

(2009) 01 AHC CK 0035
In the Allahabad High Court

Bhupendra Nath Tripathi and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 21A, 226
National Council for Teacher Education Act, 1993 — Section 1, 12, 14, 15, 17
University Grants Commission Act, 1956 — Section 2, 22, 3

Citation : (2009) 1 AWC 769

Hon'ble Judges : Vineet Saran, J;Sanjay Misra, J;Ashok Bhushan, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—The National Council for Teacher Education, constituted under the National Council for Teacher Education Act, 1993,

granted permission to the State of U.P. to impart a special primary teacher training course, i.e., Special Basic Training Course, 2007 to the

candidates, who are already B.Ed. to enable the State of U.P., to fill up more than 60 thousand vacant posts of primary teacher, which remained

unfilled due to non-availability of candidates having the primary teacher training certificate.

2. Whether the candidates, who obtained B.Ed. from the institutions recognised by the National Council for Teacher Education after the

enforcement of National Council for Teaching Education Act, 1993, are alone eligible to apply for Special Basic Training Course, 2007 or those

candidates who either obtained B.Ed. degree prior to enforcement of National Council for Teacher Education Act, 1993, from the Universities

recognised by the University Grants Commission or obtained degree after the

enforcement of National Council for Teacher Education Act, 1993

from the Universities recognised by University Grants Commission, during the period when the application of the institutions / Universities seeking

recognition under the National Council for Teacher Education Act, 1993 remained pending consideration by N.C.T.E., are also eligible to apply

for Special Basic Training Course, 2007, are the questions, which have come up for consideration before this Bench.

3. We have heard Sri Shailendra, advocate, Sri Shashi Nandan, senior advocate, assisted by Sri Abhishek Srivastava, advocate, for the

appellants, Sri Devendra Kumar Arora, Additional Advocate General, assisted by Sri K. S. Kushwaha for the State-respondents and Sri Rajiv

Joshi, Rizwan Ali Akhtar and Ms. Rashmi Tripathi, advocates, who have appeared on behalf of the National Council for Teachers Education,

New Delhi.

4. A Division Bench of this Court, while hearing above mentioned special appeals, referred the following questions for consideration by the larger

Bench:

(I) Whether after the enforcement of 1993 Act the candidates who obtained B.Ed. degree from an institution or a University during the period

when the application of the institution or University for grant of recognition was pending are eligible for Special B.T.C. Course, 2007 as held by

Division Bench judgment in Ekta Shukla's case?

Or

Whether the candidates who have obtained degree from an institution or University recognised by N.C.T.E. are only eligible for Special B.T.C.

Course, 2007 as held by Division Bench judgment in Sanjai Kumar and Sunita Upadhyay's case ?

(II) Whether recognition, as referred to in the proviso to Section 14(1) of the N.C.T.E. Act, 1993 Act can be treated to be deemed recognition

under the 1993 Act of an institution or a University for the period applications were pending ?

(III) Whether the exclusion of those candidates from field of eligibility for Special B.T.C. Course, 2007 who have obtained B.Ed. degree prior to

enforcement of 1993 Act or after the enforcement of 1993 Act during the period when the application of the institution or the University was

pending consideration, is arbitrary and unreasonable violative of Articles 14 and 16 of the Constitution of India ?

5. Brief facts necessary for answering the questions referred to this Bench are : In State of U.P., more than sixty thousand posts of Assistant

Teacher in primary institutions run by U.P. Basic Shiksha Parishad are lying vacant. The right of education for the children from 6 to 14 years being

fundamental right under Article 21A of the Constitution of India, the State is obliged to provide for imparting education to children from 6 to 14

years. For appointment of teachers in primary institutions a set of rules have been framed, namely, U.P. Basic Education (Teachers) Service Rules,

1981 in exercise of power under the U.P. Basic Education Act, 1972. Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981

provides for appointment of Assistant Master and Assistant Mistress of Junior Basic Schools, according to it a candidate has to possess

bachelor's degree from an University established by law in India together with training qualification consisting of a basic teacher's certificate or any

other training course recognised by the Government as equivalent thereto. In State of U.P. more than sixty thousand posts of Assistant Teacher in

primary institutions are vacant due to unavailability of candidates having basic teacher's training certificate (B.T.C.) or any other training certificate

recognised by the State. In State of U.P., basic training course is imparted in District Institute of Education and Training (hereinafter referred to as

the D.I.E.T.) run by the State in different districts. However, the capacity to impart training in respective D.I.E.T.'s being limited, the number of

candidates, who have been imparted regular basic training course are too meagre to cope with the requirement of Assistant Teachers in various

institutions. To cope with the requirement of filling up the posts of Assistant Teacher in basic institutions, the State of U.P. has formulated a scheme

for imparting Special Basic Training to the candidates, who are already B.Ed., such exercise was undertaken in the year 1998, 2004 and 2007.

The case in hand relates to Special Basic Training Course, 2007. The Parliament has enacted the National Council for Teacher Education Act,

1993 according to which permission is required for starting any new course or training by recognised institutions. The State of U.P., forwarded a

proposal for permitting it to impart Special Basic Training Course to the candidates, who are already B.Ed., in recognised D.I.E.Ts. of State of

U.P., so as to make available the candidates eligible to be appointed in more than sixty thousand posts of Assistant Teacher, which are lying vacant

in the State of U.P. On the proposal sent by the State of U.P., the Regional Committee of the National Council for Teacher Education granted

permission vide its order dated 27th June, 2007 for imparting Special Basic Training Course to the candidates, who are already B.Ed., of a

duration of six months" course. The State of U.P., issued a Government order dated 10th July, 2007, with regard to Special Basic Training

Course, 2007 providing for guidelines and conditions for imparting Special Basic Training Course, 2007. One of the conditions contained in

the Government order, relating to minimum educational qualification, mentioned that for Special Basic Training Course, 2007 the minimum

educational qualifications shall be graduation with B.Ed. from any recognised college run by State/Central Government and approved by the

National Council for Teacher Education (hereinafter referred to as the N.C.T.E.). In pursuance to the Government order dated 10th July, 2007

advertisement was issued on 18th July, 2007 by different D.I.E.T.S. inviting applications from the eligible candidates for Special Basic Training

Course, 2007. The advertisement mentioned graduation from an University established by law and recognised by University Grant Commission

and B.Ed. from recognised training institute from N.C.T.E. as essential qualification.

6. It is sufficient to refer the pleadings of Special Appeal No. 858 of 208 arising out of Writ Petition No. 27579 of 2008, Bhupendra Nath Tripathi

and Ors. v. State of U.P. and Ors. for appreciating the issues raised in the present case. The appellants have passed their B.Ed. (Shiksha Shastri

Pariksha) from institutions affiliated to Sampurnanand Sanskrit Vishwavidyalaya, Varanasi and from Purvanchal Vishwavidyalaya, Jaunpur. The

appellants have passed their B.Ed. in different years from 1993 to 1998. The appellants submitted their applications in respective D.I.E.Ts. They

were called for counselling in November and December, 2007 and a list was prepared and published in respective D.I.E.Ts. showing them to be

selected for counselling for Special Basic Training Course, 2007. After counselling, the appellants were called for training of Special Basic Training

Course, 2007 their names being included in the final select list. The letters were issued to the appellants from different D.I.E.Ts. between 17th

February, 2008 to 25th April, 2008. Before the appellants could be sent for training letter dated 25th March, 2008 from the Director, State

Council of Research and Training was received by different D.I.E.Ts. referring to a Division Bench judgment dated 13.3.2008 in Special Appeal

No. 391 of 2008, Smt. Sunita Upadhyay v. State of U.P. and Ors.. The Division Bench in Sunita Upadhyay's case (supra), held that

advertisement having specifically required the candidates to have passed B.Ed. from the institutions, which have N.C.T.E.'s. recognition and since

in that case the N.C.T.E.'s. recognition was not, at the relevant time when the candidates had passed, the appeal was dismissed. The substance of

the Judgment in Sunita Upadhyay's case- (supra) was circulated to all Principal of D.I.E.Ts. and they were asked to act accordingly. After the

letter dated 25th March, 2008, the Principals of the D.I.E.Ts. issued letters to the appellants on 25th April, 26th April and 3rd May, 2008

intimating that in the year when the appellants had passed the B.Ed. the institution having not been recognised by N.C.T.E., the appellants are not

eligible and cannot be sent for Special Basic Training Course. The appellants filed Writ Petition No. 27579 of 2008 praying for following relief in

the writ petition:

(i) issue a writ order or direction in the nature of certiorari calling the records of the case and quashing the impugned advertisement dated

18.7.2007 (Annexure-3A to this writ petition) and quashing the impugned order dated 25.3.2008 (Annexure-7 to this writ petition) passed by

Director S.C.E.R.T. and quashing the impugned order (Annexure-9 to this writ petition) passed by Principal of different D.I.E.T. in relation to

petitioner Nos. 1, 2 and 3 ;

(ii) Issue a writ order or direction in the nature of mandamus declaring the Government order dated 10.7.2007 amended upto date ultra vires to

the provisions of the Constitution being hit by Articles 14 and 16 of the Constitution of India to the extent that it make distinction between degree

obtained by candidates after enforcement or implement of National Council for Teachers Education Act, 1993 and degree obtained prior to

recognition by University Grant Commission or by any body authorised by University Grant Commission, so far validity of public employment is

concerned and particularly to the extent its relevancy of Special B.T.C. Course,

2007:

(iii) Issue a writ order or direction in the nature of mandamus directing respondent authorities to allow to petitioners to complete B.Ed. training in

their respective D.I.E.T. and consequential benefits in view of the facts and circumstances of the case that they are keeping valid degree and

particularly in such circumstances, Division Bench of this Court has upheld that such degrees not only for Special B.T.C. Course, 2004 but also

subsequent exam and that judgment has already been confirmed in the Apex Court, petitioner may also be given consequential order like

consideration of appointment as Assistant Teacher in Primary institution governed by Basic Education Act.

7. The learned single Judge heard the writ petition and dismissed the same holding that it is open to the State Government to provide a further

higher or stricter qualification for admission in the course in addition to the qualifications, which have been duly prescribed by the N.C.T.E. The

learned single Judge took the view that State Government's decision to provide a qualification or eligibility for admission to Special Basic Training

Course, which is not inconsistent with what has been approved by N.C.T.E., but over and above thereto, cannot be held to be illegal or invalid.

