
(2015) 02 JH CK 0018
In the Jharkhand High Court
Case No : W.P. (C) No. 2643 of 2013

Jharkhand Teacher Training College Association	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 166, 254
National Council for Teacher Education Act, 1993 — Section 12, 12(h), 2, 2(1), 29

Citation : (2015) 4 AJR 689

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : S.B. Upadhyay, Senior Advocate, Neeraj Shekhar and S.K. Gautam, for the Appellant; Rajesh Shankar, G.A., Lukesh Kumar, J.C. to G.A., A.K. Mehta, Amit Kumar Sinha, A.K. Singh, I. Sen Choudhary and Prabhu Dayal Agrawal, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner No. 1 is an association of self financed/ unaided B.Ed. colleges in the State of Jharkhand and the petitioner No. 2 is a B.Ed. college recognised by the National Council for Teacher Education have approached this Court seeking quashing of Clause 10 contained in Resolution dated 20.05.2004 whereby subjectwise quota of seats for admission in B.Ed. colleges has been fixed. Briefly stated, the respondent Nos. 1 and 2 issued Resolution dated 20.05.2004 which prescribed the procedure for admission in the B.Ed. colleges. Under Clause 10 of the said Resolution, the total number of seats for Which recognition has been granted by the National Council for Teacher Education has been fixed subjectwise that is, for Hindi, English, History, Geography, Physics, Chemistry, Biology, Mathematics etc. Such distribution of seats caused serious problems for the B.Ed. colleges where admission in various subjects could not be taken and seats could not be filled up because candidates are not interested in taking admission in many subjects. In Resolution dated 20.05.2004, there is no provision for taking admission on unfilled seats and

therefore, those seats have remained vacant. This has caused serious financial implication for the B.Ed. colleges in the State of Jharkhand. It is stated that the National Council for Teacher Education has not fixed subjectwise quota for admission in the B.Ed. colleges. All the colleges under the petitioner No. 1 are self financed, unaided colleges and they have to bear their expenses from their own resources, that is, from the fee deposited by the students.

2. Affidavits have been filed on behalf of the respondent-State of Jharkhand questioning the authority of petitioner No. 1 to file the present writ petition and taking the plea of non-joinder of necessary parties. It is stated that the Resolution dated 20.05.2004 fixing subjectwise quota of seats has been issued in view of requirement of subject-wise teachers in the State and for maintaining a balance according to the requirement of subject teachers in the State. The subject-wise quota for admission has been made for all the subjects and thus, it has a reasonable nexus with the object to be achieved. An objection has been raised to the details of unfilled seats in some of the colleges which pertain to academic session 2012-13. It is stated that in Government Colleges and University Colleges large number of applications are received and all the seats are filled up. In so far as, other States are concerned, the ground conditions, requirement of teachers in those subjects etc. may be the factors for prescribing the quota of seats in the ratio 50:50 but situation prevailing in other States cannot be equated with the situation in the State of Jharkhand. It is further stated that the private B.Ed. colleges committed grave irregularity in taking admission in breach of the mandatory condition contained under Clause 10 of Resolution dated 20.05.2004 and they have admitted more candidates in a particular subject without taking permission from the University and the State Government.

3. Supplementary affidavits have been filed on behalf of the petitioners bringing on record the guidelines for admission in B.Ed. courses issued by the Government of Karnataka, the University of Patna, University of Kolkata, Sikkim University, Tamil Nadu Teachers Education University and Deen Dayal Upadhyaya Gorakhpur University to demonstrate that in other State/University either there is no subject-wise quota fixed for admission in B.Ed. courses or seats have been allocated for Science and Art streams in the ratio of 50 : 50 and there is a provision for taking admission on unfilled seats.

4. Heard the learned counsel appearing for the parties.

5. Mr. S.B. Upadhyay, the learned Senior Counsel appearing for the petitioners submitted that the impugned Resolution dated 20.05.2004 has no statutory force nor it is backed by any regulation. The field of B.Ed. education is fully covered by Entry 66 List 1 in Schedule VII to the Constitution and therefore, the State Government is denuded of its power to legislate on the subject or to prescribe further guidelines on the subject covered under the National Council for Teacher Education Act, 1993 or the Regulation framed thereunder. It is submitted that the Resolution dated 20.05.2004 stood quashed by this Court in the case of

Ursuline Women's Teachers Training College and Others Vs. State of Jharkhand and Others, and therefore, the State Government or the University cannot insist compliance of Resolution dated 20.05.2004 by the B.Ed. colleges in the State of Jharkhand. It is further submitted that insofar as, the role of State Government is concerned it is confined to granting NOC for recognition to the B.Ed. colleges by the National Council for Teachers Education and also in the matters of selection of candidates for admitting in B.Ed. colleges that is, to prescribe method of selection of candidates. Moreover, Resolution dated 20.05.2004 being arbitrary and unreasonable, is in the teeth of Article 14 of the Constitution.

