

(1994) 11 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No's. 13854 of 1994 etc. and W.A. No's. 1138 to 1142 of 1993 etc.

Sri Kasi Viswanatha Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 11-11-1994

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g)
Grant-in-aid Code for Primary Teacher Training Institutions in Mysore State — Rule 7
Karnataka Prohibition of Admission of Students to the Unrecognised and Unaffiliated Educational Institutions Act, 1992 — Section 3, 4 (2)

Citation : (1995) ILR (Kar) 473

Hon'ble Judges : Tirath S. Thakur, J;S.A. Hakeem, J

Bench : Division Bench

Advocate : K.N. Subba Reddy, S.M. Patil, K.S. Savanur and Prasad Subbanna and Vagdevi Associates, for the Appellant; B.V. Acharya, General and K. Viswanath, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—Private Educational Institutions are a Nation wide phenomenon. Even though such Institutions have come up practically in all the States in the Country, yet in the State of Karnataka they appear to have flourished the most. While some of these Institutions are indeed doing a commendable job in supplementing the State's endeavour to spread education and literacy both in professional and technical field; there has been a mushroom growth of a much larger number of such Institutions which are neither recognised nor have the necessary infrastructure and the wherewithal to offer the right type of facilities and conditions required for the courses being offered by them. The result is that these unauthorised and unrecognised Institutions have year after year succeeded in attracting the gullible to their portals, in large numbers, who would realise only after they had ended up paying heavy amounts, on account of capitation and other fees, that they had been taken for a

ride by the managements, thereby seriously jeopardising their careers. The problem posed by these Institutions becoming endemic, the State Legislature had to intervene to enact what is known as the "Karnataka Prohibition of Admission of Students to the Unrecognized and Un-Affiliated Educational Institutions Act, 1992", (hereinafter referred to as the Act). The provisions of the Act were aimed at putting an end to the widespread malpractice of these Institutions admitting students, as is made manifest by the Preamble thereof which reads thus:-

"An Act to provide for prohibition of admission of students to the Unrecognized and un-affiliated educational Institutions in the State of Karnataka and matters relating thereto;

Whereas the practice of admitting students to Unrecognized and un-affiliated Educational Institutions is widespread in the State;

And whereas this undesirable practice besides contributing to large scale commercialisation of education has not been conducive to the maintenance of educational standards ;

And whereas it is considered necessary to effectively curb this evil practice in public interest by providing for prohibition of admission of students to the Unrecognized and un-affiliated Educational Institutions and matters relating thereto;

And whereas it is expedient to provide for prohibition of admission of students to Unrecognized and un-affiliated Educational Institutions and matters relating thereto ;

Be it enacted by the Karnataka State Legislature in the Forty third Year of the Republic of India as follows".

2. Section 3 of the Act, prohibits the admission of the students to Unrecognized and un-affiliated Educational Institutions, whereas Section 4 forbids the Educational Institutions from admitting students in excess of the intake fixed by the University or the State Government or the Board of School Education, as the case may be. Section 6 makes the infringement of the provisions of the Act, an offence punishable with imprisonment for a term which shall not be less than one year, but shall not exceed three years besides a fine of Rs. 3,000/-.

3. The deterrent nature of the punishment prescribed by the Act, notwithstanding, private Educational Institutes not only continued functioning but even new institutes were started without much hesitation. This is apparent from the fact that a large number of such Institutions who are petitioners in these Writ Petitions have not only started these Institutions without any permission or recognition from the State Government but have even admitted students to the same offering them a Diploma in T.C.H. Training Course. So much for the respect for law, by those who claim to be training Teachers, in whose hands quiver the destinies of the future generation.

4. In the present Writ Petitions, these Institutions have a common refrain to make. Their case is that they have made applications to the Government seeking its permission to start the Institutions and also for the grant of recognition to the same, in terms of the Grant-in-Aid Code, for Primary Teacher Training Institutions in the State of Karnataka. These applications according to the petitioners have remained unattended and no decision has been taken by the State Government on the same. The petitioners however, admit that even without the grant of the permission to start the Institution and without the same being recognised they have admitted candidates to the T.C.H. course offered by them. In the premises they have prayed for a Writ of Mandamus commanding the Respondents to consider their applications for the grant of permission and recognition and also for directing the Respondents to permit the students so admitted by them to take the T.C.H. Examination.

