

(1993) 06 KAR CK 0002
In the Karnataka High Court
Case No : W.AP. No. 17504 of 1992

Vijay Mahanthesh Vidyavardhak Sangh

APPELLANT

Vs

Karnataka University

RESPONDENT

Date of Decision : 08-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Karnataka State Universities Act, 1976 — Section 53, 53 (2), 53 (3), 53 (4)

Citation : (1993) ILR (Kar) 1910 : (1992) 2 KarLJ 388

Hon'ble Judges : Vasanthakumar, J

Bench : Single Bench

Advocate : N.K. Patil, for the Appellant; N.B. Bhat, for R-1 and N. Devadas, Government Advocate for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Vasanthakumar, J.—Petitioner in this Writ Petition has sought the following reliefs.-

a) Writ in the nature of Certiorari quashing Annexure-H, dated 20.5.1992 in No. KV VIM (Samyojane) 91-92 700 issued by the first respondent herein.

b) Direct the respondents to consider on merits the application made by the petitioner Sangha for the affiliation of its BEd college for the academic year 1991-92 in accordance with the provisions of Section 53 of the Act and issue a Writ in the nature of Mandamus directing the respondents to grant affiliation/renewal/continuation of affiliation for the academic year 1992-93. During the pendency of this Writ Petition the petitioner has filed additional statement of facts and has sought for quashing of the order dated 19.6.1992 on the following lines (I.A.No. 1 was allowed on 26.8.1992).

c) Writ of Certiorari quashing the impugned order at Annexure-J dated 19.6.1992 in No. ED 108 UGC 91 passed by the Second respondent herein in the interest of justice.

Few facts to briefly state are,-

Petitioner is a registered society and in the year 1988-89 started B.Ed college and sought necessary affiliation and recognition from the respondents. It is to be seen from the averments made in the Memorandum of this Writ Petition that an application dated 17.6.1988 having been made by the petitioner Society seeking recognition and affiliation for starting a B.Ed college. It is also to be seen that petitioner Society got admitted about 132 students for the B.Ed course even before affiliation and recognition was sanctioned by the respondents. It is to be stated that the application made by the petitioner Society was returned on account of the policy adopted by Government. Due to certain exchange of correspondence between the petitioner society and the Government, the Government permitted the students who had been admitted by the petitioner to appear for the examinations held in the month of April, 1989, subject to certain conditions and the results of the students being not announced. While, the matter thus stood, the Government on 20.4.1990 issued directions to the first respondent on the following lines;-

(Annexure-A)

From,

Secretary, Education Dept. Government of Karnataka Bangalore -

To,

The Registrar, Karnataka University, Dharwad.

Sir,

Sub:- Declaration of results of students of Vijaya Mahantesh Vidhya Vardhaka Sangha B.Ed College, Hungund and other colleges Rg.

Ref: Order dated 21.3.1990 passed in SLD 13227/89 by the Supreme Court of India. : Government letter of even No. Dt.28.2.90. With reference to the above, I am directed to state that in the light of the order passed by the Hon''ble Supreme Court of India in SLP/13227/89 dated 21.3.1990 the Government hereby grants the institution namely, Jain Mahila Mandal Belgaum, T.S.P.S, Mandafa Education Society, Sindhagi: and Vijaya Mahantesha Vidya Vardhaka Sangha, Hungund; as approved institutions for the year 1988-89 only and not beyond the said period. In view of this the university is requested to take necessary action in the matter under intimation to Government."

2. In pursuance of the above directions, results of the students who had appeared for the examination in the month of April, 1989 were announced. From the above background of narration of facts it is relevant to note that at no length of time the application filed by the petitioner Society seeking affiliation was granted and further it is also clear from the directions issued by the Government on 10.4.1990 (Annexure-A) that accord was given for the academic year 1988-89 only and not for subsequent period.

3. The petitioner Society on assumption of fact that affiliation having been granted made an application for renewal and continuation of the affiliation for the subsequent academic year which was once again returned by the Government on the ground that the question of continuation of affiliation as not arising from the circumstances of the case and the same was intimated to the petitioner Society by the Government on 25.10.1990.

