
(2008) 10 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 4107 (W) of 2006

Tulsi Baksi and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Constitution of India, 1950 — Article 243, 246, 246(1), 246(2), 246(3)
National Council for Teacher Education Act, 1993 — Section 10, 12, 13, 14, 14(1)
National Council for Teachers Education (Norms and Standards for Teacher Education Programmes) Regulations, 2001 — Regulation 3
West Bengal Primary Education (Amendment) Act, 2002 — Section 19(1)
West Bengal Primary Education Act, 1973 — Section 106(1), 106(2), 14, 19, 19(1)
West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 6

Citation : (2008) 4 CHN 789 : (2009) 121 FLR 456 : (2009) 1 ILR (Cal) 97

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Anindya Mitra, Asish Sanyal, for the Appellant; S. Pal and Kallol Bose, for the Respondent

Final Decision : Allowed

Judgement

Pinaki Chandra Ghose, J.—This Public Interest Litigation has been filed on behalf of the petitioner and a serious question has been raised regarding Primary Training Teachers? Institutes, both Government and Private. The complaint is basically made against 138 Institutes, which are presently engaged in training students for entitling them to teach at the primary level. Out of the said institutes, only 20 institutes are recognized by the National Council for Teachers Education. It is also pointed out that these Institutes are run on the basis of an Act called West Bengal Primary Education Act, 1973 (hereinafter referred to as the said Act) which was amended extensively in 2002.

2. The petitioner submitted that the West Bengal Board of Primary Education (Recognition of Primary Teachers? Training Institute) Regulation, 2002 was introduced in the year 2002. Pursuant to the application made by the

respondents, Primary Teachers' Training Institutes, the West Bengal Board of Primary Education granted recognition to the Institutes excepting the Institutes which are already recognized by the National Council for Teachers Education. The petitioner further submitted that the scope was extended from the concept of control of Primary Education to control of Primary Teachers' Training and thereby the concept of Primary Teachers' Training was brought under the umbrella of the said Act. It is the case of the petitioner that the running of the unrecognized Institute would be extremely hazardous because such Institutes are not maintaining the standards or are not required to maintain the standards as laid down under the National Council for Teachers Education Act, 1993 (hereinafter referred to as 'the NCTE Act'). The NCTE Act, 1993 covered the whole aspect of 'Teacher Education'.

3. The matter was moved on 3rd March, 2006 before this Hon'ble Court on the said allegation. At the time of moving of the said application, it was pointed out that the Institutes were being run on the basis of the said Act which was amended extensively in 2002. Under the amended provisions of the said Act Sections 4, 19, 22 and 26 of the said Act had been extensively amended. By such amendment of Section 19, the scope was extended from the concept of 'control of Primary Education' to 'control of Primary Teachers' Training' and thereby the concept of Primary Teachers' Training was brought under the umbrella of the said Act. By adding a new Clause (bbbb) to Section 19 where it is stated that the power was created to award diplomas, certificates, prizes, scholarships in respect of any examination conducted by the Board constituted under the said Act. Similarly, the concept of 'institutes of primary teachers' training examination' was also introduced by introducing Sub-section (dd) in Section 19. Further a power was created to grant or refuse recognition to Primary Teachers' Training Institute after considering the recommendation of the Recognition Committee and to make regulations on all aspects connected with such recognition.

4. It further appears that such power was granted by introducing Clause (ff) to Section 19. After amendment of Section 22, a Recognition Committee and Examination Committee were also added. By introducing new Sections 26A and 26B the formulation and constitution of Recognition Committee and Examination Committee were provided. It is alleged that after such amendment, the Primary Teachers' Training Institutes flourished in the State.

5. It further appears from the said Amendment Act that the course of Diploma is only one-year duration. It is the allegation of the petitioner that barring 20 Institutes, the rest are unrecognized Institutes. The attention was drawn to the provision of the NCTE Act and it has been pointed out before us that unless an Institute is recognized u/s 14 of the said Act, the students cannot appear for the examination and even if they have appeared for the examination and are awarded diplomas, those diplomas cannot be used as the basic qualification for employment under the State.

6. It is further pointed out that the teachers' education includes the education of training persons for equipping them to teach at pre-primary and primary levels. Therefore, it is the contention of the petitioner that all these Primary Teachers' Training Institutes would be covered under the umbrella of the Central Act and, therefore, the grant of recognition by the West Bengal Board of Primary Education (hereinafter called as 'the Board') to such institutes would be of no consequence inasmuch as even if the certificates are given to the students of such unrecognised institutes, those certificates would not even be worth the paper on which they are printed.

7. In these circumstances, the petitioner claims that such institutes should be closed down and they should not be allowed to admit any student and if there are students, no examination should be held by the Board for the said students and no certificate should be awarded to the students by the Board. It was further submitted at that point of time on behalf of the institutes that the fate of thousands of students is at stake and it was not the fault of the students for their admission. On the contrary, the students have already taken the course through the unrecognized institutes and they would suffer irreparable loss, injury and prejudice.

8. It was further submitted appearing on behalf of the Institutes that there is a provision u/s 10 of the NCTE Act for relaxation power in respect of eligibility/duration of the course. It was submitted that the two years' duration recommended by the NCTE Act can be relaxed for a year under the relaxation power of the relevant regulations.

9. After considering all these aspects of the matter, on 3rd March, 2006 the Division Bench was pleased to pass the following order:

Considering the arguments of all the learned Counsels appearing on behalf different parties, we would have to point out that so far there has been no evidence before us that the institutes though not recognised under the NCTE Act has not been recognised by the State Government also. It is an admitted fact that all these institutes are recognised under the Act. It is reported that the examinations are to be held in June, 2006. Therefore, instead of expressing anything in respect of the examination we would choose to limit the interim relief in the following terms:

(a) There shall be an interim order restraining the non-recognised primary teachers' training institutes from admitting any further student for primary teachers' training course till the disposal of this writ petition.

