
(2008) 09 SHI CK 0030
In the High Court Of Himachal Pradesh

Deepti Sharma and Others	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Himachal Pradesh University First Ordinance, 1973 — Ordinance 3.3(A)
National Council for Teacher Education Act, 1993 — Section 1, 3

Citation : (2008) 3 ShimLC 222

Hon'ble Judges : Jagdish Bhalla, C.J.;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jagdish Bhalla, C.J. and Kuldip Singh, J.—This judgment shall dispose of CWP Nos. 1231, 1003, 1013, 1080, 1109, 1179, 1189, 1405, 1412, 1428 of 2008, as common question of law involved in all the writ petitions is about the arbitrariness and validity of Ordinance 3.3(A) of the First Ordinance of H.P. University 1973 (for short, Ordinance) and 2008-09 prospectus of Himachal Pradesh University (for short, University) in fixing upper age limit for admission to Bachelor of Education (B.Ed.) course.

2. The grievance of the petitioners is that they want to join B.Ed. course for the session 2008-09 for which the University has issued prospectus. According to prospectus boys candidates should not be more than 26 years and girls 28 years under general category on 1.7.2008. The eligibility for applying to B.Ed. course as per prospectus 2008-09 (Annexure P-2 in CWP No. 1231 of 2008) is as follows:

3. ELIGIBILITY FOR APPLYING TO THE COURSE The candidates who wish to apply for the regular course in any of the colleges of Education recognized by NCTE and affiliated to H.P. University should fulfill the following criteria:

(a) The applicant should possess a Bachelor's Degree (Medical, Non-Medical, Arts or Commerce) with at least 45% marks (40% in case of SC, ST, and Ex-

serviceman categories) from a recognized university established by law in India. Provided further that for the purpose of eligibility for admission to the course 0.50% or above shall be considered equal to 1%) as per (Notification No. 4-9/94-HPU;(Acad) dated 27.6.1995).

(b) The candidate should not be of more than 26 years (General Category boy candidates), 28 years (General category, girl candidates), 29 years (SC and ST candidates both boys and girls) of age, on 1.7.2008.

In case of ex-servicemen, the seats are only available in Government college of Teacher Education Dharamshala and their age for eligibility to admission will be calculated by the formula: Actual age - years of service rendered in the services. The age thus calculated should not exceed that of the age of fresh candidates of their respective category.

(c) The candidate should have the following Combination of subjects at the Graduation level:

(i) Medical Stream

B.Sc. Pass Course with Zoology, Chemistry and any other science subject

or

B.Sc. Pass Course with Botany, Chemistry and any other science subject

or

B.Sc. Honours in Zoology with Chemistry as subsidiary subject

or

B.Sc. Honours in Botany with Chemistry as subsidiary subject

or

B.Sc. Honours in Chemistry with Zoology or Botany as subsidiary subject

(ii) Non-Medical Stream

B.Sc. Pass Course with Physics, Mathematics and any other science subject

or

B.Sc. Pass Course with Chemistry, Mathematics and any other science subject

or

B.Sc. Honours in Physics with Mathematics as subsidiary subject

or

B.Sc. Honours in Chemistry with Mathematics as subsidiary subject

or

B.Sc. Honours in Mathematics with Physics or Chemistry as subsidiary subject.

It has been pleaded that National Council for Teacher Education (for short, the Council) established u/s 1 of Section 3 of the National Council for Teacher Education, Act, 1993 (for short the Act) in exercise of power u/s 32 (2) of the Act has framed the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 (for short, the Regulations), Appendix 4 of the Regulations is of norms and standards for secondary teacher education programme leading to bachelor of education (B.Ed. degree). The eligibility for B.Ed programme is in clause 3.2 of Appendix 4, which is as follows:

3.2 Eligibility:

3.2.1. Candidates with at least 45% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

3. It has been pleaded that clause 3.3(A) of the Ordinance has laid upper age limit of 26 years for boys and 28 years for girls for admission to B.Ed. course, the Clause 3.3(A) of the Ordinance is as follows:

Except in the Correspondence Courses and the Evening Colleges or evening classes attached to College/Teaching departments of the University a student who has attained the age of 23 years (25 years for girls students only) in case of +1 class of +3 Pattern on the 1st July of the year concerned and 26 years for boys and 28 years for girls students in the case of MA, M.Sc., MTA, MBA, LL.B. and B.Ed. class as on the 1st July of the year concerned, provided that in each case the upper age limit shall be raised by three years in case of U.G. classes and 29 years (for boys and girls both) in case of P.G. classes, for students belonging to SC/ST, shall not be admitted to any college affiliated to or maintained by the University or in the classes attached to or the University Deptts. of studies without prior permission in writing of the Vice-Chancellor:

Provided that the Vice-Chancellor shall have the power to permit age relaxation for reasons to be recorded in writing up to maximum of 6 months:

Provided further that age bar shall not apply in the case of in-service students and the State/Government of India nominees.

