
(2000) 03 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 535 of 2000 and Batch

C. Shiva Kumari

APPELLANT

Vs

Director, Vacation Courses in Education, Institute of
Advanced Study in Education, Osmania University, Hyd.

RESPONDENT

Date of Decision : 22-03-2000

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of
Capitation Fee) Act, 1983 — Section 3
Constitution of India, 1950 — Article 14, 21, 246

Citation : AIR 2000 AP 384 : (2000) 3 ALD 193

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

Bench : Single Bench

**Advocate : Mr. K. Satyanarayana and Mr. C. Rajasekhar Reddy, for the
Appellant; Mr. K. Ramakanth Reddy, SC for OU and Government Pleader for
Education, for the Respondent**

Judgement

1. These four writ petitions can conveniently be disposed of by a common order as common question arises for consideration.

2. The respondent, Director, Vacation courses in Education, Institute of Advanced study in Education, Osmania University, Hyderabad, issued a notification in November, 1999 inviting applications for appearing in the entrance test for B.Ed., Vacation course, known as B.Ed., VCE-1999-2000, from eligible candidates who are in service and completed two years of regular service as full time teachers. The entrance test was to be held on 23-1-2000. The petitioners in WP Nos.538. 530 and 565 are graduates in arts having less than 45% average marks in the degree examination. They are working as regular teachers in various private aided/un-aided schools. The petitioner in WP No.643 of 2000 is also a graduate working as regular teacher and she has 44.85%. All of them are aggrieved by the Notification issued by the respondent insofar as the same makes the BA/B.Sc./B.Com/B.Sc., (HS) graduates with 45% aggregate marks in Part II (optional subjects) only eligible for appearing in the entrance test. The relevant

portion of the notification reads as under:

"2. Candidates should have passed B.A., B.Sc.,(HS)/B.Com., of this University or any other university recognised as equivalent at the time of submitting the application form with 45% marks and above in Part II optional subjects. However, SC/ST candidates are eligible with a pass in the degree".

3. According to the learned Counsel for the petitioners Sri K. Satyanarayana and Sri C. Rajasekhar Reddy, during the academic year 1997-98 when similar entrance test was conducted for admission to B.Ed., VCE course, the respondent-University did not impose any condition of having 45% in Part II subjects at the degree examination and that fixing 45% marks in the degree examination as the eligibility criteria is illegal and arbitrary and also violates the fundamental rights of the petitioners under the Constitution of India. It is contended by the learned Counsel for the petitioners that the respondent has no authority in fixing 45% marks as eligibility criteria. They also pray that as all the petitioners have applied pursuant to the notification issued by the University, they may be allowed to appear for the entrance test on 23-1-2000.

4. Sri K. Ramakantha Reddy learned Standing Counsel for Osmania University appeared for the respondent at the time of preliminary hearing. He submits that the respondent issued the guidelines/regulations for the entrance test for admission to B.Ed., VCE-99 course as per the guidelines issued by the National Council for Teacher Education (NCTE). After coming into force of the National Council for Teacher Education Act, 1993 (Central Act, for brevity), all the Educational Institutions in India and all the Universities offering courses in B.Ed., either regular course or vacation course are bound to conduct the courses in accordance with the guidelines issued by NCTE. The Osmania University has adopted the mandatory requirement as laid down by the NCTE, for the entrance test for admission to B.Ed., VCE course 1999. He relied on Para 2 of the information booklet issued to the candidates, which is issued in accordance with NCTE guidelines. According to Para 2, candidates should have passed B.A./B.Sc./B.com./B.Sc. (HS) of Osmania University or any other University recognised as equivalent at the time of submitting the application form with 45% marks in Part II (Optional subjects). Therefore, he would submit that there is no arbitrariness or illegality in the notification issued by the University. The learned Standing Counsel also relied on the two Division Bench judgments of this Court in Regional Admission Committee, 1995-96 and others v. Shaik Moinuddin 1996 (3) ALD 1036 (DB) and G. Giri Raju Govada Vs. Union of India and others, . He submits that in matters of judicial review of decisions taken by academic bodies, this Court should be slow to interfere with such decisions. For the proposition he relied on the judgment of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

5. In the light of these rival contentions, the point that arises for consideration is whether fixing 45% marks in the Optional subjects of graduate examination as

criteria for admission to B.Ed.. VCE 1999-2000 course conducted by the University is arbitrary and illegal.

