

SUPREME COURT OF INDIA

State of U.P.

Vs.

Bhupendra Nath Tripathi

S.L.P.(C) Nos.4854-4856 of 2009

C.A.Nos.....of 2010

(B. Sudershan Reddy and Surinder Singh Nijjar JJ.)

29.10.2010

JUDGMENT

B. SUDERSHAN REDDY, J.

1. Leave granted.

2. The State of Uttar Pradesh and its authorities are in appeal before us challenging the correctness of the judgment rendered by a Full Bench of the High Court of Judicature at Allahabad whereby and whereunder the High Court held that the restriction as contained in the Government Order dated 10th July, 2007 limiting the eligibility to apply for Special Basic Training Course 2007 only to such of those candidates who have passed B.Ed. from the institutions recognized by the National Council for Teacher Education (NCTE) as arbitrary and unreasonable. The High Court held that the exclusion of candidates from the field of eligibility for the said course who have obtained B.Ed. degree prior to enforcement of National Council for Teacher Education Act, 1993 (for short 'the Act') or after the enforcement of the Act during the period when the application of any institution or University was pending consideration is arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

3. In order to appreciate as to whether the impugned judgment rendered by the Full Bench suffers from any infirmities requiring our interference, few relevant facts may have to be noticed:

BACKGROUND FACTS

Although appalling and almost unbelievable, but the fact remains that in State of Uttar Pradesh, more than 60,000 posts of Assistant Teacher in primary institutions run by Uttar Pradesh Basic Shiksha Parishad are lying vacant and unfilled for a long time for whatever be the reasons thereof. The appointment of teachers in primary institutions is governed and regulated by the statutory rules known as U.P. Basic Education (Teachers) Service Rules, 1981 framed by the Government of Uttar Pradesh in exercise of its power under U.P. Basic Education Act, 1972. The rules provide that for appointment of Assistant Master and Assistant Mistress in Junior Basic Schools, one is required to possess a bachelor's degree from a University established by law in India together with Basic Teacher's Training Certificate (BTC) or any other training course recognized by the Government as

equivalent thereto. The BTC course in the State of U.P. is imparted by District Institute of Education and Training (DIET) run by the State in different Districts with limited intake capacity on account of which a large number of posts remain vacant as suitable candidates were not available for being appointed as Assistant Teachers.

4. It is under those circumstances, the State had formulated a scheme for the imparting of the Special BTC course to such of those candidates who were already holding the Degree of B.Ed. Such an exercise was undertaken in the year 1998, 2004 and 2007. We are concerned in the present case with the Special Basic Training Course 2007. The State submitted proposals to the Regional Committee of the National Council for Teacher Education seeking appropriate permission to impart Special Basic Training Course in recognized DIETs of U.P. to the candidates who are already holders of B.Ed. qualification. Such permission is required for starting any new course or training in teacher education by any recognized institution under the provisions of the Act. The NCTE vide its order dated 27 th June, 2007 granted permission for imparting Special BTC Course as requested by the State. The State Government issued an order specifying guidelines and conditions for imparting Special BTC Course, 2007 which, inter alia, provide minimum educational qualification for Special BTC Course, 2007 as Graduation with B.Ed. from any recognized college run by State/Central Government and approved by the NCTE under the provisions of the said Act. In pursuance of the Government Order dated 10th July, 2007, advertisement was issued which was published in various newspapers on 18th July, 2007 inviting applications from the eligible candidates for Special BTC Course, 2007.

5. The writ petitioners possess B.Ed. degrees (Shiksha Shastri Pariksha) having obtained the same from institutions affiliated to Sampurnand Sanskrit Vishwavidyalaya, Varanasi and from Purvanchal Vishwavidyalaya, Jaunpur. They have passed their B.Ed. in different years between 1993 and 1998. Minor details, if any, with regard to other candidates are not really material for our present purpose. Suffice it to note that all the writ petitioners submitted their applications to DIETs and were called for counselling in November, 2007. That a list was prepared and published revealing that they have been selected for counseling and after counselling, they were called for training and their names were accordingly included in the final selection list.

