

(2001) 11 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17793 of 1999

Baddam Prabhavathi

APPELLANT

Vs

Govt. of Andhra Pradesh

RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Andhra Pradesh Colleges of Education (Regulation of Admissions to B.Ed. Course through Common Entrance Test) Rules, 1989 — Rule 10, 2, 3, 4, 5
Andhra Pradesh Education Act, 1982 — Section 99
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 10(3), 14(1), 14(3), 15, 29
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Regulations — Regulation 5
Andhra Pradesh Minorities Educational Institutions (Establishment, Recognition and Regulation) Rules, 1988 — Rule 13, 3, 3(2), 3(4), 4
Companies Act, 1956 — Section 326(2)
Constitution of India, 1950 — Article 14, 254, 29, 30, 30(1)
National Council for Teacher Education Act, 1993 — Section 12, 14, 14(1), 14(3), 15

Citation : (2001) 6 ALD 655 : (2001) 6 ALT 584

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;G. Raghuram, J

Bench : Full Bench

Advocate : J. Ramachander Rao, A.G., Government Pleader for School Education, Government Pleader for Higher Education, T.S. Harinath, SC for ED-CET-99, R. Vijayanandan Reddy, Koka Raghava Rao, C.V. Mohan Reddy, K. Pratap Reddy, S. Niranjana Reddy, A. Mahamood, Samson Babu, Nooty Ram Mohan Rao, V. Kishore and Duggineni Vijaya, for the Appellant;

Judgement

S.B. Sinha, C.J.—Since the common questions of law and fact arise in these writ petitions, they were heard together and are being disposed of by this common judgment.

2. The matters are before us in view of the reference made by the Division Bench, observing:

After hearing the learned counsel for the parties at length we are of the view that the issues in these Writ Petitions are of public importance and should be decided

by a larger Bench for an authoritative pronouncement.

Section 4 of A.P. Educational institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short "the Act") is of prime importance in order to come to the right conclusions. There has already been an occasion of interpreting Section 4 of the Act by a Division Bench of this Court in *Sultan-Ul-Uloom Educational Society v. Govt. of A.P.* (1984 (1) APLJ 192). We are of the prima facie view that u/s 4 of the Act right to admit the students into Minority Institutions has not been taken away by the State from the management of the institutions. However, the judgment of the Division Bench is contrary to this view. Therefore, for this reason also we make a reference to a larger Bench for haring these matters. The matter be placed before the Hon"ble Chief Justice for constitution of appropriate Bench.

3. The Division Bench, keeping in view the submissions made by the parties and taking into consideration that admissions are due, also passed an order modifying the earlier orders passed by the Court by way of interim measure. The same reads thus:

In the arguments advanced by the counsel two diametrically opposed views have been taken. Minority institutions want that they should be free to select the candidates to be admitted in their institutions and according to Mr. Pratap Reddy, Senior Counsel admission of students to the Minority Institutions is part of management which guaranteed under Articles 29 and 30 of the Constitution without any restrictions. On the other hand, the learned Additional Advocate General submits that though admissions is part of the management but that does not mean that regulations cannot be framed by the State to ensure that the best candidates available get admitted to the Colleges on the basis of merit alone and no extraneous circumstances are taken into consideration except the merit while admitting the students to the colleges. He further submits that the competitive examination is conducted only to assess the "relevant merit of the prospective candidates and in terms of various G.Os the Government is only trying to ensure that best amongst the Minority candidates are admitted to the Minority institutions and if there are any vacancies left they are given to the best of non-minority candidates.

That all the Minority institutions shall issue advertisements inviting applications from the prospective candidates to be admitted in their institutions. Minority as well as non-minority candidates shall be eligible to apply. The management of Colleges shall ensure that the application forms are made available at the office of the colleges as well as at the office of the concerned District Education Officer. They shall also mention in the advertisement that the applications shall be received at the respective Colleges and also at the office of the concerned District Education Officer. If any application is received by the D.E.O., he shall immediately transmit it to the College concerned. These applications shall be considered by the institutions to which these applications are made and the candidates shall be granted admission on the basis of merit assessed on the

basis of the rank secured by them in the Common Entrance Examination. The first priority shall be given to the Minority candidates belonging to such community for which such institution is established and after the list of minority candidates is exhausted the candidates from other communities shall also be admitted on the basis of their inter-se merit in the Common Entrance examination. This arrangement shall apply only to the admissions pertaining to the B.Ed., for the present academic year i.e., 2001-2002.

4. The writ petitions can be classified into two categories viz., the writ petitions filed by a student, and by the managements of the minority institutions.

1. W.P.No. 17793 of 1999.

In this writ petition, the petitioner inter alia prays for issuance of a writ in the nature of a Mandamus or any other appropriate writ order or direction directing the respondents 1 and 2 to apply the norms and guidelines laid down by the Supreme Court and the State Government in relation to EAMCET to Ed.CET particularly in the light of G.O.Ms.No. 196, Education (E.C.2) Department, dated 27-08-1993, issued revising the pattern of admissions from the academic year 1993-94 into Minority Unaided Engineering Colleges, and G.O. Ms. No. 184, Education (E.C.2) Department, issuing rules of admission into I year Under-Graduate Courses namely Engineering, Agriculture and Medical through Common Entrance Test.

2. W.P.Nos. 25022, 25056 of 2000, 15845, 15966, 16070, 16294 and 16893 of 2001.

In these writ petitions, the minority institutions seek a declaration that the A. P. Colleges of Education (Regulation of Admissions into B.Ed. Course through Common Entrance Test) Rules, 1989 issued by the State in G.O.Ms.No. 154, Education (Rules) dated 27-4-1989 insofar as they are made applicable to the minority institutions and insofar as the rules seek to prescribe the percentage of admissions to different methodologies of B.Ed. Course as being illegal, arbitrary and unconstitutional apart from being ultra vires the A. P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and the National Council for Teacher Education Act, 1993.

