

(1996) 11 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15215 of 1996

M. Sanjeeva Reddy and Others

APPELLANT

Vs

State Convenor, Common Entrance Test, 1995 (T.T.C. Course)
and Others

RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Andhra Pradesh Educational Institutions (Admission of Students into Teacher Training Institutions) Rules, 1986 — Rule 2(3), 3, 5
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 15, 2, 3, 4, 8A
Andhra Pradesh Educational Institutions (Regulation of Admissions into Teacher Training Course through Common Entrance Test) Rules, 1990 — Rule 12(2), 3(1), 3(2), 4, 5
Constitution of India, 1950 — Article 162

Citation : (1997) 1 ALT 303

Hon'ble Judges : S. Parvatha Rao, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : Jagannatha Rao, E. Seshagiri Rao, K. Ramesh Babu, Samson Babu, J.R. Manohar Rao, D.V. Sitarama Murthy, Sridhar Reddy and S. Khader Mohiddin, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

S. Parvatha Rao, J.—The relief sought in this batch of writ petitions depends on the validity of the Special Entrance Test conducted on 24-12-1995 exclusively for all the students who studied in unrecognized private Teacher Training Institutes during the years 1983-84 and 1984-85 to permit those successful in the said test to undergo a six month crash course in Government Teacher Training Institutes as per the decision taken by the Government of Andhra Pradesh in G.O.Ms. No. 170, Education (S.S.E.) Department dated 9-5-1989.

2. The validity of this test and the decision taken by the Government under that G.O. has to be tested on the basis of the Andhra Pradesh Educational Institutions ((Regulation of Admissions into Teacher Training Course through Common

Entrance Test) Rules, 1990 (for short "the 1990 Rules) and the earlier Andhra Pradesh Educational Institutions (Admission of Students into Teacher Training Institutions) Rules, 1986 (for short "the 1986 Rules"), both made under the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short "the Act") - the 1986 Rules were made in exercise of the powers u/s 3 read with Section 15 of the Act, and the 1990 Rules were made in exercise of powers Under Sections 3 and 4 read with Section 15 of the Act in supersession of the 1986 Rules.

3. We have to mention in brief the background for the issuance of G.O.Ms. No. 170. Paragraph 2 of that G.O. itself gives the background, in part, as follows:

"In 1983-84 a number of Teacher Training Institutes sprang up unauthorisedly without prior permission of the Government contrary to the provisions contained in Section 20 of the Andhra Pradesh Education Act, 1982. The Government have rejected the request of the private Teacher Training Institutes during 1983-84 and for subsequent period. Orders were also issued to the effect that the question of permitting the said Teacher Training Certificate Examination does not arise under Clause (6) of Sub-section (4) of Section 21 of the Andhra Pradesh Education Act, 1982 (Act No. 1 of 1982). This resulted in extensive litigation. The litigation came to an end with the judgment of the Supreme Court in W.P. No. 12697/85 dated 7-5-1986. N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, . The Supreme Court in the said Judgment has observed that the Government issued a series of press notes warning the prospective students of the Institutions that they would not be allowed to appear for the T.T.C. examinations. Permitting the students to appear for the Examination would be practically encouraging and condoning the establishment of such unauthorised Institutions."

In N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, , the Supreme Court held as follows:

"These institutions were established and the students were admitted into these institutes despite a series of press notes issued by the Government. If by a fiat of the Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose. The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is probably essential before a teacher may be duly launched. We have no hesitation in dismissing the writ petitions with costs."

The G.O. recites that subsequent to that decision of the Supreme Court, many

representations were received by the Government from all quarters requesting the Government that the students of 1983-84 and 1984-85 batches who underwent training in the said very unrecognized private Teacher Training Institutes should be permitted to appear for the Teacher Training Certificate examination to mitigate their hardship, and that the Government after consideration of the matter decided on compassionate grounds "to hold a special course in Government T.T.Is. for section of those students of 1983-84 and 1984-85 batches who had undergone training in private T.T.Is. in all the districts of the State to appear in the Entrance Examination to be conducted by the Government", and that "the successful candidates in the Entrance Test should undergo a six month crash course in Government Teacher Training Institutes"; after they undergo the course "the Commissioner of Government Examinations shall conduct Teacher Training Certificate Examination" for them.

4. The Special Entrance Test under the said G.O. was proposed to be held on 31-10-1989 pursuant to the proceedings in Rc. No. 13-C-1-89 dated 4-10-1989 issued by the Commissioner of School Education, Hyderabad. For one reason or other, the Special Entrance Test could not be held on that date and was postponed from time to time, and was finally held on 24-12-1995. As per Memo No. 1702/Trq.II/92-14 dated 29-8-1996 of the Government of Andhra Pradesh, 11591 candidates appeared for the Special Entrance Test and 7959 were qualified in the Entrance Test.

5. We will first deal with Writ Petition No. 15215 of 1996. When this writ petition came up for final disposal before B.S.A. Swamy, J., disagreeing with the view taken by T.N.C. Rangarajan, J. in his Judgment in Writ Petition No. 12252 of 1993 and batch dated 7-3-1994 he referred the matter to a Division Bench and that is how this writ petition came to be posted before us for final disposal.