4. Petitioner Society being aggrieved by the order dated 25.10.1990 filed a Writ Petition numbered as W.P.5811/91 seeking quashing of the order dated 25.10.1990. This Court on 18.4.1991 while passing order on merits issued certain directions. The operative portion of the order being para 5, reads,-

"In these circumstances, I consider it appropriate to issue a direction to the respondents to consider the application of the petitioner society afresh for grant of extension of affiliation up to academic year 1991 as prayed for, keeping in view of the order of the Supreme Court made in the aforesaid SLP presented by Jain Mahila Mandali. The application for renewal of affiliation made by the petitioner shall be disposed on merits within two months from the date of this order."

5. In pursuance of the order passed by this Court in W.P.5811/91 the authorities constituted a Local Inspection Committee for the purposes of assessing the merits or demerits of the request made by the petitioner Society for affiliation, On 6.6.1991 Committee inspected petitioner society and made certain recommendations and subsequently on 5.12.1991 Local Inspection Committee inspected the petitioner institution and recommended affiliation. It is seen from the records that first respondent also accepted the recommendations of the local inspection Committee on 8.7.1991, the first respondent forwarded its approval to the Government. The relevant portion being;-

6. On 24.7.1991 Government after perusal of the order passed by this Court, in W.P.5811/91 and that of the first respondent dated 8.7.1991, passed an order refusing recognition and affiliation. The order dated 24.7.1991 reads as follows:- (Annexure-D)

7. On 12.8.1991, the first respondent intimated the petitioner Society about the rejection of their application seeking either affiliation or continuation for the academic year 1991-92. The petitioner being aggrieved by the orders passed by the Government dated 24.7.1991 and the intimation of the first respondent dated 12.8.1991 filed a Writ Petition seeking for quashing of the abovesaid orders and proceedings being numbered as W.P.21139/1991. On 11.11.1991, this Court after considering the contentions advanced by the parties on record, passed a detailed order giving certain directions. The operative portion of the order reads,-

i) The first respondent University is directed to constitute a Local Inspection Committee as early as practicable to ascertain whether the facilities now obtaining in the college concerned is such as deserving affiliation to the

University. The report of the Local Inspection Committee shall be forwarded to the Government within 2 months from the date of receipt of this order.

ii) The Government shall consider afresh the question of grant of affiliation to the college of the petitioner-society on the basis of the fresh report of the Local Inspection Committee and after taking into consideration all the relevant factors.

iii) The Government may also consider the question of granting permanent affiliation to the college concerned on the basis of the report of the Local Inspection Committee, in view of the decision of this Court and that of the Supreme Court in several Writ Petitions.

iv) The Government shall pass appropriate orders within one month from the date of receipt of the report of the Local Inspection Committee of the University.

v) Writ Petition disposed of in terms of the above order;"

8. It is seen from the records in pursuance of the directions issued by this Court in W.P.21139/91, Local Inspection Committee was constituted and on 5.12.1991, the Local Inspection Committee has submitted its report, The report reads;-

9. While the matter was still under consideration, the petitioner Society again admitted students for the academic year 1991 -92 with a view to enable the students admitted to sit for examination to be conducted in the month of April, 1992, filed a Writ Petition proceedings being numbered as W.P.4658/1992 and obtained an interim order on 20.2.1992. The Interim Order dated 20.2.1992 passed in W.P.4658/92 is as follows;

"Interim Order

Pending issue of Rule Nisi in the aforesaid petition, it is hereby ordered by this Court on 20.2.1992 by Hon"ble Mr.Justice M.Ramakrishna that the respondents be and are hereby directed to permit the students numbering 101 as found in list of students at Annexure-R to take the examination of B.Ed Course, for the academic year 1991-92, scheduled to be held in the month of April, 1992, through the approved institution V.M.S.R. Arts and Science College, Hungund, Bijapur District, provided the students comply with other requirements. It is made clear that the respondents need not disclose the results of the examination until further orders.

