
(2012) 12 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1156 of 2012

Divya College of Education

APPELLANT

Vs

State and Ors

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2012) 12 J&K CK 0011

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : B.S. Salathia, with Mr. Ashish Sharma and Mr. M.K. Raina, for the Appellant; W.S. Nargal, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, Judge

1. Petitioner-college is an affiliated Non-Government B.Ed. College of Jammu University (for short, University) with sanctioned intake capacity of

334 students. The admission of students to the petitioner-college and other private unaided B.Ed. colleges is made by the Central Admission

Committee of the University in accordance with the procedure known as Centralized Counselling. In terms of the aforesaid procedure, all the

aspirants for admission to B.Ed. Course in private B.Ed. colleges apply to the University, are selected on the basis of their merit, participation in

counselling and allotted to private colleges as per their preference. The University on 14th June, 2011 issued a notification inviting applications from

aspirants for admission to B.Ed. Regular Course, its affiliation in Non-Government B.Ed. Colleges for the Session 2011-2012. In all, 18368

(twenty five thousand) candidates responded to the advertisement and out of the

candidates, who appeared for counselling, 14154 candidates were admitted and allotted to different colleges as per their choice. In all, 6870 seats in different private B.Ed. colleges remained unfilled. Of candidates selected, only 18 candidates opted for the petitioner-college. In view of the option exercised by the candidates, 292 seats available in the petitioner-college remained unfilled.

2. The Association of private B.Ed. colleges run under name and style of Forum of Recognized Colleges (for short, Forum) facing the same problem as faced by the petitioner-college, issued a notice on 20th December, 2011 signifying its intention to make admissions on its own by spot counselling against the left over seats as per eligibility criteria laid down by the University but without involving Central Admission Committee of University. The notice dated 20th December, 2011 found sharp reaction from the University. The University through a public notice dated 20.12.2011 published on 21.12.2011, reminded the aspirants for the B.Ed. Course that admissions proposed to be made by the Forum were unauthorised and violative of the University statute.

3. The respondent University, however, to resolve the controversy decided to go for second round of counselling, give an option to the candidates, who had responded to the notification dated 20th December, 2011 issued by the Forum, to appear before the Central Admission Committee and get admission, following the procedure provided in the University statute. The University, accordingly, admitted 414 of the 516 students, who had responded to the Forum notification.

4. However, the second counselling organized by the University did not give any relief to the petitioner-college, inasmuch as, only 3 of the 414 students admitted in second counselling opted for the petitioner-college. The petitioner-college confronted with the shortage of students admitted 292 students on its own and vide its communication dated 21st December, 2011 informed the University accordingly.

5. The respondent University ignoring the communication dated 21st December, 2011 received from the petitioner-college did not regularize the admission of 292 candidates admitted by the petitioner-college on its own, returned the Bank Drafts in the amount of Rs. 15,11,100/- bearing Nos. 644926596 & 644926589 dated 7th May, 2012 forwarded by the petitioner-

college on account of examination fee and other dues in respect of 292 students admitted by it.

6. Aggrieved with the refusal of University to regularize 292 candidates admitted by the petitioner-college, it filed the writ petition registered as

OWP No. 805/2012. The writ petition was filed primarily on the ground that the petitioner-college deserved to be given same treatment as was

given to other members of the Forum and the admission of 292 students enrolled by it deserved to be regularized on the lines such admission was

regularized in respect of 414 students admitted by the University. The writ petition was disposed of on 4th June, 2012 with a direction to the

respondents to accord consideration to the petitioner's case having regard to the treatment given to similarly circumstanced colleges.

7. The University in compliance of the writ Court order accorded consideration to the petitioner's case for regularization of 292 students enrolled

by it on its own and vide Order No. CDC/12/311216 dated 29th June, 2012 rejected the petitioner's claim and directed the Bank drafts

forwarded by the petitioner-college with its representation, to be returned to it.

8. The petitioner-college through medium of writ petition on hand, seeks Writ of Certiorari quashing the impugned order No. CDC/12/3112-16

dated 29th June, 2012 issued by the respondent University as also Writ of Mandamus commanding the respondents to regularize admission of 292

students admitted by the petitioner-college and 24 students admitted under management quota on the analogy of 414 students admitted by the

Forum and regularized by the respondent University.

