
(1986) 03 KAR CK 0008
In the Karnataka High Court
Case No : W. P. No"s. 20794 of 1983

Laly

APPELLANT

Vs

Bangalore University

RESPONDENT

Date of Decision : 27-03-1986

Acts Referred:

Karnataka State Universities Act, 1976 — Section 27, 27 (2) (c), 39, 39 (2) (a), 57

Citation : (1987) ILR (Kar) 610

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : H.B. Datar, for Kalpana Datar, for the Appellant; N.B. Bhat, for R-1, K.S. Desai, for R-2 and N. Devadas, HCGP for R-3, for the Respondent

Judgement

K. A. Swami, J.—Writ Petitions 20794, 20794A and 20794B of 1983 are filed on 29-11-1983 ; whereas Writ Petitions 12144 and 12145 of 1985 are filed on 6-8-1985. Originally, Writ Petition No. 20794/83 was filed on behalf of 70 students. During the pendency of the Writ Petition, B.Ed. examination results of the petitioners except petitioners 2, 5 and 26 are announced ; therefore, it is submitted on behalf of the petitioners that the petition may be confined only to petitioners 2, 5 and 26 only. They have also paid additional Court fee. Therefore, though the Writ Petition is filed on behalf of 70 students, it is now confined only to the aforesaid three petitioners whose results have not been announced by respondent 1 on the ground that they are not eligible to be admitted to the course. Consequently, the Writ Petition 20794/83 is renumbered as W. Ps. 20794, 20794A and 20794B of 1983.

2. In Writ Petitions 20794, 20794A and 20794B of 1983, the petitioners have sought for quashing Regulation No. 1 of the Regulations framed by the Academic Council and approved by the Chancellor of the 1st respondent-University of Bangalore for B.Ed. degree course (Day Course) applicable from the academic year 1983-84 (hereinafter referred to as the "Regulations"). Whereas in W.Ps 12144 and 12145 of 1985, the petitioners have sought for striking down

Regulation No. 2 of the Regulations. They have also sought for a declaration that the first respondent has no authority to fix the eligibility marks to be obtained in the degree examination of the University in respect of the seats reserved for admission of Students belonging to S.C/S.T. and other Backward classes to B.Ed degree course contrary to the Government Order issued in that behalf and the Rules made by the Government.

3. It is contended on behalf of the petitioners that the University is not competent to make Regulations under the provisions of the Karnataka Universities Act, 1976 (hereinafter referred to as the "Act") in respect of the seats reserved by the State Government as per Sub-section (2) of Section 6 of the Act for admission of S. C./S. T. and other Backward classes ; that the Government in exercise of its power u/s 6(2) of the Act has issued an order reserving the seats and also fixing the qualifying marks to be obtained in the degree examination ; that under Article 15(4) of the Constitution special power is enjoyed by the State for providing reservations to the Scheduled Castes/Tribes and Backward communities in order to ameliorate the status in the society of the persons belonging to those categories; that the order is issued under Article 15(4) of the Constitution in exercise of the Executive power of the State; that such an order prevails over the Regulations made by the University regarding eligibility of candidates belonging to the aforesaid categories to be admitted to a particular course; that the Regulations do not impose any restriction as to the percentage of marks to be obtained by a candidate seeking admission to the B.Ed Course as a teacher ; that no fixed period of service as teacher is also required to be rendered before seeking admission to B.Ed course as per Regulation No. 3; therefore, a candidate who has secured less than 45% of marks in the Degree examination can secure appointment as teacher a day prior to the admission to the college and apply as a teacher for admission to B.Ed. Course and in that case, the eligibility rule as to the per percentage of marks to be secured in the degree examination will not apply; therefore it is the case of the petitioners that the classification made by the Regulations i.e. the candidates applying directly and those applying as teacher, has no nexus to the object sought to be achieved and it is not based on intelligible differentia ; therefore it results in discrimination.

It is also the case of the petitioners that the university is estopped from raising the contention that the petitioners are not eligible to be admitted to the B.Ed. examination at the fag end of the year even though the University was informed of the admissions much earlier to the date fixed for the examination.

4. On the contrary, it is the case of the University that the executive power of the State does not extend to the field which is covered by the Legislation and it is the University which, u/s 57 read with Section 27(2)(c) of the Act, alone is entitled to prescribe the per percentage of marks for admission to a particular course of study under the University and accordingly, the University has framed the Regulations prescribing 45% of the aggregate marks to be obtained in the final