This order is subject to final disposal of the Writ Petition."

From the averments made in the Memorandum of Writ Petition, it is to be noted that petitioner Society once again made an application for continuation/renewal of affiliation for the academic year 1992-93. The relevant paragraph being 8, which reads;-

"8. The petitioner-sangha had made an application for continuation/renewal of affiliation for the academic year 1992-93 with necessary prescribed fees to the first respondent herein with all necessary requirements as per section 53 of the

Act. The first respondent without considering the continuation renewal of affiliation was pleased to pass the impugned order dated 20.5.1992 in No. KV:VIM (Samyojane)/91-92/700 stating that for the year 91-92, the affiliation has not been granted and only keeping in view the interim order granted by this Hon"ble Court and the fate of students, permitted the students to appear examinations and hence the question of continuation of affiliation does not arise. It was further stated that the application filed by the petitioner-sangha for continuation of affiliation is rejected and also returned the necessary fees. A copy of the impugned order passed by the 1st respondent herein is filed herewith and marked as Annexure-H."

Annexure-H reads;-

10. The petitioner once again being aggrieved by the order passed by the first respondent has filed this Writ Petition numbered as W.P.17504/92 seeking the reliefs as aforesaid supra. It is also to be noted that before the respondents communicated the order dated 20.5.1992 to the petitioner Society, Government had taken a decision in its Cabinet meeting held on 18.4.1992 to the effect to impose a ban on starting new B.Ed as well as TCH, B.P.Ed and C.P.Ed institutions till the end of Eighth Five Year Plan. Copy of the extract from the proceedings of the (14th meeting) meeting of Cabinet held on 18,4.1992 has been made available to the Court by the Counsel on record. Extract of the meeting reads as follows.-

"SUBJECTNo. C-238/92

Opening of New B.Ed Colleges Decision of the Cabinet.

Cabinet reiterated its earlier decision to impose a ban on starting new B.Ed as well as T.CH, B.P.Ed, and CP.Ed institutions till the end of the Eighth Five year Plan Period. There are 12 B.Ed colleges which have admitted students for B.Ed course during this year. The concerned universities may be requested to permit the students of these institutions on humanitarian grounds to sit for the B.Ed, examination during this year on the condition that they will give an undertaking that they (the institutions) will be closed down with effect from 1992-93 academic year."

11. It is to be seen from the order sheet dated 10.7.1992 in this "Writ Petition there is a note to the following effect.

"Sri N.K.Patil learned Counsel appearing for the petitioner submits that the petitioner institution will proceed with the admission of the students for the academic year 1992-93 pending result of this Writ Petition. This submission is placed on record,"

Government has also enacted Karnataka Prohibition of admission of students to the unrecognised and unaffiliated Education Institutions. The question that arises for consideration is whether the petitioner society has any legal right to seek Mandamus. In Mani Subrat Jain and Others Vs. State of Haryana and Others,

Supreme Court has observed at para 9 as follows;

"The High Court rightly dismissed the petitions. It is elementary though it is to be stated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do some thing or to abstain from doing something. (See Halsbury's Laws of England, 4th Edition, Vol.1, paragraph 122). The State of Haryana Vs. Subash Chander Marwaha and Others, Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, and Ferris Extraordinary Legal Remedies, paragraph 198).

Here in the instant case, the Government has been consistent in refusing to accord recognition and affiliation in view of the policy decision taken in imposing ban on starting a new B.Ed as well as T.C.H., B.P.Ed, and C.P.Ed, institutions till the end of 8th Five year plan period. In cases of granting reliefs as sought for by the petitioner society one has to draw a line of distinction between initial application for grant of affiliation and revocation, suspension or refusal to renew affiliations already granted. Broadly, applications seeking affiliation may be classified as Application cases, and in cases where renewal or continuation of affiliation are sought for and in cases where affiliations granted and later on refused may be classified as Forfeiture cases. It is to be seen that in cases where the matter pertains to application cases, question of an applicant getting a legal right for grant of affiliation would not arise. But in cases of refusal to renew/continue affiliation and cancellation of affiliation granted what is to be noted is whether the applicant can entertain a reasonable expectation of grant of affiliation and whether the same is legitimate and can be legally enforced.