9. The petitioner questions the role assumed by the University in taking upon itself task of making admission to the private B.Ed. colleges. It is

insisted that the University like the Universities of Shimla and Punjab may at the most ensure that the private B.Ed. colleges adhere to the merit

while making admissions and cannot take over the admission process itself to the exclusion of the management of private B.Ed. colleges. The

petitioner relying on various Apex Court Judgments and, in particular, judgments in TMA PAI Foundation and ors. Vs. State of Karnataka and

ors. and P.A. Inamdar and ors. Vs. State of Maharashtra and the judgment rendered by the Punjab and Haryana High Court in Self Financed

B.Ed. Colleges Association Punjab (Regd.) and another Vs. State of Punjab and

others pleads that the management of a private college is to be given free hand in managing its affairs including admission of the students for undergoing course offered by the college. The petitioner reiterates the stand that once the University regularized the admission of candidates, enrolled by the Colleges associated with the Forum, it has no reason to deny such treatment to the petitioner-college. The order impugned in the petition, it is insisted is discriminatory in character, violative of constitutional mandate and liable to be set aside.

10. The University in its reply to the writ petition insists that the admissions to B.Ed. course in private B.Ed. colleges and allotment of students to the colleges, is to be made in accordance with the University Statutes. It is pleaded that in terms of the University Statute-4, the admission to private B.Ed. colleges is to be made through process of Centralized Counselling by Central Admission Committee of the University and that the private B.Ed. colleges affiliated with the University in terms of the University Statute-4 are prohibited to make admission on its own. The admissions to private B.Ed. colleges, it is pointed out, are to be made by the University leaving no scope for any admissions by the private B.Ed. Colleges and a duty cast on the University to regularize such admissions.

11. The University denies that it regularised admissions of 414 candidates admitted by the private B.Ed. colleges and singled out the petitioner B.Ed. college for a discriminatory treatment. It is pointed out that the applications received by the Forum, were forwarded to the Central Admission Committee and after the university decided to have a second counselling and granted admission to such of the candidates out of 516, responding to the notification issued by the Forum, who appeared before the Central Admission Committee. The University pleads that the case set up by the petitioner-college is different from the case of students admitted in second counselling inasmuch as the petitioner 10 college made admissions on its own without referring the aspirants for the admission to the Central Admission Committee. The petitioner college, it is pleaded, does not deserve same treatment as the candidates admitted by the Central Admission Committee, in second counselling.

12. I have gone through the pleadings as also the record available on the file. I have heard learned counsel for the parties.

13. The matter relating to irregularities in the admissions made by private B.Ed. colleges in the State surfaced in writ petition No. 879/96. A letter

received from one Anita Kumari an aspirant for admission to B.Ed. Course, Session 1996-97 in Dogra College of Education, Shastri Nagar,

Jammu, was taken as a wake up call, persuading the Court to treat it as a writ petition. The Court as interim measure on 15th May, 1997 passed

the following order;

I direct the Vice Chancellor of Jammu and Kashmir Universities to appoint Committees under their own supervision and control and select

candidates for the ensuing B.Ed. session, for Private Colleges imparting B.Ed. education, which stand affiliated to their respective Universities. The

Vice Chancellors shall inform all such colleges accordingly, and make selections after inviting applications from eligible candidates. The selection

for all the Private Colleges affiliated with Kashmir University shall be made by one Committee to be appointed by the Vice Chancellor, on the

basis of the merit. The admissions to Private B.Ed. colleges in Jammu Province which stand affiliated with Jammu University, shall be made by the

Committee to be appointed by the Vice chancellor of Jammu University.

14. The University in compliance of the writ Court Order constituted a Committee comprising of Dean faculty of Education and after due

deliberations decided to make Centralized Admissions to B.Ed. Course in non Government B.Ed. colleges of Education. The Court noticing that

the methodology was evolved by the respondent University to regulate admission to private B.Ed. colleges disposed of the petition observing;

Since the University has now decided to centralise the admissions and made the admissions on merit basis, there is no necessity for this Court to

continue with the interim order dated 15th of May, 1997. The order dated 15th May, 1997 was an interim order and it was made clear in that

order that it will be an interim measure. Since the University of Jammu has responded and has framed a scheme, therefore, there is no necessity of

keeping that order in force. The University is free to make the admissions in accordance with the scheme prepared by it. The Court reminded the

parties that the anxiety of this Court was that admissions to these private colleges should be regulated through a statutory body preferably the

University, which is conducting the examinations.