The learned single Judge relied on judgments of Division Bench in Special Appeal No. 392 of 2008, Sanjai Kumar and Ors. v. State of U.P. and

Ors. and Sunita Upadhyay's case (supra). The Division Bench judgment in the case of Ekta Shukla and Ors. v. State of U.P. and Ors. 2006 (1)

ESC 531, was distinguished. Special appeal was filed against the judgment and order of learned single Judge dated 1st July, 2008 by the

appellants in which the Division Bench hearing the said special appeal noticed that there is apparent conflict in Division Bench judgments of this

Court in Sunita Upadhyaya's case (supra), Sanjai Kumar's case (supra), which have taken the view that only those candidates are eligible, who

have obtained B.Ed. degree from an institution recognised by the N.C.T.E. for Special Basic Training Course, and the judgment in Ekta Shukla's

case (supra), in which view has been taken that B.Ed. degree (Shiksha Shastri) granted by Sampurnanand Sanskrit Vishwavidyalaya, Varanasi as

well as from the colleges affiliated to it during the period when their applications for recognition under the National Council for Teacher Education

Act, 1993 were pending, are also eligible to participate in Special Basic Training Course, 2007. The Division Bench also noticed the contention of

the appellants that N.C.T.E. having granted permission to the State to impart the Special Basic Training Course to the candidates, who are already

B.Ed. exclusion of the candidates, who had obtained their degree before the National Council for Teacher Education Act, 1993 was enforced or

during the period when the applications by the respective institutes were pending consideration before the N.C.T.E. is violative of rights under

Article 14 of the Constitution of India. The appellant's contention was that all those candidates, who have obtained B.Ed. degree are eligible to

participate in the Special Basic Training Course and the Government order, if treated to have excluded the candidates of above mentioned

categories, is liable to be struck down. The Division Bench after considering the issues raised in the appeal, has referred the above quoted three

questions for consideration by this larger Bench.

8. Now we proceed to consider the respective submissions of the learned Counsel for the parties on each of the questions, as noticed above,

separately.

Question Nos. 1 and 2.

(I) Whether after the enforcement of 1993 Act the candidates who obtained B.Ed. degree from an institution or a University during the period

when the application of the institution or University for grant of recognition was pending are eligible for Special B.T.C. Course, 2007 as held by

Division Bench judgment in Ekta Shukla's case ?

Or

Whether the candidates who have obtained degree from an institution or University recognised by N.C.T.E. are only eligible for Special B.T.C.

Course, 2007 as held by Division Bench judgment in Sanjai Kumar and Sunita Upadhyay's case ?

(II) Whether recognition, as referred to in the proviso to Section 14(1) of the N.C.T.E. Act, 1993 Act can be treated to be deemed recognition

under the 1993 Act of an institution or a University for the period application were pending?

9. Learned Counsel for the appellants submitted that after enforcement of National Council for Teacher Education Act, 1993, by virtue of Section

14(1) proviso of National Council for Teacher Education Act, 1993 each college, which were running the B.Ed. course since before enforcement

of National Council for Teacher Education Act, 1993, were permitted to continue the said course for a period of six months within which period

they were required to make an application seeking recognition from the N.C.T.E. and during pendency of their applications for such recognition,

they were entitled to run the said course. The submission is that during the above period the courses completed and degree awarded by the

competent University authorities were fully valid and those candidates cannot be treated to be ineligible for Special Basic Training Course, 2007. It

is contended that permission to continue the course is provided under the National Council for Teacher Education Act, 1993 itself and when such

course has been permitted to be run, it cannot be the object of National Council for Teacher Education Act, 1993 to treat those degrees invalid,

which were granted during the period when they were permitted to run the course. Learned Counsel for the appellants submitted that issue as to

whether during the period the colleges and Universities were permitted to run the B.Ed. course, the degree granted will be valid for Special Basic

Training Course has been answered by the Division Bench in Ekta Shukla's case (supra), where this question was specifically dealt with and

considered, hence on the strength of Division Bench judgment in Ekta Shukla's case (supra), there is no occasion to treat those candidates

ineligible. It is submitted that the appellants have been granted B.Ed. Degree from the institution during the period the institutions had submitted

their applications and the said applications were under consideration and ultimately all the institutions and colleges from where the appellants have

passed B.Ed. have been granted recognition by the National Council for Teacher Education. It is submitted that when the Regional Committee of

the N.C.T.E. has granted permission to the State to impart Special Basic Training Course to the candidates, who are already B.Ed., vide order

dated 27th June, 2007, the State cannot either by the Government order or by the advertisement further qualify the said eligibility as provided by

the N.C.T.E. It is submitted that in the year 2004 in Special Basic Training Course also the Government order and the advertisement providing for

Special Basic Training Course were almost in similar terms requiring eligibility from only those Institutes, Colleges and Universities, which have

been recognised by the N.C.T.E. but the said qualifications were understood by the State authorities themselves that it does not disentitle the candidates, who have passed B.Ed. prior to enforcement of National Council for Teacher Education Act, 1993 or during the period when their applications were pending. The contention is that appellants were also permitted to participate in Special Basic Training Course, 2004 but at that time they could not be selected looking to the number of vacancies. It is further contended that after the advertisement of 2007, the appellants applied for Special Basic Training Course, 2007 alongwith their all certificates and educational qualifications, which were processed and they were treated to be eligible and their names were also included in the final select list issued by different D.I.E.Ts. and they were also issued call letters to join the training subject to verification of their mark-sheets and certificates but by general order issued by the Director. S.C.E.R.T. dated 25th March, 2008 candidature of the appellants was cancelled relying on two Division Bench judgments in Sunita Upadhyaya's case (supra) and Sanjai Kumar's case (supra). It is submitted that respondents are now estopped from cancelling the candidature of the appellants when the State authorities always treated all the candidates eligible, who either have obtained B.Ed. degree before enforcement of National Council for Teacher Education Act, 1993 or during the period when their applications were pending consideration. Learned Counsel for the appellants further submitted that provisions of Section 14 of National Council for Teacher Education Act, 1993 permitting to run all the course is nothing but an implied recognition of such course under the National Council for Teacher Education Act, 1993 and their degree of B.Ed. obtained during that period cannot be treated to be ineligible for Special Basic Training Course, 2007. It is contended that judgments of Sunita Upadhyaya's case (supra) and Sanjai Kumar's case (supra) do not lay down the correct law since the said judgments are contrary to the view taken in Ekta Shukla's case (supra). It is contended that judgment of the Apex Court in the case of Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, , was not attracted in the facts of the present case since there was no question of any recruitment, advertisement or criteria for recruitment. The propositions laid down in Yogesh Kumar's case (supra) was not applicable in the present case. Learned Counsel for the appellants have also

relied on several Judgments of the Apex Court and this Court, which shall be referred to hereinbelow while considering the submissions.

10. Sri Devendra Kumar Arora, Additional Advocate General, refuting the submission of learned Counsel for the appellants, contended that

proviso to Section 14(1) of National Council for Teacher Education Act, 1993 although permits an institution to continue such course or training till

disposal of the application but in case the inverting period falls within the meaning of deeming recognition, it is the duty of the N.C.T.E. to grant

recognition to the said institution with effect from the date of submission of application. It is contended that most of the institutions were granted

recognition with effect from the date of grant of recognition and none of the institutions having been granted recognition with effect from the date of

submission of application, the degrees awarded by Universities and the colleges during the inverting period cannot be said to be valid degree. It is

further submitted that if there was any issue, the same could have been taken up with the N.C.T.E. by the University or by the students and the

State is only to recognise the degrees granted by the institutes or the colleges after they have been recognised under the National Council for

Teacher Education Act, 1993 and the Government order dated 10th July, 2007 and the advertisement dated 18th July, 2007 are fully in

accordance with law. It is contended that proviso to Section 14(1) cannot be treated to be a deemed recognition. The Division Bench in Ekta

Shukla's case (supra) does not lay down the correct law and in fact that judgment is per incurium due to non-consideration of real issues and

further non-consideration of the terms and conditions mentioned in the advertisement. It is further contended that judgment in Ekta Shukla's case

(supra), is not even a precedent. Learned Counsel for the respondents elaborating his submission contended that Ekta Shukla's case (supra) was a

case where the petitioners have come up by filing a writ petition praying for a mandamus commanding the respondents not to treat the certificate of

Shiksha Shastri already declared equivalent to B.Ed. unrecognised and further a mandamus commanding the respondents to permit the holders of

Shiksha Shastri certificate to join the Special Basic Training Course. It is submitted that question of grant of equivalence of certificate is not in the

domain of the Court and it is a job to be performed by expert bodies and authorities and the learned single Judge as well as the Division Bench

travelled beyond the pleadings in laying down that the degrees granted at the time when the application for recognition was pending under the National Council for Teacher Education Act, 1993 is valid for Special Basic Training Course. It is contended that neither the principle of *res judicata* nor *estoppel* will come in the aid of the appellants in facts of the present case. Learned Additional Advocate General further contended that the process of selection has been initiated by the State Government on a policy decision taken by the State Government. The policy decision by the State has been taken to permit the candidates who have obtained B.Ed. degree only from recognised institutions by N.C.T.E. to select better trained candidates and this being the policy decision, the scope of judicial review is limited to the extent of unreasonableness and arbitrariness only in context to Article 14 of the Constitution of India, no interference is required in the policy decision taken by the State Government. He has placed reliance on various judgments of the Apex Court and this Court, which shall be referred to while considering the submissions in detail.

11. Sri Rajiv Joshi, learned Counsel appearing for N.C.T.E., submitted that after the appointed day no institution can start a course or training in teacher education unless such institution is recognised to start such course or training in teacher education. However, an existing institution already offering or conducting a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months and if it has made application for recognition for the teacher training course within the said period, then until the disposal of the application by the Regional Committee. With regard to degrees obtained during the aforesaid period, it has been submitted that the said degrees are valid. A written submission has also been filed on behalf of N.C.T.E. and it is useful to quote paragraphs 6 and 7 of the said written submission, which are as under:

6. That in view of above it is clear that after enforcement of N.C.T.E. Act, the institution existed on appointed day conducting a course or training relating to teacher education are entitled to continue such course if such institution applied for grant of recognition u/s 14(1) of the N.C.T.E. Act, within the period as prescribed until the disposal of their applications by the

concern Regional Committees and degrees obtained during the pendency of said application are valid in view of Section 14(1) of the N.C.T.E. Act and recognition of such decrees during such period are treated to be deemed recognition in view of Section 14(1) of the N.C.T.E. Act.

7. That before the enforcement of N.C.T.E. Act, the University/Concerned State Government was the authority for determining norms and standards in College/Institutions imparting Teacher Training Course.