year of the degree examination by all the candidates seeking admission to B.Ed. course except those belonging to Scheduled Castes/Tribes etc., who have to secure 40%; therefore, it is not open to the State Government to reduce the per percentage of marks fixed by the University on qualifying marks. It is also the case of the University that whether the order of the State Government is passed under Article 15(4) of the Constitution or any other power it is done in the exercise of the executive power; therefore merely because the Government Order provides for lesser percentage of marks for candidates belonging to Scheduled Castes/Tribes and other Backward communities it cannot over-ride the Regulations framed by the University and to that extent, the order of the State Government is inoperative. The further case of the University is that the admissions of the petitioners were not intimated to the University well in advance ; therefore the doctrine of equitable estoppel is not attracted in the instant case. It is stated that the petitioners in W.Ps 12144 and 12145 of 1985 were admitted by the college in the month of July, 1985, whereas the list for approval was sent to the University only on 30th September, 1985 and the University informed the College after due verification on 7-2-1986 that the admission of the petitioners could not be approved as they had not secured requisite per percentage of marks in the qualifying examination. In the case of petitioners in W.Ps. 20794, 20794A and 20794B of 1983 they were admitted in June 1983, in the year 1983-84 whereas the list for approval was sent to the University on 31st October, 1983, the University informed the College on 5-3-1984 itself that some of the students admitted by the college were not eligible for being admitted to the course, as they had not secured the requisite per percentage of marks in the qualifying examination. In addition to this, it is the case of the University that the question of taking advantage of the delay if any on the part of the University does not arise in these cases because the petitioners were very well aware of the fact that they were not eligible to be admitted to the course having regard to the provisions contained in the Regulations; therefore the petitioners in W.Ps. 12144 & 12145 of 1985 have approached this Court on 6-8-1985 even before the list was sent for approval to the University; therefore there was no question of any representation having been made by the University to the college or to the petitioners and they having acted upon such representation. It is also the case of the University that in a case where the University has acted in accordance with the Regulations, the doctrine of equitable estoppel does not apply because in such an event, it will result in directing the University to do a thing contrary to law. In the case of petitioners in W.Ps. 20794, 20794A and 20794B of 1983, these petitions are filed in November, 1983 immediately after sending the list for approval and without even waiting for the intimation from the University. This according to the University, makes it clear that the petitioners were very well aware of the fact that they were not eligible for admission to the course. On the whole, the case of the University is that in these cases there is no scope whatsoever for the application of the Doctrine of Equitable Estoppel.

5. Having regard to the aforesaid contentions, the following points arise for consideration :-

(1) Whether Regulations 1, 2 and 3 of the Regulations framed by the University of Bangalore, governing admission to B.Ed. Degree Course (Day Course), are invalid on the ground that the same are opposed to Article 14 of the Constitution ?

(2) Whether Regulation Nos. 1 and 2 are invalid on the ground that the same are opposed to Government Order dated 12-6-1981 bearing No. ED 38 UBC 81 ?

(3) Whether the petitioners are entitled to take a refuge under the Doctrine of Equitable Estoppel ?

(4) What order ?

6.1 Point No. (1). It is not possible to hold that Regulation Nos. 1 and 2 are violative of Article 14 of the Constitution. Section 57 of the Act, provides that no student shall be eligible for admission to a course of study for a degree or diploma unless he possesses such qualifications as may be prescribed as per Section 27 of the Act. Section 27 of the Act deals with the powers of the Academic Council. Sub-section (2) thereof provides that "without prejudice to the generality of the foregoing and subject to such conditions as may be prescribed by or under the provisions of this Act, the Academic Council shall exercise the following powers namely :--

(a) xx xx xx xx (b) xx xx xx xx

(c) To make regulation regarding the schemes of examinations and conditions on which the students shall be admitted to the examinations, degrees, diplomas, certificates or other academic distinctions".

Thus, Section 27 of the Act, empowers the Academic Council to make Regulations regarding eligibility of students to be admitted to a particular course. Section 39 of the Act, provides for a procedure to be followed for framing the Regulations by the Academic Council. The Regulations framed by the Academic Council are required to be approved by the Chancellor, which has to be obtained through the State Government. Section 39 (2)(a)(b) and (c) of the Act, provide thus :

"(2) The Regulations may provide for exercising all or any of the powers enumerated in Section 27 and particularly for the following matters, namely :-(a) admission of students to the University ;

(b) recognition of examinations and degrees of other Universities as equivalent to the examinations and degrees of the University ;

(c) the University courses and examinations and conditions on which students of the University or the affiliated colleges or of other University Institutions shall be admitted to examinations or degrees, diplomas and certificates of the University;"

The provisions contained in Sections 57, 27 and 39 of the Act, make abundantly clear that it is the Academic Council of the University which is entrusted with the power to frame the Regulations regarding the eligibility of a candidate for admission in the course/s of study under the University. Thus Regulations framed by the Academic Council of the Bangalore University providing 45 per cent of marks to be obtained in final year degree examination for admission to B.Ed. course in the case of candidates belonging to the categories other than reserved categories and 40 per cent in the case of candidates belonging to reserved categories cannot be held to be beyond the power of the Academic Council. Such a Regulation is in accordance with the provisions of the Act and is well within the power of the Academic Council.