15. The observations made by the Court led the University to incorporate necessary changes in its statute and prescribe a mechanism for

admission to private or non Government colleges of education. The University Statutes 4 and 11 need to be noticed.

4. CENTRALISED ADMISSION

4.1 No Non-Government college of education other than M.C. Khalsa College of Education shall made admission of the candidates to the B.Ed.

course on its own. Selection of candidates for all seats in B.Ed. course in each Non-Government affiliated college of education shall be made by

the University. Upto 20% of the sanctioned seats in each college shall be free seats and the remaining 80% seats shall be payment seats.

11. PROCEDURE AND MODE OF SELECTION

11.1 Admission of all eligible candidates to B.Ed. Course shall be made by the Central Admission Committee (to be constituted by the Vice-

Chancellor) in accordance with the Statutes.

16. A bare look at the above reproduced University Statutes would make it clear that the admission to B.Ed. colleges is to be made by Central

Admission Committee appointed by the Vice Chancellor of the University in accordance with the Statues. A B.Ed. college affiliated with the

respondent University is prohibited from making admission to B.Ed. course on its own. Having regard to the University Statutes, an affiliated

college, notwithstanding the difficulties-financial or otherwise, has no power to make admissions on its own. Any admission made in violation of

University Statutes would not be binding on the University and the University would be under no obligation to regularize such admission. The

University Statutes incorporate the conditions subject to which affiliation is granted by the University to private B.Ed. colleges.

17. The petitioner-college, in the said background, was not competent to admit 292 students on its own. The University, in the circumstances, is

under no obligation to regularize the admissions made by the petitioner-college in violation of the University Statutes. This takes us to the question

as to whether the University regularized the admissions made by other private colleges through the Forum of Recognized Colleges.

18. From perusal of the record available on the file, it transpires that the Forum, of which the petitioner-college claims to be a member, on 19th

December, 2011 issued the following notification, published in local dailies on 20th December, 2011; Forum of Recognized Colleges B.Ed.

ADMISSION (Session 2011-12) In continuation to the admission notice of University of Jammu for admission to B.Ed. Regular Course for the

session 2011-12 to Non-Govt. B.Ed. Colleges the counselling for which ended on 21st September, 2011. Association of Non Government, Self

Financed unaided Colleges Affiliated to University of Jammu is holding on Spot counselling for the left over seats in various B.Ed. Colleges with

effect from 22.12.2011 to 30.12.2011 for the candidates have eligibility criteria as laid down by the University of Jammu for the session 2011-12

in terms of the law laid down in Hon'ble Supreme Court Judgment TMA PAI and P.A. Inamdar cases. The candidates are advised to bring with

them two bank drafts issued by any Nationalised/Scheduled bank for Rs. 1400/- and Rs. 25130/- drawn in favour of Forum of Recognized

Colleges (Regd.) payable at Jammu along with photographs, application form (can be filled on spot) original documents with two sets attested

photocopies.

Venue: Kawa Tower, NH Bye-Pass Road, Narwal Jammu J&K-180004

Timing: 10.00 am to 5.00 pm (All Days)

Note: Further details can be had from WWW.forcejk.com

Phone No. s: 0191-2476817, 09419187855

Sd/-

S. Harbans Singh (Former Minister)

No: B.Ed. Admission/2011/323 President

Dated: 19-12-2011 Forum of Recognised Colleges, Jammu

19. The University lost no time in questioning the power and authority of the Forum to make admissions and clarifying its stand as regards the

admissions proposed to be made by the Forum issued following Public Notice on 20th December, 2011, published in local dailies on 21st

