulation suffers from invidious classification and thereby violates Article 14 of the Constitution. The reasons are more than one and they are as follows. First, an analysis of NCET Regulations and the impugned prospectus regulation would show that basically and essentially B.Ed. Third Methodology Course is being offered by the University only to enable the B.Ed. Graduates of the University to acquire additional subject methodology to better their prospectus either in job market or if they employed, in their career. Third Methodology programme is intended only for B.Ed. Graduates of the University. When an academic programme is offered by a University only intended for its students, unless the same is grossly arbitrary, the same cannot be invalidated on the ground that it is improper qualification. Under Andhra Pradesh Universities Act, 1991, Universities established under the said Act have ample power to introduce such programmes and/or courses and also make regulations restricting entrance to such courses.

23. Secondly, as per the impugned regulation those who appear for B.Ed. Third Methodology by private study have to write theory and practical examinations in the Colleges where they studied and completed B.Ed. course earlier. That only means that the examination will be conducted in B.Ed. Colleges which are affiliated to the University. This has practical considerations. The course is offered, as noticed, for the benefit of B.Ed. Graduates of the University to improve their qualifications. If the eligibility is thrown open to all the B.Ed. Graduates of all Universities in India, it would frustrate the object of the University in offering the course. It would be well-nigh impossible for the University to conduct theory and practical examinations in B.Ed. Colleges at far off places from where the candidates desire to privately study Third Methodology. While considering the validity of classification, the practical considerations cannot be ignored.

24. In Secretary Board of Intermediate Education, Hyderabad Vs. S. Srivalli and others, , a Division Bench of this Court, to which I was a member, considered the question whether the action of Board of Intermediate Education in not offering instant examination to Intermediate Vocational Course students is arbitrary and illegal. Besides validating the action of Board of Intermediate Education to do so, having regard to various provisions of Andhra Pradesh Intermediate Education Act, 1971, this Court also took into consideration the fact that the vocational course is offered in more than five hundred subjects. In that view of the matter, it would not have been possible for the Board of Intermediate Education to offer instant examination with reference to all subjects of vocational course. This Court observed as under:

....The object of vocational education is to prepare the students for self-employment and, therefore, the stress in vocational stream is on practical training. Further, there are 521 papers in the vocational courses and, therefore, it is not possible or feasible to conduct instant examination in one paper on par with Intermediate general stream. It is well settled that classification between two groups of persons and two types of inanimate things is permissible provided the object sought to be achieved by such classification is valid and has some rational principle.

25. Thirdly, the object of offering Third Methodology Course as stated in the counter-affidavit is to enable B.Ed. Graduates of the University to acquire additional qualification/ credit. It is intended only for the University students. That way classification has nexus with the object sought to be achieved. The submission of the learned Counsel for the petitioners that syllabus of B.Ed., being same in all Universities, graduates must be given eligibility cannot be accepted for this reason. It is not on the ground that as syllabus of B.Ed., of the University is different, eligibility is restricted to graduates of that University. It is because, as stated in the counter-affidavit, to enable the B.Ed. Graduates of University to acquire additional qualification in B.Ed., itself. Further, as rightly submitted by the learned Standing Counsel for the University, if B.Ed. Graduates of every

University are permitted to third Methodology programme in the University, it would result in a very absurd and incongruous situation where a person would have B.Ed., with two subjects Methodology from one University and B.Ed. certificate in Third Methodology from Nagarjuna University.

26. Here, I may consider a decision of the Supreme Court relied on by the learned Counsel for the petitioners in Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another, . Based on the said judgment it is contended that restricting admission to those graduates who acquired qualification from the University is arbitrary. I am afraid, the decision is of no assistance to the learned Counsel for the petitioners. In the said case, Nilabhai R. Thakore and others challenged the constitutional validity of Rules 6(i) and 7 of the Rules for Admission to Municipal Medical College on the ground that they are violative of Articles 14 and 15 of the Constitution of India. High Court of Gujarat accepted the contention of Nilabhai and others and invalidated the impugned Rules on the ground that the Rules are arbitrary and the classification is unreasonable. Ahmedabad Municipal Corporation, who is owner of Medical College, carried the matter to Supreme Court. A submission is made on behalf of respondents that the classification is not arbitrary and does not violate Article 14 of the Constitution of India. Reliance was placed on various decisions of the Supreme Court dealing with institutional reservations. The Supreme Court, however, did not agree saying that the case before it is different from the law relied on by the Corporation, namely, the cases which mainly did not accept reservation in favour of candidates who passed qualifying examination from the same Institute. However, having regard to the fact that Medical College itself is situated in Ahmedabad Municipal limits, it was observed:

Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the Court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the Rule in question is only a subordinate legislation and by declaring the Rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this Rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher, (1949) 2 All ER 155 wherein he held: "When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give "force and life" to the intention of the Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

27. The Supreme Court also observed that "local student" means a student who

passed H.S.C./New S.S.C. examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal Corporation limits and, includes a permanent resident student of Ahmedabad Municipality. Indeed, said decision supports the view taken by me supra that it is always permissible for the University to offer special academic programme or course to its students.

28. The submission of the learned Counsel for the petitioners that the impugned prospectus Regulation is arbitrary, capricious and unreasonable cannot be accepted. There is no arbitrariness in the action of the respondent University in not conferring eligibility on B.Ed. Graduates of other Universities. The same reasons which rendered the classification valid must also apply here. It is now well settled that when a citizen approaches this Court contending that State action is arbitrary, initial burden lies on the petitioner to prove that such State action is arbitrary. In this case, the petitioners have failed to discharge the burden to the satisfaction of this Court. Whereas, the counter-affidavit discloses the reasons for giving benefit of B.Ed. Third Methodology only to B.Ed. Graduates of the University. Further, any complaint of arbitrariness and capriciousness has to be examined not in vacuum, but in the background of the Statutes and delegated legislation. As noticed supra, NCTE framed the Regulations for B.Ed. course. As per Regulation 4 all the institutions offering B.Ed. correspondence course have to follow the guidelines given in the Annexure to the Regulations. The relevant guideline dealing with eligibility reads as under:

Eligibility criteria:--Entry qualification for admission in terms of marks at graduation or other levels will be the same as prescribed by the State Government for recruitment of teachers or prescribed for entry to regular teacher education programmes. The admissions will be made after a written entrance examination.

29. While issuing brochure presumably after making regulation, NCTE also directed that all the institutions conducting B.Ed. Course in any mode other than correspondence/distance education mode shall have to keep in view the NCTE B.Ed. Regulations. Indeed, if those regulations are applied, the University has to restrict the admission to B.Ed. Third Methodology only to those candidates who are currently working in school system located in the territorial jurisdiction assigned to it by State enactment. It is not denied that the Districts of Guntur, Prakasam and Krishna are within the territorial jurisdiction of the University. If this is applied to B.Ed. Third Methodology course, it has to be offered only to those teachers who are working in educational system in these three districts, but the course offered is not a correspondence course as per the University prospectus Regulations. It is a different mode which is permitted by NCTE and while doing so, the University is given power to adopt such method which will be in tune with the correspondence regulations. After giving my anxious consideration to the issue, I am convinced that respondent University was well aware of the correspondence regulations in offering B.Ed. Third Methodology course only to its B.Ed. Graduates. Viewed from that point of view, it cannot be

said that the impugned prospectus regulation is arbitrary.

30. It is lastly contended by some of the learned Counsel that though Andhra University and Kakatiya University are offering B.Ed. Third Methodology Course, they have not restricted eligibility criteria to B.Ed. Graduates of those Universities. Therefore, Nagarjuna University cannot adopt such regulation. This submission is stated to be rejected. It is now settled that every University is an autonomous body and is entitled to have its own academic programmes and offer its own courses subject to University Grants Commission Act, 1946, and other relevant special enactments. Merely because Andhra University and Kakatiya University have not restricted eligibility for B.Ed. Third Methodology to its graduates, does not render the impugned regulation is invalid. Nagarjuna University is an independent autonomous body and it is entitled to have its own programme and prescribe its own eligibility criteria.

31. In the result, for the above reasons, the Writ Petitions are devoid of merits and are accordingly dismissed. Needless to mention that if any fees paid by each of the petitioners to the University while making applications pursuant to interim orders of this Court shall be returned. Sri T.S. Harnath, learned Standing Counsel for Nagarjuna University, fairly submits that fees will be returned within a period of four weeks from the date of receipt of a copy of this order without deducting any money order charges or charges for obtaining Demand Draft from Banks. There shall be no order as to costs.