6.2 It is not possible to appreciate the contention of the petitioners that such a Regulation is violative of Article 14 of the Constitution. It is not pointed out by the petitioners that how such a Regulation can be held to be arbitrary or brings about any discrimination. The Constitution itself makes a provision to enable the State and the authorities falling within the definition of the expression "the State" as defined by Article 12 of the Constitution, to make special provisions for the advancement of Scheduled Castes, Scheduled Tribes, etc. However, learned Counsel for the petitioners has placed reliance on the decisions of the Supreme Court reported in *Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others*, and also *Virendra Kumar and Others Vs. Union of India (UOI)*, In *Vishundas Hundumal's* case, while cancelling or curtailing permits of petitioners therein on the routes or parts of the routes which overlapped the notified routes, the routes relating to the other permit holders, in the same class having stage carriage permits for certain routes parts of which overlapped the notified routes were treated favourably inasmuch as the overlapping portions of their routes were neither curtailed nor cancelled and they were permitted to ply their stage carriages by passing over a portion of the notified routes, the Supreme Court held that such a treatment amounted to discrimination and was violative of Article 14 of the Constitution. In the instant case, no such situation is brought about by the Regulations. Of course, those candidates who do not belong to Scheduled Castes/Tribes etc., are required to obtain 45% of marks in the final year degree examination and those belonging to Scheduled Castes/Tribes etc., 40%. A special provision like this in favour of Scheduled Castes/Tribes etc., is permissible having regard to the provisions contained in Article 15(4) of the Constitution. In such a case no question of discrimination arises. Therefore, the decision in *Vishundas Hundumal's* case has no application to the facts of the present case.

6.3 Similarly, the decision of the Supreme Court in *Virendra Kumar's* case also has no application to the case on hand. That was a case in which Rules relating to the promotion to the post of Chargeman Grade II were considered by the Supreme Court. Large number of persons were promoted to the post of Chargeman Grade II though they had completed only two years of service. Whereas in the case of others, the Government insisted that they must complete three years of service before they are considered for promotion to the

Chargeman Grade II. The Supreme Court found that there was no justification for any such differential treatment being given to the appellants therein when a large number of other persons similarly situated were promoted after completing two years of service. The very statement of facts makes it clear that the Rule laid down therein is not applicable to the present case because Regulation No. 1 does not make any difference in its application to the persons belonging to the same category.

6.4 Regulation No 2 of the Regulations as amended reads thus :

"The reservation of seats to the candidates belonging to S.C's, S.T's etc. shall be made as per the G.O's issued from time to time. The requirement of 45% may be relaxed to the extent the required number of candidates are not available in the respective categories for which reservations are made. The relaxation of marks should not go below 40%. If any of the reserved seats are not filled due to non-availability of eligible candidates, the same may be filled by other eligible candidates from the unreserved category".

The only difference between the old Regulation No. 2 and the present one is that the present one specifically provides that the relaxation of marks should not go below 40%. The Government Order dated 12-6-1981 bearing No. ED 38 UBC 81, providing requirements for admission to colleges of education, is as follows:

"Only those candidates who have obtained 45% (40% in the case of candidates belonging to S. Cs and S.Ts) of the aggregate marks in the final year of the degree examination or the equivalent examination shall be eligible for admission to the B.Ed. Course. This requirement of 45% may be relaxed to the extent the required number of candidates are not available, in the respective categories for which reservations are made in accordance with Government Order No. ED 44 TGL 77 dated 18-5-1977. This minimum per centage of marks need not be insisted in the case of inservice teachers who want to join the B.Ed. Course and also in the case of officers and teachers on probation who may be deputed by the Department of Public Instruction".

The grievance of the petitioners is that the aforesaid Government Order dated 12-6-1981 provides for relaxation even below 45% in the case of candidates belonging to the categories other than S.Cs, S.Ts etc. and below 40% in the case of candidates belonging to S.Cs, S.Ts etc. to the extent required to fill up the seats reserved for each category; whereas Regulation No. 2 provides that the relaxation up to 40% is permissible only in the case of candidates belonging to S.Cs and S.Ts, therefore, Regulation No. 2 is contrary to, or is in conflict with, the Government Order dated 12-6-1981. The question as to whether the Government Order dated 12-6-1981 prevails over the Regulations in question is a matter for consideration under Point No. 2. As far as Point No. 1 is concerned, it is not possible to hold that Regulation No. 2 is violative of Article 14 of the Constitution because it does not discriminate between the candidates belonging to the same category. It is also in conformity with Regulation No. 1 which is

discussed earlier.

6.5 Regulation No. 3 is as follows :

"The minimum per percentage viz. 45% need not be insisted upon in the case of inservice teachers who want to join the B.Ed. Degree Course and also in the case of officers and teachers on probation who may be deputed by the Department of Public Instruction. A candidate chiming to be an inservice person should produce a service certificate duly countersigned by the concerned D.D.P.I".