December, 2011. University of Jammu Colleges Development Council Public Notice. It has come to the notice of the University of Jammu that an

advertisement (B.Ed. Admission/2011/323 dated 19.12.2011) has been published in the daily newspapers dated 20.12.2011 issued by the Forum

of Recognized Colleges, the advertisement invites applications from the students

for on spot counselling for B.Ed. Course from the University of Jammu for the session 2011-12. By this notice, all concerned are informed that the University of Jammu has not authorized anybody to issue such an advertisement or to initiate a process of on spot counselling. The advertisement and proposed action are unilateral, irresponsible and, in the University's opinion, illegal. The University takes no responsibility for the advertisement or any action flowing from it. It is further informed for the benefit of all concerned that no so-called admission consequent to the advertisement will be regularized. Any candidate who chooses to participate in the process does so at his/her own risk. Any affiliated institution found participating in the process will face punitive action, which may even include disaffiliation under University Statute 63, clauses 6 and 7. Statute 4 of B.Ed. admission norms clearly states that no Non-Government College of Education can do admission on its own. It also states that the admission to the B.Ed. course shall be done by the Centralized Admission Committee to be constituted by the Vice-Chancellor. No Non-Government College of Education, other than minority institutions recognized as such by the State Government, is permitted to make admission to the B.Ed. Course on its own, except for the permitted Management Seats, Selection of candidates for all seats, other than Management Seats, in B.Ed. Course in each Non-Government College of Education affiliated to the University shall be made only by the University. Please note that the Centralized Admission Process of the University of Jammu is carried out on the directions of Hon'ble High Court of Jammu and Kashmir at Jammu in the writ petition titled Anita Kumari versus Principal, Dogra College of Education dated 24.07.1997.

No. CDC/2011/5232 Sd/-

Dt: 20.12.2011 Director College Development

20. The University later to resolve the controversy decided to organize/hold a second counselling session from January 10, 2012 to January 25,

2012 for 516 candidates who approached the Forum for admission to private B.Ed. colleges in response to Forum's notice dated 19.12.2011, so

that they have a chance to get selected for B.Ed. course in different colleges. The counselling was accordingly conducted and out of 516 aspirants,

only 414 candidates appeared before the Central Admission Committee of the

respondent University. The 414 candidates were allotted to different B.Ed. colleges as per their choice/preference. Only 3 candidates out of 414 candidates appearing for the second counselling session opted for the petitioner-college.

21. The petitioner-college, unmindful of University Statutes made admissions on its own, did not forward applications to Central Admission

Committee and did not ask the candidates to approach or appear before the Central Admission Committee, so as to be admitted by the

Committee and allotted to the petitioner-College. The petitioner-college, therefore, cannot claim parity with the admissions made by the University

on second counselling organized at the request of the Forum and cannot on the said ground, allege discrimination or seek same treatment as given

to 414 out of 516 candidates referred to the respondent University by the Forum.

22. The stand taken by the petitioner-college that the respondent University in view of the settled legal position laid down in TMA PAI Foundation

and ors. Vs. State of Karnataka and ors. and P.A. Inamdar and ors. Vs. State of Maharashtra cases has no role in regulating admission by private

Educational Institutions and, therefore, cannot deprive the petitioner-college of its right to manage its own affairs including making admissions, is of

no help to the petitioner-college. It is pertinent to point out that once the petitioner college approached the University for affiliation, it is taken to

have agreed to follow and abide by the Statutes of the University. The petitioner college is, therefore, bound by the University Statutes including

Statute-4 and Statute-11 that give exclusive power to the University to make admissions to private B.Ed. College through its Central Admission

Committee.

23. The petitioner-college has not thrown challenge to Statute-4 and Statute-11 of the University statutes. In the circumstances, the argument that

University lacks power to make admissions in light of above referred Apex Court Judgments is of no avail to the petitioner-college. The petitioner

college, on the other hand, has assailed the order No. CDC/12/3112-16 dated 29th June, 2012, whereby the University has rejected its

representation for regularizing admission of 292 candidates admitted by it on its own. For the said reasons, reliance on the judgment of Punjab and

Haryana High Court in a Civil Writ Petition No. 10091 of 2009 titled Self Financed

B.Ed. Colleges Association Punjab (Regd) and another Vs.