SUBMISSIONS:

Submissions by Mr. J. Ramachandra Rao, on behalf of the student:

5. The petitioner in W.P.No. 17793 of 1999 appeared for B.Ed. Common Entrance Test conducted by Sri Venkateswara University for the year 1999-2000 and obtained a rank of 1972. While he was awaiting notification by the Convener inviting applications for admission to B.Ed. under the quota reserved for the Convener's counselling, he came to know that several minority institutions in Hyderabad had already filled up the entire seats for admission without waiting for the Convener's counselling, it is also his case that even before issuance of notification by the Convener calling for admission through counselling, the

minority institutions are taking pre-emptive steps to fill up the seats in a bid to thwart the aspirations of the candidates.

6. According to Mr. J. Ramachandra Rao, the learned counsel appearing on behalf of the petitioner, as the Government is conducting Common Entrance Test for admissions to B.Ed. Courses, the rules prescribed by the State in G.O. Ms. No. 184, Education (E.C.2) Department, dated 20-8-1993, for admission into I year Under-Graduate Courses namely Engineering, Agriculture and Medical through Common Entrance Test shall also prevail in this case. The learned counsel also submit that as a result of the Supreme Court's Judgment with regard to admissions to Minority Educational Institutions, only 50% of the seats in such institutions are to be filled by the Management of those institutions, from the minority community. Therefore, 50% of the seats in minority institutions have to be filled up by the general students (minority and non-minority) based on their merit and reservations etc. The learned counsel, in this connection, relied on the Government Order issued by the State in G.O. Ms. No. 196, Education (E.C.2) Department, dated 27-08-1993 wherein the revised pattern for admission into the Private Minority Engineering Colleges in the State with effect from the academic year 1993-94 has been issued. The revised pattern read:

(i) 50% of the total intake in the Minority Engineering Colleges shall be filled up by the candidates selected by competent Authority by following the rules as applicable to the Private Unaided Engineering Colleges.

(ii) The remaining 50% of the intake shall be regulated by the concerned minority Engineering Colleges to admit candidates belonging to that particular religious or Linguistic minority. The selection shall be made strictly on the basis of merit. Such merit shall be determined on the basis of the academic performance at the qualifying examination or on the basis of any objective test that the institution might itself hold; or on the basis of performance at the EAMCET. It shall be open for the managements of the Minority Private Engineering Colleges to adopt any one of these three modes and apply it uniformly. Candidates so selected shall, however abide by such conditions in the matter of payment of tuition and other fee as prescribed by the State Government.

(iii) The 50% seats to be filled by the management of concerned College in terms of Clause (ii) above shall be equally distributed between Free Seats and Payment Seats. The Non-Resident Indians, if any admitted to an extent not exceeding five per cent of the total seats shall be out of the Payment Seats to be filled by the managements from the students belonging to concerned religious or linguistic minority.

(iv) After completing the admissions, each College shall submit to the competent authority to the University to which it is affiliated and to the Government statements containing full particulars of the students admitted under Clause (ii) above. The authorities to which the statements are submitted shall verify the

correctness of the statements and if they find any irregularity they shall call upon the Colleges concerned to rectify the same. Any violation of the above orders, by the managements will make them liable for action in terms of the Supreme Court judgment fifth read above.

7. The learned counsel further submits that the minority institutions are violating the norms laid down by the apex Court in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* .

Submissions by Mr. K. Pratap Reddy on behalf of the Minority Institutions:

8. According to Mr. Pratap Reddy, the institutions, being minority institutions, are entitled for all the rights and protection afforded by Articles 29 and 30 of the Constitution of India. The learned counsel submits that the rights of minority educational institutions to promote and run educational institutions to promote and run educational institutions are well settled under a catena of judgments commencing from *IN RE. KERALA EDUCATION BILL, 1957 AIR 1958 SC 956*.

9. Referring to A. P. Educational institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983) (hereinafter referred to as -"the 1983 Act" for the sake of brevity) the learned counsel submits that the 1983 Act was enacted to regulate admissions into education institutions and to prohibit the collection of Capitation Fee in the State. Sections 3 and 4 of the 1983 Act, submits the learned counsel, stipulates the manner and regulation of admission into educational institutions, as also the minority institutions, to be made either on the basis of the marks obtained in the qualifying examinations or on the basis of the ranking assigned in the Entrance Test.

10. While so, Mr. Pratap Reddy submits, the Government issued G.O. Ms. No. 154, Education (Rules), dt. 27-4-1989 ("1989 Rules" for brevity) framing rules purporting to act u/s 3 of the 1983 Act. The said rules define Private Colleges of Education to include those administered by the minority communities. According to the learned counsel, the 1989 rules insofar as inclusion of the minority communities for the purposes of admission, viz., the percentage of admissions to various methodologies are wholly irrational and contrary to the purposes and objects of not only the rules but the Act, itself and the said rules are thus in excess of power of delegated legislation under the Act and the same being ultra vires be quashed.

11. Mr. Pratap Reddy submits further that the working of the rule for admission of students in the minority institution results in deprivation of opportunities to the minorities and the same is in violation of the rights guaranteed to minorities under Articles 29 and 30 of the Constitution of India. When the strength of admission is governed by the provisions of the National Council for Teacher Education Act, 1993 (Act 73 of 1993) (for short "the 1993 Act"), enacted by the Parliament in exercise of powers conferred on it by Entry 66 of List-I read with Entry 25 of List-III, and the same are subject to scrutiny and approval by the 4th respondent, Mr. Pratap Reddy submits, respondents 1 to 3 cannot have any

authority or say for prescribing the percentage of methodology.

12. Mr. Pratap Reddy also "submits that the Government of Andhra Pradesh has issued G.O.Ms.No. 88, School Education (Trg.1) Department, dt. 25-07-2001 ordering that the admissions into Minority Educational institutions shall be made in accordance with the provisions contained in G.O.Ms.No. 526 Education (Rules) dated 21-12-1988 ("1988 Rules" for brevity) and the 1989 Rules with immediate effect in supersession of the Rules issued in G.O.Ms.No. 405, Education (Trg.1) Department, dated 06-11-1995 ("1995 Rules" for brevity) and the managements of the institutions are challenging the same.