12. We have considered the submissions of the learned Counsel for the parties and perused the record.

13. The National Council for Teacher Education Act, 1993 has been enacted to provide for establishment of a National Council for Teacher

Education with a view to achieve planned and coordinated development for teacher education system throughout the country, the regulation and

proper maintenance of norms and standards in the teacher education system and for matter connected therewith. Prior to enforcement of the

National Council for Teacher Education Act, 1993, the National Council for Teacher Education was in existence since 1973 to guide the system of

teacher education as an advisory body till it was declared as a statutory body with the functions and object entrusted to it under the National

Council for Teacher Education Act, 1993. The National Council for Teacher Education Act, 1993 has been enforced with effect from 1st July,

1995 by virtue of notification issued by the Central Government u/s 1(3) of the 1993 Act. The National Council for Teacher Education Act, 1993

has been enacted by Parliament in exercise of power under Entry 66 of the Union List of Seventh Schedule, which is as follows:

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

14. Prior to enforcement of National Council for Teacher Education Act, 1993, the Parliament enacted the University Grants Commission Act,

1956 (hereinafter referred to as 1956 Act). One of the objects for enactment of the University Grants Commission Act, 1956 was to coordinate

and determine the standards of institutions for higher education. Section 2(f) of 1956 Act defined the University. Section 22 of the 1956 Act

provided for right to confer degree. Section 2(f) and Section 22 of the 1956 Act are quoted as below:

2(f) ""University"" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

22. Right to confer degrees.- (1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in Sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this Section, ""degree"" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette.

15. The degree of B.Ed. (Bachelor of Education) prior to enforcement of National Council for Teacher Education Act, 1993 was being conferred by different Universities established or incorporated under the Central or a Provincial Act or a University deemed to be a University u/s 3 of the 1956 Act. The Parliament enacted the National Council for Teacher Education Act, 1993 specifically relating to teachers' education.

16. The word "University" has also been defined u/s 2(n) of the National Council for Teacher Education Act, 1993. Section 2(i) defines the words "recognised institution". Section 2(d) defines the word "examining body". Section 12 provides for functions of the Council. Sections 12(c), 12(e) and 12(f), which are relevant in the present case, are quoted below:

12. Functions of the Council:

(c) coordinate and monitor teacher education and its development in the country ;

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

(f) lay down guidelines or compliance by recognised institutions, for starting new courses or training and for providing physical and instructional

facilities, staffing pattern and staff qualifications;

...

17. Section 14 of the National Council for Teacher Education Act, 1993 provides that every institution offering or intending to offer a course or

training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional

Committee. Proviso to Sub-section (1) of Section 14 provides that an institution offering a course or training in teacher education immediately

before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for

recognition within the said period and until the disposal of the application by the Regional Committee. Section 14, which is relevant in the present

case, is quoted as below:

14. Recognition of Institutions Offering Course or Training in Teacher Education.-
(1) Every institution offering or intending to offer a course or

training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional

Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue

such course : or

training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the

Regional Committee.

(2) The fee to be paid alongwith the application under Sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under Sub-section (1), and after obtaining from the institution

concerned such other particulars as it may consider necessary, it shall:

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such

other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations,

pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations ; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in Sub-clause (a), pass an order refusing recognition to such

institution for reason to be recorded in writing:

Provided that before passing an order under Sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned

institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under Sub-section (3) shall be

published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the

local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of

the academic session next following the date of receipt of the order refusing recognition passed under Clause (b) of Sub-section (3).

(6) Every examining body shall, on receipt of the order under Sub-section (4):

(a) grant affiliation to the institution, where recognition has been granted: or

(b) cancel the affiliation of the institution, where recognition has been refused.

18. Section 15 relates to permission for a new course or training by recognised institution. The said section provides that where any recognised

institution intends to start any new course or training in teacher education, it may make an application to seek permission to the Regional

Committee in such form and in such manner as may be determined by regulations. Section 15 of National Council for Teacher Education Act,

1993, which is relevant in the present case, is quoted as below:

15. Permission for a new course or training by recognised institution.-(1) Where any recognised institution intends to start any new course or

training in teacher education, it may make an application to seek permission therefore to the Regional Committee concerned in such form and in

such manner as may be determined by Regulations.

(2) The fees to be paid alongwith the application under Sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application from an institution under Sub-section (1), and after obtaining from the recognised institution such other particulars

as may be considered necessary, the Regional Committee shall,:

(a) If it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory, and that it

fulfils such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations,

pass an order granting permission, subject to such conditions as may be determined by regulation ; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in Sub-clause (a), pass an order refusing permission to such

institution, for reasons to be recorded in writing:

Provided that before passing an order refusing under Sub-section (b). the Regional Committee shall provide a reasonable opportunity to the

institution concerned for making a written representation.

(4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under Sub-section (3),

shall be published in the official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned

examining body, the local authority, the State Government and the Central Government.

19. Section 17 of National Council for Teacher Education Act, 1993 relates to contravention of provisions of the Act and consequences thereof.

Section 17, which is also relevant for the present case, is quoted as below:

17. Contravention of provisions of the Act and consequences thereof.-(1) Where the Regional Committee is, on its own motion or on any

representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the Rules,

Regulations, Orders made or issued thereunder, or any condition subject to which recognition under Sub-section (3) of Section 14 or permission

under Sub-section (3) of Section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:

Provided that no such order against the recognised institution shall be passed

unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from

the end of the academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under Sub-section (1),:

(a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded

simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation ; and

(b) shall be published in the official Gazette for general information.

(3) Once the recognition of a recognised institution is withdrawn under Sub-section (1), such institution shall discontinue the course or training in

teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed

under Sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under Sub-

section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain

recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a

course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any

State Government or University, or in any School/College or other educational body aided by the Central Government or any State Government.

20. Section 32 of the National Council for Teacher Education Act, 1993, empowers the Council to make Regulation by notification not

inconsistent with the provisions of this Act and the Rules made thereunder, to carry out the provisions of the Act. Under the National Council for

Teacher Education Act, 1993, regulations have been framed, namely, National Council for Teacher Education (Recognition, Norms and

Procedure) Regulation, 2005, which has been amended from time to time. The regulations prescribe norms and standards for different teachers

education programme including eligibility for admission to courses. Appendix-II of the Regulations, 2005, as amended from time to time, provides

for norms and standard for elementary education. It has been mentioned in Paragraph 1.1.4 that elementary teacher education programme carries

different nomenclatures like B.T.C., Diploma in Education, T.T.C. and so on. The eligibility for the said course, which is equivalent to B.T.C. and

is an elementary teacher education programme (known as B.T.C. in State of U.P.) has been provided in paragraph 3.2 and admission procedure

has been provided in paragraph 3.3. Paragraphs 1.1.4, 3.2 and 3.3 are quoted as below:

1.1.4. The elementary teacher education programme carries different nomenclatures like B.T.C, Diploma in Education. T.T.C. and so on. Both the

duration of training and entry qualifications differ across States. The course is offered in elementary teacher education institutions and in D.I.E.Ts.

The programme is aimed at preparing teachers for primary (I-V) level of education.

3.2. Eligibility.

3.2.1. Candidates with at least 50% marks in the senior secondary examination (+2) or its equivalent are eligible for admission.

3.2.2. There shall be relaxation of marks/reservation of seats for S.C./S.T./O.B.C. and other categories as per the Rules of the Central

Government/State Government/U.T. Administration concerned.

3.3. Admission Procedure.

3.3.1. Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any

other selection process as per the policy of the State Government/U.T. Administration.

21. The National Council for Teacher Education Act, 1993 has been enacted by the Parliament under Entry 66, List I of the Union List. The

legislative power of the State pertaining to education is dealt with in Entry 25, List III of the VII Schedule of the Constitution. After Constitution's

Forty-second Amendment Act, 1976, Entry 25 of List III is to the following effect:

25. [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.

22. The power of the State to legislate in a field covered by Entry 66 of List I has been subject-matter of consideration by the Apex Court time

and again. The question to be answered in this case is as to what is the scope and ambit of State Legislature to legislate or take an executive

decision. A Constitution Bench of the Apex Court in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya

and Others, had occasion to consider the provisions of National Council for Teacher Education Act, 1993 in context of power of the State

regarding recognition of educational institution to start B.Ed. Course. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya made an application

under the National Council for Teacher Education Act, 1993 seeking recognition for running B.Ed. course. The expert committee of National

Council for Teacher Education Act, 1993 visited the campus of the institution and recognition was granted for the Academic Year 2005-06 to run

B.Ed. course. After receipt of the letter the institution applied to the Government of Maharashtra for grant of permission to start the course and/or

inclusion of the name of the college in the Central admission process. The State did not take any steps for starting the institution. The institution filed

a writ petition in the High Court of Bombay. The State contested the writ petition. The stand of the State was that the State has taken a policy

decision not to grant any permission for opening new institution for the Session 2005-06 and the decision was taken to even cancel the no

objection certificate given to certain other colleges. The stand of the State further was that the State is empowered under the Regulations to issue

no objection certificate and it having decided not to issue any no objection certificate, the N.C.T.E.'s decision to grant permission is not correct.

The learned single Judge allowed the writ petition holding that appropriate authority to take decision regarding opening of new colleges was

N.C.T.E. and neither the State Government nor the University can act contrary to the decision of N.C.T.E. The High Court issued directions to the

respondents not to include the name of the institution in the list of Central admission process for the year 2005-06. The State of Maharashtra filed

SLP before the Apex Court. The Constitution Bench of the Apex Court upheld the

judgment of the High Court. Following was laid down by the

Apex Court in paragraphs 62, 63 and 64 of the said judgment:

62. From the above decisions, in our judgment, the law appears to be very well-settled. So far as coordination and determination of standards in

institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 Of

List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the

subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State

Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of

National Council for Teacher Education (N.C.T.E.) with a view to achieving planned and coordinated development of the teacher-education

system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters

connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the

Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of

Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power

by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy

consideration".

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be

refused by the State Government on "policy consideration". As already observed earlier, policy consideration was negated by this Court in

Thirumuruga Kirupananda Trust as also in Jaya Gokul Educational Trust.

23. The judgment of the Apex Court in the case of Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher

Education Department, Thiruvananthapuram, Kerala State and Another, , was a

case where the Apex Court considered the provisions of the All

Indian Council for Technical Education Act, 1987, which was also an Act enacted by Parliament under Entry 66 of List I. The Apex Court in the

said judgment laid down that State cannot have a policy contrary to the Central Act. Following was laid down in paragraph 27 of the said

judgment:

27. The so called "policy" of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval. In

Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, , which was a case relating to Medical

Education and which also related to the effect of a Central Law upon a law made by the State under Entry 25, List III. it was held (see p. 35 para

34) that the ""essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of

establishment of a new medical college now vests with the Central Government alone"". Therefore, the State could not have any ""policy"" outside the

A.I.C.T.E. Act and indeed if it had a policy, it should have placed the same before the A.I.C.T.E. and that too before the latter granted

permission. Once that procedure laid down in the A.I.C.T.E. Act and Regulations had been followed under Regulation 8(4), and the Central Task

Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however

add that if thereafter, any fresh facts came to light after an approval was granted by the A.I.C.T.E. or if the State felt that some conditions attached

to the permission and required by the A.I.C.T.E. to be complied with, were not complied with, then the State Government could always write to

the A.I.C.T.E., to enable the latter to take appropriate action.

Decision of University in not granting further or final affiliation wrong on merits.