(b) There shall be a direction against the respondent Nos. 1 and 2 that the certificates issued by the non-recognised respondent institutes shall not be accepted as a qualification for appointment as trained candidate.

10. Subsequent thereto, from time to time the matter was heard by the Division Bench and on 28th September, 2007, the Division Bench specifically made it

clear that the order passed on 3rd March, 2006 is in the overall interest of the educational standard in the State of West Bengal and the order merely protects the students being hoodwinked by the institutions which are not recognised offering themselves as recognised institutes for imparting education in teachers training.

11. On 28th September, 2007, an application for vacating the stay was refused by the Division Bench and interim order at that point of time was directed to continue till the final disposal of the writ application. Mr. Asish Sanyal, Learned Advocate appearing on behalf of the petitioners contended that the nature and scope of the NCTE Act is relatable to List-I of Entry No. 66 whereas the State Act made under List-III of Entry No. 25 having repugnant Provisions. Therefore, he submitted that it cannot survive in view of Article 246(1) and (2) of the Constitution of India. Any law made by the Parliament under List-I is supreme and overrides any State Law made under List-III.

12. Mr. Sanyal further pointed out that even if the State Amendment Act of 2002 had the assent of the President of India, then also it could not be saved because of the proviso to Article 254(2) of the Constitution.

13. Mr. Sanyal, Learned Advocate, relied upon the following decisions reported in Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon, ; AIR 2000 SC 1946 (Ram Lakhan v. Presiding Officer and Ors.) and Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others, in support of his contention.

14. In the case of Union of India v. Harbhajan Singh Dhillon (supra) where the Hon"ble Court held as follows:

20. It seems to us that the function of Article 246(1) read with Entries 1-96, List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly we do not interpret the words "any other matter" occurring in Entry 97, List I to mean a topic mentioned in each of the Entries 1 to 96. The words "any other matter" has to be used because Entry 97, List I follows Entries 1-96, List I. It is true that the field of legislation is demarcated by Entries 1-96, List I, but demarcation does not mean that if Entry 97 List I confers additional powers, we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of Entry 97, List I is removed by the wide terms of Article 248. It is framed in the widest possible terms. On its terms the only question to be asked is: Is the matter sought to be legislated included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III: No question has to be asked about List I. If the answer is in negative then it follows that Parliament has power to make laws with respect to that matter or tax.

15. The Supreme Court also held that there is no principle which debars Parliament from relying on the powers under specified Entries 1 to 96, List I supplement them with powers under Entry 97, List I and Article 248, and for that

matters powers under Entries in the Concurrent List. In the case of *Sat Pal and Co. v. Lt. Governor of Delhi and Ors.* (supra) where the Apex Court held as follows:

4. In order to avoid the slightest confusion it must be reiterated that the power of Parliament to legislate for Delhi is not in question. Article 246(1) confers exclusive power on Parliament to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Sub-article (3) confers similar power on the Legislature of any State with respect to any of the matters enumerated in List II. Sub-article (2) confers power both on Parliament and the State Legislature to make laws with respect to any of the matters enumerated in List III (Concurrent List). Sub-article (4) reads as under:

Parliament has power to make laws with respect to any matter for any part of the Territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Article 248 (1) provides that Parliament has exclusive power to make any law with respect to any matter any law with respect to any matter not enumerated in the Concurrent List or State List. In other words, residuary power of legislation is conferred on Parliament. Sub-article (2) of Article 248 is material and may be extracted:

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

Entry 84 in the Union List reads as under:

84. Duties of excise on tobacco and other goods manufactured or produced in India except?

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

Entry 97 of the Union List reads as under:

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

Entry 51 in the State List reads as under:

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; but not including

medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

Entry 52 is as under:

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

6. The contention is that Entry 51 in the State List enables the State Legislature to levy duty of excise or countervailing duty on alcoholic liquors for human consumption and that the almost corresponding Entry 84 of the Union List denies power to Parliament to levy duty of excise on alcoholic liquors for human consumption. Proceeding further it was said that initially countervailing duty was levied on the country liquor imported in Delhi and when it was found that as country for part of the territory of India not included in a State (sic). The three dimensional picture becomes complete, viz., (i) to select topic for legislation; (ii) enactment of legislation on the topic; and (iii) to impose tax in respect of such subject-matter of legislation, by reference to Article 248 which confers power to make any law with respect to any matter not enumerated in Lists II and III including the power to impose tax not mentioned in either of those Lists. Under Article 246(4), Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. Power of Parliament thus to legislate with respect to any matter for Delhi, territory not included in a State, is unabridged or unfettered by the entries in the State List. Further, residuary power of legislation including the power to levy tax is conferred on Parliament by the combined operation of Arts. 246 (4), 248 (1) and (2) and Entry 97 in the Union List. That power is untrammelled by the limitations prescribed by Article 246 (2) and (3) and Entry 51 of State List and is plenary and absolute subject only to such restrictions as are imposed by the Constitution and we find none such which is material to the present question *Mithan Mithan Lal Vs. The State of Delhi and Another*, .

In the said decision the Hon''ble Supreme held as follows:

8...Repelling the contention of legislative incompetence this Court held that there is nothing in the Constitution to prevent Parliament from combining its powers under one or other Entry with its power under Entry 97. The terse observation is that this Court knows no principle which debars Parliament from relying on the powers under the specified Entry 1 to 96, List I and supplement them with the powers under Entry 97, List I and Article 248 or even the powers under Entries in the Concurrent List. This authoritative pronouncement would answer the contention that while legislating for the Union Territories the Parliament unhampered by Article 246 (2) and (3) but enriched by Article 248 (1) and (2) could legislate on any of the topics either in the List I or in List II or in exercise of the residuary power under Entry 97. There is thus no derth of legislative competence of Parliament to enact legislation for a territory not included in a

State because the power to legislate takes within its sweep matters included in all the three Lists and added to it is the residuary power on matters not specifically included in any entry in any of the three lists.