6. As against the above, Mr. Rajesh Shankar, the learned G.A. raised a preliminary objection as to the maintainability of the writ petition on the ground of incompetence of the petitioner No. 1 to prefer the writ petition. It is submitted that the writ petition has been filed about 9 years after the Resolution dated 20.05.2004 was issued and no explanation has been offered by the petitioners for delay and therefore, the present writ petition is liable to be dismissed on the ground of laches and delay on the part of the petitioners. It is submitted that there is no inconsistency between the regulation of NCTE and the Resolution dated 20.05.2004. The letter granting recognition by NCTE and the order of affiliation issued by the respective universities clearly indicate that the recognition by NCTE and the affiliation by university are subject to condition of fulfilling the guidelines of the State Government. The issue before this Court in Ursuline Women's Teachers Training College and Others Vs. State of Jharkhand and Others, was whether in view of the protection granted to the minority institutions, the restrictions contained in letter dated 10.10.2002 and 11.06.2004 directing the colleges to follow the policy of reservation can sustain or not. It is submitted that the object behind fixing subjectwise seats for admission in B.Ed. colleges was to ensure availability of trained teachers in all subjects. The said Resolution has been issued pursuant to the policy decision taken by the State Government. The policy of the Government is just, fair and reasonable and it in no way encroaches upon the field covered by NCTE Act, 1993 rather, it compliments various provisions under the said Act. It is further submitted that the Notification dated 31.08.2009 of NCTE Act clearly provides that the self-financed educational institutions established and operated by "not for profit" Societies and Trusts only are eligible for consideration of their application for grant of recognition under NCTE Act, 1993 however, the averments made in the writ petition disclose that profit is the motive of the members of the petitioner No. 1 association and on this ground alone the writ petition is liable to be dismissed.

7. Mr. A.K. Singh, the learned counsel appearing for the respondent No. 5 Nilambar Pitambar University referred to Section 4 and Section 19 read with Section 22 of the Jharkhand State University Act and submitted that the university is not devoid of power to affiliate or de-affiliate a college for breach of condition imposed in letter of affiliation. It is further submitted that the university being conscious of the conditions imposed by NCTE granting recognition to the

B.Ed. colleges, has put the condition for grant of affiliation that the colleges would comply with the conditions of the State Government. It is submitted that if the B.Ed. colleges have no objection to facultywise quota fixed in the ratio of 50:50 for Science and Humanities, how it can be contended that fixing subjectwise quota for admission in the B.Ed course would be repugnant to the regulation framed under NCTE Act, 1993.

8. Mr. A.K. Mehta, the learned counsel appearing for the respondent-Ranchi University submitted that in absence of any statutory rule, it was competent for the State Government to exercise its power under Article 162 of the Constitution and formulate its own guidelines/policy.

9. Mrs. I. Sen Choudhary, the learned counsel appearing for the respondent-Vinoba Bhave University also raised a preliminary objection as to the maintainability of the writ petition. She submitted that it is a matter of record that there are as many as 95 B.Ed. colleges in the State of Jharkhand out of which 26 colleges are affiliated with the Vinoba Bhave University however, no detail has been furnished by the petitioner No. 1 association. The materials on record indicate that the colleges referring to which the present writ petition has been filed were granted recognition in 2012-13 however, date of recognition of other colleges alleged to be the members of the petitioner association has not been disclosed. It is further submitted that till 2003 there were only 2 private colleges and the number of B.Ed. colleges increased to 8 between the period 2003-2007. However, it swelled to 31 in the academic year 2012-13 and the individual colleges have not challenged Clause 10 of the Resolution dated 20.05.2004. It is further submitted that the colleges under the Vinoba Bhave University gave a false affidavit that they had been complying with the terms and conditions imposed by NCTE, the State Government and the University however, when it was detected that some of the colleges have taken admission in excess of the subject-wise seat fixed by the State Government, show-cause notices were issued. It is stated that when the university refused to issue admit card to the students, without impleading the university as respondent in the present proceeding, the writ petition was filed. Though, pursuant to interim order dated 24.03.2004 the university permitted the students to appear in the examination, their results have been withheld by the university because the colleges committed serious irregularities in taking admissions. The Vinoba Bhave University has preferred L.P.A. No. 137 of 2014 challenging interim order dated 24.03.2014 passed in the present proceeding however, the same is still pending.