13. The learned counsel contends that the said Government Order, takes away the right of the Minority Institutions of making admissions and confers the same upon the Convener, Ed.CET and thus Rule 13 (e)(ii) of the 1988 Rules is illegal, ultra vires and unconstitutional. In support of his contention the learned counsel has relied on a recent decision of the apex Court in 2001 (L&S) 805.

Submissions made by the learned Additional Advocate General:

14. The learned Additional Advocate General submits that the management is vested with the right to make admissions to B.Ed. Course. The State can however frame regulations to ensure that the best candidates available get admitted to the Colleges on the basis of merit alone and no extraneous circumstances are taken into consideration by the management, except the merit, while admitting the students to the colleges. The learned Additional Advocate General also submits that in terms of various Government Orders the Government is only trying to ensure that the best amongst the minority candidates are admitted to the minority institutions and the competitive examination is conducted only to assess the relevant merit of the prospective candidates. The learned Advocate General further, submits that after filling up the admissions with minorities, the vacancies left, if any, are only given to the best of the non-minority candidates.

15. The learned Additional Advocate General also submits that 1988 Rules were issued by the Government in exercise of the powers conferred upon it u/s 99 of the A.P. Education Act, 1982 ("the 1982 Act" for brevity). In the said Government Order, the Government made rules for the establishment, recognition and regulation of minority educational institutions wherein the rules lay-down the guidelines for the recognition of the minority educational institutions.

16. According to the learned Advocate General, 1988 Rules were issued in order to see that merit alone should be the criterion for selecting students whether belonging to minority Or non-minority, and accepting the said intent and purport of the Rules, the management cannot question Rule 13 (e)(ii) thereof. The learned Advocate General in support of his contention relied on the decision of the apex Court in SHAHAL H.MUSALIAR v. STATE OF KERALA 1993 (4) SCC 112.

AN OVERVIEW:

17. Several enactments, as also the Rules, made under the statute operate the field. The State of Andhra Pradesh has enacted the A.P. Education Act, 1982 on 27-01-1982 in order to consolidate and amend the laws relating to the educational system in the State of Andhra Pradesh for reforming, organizing and developing the educational system and to provide for matters connected therewith or incidental thereto, and to develop the educational system obtaining in the State of Andhra Pradesh as to - (i) be an instrument, for establishing and strengthening, consistent with the National Policy, a Socialist, Secular and Democratic Society and also for promoting National Integration; (ii) firmly link it at all levels with science and technology; (iii) inculcate moral, social and human values and promote respect for manual labour and a sense of patriotism and discipline in the children; and (iv) achieve an integrated development of the pupil's personality. The 1982 Act seeks to control general education. The educational institutions in terms of the 1982 Act are classified in three categories viz., State institutions, local authority institutions and private institutions. No institution, in terms of the provisions of the Act, can be established without the prior permission of the State. Such is the position even with regard to the minority institutions. The 1982 Act inter alia provides for school education in general, primary education, establishment of educational institutions, their administration and control, registration of schools, grant-in-aid, prohibition of transfer of properties by aided educational institutions, taking over of management, requisitioning and acquisition of educational institutions, transfer of control and management of certain schools, constitution of educational service, welfare and code of conduct and rules of conduct of the employees of educational institutions etc. Section 99 of the Act empowers the Government to make rules to carry out all or any of the purposes of the Act. Section 99(1)(b) (xxv) of the Act reads:

The regulation for admission into educational institutions of pupils for the academic course, private study and other special courses and the attendance thereat.

However, having regard to the growing tendency amongst some unscrupulous persons to establish educational institutions either in the name of minority or otherwise by taking a huge capitation fee from the students, the State enacted the 1983 Act. The 1983 Act was specifically provided for regulation of admissions into Educational Institutions and to prohibit the Collection of Capitation Fee in the State of Andhra Pradesh. Section 3 of the 1983 Act provides for educational institutions in general whereas Section 4 makes a specific provision in relation to admissions into minority educational institutions. The said provisions read thus;

3. Regulation of admission into educational institutions:-

(1) Subject to such rules as may be made in this behalf, admission into educational institutions shall be made either on the basis of the marks obtained

in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed:

Provided that admission into Medical and Engineering Colleges shall be made only on the basis of the ranking assigned in the common entrance test conducted as aforesaid.

(2) The admission into educational institutions under Sub-section (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

(3) Notwithstanding anything in Sub-sections (1) and (2) it shall be lawful for the Government, to admit students belonging to other States on reciprocal basis and the nominees of the Government of India, into Medical and Engineering Colleges in accordance with such rules as may be prescribed:

Provided that admission of students into the Regional Engineering College, Warangal to the extent of one-half of the total number of seats shall be in accordance with the guidelines issued by the Government of India, from time to time.

4. Special provision in respect of minority educational institutions:-

(1) Notwithstanding anything in Section 3, it shall be lawful for any minority educational institution to admit students belonging to the concerned minority whether based on region or language, on the basis of the marks obtained by them in the qualifying examination or as the case may be, on the basis of the ranking assigned to them in the entrance test conducted in the prescribed manner.

(2) Where any minority educational institution intends to admit students not belonging to the concerned minority, such admission shall be only on the basis of the marks obtained in the qualifying examination or as the case may be, on the basis of the ranking assigned in the entrance test conducted in the prescribed manner.

18. In exercise of its power u/s 99 of the 1982 Act the State of Andhra Pradesh framed the 1988 Rules known as the Andhra Pradesh Minority Educational institutions (Establishment, Recognition and Regulation) Rules, 1988. In the said Rules, "Educational Agency" and "Educational Institution" defined in clauses (d) and (e) of Rule 2 would mean:

"Educational Agency" means, the Society/ Trust/Commhtee/Mission/Church/Wakf Board and the like managing any of the educational institutions coming within the ambit of the Act.

"Educational Institution" means, any educational institution coming within the ambit of the Act which is managed by a minority community (both religious and linguistic) as defined in Article 30 of the Constitution of India.