6. It is at this juncture, the controversy begins. Before the writ petitioners were actually sent for training, the Director, State Council for Research and Training put the DIETs on notice of a Division Bench judgment in Smt. Sunita Upadhyay Vs. State of U.P. & Ors. requiring all the Principals of DIETs to act in accordance with the said Judgment. This was followed by the letters issued by DIETs duly intimating the writ petitioners that in the year when they have passed the B.Ed., the institutions from which they have obtained the Degree were not duly recognized by NCTE and therefore, they were not eligible and cannot be sent for Special BTC Course. The same were challenged by the writ petitioners on various grounds. The writ petition was dismissed by a learned Single Judge declaring that it was always open to the State Government to provide a further higher qualification for admission into the course in addition to the qualifications which have been duly prescribed by the NCTE. The learned Single Judge while relying on judgments of Division Bench in Sanjai Kumar & Ors. Vs. State of U.P. & Ors. and Sunita Upadhyaya (supra) distinguished the judgment rendered by another Division Bench in Ekta Shukla & Ors. Vs. State of U.P.1.

7. Aggrieved by the same, the writ petitioners preferred Special Appeal against the judgment of the learned Single Judge. The Division Bench noticed the apparent conflict between the decisions rendered by Division Benches in Sunita UPadhyaya and Sanjai Kumar. The Division Bench, after

considering the issues raised in the appeal, referred the matter for consideration by a larger Bench. That is 1 2006 (1) ESC 531 how the matter has been placed before the Full Bench of the High Court resulting in the impugned judgment.

8. The Full Bench, after an elaborate consideration of the matter, held:

(a) The candidates who have B.Ed. degree obtained from an institution or University during the period when the application of the institution or the University for grant of recognition under Section 14 of the National Council for Teacher Education Act, 1993 was pending, are eligible for Special BTC Course 2007 as laid down by the Division Bench in Ekta Shukla's case (supra).

(b) The proviso to Section 14(1) recognizes continuance of the course, which was being run immediately before the appointed day provided application is submitted within the continuance of such course is deemed recognition of such course and degree awarded therein by express provisions of proviso to Section 14(1) of National Council for Teacher Education Act, 1993.

(c) The exclusion of the candidates from the field of eligibility for Special BTC Course 2007 who have obtained B.Ed. degree prior to the enforcement of NCTE Act, 1993 or after the enforcement of the said Act during the period when the application of the institution or University was pending consideration is arbitrary, unreasonable and violative of Article 14 of the Constitution. The above two categories of candidates are also eligible to participate in Special BTC Course 2007.

9. The conclusions drawn by the Full Bench are seriously challenged by the State in these appeals on various grounds.

10. We have heard Shri P.P. Rao, learned senior advocate on behalf of the State and M/s A.M. Singhvi and P.S. Narsimha, learned senior counsel for the respondents-writ petitioners.

RIGHT TO EDUCATION

11. We have given our thoughtful consideration to the entire issue that arises in this matter for our consideration. The directive principle contained in Article 45 has made a provision for free and compulsory education for all children upto the age of 14 years within 10 years of promulgation of the Constitution of India but the nation could not achieve this goal even after 50 years of adoption of the provision. The task of providing education to all children in this age group gained momentum after National Policy of Education (NPE) was announced in 1986. It was felt that though the Government of India in partnership with State Governments had made strenuous efforts to fulfill the mandate and though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remained unfulfilled. In order to fulfill that goal, it was felt that an explicit provision should be made in the Part of the Constitution relating to Fundamental Rights. Right to Education is now a guaranteed fundamental right under Article 21A. It commands that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. The State as at present is under the constitutional obligation to provide education to all children of the age of 6 to 14 years. The State by virtue of Article 21A is bound to provide free education, create necessary infrastructure and effective machinery for the proper implementation of the right and meet total expenditure of the schools to that extent. Right to Education guaranteed by Article 21A would remain illusory in the absence of State taking adequate steps to have required number of schools