The aforesaid Regulation exempts inservice teachers who want to join the B.Ed. Degree Course from complying with Regulations 1 and 2 in so far they insist upon obtaining of 45% of marks in the final year degree examination in the case of candidates belonging to category other than S.Cs, S.Ts, etc. and 40% in the case of S.Cs, S.Ts etc. The contention of the petitioners is that a candidate who has secured less than 45% of marks not belonging to S.C. or S.T. categories can seek admission to the B.Ed Degree Course as inservice candidate on securing appointments teacher in any private institution, the very next day of his joining the service because the Regulation does not prescribe minimum period of service to be rendered by an inservice candidate as a teacher. It is also contended that the Regulation also does not prescribe minimum period of service in the case of officers and teachers on probation who may be deputed by the Department of Public Instruction. No doubt Regulation No. 3 does not prescribe minimum period of service to be rendered by an inservice candidate as a teacher seeking admission to B.Ed. Degree Course ; consequently, it enables the inservice candidates to seek admission very next day or his joining service as teacher even though he has not secured 45% of marks in the final degree examination in cast he does not belong to S.Cs, S.Ts etc. category and 40% of marks in case he belongs to S.Cs., S.Ts. etc. category. This argument cannot be accepted in the case of officers and teachers on probation who may be deputed by the Department of Public Instruction for the simple reason that under Rule 61 and Appendix-IIA of the Karnataka Civil Services Rules it is specifically provided that a Government servant seeking deputation for training or for Higher studies must put in a minimum period of service. Therefore, no officer or teacher in Government service can be deputed by the Department of Public Instruction unless be is eligible to be sent on deputation for training or for higher studies. That being so, the officers and teachers in Government service cannot be equated with those candidates who seek admission as regular candidates. They constitute different category. Therefore, Regulation No. 3 to that extent cannot be held to discriminate between the inservice candidates and regular candidates in not insisting upon the requisite per percentage of marks to be obtained in the final year degree course by the inservice candidates. Same thing cannot be said in the case of teachers belonging to private institutions who seek admission to B. Ed. Degree Course as inservice candidates. The Karnataka Civil Services Rules do not apply to them. Consequently, a person who has secured less than 45 or 40 per cent of marks as the case may be can on joining service as a teacher in a

private institution seek admission to the B.Ed. Degree Course as inservice candidate vary next day of his joining service and he need not satisfy the requirement of obtaining 45 or 40 per cent of marks as the case may be, in the final year degree examination for seeking admission to B.Ed. Degree Course as Regulation No. 3 does not prescribe a minimum period of service to be rendered by teachers in private institutions seeking admission to B. Ed. Degree Course as inservice candidates. In the absence of prescribing a minimum period of service to be rendered by a teacher in a private institution seeking admission to B. Ed. Degree Course as an inservice candidate Regulation No. 3 to the extant it enables teachers of private institutions seeking admission as inservice candidates to B. Ed. Degree Course without complying with the requirement of Regulation Nos. 1 and 2 is discriminatory. There is no different between a person who seeks admission to B. Ed. Degree Course as a regular candidate and a person, who is a teacher in a private institution, seeks admission as inservice candidate to B. Ed. Degree Course. It is the prescription of minimum period of service to be rendered by a teacher in a private institution to enable him to seek admission to the B. Ed. Degree Course as inservice candidate which makes him a class by himself not comparable with the candidate seeking admission to B. Ed. Degree Course as a regular candidate. Merely Because a person seeking admission as inservice candidate has secured an appointment and joined service as a teacher in a private institution just a day or two prior to seeking admission to the B. Ed. Degree Course as an inservice candidate, cannot make him a candidate belonging to a different as class than that of a regular candidate in the absence of a requirement that he should put in certain minimum period of service as a teacher.

6.6 The next question that arises for consideration is as to whether by striking down Regulation No. 3 in so far it enables teachers of private institutions to seek admission to B.Ed. Degree Course as inservice candidates without putting in minimum period of service and without satisfying Regulation Nos. 1 and 2 the petitioners can be benefited. It appears to me that even on striking down this part of Regulation No. 3 the petitioners will not be benefited because they are required to comply with Regulation No. 1. Of course, the presence of this Regulation and its effect as pointed out above will have relevance on the question as to whether the petitioners in W.Ps 20794, 20794A and 20794B of 1981 are entitled to have their results announced and the petitioners in W.Ps 12144 and 12145 of 1985 are entitled to be permitted to appear for the examination. These aspects will be considered while dealing with the question as to the reliefs which the petitioner are entitled to. At this stage it is sufficient to hold that Regulation No. 3 in so far it enables the teachers of the private institutions to seek admission to B.Ed. Degree Course as inservice candidates without satisfying Regulations 1 and 2 or without putting in minimum period of service is discriminatory and it is liable to be struck down.

6.7 Accordingly, Point No. (1) is answered as follows :

(a) Regulations 1 and 2 are not invalid and are not violative of Article 14 of the Constitution.

(b) Regulation No. 3 in so far it enables the teachers of the private educational institutions to seek admission to B. Ed. Degree Course without satisfying Regulation No. 1 or without putting in a minimum period of service as teachers is discriminatory and is liable to be struck down to that extent.