6. The petitioner in this writ petition states that he passed S.S.C. examination in March, 1979 and Intermediate examination with B.P.C. (Biology, Physics and Chemistry) group in April, 1982. He then underwent Teacher Training Course for one year in Madhu Teacher Training Institute (Private), Bodhan, Nizamabad District during the year 1983-84 and also completed practical training classes. That institute was not recognized by the Government of Andhra Pradesh and, therefore, he was not allowed to appear for the Teacher Training Certificate Examination conducted by the Government of Andhra Pradesh. This was pursuant to a policy decision taken by the Government not to permit students trained in private unrecognized Teacher Training Institutes to appear for the said examination. Madhu Teacher Training Institute, Bodhan and several similar institutes unsuccessfully questioned the action of the Government in preventing the said students from appearing for the said examination, before the High Court and in the Supreme Court. The petitioner states that in view of the fact that he underwent training in an unauthorised private Teacher Training Institute during the year 1983-84 he was permitted to appear for the Special Entrance Test and was issued hall-ticket No. 2850005; though as per that hall-ticket the date of the

entrance test was shown as 26-6-1994, it was not held on that date, but was finally held on 24-12-1995 and he was allowed to appear for that test. He states that on 17-5-1996 he was communicated a memo of marks and his rank was shown as 00054 in Biology under Osmania University local area. He also received an interview card on 12-6-1996 directing him to attend for interview on 25-6-1996 at Government College of Physical Education at Hyderabad along with all original certificates for provisional admission into T.T.C. course 1995-96. He states that he attended the interview on 25-6-1996 and that he was informed that as he did not pass the intermediate examination in one attempt he could not be admitted for Teacher Training Course. He submits that that action of the respondents (in W.P. No. 15215 of 1996) is illegal, bad, arbitrary and contrary to the rules issued in G.O.Ms. No. 588, Education (Rules) dated 2-12-1986 i.e., 1986 Rules and that under Rule 5 of those Rules, the eligibility for appearing for entrance test and admission to T.T.C. Course is "pass in the intermediate examination with a minimum of 45% of marks in aggregate" and that the minimum marks to be secured in the common entrance examination for getting eligibility for appointment (sic. admission) into the Teacher Training Course shall be 35%, and that in the statutory rules it is nowhere stated that the candidates who passed the intermediate in compartments are not eligible to get admission in Teacher Training Course".

7. In view of the fact that the petitioner relies on the 1986 Rules, the question that immediately arises is whether the Special Entrance Test for which the petitioner appeared is a test held in accordance with the 1986 Rules which were in force when G.O.Ms. No. 170 dated 9-5-1989 was issued, or in accordance with the 1990 Rules which were made in supersession of the 1986 Rules and are in force now and were at the time when the said test was held.

8. The learned Counsel for the petitioner contends that this question has not been raised by the respondents in the writ petition and, therefore, cannot be enquired into by this Court. But, this is a question which has to be first answered before the petitioner can rely on the 1986 Rules or 1990 Rules framed under the Act; and if the Government has no power or authority to issue G.O.Ms. No. 170 authorising the conduction of a Special Entrance Test confined to the students of 1983-84 and 1984-85 batches in unrecognized private Teacher Training Institutes, the very substratum for the petitioner's claim and contention would vanish. In view of the question involved as regards the validity of the G.O. and the Special Entrance Test, the learned Government Pleader for School Education represented on 30-9-1996 that the learned Advocate General was instructed to appear in this matter and took time on that ground. Subsequently, we heard the learned Advocate General on the question of validity of the G.O. and the Special Entrance Test. Faced with the provisions of the Act and the 1986 Rules and 1990 Rules, the learned Advocate General has very fairly submitted that the G.O. and the Special Entrance Test are unsustainable inasmuch as they run counter to the legislative enactments and the rules made thereunder, and as it cannot be disputed that the field is occupied by them the Government cannot rest on its

executive power under Article 162 of the Constitution of India.

9. In view of the fact that a decision in the other writ petitions in this batch rests on this question, we directed that they should also be posted along with this writ petition so as to give an opportunity to the learned counsel appearing for the petitioners in those writ petitions to submit their arguments, if any, to sustain the G.O. and the Special Entrance Test conducted pursuant to it. We heard Mr. E. Seshagiri Rao, Mr. K. Ramesh Babu, Mr. Ch. Samson Babu, Mr. J.R. Manohar Rao, Mr. D.V. Sitarama Murthy, Mr. Sridhar Reddy and Mr. S. Khader Mohiddin.

10. The salient provisions of the Act have to be first noticed. By virtue of Sub-section (2) of Section 1, the Act shall be deemed to have come into force on 30-10-1983. By virtue of Sub-section (3) of Section 1, the Act applies to all educational institutions. Clause (c) of Section 2 of the Act defines "educational institution" as "a college, a school imparting education upto and inclusive of tenth class or other institution by whatever name called, whether managed by Government, private body, local authority or University and carrying on the activity of imparting education therein, whether technical or otherwise, and includes a Polytechnic, Industrial Training Institute and a Teachers Training Institute, but does not include a tutorial institution". Thus, Teachers Training Institutes (for short "T.T.Is.") whether managed by the Government or a private body etc., are educational institutions and the Act applies to them. Sub-section (1) of Section 3 of the Act is relevant for the purpose of the present writ petition. To the extent relevant, it is as follows:

"Section 3(1): Subject to such rules as may be made in this behalf, admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed".