10. In reply, Mr. S.B. Upadhyay, the learned Senior Counsel for the petitioners submitted that the executive order/instruction issued under Article 162 of the Constitution cannot override 2009 Regulation of NCTE. The scope of Clause 3(3) of the Appendix-4 to the 2009 regulation which provides norms and standards for Bachelor of Education Programme leading to Bachelor of Education (B.Ed.) degree cannot be expanded to include power in the State Government to fix subjectwise seats for admission in B.Ed. colleges. It is further submitted that

under NCTE Act, 1993 the role of the State Government is considered so minimal that the terms "State Government" is not even defined in Section 2 of the Act. A conjoint reading of Sections 29 and 30 makes it clear that the Central Government alone can issue instructions/directions. The regulation made under Section 32 of the Act has significant weightage inasmuch as, the regulations are laid before the Parliament. Seriously disputing the allegations of commercialisation of education and imparting poor quality of education by the private B.Ed. colleges in the State of Jharkhand, the learned Senior Counsel for the petitioners submitted that it is a recognised fact that the best of quality education is provided by the private institutions across the country.

11. I have carefully considered the submissions of the counsel for the parties and perused the documents on record.

12. Insofar as, objection as to the maintainability of the writ petition on the ground that the petitioner No. 1 is not a registered association is concerned, the Registration Certificate of the petitioner No. 1 has been produced. Moreover, the petitioner No. 2 is a B.Ed. college namely, Bharathi College of Education and thus, it can alone maintain the writ petition.

13. The learned Senior Counsel for the petitioners has contended that the Resolution dated 20.05.2004 is merely an executive instruction and it is not backed by statutory force. I find that the said Resolution has been issued pursuant to a Government decision, is clearly recited in the Resolution itself. The Resolution dated 20.05.2004 has been issued under the order of Governor, State of Jharkhand and thus, this is an order in terms of Article 166 of the Constitution of India. The said Resolution, obviously would have the force of Law.

14. Entry 66 List I of Schedule VII to the Constitution of India covers the field of "co-ordination and determination of standards in institutions for higher education or research and scientific and technological educations". The field of legislation indicated in Entry 25 List III is "education" including technical education, medical education in universities subject to the provisions of Entries 63, 64, 65 and 66 List I and also vocational technical training of Labour. It is well-settled that Parliament has exclusive power to make law with respect to the matters in List I of Schedule VII to the Constitution and it has concurrent power with State legislature to make laws on the matters in List III. The State legislature is completely denuded of power to legislate with respect to matters enumerated in List I. There is no dispute that any Act made by the State Legislature under Entry 25 List III would be invalid if the Parliament has passed a law on the subject in exercise of powers conferred by Entries 63 to 66 of List I. It is also by now well settled that in the context of Entry 66 List I, if the State law merely prescribes additional qualifications for admissions or any courses of study in such institution, the State law would not be invalid. For ascertaining inconsistency or repugnancy in two legislations, Nicholas in "Australian Constitution" (2nd edition) proposed the following three tests which have been accepted and adopted by the Hon^{ble} Supreme Court as useful guides to test the question of repugnancy:

- "(1) There may be inconsistency in the actual terms of the competing statutes;
- (2) Though there may be no direct conflict, a State law may be inoperative because the Common-wealth law, or the award of the Common-wealth Court, is intended to be a complete exhaustive Code; and
- (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter."

Now, in this legal framework it has to be examined whether Clause 10 in Resolution dated 20.05.2004 prescribes merely an additional criteria or it covers the field already occupied by the National Council for Teacher Education Act, 1993.

15. The relevant provisions of NCTE Act, 1993 are extracted below:

The National Council for Teacher Education Act. 1993

2(k) "regulations" means regulations made under Section 32 ;

2(l) "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 non-formal education, Part-time education, adult education and correspondence education.

14. Recognition of institutions offering course or training in teacher education

(1) Every institution offering or intending to offer a course of training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

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

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall--

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b) the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

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

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

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

16. The relevant provisions in Appendix 4 to NCTE's 2009 Regulations are extracted below:

APPENDIX-4

Norms and Standards for Bachelor of education programme leading to Bachelor of Education (B.Ed.) degree

3. Intake, Eligibility and Admission Procedure

(1) Intake

There shall be a basic unit of one hundred students divided into two sections of fifty each for general sessions and not more than twenty five students per teacher for a school subject for methods, courses and other practical activities of the programme to facilitate participatory teaching and learning.

(2) Eligibility

(a) Candidates with at least fifty per cent 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.

(b) The reservation in seats and relaxation in the qualifying marks in favour of the reserved categories shall be as per the rules of the concerned Government.

(3) Admission Procedure

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University.

