

RAJASTHAN HIGH COURT

Shah Goverdhan Lal Kabra Teachers College

Vs.

Union of India

D.B. Civil Writ Petition No. 1644 of 1999
(V.S. Kokje and S.C. Mital, JJ.)

09.08.2000

ORDER

V.S. Kokje, J.

1. This is a petition filed by a privately run educational institution conducting courses leading to the Degree of Bachelor of Education. The institution is affiliated to Jai Narain Vyas University, Jodhpur. The course leading to Degree of Bachelor of Education (B.Ed.) is being conducted by the petitioner institution right from the year 1961. In the year 1964, the petitioner institution started another course by the name of Bachelor of Education (Vacation Course) which is continuously being conducted since then. According to the petitioner, the education imparted in, what is known as B.Ed. (Regular Course) and B.Ed. (Vacation Course), is of the same standard and the only difference is that for the Regular Course, admissions are granted on the basis of the Pre-Teachers Education Test whereas admissions to the Vacation Course are granted by a Committee consisting of the Principal of the Institution and the Distt. Education Officer strictly as per the norms fixed for the purpose.

2. In the year 1993, the Parliament enacted the National Council for Teacher Education Act, 1993 (in short 'the Act'), which was brought into force from 1.7.1995.

3. According to the petitioner Institution, the Regulations under section 32 of the Act were framed and enforced on 24.2.96 and for all practical purposes, the Act effectively came into existence from 24.2.96 because without the Regulations, the Act could not have been enforced. According to the petitioner, under the mistaken impression that it was necessary for the Institution to apply for recognition under the Act, an application was made to the National Council for Teacher Education (in short

'NCTE') established under the Act. On 14.10.96, the Northern Regional Committee of the NCTE sent a communication to the Principal of the petitioner Institution asking for relevant information to decide upon the grant of recognition. The information sought included information about short history of the B.Ed. (Vacation Course), number of seats, details of teaching staff, fees charged, details of expenditure, details of the Syllabus, whether the syllabus is different from that of B.Ed. (Regular Course), if so, what was the difference, the duration of the course, method of teaching, method of admission, basis of selection and minimum qualifications etc. On 28.12.96, the petitioner Institution sent a detailed reply to each and every query. On 31.3.98, the Northern Regional Committee of the NCTE passed an order under section 14 of the Act granting permission to continue the B.Ed. (Vacation Course) till the disposal of its application for grant of recognition fixing the maximum number of seats in the Course to the seats available on 17.8.95. On 5.4.99, by an order passed by the Northern Regional Committee of the NCTE, the application for recognition of the B.Ed. (Vacation Course) made by the petitioner Institution was rejected and the petitioner Institution was directed not to admit students in B.Ed. (Vacation Course) from the year 1999-2000. It was also declared in the order that if the Institution flouts the direction, no University shall grant it affiliation and if the affiliation has already been granted, that would be cancelled and the degrees would not be recognized as valid qualification for employment with the Central Government, State Government, University or any educational institution receiving grant from the Central or State Government.

4. Aggrieved by the aforesaid order, this petition was filed after some correspondence seeking revocation of the order by the NCTE itself.

5. It was contended in the petition that the Act itself was ultra vires the Constitution because of lack of competence in the central legislation, to enact law on the subject. It is contended that determining qualifications for entry into government service is governed by the Rules framed under Article 309 of the Constitution of India, by the appropriate government which, in the State Services, is the State Government. The Parliament cannot make any law governing employment to the State Services. It is further contended that the Universities established under the enactments passed by the State Legislature and even by the Acts of Parliament cannot be made subservient to some other body. They should have requisite autonomy and authority to devise their own course, to have their own Rules of affiliation and standards of education. It is also contended that the Municipalities and Panchayati Raj Institutions are constitutionally

recognized institutions and educational institutions run by the Municipalities and Panchayati Raj Institutions cannot be divested of their power to decide upon the qualification of their prospective employees.

