

(2010) 03 AHC CK 0102
In the Allahabad High Court

Case No : Writ Petition No. 11908 (MB) of 2009 Connected with
9843,11006,10332,11724,12137,12154 (M/B) of 2009 and W.P. Nos.
68,214,471,569,794 and 795 (M/B) of 2010

Jamuna Devi Naresh Chandra Mahavidyalaya and others	APPELLANT
Vs	
State of U.P. and another	RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 28(5)(b)

Citation : (2010) 03 AHC CK 0102

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Allowed

Judgement

Pradeep Kant, J.

This is a bunch of writ petitions filed by the private unaided institutions running B.Ed course and some of the students, challenging the Government Order dated 15.10.2009, by means of which an amendment has been made in para 7 of the Order, known as the Uttar Pradesh State Universities (Regulation of Admission to Courses of Instructions for Degree in Education in Affiliated, Associated and Constituent Colleges) Order, 1987, declaring the academic session 20092010 as zero session.

The aforesaid Government Order dated 15.10.2009 recites that a joint entrance test for admission to B.Ed. courses in affiliated colleges of different universities was conducted by Chhatrapati Shahu Ji Maharaj University Kanpur in July, 2007 and thereafter under the orders of this Court, special counselling was conducted in March, 2009 for academic session 20072008. Likewise, a joint entrance test for admission to B.Ed. courses for academic session 200809 was conducted by Dr. Bhimrao Ambedkar University, Agra, which examination was held in October, 2008. The second round of counselling was conducted under the orders of High Court dated 5.5.2009, but since a large number of seats were lying vacant even after the second counselling, i.e. about 15000 seats, the State Government took

a decision to fill the remaining seats by holding yet another counselling after seeking due permission from the Court, which matter was then under consideration and taking into account that under the norms set up by the National Council for Teacher Education (NCTE), minimum 210 days teaching would be required, which, under the circumstances revealed that the present academic session 20092010 would be consumed by two academic sessions i.e. 20072008 and 20082009; therefore, academic session 20092010 is declared as a zero session.

The effect of the aforesaid order is that for the academic session 20092010, no common entrance test would be held by any university and no admission of students for B.Ed. course would be made for the said session.

The challenge to the aforesaid Government Order has been made mainly on the following grounds:

(i) The State Government was having no power, authority or jurisdiction to declare the academic session 20092010 a zero session.

(ii) The reasons given therefor are wholly irrational and without any basis; muchless they do not carve out any exceptional reason or ground for taking such a drastic decision, affecting not only 1006 or so such selffinanced institutions, which cannot pay salary to such a large number of teachers in all, with the result that they would not be having teachers for the next academic session; besides, several thousand students would be deprived of seeking admissions for B.Ed. course in the said academic session;

(iii) The order impugned impinges upon the autonomy of private unaided institutions and that of the University to which they are affiliated, though the State Government has no authority to legislate or issue any executive order in respect to the admission procedure or laying down any criteria for admissions or for regulating the admissions, that too to the extent of prohibiting the admissions for a particular academic session.

The State Government, in defence of the aforesaid Government Order, has heavily placed reliance upon the Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) Order, 1987. This order has been amended from time to time, namely, on 27.5.2005, which came into effect from the academic session 20052006; on 1.9.2005, which was enforced in the same session 20052006; on 31.1.2006, which amendment came into force in the academic session 20062007; and on 1.2.2007, which amendment was brought into effect from the academic session 20072008.

The State Government has also taken a plea that under the regulations framed by the NCTE, notified on 27.11.2007, the role of the State Government was well recognized, which permits the regulation of admissions to B.Ed course and, therefore, the order impugned does not suffer from any vice of excessive

authority being used by the State Government. Further, in view of the aforesaid regulations, the prescription of completion of 210 days teaching before the written/practical examinations is a mandatory requirement and since the academic session 20082009 has started in July, 2009, but the third counselling for admissions was completed only on 31.12.2009, therefore, the State Government was having no option but to declare the academic session 20092010 a zero session for the reason that there was hardly any time left for imparting instructions for required number of days before the written and practical examinations could be held and that, two academic sessions cannot be allowed to run simultaneously for the reason that the NCTE norms prescribe a complete infrastructure including the number of teaching staff and, therefore, in the absence of additional infrastructure duly recognized by the NCTE, the affiliated colleges could not be allowed to run two shifts in one academic session for two overlapping academic sessions.