19. Rule 3 of the 1988 Rules provide for according recognition as minority educational institutions by the authorities competent therefor. Rule 4 provides the criteria for recognition of educational institutions as Minority Educational Institutions. Rule 5 contemplates the provision to apply for grant of recognition as minority educational institution and Rule 6 the procedure for grant of recognition of educational institutions as minority institutions.

20. The Government of Andhra Pradesh in exercise of its powers conferred under Sub-section (1) of Section 3 read with Section 15 of the 1983 Act framed the 1989 Rules known as the Andhra Pradesh Colleges of Education (Regulation of admissions to B.Ed. Course through Common Entrance Test) Rules, 1989. Rule 3 of the 1989 Rules deal with "method of admission". Rule 3, insofar as it relevant to the facts of the case, reads thus:

3. Method of Admission: The general guidelines for the admission of students into B.Ed. Course in all Colleges of Education shall be as laid down below: -

(1) The admissions shall be made in the order of merit on the basis of the ranking assigned to the students in the common entrance test.

(2)(a) The principals of private institutions shall admit candidates as allotted by the Entrance Test Committee on the basis of ranking assigned to them in the Common Entrance Test.

(b) The principals of the Institutions administered by the minority communities shall admit candidates belonging to their own community in the order of merit ranking assigned to them in the Common Entrance Test by following the procedure laid down under these rules.

(3) The total number of candidates to be admitted in each Course, in the private institutions, shall not be exceed the limits prescribed by the Government from time to time.

(4) The total number of candidates to be admitted in each "Method of teaching school subjects (Methodology)" namely Mathematics, Physical Sciences, Biological Sciences and Social Studies shall be as follows:

(i) Mathematics and Physical Sciences 50%

(ii) Biological Sciences 30%

(iii) Social Studies 20%

xxx

Rule 4 provides for the eligibility criteria for admission. The provisions under Rule 5 deal with the Common Entrance Test, Rule 6 contemplates about preparation of

merit lists and assigning ranking in terms whereof State-wide Common Merit List, Local area-wise Merit Lists, concerned Minority Community Merit Lists, Community-wise Merit Lists and Merit Lists or other categories of reservations to be prepared. Rule 7 deals with admission into Government Colleges and Campus/Constituent Colleges of Universities. The provisions for admissions into Private Institutions have been incorporated in Rule 8. Rule 9 speaks about allotment of candidates for admission whereas Rule 10 provide the Rule of Reservation for admission and Rule 11 contemplates the provisions for Constitution and functions of the Entrance Test Committee.

21. The Government of Andhra Pradesh in terms of Section 99 of the 1982 Act has issued another Government Order vide G.O.Ms.No. 405, Education (Training-1) Department, dated 6-11-1995 wherein the Rules for recognition of Colleges of Education and Colleges of Physical Education as Minority Educational Institutions and issue of Minority Status Certificate have been notified ("1995 Rules" for brevity). Rule 2 of the said Rules, insofar as it is relevant to the facts of the case, reads thus:

2.(a) A Minority Educational Institution would be free to invite applications from both minority and non-minority students and the Convener, Common Entrance Test shall not allot any candidates to minority institutions Candidates shall be admitted strictly on the basis of the marks obtained by them in the qualifying examination or on the basis of the ranking assigned to them in the Entrance Test as the case may be.

(b) A minority educational institution is free to admit candidates not belonging to the concerned minority. However, if they recruit such candidates, the rule of reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes shall be followed.

(c) Minority Educational Institution shall make application forms available to whosoever wants them; and also make them available with the offices of the concerned Heads of Departments and the University. The Government reserves the right to intervene and take appropriate action in case of any selection based on consideration other than merit is made.

XXX

22. It, however, appears that various writ petitions were filed questioning one or the other provision of the aforementioned Rules. In this batch of writ petitions, a learned single Judge of this Court by an order dated 30-12-1999 held that the admissions made by the Minority Colleges of Education during 1999-2000 are not valid and issued interim direction to the Convener, EdCET-99 Sri Venkateswara University, Tirupati, to make admissions into Minority Institutions as per the entrance test merit ranking of the candidates. In view of the aforementioned directions of this Court, the Government of Andhra Pradesh issued a Government Order vide G.O.Ms.No. 88, School Education (Trg.1) Department, dated 25-07-2001 ordering that admission of students into Minority Colleges of

Education shall be made in accordance with the provisions contained in 1988 and 1989 Rules. The observations made by this Court read thus:

For all these reasons, I am of the prima facie view that the G.O.Ms.No. 405 to the extent of Rule 2 (a) to (c) is not valid in law and runs counter to the scheme envisaged under Prohibition of Collection of Capitation Fee Act and the same cannot be given effect to.

23. Appeals vide W.A.Nos. 15, 47, 74, 80 and 89 of 2000 were filed by some management of the Minority Institutions, against the aforementioned interlocutory order, and on 14-12-2000 a Division Bench of this Court passed an order directing:

Having heard the learned counsel for the parties, we are of the opinion that instead of entertaining these appeals, a direction for expeditious hearing of the writ applications would sub-serve the purpose. Place the writ petitions before the appropriate Division Bench for final hearing subject to part-heard on 23-1-2001.

24. Thereafter a Contempt Case vide C.C.No. 805 of 2001 was filed by the petitioner in W.P.No. 17793 of 1999, and whereafter the aforementioned Government Order was issued stating:

The Government have examined the matter in detail and hereby order that the admissions into Minority Educational Institutions shall be made in accordance with the provisions contained in G.O.Ms.No. 526, Education (Rules), dated 21-12-1988 and G.O.Ms.No. 154, Education (Rules), dated 27-04-1989 with immediate effect in supersession of the orders issued in the reference third above.

25. The 1993 Act was enacted to provide for the establishment of National Council for Teacher Education with a view to achieve planned and coordinated development of 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.

26. Section 12 of the 1993 Act occurring in Chapter III provides for functions of the Council. Chapter IV of the 1993 Act deals with the recognition of the teacher education institutions.