The proviso to the Sub-section is not relevant and, therefore, omitted. Section 15 of the Act gives power to the Government to make rules by notification for carrying out all or any of the purposes of this Act. Section 12 of the Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In exercise of the powers conferred by the Act, Government made the Andhra Pradesh Educational Institutions (Admission of Students into Teacher Training Institutions) Rules, 1986 (for short "the 1986 Rules") under G.O.Ms. No. 588, Education (Rules), dated 2-12-1986. The 1986 Rules were brought into effect from the academic year 1986-87. These Rules repealed all rules relating to admission of students into T.T.Is. in force immediately before their commencement. Subsequently, under G.O.Ms. No. 35, Education (Rules), dated 26-2-1990 (published in A.P. Gazette on 19-3-1990) the Andhra Pradesh Educational Institutions (Regulation of Admissions into Teacher Training Course through Common Entrance Test) Rules, 1990 (for short "the 1990 Rules") were made in supersession of the 1986 Rules.

11. Before dealing with the 1986 Rules and the 1990 Rules, we have to delineate the position obtaining prior to the coming into force of the 1986 Rules. In G.O.Ms. No. 169, Education, dated 19-2-1975 and Government Memo No. 763/121-2/75-4 Education, dated 16-5-1975, the Government of Andhra Pradesh approved "the scheme and syllabus of the training courses in T.T.Is. from 1975-76". The said Scheme dealt with institutions offering training courses for teachers and designated them as Teacher Training Institutes. As per the Scheme, the duration of the course should be one academic year after a pass in the Intermediate. It also provided that each training institute should admit 150 students in two sections of 75 each, and that the institutions should be normally co-educational. The minimum qualification for admission into T.T.I should be a pass in the Intermediate examination with a minimum of 45% marks in the aggregate and the minimum percentage of marks in the case of Scheduled Castes/Scheduled Tribes could be reduced to 40%. The Scheme also provided that preference in admission should be given to those who were fresh from Junior Colleges and who had passed the examination in one attempt; and the next to be preferred would be failed graduates. Graduates were not eligible for the course. Selection of candidates would be by a Selection Committee consisting of the District Educational Officer concerned and the Principal and selection would be made purely on merit; interviews for the selection of candidates was not provided for. Candidate should have completed 17 years of age and should not be more than 30 years as on first July of the year of joining the training course. Power was conferred on the Director of Public Institution to relax the upper age limit in special and deserving cases. The Scheme was intended to train teachers to teach in | schools with Classes I to VII including Single Teacher Schools i.e., teachers who would be in a position to teach all subjects in such schools. The Scheme i dealt with all the details relating to staff, the subjects for study, the hours of teaching, practicals and training to be imparted etc. in the T.T.Is. This Scheme was made in exercise of the executive power of the State under Article 162 of the Constitution at a time when there was no legislation governing the admission to T.T.Is., and it was in operation when the Act came into force on 30-10-1983. After the 1986 Rules came into force with effect from academic year 1986-87 by virtue of Rule 12 of those Rules, it must be held that they repealed all the pre-existing rules dealing with admission to T.T.Is., and that such admissions thereafter could be made only in accordance with the 1986 Rules. So also, after the 1990 Rules came into force it must be held that they alone govern the admission into Teacher Training Course. Sub-rule (2) of Rule 1 of the 1990 Rules specifically states that these Rules shall apply to "all the Teacher Training Institutes (TTI) (both Government and Private) and District Institutes of Education and Training (DIET) functioning within the State of Andhra Pradesh offering Teacher Training Course and they were brought into effect from 1989-90.

12. When G.O.Ms. No. 170 was issued on 9-5-1989, the 1986 Rules were in force. But the various steps under the said G.O. were taken after the 1990 Rules came into force with effect from 1989-90 - the Special Entrance Test

contemplated under the said G.O. was itself held on 24-12-1995. Both these Rules are comprehensive and cover the entire field relating to admission into Teacher Training Institutions (both Government and Private).

13. The method of admission to the Teacher Training Institutions prescribed by the 1986 Rules was by common entrance examination, which meant "the test conducted for the purpose of evaluating the merit of students on the basis of which the list of students for admission into the teacher training institutions (both Government and Private) is to be prepared" (Sub-rule (3) of Rule 2); the duration of teacher training course should be for a period of one academic year (Rule 3); the minimum qualification for appearing for the entrance test was a pass in the intermediate examination with a minimum marks of 40% in the case of Scheduled Caste and Scheduled Tribe candidates and in the case of other candidates 45%. The marks to be secured in the common entrance examination for getting eligibility for admission into teacher training course was 25% in the case of Scheduled Caste and Scheduled Tribe candidates and 35% in the case of other candidates. Candidates should have completed 17 years but should not have completed 25 years of the age as on the 1st July of year of admission; in the case of Scheduled Caste and Scheduled Tribe candidates the upper age limit was 28 years. Thus, all persons who were qualified could appear for the common entrance examination and only those who secured the minimum marks in the common entrance examination could be eligible for admission into the teacher training course. The 1986 Rules did not provide for any teacher training course of less than one year duration and they mandated that admission into all the Teacher Training Institutions for any academic year should be only after conducting common entrance test and on the basis of ranking assigned to the candidates.