Section 28(5)(b) of the U.P. State Universities Act, 1973, which reads as under, is being said to be the source of power, for issuing the impugned order:

Notwithstanding anything contained in any other provision of this Act

"admission to medical and engineering colleges and to courses of instruction for degrees in education and Ayurvedic or Unani systems of medicine (including the number of students to be admitted), shall subject to clause (a), be regulated by such orders (which if necessary may be with retrospective effect, but not effective prior to January 1, 1979) as the State Government may by notification, make in that behalf :

Provided that no order regulating admission under this clause shall be inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice;"

Reading the aforesaid provision with the Order of 1987, it has been urged on behalf of the State that the admissions are regulated by the State Government as per policy determined by it and that a perusal of the provisions of aforesaid Section alongwith the Order of 1987, as it stood amended from time to time, the State Government is having full jurisdiction to regulate the admissions in the professional courses, and in the facts and circumstances of the case, where it was not possible to hold classes for minimum 210 days before the written/practical examinations, the declaration of academic session 20092010 a zero session has been made only with a view to streamline the delayed sessions and to streamline the course as per the schedule of academic session which starts from 1st of July every year and ends on 30th June in the following year.

Though an argument has been raised on behalf of the petitioners that under Section 28(5) of the Act, 1973, the State Government is not vested with the jurisdiction to declare any academic session a zero session with respect to any of the courses which are being run by the university or its affiliated or constituent colleges, but the petitioners confined the argument only to the plea that the

State Government does not have any such power or authority to declare any academic session a zero session in respect to the courses which are covered by the NCTE Act and in particular, the B.Ed course.

It may thus be put forth on record that the State is explicitly deriving its power to regulate admissions from the provisions of Section 28(5)(b) of 1973 Act, in pursuance of which 1987 Order was made with the amendments being incorporated from time to time.

Subsection (5) of Section 28 was substituted by U.P. Act No. 20 of 1974 in the U.P. State Universities Act, 1973. At the time of insertion of aforesaid provision, obviously the NCTE Act had not been promulgated, which came into force only in July, 1995, known as the National Council for Teacher Education Act, 1993. The situation, therefore, as it existed prior to the enforcement of the NCTE Act and thereafter, would be a relevant consideration for resolving the issue raised in these petitions.

The NCTE Act, 1993 is a central legislation, enacted by the Parliament which came into force on 1.7.1995. The Preamble of the said Act is relevant; it reads as under:

"An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development for 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."

The contention is that if the field is occupied by the said Act, the State Legislature would have no jurisdiction to enact a law which is covered by Entry 66 of List I, and, therefore, Entry 25 of List III has to be read subject to the provisions of Entries 63, 64, 65 and 66 of List I as given therein.

The aforesaid question regarding the right of the State Government in the matter of laying down a policy with respect to admissions for B.Ed. course, which are covered by the NCTE Act and also in the matter of recognition being granted by the NCTE for any such courses in private unaided institutions and its consequences in view of the objections/opposition made by the State Government became the subjectmatter of adjudication in the case of "State of Maharashtra versus Sant Dhyaneswar Shikshan Shashtra Mahavidyalaya and others" reported in (2006) 9 SCC 1, wherein their Lordships after considering the scheme of the Act and the meaning and import and also the effect of Entry 66 of List I and Entry 25 of List III of Schedule VII, the Apex Court, considering the arguments raised, observed as under:

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

Their Lordships further observed in para 74 as under:

"It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher education system "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE."