(4) Fees

The institution shall charge only such fee as prescribed by the affiliating body/ State Govt. concerned in accordance with provisions of National Council for Teacher Education (Guidelines for Regulations of tuition fees and other fees chargeable by unaided teacher education institutions) Regulations, 2002, as amended from time to time and shall not charge donations, capitation fee etc. from the students.

4. Staff

(I) Academic

(i) Number (For a basic unit of one hundred students)

Principal/Head - One

Lecturers - Seven

(ii) For additional intake will be in the multiple of one hundred and the number of full time teacher educators shall be increased by seven for each increase in the basic unit. However on each occasion additional intake of one basic unit shall be considered. Also, maximum intake capacity of a teacher training institution taking all teacher education courses together shall not exceed three hundred.

(iii) Appointment of teachers shall be such as to ensure the availability of expertise for teaching all foundation and methodology courses.

17. The National Council for Teacher Education has been established with a view to achieving planned and coordinated development of the teacher education system through out the country and for the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. The statement of objects and reasons for enacting the National Council for Teacher Education Act, 1993 indicates that the Council has been clothed with statutory powers for making qualitative improvement in the system of teacher education. Section 2(1) of the 1993 Act defines "teacher education" to mean programmes of education, research or training of persons for equipping mean to teach at preprimary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education. In exercise of power conferred by Section 12(h) read with Section 32(2)(d)(v) of the National Council for Teacher Education Act, 1993, the Central Government has framed National Council for Teacher Education (Guidelines for Regulation of Tuition Fees and other Fees Chargeable by Unaided Teacher Education Institutions) Regulations, 2002 and National Council for Teacher Education (Recognition, Norms and Procedure)

Regulations, 2009. Appendix-4 to the 2009 Regulation deals with "Norms and Standards for Bachelor of Education Programme leading to Bachelor of Education B.Ed. Degree". Section 12 of the National Council for Teacher Education Act, 1993 deals with the function of the Council which includes co-ordination and monitoring of teacher education and its development in the country. The function of the Council to monitor the development of teacher education in the country would include the function to ensure adequate number of teachers in various subjects. As noticed above, the National Council for Teacher Education Act, 1993 provides that the main object for establishing the Council is to achieve "planned and co-ordinated development for the teacher education system through out the country". Though, fixing subjectwise seats for admission may not be necessary for maintaining norms and standards in the teacher education system, this would definitely be a part of planned and coordinated development of teacher education system through out the country and thus, only Central Government can make regulation in this regard. The Regulation of 2009 makes it clear that these Regulations are applicable to all matters relating to "teacher education programme". From the various provisions under NCTE Act, 1993 and the 2009 Regulations, it is apparent that the function of the Council and the applicability of 2009 Regulations are not confined only to fixing norms and standards of teacher education and procedure for recognition of institutions, commencement of new programmes etc. rather, the NCTE Act encompasses all matters connected to teacher education.

18. The various provisions in the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2009 clearly indicate that every aspect of teacher education including, the courses such as, Early Childhood Education, Elementary Education, Bachelor of Education, Master of Education, Physical Education, Diploma in Elementary Education through Open and Distance Learning System, B.Ed. and M.Ed. Degree through Open and Distance Learning System, Diploma in Arts Education (Visual Arts), Diploma in Arts Education (Performing Arts) etc. have been dealt with therein. By 2009 Regulation even the mode of payment of salary to the teachers, provident fund, endowment fund etc. have been taken care of. It further provides regulation of process of admission by prescribing the schedule of academic calendar and Appendix-4 to 2009 Regulation deals with B.Ed. program, duration, working days and minimum working hours in the institution besides, intake, eligibility and admission procedure. Not only the number of academic staff and supporting staff have been fixed, their qualifications have also been prescribed. The terms and conditions of service of the teaching and non-teaching staff as well as the infrastructure which includes the following have been provided:

- (a) Two classrooms
- (b) Multipurpose Hall with seating capacity of 200 and a dias (2000 sq. ft.)
- (c) Library-cum-Reading Room

- (d) ICT Resource Centre
- (e) Psychology Resource Centre
- (f) Art and Craft Resource Centre
- (g) Health and Physical Education Resource Centre
- (h) Science and Mathematics Resource Centre
- (i) Principal's Office
- (j) Staff Room
- (k) Administrative Office
- (l) Visitors Room
- (m) Girl's Common Room
- (n) Seminar Room
- (o) Canteen
- (p) Separate Toilet Facility for Boys and Girls
- (q) Parking Space
- (r) Store Rooms (Two)
- (s) Multipurpose Playfield
- (t) Open space for Additional Accommodation.