14. The 1990 Rules are more elaborate. Rule 3 of these Rules provide the general guidelines for admission of students into teacher training course offered in various Teacher Training Institutes etc. Sub-rule (1) of Rule 3 provides that the course shall be of one academic year duration and Sub-rule (2) provides that "the admissions into the Teacher Training Course shall be made on the basis of merit ranking assigned to the students in the common entrance test". Sub-rule (4) prescribes the number of students to be admitted in each one of the Government Teacher Training Institutes, section-wise and subject-wise. Age limit and educational qualifications are similar to those prescribed under the 1986 Rules. As regards the qualifying marks in the entrance test, while for the general category of candidates it is 35% of the aggregate marks, no minimum qualifying marks is prescribed in respect of candidates belonging to the Scheduled Castes and Scheduled Tribes. Candidates who have obtained qualifying marks in the entrance test and those belonging to S.C. / S.T. communities only can be assigned ranking in the order of merit on the basis of aggregate marks obtained in the entrance test. These rules also make it clear that mere appearance in the entrance test does not entitle a candidate to be considered for admission into any course automatically unless the candidate makes application in the

prescribed form to the Regional Convenor to which he is a local candidate and/or to the Regional Convenor to which he is a non-local candidate for consideration of his application as of local candidate and/or for open competition, as the case may be, and satisfies all the conditions of admissions stipulated by the Government and the Board of Intermediate Education as the case may be, in addition to the rules prescribed. Rule 8 deals with procedure for admission into various institutions and Rule 11 deals with reservation for admission.

15. From a reading of the various provisions in the 1986 Rules and the 1990 Rules, it is obvious that they do not empower the Government to conduct any Special Entrance Examination different from the Common Entrance Test under Clause (3) of Rule 2 of the 1986 Rules or Clause (2) of Rule 3 of the 1990 Rules. There can be no doubt that the Special Entrance Test held on 24-12-1995 did not comply with the requirements of the 1990 Rules in force at that time. It was not a common test open to all because it was restricted to those who had undergone training in private T.T.Is. during the years 1983-84 and 1984-85. The said test itself was not for admission to Teachers Training course of one academic year duration as mandated under Clause (1) of Rule 3 of the 1990 Rules (corresponding to Rule 3 of 1986 rules) but was for a six months "crash course" in Government T.T.Is. G.O.Ms. No. 170 does not require the rules of reservations to be followed. Even if it is open to the Government to start a new "crash course" of six months duration to be undertaken by the existing Government T.T.Is. in addition to the regular one year course as contemplated by the 1986 Rules and the 1990 Rules, admission to Government T.T.Is. for the various courses conducted by them can only be in accordance with Sub-section (1) of Section 3 of the Act i.e., "either on the basis of the marks obtained in the qualifying examination or on the basis of ranking assigned in the Entrance Test conducted by such authority and in such manner as may be prescribed". "Prescribed" means prescribed by rules made by the Government under the Act (Clause (g) of Section 2). The rules under the Act applicable to admissions to T.T.Is. were the 1986 Rules, and after them the 1990 Rules, which continue to be in force now. The 1990 Rules prescribe a Common Entrance Test (Rules 5, 6 and 7). Procedure for admission into various institutions also is prescribed by Rule 8 of the 1990 Rules. They mandate that the Teacher Training Course" shall be of one academic year duration". Teacher Training Certificates are issued to those successful in the examination conducted after the one year course is completed. The Special Entrance Test conducted on 24-12-1995 was not contemplated or provided for under the 1990 Rules. Without being prescribed by the Rules made under the Act, no such Special Entrance Test could have been conducted.

16. Section 8-A of the Act grants exemption to certain specified educational institutions; it does not cover T.T.Is. The Act does not confer any power on the Government for granting any exemption. Therefore, Sub-section (1) of Section 3 of the Act cannot be avoided in any way for admission to any course run by T.T.Is. Coming to the 1986 Rules, Rule 11 provided exemption from appearing for Entrance Examination to certain candidates specified therein for admission into

various Government Teacher Training Institutions in the State. But that has no relevance here. Rule 12 of the 1990 Rules gives certain "general instructions". Sub-rules (1) and (3) of Rule 12 are not relevant for the present case. Sub-rule (2) of Rule 12 confers power on the Government to amend or alter the Rules from time to time without notice. We have to notice here that rules can be made u/s 15 of the Act only by notification and Sub-section (2) of Section 15 provides for laying of every rule made under this Section before each House of the State Legislature and for modifications in and annulments of the rules by both Houses. The 1990 Rules were made u/s 15 of the Act and they were published in the Gazette. The Rules cannot be amended or altered without following the procedure u/s 15. However, it is not the case of the Government that any amendment or alteration of the 1990 Rules was made. When G.O.Ms. No. 170 dated 9-5-1989 was issued 1986 Rules were in force. The 1986 Rules did not confer any power on the Government like under Rule 12(2) of the 1990 Rules. G.O.Ms. No. 170, at any rate, does not purport to amend or alter the Rules. In *State of Maharashtra v. Jagannath* AIR 1989 SC 1133, the Supreme Court has held that it is a well accepted principle that "the Government could not have restricted the operation of the statutory rules by issuing the executive instruction" and that "the executive instruction may supplement but not supplant the statutory rules". In the result, we have to hold that the Special Entrance Test held on 24-10-1995 by an executive order is unauthorised, contrary to law and impermissible and that the candidates who appeared for that Special Entrance Test cannot have any right to be admitted to any course run by the Government T.T.Is. for the grant of Teacher Training Certificates.