5. The Respondents have appeared through the learned Advocate General and filed a Statement of Objections in which they have taken a specific stand that keeping in view the new Educational Policy enunciated by the Government of India and also the fact that nearly 90,000, candidates who have passed the T.C.H. course are at present registered in the Employment Exchanges throughout the State, the Government has taken a policy decision not to grant any permission to start any new Teachers Training Institute, till the completion of the VIII Five Year Plan. The Respondents further state that the present intake capacity of the recognised Government Teachers Training Institutes, in the State is to the tune of 7260 per year, which means, that to the already existing lot of the trained unemployed teachers is added another 7260 candidates annually thereby raising further the multitude of the unemployed teachers in the State. It has been pointed out that Writ Petitions have come to be filed before this Court on the eve of the commencement of the examination for the T.C.H. course with the sole object of obtaining Interim Orders from this Court for the benefit of the candidates unauthorisedly admitted by these Institutions. It is averred that the admission of the students by the petitioner - Institutes being contrary to the provisions of Sections 3 and 4 of the Act, there is no warrant for the grant of any interim or final relief to the petitioners either regularising the said admissions or permitting the students to take the examination as prayed for in these Petitions.

6. We have heard the learned Counsel for parties at length.

7. Mr. Subba Reddy, Mr. S.M. Patil, Mr. S.M. Babu, Mr. Prasad Subbanna, M/s. Vagdevi Associates, and Mr. K.S. Savanur, learned Counsel appearing for the Writ petitioners, in their respective Writ Petitions strenuously contended that the applications made by the petitioners were required to be considered by the Respondents in accordance with the Grant-in-Aid Code, and that since the Government had not done so, a Mandamus must issue directing the Government to perform its duty.

8. The learned Advocate General on the other hand urged that the petitioners had no Fundamental Right to establish private educational Institutions nor could

the petitioners seek the permission to establish such Institutions under the Grant-in-Aid Code as a matter of right. Relying upon the Judgment of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., he submitted that the Apex Court had clearly negated the plea that a citizen had a right to establish an educational institution in terms of Article 19(1)(g), particularly so if the Institution required recognition from the State Government. He further contended that the Government having taken a policy decision, not to permit the setting up of any new Institution offering T.C.H. Diploma course during the VIII Five Year Plan, no Mandamus could issue against it to consider the petitioners applications on merits in the teeth of the said policy decision. He referred to and heavily relied upon the Division Bench Judgment of this Court in Srinivas Desai Vs. State of Karnataka, in which the Constitutional validity of the policy adopted by the State was examined and upheld. In the face of the said Judgment, contended the learned Counsel, there is no room for granting any relief to the petitioners.

9. In Unni Krishnan J.P. v. State of A.P., one of the questions that fell for consideration of the Supreme Court was whether there was a Fundamental Right to establish an educational Institution under Article 19(1)(g), of the Constitution; while B.P. Jeevan Reddy J, speaking for himself and S. Ratnavel Pandian J, left that question open, his Lordship S. Mohan J, while concurring with the conclusion arrived at by the former, addressed himself to the question and answered the same squarely but in the negative. His Lordship held that, establishing an educational Institution, could not be treated to be a business, trade or profession nor could every activity or occupation be held entitled to protection as a Fundamental Right, by reason merely of the fact that the activity or occupation was neither harmful nor obnoxious to the Society. Some rights, observed his Lordship by their very nature cannot qualify to be protected as Fundamental Rights. The following passages from His Lordship's Judgment bring out the point rather succinctly:

"It is not mere an establishment of educational institution that is urged by the petitioners, but to run the educational institution dependent on recognition by the State. There is absolutely no fundamental right to recognition in any citizen. The right to establishment and run the educational institution with State's recognition arises only on the State permitting, pursuant to a policy decision or on the fulfilment of the conditions of the Statute. Therefore where it is dependent on the permission under the Statute or the exercise of an executive power, it cannot qualify to be a fundamental right. Then again, the State Policy may dictate a different course.

xxx xxx xxx If there is no fundamental right to establish a University a fortiori a fundamental right to establish an educational institution is not available.

