

(2009) 01 DEL CK 0283

In the Delhi High Court

Case No : Writ Petition (C) 6084 of 2007 and 5152 of 2008

Rajender Kumar and Another and Kamal Preet and Another	APPELLANT
Vs	
State Council of Education Research and Training and Others	RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 226
National Council for Teacher Education Act, 1993 — Section 12, 14(1), 14(3), 15(1), 16
National Council for Teachers Education Regulations, 2001 — Regulation 3

Citation : (2009) 01 DEL CK 0283

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Anu Bagai, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—Issue Rule. As these two Writ Petitions involve common question of facts and law, they are taken and heard together, with consent of counsel for parties.

2. The Writ Petitioners challenge the eligibility conditions prescribed by the Respondent No. 1 (hereafter referred to as 'SCERT') for admission to its Elementary Teachers Education ('ETE') course. More specifically, the impugned condition is in the nature of an exclusion of students who graduated or finished from senior secondary school, with vocational subjects in their 10+2 Board examinations.

3. Vocational courses were introduced at the 10+2 stage in Delhi apparently in the year 1977-78. With a view to rationalize teachers training, the SCERT was established in 1988. The petitioners claim to have attempted the entrance test for ETE program offered by the SCERT some time earlier in 2004, but unsuccessfully. At that point in time, the admission procedure required the candidates to qualify in a common entrance test provided they fulfilled other eligibility conditions. The relevant eligibility conditions, existing for the period

2004-06 as spelled out in the brochure or prospectus of the SCERT was as follows:

Admission Procedure

Eligibility:

1. Qualification

(a) Candidates seeking admission to ETE Course must have passed Senior Secondary Examination (10+2) of CBSE, Delhi or its equivalent examination of any other recognized board/University, from the schools of National Capital Territory (NCT) of Delhi only.

(b) Candidates must have secured at least 50% marks in aggregate (including one language) in Senior Secondary Examination (5% relaxation of marks is allowed for candidates applying under the categories Scheduled Caste, Scheduled Tribe and Physically Handicapped only).

4. Some of the petitioners thereafter appear to have applied and obtained admission in the graduate programs offered by the Delhi University in 2007. The SCERT in its prospectus in the session 2007- 2009 sought to restrict the eligibility conditions by excluding those who have graduated from their School with vocational subjects. The modified or amended eligibility conditions in the prospectus read as follows:

Admission Procedure

Eligibility:

1. Qualification

(a) Candidates seeking admission to ETE Course must have passed Senior School Certificate Examination (10+2) of CBSE, Delhi or its equivalent examination from any other recognized Board/University. The minimum percentage of marks required for admission to ETE course is 50%. For calculating percentage of marks of 10+2 examination conducted by CBSE, best 5 subjects including atleast one language (except vocational courses) will be considered. For other boards/universities, aggregate of marks in all the subjects in which he/she has to pass as per rules laid down by the board will be considered.

(b) Five percent relaxation of marks is allowed for candidates applying under the categories Scheduled Caste, Scheduled Tribe and Physically Handicapped only.

(emphasis supplied)

5. In addition to spelling out restricted qualifications, SCERT also put in place a new admission procedure whereby candidates were to be admitted on the basis of the marks obtained in the Board of 10+2 examination, instead of qualifying in an entrance examination. Other stipulations which existed before the publication of the 2007-2009 prospectus, continued. The petitioners are aggrieved by the

amended qualification as they are not eligible to be admitted to the Course.

6. It is contended on behalf of the petitioners that the power and authority to prescribe standards, in such cases is exclusively that of the National Council of Teacher Education (hereafter 'NCTE') set up under a Parliamentary enactment of 1993. Ms. Anu Bagai, learned Counsel, (appearing for the petitioners, on behalf of the Delhi High Court legal Services Committee, who ably argued the case) adverts to Section 12(e) and Section 32(2)(d) of the Act to contend that norm evolution functions, which include the power to spell out minimum qualifications of a person entitled to be employed as a Teacher in specified category of courses of teacher training etc. vest exclusively with the NCTE.

7. Ms. Bagai contends that the Parliament having intervened through the said enactment, pursuant to which NCTE issued Regulations in 2001 and subsequently in 2006, local bodies such as States or Union Territories. departments or authorities were denuded of the power to prescribe or lay down standards conditions. This also extended to eligibility conditions, which were at variance with those prescribed by the NCTE.