It is thus noticed that 2009 Regulation covers all matters relating to teacher education program. It is also pertinent to note that the function of the Council includes undertaking surveys and studies relating to various aspects of teacher education and also to make recommendation to the Central and State Government Universities and recognised institutions in the matter of preparation of suitable plans and programs in the field of teacher education besides, co-ordination and monitoring of teacher education and its development in the country.

19. Now, let us examine the provision in Clause 10 of Resolution dated 20.05.2004 which is extracted below:

10. Facultywise division of Seats: In every Teacher Training college (B.Ed.) allocation of seats shall be as follow:

The Principal of the concerned college shall put his signature and date of receipt on the applications received after publication of advertisement for admission and shall get it maintained in the register. It shall be responsibility of the concerned Principal to get all the applications registered. Merit list and Waiting list shall be prepared separately that is, subjectwise and call letter for admission shall be

dispatched on the basis of the merit list. For this, candidates shall attach a self addressed stamped (for registered post) envelope of 23 x 10 c.m. size.

Those candidates who are not able to submit the original copy of the certificate or mark sheet with respect to qualification, at the time of admission, they shall submit a legal/affidavit to this effect that they will produce the original copy of the same within one week of the date of admission failing which their provisional admission shall automatically be cancelled.

The selected candidate shall have to complete his training in the same college against which (Training College) they get admission. They shall not be transferred to any other college under any circumstances.

20. A close scrutiny of Resolution dated 20.05.2004 indicates that by the said Resolution "Admission Process" has been prescribed. The Resolution dated 20.05.2004 recites that it is a step taken by the State Government for "qualitative improvement" in primary and secondary education. It provides that the admission would be merit based and the list of candidates would be prepared categorywise that is, SC/ST etc. It provides constitution of selection committee for admission which includes District Education Superintendent/Regional Deputy Director of Education. It also provides basis for calculation of marks obtained by the candidates in Matriculation, Intermediate, Graduation and Post Graduation etc. It further provides age limit and fee that can be charged by the B.Ed. colleges. Thus, Resolution dated 20.05.2004 provides exhaustive guidelines for "selecting candidates" for admission in B.Ed. course. Insofar as, the above provisions are concerned, the petitioners have raised no grievance however, it is contended that the provision under Clause-10 by which subjectwise quota of seats has been fixed, is beyond power of the State Government and it is completely unconnected with the manner in which the candidates have to be selected for admission in B.Ed. courses. The learned Senior Counsel for the petitioners has contended that the provision under Clause 10 of the Resolution dated 20.05.2004 is ultra vires National Council for Teacher Education Act, 1993 and therefore, it is liable to be struck down. Clause 3(iii) and Clause 4 in Appendix-4 to the 2009 Regulation deal with "Admission Procedure" and "Staff. The total number of teachers for a B.Ed. college with intake capacity of 100 students is restricted to 7 Lecturers and 1 Principal/Head. It further provides that the admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government and thus, it is apparent that the role of the State Government is minimal and it is restricted to devising a selection process for admission of students in B.Ed. course. Since fixing of subject-wise seat out of total intake capacity for admission of students cannot be said to be a part of selection process of the students, Clause 10 of Resolution dated 20.05.2004 is in the teeth of 2009 Regulations.

21. In Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, , the Hon"ble Supreme Court referring to decision in "Sant Dnyaneshwar" held

that, the field of teacher education and matters connected therewith are fully and completely occupied by NCTE Act, 1993 and hence, the State legislature cannot encroach upon the field of teacher education. It has further been observed that "in the normal circumstances, the role of State is very formal one and the State cannot obstruct the admission process and the academic courses once recognition is granted and affiliation is found to be acceptable. In *Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others*, , it has been held that role of the State Government is limited to the manner of admission, eligibility criteria etc. without interfering with the conditions of recognition prescribed by NCTE. In *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, , the Hon'ble supreme Court has held as under;

53. "Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254 ".