17. The learned Counsel attempts to rest G.O.Ms. No. 170 dated 9-5-1989 on the executive power of the State under Article 162 of the Constitution. In *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, the Supreme Court observed as follows about executive power:

"So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf".

In *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others* etc., , a four judges Bench of the Supreme Court examined "whether the Government had a right to prescribe a test for making a selection of a number of candidates from out of the large body of applicants for admission into the 1st year M.B.B.S. course and whether such action of the Government contravened any provision already made by the legislature in that respect". The Supreme Court held as follows:

"Under Article 162 of the Constitution the executive power of a State extends to the matters with respect to which the legislature of a State has power to make laws but this is subject to the provisions of the Constitution. As the Government

runs these colleges, it undoubtedly has a right and a duty to make a selection from the number of applicants applying for admission if all could not be admitted. If there was no legislation covering this field Government would undoubtedly be competent to prescribe a test itself to screen the best candidates... ... The Government which ran the colleges had the right to make a selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not against any law."

The Supreme Court examined the provisions of the Andhra University Act and held that the provisions of the said Act did not make it incumbent upon the Government to make their selection in accordance with the marks obtained by the applicant-candidate at the qualifying examination, and that the action of the Government in prescribing the test under question did not run counter to any of the provisions of that Act. The Supreme Court has reiterated the position in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, as follows:

"Under Article 162 of the Constitution the executive power of a State, therefore, extends to the matter with regard to which the legislature of a State has power to make laws. As there is no legislation covering the field of selection of candidates for admission to Medical Colleges, the State Government would, undoubtedly, be competent to pass executive orders in this regard".

But the position in the present case is just opposite. The Act read with the 1990 Rules specifically provides for the manner in which candidates have to be admitted to the Teacher Training Course offered in the various T.T.Is. in the State and the 1990 Rules prescribe a Common Entrance Test for that purpose. The Special Entrance Test conducted by the Government on 24-12-1995 does not satisfy the requirements of the Common Entrance Test prescribed under the 1990 Rules; and the method of admission provided under G.O.Ms. No. 170 dated 9-5-1989 for the so called six months teacher training course does not satisfy the requirements of Section 3 of the Act and the 1990 Rules. As we have already pointed out, the six months teacher training course itself is contrary to Clause (1) of Rule 3. Thus, the Special Entrance Test and the six months teacher training course under G.O.Ms. No. 170 dated 9-5-1989 conflict with the Act, the 1986 Rules and the 1990 Rules and, therefore the executive power under Article 162 could not have been relied upon by the Government to conduct such test and to prescribe such a course. The learned Advocate General does not dispute this position.

18. The learned Counsel for the petitioner next relies on the doctrine of promissory estoppel. It is well established that the rule of promissory estoppel cannot be invoked against the statute. In *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, , the Supreme Court observed as follows while dealing with a case where the Principal of an engineer college granted permission for transfer of his student contrary to the rules:

"The subject of migration of students is a matter governed by law. The Principal

could only act within the said provisions not outside them. The Rules are emphatic. They left no choice to him. He had no option but to refuse his consent. The consent given by him was thus contrary to law. It was beyond his power i.e., ultra vires his powers. It should be noted that the violation was not a technical one. It was not a procedural⁵ or peripheral one. It touched the core, the substance of the Rules. It is worse that it was a conscious violation... The doctrine of promissory estoppel is a rule of equity... It cannot be utilised or relied upon to defeat or nullify a provision of law... The violation was of an emphatic Rule couched in categorical language. The Rule is based upon sound public policy. It is designed to check back-door admission of ineligible students. It was conceived as a bar to doing indirectly that which could not be done directly. It was conceived in the interest of fairness, good administration and quality and standards of education."

In the present case, we have found that in view of the Act, the 1986 Rules and the 1990 Rules the Government had no power to issue G.O.Ms. No. 170 dated 9-5-1989 and to conduct the special Entrance Test pursuant to the said G.O. Therefore, what was provided in the said G.O. is contrary to the Act and the said rules. Consequently, the special Entrance Test also is contrary to law and cannot be acted upon and the candidates who partook in the said test cannot claim admission into T.T.Is. on that basis. In *G. Manjula v. Director of School Education* 1996 (4) ALD 590 : 1997 (1) An. W.R. 1, a learned single Judge of this Court no doubt held that the promise made by the Government by issuing G.O.Ms. No. 170 is quite categorical and unambiguous, and that no mention was made about the ceiling of the seats, and that, therefore, all successful candidates should be allowed to undergo for training in Government T.T.Is. and that the Government was estopped from fixing a ceiling on seats. But the Act and the Rules made thereunder were not brought to the notice of the learned single Judge.