By implication also a fundamental right of the nature and character conferred under Article 30 cannot be read into Article 19(1)(g). The conferment of such a right on the minorities in a positive way under Article 30 negatives the

assumption of a fundamental right in this behalf in every citizen of the country.

xxx xxx xxx The argument that every activity or occupation by the mere fact of its not being obnoxious or harmful to society cannot by itself be entitled to protection as fundamental right. As pointed out above, some rights, by the very nature, cannot be qualified to be protected as fundamental rights.

Accordingly, it is held that there is no fundamental right under Article 19(1)(g) to establish an educational institution, if recognition or affiliation is sought for such an educational institution. It may be made clear that any one desirous of starting an institution purely for the purposes of educating the students he could do so but Sections 22 and 23 of the University Grants Commission Act which prohibits the award of degrees except by a University must be kept in mind."

It is true that the views expressed by Mohan J, on this part of the controversy before their Lordships have not been shared by the other four Hon'ble Judges constituting the Bench, who have preferred to leave the question open, yet it is in our opinion not possible to read the Judgment of Mohan J, as a dissenting Judgment on the point, so as to be left alone or ignored. What is significant is that His Lordship Mohan J, has concurred with the conclusions arrived at by the other Hon'ble Judges, but preferred to give his own reasoning for the same; and, in the process of doing so the Hon'ble Judge has specifically negated the existence of any Fundamental Right under Article 19(1)(g) to establish an educational institution; particularly when the institution seeks recognition or affiliation for itself. The fact that the majority has decided the controversy, involved in the cases even without considering the question aforesaid, would only mean that an answer to the question may not have been, in the peculiar circumstances of the cases before Their Lordships, necessary, as indeed the majority found it so, yet all that can be said about the Judgment of Mohan J, and in particular that part of the Judgment delivered by His Lordship which answers the question is that it should be treated to be obiter dicta; in the context of the Judgment of the Court taken as a whole. But then even the obiter dicta of the Apex Court is binding upon this Court with the result that we cannot treat the question at hand to be res-integra, so as to call for an indepth evaluation of the point urged before us. We therefore proceed on the basis that there is no Fundamental Right to establish an educational institution guaranteed under Article 19(1)(g) of the Constitution; and that the right arises only on the State permitting pursuant to a policy decision or on the fulfilment of the conditions of the Statute, as observed by His Lordship Mohan J, in para 69 (supra) of his Judgment aforesaid.

10. In the instant case, the fact that the State Government has taken a policy decision not to permit the setting up of any private educational institution offering a T.C.H. course, is not in dispute; nor has the averment made in the Statement of Objections filed by the Respondent-State to that effect, been refuted by the petitioners. As a matter of fact the Constitutional validity of this policy decision, and the refusal of permission by the Government on that basis

was examined by a Division Bench of this Court in *Srinivas Desai v. State of Karnataka*. This Court speaking through Majmudar C.J (as His Lordship then was) observed thus :-

"When there is a policy decision taken by the State on a uniform basis, the question would be whether such policy decision would stand the test of Article 14 of the Constitution of India. As the State is bound to comply with the requirement of Article 14, that grievance of the appellant has to be examined. When the State looking to the needs of such institutions in the State, takes a decision not to permit new institutions for some time, during the currency of the Eighth Five Year Plan, it cannot be said that the State is acting arbitrarily or in an irrational manner. Even that apart, Rule 9 of the Grant-in-Aid Code for Primary Teachers Training Institutions, on which reliance was placed by the learned Counsel for the appellant, itself says that one of the conditions for recognition is to satisfy the Department by the institution with regard to need for the institution. If, according to the State, there is no need for such new institutions presumably because there are sufficient number of unemployed persons holding Teachers Training Certificates, it cannot be said that the State by putting such an embargo, has acted in an arbitrary manner. In fact, this policy decision itself says that there is no need for these institutions in the State for some time. Under these circumstances, it cannot be held that the decision of the State in rejecting permission to the present appellant to start a new training institution in the State, is hit by the provisions of Article 14 of the Constitution of India, or that it is an irrational decision; nor can it be said to be contrary to the scope and ambit of the Grant-in-Aid Code,"