12. The question that requires consideration is whether the Court in exercise of its powers under Articles 226 can compel the Government to sanction affiliation to petitioner society in respect of a course where the Government has taken a decision to impose ban on starting B.Ed course till the end of 8th Five Year Plan and whether Government's decision in refusing to accord affiliation to the petitioner society is justifiable. Further what is to be seen is whether it is open for the petitioner society to seek affiliation as Constitutional right. It is but natural that before a decision is taken by the Government, applications submitted by educational institutions seeking affiliations are being processed by investigatory agencies, such as, Local Inspection Committee, approval of university etc, before Government takes a decision regarding sanctioning of affiliation. Favourable reports of Local Inspection Committee and recommendations of Syndicate by itself would not confer justiciable rights. In the absence of any vitiating facts I am of the view that Government's decision not to accord affiliation to the petitioner society is well within its Constitutional limits and it does not suffer from any vice of extraneous factors. In AAE SOCIETY v. STATE OF KARNATAKA, this Court has exhaustively dealt with the Scope of

Section 53 of Karnataka State Universities Act. Relevant paragraph being:-

"19. The subject of grant of affiliation, here, has been treated by the Legislature, by enacting Section 53 of the Act; the field, thus, is occupied by the legislation. The power to grant or refuse affiliation has become statutory. It can be and has to be exercised in the manner laid down by the Statute, to advance its purposes. The statutory purpose, if any, cannot be subjected to any executive policy, not falling within the statutory scheme. The extreme stand taken by the State Government, that it has an absolute discretion u/s 53 of the Act and the provisions of Section 53 could be overridden by any policy decision, is patently untenable and strapless the doctrine of ultra vires; the attitude that moulded this contention exhibits a tendency to obstruct and denigrate the rule of law. Executive cannot overstep the limits carved out for it by the Legislature; it shall follow the path laid by the Legislature, in the exercise of its statutory power.

20. The question, then, arises as to the scope of Section 53. Are the provisions of Section 53(2) exhaustive of the factors to be satisfied for the grant of affiliation to a college?

The Legislature cannot foresee the several situations that may crop up in future while entrusting a power in the state to deal with an application for affiliation of the college. The factors to be considered, at the outset are, enumerated in Section 53(2). These are the factors, to be satisfied by the applicant. But, independently, of these provisions, the Syndicate and the Academic Council are vested with a power u/s 53(4) to direct a local inquiry "in respect of such matters as may be deemed necessary and relevant" (underlining is by us). If the enquiry to be held u/s 53(4) is confined to the matters stated in Section 53(2), the language of Section 53(4) would have been different, by directing the inquiry to be made "in respect of matters stated in Section 53(2)". By permitting to hold an inquiry "in respect of such matters as may be deemed necessary and relevant", Legislature has widened the scope of consideration of an application seeking affiliation. With the change of situations and other developments, the Syndicate or the Academic Council of the University may deem it necessary to enlarge the requirements for an affiliation; these other requirements may be of transitory character or would have arisen due to changed conditions in the University area, But these requirements are to be proximate and relevant to the subject of education, as otherwise, the new requirement u/s 53(4) found "necessary and relevant" would be legally necessary and irrelevant.