8. Learned Counsel for the petitioner relied upon the judgment of this Court reported as T.C. Sharma (Dr.) Vs. Lt. Governor and Others, to submit that even though SCERT may not be a State, nevertheless the arena of disputes in this case falls within the domain of public law and this Court is entitled to exercise judicial review powers under Article 226. She further relied upon the decision in Lt. Governor of Delhi and Others Vs. V.K. Sodhi and Others, to say that even though the Court held that SCERT is not a State and said that it is not normally amenable to the jurisdiction of the High Court, nevertheless having regard to the fact that the eligibility conditions are in conflict with statutorily prescribed norms, the present Writ Petition would be maintainable.

9. Learned Counsel relied upon the judgment of Supreme court reported as Binny Ltd. and Another Vs. V. Sadasivan and Others, and contended that wherever public law functions are involved, the High Courts are clothed with authority to entertain proceedings under Article 226 of the Constitution and pass appropriate orders.

10. It was next contended that the issue involved in this case is prescription of eligibility conditions, ? by way of excluding those who are otherwise eligible for admission ? is covered by the judgment of this Court reported as Narender Singh Negi and Others Vs. NCT of Delhi and Others, Reliance was next placed on the judgment of the Supreme Court reported as State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, Learned Counsel submitted that the declaration of law by the Supreme Court in Sant Dhayaneshwar's case (supra) is categorical; it is now beyond any debate that NCTE has been established as a "standard evolving body" exclusively empowered to prescribe norms, under Entry 66 of List 1 to the 7th Schedule to the Constitution of India, in regard to teacher training and education. Counsel urged

that what even State Legislature cannot do, i.e., make conflicting laws cannot be achieved by the SCERT by excluding a whole class of otherwise eligible candidates such as the petitioners.

11. The SCERT in its counter affidavit justifies the amended norms and submits that the admission procedure to the ETE course was changed considerably, whereby, instead of the previous procedure of admission through entrance examination, admissions could be made on the basis of the marks obtained by the candidate in the qualifying Board examinations. It was therefore, deemed appropriate, on the basis of the recommendations of the Admission Advisory Committee that vocational course stream candidates should not be permitted admission. Learned Counsel submitted that the Committee, which considered the issue had recommended that since the ETE was a professional course, for teacher education, (where future teachers are trained for elementary school training) candidates graduating from vocational stream with diverse subjects such as Stenography and Textile Designing etc., would be unable to teach students.

12. It was submitted that a similar policy exists in other institutions such as Jamia Milia Islamia etc. Learned Counsel relied upon the judgment of the Supreme Court reported as *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, and a judgment of this Court *Abhijay v. AICTE* W.P. 2293-94/06 decided on 3.5.2007 and submitted that in such cases, the impugned exclusion cannot be characterized as repugnancy with the norm evolved by the NCTE. It was further contended that in any event, the SCERT has the autonomy to insist that those candidates who are intrinsically unsuitable to perform the job of Elementary Teachers, should not be granted admission.

13. Before discussing the merits of this case, it would be necessary to notice the relevant provisions of the National Council for Teacher Education Act, 1993 (the Act?). The preamble to the Act states that it seeks to provide for establishment of a National Council for Teacher Education, to achieve planned and coordinated development of the teacher education system throughout the country, and the regulation and proper maintenance of norms and standards in the teacher education system. Section 2 defines various terms. 'Council' is defined as the National Council for Teacher's Education established under Sub-section (1) of Section 3 of the Act. 'Institution' has been defined as 'an institution, which offers courses for training in teacher's education'. 'Teacher education' is defined as 'programs of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools'. Chapter II provides for establishment of the Council and Chapter III deals with functions to be performed by the Council. Section 12 imposes a duty upon the Council to ensure planned and coordinated development of teacher education and for determination and maintenance of standards for teacher education. That provision reads as follows:

12. It shall be the duty of the Council to take all such steps as it may think fit for

ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may--

- (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
- (b) make recommendations to the Central and State Governments, Universities, University Grants Commission and recognized institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;
- (c) co-ordinate and monitor teacher education and its development in the country;
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;
- (f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;
- (g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;
- (h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;
- (i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;
- (j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;
- (k) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognized institutions;
- (l) formulate schemes for various levels of teacher education and identify recognized institutions and set up new institutions for teacher development programmes;
- (m) take all necessary steps to prevent commercialization of teacher education; and
- (n) perform such other functions as may be entrusted to it by the Central

Government.