24. In the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , the Apex Court considered the

provisions of All India Council for Technical Education Act, 1987 and Tamilnadu Private Colleges (Regulation) Rules, 1976. The All India Council

for Technical Education Act, 1987 was a Parliamentary Act under Entry 66 of List I. The provisions of State Act insofar as it was in conflict with

the parliamentary enactment was held to be void and unenforceable. Following

was laid down in paragraph 27 of the said judgment:

27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in

conflict, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing

education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality

instructions assessment and examinations, fixing norms and guidelines for charging tuition and other fees granting approval for starting new technical

institutions and for introduction of new courses or programmes, taking steps to prevent commercialisation of technical education, inspection of

technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring

compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receipt grants, the constitution of the

Council and its Executive Committee and the Regional Committee to carry out the functions under the Central Act, the compliance by the Council

of the directions issued by the Central Government on questions of policy ext. which matters are covered by the Central Act. What is further, the

primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a

view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative

improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject

within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other

provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of the

List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable.

It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondents-Trust was void as

has been rightly held by the High Court.

25. Another judgment of the Apex Court, which is relevant in the present

context, is the case of Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another, Bharti Vidyapeeth, which had been running several colleges affiliated to Pune University, applied to University Grant Commission for treating the society as deemed University. On the recommendation of the State Government, the Union of India granted the status of deemed University. After they having been declared as deemed University, they have decided to keep themselves outside the scope of common entrance test conducted by the State authorities. The admission rules for admission in medical, engineering and dental colleges whereby the colleges run by Bharati Vidyapeeth were included in the admission proposed to be controlled by the Central Entrance Test Authority were challenged in the writ petition by the Bharati Vidyapeeth. The writ petition was dismissed against which SLP was filed in the Apex Court. The Apex Court held that the University Grant Commission Act, 1956 was an enactment under Entry 66 of List I. It was held by the Apex Court that within the concepts of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, the entire gamut of admission will fall. Following was laid down in paragraphs 16, 17, 18 and 19 of the said judgment:

16. It is now settled proposition in law that within the concepts of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, the entire gamut of admission will fall. Therefore, if any aspect of admission of students in colleges would fall within Entry 66 and it necessarily stands excluded as has been held in the Gujarat University's case (supra). After examining the power of the State to prescribe medium of instruction in institutions for higher education it is stated in that decision as follows:

Item 25 of the Concurrent List confers power upon the Union Parliament and the State Legislatures to enact legislation with respect to "vocational and technical training of labour". It is manifest that the extensive power vested in the Provincial Legislature to legislate with respect to higher, scientific and technical education and vocational and technical training of labour under the Government of India Act is under the constitution controlled by five items in List I and List III mentioned in Item 11 of List II. Items 63 to 66 of List I are carved out of the subject of education and

in respect of these items the power to legislate is vested exclusively in the Parliament.

17. If the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament even at a time

when "Education" fell under List II, we find no reason now not to accept the arguments advanced on behalf of the appellant that once an institution

comes within the scope of Entry 66 of List I, it falls outside the control of the provisions of Entry 25 of the List III.

18. u/s 3 of the Act, deemed University status will be given to those institutions that for historical reasons or for any other circumstances are not

Universities and yet are doing work of a high standard in specialised academic field compared to a University and that granting of a University

status would enable them to further contribute to the course of higher education, which would mutually enrich the institution and the University

system. Guidelines for considering proposals for declaring an institution as deemed to be University were also issued by the U.G.C. Under the said

guidelines aspects relating to admission was specifically entrusted with the U.G.C. and admission could be made only through a common entrance

test on All-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out, admission

plays a crucial role in maintaining of the high quality of education. And for the proper maintenance of academic excellence, as intended by the

U.G.C. Act, admission to deemed University has to be made under the control of the U.G.C. This further goes to show that admission procedure

to a deemed to be University is fully occupied by Entry 66 of List I and the State cannot exercise any power over admission procedure.

19. Therefore, the State could not have enacted any legislation in that regard. If that is so, neither in exercise of executive power under Article 162

of the Constitution which extends only to the extent of legislative power nor in respect of power arising under the Maharashtra State Universities

Act, such rules could have been prescribed. To the extent the High Court holds to the contrary, we set aside the order of the High Court.

26. After laying down as above, the Apex Court allowed the appeal of Bharati Vidyapeeth and restrained the State respondents to enforce their

instructions for bringing the institution within the stream of common entrance test examination.

27. The permission to run the Special Basic Training Course, 2007 has been granted by the Regional Committee u/s 15 of the National Council for

Teacher Education Act, 1993. It is useful to quote the relevant portion of order of the Regional Committee granting permission to run Special

Basic Training Course vide its order dated 27th June, 2007, which is to the following effect:

Whereas N.R.C. in its 118th (1st sitting) meeting held on 16th-18th June, 2007, after thorough discussion and observation related documents,

noted the following:

As per proposal submitted by the Government, it has been informed that admission will be granted in this special programme of six months

duration only to those candidates who are already B.Ed.

The N.R.C. appreciated the proposal of U.P. Government decided to grant approval to conduct the special B.T.C. programme bridge course as

proposed by the State. It will be only one approval. Teachers are to be trained only in D.I.E.Ts. recognized N.R.C-N.C.T.E. The committee also

observed that as this programme will be conducted only in recognised D.I.E.Ts., so there is no need for any inspection.

Now, therefore, in exercise of the powers vested in Section 15(3)(b) of the N.C.T.E. Act, the Regional Commissioner hereby grants one time

approval for training of 60,000 candidates primary teachers who are already B.Ed. subject to the fulfilment of the following:

(a) The teachers are to be trained only in the list of recognised by N.R.C-N.C.T.E. ;

(b) The S.C.E.R.T. to submit the date of commencement of the course alongwith the list of the recognised where the proposed training is to be

conducted ;

(c) The quarterly progress report of the programme to be submitted to N.R.C-N.C.T.E. ; and

(d) The curriculum as finalized in the meeting between N.C.T.E. and the State Government of U.P. followed for the programme.

28. From the above quoted order of the N.C.T.E., it is clear that N.C.T.E. granted permission to run the Special Basic Training Course permitting

the candidates, who are already B.Ed. The issue, which is to be answered, is as to whether the conditions imposed by the N.C.T.E. for permitting

the candidates, who are already B.Ed., is to be interpreted as the candidates who are already B.Ed. from the institutions recognised under the

National Council for Teacher Education Act, 1993. In the regulations framed under the National Council for Teacher Education Act, 1993, the

B.Ed. degree and the B.Ed. course permitted by the N.C.T.E. have been used at several places. It is useful to look into the norms and standards

for M.Ed., which is in Appendix 1 of Regulation, 2005 as amended from time to time. The eligibility is provided in paragraph 3.2, which is as

follows:

3.2. Eligibility. - (a) Candidates who have obtained at least 55% marks in the B.Ed. degree are eligible for admission ;

(b) There shall be relaxation of marks/reservation of seats for S.C./S.T./O.B.C. and other categories as per the Rules of the Central

Government/State Government/U.T. Administration concerned.

29. Another course is M.Ed. Part Time. The norms and standards for Master of Education Programme Part Time is provided in Appendix-2, the

eligibility of which is in paragraph 3.2, which is quoted as below:

3.2. Eligibility. - Teachers and educational administrators and other functionaries in service mentioned in 1.0 (a), with at least 55% marks in B.Ed.

degree, are eligible for admission.

30. The words "B.Ed. degree" as have been used in the regulations at various places cannot mean to be B.Ed. degree granted by an institution

recognised by N.C.T.E. alone. The B.Ed. degree referred to in the regulations are B.Ed. degree by a competent University and also B.Ed. degree

granted by recognised institutions but to interpret that B.Ed. degree mean only the B.Ed. degree granted by an institution recognised under the

N.C.T.E. shall be adding words and meaning, which are not there. Thus, in the permission granted by N.C.T.E. on 27th June, 2007, the words

used "already B.Ed." cannot be read to be B.Ed. degree obtained from a recognised institution under the N.C.T.E. alone. No such limited

interpretation or scope is contemplated by N.C.T.E. while granting permission. The conditions as contained in the order dated 27th June, 2007 of

N.C.T.E. also lead to the same view that use of words ""already B.Ed."" cannot be restricted or read as B.Ed. from institution recognised by

N.C.T.E. This is clear from the condition "a" (as quoted above) which requires

training of teachers only in the institutions recognised by Northern

Regional Council-National Council for Teacher Education (N.R.C.-N.C.T.E.). In the same order at one place the N.C.T.E. has used the words

"the institutions recognised by N.R.C. and N.C.T.E. when the question of imparting training to those selected for Special Basic Training Course is

concerned whereas in the same order at another place words "already B.Ed." have been used, which is for purpose. The express use of words

"recognised by N.R.C.-N.C.T.E." in the order dated 27th June, 2007 insofar as imparting Special Basic Training Course training is concerned and

not using the same phrase when the qualification for selecting for Special Basic Training Course course is prescribed, i.e., already B.Ed., the

intention is more than clear that N.C.T.E. never intended to restrict the qualification B.Ed. by any such condition like one imposed by the State in

the Government order dated 10th July, 2007 as well as the advertisement.

31. The first question is regarding the issue as to whether the degree granted consequent to continuance of course by an institution running the said

teacher training course immediately before the enforcement of National Council for Teacher Education Act, 1993 shall be disqualified for Special

Basic Training Course since it has not the effect of grant of recognition by the N.C.T.E. as contemplated u/s 14(3). The words "recognised

institution" have been defined u/s 2(i), which means an institution recognised by Council u/s 14. The recognition u/s 14(3) is a subsequent act after

receipt of the application by an institution and after satisfaction regarding financial resources, accommodation, library, qualified staff, laboratory and

fulfilment of other conditions required for proper functioning of the institution. What is the effect of proviso to Section 14(1), which permits a

course already running by an institution prior to enforcement of National Council for Teacher Education Act, 1993 to be continued and the

consequent award of degree ? Permitting a course to be continued under proviso to Section 14(1) is also an integral part of National Council for

Teacher Education Act, 1993. When the National Council for Teacher Education Act, 1993 continues a course, which was being run prior to

enforcement of the said Act, if the application is filed within six months and till the same remain pending, the object is not to either discontinue such

course or to de-recognise such course. The degree awarded in such course to a

student who passed out between the intervening period till the application is disposed of, is in no manner disqualified from being treated to have passed B.Ed. In this context, it is also relevant to refer to Section 14(5), which is a provision providing that in the event recognition has been refused, the running course shall be allowed to continue till the end of the academic session and such course shall be discontinued after the end of the academic session. The object and purpose of Section 14(5) is also permitting continuance of running course till the end of the academic session. The express provision under proviso to Section 14(1) and Section 14(5) explicitly permits running course to continue. When under the policy and object of the National Council for Teacher Education Act, 1993, a course has been allowed to continue by statutory provision, it cannot be accepted that the degree awarded under such course is denuded of its value.