It is therefore apparent, that not only was the existence of a Fundamental Right negated by this Court, but the policy not to permit the setting up of any such institutions during the VIII Five Year Plan was found to be valid as the same was non-discriminatory and applicable uniformly to all. The fact that need for the proposed private educational Institutions was a relevant consideration, under the Grant-in-Aid Code as also the fact that the State had found that there was no need for any such Institutions keeping in view the existing capacity of the recognised Institutions, and the number of unemployed trained teachers in the State were held to show that the decision not to permit any fresh Institutions was a rational decision on the part of the Government, which could not be said to be offending Article 14 of the Constitution.

11. We must however, in fairness to the learned Counsel appearing for the petitioners mention that they did not challenge the validity of the policy decision of the State Government, nor has any challenge to the said decision been laid in the Writ Petitions filed by them. What was urged by the learned Counsel was that the State Government was duty bound to communicate to the petitioners the fate of the applications; regardless whether they were rejected on the basis of a general policy decision or on their merits. We find this proposition of law legally unexceptionable. There is indeed no gain said that a public functionary,

exercising, statutory or even executive authority, must be considered to be duty bound, to communicate to the citizen concerned the decision which it has taken affecting his rights or obligations. This is particularly so, in cases where a citizen applies to the authority concerned for some relief, and the authority considers and decides the matter, without following the procedure generally known to Judicial fora, like announcement of the orders in presence of the parties or their authorised representatives. In all such cases, the very nature of the functions being performed by the authority, and the implications, the same has for the citizen affected or benefited by such a decision, would imply a duty to communicate to the person concerned the final decision in the matter or the end result of the proceedings held by it. We say so for the reason that any other view would put the citizen affected by any such decision at a great disadvantage, and prevent him from pursuing his remedies against the decision of the authority, either endlessly or at least, within a reasonable period. That apart, a citizen is entitled to legitimately expect, a proper response from the authority concerned particularly when the decision taken by the authority would constitute the foundation for the future course of action to be chosen by the citizen, whether the same be directed against the decision or in aid thereof.

12. The learned Advocate General however, produced before us a comprehensive statement disclosing the particulars of the endorsement under which the petitioners have been informed about the fate of their respective applications. He submitted that the petitioners have been informed not only about the policy decision, taken by the State Government but even about the rejection of their requests for permission to establish the proposed institutions. This position was however disputed by the learned Counsel for the petitioners, orally before us, though without filing any affidavit in support of their denial. Be that as it may, since we have found the policy decision of the State Government to have been validly taken, and since the Government is on affidavit before us, that the said decision is the solitary ground for rejection on a uniform basis of all applications seeking permission to start new institutions offering T.C.H., training course, we consider it to be an idle formality, and an exercise in futility to direct, issue of formal intimations to the petitioners conveying to them the rejection of their applications, assuming that the earlier endorsements issued by the Government have not been received by them. This is all the more so, for the reason that we having upheld the refusal of the permission and recognition prayed for by the petitioners they will not be entitled to re-agitate their grievance against the said refusal, even if a fresh intimation is sent to them about the same. In that view of the matter we do not see any reason to interfere, in the matter, even if the version of the petitioners that they have not received the endorsement sent to them is accepted to be factually correct.