State of Punjab and another is also misplaced. In the said writ petition, the petitioner had questioned the authority of the State Government to

conduct entrance test through Universities in Punjab for selection of students for admission to B.Ed course and thrown challenge to the

Government Notification dated 19th May, 2009 pleading that the Government lacked authority to issue such notification. In the present case, the

petitioner college without questioning the University Statutes under which the University has exercised its power to make admissions, has

questioned the order, whereby the University has declined to regularize admissions made on its own by the petitioner-college. The facts of the

present case are markedly different from the facts of the case relied upon by the petitioner-college. This apart, Statute-4 and Statute-11 of the

University Statutes are based on the writ Court order in Anita Kumari's case (Supra) and have found approval of the Court as reflected in its

judgment dated 24th July, 1997.

24. Having held that the 292 candidates have been admitted by the petitioner-college in violation of the University Statutes, the next question that

calls for consideration is whether the Court notwithstanding illegality committed by the petitioner-college, must show indulgence to the 292

admitted candidates and grant any relief in their favour, in the name of saving their academic career.

25. The educational institutions after admitting the students in wilfull disregard of the University statutes, more often make an effort to get the

irregularities condoned in the name of academic interest of the students admitted in violation of the University Statutes. The erring educational

institutions try to give the controversy colour and complexion of an emotional issue and argue that the students enrolled though in violation of

University statutes should not be exposed to any penalty for the wrong committed by the institution. The Courts often fall prey to such persuasion

made by the educational institutions and permit something that is not permissible under University Statutes. Such practices has been deprecated by

the Supreme Court in more than one cases.

26. Though the State because of stupendous task of imparting education and training allows private actors a role in the field of education-

essentially a sovereign power of the State, yet it cannot and must not permit academic indiscipline on part of such actors. The Apex Court in *Guru*

Nanak Dev University Vs. Parminder Kr. Bansal and another, , while setting aside the High Court order whereby admission of two candidates to

internship was directed, though they did not satisfy the eligibility criteria for such admission, observed;

We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to

anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill conceived sympathy masquerades as

interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline,

or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates.

Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications

might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an

accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic

authorities by itself taking over their functions.

27. Again in *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, , the question before the Court was whether the students, enrolled by the

institutions not affiliated with Central Board of Secondary Education, were to be permitted to pursue their courses, and prosecute further studies.

The Supreme Court, while setting aside the High Court order whereby the students were directed to be granted certificates pursuant to declaration

of results on the ground that the students were not to be allowed to suffer, held;

The learned counsel appearing for the students in different appeals did not dispute the position that the schools from where their clients have

perused their studies are not yet affiliated to the Central Board of Secondary Education. But they mainly contended that the students having been

permitted to appear at the examination and they having been successful and certificates have been issued in their favour, it would work out great

injustice, if the impugned directions of the High Court are set aside at this length

of time. In support of this contention they placed reliance on a recent decision of this Court in the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, . In the aforesaid case, this Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future but did not interfere with the ultimate direction of the High Court on the ground that found hopes have been raised in the minds of the students and therefore it would be inappropriate to interfere under Article 136 of the Constitution. We are unable to apply the reasoning given in the aforesaid case, inasmuch as there is no iota of material placed before us to indicate that the Central Board of Secondary Education, the appellants herein, either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their studies have been affiliated or are going to be affiliated at a near future. We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students.

The Court further observed;

This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularising the same by taking a sympathetic view of the matter. In the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , this Court held that the court will not be justified in issuing direction to the University to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the University Act and the regulations of the University. It was also observed that the court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law. In the case of the State of Tamil Nadu

and Others Vs. St. Joseph Teachers Training Institute and Another, , this Court held that the direction of admitting students of unauthorised educational institutions and permitting them to appear at the examination has been looked with disfavour and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Education Department of the Government cannot be allowed to sit at the examination and the High Court committed error in granting permission to such students to appear at the public examination. All these cases were again considered by a three Judge Bench of this Court in the case of the State of Maharashtra Vs. Vikas Sahebrao Roundale and others, , and it was held that the students of unrecognised and unauthorised educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognised institutions. The Court ultimately struck down the direction issued by the High Court.