32. Learned Additional Advocate General has placed much reliance on Section 17(4) of National Council for Teacher Education Act, 1993 in this context and submitted that such course cannot be treated as a valid qualification for the purposes of appointment under the Central Government or the State Government or University or in school and college. Sub-section (4) of Section 17 refers to different contingencies ; firstly when recognition is withdrawn under Sub-section (1) with regard to which we are not concerned in the present case and secondly where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under the Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be valid. Present is not a case where institution failed or neglected to obtain recognition or permission under the National Council for Teacher Education Act, 1993. Present is a case where the institutions from which the appellants had passed B.Ed. made application u/s 14(1) and subsequently recognition has been granted by the N.C.T.E. The details of the date of application given by the institutions and date when the recognition was granted by the institutions are on the record and it is not disputed by the respondents that ultimately the recognition was granted to the institutions from where the appellants have passed their B.Ed.

Section 17(4) shall be attracted only when an institution, which was running a course, fails or neglects to obtain permission. The words "fails or neglects" used u/s 17(4) have to be read in context of other provisions of the Act. An institution, which makes an application u/s 14(1) cannot be said to have failed or neglected to obtain permission. Thus, Section 17(4) has no application in facts of the present case and the submission of the learned Additional Advocate General in that regard cannot be accepted.

33. Much reliance has been laid by the learned Additional Advocate General on the submission that the recognition by the N.C.T.E. having not been granted with retrospective effect to most of the institutions, the State cannot look behind the recognition. The submission is that N.C.T.E.

ought to have granted, recognition with retrospective effect and in case any issue is to be raised in that regard, it was open for the college or the

students to approach the N.C.T.E. for correcting their recognition. Section 14 of National Council for Teacher Education Act, 1993, as indicated

above, contains two part ; firstly, if application is made within the time prescribed the running course shall be allowed to continue and secondly, on

receipt of the application the Regional Committee after being satisfied with the criteria provided shall grant recognition. Both the above parts of the

scheme operate in different field and the scheme does not suggest that it is necessary that when the recognition is granted, it should be granted with

retrospective effect. It is, however, open for the N.C.T.E. to grant recognition even for a course, which was permitted to be continued but non-

grant of recognition with retrospective effect has no adverse effect on a running course, which was permitted to be continued under proviso to

Section 14(1) of National Council for Teacher Education Act, 1993. The provisions of Section 14 and the intent and object of the Parliament, as

indicated above, bind everyone including the State. It is not open for the State to contend that it will not look into the effect and consequence of

Section 14 unless N.C.T.E. expressly grants recognition retrospectively. The State including everyone is to obey the provisions of law and it

cannot shut its eyes to the express provisions contained in Section 14 of the National Council for Teacher Education Act. 1993.

34. Now comes the Division Bench judgment in Ekta Shukla's case (supra). As

noticed above, in that case writ petition was filed by

Sampurnanand Sanskrit Vishwavidyalaya, Varanasi. The learned single Judge in its judgments in Sampurnanand Sanskrit Vishwavidyalaya, Varanasi

v. State of U.P. and Ors. 2005 (1) ESC 2412 : 2005 (6) AWC 6123, laid down following in paragraph 23:

23. For the aforesaid reasons, I find that the course of "Shiksha Shastri" as equivalent to B.Ed. offered by Sampurnanand University, Varanasi from

the Faculty of Education of the University and its affiliated Colleges is valid qualification up to year 1995-96, before the provisions of N.C.T.E.

Act of 1993 became applicable and thereafter for academic session 1999-2000 when permission was granted by Northern Regional Committee,

Jaipur for running the course in the Faculty as well as affiliated Colleges. The course of study offered by the Faculty of Education of the University

is also valid for 1996-97, as it had applied under proviso to Section 14(1) of the N.C.T.E. Act, 1993 and no restrain order or refusal was

communicated to the University. The degrees, however, for the academic year 1996-97 pursued in the affiliated Colleges of the University and for

the years 1997-98 and 1998-99 both for the Faculty of Education by the University and the affiliated colleges is not valid as the University and

Colleges were not recognised for these academic sessions. These qualifications shall not be treated to be valid for the purposes of pursuing Special

B.T.C. Course, 2004 and public employment.

35. From the above, it is clear that learned single Judge has held the B.Ed. course of the year 1995-96 was valid since the provisions of the

National Council for Teacher Education Act, 1993 were not enforced by that time and thereafter for the year 1999-2000 when permission was

granted by the Regional Committee. With regard to the year 1996-97 the course was also held to be valid since the University had applied u/s

14(1) and there was no restraint order. However, with regard to the years 1996-97 and 1997-98 the degree was held to be not valid since the

college and University were not recognised for these years and a restrain order was passed by the University. The special appeal was filed by the

candidates, who were being adversely affected by the judgment. The Division Bench in Ekta Shukla's case (supra), noticed the issues raised

including the scheme of Section 14 of the National Council for Teacher Education

Act, 1993. The Division Bench held that once the application has been made u/s 14, deemed recognition will continue until the application is rejected. The relevant observations were made by the Division Bench in paragraphs 19, 20, 21 and 23 of the said judgment, which are quoted below:

19. Regarding the stop students orders passed by the Council for the academic years in question, we are of the clear view that these orders were passed without jurisdiction. Section 14 quoted above is a section inserted for the continuance of the running institutions. This continuance is a matter of course provided applications for recognition have been made to the body in question and those are not fatally defective. Once those applications have been made, they can be either finally accepted or finally rejected. The section itself contains the clause, so to speak by way of an interim order and that is, the deemed recognition will continue until, if unfit at all, the application is rejected.

20. In the face of this language of the section, the Council had no authority or jurisdiction to pass a contrary order stopping the students and withholding recognition. as it were from year to year. The only jurisdiction that they possess is to withhold recognition from this college or that College, but not from this College for this year or from that College for that year. The stop students orders being invalid, placement of any weight on those by Hon"ble the single Judge was, with respect, erroneous.

21. We are also of the opinion that the applications made even before August, 1997, i.e., in May. 1997 by the University on behalf of the affiliated Colleges was also substantially valid and should have been held to be so. The point however, need not be pressed at this time of the litigation because thereafter separate applications were made and also granted.

23. It is declared that the degrees for the academic years 1996-97, 1997-98, 1998-99 and indeed for all academic years pursued either in the Faculty of Education of the University or in any of the affiliated Colleges in question, is valid and that the qualifications granted by these bodies shall be treated to be valid for the purpose of pursuing Special B.T.C. Course, either of the year 2004 or any other year and for public employment.

We take note that the Colleges themselves are not parties before us, but the University is a party and nine (9) students have come in appeal. It is

not necessary, that the Colleges have to be made parties as the case has been argued by the contestants including the State, which is a very material respondent, who will be particularly bound by our orders.

36. The Division Bench in the above case, thus, laid down that when application u/s 14 of the National Council for Teacher Education Act, 1993 was submitted within time and it remained pending. Section 14 itself contains a clause by way of an interim order that the deemed recognition will continue until the recognition is rejected.

37. The learned Additional Advocate General has contended that Division Bench judgment in Ekta Shukla's case (supra), is per incurium and cannot be relied as a precedent. Learned Additional Advocate General has relied upon the judgment of the Apex Court in the case of Government of Andhra Pradesh and Anr. v. B. Satyanarayana Rao AIR 2000 SC 1729. to press his submission that judgment in Ekta Shukla's case (supra), is per incurium. The Apex Court in the above mentioned case laid down that rule of per incurium can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits to consider any statute while deciding that issue. Following was laid down in paragraph 8 of the said judgment:

8. Learned Counsel for the respondent attempted to convince us that the decision in the case of State of Andhra Pradesh and Another Vs. V.

Sadanandam and Others, (supra), has to be ignored on the principle of per incurium as certain relevant provisions of the Rules were not

considered in the said case, and in any case this case requires to be referred to a larger Bench of three Judges. Rule of per incurium can be applied

where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits

to consider any statute while deciding that issue. This is not the case here. In State of A.P. v. V. Sadanandam (supra), the controversy was exactly

the same as it is here and this Court after considering paragraph 5 of the Presidential Order of 1975 held that the Government has power to fill a

vacancy in a zone by transfer. We, therefore, find that rule of per incurium cannot be invoked in the present case. Moreover, a case cannot be

referred to a larger Bench on mere asking of a party. A decision by two Judges Bench has a binding effect on another co-ordinate Bench of two

Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law. We,

therefore, reject the arguments of learned Counsel for the respondents.

38. In the present case, no such binding precedent has been referred to which has been ignored by the Division Bench in Ekta Shukla's case

(supra), on the issues, which were before the Court, nor any statutory provision has been referred to, which has been omitted by the Division

Bench. The judgment in Ekta Shukla's case (supra), cannot be termed as per incurium and the submission in that regard is without any substance.

39. The learned Counsel for the respondents, in support of his submission that judgment in Ekta Shukla's case (supra), cannot be used as a

precedent has relied on the judgments of the Apex Court in the cases of Saroja Vs. Chinnusamy (Dead) by L.Rs and Another, State of Haryana

and Others Vs. M.P. Mohla, Bharat Singh and Others Vs. State of Haryana and Others, Ramrao and Others Vs. All India Backward Class Bank

Employees Welfare Association and Others, and Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, . The

judgment in Saroja's case (supra) was a case where the Apex Court considered the principles of res judicata, which was raised in the appeal. It

was held that ex parte decree passed in the former suit during pendency of the subsequent suit of the appellant operates as res judicata in the

subsequent suit. No such issue is involved in the present said case pertaining to res judicata, hence the said case does not help the respondents.

The judgment in State of Haryana's case (supra) was a case where the Apex Court held that new question cannot be raised in review petition

under Article 226. The Apex Court further held that judgment of the Court must be read in its entirety and on the touchstone of the pleadings of the

parties. The Apex Court further held that if a specific question, which was not raised and has not been decided by the High Court, the same would

not debar a party from agitating at any appropriate stage subject to applicability of principles of res judicata or constructive res judicata. The

proposition laid down by the Apex Court in the said case also in no manner helps the respondents. In the judgment of Bharat Singh's case (supra),

the Apex Court held that a party raising a point must plead not only the facts but also the evidence in proof of such facts in a writ petition. The said

case also does not help the respondents. The judgment in Ramrao's case (supra) was a case pertaining to promotion granted in Regional Rural Bank. It was laid down that High Court could not have considered grant of a relief wherefor no factual foundation existed or laid in the pleadings of the parties. The judgments of Ekta Shukla's case, both by learned single Judge and the Division Bench, were delivered on the basis of pleadings in the writ petition, which was referred to and relied in the judgment. The issues, which were specifically raised in Ekta Shukla's case and decided cannot lose its value of precedent since sufficient pleadings were noticed in that judgment. Again the judgment in the case of Director of Settlement case (supra) was a case where the Apex Court laid down that the judgment of the High Court was a conscious decision on application of mind to the provisions of the Act and could not have been held to be a judgment on concession. We fail to see how the above cases have any application in facts of the present case.