14. Section 31 enables the Central Government to frame Rules to effectuate the purposes of the Act. Section 32(1) empowers the Council to frame Regulations, not inconsistent with the provisions of the Act and the Rules, to achieve the purposes of the Act. Section 32(2) enacts that without prejudice to the generality of powers, the Regulations could provide for matters enumerated in Clauses (a) to (p). Clauses (d), (e), (f) and (g) are relevant and read as follows:

(d) the norms, guidelines and standards in respect of--

(i) the minimum qualifications of a person to be employed as a teacher under Clause (d) of Section 12;

(ii) the specified category of courses or training in teacher education under Clause (e) of Section 12;

(iii) starting of new courses or training in recognized institutions under Clause (f) of Section 12;

(iv) standards in respect of examinations leading to teacher education qualifications referred to in Clause (g) of Section 12;

(v) the tuition fees and other fees chargeable by institutions under Clause (h) of Section 12;

(vi) the schemes for various levels of teacher education, and identification of institutions for offering teacher development programmes under Clause (1) of Section 12;

(e) the form and the manner in which an application for recognition is to be submitted under Sub-section (1) of Section 14;

(f) conditions required for the proper functioning of the institution and conditions for granting recognition under Clause (a) of Sub-section (3) of Section 14;

(g) the form and the manner in which an application for permission is to be made under Sub-section (1) of Section 15.

(emphasis supplied)

15. First, this Court has to consider maintainability of these petitions, under Article 226 of the Constitution. The decision of the Supreme Court, in V.K. Suri (supra) is now authoritative that SCERT is not 'State' with the meaning of that expression under Article 12 of the Constitution. Yet, that does not exclude jurisdiction under Article 226, which is couched in wider terms, than Article 12, and can also be directed against 'persons'. The amplitude of this power was commented upon by the Supreme Court, vividly, in Binny Ltd. (supra) in these terms:

Judicial review is designed to prevent the cases of abuse of power and neglect of

duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides 'public goods' or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the Criminal and Civil Courts and Tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the Courts to 'recognize the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government.

Commenting on the wide power under Article 226, the Supreme Court had, in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, stated as follows:

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country.

In these cases, the petitioner is asserting that the norm created and published by NCTE is sought to be altered, which effectively strikes at the legal authority of SCERT to formulate a different criteria for admission. This clearly falls within the domain of a public law disputes, empowering the court, under Article 226 of the Constitution to exercise judicial review, if a case for doing so is made out.

16. Having got the preliminary objection to maintainability out of the way, it is necessary to consider whether the complaint about illegal exclusion of the petitioners from the admission process, is well founded. In *Sant Dyaneshwar* the issue of what falls within the exclusive domain of the NCTE, was considered by the Supreme Court. The court noted its previous decision in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, the issue was the exclusivity attached to norms framed by the All India Council for Technical Education (AICTE) when seen in conflict with state mandated norms for the same class of academic course. The Supreme Court emphasized the necessity for such Central bodies efforts, at coordinating and harmonizing norms to ensure uniformity:

the norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth de technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the co-ordinated an integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. The country as is well known, consists of regions and population, which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not an account of any physical or intellectual deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, save for admission to the educational

institutions, or to pass the examinations, may not only deprive the vast majority of the people of the benefits of education and the qualification, but will also result in concentrating technical education in the hands of the affluent and elite and in depriving the country of the large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate for us centred around the right of the States to prescribe standards higher than the one laid down by the Council...the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the council and the rules to be made by the Central Government under the Act are to be laid before Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry level 11 of List II prior to the Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty fourth Amendment....

17. The Supreme Court, in *Sant Dnyaneshwar* also considered other judgments (*Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, and *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another*, , and declared, *inter alia*, that:

62. From the above decisions, in our judgment the law appears to be very well settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

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

xxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx 74.... It is neither open to the State Government nor to a University to consider the local conditions or to apply ?State policy? to refuse such permission. In fact as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of institution or to overrule the decision of NCTE....