21. Having regard to the need to have a flexible power, provisions of Section 53(5) which vests a similar power in the State Government also should be liberally construed, so that the scope of inquiry by the State Government need not always be confined to the enumerated factors u/s 53(2). Again, here, the factors to be considered by the State Government while considering the application for affiliation, cannot be irrelevant or too remote to the purposes of establishing a recognised educational institution. Primary object of affiliation is to safeguard excellence in education; normally, this could be achieved by entrusting

the power to affiliate or refuse affiliation to the University. But legislature has given a substantial power to the State, u/s 53(5). This indicates, that, apart from the requirement of maintaining excellence in the standard of education, there are other factors which may have to be considered while granting affiliation. One of the purposes of an affiliation, is to enable the students to get degrees which in turn would enable them to seek employment. Therefore, the number of graduates that may enter the market of employment would be a relevant factor for the Government to consider, while considering an application seeking affiliation. The State has several Universities within its area. Each University by itself will not be in a position to find out the requirements of the State as a whole, for a particular type of graduates. Employment opportunities are to be created by the State; it has the machinery to measure the needs of its society; in fact, the State Government may have regard not only to its requirements and its capacity to provide employment, but also the situation prevailing generally in the Country, as a whole. Graduates from one State, may go out of the State seeking employment and the State may gather information as to how far the educational institutions in the State may cater to the needs of other parts of the Country, to some extent.

24. Section 53, as we read it, thus, does not confer an absolute discretion to reject the application for affiliation. Section 53 creates a statutory power. The power has to be exercised by the application of relevant considerations to the subject matter (i.e., education and its objectives) in respect of which the power is exercised. The relevant factors are not confined to the enumerated matters in Section 53(2).

Similarly, Section 53 does not impose a mandatory duty to grant affiliation, just because, the applicant satisfies the conditions enumerated in Section 53(2). The University and the State have other responsibilities to be discharged to safeguard the public interest, and the legislature has seen to it by enacting inter alia Section 53(4), 53(5) and 53(10) of the Act in this regard. An aspect of the above contention requires to be considered here. It was contended that u/s 53(2)(a), need of a locality only is to be considered and the decision of the State Government not to permit new affiliated colleges in the State, is a decision with respect to the entire geographical area of the State, overlooking the needs of any particular locality, The short answer to this contention lies in understanding the State as a conglomeration of localities and when the State considered the question of the need of the State as a whole, the needs of several entities (in the nature of localities) are to be assumed to have been considered. State was held to be conglomeration of "particular areas" in *BHEEMANKATTE BHEEMASETHU MUNIVRUNDA MUTT SWAMINI v. STATE OF MYSORE AND ORS.* Concept of a locality varies from context to context; it is a comparative term like the idea of a neighbour, varying, in the context of one house, its neighbour is the one situated next to it or near about; in the context of a state, its neighbours are, the states found across its boundaries. The concept of "needs of a locality" may be understood with reference to a town, a taluk, a District or a Division. With

reference to a minority, the locality may have a larger area of operation. Further, this concept of "locality" has to be understood in the context of the subject to be taught in the educational institutions concerned. In the case of a primary school, locality to which it caters may be a village, or a part of the village. In a case of an ordinary college (in contra distinction to a college, imparting professional courses), "locality" may be a taluk or even a District. A college where professional courses are taught, like medicine, engineering, law, etc., where the movement of students for studies all over the state "locality" may have to be understood as the entire state.

Similarly, we are of the view, that the needs of the minorities are not foreign to the considerations u/s 53(2) (a). Needs of a locality means, needs of those who are within the locality. Any "locality" has, as its residence, majority, as well as minority groups. Expression used in a law like the Karnataka State Universities Act, has to be understood broadly, so that all the relevant considerations may not be ignored while applying its provisions to a given set of facts.

25. Section 53(5) vests a power in the State Government to consider the application for affiliation; several relevant considerations, (as already noted above) would go into the decision; one such consideration, necessarily would be the requirements of the State to have more colleges or need to restrict the colleges having regard to the State's responsibility to provide employment. These considerations are not confined to the individual cases, but to the general situation prevailing in the State. There cannot be anything wrong if the State having regard to the prevalent situation in the State decides (after a proper inquiry) not to permit new colleges. Such a decision cannot be struck down as clogging the discretion in advance. The prevalent situation in the State which is a relevant consideration, may be such as to override all the considerations and the existence of such a overriding factor may be expressed in terms of a policy by the State so that, those who are affected may be aware of it."