27. Section 14(1) clearly postulates that an application to the Regional Committee for grant of recognition to offer course or training in teacher education may be made in such form and in such manner as may be determined by the Regulations. Sub-section (3) of Section 14 provides for satisfaction of the Regional Committee in relation to the factors laid down under Clause (a), viz., adequate financial resources accommodation, library, qualified staff, laboratory, and other conditions required for proper functioning of the institution as may be determined by the regulations.

28. Section 15 provides for obtaining of permission from the Regional Committee

for starting a new course of training by a recognized institution. Sub-section (3) of Section 15, by and large, prescribes the same conditions for grant of permission for an institution for starting a new course to be obtained by a recognized institution. Section 16 of the 1993 Act starts with a non-obstante clause in terms whereof no examining body, on or after the appointed day, shall grant affiliation or hold examination unless the institution concerned has obtained permission from the Regional Committee u/s 14 of the 1993 Act. Section 17 provides for withdrawal of recognition for contravening the provisions of the Act. Section 18 provides for an appeal against any order passed by the Council under Sections 14 or 15 or 17 by a person aggrieved.

29. Section 29 of the Act provides that the Council in the discharge of its functions and duties shall be guided by such directions on the questions of policy as the Central Government may give in writing to it from time to time. Section 32 provides for regulations making power. Sub-section (i) of Section 32 empowers the Council to make regulations, not inconsistent with the provisions of the Act and the Rules made thereunder, generally to carry out the provisions of the Act. Sub-section (2) of Section 32, which is illustrative in nature, empowers the Council to lay down the norms, guidelines and standards in respect of matters specified therein. Clause (e) of Sub-section (2) of Section 32 provides for the form and manner in which an application for recognition is to be submitted under Sub-section (1) of Section 14, whereas Clause (f) of Sub-section (2) of Section 32 provides for regulation making power as regards conditions required for proper functioning of the institutions and conditions for grant of permission under Clause (a) of Sub-section (3) of Section 14.

30. Regulation 5 of Regulations for the purpose of Section 14 was made in terms of Clause (f) and (g) of Sub-section (2) of Section 32. Clause (e) of Regulation 5 mandates obtaining of no objection certificate from the State in which the institution is located if it was not functioning immediately before 17-8-1995.

31. Coordination and determination of standards of higher education is a subject, which falls in List I of the Union List of VII Schedule to the Constitution of India. Entry 66 of List I reads thus:

"Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

32. The Concurrent List provides the legislative power of the Central Government, as also the State Government, by reason of Entry 25, which is subject to Entry 66 of List 1. The said Entry reads thus:

"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.

QUESTIONS:

33. The questions, which arise for consideration in these writ petitions, are:

- (1) Whether the provisions of the Andhra Pradesh Education Act insofar as they relate to Teacher Education are beyond the legislative competence of the State?
- (2) Whether the State in exercise of its executive power under Article 162 of the Constitution of India can issue any notification when statutory rules are in operation?
- (3) Whether by reason of G.O.Ms.No. 154, the Rules proceeded from the Rules made in G.O.Ms.No. 526, whether Rule 3 (2)(b) and 3 (4) of the 1988 Rules are invalid?
- (4) Whether the Rules made in G.O.Ms.Nos. 154 and 526 are violative of Sections 3 and 4 of the 1983 Act?
- (5) Whether G.O.Ms. No. 88 dated 25-07-2001 issued by the State is invalid by reason of the Rules issued in exercise of its legislative power in derogation of the statutory rule making power of the State?

FINDINGS:

34. It is now a well-settled principle of law that having regard to the entries made in List I and List 3 of the VII Schedule of the Constitution of India "the coordination and determination of standards of higher education must be given a harmonious construction. The pith and substance doctrine as far as possible should be applied. In a case where the legislations made by the State and the Union are inconsistent with each other, the legislation made by the Central Government shall prevail. Similarly, where a legislation falls exclusively within the purview of Entry 66, the State will be denuded the power to make any legislation in relation thereto. The law in this regard, having regard to the various decisions of the apex Court, is absolutely clear. The State although cannot make any law in derogation of the provisions of a law, made by the Central Government in relation to maintenance of standard of education, it, however, can lay down higher standard. In other words, the State shall not make any legislation or take any action contrary to or inconsistent with the Central legislation and the rules, regulations or directions issued by any authority created thereunder, but it can always go for a higher standard. It is not necessary for us to notice a large number of case laws as the matter is since covered by a decision of the apex Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, .

It is, therefore, wrong to say that the standard of education is not affected by admitting students with low qualifying marks or that the standard of education is affected only by those factors which come into play after the students are admitted. Nor will passing a common final examination guarantee a good standard of knowledge. There is a great deal of difference in the knowledge and skills of those passing with a high percentage of marks and those passing with a low percentage of marks. The reserved category of students who are chosen for higher levels of university education must be in a position to benefit and improve

their skills and knowledge and bring it to a level comparable with the general group, so that when they emerge with specialised knowledge and qualifications, they are able to function efficiently in public interest.

Both the Union as well as the States have the power to legislate on education including medical education subject, inter alia, to Entry 66 of List-1 which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-1. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

35. The said decision has been followed by a Division Bench of this Court in Dr. B. Srinivas Vs. Dr. P. Krishna Malakonda Reddy and others, . Yet again, in The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another, , the Apex Court laid emphasis on the standard of education.

36. Before answering the questions, which arise for consideration in this batch of writ petitions, it is relevant to notice the decision of the apex Court in ST.STEPHEN'S COLLEGE (supra) wherein the apex Court observed:

...The right to minorities whether religious or linguistic to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to mal-administer. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc., which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1)...The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the

regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it.

37. Before proceeding to deal with the matter, we may also notice the decision of the apex Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, wherein the apex Court observed that:

We have held hereinbefore that the educational activity of the private educational institutions is supplemental to the main effort by the State and that what applies to the main activity applies equally to the supplemental activity as well. If Article 14 of the Constitution applies as it does, without a doubt to the State institutions and compels them to admit students on the basis of merit and merit alone (subject, of course, to any permissible reservations wherein too, merit inter se has to be followed) the applicability of Article 14 cannot be excluded from the supplemental effort/ activity. The State Legislature had, therefore, no power to say that a private educational institution will be entitled to admit students of its choice, irrespective of merit or that it is entitled to charge as much as it can, which means a free hand to expel main body of the section and, therefore, the whole section is liable to fall to the ground.