The Court further observed in para 77 as under:

" The learned counsel for the respondents are also right in relying upon the provisions of Articles 19 and 21A of the Constitution. Under clause (g) of Article 19(1), all citizens have the right to practise any profession, or to carry on any occupation, trade or business, unless they are restrained by imposing reasonable restrictions under Article 19(6). In the instant case, applications had been made by colleges to NCTE under the 1993 Act and after complying with the provisions of the Act, permission was granted by NCTE. The State thereafter could not have interfered with the said decision. It is also clear that Article 21A would cover primary as well as secondary education and the petitioners could claim benefit of Part III of the Constitution as well."

The Court also found that once recognition has been granted by NCTE under Section 14(6) of the Act, every university is obliged to grant affiliation to such institution and Sections 82 and 83 of the Maharashtra University Act do not apply to such cases.

In the case of State of T.N. and another versus Adhiyaman Educational & Research Institute and others (1995) 4 SCC 104, the Court had an occasion to consider the constitutional provisions in respect to the powers of the Parliament and the State on legislation. On the scope of Entry 66 of List I and Entry 25 of List III of Schedule VIII, after examining the Central Act as well as the State Act, the Court concluded as follows:

"As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the derecognition by the State Government or the disaffiliation by the State

University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative"

The NCTE Act lays down a full procedure regarding the grant of recognition for running B.Ed. course in the given capacity i.e. number of seats where admissions can be made by colleges so recognized after affiliation is granted by the concerned university. Though it has been also urged that the provision of prior approval for affiliation by the State Government is contrary to the provisions of NCTE Act, but since this question is not substantially in issue in the present writ petitions, therefore, we do not intend to address ourselves on the said plea which matter is being left open.

The Order, 1987, on which reliance has been placed by the State, was issued prior to the enforcement of the NCTE Act. All professional education, including the teacher's training education, namely B.Ed. course, was being provided by the universities and affiliated colleges as per the State University Act, 1973 and the rules or orders framed thereunder. On the advent of the NCTE Act in July, 1995, the powers to allow admissions to B.Ed. course in affiliated colleges were brought within the ambit of the aforesaid Act. It is only the NCTE who is competent to recognize a private unaided college for imparting education of B.Ed course on fulfillment of required conditions as laid down under the Act and the regulations notified therefor and once the NCTE is satisfied after making necessary inspection and following other formalities, as may be necessary, it grants recognition to such institution, making it eligible for taking admissions, on the number of seats permitted by it, subject to the grant of affiliation by the concerned university.

The State Government has no role, in the matter of grant of such recognition which allows admissions, on affiliation being granted by the university

The State Government only has a right of granting approval for affiliation being granted by the university and nothing beyond that. Since the validity of such an action of the State Government is not being touched by us, as observed earlier, we do find that once approval is granted by the State for granting affiliation, the State Government cannot exercise its control over the admissions which are to be made by affiliated colleges through a common entrance test, for which the State Government nominates a particular university for holding a common entrance test, nor the State Government can have any power to deaffiliate or cancel the affiliation of any such college of its own, but in case any lacuna or default is detected in the action of any college, a complaint can be made or said fact can be brought to the notice of NCTE who may suitably take action including derecognition of such college. Sections 14 (6), 15 and 17 of the Act, 1993, which are relevant for the purpose.

The State has not been able to indicate any provision under the NCTE Act which defines the role of the State Government in the matter of continuance of the courses in duly affiliated colleges or in the matter of taking admissions in such

colleges. The State Government, however, by virtue of the amendment made in the Act of 1973 is vested with the power of granting prior approval for affiliation which powers were previously with the Chancellor of the university.

Once recognition is granted and affiliation is accorded, so long this recognition/affiliation continues, such a private unaided college is legally entitled to take admissions in every academic session. There cannot be any exception to taking of admissions in any particular academic session, nor any impediment can be placed by the State Government in doing so. The State Government except for directing to hold a common entrance test by any university on a given date has no other function to perform in the matter of admissions. After the common entrance test is held, a select list is prepared in order of merit and the students during the counselling which is centralised, give their choice of colleges which are allotted to them as per their merit and order of preference. The State Government has no role to play in such admissions.