16. He further pointed out that if the State Amendment Act of 2002 had the consent of the President of India, then also it could not be saved because of the Proviso to Article 254(2) and the later Central Act overrides repugnant State Act, notwithstanding President's assent to the State Act.

17. Mr. Sanyal also contended that the petitioners have locus standi to move this application and the application is maintainable since it has already been decided by the Division Bench in *Anjan Bhattacharya and Another Vs. State of West Bengal and Others*, . He further relied upon the decision reported in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, in support of such contention. He submitted that the decision of the Supreme Court reported in *Basic Education Board, U.P. Vs. Upendra Rai and Others*, has no manner of application in the facts and circumstances of this case. Hence, it is submitted that this application should be allowed.

18. On the contrary, Mr. S. Pal, Learned Senior Advocate appearing on behalf of the respondent-State, contended that the reliefs prayed for in the writ petition are as follows:

i) The recognition granted by the West Bengal Board of Primary Education to the respondent Primary Teachers Training Institutes are not in accordance with law;

ii) The respondent No. 1 (State of West Bengal) and the Respondent No. 2 (the Director of School Education (PE) West Bengal) should ensure that no candidate is appointed as an Assistant Teacher in any Primary School in the State of West Bengal possessing training certificate issued by the West Bengal Board of Primary Education in relation to a person who has been trained in one of the respondents Primary Teacher Training Institute.

iii) The State respondent and the respondent Director be directed to terminate the services of those incumbents who have already been appointed as primary school teachers based on pursuing of course of study in Teacher Education in any of the respondents Primary Teaching Institute.

19. He submitted that the contentions of Validity of the NCTE Act would have to be considered in the light of the West Bengal Primary Education Act, 1973 (State Act).

20. He further drew our attention to Section 19(1) as amended by the West Bengal Primary Education (Amendment) Act, 2002 which reads as follows:

Section 19(1) (bbbb) - to award diplomas, certificates, prizes, scholarships in respect of any examination conducted by the Board.

(dd) to institute Primary Teachers' Training Examination, after considering the recommendations, if any, of the examination Committee and to make regulations

on all aspects connected with such examination.

(ff) to grant or refuse recognition to Primary Teachers' Training Institute, after considering the recommendation, if any, of the Recognition Committee and to make regulations on all aspects connected with such recognition:

Provided that all existing Government sponsored and non-Government Primary Teachers' Training Institute, recognized by the competent authorities in terms of the orders issued by the Education Department, Government of West Bengal or the Director of Public Instruction, West Bengal before the coming into force of the West Bengal Primary Education (Amendment) Act, 2002, shall be deemed to have been recognized by the Board in accordance with the provisions of this Act, as if the West Bengal Primary Education (Amendment) Act, 2002 were in force when such recognition was granted

21. He drew our attention to Section 14(1), Section 16 and Section 17(4) of the said NCTE Act, which are also reproduced hereunder:

14(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

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

16. Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,-

(a) grant affiliation, whether provisional or otherwise; to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution, unless the institution concerned has obtained recognition from the Regional committee concerned, u/s 14 or permission for a course or training u/s 15.

17(4). If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under subsection (1), or whether an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

He further pointed out that the validity of the State Act has not been questioned at all in the writ petition. According to Mr. Pal, the State Act is operating in a field not covered by the Central Act. According to him, these Supreme Court Judgments established that the Central Act was enacted in relation to the field covered by Entry 66 of List-I of the Seventh Schedule of the Constitution and he relied upon a decision reported in Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College, where Hon''ble Supreme Court decided as follows:

i) The Central Act squarely deals with co-ordination and determination of standards in institutions for higher education within the meaning of Entry 66 of List-I (para 8 at 234);

ii) Section 17(4) of the Central Act is a law dealing with co-ordination and determination of standards in institutions for higher education coming within Entry-66 of List-I and not a law dealing with employment (para 66 at 234, 235);

The point that Section 17(4) must in the context be referable to Entry-41 of List-II was not even raised or argued.

It was not argued that the object of the Central Act was to train persons as teachers to serve the students and the country and was service oriented.

22. He further pointed out that the decision reported in Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, where the precise issue was whether the Basic Teachers Certificate (BTC) issued by the State Government was consistent with the provisions of the U.P. Basic Education Act, 1972 and the U.P. Basic (Teachers) Service Rules, 1981. The Supreme Court formulated the issue in these words:

Whether the selection of candidates for Special BTC Training is contrary to the provision of the U.P. Basic Education Act, 1972 and the U.P. Basic (Teachers) Service Rules, 1981.

23. In paragraph 19 (at Page 180) of the said decision the Supreme Court held as follows:

19. Relying on the judgment of Union of India v. 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 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 BEd/Learned Tribunal and other courses recognised by the National Council for Teacher Education 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 Mistresses for the schools run by the Board. The High Court, therefore, pointed out that the government order recognising 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.

24. Mr. Pal contended that it was not at all necessary to consider the Central Act since it was found that the Special BTC Training Course was not violative of the Basic Education Act, 1972 of the UP Legislature and the U.P. Basic (Teachers) Service Rules, 1981.

25. In the decision of ?Sant. Dnyaneshwar? (Supra) the Supreme Court was dealing with a case relating to recognition for starting B-Ed. Courses and held that the Central Act was enacted under Entry 66 of List-I.