38. It is not in dispute that the Colleges imparting B.Ed. Course would also come within the purview of professional colleges. Section 3 of the 1983 Act provides that the admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority or in the manner prescribed. Section 4, although starts with a non-abstante clause, lays down an enabling provision. By reason of the said provision prima facie the minority institution may either admit students concerned on the basis of the ranks obtained by them in the qualifying examination or as the case may be on the basis of the ranking assigned to them in the entrance test in the manner prescribed.

39. In *SULTAN-UL-ULOOM EDNL. SOCIETY v. GOVT. OF A.P.* 1984 (1) APLJ 192, Section 4 of the 1983 Act has been challenged by the management of the education society and a Division Bench of this Court, however, upheld the provisions of Section 4.

40. It is not in dispute that both the 1982 and 1983 Acts make a provision as regards admission of students. Common Entrance Test is carried out for the purpose of judging the merit of the respective candidates. Merit, as has been laid down by the Supreme Court in *UNNIKRISHNAN* (supra), subject to certain exceptions laid down therein, must have a primacy. It is well-known that different Universities or Boards adopt different standards for evaluating the papers of an examination. It is also well-known that the methodology of having common entrance and assigning of ranking on the basis thereof had also been followed by different Universities and Boards.

41. By reason of the 1982 Act, as indicated hereinbefore, control over the institutions, including the minority institutions has been vested in Government and various authorities. The minority institutions not only take admissions of the students belonging to its community, but also from other community. Keeping in view the fact that in professional institutions a high standard has to be maintained, although preference in certain matters may be given to those who belong to minority community, the standard of education itself cannot be ignored only for the purpose of promoting their interests.

42. It would, therefore, in our opinion, not be correct to contend that the 1982 Act or the 1988 Rules made thereunder have no say in the matter or in any event, superseded by the 1989 Rules. The 1989 Rules by itself does not state that 1988 Rules stood superseded. Such an inference has to be drawn only on the basis of the preamble made in the said Rules. The 1988 Rules are the general rules whereas the 1989 Rules are special rules. Although in a normal situation the maxim *Generalia Specialibus Non Derogant* may apply, instances are not unknown where general provisions have also been held to prevail over the special provisions.

43. The 1989 Rules provide for a common entrance test. In terms of Sub-rule (1) of Rule 3, the admission has to be made in the order of merit on the basis of ranking assigned to the students on the common entrance test. As noticed hereinbefore, apart from such ranking, several other merit lists are also required to be prepared. One of them relate to the students to be admitted in the minority institutions. Insofar as 1995 Rules is concerned, the same have a statutory force. The said Rules again were made in terms of Section 99 of the 1982 Act. Keeping in view the fact that under the 1993 Act no rules having been framed and also taking into consideration the case laws discussed supra, we are of the opinion that the rules framed by the State shall apply.

44. Rules, as is well known, when validly framed form part of the statute. An attempt therefore must be made to give effect to the provisions of the Acts, as also the Rules, by reading them harmoniously so as to uphold them. Article 29 of the Constitution protects the interests of minorities. Article 30 confers a valuable right to the minorities" viz., right to establish and administer educational institutions, it is useful to extract these Articles:

ARTICLE 29 Protection of Interests of minorities -

(1) Any section of the citizens residing in-the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

ARTICLE 30 - Right of minorities to establish and administer educational

institutions-

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1) the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

But, providing such a right does not mean that a licence would be given to the minority institutions to do whatever they like. Education primarily is the prime concern of the State. As has been held by the Apex Court in UNNIKRIISHNAN J.P. (supra), private educational institutions are a necessity in the present day context. Private educational institutions, including minority educational institutions, thus, have a role to play. However, the role of the private educational institutions, including the minority educational institutions, is supplemental to the governmental function.

45. While discharging such function, the private institutions, including the State, have a duty to see that standard of education is maintained. For the purpose of maintenance of standard of education the Government indeed plays a pivotal role. The activities of such private educational institutions, including minority educational institutions, are subjected to regulations. Such a regulation, however, in the context of Articles 29 and 30 of the Constitution of India may not be prohibitory. So long as such regulations do not take away the fundamental right of the minorities, whether based on religion or language, or their right under Article 30(1) of the Constitution of India, the validity of the regulations have to be upheld.

46. The petitioners herein do not question the validity or otherwise of the 1982 and 1983 Acts. The 1983 Act provides certain statutory principles. It inter alia regulates admission of students into institutions imparting professional studies, it is also well settled that although a minority institution has a right to manage its own affairs, it cannot be allowed to mismanage the same. The State has a right, nay a duty to see that in the garb of a minority institution the standard of education may not go down.

As far as practicable, the State may prescribe a well-known standard albeit keeping in view the interest of the minority community. In SULTAN-UL-ULOOM EDN. SOCIETY (supra) the Division Bench after discussing the various decisions of the apex Court viz., SIDHRAJBHAI v. STATE OF GUJARAT AIR 1963 SC 540 , State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, ,

The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, , The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another, , Lily Kurian Vs. Sr. Lewina and Others, and INDULAL HIRALAL SHAH v. S.S. SALGAONKER AIR 1983 Bom. 193, observed thus:

On the above conspectus, the emerging principles are:

- 1) Right to administer a minority institution cannot obviously include the right to mal-administer;
- 2) Standards of education are not part of management as such;
- 3) Minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions and the right of the State to regulate education, educational standards and the allied matters cannot be denied;
- 4) No institution, minority or majority, has a fundamental right to recognition by the State or affiliation to the University; but since they are indispensable, they are entitled to recognition and affiliation, if they agree to accept and comply with regulatory measures, provided they are directed to ensuring educational excellence of the institution, without impairing the right of administration in regard to the internal affairs of the institution;
- 5) The right of a minority institution to admit students of their choice is subject to reasonable regulations about academic qualifications;
- 6) Regulations made in the interest of efficiency of institution, discipline, health, sanitation, morality, public order and the like, may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed.