19. The learned Counsel for the petitioner further contends that the question regarding the validity of G.O.Ms. No. 170 dated 9-5-1989 and of the Special Entrance Test held on 24-12-1995 was not raised in the writ petition neither by the petitioner nor by the respondent - Government, and that, therefore, this Court cannot entertain that question and throw out the petitioner on the ground that the G.O. and the Special Entrance Test are bad. He relied on the decisions of the Supreme Court in *S.P. Gupta Vs. President of India and Others*, ; *K.I. Shephard and Others Vs. Union of India (UOI) and Others*, and *Bank of Baroda Vs. Rednam Nagachaya Devi*, . In *S.P. Gupta Vs. President of India and Others*, , it was only held that the Courts should not decide academic questions and should not take upon themselves a theoretical exercise merely for the purpose of deciding academic issues, howsoever important they may be. In *K.I. Shephard and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that "Courts should not enter into constitutional issues and attempt interpretation of its provisions unless it is really necessary for disposal of the dispute". These decisions have no relevance to the facts of the present case. In *Bank of Baroda Vs. Rednam Nagachaya Devi*, the Supreme Court faulted the High Court for

deciding the question of the unconstitutionality of Section 4(e) of Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 when that question was not raised and, therefore, was not at issue. The Supreme Court observed as follows:

"While we are sensible of the anxious concern of the learned Judge for the acuteness and magnitude of the problem of agricultural indebtedness it appears to us that even if the question had not been tramelled by a decision of this Court, it would be appropriate to examine the question in a properly constituted action where pleas challenging the vires of the provisions had been properly raised and urged.

It is not disputed before us that respondent in this case did not bestir herself to raise this contention. The learned Judge in view of what he considered to be the general importance of the matter, pondered over the question himself and came to record a finding that Section 4(e) suffered from the vice of hostile discrimination".

The Supreme Court also referred to its earlier decision in Rajput Ruda Meha and Others Vs. State of Gujarat, . But, we have to observe that Bank of Baroda's case (10 supra) arose out of a second appeal and that the learned Judge of the High Court in that second appeal took upon himself to enquire into the constitutionality of the said Section 4(e) when that question was not raised in the suit or even before him by any of the parties i.e., without any plea raised in the suit. The Supreme Court also adverted to the principle that the allegations on which violation of Article 14 was based must be specific, clear and unambiguous and must contain specific particulars brought out in the pleadings. But, the matter before us is a writ petition in which the petitioner specifically relies on G.O.Ms. No. 170, Special Entrance Test and Rule 5 of G.O.Ms. No. 588 dated 2-12-1986 under which the 1986 Rules were made. The petitioner did not notice that the 1986 Rules were repealed by G.O.Ms. No. 35 Education (Rules) dated 26-2-1990 (published in Gazette dated 19-3-1990) under which the 1990 Rules were made. Rule 4 of the 1990 Rules deals with eligibility criteria for admission and replaces Rule 5 of the 1986 Rules dealing with eligibility for admission. The question whether the Special Entrance Test conducted by the authorities concerned on 24-12-1995 is in accordance with the Act and the said Rules, and whether the petitioner gets any right by participation in such test, thus arise for consideration in the present writ petition. Under G.O.Ms. No. 170 dated 9-5-1989, the Government of Andhra Pradesh took a decision on compassionate grounds to hold a six months special course in Government T.T.Is. for those students of 1983-84 and 1984-85 batches who underwent training in unauthorised private T.T.Is. in the State and who would be successful in the Entrance Test to be conducted for admission to the said course, and on that basis conducted the Special Entrance Test on 24-12-1995. As already held by us, the said G.O. and the Special Entrance Test are unauthorised and contrary to the Act and the Rules made thereunder and their invalidity is patent and obvious. The learned Advocate General very fairly expressed that the Government had no

authority to issue the said G.O. and to conduct the Special Entrance Test in the face of the Act and the Rules thereunder. This Court cannot close its eyes to such a glaring illegality. In *Anil Kumar Gupta and Others Vs. State of U.P. and Others*, , the Supreme Court observed as follows:

"At the outset, we may mention a glaring illegality which has unfortunately not been raised in these writ petitions but is self-evident from the decisions of this Court... It has been held by this Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, that the reservation of seats in favour of candidates belonging to hill areas and Uttarakhand areas are reservations within the meaning of Article 15(4) of the Constitution i.e., they are reservations in favour of socially and educationally backward classes of citizens...It, therefore, follows that a separate horizontal reservation of six per cent of the seats in favour of candidates from hill areas and Uttaranchal apart from and in addition to twenty-seven per cent reservation in favour of other backward class candidates is clearly illegal. Though this contention has not been specifically raised in these writ petitions, we must yet take notice of this circumstance while making the appropriate directions in these matters".