manned by efficient and qualified teachers. Before teachers are allowed to teach the children, they are required to receive appropriate and adequate training from a duly recognized training institute. It has been observed by this Court : "Allowing ill-trained teachers coming out of derecognized or unrecognized institutes or licensing them to teach the children of impressionable age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play vital role. In cases like these, interest of individuals cannot be placed above or preferred to larger public interest" [See L. Muthukumar Vs. State of Tamil Nadu²]. Such is the importance of proper training to the teachers before they are allowed to teach the children of impressionable age. Part of the mantra of development economics today is a stress on universal primary education, including specific emphasis on educating girls. Several countries have shown with experience that investing in primary education has been a fundamental factor resulting in economic and social development. But in some countries including ours, it has been very difficult to achieve high enrollment rates, it is precisely for that reason and with a view to create a culture in which the expectation was that everyone went to school and that the entitlement to free primary education was universal, a 2 (2000) 7 SCC 618 provision is made in Part III of the Constitution imposing an obligation on the State to provide free and compulsory education to all children of the age of 6 to 14 years. The provision intends a systemic change to empower the marginal and deprived sections of the society. EFFORTS MADE BY THE STATE OF UTTAR PRADESH

12. As pointed out in the instant case, the problem confronting the State of Uttar Pradesh with respect to imparting free and compulsory education appears to be a gigantic one. A scheme known as Sarva Shiksha Abhiyan was launched by the Government of India and for universalization of education, time bound goals have been ascertained. In order to achieve those goals, the State of Uttar Pradesh appointed 33,000 B.Ed. graduates in the primary schools controlled by U.P. Basic Education after the selection and successful completion of six months Special BTC Course. The State, thereafter, addressed NCTE requesting it to accord necessary recognition/consent to conduct and to select the candidates for Special BTC Training 2006 as proposed by the State Government to fill the vacancies in Parshadiya School of Basic Education all over U.P. and to admit the B.Ed./L.T.B.P.Ed./C.P.Ed./D.P.Ed. trained candidates in the training. The NCTE, having considered the proposal submitted by the Government of Uttar Pradesh for Special BTC Course of six months duration granted one time approval for training candidates for being appointed as primary teachers who were already B.Ed. subject to the fulfillment of the following:

- (a) The teachers are to be trained only in the DIETs recognized by NRC-NCTE.
- (b) The SGERT to submit the date of commencement of the course along with the list of the recognized DIETs where the proposed training is to be conducted.
- (c) The quarterly progress report of the programme is to be submitted to NRC-NCTE.
- (d) The curriculum as finalized in the meeting between the NCTE and the State Government of U.P. is to be followed for the programme.

This was followed by the guidelines, terms and conditions issued by the Government for the selection process and training of the selected candidates for Special BTC Training, 2007 which, inter alia, provide Graduation as the minimum academic eligibility and they must have passed the B.Ed. degree recognized by NCTE from the institutions/University established under law and

recognized as regular candidate fulfilling all other conditions. After completion of the six months training of all the candidates of the concerned District, a formal written examination would be held and successful candidates would be eligible for appointment as Assistant Teacher in Parshadiya Primary Schools. That is the scheme in vogue.

13. The candidates in the present case were finally selected to undergo Special Basic Training course, 2007. Before they could be actually sent for training, the Director, State Council of Research and Training addressed DIETs in the State to follow the judgment in Sunita Upadhyay which declared that so far as the BCT course is concerned, there is a specific stipulation in the advertisement that the candidates concerned to have the degree or diploma from the NCTE recognized institutions and since the candidates therein did not have the recognition of NCTE as on the date when they have obtained their B.Ed. and therefore, were not eligible to join the BTC course.