47. The 1982 and 1983 Acts are general in nature. Their applicability may vary from the nature of courses to which the students are to be admitted. Section 3 of the 1983 Act provide for admission into educational institutions either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed. Section 4, however, as noticed hereinbefore, provided some sort of option, but when rules have been laid down for holding an entrance test, can an option be exercised by the minority institution to admit students only on the basis of the marks obtained by them in the qualifying examination is the question which requires to be considered.

48. The expression "as the case may be" assumes importance for determination of the aforementioned questions in these writ petitions. The phrase "as the case may be" in Section 326(2) of the Companies Act were interpreted by Justice Morris in *BLUSTON 7 BRAMLEY, LD. v. LEIGH* 1950 KB 548. The phrase "as the case may be" in Section 326, Sub-section (2) does not mean "respectively", it means "whichever is appropriate in "the events which happen" ". "And an order

is made or a resolution is "passed", as the case may be" for the winding up the company was interpreted as where there has been a notice of a meeting, it should be followed by an order and in that way where there has been a notice of meeting, it should be followed by a resolution for voluntary winding-up. Their Lordships of the Supreme Court interpreted the phrase "as the case may be" occurring in Section 10(3)(c) of Tamil Nadu Buildings (Lease and Rent Control) Act in *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, , to the effect that in the context of Sub-clause (c), the words "as the case may be" would only mean "whichever the case may be i.e., either residential or non-residential". The same phrase fell for consideration again in *Subramaniam Shanmugham Vs. M.L. Rajendran and Others*, , wherein the apex Court explained the meaning of the expression "as the case may be" to the effect that i.e., as the situation may be, in other words in case there are separate and distinct units then concept of need will apply accordingly. From the above, it is seen that the words "as the case may be" should mean "as the situation may be" or "whichever the case may be".

49. The question, in the aforementioned context, which must be examined is that when the State makes a provision for entrance test, whether the action of the managements of the minority institutions admitting the students only on the basis of the marks obtained by them in the qualifying examination stands superseded or not?

50. In a case of this nature, the purpose and object of the statute must be kept in mind. It is a well-settled principle of law that where the law is not clear, recourse must be taken to purposive interpretation. In *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, , the apex Court held:

interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section-by-section, clause-by-clause, phrase-by-phrase and word-by-word, if a statute is looked at, in the context of its enactment with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

51. In *ANANTHA KUMAR BEJ v. STATE OF WEST BENGAL* 1999 (4) SLR 661, a Division Bench of the Calcutta High Court has noticed the authorities as regards

purposive construction.

It is a well settled principles of law that despite absence of a rule, the Selection Committee is entitled to short list the candidates. Rule 9(c)(ii) of the rules only gives a statutory, recognition to the aforementioned service jurisprudence. In a case of this nature, therefore, the doctrine of purposive interpretation should be invoked, and in such a situation the word "written test" must be held to be, incorporated within the word "interview". The answer to the question posed in this appeal, thus in the opinion of this court, should be rendered in affirmative as otherwise the word "written examination" would become totally otiose. Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been elaborately dealt in by Francis Bennion in his Statutory Interpretation.

52. In Francis Bennion Statutory Interpretation, Second edition, as regards the rule of "purposive construction", it has been stated at Section 304 as under:

A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in the Code called a purposive-and-literal construction);

(b) applying a strained meaning where the literal meaning is not in accordance, with the legislative purpose (in the Code called a purposive-and-strained construction).

53. In DPP v. SCILDKAMP (1971) AC 1, it was held that the rule that severance may be effected even where the "blue pencil" technique is impracticable.

54. In JONES v. WROTHAM PARK SETTLED ESTATES (1980) AC 74 at p. 105, the law is stated in the following temv.-

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to result which would clearly defeat the purposes of the act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words, which are not expressly included in it. Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd (1971 AC 850) provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the

omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is" the meaning of a written law, which Parliament has passed.

55. It is a well-known principle of construction of statutes that all words employed therein must be given its full meaning unless the same result in absurdity. In *Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, , it has been held:

Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to heir grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver...

56. In *Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar*, , the rule of addition of word had been held to be permissible in the following words:-

We are of the view that having regard to the pattern in which Clause (a) of Sub-section (3) of Section 10 of the Acts enacted and also the context, the words if the landlord required it for his own use or for the use of any member of his family which are found in Sub-clause (ii) of Section 10(3)(a) of the Act have to be read also into Sub-clause (iii) of Section 10(3)(a) of the Act. Sub-clauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clause by adding a conjunction and between the said two sub-clauses, in which event the cause would have read thus; in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own. If the two sub-clauses are not so read, it would lead to an absurd result.

In *DADI JAGANNADHAM v. JAMMULU RAMULU* 2001 AIR SCW 3051, the Apex Court held:

The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must as far as possible, adopt a construction which will

carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not here, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction make up deficiencies which are there.

57. In terms of the 1988 Rules, rules imposing conditions for recognition of a minority institution have been framed. Rule 13 envisages that the right of such educational Institutions, which serve the general interest of the minorities had been protected. However, Clause (e) of Rule 13 categorically prescribes that when common entrance test has been prescribed for admission to various educational institutions, including the minority educational institutions, the minority institutions shall admit students belonging to the concerned minority from among the merit list of the students prepared by the competent authority conducting the common entrance test on the basis of the ranking assigned in the entrance examination. The institutions also have to admit the students belonging to non-minority groups on the basis of the ranking assigned in the common entrance examination, if there are no eligible candidates belonging to the minority community to the concerned admission. It is therefore not correct to contend that by issuing the 1989 Rules, the 1988 Rules have been given a complete go-bye. Had that been the intention of the Government, the same could have been specifically stated in the said Government Order wherein the 1989 Rules have been issued. In the 1989 Rules also a duty has been cast upon the principals of the institutions to admit candidates belonging to the minority community in the order of merit on the basis of the ranking assigned to them in the common entrance test by following the procedure laid down under the rules.