There is no doubt that the petitioner could not have been denied admission on the ground that he did not pass the intermediate examination in one attempt. But, when we find that the G.O. and the Special Entrance Test are contrary to law, it is not possible for us to give the direction sought by the petitioner. In *Dental Council of India v. Harpreet Kaur Bal* , the Supreme Court held that "a relief must be such as could be considered permissible in law and worked out by the application of legally recognized principles". That was a case where the students underwent the course in a Dental college which was not recognized and was not even given affiliation by the University and yet the High Court of Punjab and Haryana passed an order allowing the writ petition filed by the students and directing the University to proceed to hold the examinations at the risk and responsibility of the students. The Supreme Court held that no question of the University being directed to hold professional examinations at the risk and responsibility of the students could, at all, be conceived when it was admitted that the Dental College was not a recognized institution. We have also to keep in view what *K. Ramaswamy, J.*, said in *State of Maharashtra v. Vikas Sahebrao Roundale* AIR 1925 SC 1926.

"The proceedings of the recent seminar held in Delhi, as published by the Times of India dated 4th August, 1992, would demonstrate the admission by the teachers that they are not properly trained to cope up with the growing needs of the society and are unsuited to the duties they have to shoulder in imparting teaching to the children. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The formal education needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest technics to the students on secular, scientific and rational outlook. A well equipped teacher could

bring the needed skills and intellectual capabilities of the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast ever changing technics, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students".

When the rules provide for one year training in T.T.Is., the Government sought ... to introduce a crash course of six months. The T.T.Is. are already burdened with the regular students.

20. In the light of the above discussion, the petitioner cannot have the relief sought by him. The writ petition is, therefore, dismissed. No costs.

21 Writ Petition Nos. 27283, 27681, 28083, 28458, 28686, 28802, 28861, 28967 and 29129 of 1995 are filed by Sri Rosayya Memorial Teacher Training Institute, Isukapalli (Guntur District), Siddardha Teacher Training Institute, Kavali (Nellore District), Kalabharathi Teachers Training Institute, Addanki (Prakasam District), Shanti Teachers Training Institute, Tadepalligudem (West Godavari District), Saint Paul's Teachers Training Institute, Giddalur (Prakasam District), St. Paul's Teacher Training Institute, Powerpet, Eluru (West Godavari District), Siddardha Teacher Training Institute, Kavali (Nellore District) - second writ petition, St. Thomas Teachers' Training Institute, Gunupudi (West Godavari District) and Sri Vivekananda Teacher Training Institute, Allur (Nellore District) respectively sought for a direction to the respondents in the respective writ petitions to permit their students of 1983-84 and 1984-85 years to appear for the Special Entrance Test on 24-12-1995 - in some of these writ petitions, the petitioners also prayed for declaration of the results and also for grant of certificates, presumably teacher training certificates. The petitioners in all these writ petitions also filed W.P.M.Ps. seeking interim directions to permit their respective students to appear for the Special Entrance Test on 24-12-1995 and this Court granted interim directions to permit them to appear for the Entrance Test but not to declare the results pending further orders except in W.P.M.P. No. 35627 of 1995 in Writ Petition No. 28861 of 1995 of Siddardha Teacher Training Institute wherein the prayer for publishing the results was not withheld. The petitioner institute in Writ Petition No. 28967 of 1995 filed W.P.M.P. No. 15602 of 1996 for declaring the results after getting the interim direction dated 22-12-1995 in W.P.M.P. No. 35774 of 1995 directing the respondents therein to allow its students "as per the list of selected candidates of 1983-84 and 1984-85 batches of private T.T.C. candidates found as per the admission register and according to the nominal rolls to appear for the special Entrance Test on 24-12-1995". This Court on 5-7-1996 directed the declaration of the results subject to the result of the writ petition. No counter affidavit was filed on behalf of the respondents. In

Writ Petition No. 28802 of 1995, the petitioner institute filed a similar W.P.M.P. No. 15603 of 1996 for declaration of the results after getting the interim direction dated 20-12-1995 in W.P.M.P. No. 35561 of 1995 for permitting its students to appear for the Special Entrance Test. In that also on 5-7-1996 this Court directed that the results should be declared, but subject to the result of the writ petition. In this writ petition also no counter affidavit was filed on behalf of the respondents. In Writ Petition No. 27283 of 1995, the respondents filed W.P.M.P. No. 2756 of 1996 for vacating the interim direction granted on 5-12-1995 in W.P.M.P. No. 33671 of 1995 alleging that 52 candidates of the petitioner institute did not produce any records that they underwent training in that institute. In Writ Petition No. 28083 of 1995 also, the respondents filed W.P.M.P. No. 3089 of 1995 for vacating the interim direction pointing out that there were various discrepancies in the number of students. Similarly, in Writ Petition No. 28861 of 1995, the respondents filed W.P.M.P. No. 2221 of 1996 for vacating the interim direction granted on 21-12-1995 pointing that certain registers, like Staff Acquittance Register, were not produced. So also in Writ Petition No. 29129 of 1995, the respondents filed W.P.M.P. No. 1404 of 1996 to vacate the interim directions granted for permitting the students of the petitioner institute to appear for the Special Entrance Test. In Writ Petition No. 28861 of 1995, the respondents filed counter affidavit. It is interesting to note that the Siddardha Teacher Training Institute at Kavali filed two writ petitions. It first came to this Court by way of Writ Petition No. 27681 of 1995 to permit its 71 students of 1983-84 and 1984-85 batches to appear for the Special Entrance Test on 24-12-1995 and to publish their results. This Court granted interim directions on 12-12-1995 in W.P.M.P. No. 34168 of 1995 to permit the said students to appear for the Special Entrance Test but also directed the results of the test should not be published until further orders. In the main writ petition, the prayer was "to permit them to sit for the Special Entrance Test scheduled to be held on 24-12-1995 or thereafter, and publish their results and issue certificates to the passed candidates and to pass such other order or orders". In W.P.M.P. No. 34168 of 1995 in that writ petition, the prayer was the same though "pending disposal of the writ petition" was added at the end. In Writ Petition No. 28861 of 1995, Siddardha Teacher Training Institute at Kavali sought a writ directing the respondents to accept the application forms, examination fee and issue hall tickets for the "left over 23 candidates" trained for the year 1983-84 and 11 candidates trained for the year 1984-85 submitted along with letter dated 13-10-1995 to the District Educational Officer, Nellore and permit them to sit for examination scheduled to be held on 24-12-1995 or thereafter, and publish their results and issue certificates to the passed candidates. In W.P.M.P. No. 35627 of 1995 in that writ petition, the same prayer was repeated adding at the end "pending disposal of the writ petition" and interim directions as prayed for were granted on 21-12-1995. In W.P.M.P. No. 2221 of 1996, the respondents filed a detailed counter affidavit. It is not necessary to go into the details of the facts in view of our finding in Writ Petition No. 15215 of 1996 that G.O.Ms. No. 170 dated 9-5-1989 and the Special Entrance Test held on 24-12-1995 are not valid because