14. Before we proceed further, one important factor that is required to be borne in mind in the present case is that on the date of notification all the colleges from which the writ petitioners obtained their degrees were recognized by NCTE. We make it clear that the candidates securing the degrees from those institutions whose applications were ultimately rejected by NCTE stands entirely on different footing.

15. The real question that falls for our consideration is whether only B.Ed. candidates who have obtained this degree after grant of recognition by NCTE or those candidates who have obtained their degree when the application of the institution for recognition was pending or such of those candidates who have obtained B.Ed. degree prior to commencement of the Act on 1st July, 1995 are also eligible to join the BTC course. On an analysis of the material available on record and the submissions, the following are the various possible distinctions identified during the course of several levels of litigation concerning the issue:

(I) Degrees obtained from recognised institutions which have initiated such courses after the commencement of NCTE Act;

(II) Degrees obtained from institutions after the commencement of the Act during the pendency of applications seeking recognition which ultimately did not receive the recognition;

(III) Degrees obtained from institutions during the pendency of applications after which they have been recognized;

(IV) Degrees obtained from Universities and affiliated colleges thereof before the commencement of NCTE Act which have been granted recognition after the Act coming into force; and

(V) Degrees obtained from Universities and affiliated colleges before the commencement of the Act which have not been granted recognition.

SCHEME OF THE ACT

16. The NCTE Act, 1993 is an Act to provide for the establishment of National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, for regularization and proper maintenance of norms and standards in

the teacher education system and for matters connected therewith. The Act came into force with effect from July 1, 1995 the appointed date under Section 1 (3) of the Act. Section 2(i) defines "recognized institution" which means an institution recognized by the Council under Section 14. The said Section 14 which is relevant for our present purposes reads as under : Section 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 subsection (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 fulfill the requirements laid down in 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 subsection (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.

17. Section 16 of the Act mandates that the affiliating body to grant affiliation only after the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course or training under Section 15. Section 17 (3) declares that once

the recognition of a recognized institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution with effect from the end of the academic session next following the date of communication of the said order.

18. A fair reading and analysis of the scheme of the Act with respect to recognition of the institution imparting course or training in teacher education is an essential prelude to the core questions involved. On a plain reading of the provisions it is evident that on and from the date of enforcement of the Act, every institution offering or intending to offer the course or training in teacher education, was required to make application to the Regional Committee in such form and manner as may be determined by the regulations as provided in Section 14 of the Act. The proviso to Section 14(1) states 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 disposal of the application by the Regional Committee. What happens in case of existing institution makes application seeking recognition within the prescribed time but no decision is taken by the Council within the period of six months? Does it mean that the institution can impart training only for a period of six months and thereafter close the institution? Section 14(5) states that 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).

19. A plain reading of provisions suggests that all such institutions offering a course or training in teacher education prior to the Act coming into force, are entitled to continue such course or training until the application is disposed of provided such an application has been made within six months from the appointed day. The consequence of not being able to gain recognition is the discontinuance of the course. Once an application seeking recognition has been filed by the institution within the prescribed period of six months the institution is entitled to continue offering a course or training in teacher education until the disposal of the application by the Regional Committee. Once the recognition is granted by the Regional Committee to the institution offering a course or training in teacher education, the same shall relate back to the date of filing of application. Section 14(5) read with Section 14(1) enables the institution offering a course or training in teacher education on the appointed day to continue the course or training as the case may be during the pendency of the application seeking recognition and even in case of refusal of recognition, the course may have to be discontinued, only at the end of academic session. The institution offering training or course is entitled to award degree or certificate as the case may be.

VIEW OF THE NCTE

20. The NCTE made its stand clear, as is evident from the impugned order that after the enforcement of NCTE Act, the existing institutions on the appointed day offering a course or training in teacher education are entitled to continue such course or training provided such institutions apply for the grant of recognition under Section 14(1) of the Act within a period of six months and until the disposal of their application by the Regional Committee. The degrees obtained during the pendency of the application are valid and recognition of such institutions shall relate back to the date of application and all such institutions shall be deemed to have been recognized for all purposes in view of Section 14(1) of the NCTE Act. The NCTE reiterated its stand before us.