The age limit for admission to the M.J.M.C. Course shall be 27 years (30 years for SC/ST candidates) as on the 1st of July of the concerned year.

4. The petitioners have pleaded that norms and standards for B.Ed. course have been laid by the Council under the Central Act. The norms, standards for B.Ed. course fixed in the Ordinance and prospectus of the University are in conflict with the norms and standards fixed by the Council for B.Ed. course. In fact, upper age limit of 26 years for boys and 28 years for girls in the norms for eligibility for B.Ed. course laid in the Ordinance and prospectus are repugnant to the norms and standards laid by the Council in the Regulations. In the regulations no upper

age limit has been fixed for admission to B.Ed. course. The norms and standards fixed in the Regulations have occupied the field, therefore, the norms and standards of age fixed in Ordinance 3.3.(A) and prospectus fixing the upper age limit for admission to B.Ed. course for boys 26 years and for girls 28 years is to be ignored in the presence of Regulations of the Council and petitioners' applications for B.Ed. course cannot be rejected on account of age bar. The fixing of upper age limit in Ordinance 3.3(A) and prospectus for admission to B.Ed course is arbitrary.

5. The respondents have supported the norms and standards fixed in Ordinance 3.3(A) and prospectus. It has been submitted that Ordinance 3.3(A) and prospectus fixing upper age limit of 26 years for boys and 28 years for girls are not in conflict with or repugnant to the norms and standards laid in the Regulations of the Council. It has been submitted that the upper age limit for admission to B.Ed. course in the Ordinance 3.3(A) and prospectus is just, legal and supplementary to the norms and standards fixed by the Council for admission to B.Ed. course.

6. It is appropriate to refer to some of the provisions of the Act. Section 2(1) defines "teacher education", whereas Section 2(m) defines "teacher education qualifications". The functions of the Council are prescribed in Section 12, relevant part of Section 12 is as follows:

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

(a) ...

(b) ...

(c) ...

(d) ...

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

(f) ...

(g) lay down standards in respect of examinations leading to teacher education qualifications criteria for admission to such examinations and schemes of courses of training.

The power to make Rules is provided in Section 31 and power to make Regulations is prescribed in Section 32, the relevant part of Section 32 is as

follows:

Power to make regulations.-(i) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) ...

(b) ...

(c) ...

(d) The norms, guidelines and standards in respect of:

(i) ...

(ii) the specified category of courses or training in teacher education under Clause (e) of Section 12;

(iii) ...

(iv) standards in respect of examinations leading to teacher education qualifications referred to in Clause (g) of Section 12.

7. It has been submitted on behalf of the petitioners that as per clause 3.2.1 of Appendix 4 of Regulations, candidates with atleast 45 marks either in bachelor and/or in the master degree or any other qualifications equivalent thereto are eligible for admission to the programme. The Council has not put any age bar for admission to the candidates in B.Ed. course. On the contrary, Ordinance 3.3(A) and prospectus have put age bar of 26 years for boys and of 28 years for girls under general category for admission to B.Ed. course. It has been submitted that there is repugnancy in the two provisions, therefore, in view of Article 254 of the Constitution of India, the eligibility fixed in the Regulations will override the upper age limit fixed in Ordinance 3.3(A) and prospectus.

8. The Parliament has exclusive power to make laws with respect to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions under entry 66 of List-I of 7th Schedule of the Constitution. The State Legislature and Parliament have concurrent powers to make laws with respect to entry 25 relating to education including technical education, medical education, and universities subject to the provision of entries No. 63, 64, 65 and 66 of List-I, vocational and technical training of labour provided in List-III of 7th Schedule of Constitution.