26. In the case of Basic Education Board (Supra), the question arose in relation to the training qualification for Basic Teachers Certificate (BTC) under Rule 8 of U.P. Basic Education (Teachers) Service Rules, 1981 and more particularly as to whether the respondent without having a BTC could qualify himself to be appointed as Assistant Master of junior Basic School in U.P. To meet the point of disqualification under the U.P. Law, the respondent contended that he had requisite qualification as per the Central Act. Mr. Pal submitted that Rule 8(b) of U.P. Rules in the basic education case is substantially similar to Rule 6 of the West Bengal Primary Teachers Recruitment Rules, 2001. Therefore, the basic education case squarely covers the instant case. The Supreme Court accordingly held as follows:

i) A person who does not have the qualification mentioned under Rule 8 of the aforesaid rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a Junior Basic School (para 19).

ii) The Central Act does not deal with the ordinary educational institutions like primary schools, high schools, intermediate college or university (para 22).

iii) The two Acts operate in altogether two different fields (para 22).

iv) Article 254 has no application (para 23).

v) It allow the appeal filed by the Basic Education Board, U.P., holding that the Central Act had nothing to do regarding qualification for being appointed as Assistant Master in Junior Basic School in U.P. (para 25).

27. Mr. Pal further pointed that in view of the Supreme Court judgments referred

to above, the question of primacy or supremacy of the law enacted by Parliament and the law enacted by the State Legislature is not at all relevant. In other words, Article 254 is not attracted in deciding the matter.

28. Moreover, after the 73rd Amendment of the Constitution, there has been a significant change in relation to the field of education and having regard to such change the question of the Primary Teachers' Training Institutes obtaining recognition from the National Council for Teachers Education constituted under the Central Act does not arise.

29. According to Mr. Pal, this is because of the insertion of Part- IX of the Constitution by the 73rd Amendment. He further drew our attention that an institution of self-government is normally given jurisdiction in relation to certain matter to make such self-governance effective.

30. He further drew our attention to Article 243(d) of the Constitution which defines the Panchayat. Article 243(g) specifies what would be the powers, authority and responsibilities of Panchayat. It states as follows:

Legislature of a State may, by law, endow Panchayats with such powers and authority as may be necessary to enable them to function as Institution of self government and such law may contain provision for the devolution of powers and responsibility upon Panchayat.

31. He further drew our attention to Article 243(g) where it has been reproduced that such law may be with respect to ?

- a) The preparation of plans for economic development and social justice;
- b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matter listed in the Eleventh Schedule.

32. He further drew our attention to the Entry 17 of the Eleventh Schedule to the Constitution which reads as follows:

17. Education, including Primary and Secondary Schools.

The 73rd Amendment Act came into force with effect from 24th April, 1993. Therefore, on and after 24th April, 1993 education became a field on which the Legislature of a State could only legislate as far as the Panchayat areas are concerned namely Panchayat area as defined in Article 243(e):

(e) Panchayat area means the territorial area of a Panchayat.

The Central Act cannot, therefore, apply to schools of any kind which are situated within the Panchayat areas in West Bengal.

33. Therefore, he submitted that the two judgments of the Division Bench of this High Court, namely, ?Tulsi Bakshi? (unreported) dated 19th April, 2006 and ? Anjan Bhattacharjee? reported in Anjan Bhattacharya and Another Vs. State of

West Bengal and Others, are of no assistance to the writ petitioners since both these judgments recognized that Parliament has enacted the Central Act in relation to the Field covered by Entry 66 of List-I. In the case of ?Tulsi Bakshi? the issue was whether some colleges masquerading as B.Ed. College could train graduate students for qualifying as teachers and can grant B.Ed degrees. By the Constitution (74th Amendment) Act, 1992 (w.e.f 1st June, 1993) Part- IXA was inserted in the Constitution and provided for the Constitution of Municipalities as well as their powers and functions. Article 243(w) sets out the powers, authority and responsibilities of Municipalities which reads as follows:

Article 243(w) - Powers, authority and responsibilities of Municipalities etc.? Entry 13 of the Twelfth Schedule to the Constitution reads as follows:

13. Promotion of Cultural, Educational, Aesthetic aspects.

The Central Act in so far as it relates to the qualifications (Section 17(4)) for employment under any Government or any school, college or other educational body aided by the State Government is wholly outside the field covered by List-I and is an encroachment upon the field exclusively reserved for the State Legislature being Entry 41 of List II to the Seventh Schedule which reads as follows:

41. State Public Services; State Public Service Commission.

34. Therefore, Mr. Pal contended that the Central Act has no manner of application in the facts and circumstances of this case and this writ petition should be dismissed.

35. Mr. Anindya Mitra, Learned Senior Advocate appearing on behalf of the Board of Primary Education, submitted that the NCTE Act does not deal with the ordinary educational institutions like pre-primary school. According to him, qualification for appointment as teacher in the primary school cannot be prescribed under the NCTE Act and the essential qualifications are prescribed by the local Acts and Rules in each State. According to him, the qualification for Primary Teachers of Primary Schools in West Bengal prescribed under West Bengal Primary Education Act, 1973 and the rules framed thereunder. The West Bengal Primary School Teachers Recruitment Rules, 2001 framed in exercise of power conferred to Sub-section (1) and Clause (K) of Sub-section (2) of Section 106 read with Clause (K) of Sub-section (1) of Section 60 of the West Bengal Primary Education Act, 1973.

36. He drew our attention to Rule 6 as amended on 16th December, 2005. It would be proper for us to reproduce Section 106(1)(2)(k) read with Section 60(1) (k) of the West Bengal Primary Education Act, 1973 hereunder:

Section 60(1)(k). Subject to the prescribed conditions, to appoint teachers and other staff in primary schools, to transfer any such teacher or other staff from one primary school to another primary school within the jurisdiction of the same Primary School Council and to pay to teachers and other staff salaries and

allowances, if any, at such rates as may be fixed by the State Government.

37. He further pointed out that the said Act of 1973 was enacted by the State Legislature under Entry No. 11 of List II of the Seventh Schedule of the Constitution as it then stood. Education was then within the exclusive competence of the State legislature. The NCTE Act, 1993 has been enacted by the Parliament under Entry No. 66 of the List I of the Seventh Schedule. Therefore, he submitted that the NCTE Act has no manner of application in this case. He relied upon the decisions reported in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, and *Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College*, in support of his contention.