13. We may at this stage deal with another aspect of the matter which was argued by the learned Advocate General and which we find is not wholly without merit. In terms of Rule 7 of the Grant-in-Aid Code for Primary Teacher Training Institutions in Mysore State, an application has to be made before the December

of the year previous to that in which Institution is proposed to be started. Sub Rule (iii) of Rule 7 of the Grant-in-Code provides that no Institution shall be started without the previous permission of the Department and that recognition and aid shall not be granted to an Institution which has been started without previous permission. For facility of reference Rule 7 may be reproduced in extenso:

(i) Applications for starting a Teachers' Training Institution shall be made in Form No. 1 to the Director of Public Instruction through the Joint Director of Public Instruction of the Division before December of the year previous to that in which the institution is proposed to be started.

(ii) Such application shall be disposed off by the Joint Director of Public Instruction and the Director together within 3 months from the date of receipt of the application and a communication shall be sent to the management intimating whether the permission to start the institution has been granted or otherwise. In the event of refusal of permission to start the institution, reasons for refusal shall be communicated to the management.

(iii) In no case shall an institution be started without the previous permission of the Department. Recognition and aid shall not be granted to an institution which has been started without previous permission".

14. In the instant case however, the Institutions in question have been started even before the making of the applications, with the result that neither were the applications filed in accordance with Rule 7 nor could the Institutions be recognised or granted any aid, in terms of Sub-Rule (iii) of Rule 7 (Supra). Learned Advocate General is therefore right in contending that the petitioners have not fulfilled even the bare minimal requirements of the Rules, which they have observed more in breach than obedience.

15. It was then contended by the learned Counsel for the petitioners that the petitioners having appeared in some of the papers of the previous T.C.H. Examination, in pursuance of the Interim Orders, passed in the present Writ Petitions and Writ Appeals, this Court shall by a Mandamus direct the Respondents to permit the petitioners to appear in the remaining papers and to declare their result. We find no substance in this submission of the learned Counsel; for we fail to appreciate as to how can we while declining the relief prayer for in the main Writ Petition, issue a direction in the mandatory form, conceding the very same relief which we find the petitioners to be disentitled to claim in the main petition. The submission made by the learned Counsel ostensibly fail to appreciate that an interim relief is subject always to the final orders that may be passed in main cause be that a suit or a Writ Petition and that once the Writ Petition fails the interim arrangement terminates automatically.

16. That apart, we find that the provisions of Section 4 of the Act, is a clear bar to the appearance of any candidate, admitted to any unrecognised institution, in any University, Board or other examination conducted by the Government or any

Authority. Section 4 reads thus:-

"Prohibition of admission of students in excess of in-take - (1) No Educational Institution shall admit Students in excess of intake fixed by the University or the State Government, Board or any other Authority in respect of such institution made in excess of such intake shall be invalid.

(2) No students admitted in contravention of this section or Section 3 shall be eligible to appear for any examination conducted by the State Government or the University or a Board or any Authority."

17. A plain reading of the Section makes it abundantly clear that while Sub-section (1) to Section 4, contains a prohibition against admission of students to an unrecognised institution or admission of students in excess of the intake capacity of a recognised institution, Sub-section (2) clearly forbids the appearance of any such student to any Board, University or other examination. The Constitutional validity of this provision is not under challenge in these proceedings, nor was there any suggestion that the provision, is unfair or arbitrary in any manner. Indeed, the provision, has been introduced to prevent the widespread malpractice of unrecognised institutions admitting students, for courses of studies which the institute is not authorised to offer. We therefore see no reason why a provision meant to curb a widespread evil or malpractice in the system, should be lightly interfered with or its effect whittled down by means of a Mandamus issued in derogation of the language and the spirit behind the same. This we say even independent of the well settled principle that a Mandamus issues only in aid of the legal provisions and not in derogation thereof except of course in cases where the vires of the provision itself is under challenge, and does not thereby operate as a hurdle in the way of the Court issuing a Mandamus.