40. At this juncture, it is useful to refer the judgment of the Apex Court in Yogesh Kumar's case (supra), with regard to which it has been contended that the said judgment has not been looked into in Ekta Shukla's case. In Yogesh Kumar's case (supra) the appeal was filed by the candidates who held the B.Ed. degree, seeking recruitment in the primary schools of the Municipal Corporation, New Delhi. The writ petition filed by the candidates for appointment in primary institutions was dismissed. It was contended by the B.Ed. candidates that earlier B.Ed. qualification was included in the prescribed qualification but impugned circular was issued where qualification was mentioned only to two years teacher training certificate or one year teacher training certificate. The High Court held that B.Ed. qualification is a qualification, which equipped them for teaching higher classes but specialised training given to a teacher for teaching small children at primary level cannot be compared with training given for awarding B.Ed. degree. Upholding the recruitment notice, which excluded the B.Ed. candidate, the Apex Court laid down following in paragraph 8 of the judgment:

8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules

allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of T.T.C. candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of T.T.C. and B.Ed. are available yet they chose to restrict entry for appointment only to T.T.C. pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals (C.A. No. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than T.T.C. because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from T.T.C. category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.

41. There cannot be any dispute to the proposition that recruitment to public service should be held strictly in accordance with the terms of advertisement. In the present case, there is no dispute that only B.Ed. candidates are eligible to apply for Special Basic Training Course. The question is as to whether only B.Ed. candidates who have obtained degree after recognition or the candidates who have obtained degree when the application of the institution for recognition was pending or those who obtained

B.Ed. degree prior to enforcement of National Council for Teacher

Education Act, 1993 are also eligible. The issue in the present case was not before the Apex Court nor any proposition to that effect has been laid

down in Yogesh Kumar's case (supra). The observations by the Apex Court in paragraph 8 of the said judgment were made in the background

that the B.Ed. candidates, who have filed writ petition, were not eligible since B.Ed. was not prescribed, rather the qualification prescribed was

two years teacher training certificate for High School and one year teacher training certificate for Intermediate. Further the issue in the present case

is that if the degree obtained by a student when running course has been permitted to continue under National Council for Teacher Education Act,

1993 itself and whether the said continuance is not implied recognition of the course under the said Act. Thus, judgment in Yogesh Kumar's case

(supra), was not on the issues, which have arisen in the present case.

42. Another judgment relied by learned Counsel for the respondents is in the case of Dilip Kumar Ghosh and Others Vs. Chairman and Others, In

the said case the appeal was filed by the candidates, who were holders of B.Ed. degree and had applied for the post of primary school teacher in

response to the advertisement for filling up the post of primary school teacher. The candidates who possessed qualification of J.B.T./P.T.T.C.,

which were Primary School Training Certificate, were awarded marks against training qualification whereas the appellants were denied awarding of

marks against the qualification of B.Ed. since they were not holders of Junior Basic Training/Primary Teacher Training Certificate (J.B.T./P.T.T.C).

The Apex Court after taking into consideration the relevant rules governing the recruitment, held that candidates who possessed B.Ed. were not

entitled for any credit whereas the candidates who possessed J.B.T./P.T.T.C. were entitled for extra credit. The appeal filed by the B.Ed.

candidates was dismissed. Following was laid down in paragraph 12 of the said judgment:

12. Rule 2(n) defines trained candidate. The term "trained candidate" if read and understood in the context of appointment of teachers in the

primary school, would mean a candidate who possessed J.B.T./P.T.T.C. Rule 6 (d) as quoted above expressly put a prohibition that no extra

credit should be given to higher academic qualification for the purpose of

selection of a teacher. A conjoint reading of Rule 2 (n) and Rule 6 (d)

would make abundantly clear that for appointment of a teacher in primary school only the candidates who possessed the academic qualification

J.B.T./ P.T.T.C., prescribed under the rules shall be considered and the candidates like the appellants who possessed higher academic

qualification like B.A./B.Ed. shall not be given any credit.

43. The issue raised in the said judgment was entirely different and had no bearing in the present case. The said decision also does not help the

respondents in any manner.

44. The submission of the learned Additional Advocate General that judgment in Ekta Shukla's case (supra), cannot be treated to be a precedent

also does not merit acceptance. The issue with regard to validity of the B.Ed. courses in different years granted by the University and acceptability

of the said course for Special Basic Training Course was in issue in the said case and the said issue was discussed and decided. The submission

that the writ petition was only for declaring equivalence of Shiksha Shastri Pariksha to the B.Ed., hence the decision given was beyond the

pleadings is also not correct on the facts and pleadings of the case. In the writ petition apart from the relief that Shiksha Shashtri be also recognised

as B.Ed., the relief that the degree awarded to the petitioners be treated eligible for Special Basic Training Course was very much there.

45. The submission that question of equivalence cannot be granted by the Court needs to be considered. Reliance has been placed upon the

judgment of the Apex Court in the case of State of Rajasthan and Others Vs. Lata Arun, Following was laid down by the Apex Court in

paragraph 12 of the said judgment:

12. From the ratio of the decision noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or

promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational

qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

46. In Ekta Shukla's case (supra), the Court did not enter into the question of equivalence due to the fact that State Government has already

issued Government order dated 12.1.1973 treating the degree of Shiksha Shastri

equivalent to B.Ed. Thus. the principle laid down in State of Rajasthan's case (supra) were not attracted.

47. Two more Judgments have been relied where the view has been taken that the only candidates, who have obtained the degree after recognition

of the institution under the National Council for Teacher Education Act, 1993 are eligible for Special Basic Training Course, i.e., Smt. Sunita

Upadhyaya's case (supra) and Sanjai Kumar's case (supra). In Sanjay Kumar's case (supra) the recognition application was made on

22.11.1997, which was rejected on 8th October, 1999. The course of the year 1998-99 was pursued and reliance was placed on Section 14 of

the National Council for Teacher Education Act, 1993. In paragraph 3 of the said judgment the Division Bench held that when the recognition is

rejected it will relate retrospectively. Further referring to the judgment in Ekta Shukla's case (supra), it was observed that in the said case the

application was not rejected. Further in paragraph 3 of the said judgment it was observed that in the Division Bench in Ekta Shukla's case (supra),

has not considered the Judgment of the Apex Court in Yogesh Kumar's case (supra). It is useful to quote paragraphs 3 and 4 of judgment in

Sanjai Kumar's case (supra), which are as follows:

3. In our view, such an interpretation cannot be given. The moment recognition application is rejected, it will relate retrospectively. That apart, the

other submission of Mr. Khare is that in the case of Ekta Shukla v. State of U.P. and Ors. 2006 (1) ESC 531 (All) (DB). the Division Bench has

taken a view relying upon Section 14 of the N.C.T.E. Act, that during such period the certificate given will have to be considered as valid, for the

Special B.T.C. Course. It is another matter that in that judgment, the stipulation was different in the sense the recognition application of the

institution was not rejected. We would like to refer to the fact that this judgment of the Division Bench has not considered the judgment of the

Apex Court in Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, wherein the Apex Court in Para 8, observed that "it is

open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made".

4. In the instant case, the advertisement is very clear and it requires the persons concerned to have the Diploma or B.P. Ed. or equivalent degree

or diploma from an institution which is recognised by N.C.T.E. the Division Bench judgment in Ekta Shukla (supra), states that the degree or diploma will be valid. There is no quarrel with that proposition, but it will not be valid for the B.T.C. Course concerned, for the reason that under the advertisement, there is a specific stipulation and that stipulation is not satisfied by the candidates. The candidates cannot claim the benefit of that degree or diploma for this particular course. The inference which flows from the judgment of Yogesh Kumar (supra) and which we have drawn concerning the advertisement, is not reflected in the judgment of the Division Bench in Ekta Shukla (supra). The Division Bench judgment, therefore, had not considered the question from the approach that is to be taken with respect to the advertisement concerned. The degree or diploma will be valid for other purposes, but not for the concerned admission to the B.T.C. Course, where there is a specific stipulation that the persons concerned must have concerned degree or diploma from the N.C.T.E. Recognised institution.

48. In so far as observation in paragraph 3 of the said judgment that when the application is rejected, it will relate retrospectively is concerned, suffice it to say that Section 14(5) of the National Council for Teacher Education Act, 1993, provides to the contrary. Section 14(5) indicates that even after recognition is refused, the course shall be discontinued at the end of academic session. Thus, the Division Bench in Sanjai Kumar's case (supra) did not notice Section 14(5). Further the Ekta Shukla's case (supra) was sought to be distinguished on the ground that in the said case the application for recognition was subsequently allowed. The judgment of the Yogesh Kumar's case (supra) on which the Division Bench much relied was clearly distinguishable since in Ekta Shukla's case (supra), interpretation of Section 14(1) proviso was involved whereas such issue was not there in Yogesh Kumar's case (supra). In Yogesh Kumar's case the Apex Court reiterated the proposition that recruitment has to be made in accordance with the rules and advertisement, which proposition cannot be disputed. Furthermore in the writ petition giving rise to the appeal the Government order dated 10th July, 2007 as well as the advertisement dated 18th July, 2008 in so far as they exclude those candidates, who have passed their degree during the continuance of course u/s 14(1) proviso has also been challenged, which has been considered and decided by the

learned single Judge. Before the Division Bench in Sanjai Kumar's case (supra) challenge to the Government order and the advertisement was not

there nor there was any occasion to examine the issues, which are up for consideration in this case.

49. The judgment in Sunita Upadhyaya's case (supra), is of the same date as of Sanjai Kumar's case and the said judgment again relies on yogesh

Kumar's case (supra), which has already been discussed as above. From the aforesaid observations, it is clear that the interpretation of Section

14(1) proviso as put by Division Bench in Ekta Shukla's case (supra) does not suffer from any error whereas in Sanjai Kumar's case Section

14(1) proviso and Section 14(5) of the National Council for Teacher Education Act, 1993 have not been specifically dealt with and the view taken

by the Division Bench in Sanjai Kumar's case (supra) and Sunita Upadhyaya's case (supra) cannot be preferred as compared to the view taken

by the Division Bench in Ekta Shukla's case (supra).

50. From the above discussions, it is clear that the candidates, who has obtained degree during the period when the application for recognition was

filed and pending cannot be said to be ineligible for applying Special Basic Training Course, 2007. The continuance of the said courses have been

expressly recognised in National Council for Teacher Education Act, 1993 itself. The different degrees including B.Ed. were being granted by the

respective Universities by virtue of Section 22 of the University Grants Commission Act. The said power to grant and confer degree by University

despite enforcement of National Council for Teacher Education Act, 1993 was continued subject to fulfilment of the conditions under proviso to

Section 14(1). Such candidates cannot be excluded from consideration for Special Basic Training Course, 2007. Moreso, as noticed above, the

eligibility criteria for the candidates applying for Special Basic Training Course was "already B.Ed." and as observed above, the words "already

B.Ed." used by N.C.T.E. while granting permission for running the course cannot be read as the words "already B.Ed. from recognised institutions

under the N.C.T.E." As noticed above, when the field is covered by Parliamentary enactment under Entry 66 of List I, the State can exercise

neither any legislative power on the subject, which are already covered under Parliamentary enactment nor can exercise such power by any

executive action.