38. He further pointed out that primary teachers are part and parcel of primary education system, which is within the domain of the State. Numbers and qualifications for primary teachers are to be determined by the State Government in accordance with the State Policy. Numbers and requisite qualification of primary teacher may vary from State to State depending on its economic strength.

39. He further contended that the said Act, 1973 and the NCTE Act of 1993 are alternatively two different things and there cannot be any conflict. He relied on a judgment reported in *Basic Education Board, U.P. Vs. Upendra Rai and Others*, , in support of his contention. He submitted that in these circumstances, the NCTE Act does not deal with the Primary Teachers' Training Institutes.

40. Learned Advocate appearing for the Khamargachi Primary Teachers' Training Institute submitted that an advertisement was published by the West Bengal Board of Primary Education (hereinafter referred to as 'the Board') for establishing a new Primary Teachers' Training Institute in West Bengal. Pursuant to the said advertisement, the said training institute after fulfilling of all the conditions laid down in the Notification No. 1132/BPE/2002 dated November 28, 2002 duly applied for recognition from the Board.

41. By a letter dated 21st February, 2006, the Joint Secretary to the Government of West Bengal duly forwarded a copy of an application form for grant of recognition of the institute from NCTE. The said letter dated 21st February, 2006 is set out hereunder:

No. S.E.(P)/4P-14-14/04 Dated, the 21st February, 2006

From : Shri S. Mahapatra,

Joint Secretary to the Govt. of West Bengal.

To : The Director of School Education, West Bengal, Bikash Bhavan, 7th floor, Salt Lake, Kolkata-700091.

Sub : Recognition of Primary Teacher Training Institute in West Bengal By N.C.T.E.

----- The undersigned is directed to forward herewith a copy of the letter No. ERC/-6-2/WB/2004/719-722 dated 28.30.2005 with a copy of an application form for grant of recognition of Teacher Training Institutions from NCTE and to request him to issue suitable instructions to all P.T.T.I.s. so that they may apply for recognition to NCTE through the Deptt. at an early date.

Sd/- S. Mahapatra Joint Secretary

No. 1139/1(1)-SE(P) Dated, the 21st February, 2006

Copy forwarded for information and necessary action to the President, West Bengal Primary Education, DK-7/1, Sector-I-II, Bidhannagar, Kolkata-91.

Sd/- Joint Sectary

Memo. No. /BPE/1/2006 Date

Copy forward for information & with a request to comply with the above Govt. Order bearing No. 113-SE(P) dated 21.02.2006: The President/Principal/Teacher-in-Charge

Sd/- Secretary West Bengal Board of Primary Education

42. Thereafter, the Board accorded permission to the Institute to withdraw the Fixed Deposit Amounts from Endowment Fund and Reserved Fund made by the Institute subject to making necessary fixed deposit in connection with submission or application for recognition by NCTE. The certificate was also issued by the State of West Bengal. The Regional Committee, Eastern Region, NCTE after inspection the Institute duly granted recognition in favour of the Institute.

43. It is further submitted that as per NCTE norms every Examining Body shall on receipt of the order under Sub-section 14(4) of the NCTE Act grant affiliation to the Institute to whom the recognition has been granted. It is further pointed out that the Board is the Examining Body of Primary Teachers? Training. After completion of the training course, the Board issues certificates in favour of the students who successfully completed the said training. It is submitted that as per NCTE norms the Institute duly applied for affiliation before the Board since Board is the Affiliating Body. The Institute duly applied for recognition from NCTE and recognition was granted to the Institute. The grievance of this Institute that inspite of such recognition the Board refused to grant affiliation. The said Institute has followed all the norms of the NCTE Act and completed the process of admission for the academic year 2008-2010. Therefore, at this stage the Board cannot withhold the affiliation. The same submissions made on behalf of the Purba Medinipore Primary Teachers? Institute.

44. It is further submitted that after such denial of affiliation of the Institute by the Board, the Institute moved a writ petition and an interim order was passed in the said writ petitions being W. P. No. 863 (w) of 2008 and W. P. No. 864 (w) of 2008.

45. Mr. Kallol Bose, Learned Advocate appearing on behalf of the added respondent Nos. 123 to 132 being the students of the various Institutes submitted that the added respondents are the students and are proceeding with studies under the recognized Primary Teachers' Training Institutes. According to him, no case has been made out by the petitioners.

46. He submitted that the point of encroachment of a State Legislation in the instant case upon the occupied field is no more a *res integra* in view of the Judgment reported in *Basic Education Board, U.P. Vs. Upendra Rai and Others*, . There is no prejudice caused to the common public by reason of the alleged violation of law as sought to be made out by the petitioners in the petition.

47. He further submitted that u/s 19(1)(d) of the said Act of 1973 the Board is empowered to grant approval and recognitions to the Primary Teachers' Training Institutes. The Board has authority to make regulations in relation to the affairs of the Primary Teachers' Training Institutes. The Board is also empowered to make regulation determining the mode of teaching and medium of instructions to be followed in primary schools. The Board has power to supervise and control over the work of the Primary Council.

48. He further submitted that in West Bengal, education is divided into various categories, namely, (1) primary education (Class 1 to IV) now controlled by the Board of Primary Education, (2) Secondary Education i.e. (Class IX to X Madhyamik) controlled and supervised by the West Bengal Board of Secondary Education and (3) Higher Secondary Education (Class XI to XII) controlled by the West Bengal Council for Higher Secondary Education, Higher Education starts at college level for acquiring Degree of B.A., B.Sc., B.Com. and B.E. etc., as the case may be.