7.1 Point No. (2) : While dealing with Point No. (1) it is already pointed out that the Regulations are framed by the Academic Council by virtue of the power vested in it by the Act, and they are well within its power. Now the question for consideration is whether having regard to the order issued by the State Government u/s 6(2) of the Act, the Regulations can be held to be inoperative to the extent they are contrary to the said order of the State Government. Sub-section (2) of Section 6 of the Act, provides that subject to the provisions of Sub-section (1), the University shall in accordance with the special or general directions of the State Government reserve seats for purposes of admission as students in any college or institution maintained or controlled by the University for the classes of persons belonging to the Scheduled Castes/Scheduled Tribes and the classes declared by the State Government from time to time to be socially and educationally backward; nominees of the Central Government, defence personnel and ex-servicemen and their children or wards; and children of freedom fighters. It is contended for the petitioners that it is in exercise of this power the State Government has issued the order dated 12-6-1981 and it is only, the State Government which is entitled to make reservations for the classes of persons mentioned in Section 6 of the Act. In addition to this it is also contended that Article 15(4) of the Constitution enables the State Government to make special provisions for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes ; that it is possible to give effect to this policy of the State only when the State Government is entitled to make relaxation in the conditions of eligibility for admission to a course including relaxation in the marks to be obtained by such candidates in the qualifying examination. Therefore, it is contended that the order of the State Government, prevails over the Regulations framed by the University, as such it is submitted that the Regulations framed by the University either must conform to the Government Order or else must yield to it. In this regard, the provisions contained in Sub-section (2) of Section 6 of the Act and those contained in Sections 27(2)(c), 39 and 57 of the Act have to be read harmoniously. It is normally accepted that the Legislature is the repository of wisdom. Therefore, it is normally expected that the Legislature is aware of the fact that if the same power is invested in more than one authority, the exercise of it by each one of them is likely to result in conflict. Therefore, the Legislature cannot be intended to invest the same power in more than one body or authority. The State Government cannot in the very nature and mode of its formation, be expected to consist of experts in the academic field. Whereas the Academic Council consists of such experts (see Section 26 of the Act) Therefore, it is the

Academic Council which is the proper and fit authority to prescribe qualifications and conditions of eligibility for a student to be admitted to a course of study or for a degree or diploma. It is because of this the Legislature has entrusted this function to the Academic Council (see Sections 27 (2) (c), 39 and 57 of the Act). As per Section 27 (1) of the Act the Academic Council is the Academic body of the University. The control and general regulation and the responsibility, of maintenance of the standards of instruction, education and examinations of the University are vested in the Academic Council. As such it is the Academic Council which alone is entitled to prescribe the per centage of marks to be obtained in the final year degree examination to be eligible for admission to B.Ed. Course. This is so in the case of admission to every course of study conducted under the University. That being so, to hold that the State Government is also entitled to fix percentage of marks to be obtained in the final year degree examination in order to be eligible for admission to B.Ed. Course under the University under the guise of reserving seats for classes of persons enumerated in Section 6(2) of the Act, is to ignore the relevant provisions of the Act and the object underlying those provisions. It would also result in surrendering the legitimate authority of the Academic Council to the State Government which in the very nature of things cannot claim any competency or expertise for prescribing the standards and norms of eligibility for admission to various courses run under the University. Further the legislature has made the law - The Act - exclusively entrusting this power to the Academic Council. It is in exercise of this power the Academic Council has made the Regulations. Thus it is the field which is covered by law. The executive power of the State cannot be exercised in respect of the matter covered by law. As a matter of fact, this question is covered by a decision of this Court in *Sri Sarvagna Education Society and Ors. v. State of Karnataka and Ors.*, This Court, on the basis of the decision of the Supreme Court in *R. Chitralakha and Another Vs. State of Mysore and Others*, has held that the executive order cannot cover the field covered by law. Therefore, it is not possible to hold that the order issued u/s 6 (2) of the Act, directing the University to reserve certain percentage of seats to the classes of persons enumerated in Sub-section (2) of Section 6 of the Act, will have the force of over-riding or cancelling the Regulations framed by the University regarding the eligibility of a candidate for admission to a particular course. The scope of the order issued u/s 6(2) of the Act, is only to reserve seats for classes of persons enumerated in that Sub-section (1) and not more than that. However, in this regard, a special contention is raised that when Article 15(4) of the Constitution enables the State Government to make a special provision for the advancement of socially and educationally backward classes of citizens and for Scheduled Castes and Scheduled Tribes and if it has to be done subject to Regulations framed by the University regarding eligibility of a candidate for admission to a particular course of study ; no useful purpose is served and the object of securing admission to the persons belonging to the aforesaid categories will not at all be achieved. Consequently, the power exercisable u/s 6(2) of the Act is rendered nugatory. Section 6(2) of the Act incorporates one of the Directive Principles of the State

Policy as contained in Article 46 of the Constitution and his saved by Article 15(4) of the Constitution from the attack that it is discriminatory. The power of the State Government to issue directions to the University to reserve seats for purposes of admission of students in any college or institution maintained or controlled by the University, in the light of the provisions contained in Sections 27, 39 and 57 of the Act cannot be interpreted to include the power to relax the conditions of eligibility prescribed by the Academic Councillor to fix different conditions of eligibility. When the Legislature in its wisdom has only entrusted the State Government with the power to reserve seats for purposes of admission of students belonging to the aforesaid special categories and at the same time entrusted the power to prescribe conditions of eligibility for admission to a course of study under the University to the Academic Council. It is in this context the rule that the executive power of the State cannot be exercised in respect of the subject which is covered by law become relevant and applicable.