22. For further examination of the issue involved in the present writ petition, we need to travel a little in the past also. The National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 1995 provided that for grant of recognition every institution is required to submit application with "No Objection Certificate" from the State/Union Territory. By Notification dated 02.02.1996, NCTE framed guidelines for the State/Union Territory for issuance of "No Objection Certificate". One of the guidelines provided that preference might be given to institution which tends to emphasis the preparation of teachers for subject such as Science, Mathematics, English etc. for which trained teachers have been in short supply in schools. The validity of the provisions requiring submission of application with "No Objection Certificate" issued by the State Government/Union Territory in 1995 Regulation was challenged in *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*, and the Hon'ble Supreme Court upheld the validity of the said Regulation. It is not in dispute that the petitioner No. 2 and other similarly situated B.Ed. colleges in the State of Jharkhand were granted "No Objection Certificate" by the State Government and considering the requirements under NCTE Act, 1993 recognition has been granted to these colleges by NCTE. It was open to the State Government to take a conscious decision to identify B.Ed. colleges which intended to impart B.Ed. education in a particular subject and to make recommendation by issuing "No Objection Certificate" to such B.Ed. colleges which intended to emphasize on a particular subject in which the available trained teachers were lesser in number. It was also open to the State Government to frame a policy in this regard and forward the same to the NCTE before recognition was granted. After the State Government issued "No Objection Certificate" and recognition has been granted by NCTE to the B.Ed. colleges, a further restriction in the form of fixing quota for subjectwise reservation of seats for admission in B.Ed. colleges on the plea of maintaining availability of sufficient

number of teachers in each subject cannot be permitted. Fixing subjectwise quota for admission in a college cannot be equated with cases where higher standards/norms or higher minimum qualification for admission have been fixed by the State Government. The petitioners have challenged Clause 10 of Resolution dated 20.05.2004 on the ground that the State Government is denuded of its power to legislate on the subject relating to teacher education. In "Maa Vaishno Devi Mahila Mahavidyalaya" case the Hon"ble Supreme Court has observed that the provisions of the National Council for Teacher Education, 1993 are *pari materia* to the provisions of All India Council for Technical Education Act, 1987 and Medical Council Act. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , it was held that "Essentiality Certificate" cannot be withheld by the State Government on any policy consideration because policy in the matter of establishment of new colleges vested essentially with the Central Government". In *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, , the stand of the State of Kerala that it would not permit any more engineering college in the State in view of large number of colleges and bearing in mind the interest of the students and the employment condition, was rejected by the Hon"ble Supreme Court holding that the State could not have any "policy" contrary to the AICTE Act and if it has a policy, it should have placed the same before AICTE and that too before the letter granting permission was issued. In *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, , the issue was whether in view of the refusal by the State Government to grant "No Objection Certificate" on the ground that there was no need for new B.Ed. trained manpower, the NCTE could have granted recognition for establishment of new B.Ed. colleges. The Hon"ble Supreme Court has held thus;

63. "In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

23. The learned counsel for the respondent-State of Jharkhand has contended that the order granting recognition to the B.Ed. colleges contains condition that "all such other requirements as may be prescribed by other regulatory bodies

like U.G.C., affiliating university/body, the State Government, as applicable" and therefore, the B.Ed. colleges are required to adhere to Clause 10 and the said clause in the Resolution dated 20.05.2004 reflects decision of the State Government for maintaining adequate number of B.Ed. trained teacher in every subject. It is thus, submitted that the Resolution dated 20.05.2004 is in consonance with the order granting recognition to the B.Ed. colleges and it cannot be construed as impinging upon the power under of NCTE Act, 1993. This Contention merits no acceptance. The requirements which may be prescribed by the State Government must be only additional criteria which relates to maintaining standard of B.Ed. education. The provision under Clause 10 of Resolution dated 20.05.2004 is not a requirement which in any manner lead to maintaining standard of teacher education in the B.Ed. colleges.

24. In view of the all inclusive role assigned to the National Council for Teacher Education, there is no doubt that the field of "Teacher Education" is fully covered by the National Council for Teacher Education Act, 1993 and the State Government cannot provide seatwise quota as contained in Clause-10 of the Regulation. For reaching this conclusion, I further rely on the judgment of Hon"ble Supreme Court in "Maa Vaishno Devi Mahila Mahavidyalay" and in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, cases.

25. Mr. Rajesh Shankar, the learned counsel appearing for the respondent-State of Jharkhand submits that under 2009 Regulation, only the self-financed educational institutions established and operated by "not for profit" Societies and Trusts are eligible for grant of recognition under NCTE Act, 1993. However, the averments made in the present writ petition clearly indicate that the present writ petition has been filed on the ground that B.Ed. colleges in the State of Jharkhand are suffering losses due to provision contained under Clause 10 of the Resolution dated 20.05.2004 and therefore, the present writ petition is liable to be dismissed on this count alone. The learned counsel further refers to the admission procedure mentioned in 2002 Regulation and submits that the procedure for admission has to be regulated as per the policy of the State Government and thus, the provision under Clause 10 of the Resolution dated 20.05.2004 is not in conflict with NCTE Act, 1993 or the Regulations framed thereunder rather, it is in consonance with the provisions contained therein. Referring to the contention that only "not for profit" Societies and Trusts are eligible for grant of recognition under NCTE Act, 1993, I am of the view that, in course of running the B.Ed. Programmes if the college/institute earns profit, it cannot be blamed for the same. The object behind Clause 3(iv) which deals with "applicability" for grant of recognition is to prevent commercialisation of teacher education and to ensure that the motive behind running the self-financed educational institutions is not profit earning. An institute is not obliged to run in losses and merely because recognition has been granted for running B.Ed. courses, the State Government cannot impose such conditions which would apparently relegated the institution in a situation in which it becomes impossible