49. Mr. Bose submitted that in *West Bengal Madrasah Education Board and Anr. v. Shaikh Sahajamal and Ors.* reported in 2005 CHN (2) 67 clearly indicates that the primary education and all matters connected therewith were within the exclusive domain of State legislature by dint of Article 246 sub clause (2) of the Constitution of India. Entry No. 25 of List 3 was restricted to vocational and technical training. It is submitted that apart from the above referred 2 Lists the Parliament has residual power to legislate on the subject not covered by 3 Lists by reason of Article 248 of the Constitution of India. When the Central Law conflicts with the State Law on a concurrent subject formerly prevails, the State Law passed subsequent to the Central law is prevalent if, however, it is received the Presidential assent under Article 254 of the Constitution.

50. He further submitted that qualification and standard of efficiency of a primary teacher are incidental to and part of primary education and therefore, covered by the Entry No. 11 of the State List as that was prevalent in the year 1973. The constitutional mandate and/or imperatives upon the State to provide free and compulsory education for all children of the age of 6 to 14 years made us to believe that it was very much within the jurisdiction of the aforesaid legislation

and as such, without knowing the subsequent legislation, namely, the NCTE Act, 1993 might cause an eruption of volcano.

51. He further submitted that the added respondents have proceeded and acted on good faith and the entire action for taking admission in the Institute was absolutely bonafide and there was no negligence on the part of the students in the matter of prosecuting their studies in a recognized institute duly approved by the concerned Board. The primary teachers who have been appointed by the Primary School Council within the State of West Bengal are not facing any trouble though they are at par with the present students. It was the duty of the State to grant recognition to the Primary Teachers' Training Institutes who fulfill all the criteria and the norms framed by the authority.

52. He pointed out that on the fault of the Institutes and the State, the students who are suffering in this situation should be allowed to suffer. The said students cannot suffer without their fault or laches on their part. The State should not be permitted to shirk of its responsibility when a challenge under the guise of overlapping two legislations have come for consideration before the Hon'ble Court.

53. It is pertinent to mention that the total marks for the examination was 1100, out of which 660 marks was settled for periodical and practical test and the students after being qualified in those tests were selected to sit for the final written examination for the rest 440 marks which was scheduled to be held on 16th June, 2006 for the Academic Session 2005-2006. All the students duly received their admit cards issued by the respondent training institutes. At that point of time they were informed that the schedule of examination had been postponed for an indefinite period.

54. The students have spent a large amount of money for taking admission and paid fees in order to have proper education and to become primary teachers in future, but for the purported challenge their future is in the dark. He further pointed out that the entire NCTE Act was considered by the Hon'ble Supreme Court in JT 2006(4) Page 201. The entire scheme of the NCTE Act was considered. Had there been any possibility of NCTE Act being considered to have been made under Entry 25 of List III, the Hon'ble Supreme Court would have said so and would not have said that NCTE as made under Entry 66 of List I of the 7th Schedule. Any contention that NCTE Act has also been made under Entry 25 of List III would be contrary to and inconsistent with the aforesaid two judgments of the Hon'ble Supreme Court.

55. He further submitted that Entry 25 of List II and also Entry 66 of List I are mutually exclusive and therefore, NCTE Act could not be enacted under both. Entry 25 of List III contains the expression 'subject to the provision of Entries 63, 64, 65 and 66 of List I'. Entry 66 of List I and Entry 25 of List III, which was previously part of Entry II of List II are mutually exclusive legislative fields as held by the Constitutional Bench of the Supreme Court in The Gujarat University,

Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, . Education was within Entry 11 of List II except to the extent carved out by Entry 66 of List I as held by the Hon"ble Supreme Court in the said judgement. This judgement supports the submission that primary education was within exclusive domain of State Legislature when the W.B. Act of 1973 was enacted. It is further submitted that an Act cannot be enacted by Legislative Body under Entry 66 of List I and also Entry 25 of List III as it now stands. If it is assumed that NCTE Act has been framed both under Entry No. 66 of List I and under Entry No. 25 of List III, then it would be difficulty to decide which part of NCTE Act is under List III and which part is under List I. The part of NCTE Act enacted under List III cannot override the existing State Act enacted under Entry No. 11 of List II .

56. The Learned Advocate appearing on behalf of the Union of India submits that after the promulgation of the NCTE Act, 1993 by the Parliament, the State Government cannot frame any Statute for granting recognition to the Primary Teachers? Training Institutes in respect of matters concerning teacher education programme.

57. It is further submitted that unfortunately, the Legislative mandate of the NCTE Act has been given a complete go-bye by the State Legislature to the detriment and prejudice of the children studying in the primary level in the State. It is pointed out under the said Act that the minimum eligible qualification for admission in Primary Teachers? Training Institute is 45% marks in secondary education and the duration of the course would be of two years, whereas the qualification as fixed by the West Bengal Board of Primary Education is only School Final or Madhyamik and the duration of the course is one year which is contrary to the Act of 1993.

58. It is submitted that in view of the promulgation of 1993 Act, the provision for recognition by the State Board is nonest in the eye of law and, therefore, the examination conducted by the West Bengal Board of Primary Education is also not a valid qualification in terms of the said Act.

59. The object of 1973 Act and the object of the Amendment Act, 2002 are totally different. In the 1973 Act, the object of free primary education and the assent was given by the President on the basis of the report submitted by the State which relates to acquisition of the landed property of the primary schools in existence at that relevant point of time. There was no iota of evidence in the Act of 1973 relating to the establishment of Primary Teacher Training Institutes by the private entrepreneurs to be recognized by the West Bengal Board of Primary Education for giving education to the persons who will teach at the primary level. It is further pointed out that before the amendment of said 1973 Act came into force, there is already an Act promulgated by the Parliament in 1993 with the same object. Therefore, it is submitted that in that event the legislation made by the State of West Bengal in 2002 is repugnant to the 1993 Legislation made by the Union of India and that too after 1993 Act has come into operation. Therefore, State has no legislative competence to formulate any Act on the

selfsame issue.