Learned counsel for the petitioners further submitted that the authority to hold the common entrance tests to the State Government flows from the judgment of the case of "P.A. Inamdar and others versus State of Maharashtra and others" reported in (2005) 6 SCC 537 and not from the provisions of Section 28(5) (b) of the Act, 1973 nor from the Order of 1987 and, therefore, also the State Government does not have any power to declare the academic session 2009-2010 a zero session.

March, 2010

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In P.A. Inamdar's case (supra), while considering the necessity of having a single window system for admissions i.e. a centralised system, the consideration was mainly given to the plight of the students, who were to appear in several tests at different places for seeking admissions in one or several institutions, who impart education in one and the same discipline and also for fulfillment of the twin object of transparency and merit. The common entrance tests were also found necessary in the interest of achieving the said object and also for saving the students' community from harassment and exploitation.

In the aforesaid case, their Lordships made the following observation:

"137. *Pai Foundation (T.M.A. Pai Foundation v. State of Karnataka)*, (2002) 8 SCC 481 has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and nonexploitative. The same principle applies to nonminority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and nonexploitative. All institutions imparting same or similar professional education can join together for holding a common entrance

test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and meritbased admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure."

To give effect to the aforesaid directive of the Apex Court, the State Government, having found that there was no recognized association of the private unaided institutions, stepped in and started holding the common entrance tests. The authority to hold the common entrance test for admissions to B.Ed. course in different colleges affiliated to various universities was thus the necessary outcome of the P.A.Inamdar's case. In case the common entrance test was to be conducted by the Association of private institutions as per the verdict of the Apex Court, obviously, the State Government, could not have interfered in the admission process, subject to the conditions of interference as given in the aforesaid judgment.

That being so, in the absence of any specific provision under the Act of 1973 or the NCTE Act, the admission procedure only in so far it prescribes for authorising any university for holding of a test for admissions is in the domain of the State Government. But no provision could be shown where under which, the academic session can be declared a zero session by the State Government. This would mean that the State Government cannot refuse to hold common entrance test of its own and if there is any such contingency, the matter could have been taken up with the concerned university, and if any such decision was at all required to have been taken, it could have been taken by the university with the representatives of the affiliated colleges. But even in such a case, all efforts need be first made, for regularising the academic session, by adopting alternative solutions, instead of declaring any academic session as zero session. No such exercise was done in the present case, where the State Government took a unilateral decision of its own.

It may be reminded that prior to the dictum of the Apex Court in P.A.Inamdar's case, the admissions were being taken by the respective universities of the colleges affiliated with them of their own without any intervention by the State Government and the university was thus competent to see whether the academic session could be allowed to be discontinued in a particular year for any valid or cogent reason. The power of holding a joint entrance test conferred upon the State Government, would not take away the right of the university to regulate its own academic session.

In view of the legal position that the NCTE Act is a Central Act, therefore, on the enforcement of said Act in July, 1995, all the provisions of the State Act (Act of 1973), which are repugnant or contrary to the Central Act or if they are overlapping, would lose their effect and shall become inoperative, null and void. Recourse cannot be taken to the provisions of the State Act which thus do not

stand protected under the Central Act and which are repugnant and contrary to the aforesaid Act. In view of the ratio decidendi of the judgments in the cases of Sant Dhyaneswar and Adhiyaman Educational Institute (supra), the field stands fully occupied by the Central Act (NCTE Act) and, therefore, the State Act (Act of 1973) cannot encroach upon the already covered field.

Regulations and the Order of 1987 primarily issued under the State Act, that too prior to the enforcement of 1993 Act, thus having rendered themselves inoperative in regard to laying down the scheme for admission, providing number of seats for admission etc. in cases covered by NCTE Act, there was no power with the State Government to amend the said Order so as to give effect to the provisions of Section 28(5)(b) of the Act of 1993 and the Order of 1987.