13. Further petitioner's counsel invites this Court's attention to the stand taken by the Government in according affiliation to AI-Ameen Society which is to be stated stands on a different footing. In UNNIKRISHNAN AND ORS. v. STATE OF ANDHRA PRADESH, W.P.(C) No. 1992 68 SC 607 as follows:

"For the purpose of these cases we shall proceed on the assumption that a person or body of persons has a right to establish an educational institution in this country, But this right, we must make it clear, is not an absolute one. It is subject to such law as may be made by the State in the interest of general public.

69. We must, however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. In The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J., stated that this has been "the consistent view of this Court."

They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and accord certificate to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State - muchless have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance - the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised, by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognised and/or affiliated as stated above, it's certificate will be of no use. No one would join such educational institution. As a matter of fact, by virtue of the provisions of the U.G.C. Act, noticed hereinabove, no educational institution in this country except a University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government/University. The idea is that if such students pass the said examination, the Government/University will award its degree/diploma/certificate to them. These educational institutions follow the syllabus prescribed by the Government/University, have the same courses of study, follow the same method of teaching and training. They do not award their own degrees/qualifications. They prepare their students for University / Government examinations, request the University/Government to permit them to appear at the examinations conducted by them and to award the appropriate degrees to them, clearly and indubitably, the recognized/affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State. In the above circumstances, it is idle to contend that imparting of education is a business like any other business or that it is an activity akin to any other activity like building of roads, bridges etc. In short, the position is this. No educational institution except an University can award degrees (Sections 22 and 23 of the U.G.C. Act). The private educational institutions cannot award their own degrees. Even if they award any certificates or other testimonials they have no practical value in as much as they are not good for obtaining any employment under the State or for admission into higher

courses of study. The private educational institutions merely supplement the effort of the State to educating the people as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory - in the interest of general public upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students, recruitment of employees and their conditions of service. Since the recognizing/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidence attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or university is justified or is entitled to grant recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part-III; its activity is bound to be characterised as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates."

14. In the instant case, at every stage when Government gave permission to the students of the Petitioner - Society to sit for the examinations for respective academic years it was made clear that on humanitarian grounds permission having been accorded. It is to be seen that petitioner society from the years 1988-89 onwards has been successful in obtaining requisite permission to run B.Ed course either through the intervention of the Government or through the orders passed by this Court in Writ Petitions Nos. 5811/91, 21139/91, and W.P.4658/92 which enabled the students admitted to sit for the public examinations for the respective academic years. From the narration of the facts one thing is clear that at no time affiliation has been granted to the petitioner society except under circumstances stated supra.

15. The petitioner's Society knowing fully well that Government having not accorded affiliation and subject matter of affiliation being the subject matter of Writ Petitions, has been admitting students for the B.Ed Course, which is to be stated is to be deprecated. It is well established through catena of Decisions of the Supreme Court that it is not within the legitimate domain of the Court to determine whether the purpose of a Statute can be served better by adopting any policy different from what has been laid down by the legislature or its delegate and to strike down as unreasonable bye-law/regulation merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purpose of the Act.

16. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, Supreme Court has observed at para 29 as follows;

"Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments, controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

17. In State of Maharashtra Vs. Vikas Sahebrao Roundale and others, the Supreme Court has observed at paras 5, 6, 7, 8, 9, 10, and 11;

Para 5: "5. In N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, this Court held that the private institutions unauthorisedly established were invariably ill-housed, ill-staffed and ill-equipped. If the Government is directed to permit the students admitted into those institutions, to appear in the examination, we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 or Article 226 of the Constitution should be frittered away for such a purpose. So the request to permit the students who had training in unrecognised schools was deprecated by this Court.

Para 6: 6. In A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, when fervent request with all persuasion by the Senior Counsel, Sri K.K.Venugopal to permit the students admitted in unrecognised and unauthorised Institution to pursue balance course was made, this Court noted thus (at p.1497 of AIR) : "We do not think that we can possibly accede to the request made on behalf of the students any direction of the nature sought for would be in clear transgression of the provisions of the University Act 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 than a direction by the Court to disobey the laws." The request to permit the students to appear in the examination and to accommodate them elsewhere to

enable them to prosecute further study was negated by this Court.