60. It is further submitted that the said Act of 1993 is a complete code. In the said Act, it has been specifically indicated, who will be the Examining Body, what is a recognized institution, examining of teacher education as also teacher educational qualification. Therefore, it is submitted that the said Act, in fact, dealt with every stage of the education from pre-primary, primary, secondary, senior secondary of schools etc... The Act has also indicated the procedure relating to the granting of recommendation. It is absolutely clear from the said Act that if no recognition is obtained and if recognition is cancelled, then affiliation will be cancelled. No examination can be taken by the examining body and the degree or diploma as awarded by such institution where recognition has not been obtained or cancelled, shall not be treated as a valid qualification for the purpose of employment under Central Government, any State Government or University or any school, college and other education body aided by the Central Government or any State Government.

61. It is further submitted that in the 1973 Act, there was provision for training institute to be recognized by the Director. To the said Act, the Presidential assent was given. But in view of Article 254(1) of the Constitution the said provision cannot prevail after the promulgation of 1993 Act by the Parliament in view of the repugnancy relating to the recognition clause. In terms of 1993 Act, the recognition is required to be given by the Regional Committee under the NCTE Act and not by the Director or by any other State Body. It is further pointed out that it is contended on behalf of the State Authorities that the Act of 1973 has been promulgated under List II, Entry 11, when the education was under List II that is a State List and the said Act obtained the Presidential assent in general terms and the Court has no business to investigate the terms of the Presidential assent and it would be presumed that the assent of the President has been given in respect of the entire Statute irrespective of the year and in view of the decisions reported in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, ; *Bharat Sevashram Sangh and Others Vs. State of Gujarat and Others*, and 1995 Suppl. SCC (2) 187 (Supra). No further Presidential assent is required in respect of the amended provision of the Statute.

62. It was further submitted that the 1973 Act when came into operation, there was no question of 1993 Act. But the Amendment Act, 2002 promulgated by the State of West Bengal for which no Presidential assent was taken and the said Act came into force from 17th July, 2002. Therefore, it cannot be stated that once the assent is granted by the President, the State law namely, the 1973 Act as well as its amendment would prevail qua earlier than the other law enacted by the Parliament. Further no assent was sought for nor it was sent for the consideration of the Hon'ble President. Therefore, it is submitted that the applicability of the Act as far as back of 1973 is not at all applicable and furthermore, the said amendment was published in the Calcutta Gazette on 3rd December, 2002. Therefore, it is submitted that the said Amendment Act and

Regulations cannot be survived in view of the clear dictum of Article 254(2) of the Constitution of India.

63. It is submitted that at the present moment, the Act of 1993 List I, Entry 66 and in the said subject, State has no legislative competency to promulgate any further statute. It is further submitted that if any statute has already been promulgated by the Government of India under Concurrent List and on the selfsame subject the State has no legislative power to promulgate any statute substitute on that issue and therefore, it is submitted that the NCTE Act, 1993 and the object of 1973 Act are different and as such the said Amendment Act of 2002 cannot be made in the said field.

64. It is further submitted that the establishment of Primary Teachers' Training Institute without taking any recognition from the NCTE, is fully illegal. Therefore, it is submitted that the Amendment Act of 2002 is required to be declared as nonest in the eye of law as the same is repugnant to the Act of 1993. After considering the facts and circumstances of this case and the submissions made on behalf of the parties, we have perused the decisions cited before us, the NCTE Act as well as the said West Bengal Primary Education Act, 1973. It would be evident from the NCTE Act that the Act itself was promulgated for the following object:

An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

65. It would also be evident from Section 2(l) which defined the meaning of ? teacher education? which is stated hereunder:

2(l). ?teacher education? means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools and includes non-formal education, part-time education, adult education and correspondence education.

66. It would be further evident from Section 2(m) which defines the meaning of ? teacher education qualification? which is stated hereunder:

teacher education qualification? means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act.

67. The object of the West Bengal Primary Education Act, 1973 is quoted hereunder:

An Act to make better provision for the development, expansion, management and control of primary education with a view to making it universal, free and compulsory.

68. It appears that the case of *Tulsi Bakshi and Anr. v. the State of West Bengal and Ors.* W.P. No. 21101 (W) of 2005 which is an unreported decision of this High Court.

69. It further appears that Chapter II which is titled as 'Establishment of the Council' deals with constitution, working as also the procedure adopted by the National Council for Teacher Education.

70. It further appears that Section 12 deals with the function of the Council, which suggests that it shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated 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. This Section also enumerates from Sub-sections (a) to (n) that various functions to be undertaken by the Council which include Sections 12(d) which lays down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions. Section 12(e) lays down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof and the method of selection of candidates, duration of course, course contents and mode of curriculum. Section 12(f) lays down guidelines for compliance by recognized institutions, for starting new courses or training and for providing physical and instructional facilities, staffing pattern and staff qualification. Section 12(g) lays down standards in respect of examination leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training. Section 12(h) lays down guidelines regarding tuition fees and other fees chargeable by recognized institutions.

71. It further appears that Section 13 gives the power to the Council to take inspection of the recognized institutions from time to time. It further appears that Section 14 is the most important section, it runs as under:

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

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations: Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

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

(3) On receipt of an application by the Regional Committee from any institution under Sub-section (1), and after obtaining from the institution concerned such

other particulars as it may consider necessary, it shall ?

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

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

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

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

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

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

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

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

72. It further appears that Section 15 provides for permission for a new course or training by a recognized institution for which similar application has to be made to the Regional Committee. It further appears that Section 16 which is the most vital section runs as under:

16. Affiliating body to grant affiliation after recognition or permission by the Council. Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,-

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) bold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution,

Unless the institution concerned has obtained recognition from the Regional Committee concerned, u/s 14 or permission for a course or training u/s 15.