21. Prior to the enactment of NCTE Act, the degrees such as B.Ed. course for teacher education were being awarded by the Universities or by the recognized institutions by the University Grants Commission or by such bodies as authorized by the University Grants Commission. It is unreasonable to hold that all those degrees granted by the Universities or the bodies authorized by the University Grants Commission as the case may be were of sub- standard in nature in comparison to those degrees granted by the recognized institutions after the NCTE Act came into force. Such a view may amount to undermining the importance of the university education and the role played by the Universities in promoting the education and educational standards. Each of the Universities have their own systems and mechanism to grant affiliation to the institutions offering courses at the college/University level and grant of affiliation is never considered to be a matter of course. Universities always ensure maintenance of standards and degrees awarded only after successfully completing the prescribed syllabi and the examinations conducted by the Universities. The NCTE Act in no manner makes any distinction between the degrees granted by the Universities or authorized bodies recognized by the University Grants Commission prior to the enactment of the Act and the degrees granted by the recognized institutions after the Act has come into force. NCTE Act provides for the recognition of the institution offering course or training in teacher education and does not speak about recognition of the degrees granted by the institution prior to the Act coming into force. Thus, degrees granted by the institutions already in existence offering a course or training in teacher education shall be deemed to be at par with the degrees or certificates granted by the recognized institutions after the commencement of the Act provided those institutions in existence offering the course also received recognition under the Act.

22. In our considered view the State Government cannot make any distinction between the degrees obtained from the existing institutions prior to the Act coming into force but received recognition after the commencement of the Act and the degrees obtained from the recognized institutions after the Act coming into force. It is not shown how such a classification is based on an intelligible differentia and on a rational consideration and further how it bears a nexus to the purpose and object thereof. The impugned action of the State results in the classification or division of members of a homogeneous group and subjecting them to differential treatment without any rhyme or reason.

23. Learned senior counsel appearing for the State however submitted that the State which runs a training course with the approval of NCTE is entitled to prescribe the qualifications for candidates seeking admission to the course so long as the qualifications prescribed are not lower than those prescribed by or under the NCTE Act. The submission was that after the NCTE Act has come into force the State is justified in insisting and prescribing B.Ed. qualification from only such of those institutions recognized by NCTE. Reliance has been placed upon the decisions of this court in State of A.P. and Ors. Vs. Lavu Narendranath & ors. etc.³, Dr. Preeti Srivastava & Anr. Vs. State of M.P. & Ors.⁴ and State of T.N. & Anr. Vs. S.V. Bratheep (Minor) & Ors.⁵

24. There is no quarrel with the proposition that the State in its discretion is entitled to prescribe such qualifications as 3 (1971) 3 SCR 699 4 (1999) 7 SCC 120 5 (2004) 4 SCC 513 it may consider appropriate for candidates seeking admission into BTC course so long as the qualifications so prescribed are not lower than those prescribed by or under the NCTE Act. The State can always prescribe higher qualification, but the argument proceeds on the assumption that B.Ed. qualification obtained from only such of those institutions established and recognized by NCTE after the Act coming into force is higher or superior than the B.Ed. qualification obtained from the Universities or affiliated colleges duly recognized by the University Grants Commission prior to the Act coming into force. What is the rational basis for such a presumption? None. This fact assumes significance

particularly in the light of the fact that all the institutions from where the candidates obtained their B.Ed. qualification have themselves received recognition from the Regional Council after the NCTE Act came into force.

25. For all the aforesaid reasons, we are of the opinion that the impugned judgments do not suffer from any infirmities requiring our interference.

26. As a result, the appeals fail and are accordingly dismissed.