to run B.Ed. courses. Insofar as, the contention raised in the context of 2002 Regulation that Clause 10 of Resolution dated 20-05-2004 reflects the policy of the State Government for regulating procedure for admission, I find that the 2002 Regulation was framed for laying down guidelines regarding tuition fees and other fees chargeable by unaided teacher education institutions. The procedure for admission referred in Clause 4(ii) of 2002 Regulation is in relation to the policy of the State Government regarding tuition fees and other fees chargeable by unaided/self-financed institutions and it has no connection with fixing subjectwise quota for admission of students in B.Ed. courses. The relevant provisions of NCTE Notification dated 18th June, 2002 are extracted below:

4. Admission

(1) No student other than a student who fulfils the requirements of the NCTE Regulations laying down the norms and standards for various teacher education programmes shall be eligible for admission to a teacher education programme.

(2) Eligibility of candidates and the procedure for admission will be regulated as per the policy of the State Government and in terms of NCTE Regulations, laying down the norms and standards for various teacher education programmes, as amended from time to time.

3(i) At least 50 per cent of the seats in every recognized institution shall be Free Seats and the remaining 50 per cent be Payment Seats.

(ii) The Criteria of eligibility and other conditions shall be the same in respect of both Free Seats and Payment Seats, except that a higher fee is to be paid for Payment Seats.

(iii) The management of a recognized institution shall not be entitled to impose an additional eligibility criteria or conditions for admission either to Free Seats or Payment Seats.

(4) Private recognized institutions shall be permitted to admit the NRI/foreign students up to a maximum of 5 per cent of the total intake approved by the Council from time to time for each academic year. This percentage shall be out of Payment Seats.

5(i) There shall be no quota of seats for the management or for any family, caste, community which had established the institution.

(ii) The competent authority may, at its discretion, fill any seat which may remain unfilled in five per cent NRI quota in any academic year.

(iii) The fees chargeable from the students admitted under sub-regulation (ii) above shall be the same as chargeable for the students admitted against Payment Seats and not against the NRI Seats.

26. The learned Senior Counsel for the petitioners has rightly admitted that the admission in B.Ed. courses may be on the basis of a selection process as per the

policy of the State Government however, it is an admitted position that admission in B.Ed. colleges in the State of Jharkhand is made on merit on the basis of marks obtained in the qualifying examination and no other selection process has been prescribed by the State Government. Evidently, provision under Clause 10 of Resolution dated 20.05.2004 does not prescribe a different/separate admission procedure rather, it prescribes the manner in which seats in the B.Ed. courses would be filled up. Thus, Clause 10 is not referable to 2002 Regulations of NCTE.

27. There is another aspect of the matter which cannot be overlooked. In the counteraffidavit filed by the NCTE, it is stated that the impugned Resolution of the State of Jharkhand does not in any way violates the provision of the NCTE, Act, 1993. I find that the affidavit filed by NCTE does not disclose any reason for taking the said stand. The affidavit has been filed by one Chandrapida Neelap who is presently working as Regional Director, Eastern Regional Committee, National Council for Teachers Education at Bhubneshwar. The said person may be competent to swear the affidavit but, I find that in the affidavit filed on behalf of NCTE there is no reference whether the issue has been discussed at the Council and a conscious decision was taken by the Council to take such a stand. The stand taken in affidavit does not appear to be the stand taken by the Council. I find that the stand taken in the affidavit dated 01.12.2014 is contrary to the law laid down by the Hon"ble Supreme Court and therefore, it is liable to be rejected.

28. It is submitted that while fixing subjectwise quota for admission of students in B.Ed. course, as many as 11 main subjects and 7 languages besides, other regional languages have been prescribed and therefore, a teacher training college would be required to engage more than 17 teachers and thus, this provision cannot be said to be an additional requirement in addition to the number of teachers fixed under Appendix 4 of 2009 Regulation. From the materials brought on record, it is apparent that though in other states/universities seat for admission in B.Ed course has been fixed for Science and Arts/Humanity in the ratio of 50 : 50 and a provision has been made for taking admission in another stream in case some of the seats remain unfilled. In the counter-affidavit dated 04.07.2013, it has been stated on behalf of the respondent-State of Jharkhand that it is collecting necessary data from the other States across the country and if necessary, further guidelines would be issued and Clause 10 of the Resolution dated 20.05.2004 would be modified after a decision is taken by the State Government. Taking note of the above situation, vide order dated 06.05.2013, a direction was issued by this Court to the respondent-State of Jharkhand to consider the aforesaid situation and allow the B.Ed. colleges to admit the students in other faculties if the seats remained vacant. The writ petition was listed on as many as 24 occasions thereafter and more than 19 months have passed however, neither any affidavit on this issue has been filed by the respondent-State of Jharkhand nor any decision in this regard has been taken by the respondent-State of Jharkhand. Referring to the conditions under Regulation 3 of the 2009 Regulations, it has been argued that