51. The learned Counsel for the respondents has placed reliance on certain judgments of the Apex Court where the Apex Court laid emphasis on

the importance of teachers' training. The first judgment is in the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of

Tamil Nadu and others, etc. etc., . The Apex Court in the said judgment referring to the other judgments of the Apex Court in the case of N.M.

Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, and Andhra Kesari Education Society v. Director of School Education

AIR 1989 SC 183, laid down following in paragraph 9 of the said judgment:

9. The High Court rightly emphasised the need for maintaining very high standards of Education, Sports, administration and maintenance of the

Teachers Training Institutes. These Institutions are established with the avowed object of training teachers and educationists who have to shoulder

the responsibility of moulding the nation.

52. There cannot be any dispute to the proposition as laid down by the Apex Court in the above mentioned cases. The importance of teacher

training is of great significance and usefulness for imparting education to children of tender age, however, we fail to see how the proposition as laid

down in the above cases help the respondents in the present case.

53. Much emphasis has been laid by the learned Counsel for the State-respondents that the Court cannot interfere in the policy decisions of the

State. Present is not a case of interfering with any policy decision of the State. After the eligibility for admission to Special Basic Training Course is

required to be provided for by N.C.T.E. u/s 15, the Special Basic Training Course being a special course for which there being no regulation

framed by the N.C.T.E. till date, the conditions under which the permission has been granted, are the conditions imposed in exercise of statutory

power u/s 15 of the National Council for Teacher Education Act, 1993 and cannot be diluted by the State in any manner.

54. Learned Counsel for the respondents in support of his submission that the scope of judicial review with regard to policy decision of the State is

too limited, placed reliance on the judgments of the Apex Court in the cases of Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, ; State of

Himachal Pradesh v. Padam Devi 2002 (2) SCC 510 ; Krishnan Kakkanth Vs.

Government of Kerala and others, State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, State of Orissa and Others Vs. Gopinath Dash and Others, Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, and English Medium Students Parents Association Vs. State of Karnataka and others, . The Apex Court in Ekta Shakti Foundation's case (supra), examined the scope of judicial review in context of policy decision of the State. In the said case legality of certain terms in inviting offers for implementation of the scheme called the "Detailed Scheme for Capacity Building of Self Help Groups to Prepare and Supply Supplementary Nutrition under the Integrated Child Development Service Programme, came for consideration. In the above context the Apex Court laid down following in paragraphs 10, 11 and 12 of the said judgment:

10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislative or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Asif Hamid v. State of J. & K., Shri Sitaram Sugar Co. v. Union of India). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

11. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

12. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from

different angles. In matter of policy decision or exercise of discretion by the Government so long as the infringement of fundamental right is not

shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive

in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of

the Government.

55. In other cases, as relied by learned Counsel for the respondents and noticed above, the similar propositions have been laid down. There

cannot be any dispute to the propositions laid down by the Apex Court that scope of judicial review in a policy decision of the State is too limited.

The scope of judicial review is confined to the question whether the decision taken by the State Government is against any statutory provision or is

violative of the fundamental rights of the citizen or is opposed to the provisions of the Constitution. The present is a case where the criteria for

admission in Special Basic Training Course has been laid down by N.C.T.E. vide its order dated 27th June, 2007 issued in exercise of statutory

power u/s 15 of National Council for Teacher Education Act, 1993. The National Council for Teacher Education Act, 1993 is an Act enacted by

Parliament in exercise of its legislative power under Entry 66 of List I. The admission to Special Basic Training Course, eligibility for such

admission, i.e., the candidates who are already B.Ed. has been laid down by N.C.T.E. The field being occupied, there is no scope of laying down

any policy decision by the State in context of eligibility for admission to Special Basic Training Course. The Government order dated 10th July,

2007 and the advertisement dated 18th July, 2007, in fact, have whittled down and restricted the eligibility as laid down by N.C.T.E. As noticed

above, the Apex Court in Constitution Bench judgment in the case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra

Mahavidyalaya and Others, has held that field is covered by National Council for Teacher Education Act, 1993 and the State has no scope of

laying down any policy. The Apex Court in the case of Jaya Gokul Educational Trust v. Commission and Secretary to Government High Education

Department Thiruvananthapuram and Anr. AIR 2000 SC 1614, has made relevant observations in that regard in paragraph 27 of the judgment,

which has already been quoted above.

56. Thus, the present is not a case where the admission to Special Basic Training Course has to be done by State of U.P. according to its policy

decision. The admission is to be regulated under the terms and conditions of N.C.T.E. as per its order dated 27th June, 2007 issued u/s 15 of

National Council for Teacher Education Act, 1993. In Bharati Vidyapeeth's case (supra), where the Apex Court was examining the claim of a

deemed University to adopt its own procedure for admission as against the admission procedure prescribed by the State, held that admission

procedure to a deemed University is fully occupied by Entry 66 of List I and the State cannot exercise any power over admission procedure.

Paragraphs 18 and 19 of the said judgment, which are relevant, have already been quoted above. Thus, the submission of the learned Counsel for

the respondent that restricting the eligibility to the candidates, who have passed B.Ed. only from recognised institutions by N.C.T.E. is a policy

decision of the State cannot be accepted.

57. Another limb of submission of learned Counsel for the respondent is that the Court cannot issue any mandamus against statute. Reliance has

been placed upon the Apex Court judgment in the case of Union of India v. Kirloskar Pneumatic Co. (1996) 4 SCC 453. The present is not a

case, where the Court is considering issue of mandamus against any provision of statute. The proposition as laid down by the Apex Court in the

above case that no mandamus can be issued against the statute is well-settled whereas the present is a case where the eligibility of candidates for

Special Basic Training Course has to be found out in accordance with the statutory order issued by the N.C.T.E. u/s 15 of the National Council

for Teacher Education Act, 1993. The Court is called upon to consider the eligibility laid down by the N.C.T.E. and direct the State to act in

accordance with the said order.

58. In view of the foregoing discussions, the question No. 1 is answered as follows:

The candidates, who have B.Ed. degree obtained from an institution or University during the period when the application of the institution or the

University for grant of recognition u/s 14 of National Council for Teacher Education Act, 1993 was pending, are eligible for Special Basic Training

Course, 2007 as laid down by the Division Bench in Ekta Shukla's case (supra).

59. The Division Bench in Ekta Shukla's case (supra), in paragraph 19, after considering Section 14(1) of National Council for Teacher Education

Act, 1993 laid down that Section 14(1) itself contains a clause so as to speak by way of an interim order the deemed recognition until the

application is rejected. The recognition of an institution is contemplated u/s 14(3), which is an act of Regional Committee after considering various

requirements mentioned therein. Section 14(1) proviso provides for continuance of a course by an institution, which was being run immediately

before the appointed day. The proviso to Section 14(1), which provides for continuance of course although cannot be treated to be deemed

recognition as contemplated u/s 14(3) but the scheme u/s 14(1) recognises the continuance of course by the Council itself meaning thereby that

degree awarded during intervening period after enforcement of the National Council for Teacher Education Act, 1993 has been expressly

accepted as valid, which shall be with all its natural effects and consequence.

60. In view of the foregoing discussions, the question No. 2 is answered as follows:

The proviso to Section 14(1) recognises continuance of the course, which was being run immediately before the appointed day provided

application is submitted within the continuance of such course is deemed recognition of such course and degree awarded therein by express

provisions of proviso to Section 14(1) of National Council for Teacher Education Act, 1993.

Question No. 3:

(III) Whether the exclusion of those candidates from field of eligibility for Special B.T.C. Course, 2007 who have obtained B.Ed. degree prior to

enforcement of 1993 Act or after the enforcement of 1993 Act during the period when the application of the Institution or the University was

pending consideration, is arbitrary and unreasonable violative of Articles 14 and 16 of the Constitution of India?

61. The question No. 3 has two parts. Two categories of candidates are included therein ; firstly, the candidates who have obtained B.Ed. degree

prior to enforcement of National Council for Teacher Education Act, 1993 and secondly, the candidates, who have obtained degree after the

enforcement of National Council for Teacher Education Act, 1993 during the period when the application of their institution or the University for recognition was pending consideration. The question is as to whether exclusion of the aforesaid two categories of candidates from the field of eligibility for the Special Basic Training Course, 2007 is arbitrary and unreasonable violating Articles 14 and 16 of the Constitution of India. Taking second part first, i.e., exclusion of the candidates who have obtained the degree when the application of the institution for the University was pending, as discussed above while answering question Nos. 1 and 2, it has been held that the degree obtained during the aforesaid period is valid and running of the course having been expressly recognised by the National Council for Teacher Education Act, 1993 itself by Section 14(1) proviso, hence the exclusion of such candidates cannot be justified.

62. Learned Additional Advocate General elaborating his submission in this context, has tried to justify the exclusion on the ground that imposition of such condition by the State Government was for the object to select better trained candidates. The question is, thus, as to whether the candidates, who were granted degree during the period when the application for recognition was pending, as noticed above, and the candidates who have obtained degree prior to enforcement of National Council for Teacher Education Act, 1993 are inferior only due to the reason that they have obtained the degree at the time when the institution was not recognised under the National Council for Teacher Education Act, 1993. As noticed above while answering question No. 1, the N.C.T.E. in this permission granted u/s 15 dated 27th June, 2007 has confined the eligibility to the candidates, who were already B.Ed. The question is as to whether when eligibility criteria has been laid down, any sub classification or micro classification can be done by the State and whether there is any intelligible differentia with the object sought to be achieved. At this juncture, it is relevant to notice two cases of the Apex Court where the power of the State to provide for any stricter and higher qualification while providing for eligibility for admission to a course has been laid down, i.e., in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and in the case of State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, In Dr. Preeti Srivastava's case (supra), the norms for

admission were laid down by a Parliamentary Act in exercise of legislative power under Entry 66 of List I. The State of Madhya Pradesh laid

down a higher educational course for admission in addition to the criteria already laid down under the Parliamentary Act. The Apex Court laid

down that State Government can prescribe qualification in addition to those prescribed under the Parliamentary Act. Following was laid down in

paragraph 36 of the said judgment:

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission

are covered only by Entry 25 of List III. Norms of admission can be a direct impact on the standards of education. Of course, there can be rules

for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under

Entry 66 of List I. For example, a State may, for admission to the postgraduate medical course, lay down qualifications in addition to those

prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But

any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education.