6. For the purpose of establishment of National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system in the country, the Parliament enacted the Central Act. The Act came into force with effect from 1-7-1995 and it also intends to regulate proper maintenance of norms and standards in the teacher education system. Entry 25 of List III of Seventh Schedule to the Constitution deals with education. The Central Act is referable to Entry 25 made by the Parliament by virtue of clause (2) of Article 246 of the Constitution. Therefore, any other Act concerning teacher education has to yield to the provisions of the Central Act as well as the Regulations made thereunder. The primary duty of proper maintenance of norms and standards in teacher education system lies with NCTE and, therefore, in a situation like this, when once the subject of teacher education is covered by the Parliamentary enactment, the Regulations made by or under the State law have to be read in the light of the Central Legislation. In *Madanapalli Institute of Technology and Science and others Vs. State of Andhra Pradesh and others*, , dealing with the primacy of Central Legislation referable to either Entry 66 of List I or Entry 25 of List III of Seventh Schedule to the Constitution in connection with Technical Education, I referred to various decisions of the Supreme Court on the subject and summarised the principles and the following among those are equally applicable in matters of teacher education covered by NCTE Act.

(a) The use of the expression "subject to" in Entry 25 of List III clearly indicates that the Legislation in respect of education including Technical Education, Medical Education and University Education to the extent it is entrusted to the Union Parliament whether such power is exercised or not shall be deemed to be restricted. In other words, if a subject of Legislation covered by Entries 63 to 66 of List, even if it falls otherwise within the larger field of "education including Technical Education, Medical Education and University Education", the power to legislate on that subject must lie with the Parliament.

(b) If the State Legislation is in conflict with the Central Legislation and any of its Legislation, including the subordinate Legislation made by the Centre to give effect to Entry 66, the State action would be void and inoperative.

(c) The All India statutory body established under Central Legislation and entrusted with the duty of maintaining standards of Higher Education and Technical Education alone is competent to lay down the standards of education. The norms for admission have direct impact on the standards of education. Therefore, the norms for admission can only be laid down by or under the Union Legislation. If the norms of admission are laid down either by or under the State Legislation, insofar as they do not adversely affect the standards of education or are not inconsistent with the norms of admission laid down by or under the Union Legislation, the State is empowered to lay down qualifications in addition to those prescribed under Entry 66 of List I. Such a course of action is intended to

permit higher standards for admission to higher educational courses.

(d) It would be incorrect to say 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 for admission can have a direct impact on the standards of education and, therefore, only the Council can lay down the norms and guidelines for admission to Technical Institutions.

(e) In matters of granting affiliation or recognising the institutes and also prescribing standards of admission, both at the stage of entrance test or during actual admission programme, State Government though has power to deal with the situation, any refusal by the State Government shall not be on matters or grounds which are already considered and covered by the Council and which are approved by the Council.

(f) It will not be open for the body created under the State Act or an authority of the State to exercise power, which results in deviation of the terms and conditions laid down, by the Council under the AICTE Act.

7. Therefore, after coming into force of the Central Act, dealing with teacher education, no University in the State can make any Regulation in connection with standards of teacher education. But the State or the body established under the State law can always make Regulations with a view to better the standards and prescribe qualifications over and above the qualifications/eligibility criteria fixed by or under the Central Legislation. In view of this, the submission of the learned Counsel for the petitioners that other Universities are allowing graduates with 40% aggregate in Optional subjects to appear for the entrance test for admission to B.Ed., VCE course, cannot be accepted. Indeed in *P. Vijayakumar and Others Vs. Kakatiya Institute of Technology and Sciences and Another*, a Division Bench of this Court held that merely because candidates were admitted through common entrance examination to a University, they couldn't claim that the other University must be compelled to follow the uniform procedure of another University.