Section 28 of the Act of 1973 pertains to constitution of admissions committee, which says that there shall be an Admissions Committee of the University, the constitution of which shall be such as may be provided for in the Ordinances. Subsection (3) of Section 28 aforesaid says that subject to the superintendence of the Academic Council and to the provisions of subsection (5), the Admissions Committee shall lay down the principles or norms governing the policy of admission for various courses of studies in the University and may also nominate a person or a subcommittee as the admitting authority in respect of any course of study in an Institute or a constituent college maintained by the University whereas subsection (5) starts with a non obstante clause, clause (b) of which says that admission to medical and engineering colleges and to courses of instruction for degrees in education and Ayurvedic or Unani systems of medicines (including the number of students to be admitted), shall, subject to clause (a), be regulated by such orders (which if necessary may be with retrospective effect, but not effective prior to January 1, 1979) as the State Government may by notification, make in that behalf.

The enactment aforesaid makes it clear that it was inserted in the year 1974 with a view to bring within its ambit the admissions to medical and engineering colleges and to courses of instructions for degrees in education and Ayurvedic or Unani systems of medicines, etc. including the number of students to be admitted, subject to clause (a), namely with reservation of seats for admission, for which power was given to the State Government to issue necessary orders by making notifications. The admission to professional courses or for that matter, for having degree in education (B.Ed. course) since have been taken away from the ambit of the State law and are now covered by the NCTE Act, the two provisions cannot go simultaneously side by side.

It is now under the NCTE Act, the Council has to grant recognition, to any unaided private college for running the B.Ed course which also prescribes the number of seats against which admissions can be made. Section 2(d) of the NCTE Act says that the "examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications. Section 2(e) defines "institution" which means

an institution, which offers courses or training in teacher education. Subclause (1) of Section 2 says that "teacher education" means programmes of education, research or training of persons for equipping them to teach at preprimary, primary, secondary and senior secondary stages in schools, and includes nonformal education, parttime education, adult education and correspondence education, and "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act.

The functions of the Council have been enumerated in Chapter III in Section 12, which says that it shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purpose of performing its functions under this Act, the Council may, amongst other provisions, 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. Clause (g) lays down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training, etc. etc.

Thus, once the B.Ed. course or so to say, teacher education has been put within the ambit of NCTE Act, all provisions relating thereto, particularly with respect to admissions as given in Section 28(5)(b) of the Act, 1973 will become inoperative and cannot be relied upon. The State Government has not been able to indicate any provision of law, under which it could have exercised power for declaring the academic session 20092010 a zero session.

To regulate the academic sessions, the universities could have adopted some better means and may be, for that purpose, the State Government could have given some advice as it cannot go unnoticed that in the matter of approval or affiliation, long delays occur, sometimes on the part of the State Government and sometimes on the part of a university and delay also takes place in holding the common entrance test and consequently in holding the counsellings, resulting into delay in admissions.

Past events reveal that delays in academic sessions have been allowed to be continued without any protest by the universities or the State Government, but instead of taking a rational and reasonable approach for streamlining the academic sessions, the State Government issued the impugned order though it was having no such authority.

In regard to the plea that the reasons given in the impugned order for declaring the academic session 20092010 a zero session are baseless and irrational so as to debar the colleges to take admissions for the said academic session and thus to deprive those students of having teacher education who were otherwise eligible for the purpose, it would be appropriate to have a glimpse upon the

manner in which common entrance tests were held in the past on the directives of the State Government and the examinations which have been conducted many a time on the directives of the High Court, as under:

In academic session 20052006, as many as five counsellings were held, the last of which was done upto 28th February, 2006. Since the admissions were made after counsellings being held repeatedly, three examinations were held and the last examination concluded on 12.12.2006.

In academic session 20062007, as many as six counsellings were held starting from July, 2006 and ending on 10.11.2006. Three examinations were conducted by Kanpur University, the last being on 31.12.2007.

In academic session 200708, as many as five counsellings were held and whereas two examinations were conducted for the first three counsellings, the last examination having been conducted on 8.6.2009 for the students admitted in the fourth and fifth counsellings. The dates of examinations have yet not been declared, although the last counselling was completed on 8.3.2009.

In respect of colleges affiliated to Agra University, for academic session 20082009, the counsellings for the last session were held in November, 2008 and upto March, 2009.