63. Again in State of Tamilnadu's case (supra), qualifications were prescribed by All India Council for Technical Education in accordance with the

provisions of Technical Education Act. The State Government prescribed additional qualification as minimum eligible marks for different category

of candidates. Such prescription was upheld by the Apex Court and following was laid down in paragraph 9 of the said judgment:

9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter

of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the

standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union

of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards

made by the State Government is in any way adverse to, or lower than, the standards fixed by A.I.C.T.E. It is no doubt true that A.I.C.T.E.

prescribed two modes of admission-one is merely dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by A.I.C.T.E., can it be said that it is in any manner adverse to the standards fixed by A.I.C.T.E. or reduces the standard fixed by it ? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by A.I.C.T.E. would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by A.I.C.T.E. to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by A.I.C.T.E. are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by A.I.C.T.E. is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in Dr. Preeti Srivastava case. It is no doubt true, as notice by this Court in Adhiyaman case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of A.I.C.T.E. in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including Dr. Preeti Srivastava case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

64. From the law declared by the Apex Court, as noticed above, there cannot be any dispute that State can prescribe any higher or stricter

qualification in addition to those prescribed under the National Council for Teacher Education Act, 1993. Here for admission in Special Basic

Training Course all those candidates who are already B.Ed. have been treated to be eligible. Whether the candidates who have obtained B.Ed.

degree after recognition of the institution under the National Council for Teacher Education Act, 1993 possess higher or stricter qualification to

those who passed the B.Ed. before the enforcement of the Act or during the period when the application submitted by the institution u/s 14(1) was

pending consideration ? A degree, which was being granted earlier by respective Universities in exercise of power u/s 22 of the University Grants

Commission Act, 1956 cannot be said to be anything inferior than the degree of B.Ed. now awarded from the institutions after their recognition u/s

14(3) of National Council for Teacher Education Act, 1993 and the same cannot be said to be higher or stricter qualification. Thus, the reason

sought to be advanced by the State in support of confining the B.Ed. only from the institutes or the Universities, which have obtained recognition

under National Council for Teacher Education Act, 1993 cannot be said to be prescription of any additional, stricter or higher qualification nor the

said prescription can be saved on the proposition as laid down in Dr. Preeti Srivastava's case (supra) or in State of Tamilnadu's case (supra).

65. From the aforesaid observations, the candidates, who have passed B.Ed. either before enforcement of National Council for Teacher Education

Act, 1993 or during pendency of application for recognition u/s 14(1), have to be treated to be eligible due to reason that the N.C.T.E. in its

permission to run the course dated 27th June, 2007 having permitted those candidates who are already B.Ed., the same cannot be read to mean

that the candidates who have already B.Ed. from the institution recognised by the N.C.T.E., the eligibility only to the candidates, who have passed

B.Ed. from recognised institution is not in conformity with the permission granted by the University.

66. Now remains first part of Question No. 3, i.e., whether the candidates, who have obtained B.Ed. degree prior to enforcement of National

Council for Teacher Education Act, 1993, can be excluded from eligibility criteria of Special Basic Training Course, 2007 ? In the foregoing

discussions, it has been found that N.C.T.E. required imparting of Special Basic Training Course, 2007 to the candidates, who are already B.Ed.

and the words ""already B.Ed."" could not have been given restricted meaning as has been done by the State in its Government order dated 10th

July, 2007 and the advertisement dated 18th July, 2007. The issue is to be considered on another anvil. Whether the State is justified in classifying

only one category of B.Ed., i.e., B.Ed. obtained by the candidates from institutions recognised under the National Council for Teacher Education

Act, 1993 as eligible for Special Basic Training Course, 2007 and whether such classification is a valid classification on touchstone of Article 14 of

the Constitution of India.

67. The object of imparting Special Basic Training Course as is decipherable from pleadings of the parties is to fill up more than 60,000 vacant

posts of Assistant Teacher in Primary and Junior High School run by U.P. Basic Shiksha Parishad. The sixty thousand posts of teachers are lying

vacant due to non-availability of the candidates possessing primary teacher training course, i.e., B.T.C. or equivalent thereto. Under Rule 8 of the

U.P. Basic Education (Teachers) Service Rules, 1981 the training qualification consisting of basic teachers certificate. Hindustani teacher's

certificate, junior teacher's certificate, certificate of teaching or any other training course recognised by the Government as essential qualification.

The candidates having B.Ed. are not eligible for appointment as Assistant Teacher. Thus, the State sent proposal to the N.C.T.E. seeking

permission to permit the candidates who are B.Ed. to be imparted Special Basic Training Course to make them eligible for appointment as

Assistant Teacher. The object thus is to impart basic training teacher's course to the candidates who are already B.Ed. Whether imparting of such

basic teacher's training can be confined only to those candidates, who have obtained their B.Ed. from the institutions recognised by N.C.T.E. is a

question, which is to be answered. Article 14 of the Constitution of India while forbids class legislation, it does not forbid reasonable classification

for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the

classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the

group ; and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The Apex Court in

Budhan Choudhry and Others Vs. The State of Bihar, after laying down the above test of permissive classification held that the classification must

be founded on different basis, such as geographical or according to object or occupation or like but it is necessary that there must be a nexus

between the basis of classification and the object under consideration.

68. The doctrine of classification is a subsidiary rule to give effect to the doctrine of equality but it is relevant to note the following caution given by

the Apex Court in *LIC of India and Another Vs. Consumer Education and Research center and Others*, which are as under:

30. ...The doctrine of classification is only subsidiary rule evolved by the Courts to give practical content to the doctrine of equality, overemphasis

on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the

profound potency of the glorious content of equality enshrined in Article 14 of the Constitution....

69. The scheme of the National Council for Teacher Education Act, 1993, does not indicate that it differentiate or put the B.Ed. obtained from the

institutions recognised by the University on any higher pedestal from those, which were obtained from the recognised Universities earlier to

enforcement of National Council for Teacher Education Act, 1993 or during the period when their applications were pending. Applying the test of

classification as laid down by the Apex Court, as noted above, in the present case there does not appear any nexus with the object sought to be

achieved by differentiating B.Ed. from one obtained by an institution recognised by the N.C.T.E. and other, which were obtained prior to

enforcement of the National Council for Teacher Education Act, 1993 and those, which were obtained during pendency of the application

submitted by the institution for recognition under the National Council for Teacher Education Act, 1993. In case the classification made by the

State, as noted above, is accepted large category of candidates who may be otherwise eligible as per their age and qualification according to the

advertisement, will be deprived for consideration and in consequence for employment as Assistant Teacher. No reason has come forward from the

respondents, which may justify the exclusion of such category of candidates from imparting Special Basic Training Course. A look into the

advertisement dated 18th July, 2007 (Annexure-1 to the Special Appeal No. 858 of 2008) indicates that prescribed age on 1.7.2004 for general

category candidates is not to be more than 35 years for S.C., S.T., O.B.C., dependent of freedom fighters relaxation of five years and for ex-

servicemen relaxation of 3 years has been given. Thus, there may be large number of candidates who are less than 35 years of age on 1st July,

2004 although they had obtained their B.Ed. prior to 1st July, 1995 when the National Council for Teacher Education Act, 1993 was enforced.

Thus, accepting the classification as valid and ignoring the candidates excepts one who had obtained B.Ed. from an institution recognised under the

National Council for Teacher Education Act, 1993 will be without valid reason. Thus, the classification as introduced by the State Government in

the Government order dated 10th July, 2007 and the advertisement dated 18th July, 2007 is clearly hit by Article 14 of the Constitution of India.

70. In *Jaila Singh and Anr. v. State of Rajasthan* AIR 1975 SC 1436, the Apex Court considered the provisions of rules framed by State of

Rajasthan, which contained a classification with regard to Pre-1955 allottees and Post-1955 allottees. The classification was the basis for further

allotment under the Rajasthan Colonisation (Rajasthan Canal Project Pre-1995 Temporary Tenants Government Land Allotment) Conditions

(1971). The Apex Court held that there was no nexus between the Pre-1995 Conditions and Post-1955 Rules with the object of further allotment.

The classification between Pre-1955 allottees and Post-1955 allottees was held to be unjustified and discriminatory.

71. In the present case also the degrees obtained prior to enforcement of National Council for Teacher Education Act, 1993 with those obtained

subsequent to recognition by N.C.T.E. have been classified for purposes of eligibility to apply in Special Basic Training Course, 2007. No nexus

with the object sought to be achieved in imparting Special Basic Training Course, 2007 to the B.Ed. candidates with the classification has been

made out. The classification must have a nexus with the object sought to be achieved.

72. From the aforesaid discussions, the restriction as imposed in the Government order dated 10th July, 2007 and the advertisement dated 18th

July, 2007 restricting the B.Ed. degrees obtained from the institutions recognised under the National Council for Teacher Education Act, 1993

cannot be sustained more so when the N.C.T.E. under its order dated 27th June, 2007 granted u/s 15 of the National Council for Teacher

Education Act, 1993 did not provide for any such restriction and made the candidates, who have already B.Ed. as eligible for Special Basic

Training Course, 2007. The Special Basic Training Course, 2007 has to be imparted in accordance with the National Council for Teacher

Education Act, 1993 as per conditions laid down u/s 15 of the said Act by order dated 27th June, 2007, which has statutory force. Any conflict

between the conditions as laid down granting permission u/s 15 of the Act and the Government order issued by the State of U.P., and the

advertisement, the later has to give way to the former. In Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others,

there arose conflict between the conditions as requirement of the age between the advertisement as well as the U.P. Judicial Service Rules, 2001.

The Apex Court held in the said case that error if any in the advertisement cannot override the rules. Following was laid down in paragraph 21 of

the said judgment by the Apex Court:

21. The present controversy has arisen as the advertisement issued by P.S.C. stated that the candidates who were within the age on 1.7.2001 and

1.7.2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but

the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules

and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible

under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by P.S.C. when it issued the advertisement was

erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the rules.

Taking overall circumstances in to consideration the candidates having already B.Ed. as provided by the N.C.T.E. in its order dated 27th June,

2007, have to be treated to be eligible and the restriction as contained in the Government order dated 10th July, 2007 and the advertisement dated

18th July, 2007 limiting the eligibility only to the candidates, who have passed B.Ed. from the recognised institutions under the National Council for

Teacher Education Act, 1993 cannot be justified. The candidates of all the three categories as mentioned above, who have passed the B.Ed. and

have valid degree, are eligible to participate in Special Basic Training Course, 2007.

73. In view of the foregoing discussions, the question No. 3 is answered as follows:

The exclusion of the candidates from the field of eligibility for Special Basic Training Course, 2007, who have obtained B.Ed. degree prior to

enforcement of National Council for Teacher Education Act, 1993 or after the enforcement of National Council for Teacher Education Act, 1993

during the period when the application of the institution or the University was pending consideration is arbitrary, unreasonable and violative of

Articles 14 and 16 of the Constitution of India. The above two categories of candidates are also eligible to participate in Special Basic Training

Course, 2007.

74. Let our opinion be placed before the Division Bench for deciding the special appeals.