Para 7: 7. In *All Bihar Christian Schools Association and Another Vs. State of Bihar and Others*, , this Court, when the ill-equipped and mismanaged schools were challenged on the anvil of Article 30 of the Constitution, held that even the minority institutions are subject to statutory regulations and establishment and maintenance of such an educational institution should be in conformity with the statute and the State is entitled to regulate the establishments of the educational institutions and the admission of the students in those educational institutions. It was held that the educational institutions of the minorities have no right to maladministration. Any rule or direction issued by the Government to prevent mal-administration would be valid.

Para 8: 8. In *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, the High Court of Madras while dismissing the Writ Petitions filed by unauthorised educational institutions, gave direction to admit the students for the examination. This Court held that the direction of admitting students of unauthorised educational institution and thus seeking direction for permitting the students to appear at the examination has been looked with disfavour by this Court. It was held that since the students of unrecognised institutions were legally not entitled to appear at the examination conducted by the educational department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. Accordingly, the appeal was allowed and the direction issued was set aside.

Para 9: 9. In *Students of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra*, SLP (C) No. 2067 of 1991 decided on 19.2.1991 this Court held thus;

"We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some Courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of regulation."

Para 10: In *Andhra Kesari Educational Society Vs. Director of School Education and Others*, relied upon by the counsel for the respondents, no doubt this Court directed the Government, to consider whether the students in the appellant's college have undergone the necessary B.Ed, course and has permitted them to appear in the ensuing examination and publish their results. In that case there was a long drawn history of the recognition of the institute and that the direction was issued by this Court in the special circumstances therein. Therefore, it cannot be taken as a precedent, in particular in the light of the law laid down by this Court as stated supra.

Para 11: Article 51A enjoins every citizen by Clause (H) to develop the scientific temper, humanism, the spirit of inquiry and reform and Clause (j) enjoins as fundamental duty to strive towards excellence in all spheres of individual and

collective activity so that the nation constantly rises to higher levels of endeavour and achievement; (a) respect for national flag and national anthem; (e) to promote harmony and spirit of common brotherhood amongst all the Indian people transcending religious, linguistic and regional derogatory to the dignity of woman; (f) to value and preserve rich heritage of our composite culture, etc., are some of the basic duties which the budding students need to be inculcated and imbibed. They should be sowed in the receptive minds in their formative periods so that they take deep roots at maturity. The teacher needs, not only the training at the inception, but also periodical orientation in this behalf so that the children would reap the rich benefit thereof. The ill-equipped and the ill-housed institutions and the sub-standard staff therein are counter productive and detrimental to inculcate spirit of enquiry and excellence to the students. The disregard of statutory compliance would amount to let loose of innocence and unwary children. The proceedings of the recent seminar held in Delhi, as published by the Times of India dated 4th August, 1992 would demonstrate the admission by the teachers that they are not properly trained to cope-up with the growing needs of the society and are unsuited to the duties they have to shoulder in imparting teaching to the children. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The formal education needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well equipped teacher could bring the needed skills and intellectual capabilities of the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast ever changing techniques, the needs of a society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition in that behalf compliance of the statutory requirements in insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc."

18. In Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, Supreme Court has observed at paragraphs 10 and 11 as follows:

"10. The observation of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution and as such the learned judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Court or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowling to any such advice.

11. This Court relying on *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others, and State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, held in *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*,

"When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the Court must strike down the action. While doing so the Court must remain within its self imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government, While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive."

19. Following the ratio decidendi of the Cases cited supra and also taking into consideration the background of the facts of this Case, I am of the view that circumstances do not warrant any interference with the impugned orders. Further it is made clear that students who have been admitted to the B.Ed. Course during the pendency of this Writ Petition, if any are not eligible to sit for the ensuing examination of the respective academic year.

Rule issued is discharged. Writ Petition is dismissed.