58. The procedure as regards holding of common entrance test and grant of ranking had also been laid down. As noticed hereinbefore, a list of concerned minority merit list is also to be prepared in terms of Rule 6(c) of the 1989 Rules. Thus, the purpose and object for which the minority institutions have been given protection u/s 4 of the 1983 Act, as also Article 30 of the Constitution of India, have been sufficiently safeguarded.

59. It has not been and could not have been contended that the said Rules are unfair. In terms of Section 99 of the 1982 Act, 1995 Rules have also been framed. Rules, as noticed hereinbefore, have already been made under 1983 Act adopting the selfsame subject. The rules made under 1983 Act in this behalf shall therefore prevail in relation to the matters already covered thereunder. The 1995 Rules have application in relation to the general law. By reason thereof, no detailed procedure has been made out. However, it is pertinent to note that in the said Rules also the phraseology "as the case may be" has been used. Thus, if the aforementioned rules are construed by a combined reading of the aforementioned rules and applying the principles of harmonious construction, we

are of the opinion, that in a case where common entrance test is held, the minority institutions will have to admit students in terms of the ranking assigned to the students therein.

60. It is not in dispute that the Course of Bachelor of Education is a professional course. For the purpose of admission into B.Ed. Course, meritorious students are required to be admitted so that they can become good teachers in future. If the aforementioned object is kept in view, we are of the opinion - having regard to the fact that the interest of the minorities having been protected; that even if a common entrance test is held, the same does not offend Section 4 of the 1983 Act.

61. It is to be noticed that ST. STEPHEN'S COLLEGE case (supra) has considered and discussed the following decisions of the Supreme Court on the ambit and scope of Articles 29(2) and 30(1) of the Constitution, apart from the decisions rendered by several High Courts:

The State of Bombay Vs. Bombay Education Society and Others, In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, , S. Azeez Basha and Another Vs. Union of India (UOI), , REV. FATHER PROOST v. STATE OF BIHAR (1969)2 SCR 734, STATE OF KERALA v. MOTHER PROVINCIAL (supra), D.A.V. College, Vs. State of Punjab and Others, , ST. XAVIER'S COLLEGE SOCIETY v. STATE OF GUJARAT (supra), GANDHI FAIZ-AN-COLLEGE, SHAHAJAHANPUR v. UNIVERSITY OF AGRA (supra), Rt. Rev. Msgr. Mark Netto Vs. State of Kerala and Others, , LILY KURIAN v. SR.LEWINA (supra) and A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, .

62. On an interactive analysis of the provisions of Articles 29(2) and 30(1) of the Constitution, the Constitution Bench of the Supreme Court in ST. STEPHEN'S COLLEGE (supra) ruled:

In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

63. In the light of the categorical ruling by the Constitution Bench decision of the Apex Court in ST.STEPHEN'S COLLEGE (supra), we hold that Minority Educational Institutions shall make available at least 50% of the available admissions to

students of communities other than the minority community and the admission of the other community students shall also be done purely on the basis of the merit/ranking at the entrance examination.

64. True it is, that none of the statutory rules either made under the 1982 Act or under the 1983 Act have in terms prescribed any ceiling that minority educational institutions should admit students belonging to the specified minority either linguistic or religious in a quantum not exceeding 50% of the available seats. However, as the decision of *ST.STEPHEN'S COLLEGE* (supra) has laid down the ratio on an interpretation of Articles 29(2) and 30 of the Constitution, this ceiling will have to be treated as a ceiling that is founded upon constitutional prescriptions. The provisions of the State legislation and the subordinate legislations thereunder will have to be construed harmoniously with such constitutional prescriptions. Consequently, the minority educational institutions will have to conform to the ceiling of 50% in the matter of admitting students belonging to the specified minority.

65. In *SHAHAL H. MUSALIAR* (supra) the apex Court held that having regard to the reputation of the minority institutions, some sort of a general standard must also be maintained. Asking the students to undergo an entrance test so that they may obtain admission in the institutions of their liking depending on the ranking obtained by them cannot be said to be unfair. In technical colleges like medical and engineering where a provision exists for free seats and payment seats, percentage minority students should not exceed 50%. The apex Court held:

(i) Fifty per cent of the total intake in the petitioners' educational institutions shall be permitted to be filled up by candidates selected by the agencies of the State government on the basis of a competitive examination/test. The candidates so selected and admitted shall pay scales of fee as applicable to this class of students as determined by the State government from time to time.

(ii) The remaining fifty per cent of the intake may be regulated by the petitioners to admit candidates belonging to the particular religious or linguistic minority. However, the selection shall be made strictly on the basis of merit among the candidates seeking admission to the institutions. Such merit shall be determined on the basis of the academic performance at the qualifying examination; or on the basis of any objective test that the institution might itself apply to determine such relative and competing merits; or on the basis of performance of the results of the selection tests that the State government may itself hold for selecting candidates for admission to technical colleges in the State. It is optional for the petitioners to adopt any one of these three modes and apply it uniformly. Candidates so selected on the basis of merit amongst the minorities shall, however, abide by such condition in the matter of payment of tuition and other fee as may be permitted by the State government

66. In *State of Maharashtra and others Vs. Admane Anita Moti and others*, , a direction had been issued by the apex Court directing the management to fill

50% of the seats with other community students.

67. In BHARATIDASAN UNIVERSITY v. A.I.C.T.E. (2001) 6 Scale 429, AICTE Regulations were held inapplicable to the extent they were found inconsistent with the provisions of the AICTE Act, 1987 notwithstanding the fact that these Regulations had not been formerly challenged. The Supreme Court had this to say in this context:

The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations and confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the writ or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack

68. For the foregoing reasons we are of the opinion that the orders of the State Government in G.O.Ms.No. 88, dated 25-7-2001 are valid. Subject to the directions above, consequent on the ruling in ST.STEPHEN'S COLLEGE (supra), we held that the writ petitions except W.P.No. 17793/ 1999 are without merit and are disposed of as such. No order as to costs.