the Government had no power to issue such a G.O. and to conduct such a Special Entrance Test in violation of the Act and the Rules made thereunder. The G.O. attempts to legitimise and permit what was found to be impermissible by the Supreme Court in Nageswaramma's case (1 supra). In that case, the Supreme Court referred to the conditions obtaining in these unauthorised T.T.Is. like the petitioners in these writ petitions and observed as follows:

"Encouraged by the sympathetic attitude taken by the Government in permitting the students of an unauthorised institution to appear at the Government examination, a few other private managements started unauthorised institutions. The unauthorised institutions had no facilities to train teachers in the manner prescribed by G.O.Ms. No. 169 Education. They had no financial wherewithal, the necessary qualified staff, Library, Laboratory and other equipment. They had no model schools for their pupils to practise teaching. In the circumstances the Government was forced to enunciate a policy decision not to permit any privately managed Teacher Training Institutes. In order to prevent unwary individuals from being trapped into joining unauthorised Institutes, the Government issued press notes from time to time warning the public that candidates seeking admission into privately managed unauthorised Teacher Training Institutes would be doing so at their own risk. In some of the press notes the names of some of such unauthorised Institutes were also mentioned. We may mention here that all the petitioners are such unauthorised privately managed Teacher Training Institutes established despite the warning issued by the Government from time to time and in defiance of G.O.Ms. No. 169 dated February 19, 1975 and the provisions of the Andhra Pradesh Education Act, 1982 to which we shall refer presently."

It is obvious that the efforts of the very same institutions to circumvent the judgment of the Supreme Court bore fruit by persuading the Government to issue the G.O. in question and to conduct the Special Entrance Test ignoring the Act and the Rules made thereunder. The Government has no such power and the Act and the Rules made thereunder cannot be allowed to be overturned that way. The unauthorised petitioner-institutes cannot seek their illegitimate students to be admitted into the Government T.T.Is. for participating in an unauthorised course through Special Entrance Test conducted by the Government in contravention and violation of the provisions of the Act and the Rules made thereunder.

22. In the result, these writ petitions are dismissed. No costs.

Writ Petition Nos. 28684. 28779. 28939. 28973, 29091. 29099 and 29151 of 1995:

23. These writ petitions are preferred by the students of unauthorised T.T.Is. during the years 1983-84 and 1984-85 for permitting them to appear for the Special Entrance Test on 24-12-1995 pursuant to G.O.Ms. No. 170 dated 9-5-1989. In the view we have taken, it is not necessary to go into the specific objections raised in the counter affidavits filed in some of these writ petitions.

For the reasons stated while disposing of the earlier writ petitions, these writ petitions are also dismissed. No costs.

Writ Petition No. 29103 of 1995:

24. The petitioner presented this writ petition on 22-12-1995 seeking the postponement of the Special Entrance Test to be held on 24-12-1995 on the ground that no proper notification was given. As we have held that the G.O.Ms. No. 170 dated 9-5-1989 and the Special Entrance Test of 24-12-1995 held pursuant to the said G.O. are unauthorised and contrary to law, this writ petition has to be dismissed and is accordingly dismissed. No costs.

Writ Petition No. 29603 of 1995:

25. The petitioner in this writ petition presented on 27-12-1995, seeks a direction that he should be given an admission into a Government T.T.I. overlooking the Entrance Test, which was held on 24-12-1995. As we have held that G.O.Ms. No. 170 dated 9-5-1989 and the Special Entrance Test held on 24-12-1995 pursuant to the said G.O. are unauthorised and contrary to law, this writ petition has to be dismissed and is accordingly dismissed. No costs.