18. Mr. Subba Reddy, learned Counsel appearing for petitioners in some of the Writ Petitions, then made a last ditch effort, to get the relief prayed for in the name of human compassion towards the students who according to Mr. Reddy were not to blame for the cesspool of confusion in which they had landed themselves. He strenuously pleaded for a lenient view and a liberal approach in the matter to somehow reach out the relief to what Mr. Reddy termed as the innocent third party likely to suffer the most in the event of dismissal of these Writ Petitions.

19. We have thoughtfully considered the matter, but regret to say that we do not find it to be a case where we can grant any relief, weighty considerations of human compassion and a humane approach to the problem notwithstanding. While we appreciate Mr. Reddy's fervent appeal for the benefit of the students who were admitted by these Institutions, we cannot help observing that more than any one else, it is the interests represented by Mr. Reddy who were responsible for the stalemate which confronts them today. Who can deny that the conduct of the petitioners before us, in these proceedings was contumacious ?

They defied the law in admitting the students even when they knew that the students would not be entitled to appear in any examination; and would therefore be wasting both their money as also their valuable time. We do not know as to what representations and assurances were held out to the students while they were induced to join these unrecognised Institutions; nor do we know whether the students were really innocent parties or active privies to what was manifestly illegal and improper in terms of the Act. We are not therefore persuaded by the half baked version as to the innocence of the parties in the matter nor can we make half truths a basis for any relief in the name of compassion, howsoever, liberal an approach we may adopt. That apart, having found that the refusal of permission and recognition by the Institutes established by the petitioners is justified, we cannot bring in equitable considerations to play against the clear mandate of the Statute. Equity follows the law and not vice versa. Equitable and compassionate consideration would not in the present cases, outweigh the dictate of the provisions which are meant to fall heavily upon what appears to have become a matter of practice for the managements of such Institutes, who appear to be unrelenting in their defiance of law.

20. There is yet another reason which dissuades us from taking a different view. The Institutes are offering and have admitted candidates for TCH course - a course meant to train teachers, While it is true that a very small percentage of those who finally become teachers choose the jobs, out of their own volition, and most of those who finally become teachers do so because they have not made it elsewhere, yet, it can hardly be disputed that the role which a teacher plays in the process of Nation building is both vital and enduring. They are the people who etch out lasting impressions on the minds of the impressionable young of the Country. They build the moral fibre, and the character of those in whose hands would lie the destiny of the Nation. They are the torch bearers and the paragons of virtue whom the young generation has to emulate. And what a pity it would be, if these builders of Nation and social architects, were to be trained for their mission in life by some unrecognised, unauthorised ramshackle institute for a price that has been paid and a training which may or may not have been undergone. It is in this context that we feel, that the least this Court can do to keep the system pure and unpolluted is to refuse to recognise and support such a dubious arrangement, no matter the same had for a short interval the sanction of an Interim Order of this Court. We are supported in our view by the Judgment of the Supreme Court in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, That was a case where a Medical College had been established without the requisite permission of the Government and proper affiliation. Students had all the same been admitted to the College, on whose behalf an argument similar to the one made before us was urged before the Apex Court. The Court however, declined to recognise any legal or equitable right of the students to appear in the examination and turned down the plea advanced on their behalf in the following words :

"Shri. K.K. Venugopal, learned Counsel for the students who have been admitted

into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical College established by the Daru Salam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University, and the regulations of the University, We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law that a direction by the Court to disobey the laws".

21. Again in an identical situation involving Teachers Training Course, the Supreme Court refused to grant any relief to the candidates who had been admitted by the unrecognised institute and who had in pursuance of the Interim Orders issued by the High Court appeared in the examination. The Court observed thus :

"In view of the aforesaid pronouncement of this Court, the High Court should not have passed, interim order directing the respondents to allow the teachers of unrecognised institutions to appear at the examinations in question. Such teachers cannot derive any benefit on basis of such interim orders, when ultimately the main writ applications have been dismissed by the High Court, which order is being affirmed by this Court. The same view has been expressed by this Court, in connection with the minority unrecognised teachers training institutions in the State of Tamil Nadu itself, in the case of State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, As such equity of legal right can be pleaded on behalf of the. Teachers admitted for training by such minority institutions, for publication of their results,. because they were allowed to appear at the examinations concerned, during the pendency of the writ applications before the High Court, on basis of interim orders passed by the High Court; which were in conflict with the view expressed by this Court in the aforesaid cases".