8. In *St. Mary's Educational Society, Giddalur, Prakasam Dist. Vs. Government of A.P. and another*, I have referred to the relevant provisions of the Central Act and A.P. Education Act, 1992 and held that by virtue of clause (3) of Article 246 of the Constitution, the State Act or the regulations insofar as they deal with teacher education system are subject to the law enacted by the Parliament i.e., NCTE Act. Therefore, the other submission of the learned Counsel for the petitioners that the respondent has no authority or power to prescribe 45% as minimum eligibility criteria for appearing in the entrance for admission to B.Ed., VCE-99 course is devoid of merits.

9. In *Moinuddin 's case (supra)*, the Teacher Training Course Rules issued in G.O. Ms. No.35 insofar as the same provide for 45% as minimum eligibility marks in Intermediate for appearing in the entrance test was questioned as being ultra vires Section 3 of A.P. Educational Institutions (Regulation of admission and

prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983) as violative of Articles 14, 16 and 21 of the Constitution. The contention of the petitioners therein were rejected and the Court held as under:

"It is clear from the above, that admissions into Teacher Training Course are made on the basis of merit ranking assigned to the students in the Common Entrance Test (subject to the rules of reservation etc.,) and those who have secured 45% marks in the aggregate in the qualifying examination (the minimum for Scheduled Castes, Scheduled Tribes and Physically handicapped candidates be 40%) alone are eligible to make application for the Common Entrance Test. It will be wrong to confuse thus the procedure of admission as selection based on the results in the Intermediate Examination or equivalent examination with that of admissions on the basis of merit ranking in the Common Entrance Test as contemplated under the above mentioned rules. There is nothing wrong, in our view, in laying down a minimum qualification for the eligibility to sit in the entrance examination and such minimum qualifications as contemplated in the rules aforementioned, in our view, is in no way destructive of the scheme of admitting students through a Common Entrance Test".

10. In *Giri Raju Govada* 's case (supra), the Rules for admission to PG course in Management and Information Technology prescribing 55% marks in the qualifying examination in the case of Scheduled Caste candidates was challenged. The Division Bench of this Court dealing with the said question held that when the rules provide for minimum qualifying marks for appearing in the entrance test, no authority can do a thing, which the law or the rule does not permit, and if the University is directed to admit students who do not possess the requisite qualification viz., 55% marks in the qualifying examination, the Court will be creating a very bad precedent.

11. Therefore, it should be held that there is no arbitrariness in prescribing 45% marks minimum in Part II of degree examination. The contention of the learned Counsel for the petitioner that the Regulation violates Articles 14 and 21 of the Constitution is also to be rejected for the same reason.

12. The learned Counsel for the petitioner in WP No.643 of 2000 raised another ground. Placing reliance on a communication sent by the Deputy Registrar (Academic) of the Osmania University in No.612/D.351/II/77 Acad, dated 4-2-1978, he would submit as per the decision of the University while calculating the percentage of marks, 0.5% and more shall be treated as one. As the petitioner has secured 44.85%, he would submit, the petitioner should be treated as having secured 45% marks. The submission is liable to be rejected. As already held by me, after coming into force of the Central Act, no University can take any action to lower the standards of teacher education. If the communication of the Deputy Registrar (Academic) is valid even as on today, the same is not applicable to teacher education and should be made applicable to other courses in respect of which there is no control or Regulation made by or under the Central Legislation. Accordingly, this submission is also rejected.

13. For the above reasons, all the four writ petitions fail and they are accordingly dismissed. There shall be no order as to costs.