Several writ petitions were filed praying for directions to make admissions pursuant to the joint entrance test held on 19.10.2008. In March, 2009, orders were passed by this Court, in furtherance whereof counselling was conducted from 8.4.2009 to 22.4.2009. About 80% students were allotted out of total intake of about one lac students. Another order was passed by the Court directing on 5.5.2009 to complete the counselling by 10.6.2009 and to start the session latest by 1.7.2009. In this counselling, more students were admitted but 15% of the seats were still lying vacant, as a consequence whereof several representations were made to the university/State Government and finally the State Government took up the cause and made an application before this Court for extending the period of examination and provide another chance to hold the counselling so that remaining seats may be filled and students, who were on the select list, could be accommodated in institutions, which are 1006 in number.

On the application of the State Government, the Court on 11.11.2009 permitted to hold the last leg of counselling within a month. The State Government did hold the third counselling but not within the time prescribed by the Court and still there were large number of vacancies which could not be filled. No counselling was held thereafter nor was permitted by the Court. Students, who were admitted pursuant to first and second counsellings, completed their course, but the students, who were admitted in pursuance of third counselling, are now pursuing their course for academic session 20082009. According to the petitioners, this constitutes only about 9% of the entire strength of students in the colleges.

The petitioners have also given a timeschedule for making admissions and thereafter continuance of studies so as to cover up the period of 180 days teaching which is required under the regulations (not 210 days) before written and practical examinations are held. They also say that with a slight delay in the start of present academic session, the entire sessions can be regulated and if the State Government and the universities allow the admissions within the prescribed period, next academic sessions would automatically stand regulated.

Learned counsel for the petitioners have also submitted that the plea of the State that students of two different academic sessions i.e. 20082009 and 20092010 cannot be allowed to pursue their studies in one academic session for want of infrastructure and also for want of necessary teaching staff etc., is not based upon any objective consideration. The submission is that three counsellings were held for the academic session 20082009 and students who were admitted pursuant to first and second counselling have already completed their course, and it is only the students, who were admitted in pursuance of third counselling held on 31.12.2009, are pursuing their studies. This constitutes only 9% or so of the students of all the colleges in the entire State of U.P. The argument, therefore, is that for this 9% meagre number of students, all the colleges in the State of U.P. would remain without any students throughout the year, waiting for admissions to be made for the next academic session 20102011, regarding which also the process has not yet started.

In the above background, we also take notice of the fact that despite a writ petition being filed (viz. Writ Petition No. 5567 (M/B) of 2009 in re: Association of Self Finance Educational Institutes, etc. Vs. State of U.P. and others, praying for a direction to the State Government to forthwith hold a joint entrance test for academic session 20092010 and the Court granting four weeks" time to the respondents to file counter affidavit in the matter on 9.7.2009, the State Government did choose not to file any counter affidavit and thus for no reason, did not take any steps for holding the joint entrance test and frustrated the above petition by declaring the academic session 20092010 a zero session on 15.10.2009.

The State Government sat tight over the matter and then created a situation where it expressed its inability to allow admissions for the said academic session on the ground that it would not be possible for the students to attain 210 days of teaching as required before the final written and practical examinations.

The State Government ought to be conscious of the fact that the delay being on its part in holding the joint entrance test cannot be attributed to the private colleges nor the students could be made to suffer for the aforesaid reason, therefore, it ought to have held the joint entrance test as soon as the matter was brought to its notice, so that one complete academic year would not have been wasted. The State Government with no sense of responsibility, first had chosen not to allow the joint entrance test for admissions and then has given explanations for justifying its own Order.

We also take notice of the fact that the reasons given by the State Government are not justified as the academic sessions could have been very well streamlined by holding joint entrance test in July itself, or within a reasonable time, even thereafter.