9. The question for consideration is whether age limit fixed in Ordinance 3.3(A) and prospectus is repugnant to the eligibility prescribed in clause 3.2.1 of Appendix 4 of the Regulations or the age bar fixed in 3.3(A) and prospectus is supplementary to clause 3.2.1 of Appendix 4 of the Regulations. The upper age

limit of 26 years for boys and 28 years for girls students in Ordinance 3.3(A) has not only been fixed for B.Ed. course but it has been fixed for other courses also. The fixation of age limit for admission in courses is not uncommon, similarly for entering into the service upper age limit is fixed almost in every public employment. It cannot be said that age limit for admission to a course cannot be fixed. Once age limit fixed for admission to a particular course is found to be reasonable having nexus with the object to be achieved then fixation of age limit for admission cannot be questioned. One of the objects of fixation of upper age limit for admission to a particular course appears to be learning capacity of a student is better when there is continuity of education. The fixing of upper age limit for admission is a step towards continuity in education. The fixation of upper age limit for B.Ed. course in Ordinance 3.3(A) and prospectus of the University is not arbitrary. In the present petitions the question of repugnancy of Ordinance 3.3(A) and prospectus while fixing age limit vis-a-vis clause 3.2.1 of Appendix 4 of the Regulations is to be considered. In *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, , the question before the Apex Court was whether the norms prescribed by the State Government are contradictory to the norms fixed by All India Council of Technical Education (AICTE) or are only in the nature of higher qualification above the minimum prescribed by AICTE for admission to Engineering Colleges. The Apex Court noticed *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, , in which in paragraph 36, the Supreme Court has held as follows:

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 have 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 post-graduate medical courses, 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.

Thereafter the Supreme Court in paragraph 10 has held as follows:

Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including *Dr. Preeti Srivastava* case that the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question

of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution has to be understood in the manner as stated in Dr. Preeti Srivastava case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as on application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration.

The Apex Court in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, , has held as follows:

From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination 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.

10. The council has not fixed any age limit for admission to B.Ed. course. This does not mean that no age limit for B.Ed. course by way of Ordinance and prospectus can be fixed. It is not a case where the council has fixed certain upper age limit for admission to B.Ed. course and the Ordinance and prospectus of the University have fixed different upper age limit for admission to B.Ed. course than fixed by the Council for admission. If Council would have fixed upper age limit for admission to B.Ed. course then it could have been said that once the council has fixed the upper age limit for admission, then the prospectus and Ordinance cannot fix upper age limit for admission. The Supreme Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, , has held as follows:

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and
- (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

We are of the opinion that petitioners in the present case have miserably failed to bring their case of repugnancy of prospectus and Ordinance 3.3(A) regarding fixing of upper age limit for admission to B.Ed. course with the Regulation 3.2.1 Appendix 4 of the Council within the parameters laid down in *Deep Chand* (supra). In *S.V. Bratheep (minor) supra*, the Supreme Court has held that State

can always fix higher than the minimum standard fixed by the Council for admission. The fixing of no age limit for admission in B.Ed. course in the Regulation does not mean that the State and University can not fix age limit in the Ordinance and prospectus. The field which has been left open in the Regulations can certainly be regulated by the State and the University. A Division Bench of this Court in CWP No. 635 of 2007 decided on 9.1.2008 has held that where the norms of NCTE are silent it is for the State or University to lay down the criteria which could be followed for granting admissions. In our considered view, fixation of upper age limit in the prospectus and Ordinance 3.3(A) is supplementary to Regulation 3.2.1 of Appendix 4 and not in conflict with the Regulations of the Council. Therefore, it cannot be said that in prospectus and Ordinance 3.3(A) fixing of upper age limit 26 years for boys and 28 years for girls for admission to B.Ed. course is in conflict with or contrary to or repugnant to the eligibility fixed in clause 3.2.1 of the Appendix 4 of the Regulations. In some of the writ petitions, 85% reservation of seats in B.Ed. course in favour of bona fide/domicile Himachali has also been questioned. In these writ petitions prayer has been made that 25% reservation of seats for B.Ed. course may be ordered for non-Himachali. At the time of hearing, this point was not argued. But this point is otherwise covered by a Division Bench judgment of this Court rendered on 6.7.2007 in CWP Nos. 1256 of 2006, 1034 of 2006 and CWP No. 627 of 2007. There is no merit in the writ petitions.

11. No other point was urged.

12. The result of the above discussion, all writ petitions being CWP Nos. 1231, 1003, 1013, 1080, 1109, 1179, 1189, 1405, 1412, 1428 of 2008, are dismissed. The interim orders in each petition, if any, are vacated, with no orders as to costs.