18. NCTE framed Regulations, in 2001, on the topic of minim standards of eligibility inter alia of elementary teachers. These regulations categorically spell out, as essential qualifications ?Senior Secondary School certificate or intermediate or its equivalent? under Regulation 3, read with the Schedules. These standards, though amended in 2003 and later, in 2005, have not shown any change as far as eligibility conditions for elementary teachers qualifications are concerned. Thus, the NCTE has not excluded vocational stream students from applying for teacher training courses, nor are they barred from being elementary teachers, provided they fulfill the other requirements. If the SCERT.S exclusionary condition were to be applied, these vocational stream students, otherwise deemed eligible, to act as elementary teachers, would be unable to do so, as they would be denied admission to the elementary teacher education (ETE) course itself.

19. Section 16 of the 1993 Act significantly, gives overriding effect to its provisions. In view of that imperative and the clear declaration of law in Sant Dhyaneswar (supra) it cannot now be contended that conditions in recruitment rules, or advertisements, or admission brochures, which spell out qualifications that conflict with those in the 2001 Regulations nevertheless be applied. The effect of the 1993 Act, In the context of a similar contention for enforcement of conditions in rules that contained stipulations to the norms of NCTE were considered by the Supreme Court, in Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, The court held as follows:

Whether the selection of candidates for special BTC training is contrary to the provisions of the basic Education Act, 1972 and U.P. Basic Education (Teachers) Services Rules, 1981.

19. Relying on the judgment of Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College, the High Court held that the National Council for Teacher Education constituted u/s 3 of the National Council for Teacher Education Act, 1993 is an expert body whose function is to maintain the standards of education in relation to teachers" education. It was for this body to prepare norms for recognised courses for teachers" education on different levels. The special BTC training course contemplated by the State of U.P. had not been recognised by the National Council for Teacher Education Act under the 1993 Act. It was. therefore, not a recognised teachers" training course. The State government therefore, could not have declared it or treated it as equivalent qualification for the purpose of Assistant Masters or Assistant Mistresses, Merely because the State was under pressure and in a hurry to recruit a large number of teachers, the requirement of educational standards of the training imparted to

the teachers could not be compromised. Strangely, despite recognition of E.Ed/ L.T. and other courses recognised by the National Council for Teacher Education Act under the 1993 Act, the State government had not bothered to declare their equivalence for the purpose of making appointment on posts of Assistant Masters and Assistant Mistress for the schools run by the Board. The High Court therefore, pointed out that the Government Order recognizing special BTC course as equivalent qualification was contrary to the provisions of the U.P. Basic Education Act and provisions of the National Council for Teacher Education Act, 1993, particularly so in view of Section 16 of the National Council for Teacher Education Act, 1993 which gives overriding effect to the provisions of the State Act.

20. The U.P. Basic Education (Teachers) Service Rules, 1981 provides u/s 5 for direct recruitment to the posts of Assistant Masters and Assistant Mistresses to Junior Basic Schools. The Rules prescribe the qualifications requisite for such posts. Academic qualification required is a bachelor's degree from a University established by law in India or a degree recognised by the Government together with "training qualification" consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any other training course recognised by the government as equivalent thereto. In the face of these Rules, and particularly keeping in view the provisions of the National Council for Teacher Education Act 1993, no fault can be found with the impugned judgment of the High Court that the special BTC training course formulated by the State government was contrary to the provisions of the impugned Act and Rules and the 1993 Central Act.

20. Apart from the question of SCERT's power to vary NCTE Regulations, and superimpose a restriction, the court also does not discern any rationale in the policy choice impugned in these proceedings. SCERT could not show whether any empirical study showed that vocational stream students, finishing with 10+2 certificates, are so academically backward, in comparison, or so disadvantaged, in terms of aptitude to teach elementary school children, as to be completely disqualified from that profession. That such policy choice lies within the exclusive domain of NCTE is another issue, as concluded earlier. Yet, the norm evolution in this case was not made in the vacuum ? earlier eligibility conditions had not spelt out such disqualifications; vocational stream students were entitled to, did, compete in entrance examination to ETE courses, and were admitted to the course. In these circumstances, the decision is also bereft of any overarching policy considerations, and betrays non-application of mind.

21. For the above reasons, these writ petitions have to succeed. The writ petitioners had been granted provisional admission pursuant to ad-interim orders. The same shall be considered as regular admission, in the light of the above discussion. The writ petitions are accordingly allowed; each set of petitioners shall be entitled to costs quantified at Rs. 15,000/- per writ petition. The SCERT shall pay the costs, within four weeks.