28. The matter again fell for consideration of Supreme Court in *Abhyudya sanstha V. Union of India & ors.* (2011 (4) Sup 148). It was held that the students granted admission by the Education Institutions, not granted affiliation by National Council for Teachers Education, were not entitled to any regularisation and even directed the degree if awarded not to be treated valid for any purpose whatsoever. It would be profitable to reproduce hereunder para 17 and 19 of the judgment;

17. The question which remains to be considered is whether the Court should direct regularisation of the admission of the students, who were allotted to the appellants by the State Government etc. pursuant to the directions given by this Court. Although, in the absence of cogent material, it is not possible to record a finding that the students were party to the patently wrong and misleading statement made by the appellants, the Court cannot overlook the fact that none of the appellants has been granted recognition by WRC, Bhopal and in view of the prohibition contained in Section 17A of the Act read with Regulation 8(12), the appellants could not have admitted any student. However, with a view to make business and earn profit in the name of education, the appellants successfully manipulated the judicial process for allocation of the students. Therefore, there is no valid ground much less justification to confer legitimacy upon the admission

made by the appellants in a clandestine manner. Any such order by the Court will be detrimental to the national interest. The students who may have taken admission and completed the course from an institution, which had not been granted recognition, will not be able to impart value based education to the future generation of the country. Rather, they may train young minds as to how one can succeed in life by manipulations. Therefore, we do not consider it proper to issue direction for regularising the admissions made by the appellants on the strength of the interim orders passed by this Court.

19. We also declare that none of the students, who had taken admission on the basis of allotment made by the State Government, shall be eligible for the award of degree etc. by the affiliating body. If the degree has already been awarded to any such students, the same shall not be treated valid for any purpose whatsoever.

29. This Court in *Kashmir Women's College Vs. Kashmir University & Ors.* 2012(1) JKJ 100(HC), when asked to grant a writ of Mandamus directing Kashmir University to regularize admission of 60 candidates admitted by the petitioner-college over and above its intake capacity, dismissed the writ petition observing;

In view of the settled legal position it would not be permissible to regularise the 60 candidates admitted by the petitioner college over and above its intake capacity even though the students might have appeared in the examination pursuant to the Court direction that asked the respondents to accept the examination fee, RR's forms of those of the students of the petitioner-college who have been admitted by the University in the session 2009-10 and thereafter to enable this class of the student(s) to take examination. The petitioner college motivated by pure commercial interests, while granting admission over and above its intake capacity, ignoring that it had volunteered to be a partner with the State in the sacred task of training Teachers who would in turn educate future generation and thus expected to follow the fundamental values of truth, honesty and fair play, cannot get its irregularity legitimised by pushing forward cause of the students who have been enrolled without any authority. The power of judicial review and writ jurisdiction cannot be exercised to held the petitioner college to secure its commercial interests other than in accordance with law.

30. From the above discussion, it is abundantly clear that any direction to the respondent University to regularise the admission of 292 students

enrolled by the petitioner college in violation of University Statutes, would be impermissible and not in tune with principles that must guide exercise

of writ jurisdiction.

31. This, however, does not end the matter. Would it be just and fair to leave 292 students enrolled in violation of University Statutes, high and dry

without any relief and remedy, is the question that calls for an answer. Though the public Notice issued by the University on 14th June, 2011

informing the aspirants for admission to B.Ed. Course in private colleges, that the colleges had no power to make admissions and that the

University had the exclusive power to admit and allot students, ought to have put 292 candidates enrolled by the petitioner-College on caveat and

dissuaded them from seeking admission in the petitioner college, yet the petitioner-college cannot be allowed to get enriched at the cost of the

illegally enrolled students. The petitioner college, therefore, as one of the measures to undo the wrong done to the students has to return the fee

received from the 292 students enrolled in violation of University Statutes.

32. The other measure required to be taken by the petitioner-College is to compensate students enrolled in violation of the University Statutes for

loss of one academic year. It would not be fair on the part of the petitioner college to push the 292 students enrolled in violation of University

Statutes to any litigation on question of compensations. The petitioner-college may on its own consider payment of a reasonable compensation say

Rs. 50,000/- (Rupees Fifty Thousand only) per student to each of the 292 students admitted in violation of the University Statutes.