73. After considering the objects of the said two Acts it appears to us that the very object of the NCTE Act is to develop the teacher education system through out the country whereas the object of the West Bengal Primary Education Act, 1973 is for the development, expansion and control of primary education with a view to make it universal, free and compulsory. Therefore, we do not have any hesitation to hold that the objects of the two Acts are different.

74. After perusing all Sections of the said NCTE Act, it clearly appears to us that a non-recognised institution cannot award any diploma, degree etc. in teachers' education to its students which could be treated as a valid qualification for the purpose of employment under the Central Government, any State Government or University, or in any school, colleges or other educational body aided by the Central Government or any State Government.

75. It further appears to us that u/s 32 the Council has the power to frame regulations which are not inconsistent with the provisions of the Acts and Rules, for carrying out the provisions of the Act. Our attention was drawn towards Regulation dated 13-11-2002. This regulation is called NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002. Regulation 3 provides that the application for grant of recognition would be given as per proforma Appendix 1A, the application must be accompanied with the list of essential documents as given in Appendix 1B, land title certificate as per form in Appendix 1C and an undertaking on a non-judicial stamp paper as per Appendix 1D.

76. It would be evident from the letter dated 21st February, 2006, that the fact of grant of recognition of the Institute lies with the authority of the Regional Body made under the NCTE Act.

77. After considering all these aspects of the matter, we are unable to accept the submissions made on behalf of the respondents and in our considered opinion, we find that the National Council for Teachers' Education Act deals with the teacher education system in the country. It has been specifically stated in the preamble and in the provision of the said Act that it deals with the programmes of education, research or training or persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools which also includes non-formal education, part-time education, adult education and correspondence education. Therefore, we do not have any hesitation to hold that the NCTE Act would prevail in the State which is dealing with teachers' education to teach at pre-primary, primary and other levels. We do not have any hesitation to accept the contention of the petitioner that without the recognition from the NCTE no Regional Board or Authority can have a right to function as a Board. u/s 16 it has been specifically stated that it is the right of the NCTE to grant affiliation to the institution or to hold examination by examination body. No institute, without having an authority/recognition from the Regional Committee,

u/s 14 or obtaining permission u/s 15, can undertake to grant any diploma, degree or etc. to the persons without having an affiliation from the Regional Committee under the said NCTE Act.

78. We do not have also any hesitation in holding after analyzing the decisions of the Supreme Court that the State cannot debar Parliament to legislate any Act which is relatable to List I, Entry 66. (See AIR 1972 SC 1072; *Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others*,) We further make it clear that although the West Bengal Primary Education Act came into force in 1973 and subsequent thereto, the amendment made in the said Act cannot make it a good law in view of the fact that the Parliament has the right to make laws. In the decision of *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, where the Supreme Court held as follows:

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

It has been further held as follows:

75. The decision relied on by *Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra* has no application to the facts of the case. In that case, the power was with the State Government to grant or refuse permission to open BEd college. Considering the fact that if permission would be granted, there would be large-scale unemployment, it was decided by the State Government not to allow new BEd colleges to be opened. It was held by this Court that such policy

decision could not be said to be arbitrary or otherwise unreasonable. The Court in that case was not concerned with the power or authority of the State Government vis-à-vis the Central Government and the Act of Parliament. In the present case, as the field was fully occupied by Entry 66 of List I of Schedule VII to the Constitution and Parliament has enacted the 1993 Act, it was not open to the State Legislature to exercise power by making an enactment. Such enactment, as per the decisions of this Court, would be void and inoperative. It would be unthinkable that if the State Legislature could not have encroached upon a field occupied by Parliament, it could still exercise power by executive fiat by refusing permission under the 'policy consideration'. The contention of the State Government, therefore, has to be negated.

79. We have also considered the decision reported in *Basic Education Board, U.P. Vs. Upendra Rai and Others*, . We find that the Supreme Court held that UP Basic Education Act deals with the ordinary primary schools in UP and not any Teachers' Training Institute whereas the NCTE Act deals with the Teachers' Training Institute. Therefore, in the present case the very question relates to Teachers' Training Institute. therefore, the said decision cannot be a help to the respondent authorities.

80. Therefore, we hold that the Parliament cannot be debarred to enact the said law, i.e., NCTE Act and the said Act should prevail.

81. In these circumstances, we hold that there is a breach on the part of the Board in granting affiliation to those institutions in patent violation of the provisions of Section 16 of the NCTE Act and, therefore, we are convinced that the petitioners are acting bonafide and have sufficient interest in prosecuting this public interest litigation and as such they would have a locus standi to approach this Court to help the students. We are also convinced that this writ petition has not been filed for personal gain or private profit or political motive or any oblique consideration.

82. On these grounds, this petition deserves to be allowed and we declare that all the respondent institutions which are not recognised by the NCTE could not be given affiliation by the Board. The Institutions, which have not followed the provisions of the NCTE Act and are not recognised by the NCTE Authority, had no right to admit students in the said training programme.

83. Accordingly, we direct that unless these institutions are recognised, they shall not have any authority to admit any student in their institutions. It is clear from the facts that these institutions have acted in flagrant disregard of the provisions of the Act and Rules. All these institutions are bound to be aware of the provisions of the NCTE Act and could not have merely on the basis of the affiliation granted by the Board admitted the poor students. We are aware that the students are now going to lose one year which is very precious in their young lives. But the law must prevail and, accordingly, we direct all these unrecognized institutions to return all the fees to each and every student.

84. Before we part we also make it clear those Institutions who are already recognised under the NCTE Act, there are no impediments for them to run their Institutions. We further direct the State Authorities to render all assistance to the said Institutions.

85. For the reasons stated hereinabove, this application is allowed.

Surinder Singh Nijjar, C.J.

86. I agree.