7.2 However, learned Counsel for the petitioner has placed reliance on a decision of the Supreme Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, In that case Regulations 1 and 2 of the Regulations of the Medical Council of India framed under the Medical Council Act, 1956 regarding admission to the medical courses and also the executive power of the State Government under Article 162 of the Constitution to prescribe conditions regarding selection for admission came up for consideration. Regulation No. 1 prescribed the eligibility of a candidate for admission to medical course. Regulation No. 2 provided for selection of students to a medical college. It provided that the selection of students to a medical college should be based solely on merit of the candidate and for determination of the merit certain criteria were prescribed. One of the criteria was as follows :-

"II(e) To be eligible for competitive entrance examination, candidate must have passed any of the qualifying examinations as enumerated under the head-note "Admission to Medical Course".

Provided that a candidate who has appeared in a qualifying examination the result of which has not been declared, may be provisionally allowed to take up the competitive examination and in case of his selection for admission to a medical college, he shall not be admitted thereto "unless in the meanwhile he has passed the qualifying examination.

Provided also that a candidate for admission to the medical course must have obtained not less than 50% of the total marks in English and Science subjects taken together (i) at the qualifying examination (or at a higher examination) in the case of medical college where the admissions are made on the basis of marks obtained at these examinations or (ii) 50% of the total marks in English and Science subjects taken together at the competitive entrance examination where such examinations are held for selection.

Provided further that in respect of candidates belonging to Scheduled Castes/

Scheduled Tribes the minimum marks required for admission shall be 40% in lieu of 50% for general candidates."

It was held that what was contained in Regulation No. II was merely in the nature of a recommendation and it was evident from the language used in Regulation No. II particularly when the same was contrasted with the language used by the Council in Regulation No. 1. It was further held that Regulation No. II began with the words "selection of students in a medical college should be based solely on merit". The Supreme Court was of the view that the use of the words "should be" in Regulation No. II was deliberate and was intended to indicate the intention of the Council that it was only in the nature of a recommendation. The Regulation No. II dealt with the process or procedure for selection from amongst eligible candidates for admission. It was merely in the nature of a recommendation and was directory in nature. It was further held that it was outside the authority of the Council u/s 33 of the Medical Council Act to recommend the process of selection. Therefore, the Council advisedly and deliberately used such language in Regulation No. II so as to make the position clear and place the matter beyond any doubt that it was merely directory and not mandatory. Thus, the Supreme Court came to the conclusion that Regulation No. II was outside the authority of the Council, therefore, it had no force of law. It was also further held that as the executive power of the State extended to the matter with regard to which the legislature of a State had power to make laws and as there was no legislation covering the field of selection of candidates for admission to medical colleges, the State Government was undoubtedly competent to pass executive orders in that regard. In para 25 of the Judgment it was further made clear by stating thus :

"In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made".

Thus, the aforesaid decision also makes it clear that in the absence of any law to the contrary it is open to the State Government in exercise of its executive power under Article 162 of the Constitution to impose such conditions as it would make the reservation effective and meaningful. In the instant case as it is already pointed out there is a law which empowers the Academic Council to make Regulations regarding the schemes of examinations and conditions on which the students shall be admitted to the examinations, degrees, diplomas, certificates or other academic distinctions. It is in exercise of this the Academic Council has framed the Regulations referred to earlier. Therefore, the field of selection of the candidates for admission to the B.Ed. Degree Course in question is already covered by law. Hence, the executive power of the State cannot be exercised with regard to this matter. Thus this decision of the Supreme Court instead of helping the petitioners, it helps the stand taken by the University.

7.3 Sri Datar, learned Counsel for the petitioners also placed reliance on a Full

Bench decision of the High Court of Patna reported in Amalendu Kumar Vs. The State of Bihar and Others, With regard to this decision, the Supreme Court in the aforesaid Nivedita Jain's case at para 26 of the Judgment has held that the view expressed by the Patna High Court that Article 15(1) of the Constitution cannot be meaningful and will become illusory until minimum standards of proficiency are laid down and followed in the matter of admission to Medical Colleges and if undeserving candidates are admitted into medical colleges that the standard of medical education will go down and undeserving candidates admitted to medical colleges would not be able to pass out and qualify as doctors and there may be many drop-outs and doctors not properly qualified will prove a danger to society is untenable. Therefore, the aforesaid decision also cannot be relied upon.