the B.Ed. colleges with intake capacity of 100 students are required to appoint only 7 lecturers besides, a Head however, by the impugned Resolution dated 20.05.2004 the colleges are required to appoint as many as 17 subject teachers. In my opinion, the conditions under Clause 10 fixing the subject-wise seat for admission would thus, be in the teeth of Article 14 of the Constitution being arbitrary and unreasonable. To a pointed query, whether prior to year, 2013, the university insisted on compliance of Resolution dated 20.05.2004, Mr. A.K. Mehta, the learned counsel appearing for the Ranchi University stated, on instruction, that it was not complied with. Mr. A.K. Singh, the learned counsel appearing for the respondent-Nilambar Pitambar University stated that from the Academic Session 2014-15 the University has insisted that the colleges should submit an affidavit undertaking compliance of Resolution dated 20.05.2004. Similar undertakings are taken by other universities. To a pointed query why the universities or the State Government did not insist upon compliance of Clause 10 of Resolution dated 20.05.2004, the learned counsel for the respondents could not give any reason and they merely stated that after the Academic Sessions 2013-14 the universities are now taking affidavits from the B.Ed. colleges that they are complying with the provisions under Clause 10 of the said Resolution. The learned Senior Counsel for the petitioners has submitted that in view of decision of this Court in *Ursuline Women's Teachers Training College and Others Vs. State of Jharkhand and Others*, both the parties understood that Resolution dated 20.05.2004, stood quashed by this Court however, on re-thinking the universities started insisting upon filing of affidavit by the B.Ed. colleges which necessitated filing by the present writ petition.

29. The plea of delay in filing the writ petition taken by the respondent-State of Jharkhand is also liable to be rejected. In cases where vires of legislation/executive decision which has force of law is challenged on the ground of competence of the legislature/executive to enact such law, delay cannot be a ground for repelling the challenge made by the petitioner. Referring to decision in *Ursuline Women's Teachers Training College and Others Vs. State of Jharkhand and Others*, in which Resolution dated 20.05.2004 was also under challenge, learned senior counsel for the petitioner has submitted that a reading of the concluding paragraph in the said case discloses that, this Court has allowed the writ petition and thus, though in paragraph No. 8 reference of only two other Resolutions are mentioned, by implication Resolution dated 20.05.2004 also stood quashed. I am unable to accept the contention raised on behalf of the petitioner. The learned counsel for the respondent-State of Jharkhand has rightly pointed out that in the said case, the main issue was whether in view of protection granted to the minority institutions, Resolution dated 10.10.2002 and Resolution dated 11.06.2004 could have been issued by the respondent-State. In view of decision in "*Islamic Academy of Education*" and other cases, the writ petition was allowed and Resolution dated 10.10.2002 and Resolution dated 11.06.2004 were held invalid. The plea taken by the respondents that the B.Ed. colleges committed serious irregularities in taking admission in excess of the

subject-wise seat reserved vide Resolution dated 20.05.2004 and that the commercialization of the education resulted in lowering of standard of B.Ed. Education, are liable to be rejected. The State Government as well as respective Universities have ample power to take action against erring colleges. None of the universities except, Vinoba Bhave University has brought on record any material to disclose that it has taken action against B.Ed. colleges for violating Clause 10 of Resolution dated 20.05.2004. Merely on the allegation that the B.Ed. colleges have taken admission in excess to the seat fixed by the State Government, the writ petition cannot be thrown out. To conclude, I hold that Clause 10 in Resolution dated 20.05.2004 contravenes the provisions of the National Council for Teacher Education Act, 1993 and the Regulations made thereunder and thus, the impugned Clause 10 is invalid and inoperative. It is further held that Clause 10 in Resolution dated 20.05.2004 violates Article 14 of the Constitution of India. In the result, the writ petition stands allowed. Consequently, I.A. No. 5800 of 2014, I.A. No. 5802 of 2014 and I.A. No. 91 of 2015 stand dismissed and I.A. No. 5801 of 2014 stands allowed.