33. The discussion made while dealing with the controversy arising out of pleadings and the material available on the file, points to an important

issue, requiring immediate consideration of the Jammu University, Kashmir University and other Universities set up in the State. The present

mechanism evolved by the University to make admissions to private B.Ed. colleges and allotment of students selected to the colleges, leaves scope

for chasing out one or more such colleges from the field and pushing them to financial disaster and bankruptcy. The record reveals that out of

21024 B.Ed. seats for the session 2011-12 available in Non-Government private

B.Ed. Colleges affiliated to the University, only 14154

candidates have been selected leaving 6870 seats unfilled. The private B.Ed. colleges, therefore, do not get the students up to their intake capacity.

The Promoters of such colleges, therefore, have to carry on their day to day affairs from admission Fee and other dues received from 50% or less

number of students of its intake capacity. This is only one aspect of the matter. The other and more disastrous aspect of the problem confronting

private B.Ed. colleges is the absolute choice given to the students to opt for the college of their choice. Nothing can be a more appropriate

example in this regard, than the plight of the petitioner-college. The petitioner college, as already pointed out has an intake capacity of 334

candidates. However, only 18 out of 13740 have given preference to the petitioner college and have been admitted by the college. The promoters

of the petitioner-college, therefore, have to carry their day to day affairs from the admission fee and other dues deposited by the 18 candidates.

The petitioner-college has employed manpower and set up infrastructure to cater to the requirements of 334 students. It obviously would be

difficult for the petitioner college to keep its head above water and avoid closure. Same may be true about other private colleges.

34. While, academic discipline cannot be sacrificed for the financial interest of one or more private educational institutions and the private

educational institutions cannot be permitted to add to the national human resources pool, inefficient and incapable professionals, who may

conveniently cover up their inefficiency under the degrees awarded after an academic/training course undergone in such private colleges. Still their

genuine grievance cannot be ignored or left unaddressed. To illustrate, it would be highly unjust to allot less than 20 students to a college having

intake capacity of 334 students, debar it from making admissions on its own and allot 75 students to private B.Ed. college having intake capacity

of 100 students. There is to be some reasonable nexus between the number of students allotted and the intake capacity of a private educational

institution. In the circumstances, the decision to give absolute discretion to a student to go for a private college of his choice and make decision as

regards allotment of selected candidates to the private B.Ed. colleges exclusively on the basis of the option exercised by the selected candidates,

may require a fresh look. Needless to state that the decision taken by a student as regards the college may not always be an informed decision and may at times be manipulated.

35. The Jammu University, Kashmir University and other Universities set up in the State and granting affiliation to Non-Government Educational

Institutions/Colleges would be well advised to constitute a High Level Committee/ees to examine the matter and make its/their recommendation for

rationalising distribution of selected students amongst private B.Ed. colleges and for that matter other private educational institutions, so as to

ensure that they get fair share of the admissions made by the Central Admission Committee having regard to their individual intake capacity.

36. The Committee(s) constituted is/are to have coopt a representative of the private educational institutions and an Officer of the rank of

Secretary from State Education Department. The Committee(s) after looking into all aspects of the matter is/are expected to make its/their

recommendations to the University concerned within eight weeks and the University to take a decision on the recommendations made within four

weeks, so that a mechanism is evolved for allotment of fair share from the selections made by the Central Admission Committee, to each of the

private B.Ed. colleges.

37. In view of the big gap between the number of selected candidates for B.Ed. course and total intake capacity of all the B.Ed. colleges in

Jammu, the Committee is also required to look into mode, mechanism and criteria for grant of permission by the State Government and affiliation

by the University to new private B.Ed. colleges, so that economic viability of such colleges attracts due attention of the State Government and

University authorities as also promoters of such new colleges. A balance is to be struck between the total intake capacity and number of aspirants

for the course. Any reckless increase in intake capacity by permitting and granting affiliation to new private/Non-Government Colleges or

enhancement in intake capacity of existing colleges, is bound to compound the problem, make private educational institution like sick industrial units

plagued by financial crisis and compel them to grant admission in violation of University Statutes, compromising the academic standards. This shall

in turn pollute the academic atmosphere, lead to unhealthy trends in the Sector

and last of all, add ill/under educated and ill/under trained manpower to the national human resource pool.

38. The writ petition with above observation is dismissed. The parties are left to bear their own costs. (Hasnain Massodi)