22. The Court further observed that Interim Orders ought not to be issued in such situations particularly when such Writ Petitions are filed immediately before the holding of the examinations only with a view to obtain Interim Orders from the Court, and the Institutions are themselves only masked phantoms established as business ventures. It is instructive in this regard to quote from the Judgment the following passage :

"Before we part with this judgment, we consider it necessary to strike a note of caution in respect of passing of interim orders by Courts directing the students of unrecognised institutions, to appear at the examinations concerned. In view of the series of judgments of this Court, the Courts should not issue fiat to allow the students of unrecognised institutions to appear at the different examinations pending the disposal of the writ applications. Such interim orders affect the careers of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with such directions of the Court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examinations are filed only when the dates for examinations are notified. Many of such institutions are not only "masked Phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests, on basis of considerations which cannot serve even the interest of the minority. There is no occasion for the Courts to be liberal or generous, while passing interim orders, when the main writ applications have been filed only when the dates for the examination have been announced. In the process, students without knowing the design of the organisers of such institutions, become victim of their manipulations".

For all that we have stated above, we do not see any reason to depart from what their Lordships, have held in the cases, above mentioned.

23. That brings us to the Writ Appeals, which have been filed by the appellants against the refusal of the learned single Judge to grant an Interim Order in their favour permitting the students admitted to the T.C.H. course being run by the institutions to take the examination. In the light of what we have said while dealing with the Writ Petitions and particularly in the face of the note of caution struck - by the Apex Court, in the matters of this nature, we find that the learned Single Judge did not commit any error in not allowing the candidates being offered by the petitioners to take the T.C.H., examination. The fate of the Writ Appeals cannot therefore be any different from that of the Writ Petitions.

24. We may however make a special mention of W.A.No. 1157 of 1994, which is directed against the learned Single Judge's Order dated 21.4.1994, partly allowing the Writ Petition, but declining the further relief of permitting the students of the appellant, Institute to appear in the T.C.H. examination. It is the later part of the Judgment alone that is questioned before us in the said Writ Appeal.

25. Mr. Savanur, learned Counsel appearing for the appellant submitted that the appellant was duly recognised for admitting 60 students to the T.C.H. course, but on account of heavy rush of students it had admitted 30 students in excess of its intake for the year 1993-94. He urged that his case for regularising the excess of 30 students was being considered by the State in terms of the Judgment of the learned Single Judge, but pending such consideration those students should be permitted to take the T.C.H. examination and their result ordered to be declared.

Mr. Achar, however, contended that in view of the policy decision, taken by the State Government, there is no room for regularising the admission of the students admitted by the appellant in excess of its intake capacity, and that even though no Appeal has been filed by the State against that part of the Judgment which directs consideration of the appellants application notwithstanding the policy decision to the contrary, such a consideration would only be a technical compliance with the said direction as the result thereof is already known. He also relied upon Section 4(2) of the Act, to urge that students admitted in excess of the intake capacity of an Institute are placed in the same position as students admitted by an unrecognised institute who are debarred from appearing in any University or Board Examination.

26. We find considerable merit in what Mr. Achar has argued. The direction of the Single Judge, for consideration of the appellants application notwithstanding the students admitted by the said Institute cannot be allowed to take the examination, in the face of the clear statutory bar contained in Section 4(2) (Supra). We cannot for obvious reasons, issue a Writ of Mandamus, which will have the effect of defying a statutory provision, for a Mandamus as earlier pointed out by us, issues in aid of the statutory provision and not in defiance thereof. We, therefore have no hesitation in rejecting the submission of Mr. Savanur.

27. In the result, we find no merit in these Writ Petitions and Writ Appeals, which are hereby dismissed, but in the circumstances without any orders as to costs. Interim Orders granted shall stand vacated.