Lastly, reliance was placed on a decision of the Supreme Court in S.S. Sharma and Others Vs. Union of India (UOI) and Others, In that case Rule 12 (2a) of the Central Secretariat Service Grade I (Limited Departmental Competitive Examination for filling the vacancies reserved for Scheduled Castes and Scheduled Tribes) Regulations 1979 came up for consideration. The Rule provided for filling up the reserved vacancies by recourse to a departmental competitive examination for candidates from the S.Cs and S.Ts. The contention was that the vacancies reserved for S.Cs and S.Ts. should have been de-reserved and made them available to candidates falling under the general category and such a Rule was violative of Articles 14, 15 and 16 of the Constitution as it resulted in providing two avenues of promotion for Government servants belonging to S.Cs and S.Ts, while a single avenue only of promotion is available to other Government servants especially when the general category vacancies have not remained unfilled for want of suitable candidates. It was held that the Rule was not violative of Articles 14, 15 and 16 of the Constitution. In the vacancies reserved for S.Cs and S.Ts there was no 7. right in candidates seeking to fill vacancies belonging to general category to insist on de reservation of reserved vacancies so long as it was possible in law to fill the reserved vacancies. Thus, it was also further held that the Rules were framed under Article 309 of the Constitution and they were valid having regard to the provisions contained in Article 15(4) of the Constitution as it was open to the Government to provide such avenues in favour of S.Cs and S.Ts to fill up the vacancies reserved in their favour from the candidates belonging to reserved categories. Thus, it is clear that the enunciation made in the aforesaid decision of the Supreme Court cannot, in the facts and circumstances of the present case, be held to be applicable to it. Regulations made by the Academic Council of the University provide for lesser percentage of marks to be obtained by the candidates belonging to S.Cs and S.Ts and other classes. That being so, it is not open to the State Government to provide another criteria in exercise of its executive power. Therefore, it is not possible to hold that Regulations 1 and 2 in question are invalid because the same are opposed to the Government Order dated 12-6-1981. It is also not possible to hold that the Government Order dated 12-6-1981 has the effect of overriding Regulations 1 and 2. The Government

Order dated 12-6-1981 can be read only in such a manner so as to be in conformity with Sub-section (2) of Section 6 of the Act as only giving directions to the University to reserve seats for purposes of admission of students in the colleges or institutions maintained or controlled by it, belonging to the classes of persons mentioned in Sub-section (2) of Section 6 of the Act, and not more than that.

7.4 Accordingly, Point No. (2) is answered as follows :

Regulations 1 and 2 are not invalid on the ground that the same are opposed to the Government Order dated 12-6-1981 bearing No. ED 38 UBC 81. The Government Order dated 12-6-1981 can be read only in such a manner so as to be in conformity with Sub-section (2) of Section 6 of the Act and only giving directions to the University to reserve seats for purposes of admission of students in the colleges or institutions maintained or controlled by it belonging to the classes of persons mentioned in Sub-section (2) of Section 6 of the Act and not prescribing the conditions of eligibility for admission to B.Ed degree examination.

8.1 Point No. (3) : It is the case of the petitioners in Writ Petitions 20794, 20794A and 20794B of 1983 that admissions took place in the month of June 1983 and the list of admitted students was sent to the University for approval on 31-10-1983, whereas the University intimated the institution only on 5-3-1984 just a few days prior to the examination. Though the Writ Petitions were filed on 29-11-1983, having regard to the communication dated 5-3-1984 issued by the University, the petitioners obtained an interim order on 5-4-1984 directing the University to permit the petitioners to appear for the B.Ed. Examination subject to the result of the Writ Petitions. Thereafter, on 29-5-1984 in modification of the earlier order, the first Respondent-University was directed to publish the results of the examination of the candidates who were declared to have been eligible to take the, examination. Accordingly, the results of the petitioners except three were published by the University. The results of the petitioners are not published on the ground that they are not eligible as they have not secured 40% marks in the final year degree examination. In this regard it is the case of the petitioners that the effect of the interim order dated 5-4-1984 is to hold that the petitioners are eligible to appear for the examination ; therefore they have been permitted to appear, hence it is not open to the University to contend that the petitioners are not eligible. It is also further submitted that the petitioners have undergone the course of study and have appeared for the examination and now at this stage to cancel the examination on the ground that they are not eligible will work out great hardship to them as they have spent one year for undergoing the course of study in question ; that if they were told in the beginning itself that they were not eligible they would not have pursued the course and would have taken another course or opted to another career. As it is already pointed out the stand of the University is that the petitioners were aware of the fact that they were not eligible and it is because of that, even before they received the intimation from

the University they had approached this Court.

8.2 The case of the petitioners in W.Ps. 12144 and 12145 of 1984 is that they were admitted in July 1985 and the list of admissions was sent to the University for approval on 30-9-1985 and it was only on 7-2-1986 the University informed the institution that the admission of the petitioners could not be approved because they had secured lesser per percentage of marks in the final year degree examination. The petitioners have sought for admission to the B.Ed. Course on the ground that they belong to backward special group and as per Government Order dated 12-6-1981 they need not obtain requisite per percentage of marks as prescribed by the University and at any rate if they were told that they were not eligible, they would have pursued another course. In this regard the stand of the University is similar to the one taken by it in the connected Writ Petitions i.e. 20794, 20794A and 20794B of 1983.