The petitioners have categorically asserted that in the year 1977, there were only 120 teacher education institutions in the State of U.P including Uttarakhand, but after about a decade, there are more than 1006 institutions for B.Ed. course in the State of U.P. alone. By virtue of the provisions of Section 12(m), one of the principle objectives laid down in the NCTE Act is to prevent commercialization of teacher education and the jurisdiction of the NCTE has been invoked to step in, but the State Government, by its interference has virtually negated the very object of the NCTE Act. In Uttarakhand, the date of entrance examination for the B.Ed course 20092010 was declared as 9.12.2009, but in the State of U.P, though such test could have been held earlier, the State Government took the impugned decision by declaring the said academic session a zero session.

In the counter affidavit, there is no denial of the fact that in the State of U.P., there are more than 1006 institutions for B.Ed. course or that the State Government was oblivious of the fact that all the educational institutions set up in the State of U.P for imparting teacher education have to maintain a certain amount of infrastructure throughout the year and in the process, the teachers and other staff is also required to be employed and a huge amount of money as salary is paid to these teachers and staff. In the absence of any students being sent to the college, this expenditure is necessarily to be incurred by the institutions, which the institutions can illafford to incur such expenditure. The colleges which have been set up at heavy cost expended by those who are interested in promoting the cause of education also entail heavy bank interest.

The NCTE Act, which is a Central Act, is specially enacted for teachers' training where the entire procedure for seeking permission/recognition for running such course on fulfillment of certain formalities and terms and conditions, as required under the Act, has been provided. This virtually excludes the interference of the State Government to its maximum in the matter of setting up of such institutions and running these courses. These institutions have been given autonomy to run their courses and till their recognition lasts and affiliation continues, there cannot be any point of intervention by the State Government in the matter. The State is only empowered to authorise any particular university in the State to hold the common entrance test on a given date and has no role to play beyond that in the existing institutions. The authority to nominate one university for holding common entrance test on a given date would not entitle the State Government to interfere in the running of course in a particular academic session and in no case to declare the academic session a zero session and that too for its own reasons for not holding the joint entrance test. Such an action on the part of the State affects the autonomy of the institutions also which are affiliated to concerned universities in the matter of running their courses, to which they are entitled in

the academic session.

On having a close look upon the events aforesaid, we have no hesitation in observing that the State Government was having no competence to declare the academic session 20092010 a zero session by issuing the impugned order and, therefore, the said order cannot be sustained legally. The impugned order of the State Government dated 15.10.2009 is per se without any authority and cannot be justified even on the facts and the reasons given therefor. The said order is liable to be quashed, which is hereby quashed.

The question remains as to what relief can be granted to the petitioners and like institutions. This Court would not be acting as an expert in chalking down or laying down the time schedule for holding the joint entrance test and consequently for counsellings and admissions of the students in various institutions for academic session 20092010, more so when the Court is conscious of the fact that the academic session 20092010 which technically said to have been started in July 2009 would come to an end on 30.6.2010. In such a situation and the fact that admissions to the academic session 20102011 would be made by July, 2010, no relief can be granted for admitting the students for the academic session 200910.

To allay the apprehension of the petitioners that the academic session 20102011 would also be delayed and that the colleges would again suffer for the same cause or delay, we direct that after holding the joint entrance test on 5.5.2010, the date which has already been fixed, the counselling shall be completed by 15.6.2010 even if repeated counsellings are to take place for admitting maximum number of students. The admission process will be arranged in such a manner that after the first counselling, the students would be admitted within a shortest possible reasonable time so that if any seats remain vacant after first counselling, counselling for the same can be held within the time prescribed. The admission process shall be completed by 30.6.2010 and the academic session 201011 shall start from 1.7.2010.

To avoid any delay in the start of further academic sessions, we further direct that the State Government shall fix the date for common entrance test every year on any day in the month of April and shall complete the counselling (may be one or repeated counselling) positively by 15th of June, and the admissions shall be made by the affiliated colleges in appropriate phases after every counselling, so that all admissions are over by 30th of June of every year, so that the academic session starts with effect from 1st of July of the year.

We, for the aforesaid reasons, though quash the impugned order dated 15.10.2009, but in view of the fact that still no relief can be granted to the petitioners, for admissions in the academic sessions 20092010, allow these writ petitions, with costs of Rs. 2,00,000/.