8.3 It appears to me that on the facts and circumstances established in these cases there is no scope for holding that the University is estopped by the Doctrine of Equitable Estoppel to contend that the petitioners are not eligible to be admitted to the B. Ed. Degree Examination. The fact is that the petitioners have approached this Court even before the University informed its disapproval to the admission of the petitioners. This fact is sufficient to show that the petitioners were well aware of the fact that they were not eligible to be admitted to the B.Ed. Course as they had not secured requisite per percentage of marks in the final year degree examination. In such a situation the question of applying the Doctrine of Equitable Estoppel does not arise. The Doctrine of Equitable Estoppel applies only when the person invoking it has bona fide acted upon the representation or conduct of the other person or the authority and pursuant to that he has altered his position to his detriment. In the instant case, even if it is held that there was delay on the part of the University intimating its disapproval of the admission of the petitioners to the B. Ed. Degree Course, there is no scope for holding that the petitioners were under the bona fide belief on basis of the conduct of the University or were led to believe, that they were eligible to be admitted to the B.Ed. Degree course. As it is already pointed out, the petitioners were very well aware that as per the Regulations framed by the University they were not eligible to be admitted to the Course. It is because of that only they approached this Court well in advance even before the University intimated its disapproval to the admission of the petitioners to the B.Ed. Course. To such a situation, the Doctrine of Equitable Estoppel is inapplicable.

8.4 It is also not possible to accept the contention of the petitioners in W. Ps 20794, 20794A and 20794B of 1983 that the interim order dated 5-4-1984 amounted to holding that the petitioners were eligible to be admitted to B.Ed. Degree examination. The order dated 5-4-1984 firstly is subject to the result of the Writ Petitions ; secondly it has been modified by the order dated 29-5-1984 permitting the University to publish the result of only those candidates who are declared to have been eligible to be admitted to the B. Ed. Degree examination.

That being so, it is not possible to hold that the interim order dated 5-4-1984 has the effect of declaring that the petitioners are eligible for admission to B.Ed. degree examination.

8.5 For the reasons stated above, Point No. 3 is answered against the petitioners.

9. The last point that remains for consideration is, having regard to the conclusions reached by me on Point Nos. 1 to 3 whether the petitioners are still entitled to the reliefs they have sought for. While dealing with the validity of Regulation No. 3, I have pointed out that the Regulation in so far it permits the teachers of the private educational institutions to be admitted to the B.Ed. degree course without putting in minimum period of service as teachers or without satisfying eligibility condition as to the per percentage of marks to be obtained in the final year degree examination is discriminatory and such teachers and the petitioners stand in the same category and they cannot at all be classed in different categories. That being so, under Regulation No. 3, if a teacher of a private educational institution without having put in requisite period of service or without satisfying the condition as to obtaining fixed per percentage of marks in the final year Degree examination is eligible to be admitted to the B.Ed. degree examination ; applying the same logic and also having regard to the fact that the petitioners in W.Ps. 20794, 20794A and 20794B of 1983 have already appeared for the examination and only the results of the examination are withheld and whereas the petitioners in W.Ps. 12144 and 12145 of 1985 have completed the course of study, there is no reason or justification why the University should not be directed to declare the results of the examination of the petitioners in W.Ps. 20794, 20794A and 20794B of 1983 and permit the petitioners in W.Ps. 12144 and 12145 of 1985 to appear for the next examination.

10. It is further stated that the examination for the B.Ed. Degree Course will commence on 24th April, 1986. The last date for receiving the applications has also expired. Under these circumstances, it is necessary to issue a suitable direction

11. For the reasons stated above these Writ Petitions are disposed of in the following terms :

(i) Regulations 1 and 2 of the Revised Regulation for B.Ed Degree Course are valid ;

(ii) Regulation No. 3 of the said Regulation in so far it permits the teachers of the private educational/institutions to appear for the B.Ed degree examination without putting in certain minimum period of service as teachers or without satisfying the condition of eligibility of obtaining 45 or 40 per percentage of marks as the case may be as per Regulation Nos. 1 and 2 of the Regulation is struck down. The University is directed to refrain from enforcing that part of Regulation No. 3.

(iii) The order dated 12-6-1981 bearing No. ED 38 UBC 81 issued by the State

Government does not have the effect of over-riding Regulations 1 and 2.

(iv) Having regard to the provisions contained in Sections 27, 39 and 57 of the Act, the State Government has no power to prescribe minimum percentage of marks to be obtained in the final year degree examination for Admission to B.Ed. Degree course.

(v) The respondents are directed to announce the results of the petitioners in W.Ps. 20794, 20794A and 20794B of 1083 of the B.Ed examination for which they have appeared pursuant to the interim order dated 5-4-1984. In case they are declared passed in the examination, award the degree without going into the question of eligibility.

(vi) The respondents are also directed to permit the petitioners in W.Ps 12144 and 12145 of 1085 without going into the question of eligibility in terms of Regulation 1 and 2 to appear for B.Ed. Degree examination scheduled to commence on 24-4-1986. The respondents are also directed to conduct the practical examination at their convenience.