6. It was also contended that the impugned action was violative of the principles of natural justice as the decision was taken without affording an opportunity to the petitioner Institution to show cause. It is also contended that the petitioner was never told as to what were the norms fixed by the NCTE for recognition so that it could either conform to those norms or to challenge them as arbitrary and unreasonable. It was also contended that there was actually no difference between the standards of education imparted in the B.Ed. (Regular Course) and B.Ed. (Vacation Course) and that recognizing one course and derecognizing the other is discriminatory. It is also contended that when the NCTE recognized the correspondence courses, there could be absolutely no rational basis for not recognizing B.Ed. (Vacation Course). On this count also, the action is alleged to be discriminatory.

7. There were several other cases filed by individual employees who were denied opportunity of employment by the State on the ground that the qualifications which they possessed, were not obtained through the institutions recognized by the NCTE. All these cases were heard together as in those cases also, the question of vires of the provisions of the Act was involved. They are not being decided together because the factual situation in other cases is different and the only common point is the vires of the provisions of the Act.

8. In reply to the writ petition, the NCTE, the main contesting party, refuted the allegation made in the writ petition and contended that the Act was a perfectly valid piece of legislation. It was also contended that there was difference between the B.Ed. (Regular Course) and B.Ed. (Vacation Course) and therefore, there was nothing wrong in one course being recognized and the other not being recognized. It was also contended that the body which decides the grant of recognition or otherwise, is a body of technical experts and they are the best judges of the standard of education to be maintained in a recognized institution. The question of recognition is an academic question which has to be left to the academicians.

9. For examining the vires of the Act, it is necessary to first set out the relevant provisions of the Act. The Act has been enacted to provide for the establishment of the

National Council for Teacher Education with a view to achieve planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standard in the teacher education system and for matters connected therewith. Section 12 of the Act provides for the functions of the NCTE, which reads as under :-

"12. 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, the Council may -

(a) undertake survey and studies relating to various aspects of teacher education and publish the result thereof;

(b) make recommendations to the Central and State Governments, Universities, University Grants Commission and recognized institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;

(c) co-ordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions;

(e) lay 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 the course contents and mode of curriculum;

(f) lay down guidelines for compliance by recognized institutions, for starting new course or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examination and schemes of courses or training;

(h) lay down guidelines regarding tuition fees and other fees chargeable by recognized institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognized institutions;

- (k) evolve suitable performance appraisal system, norms and mechanisms for enforcing accountability on recognized institutions;
- (l) formulate schemes for various levels of teacher education and identify recognized institutions and set up new institutions for teacher development programmes;
- (m) take all necessary steps to prevent commercialisation of teacher education; and
- (n) perform such other functions as may be entrusted to it by the Central Government."

Section 13 of the Act provides for inspection of recognized institutions and communication of the Council's views in regard to the results of any such inspection. The Council is also empowered to make recommendations to the Institution regarding action to be taken as a result of such inspection after ascertaining the opinion of the Institution.

Chapter IV of the Act relates to recognition of teacher education institutions. Section 14 of the Act reads as under :

(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 the 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 in sub-clause (a), pass an order refusing recognition to such institution 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 Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training 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."

Section 15 deals with the commencement of new course or training in teacher education by a recognized institution.

Section 16 of the Act provides as under :

"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, under section 14 or permission for a course or training under section 15.

Section 17 of the Act deals with the contravention of provisions of the Act and consequences thereof. It reads as under :

"17(1) Where the Regional Committee is, on its own motion or on any representation received institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued there under, or any condition subject to which recognition under sub-section (3) of Section 14 or permission under sub-section (3) of Section 15 was granted, it may withdraw

recognition of such recognized institution, for reasons to be recorded in writing :
Provided that no such order against the recognized institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognized institution :

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under sub-section (1) -

(a) shall be communicated to the recognized institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and

(b) Shall be published in the Official Gazette for general information.

(3) 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 in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1) or where 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."

10. The first contention of the learned counsel for the petitioner is that the Parliament lacks legislative competence to enact a law on the subject on which the Act has been enacted. Three Entries of the three Lists of the Seventh Schedule of the Constitution of India are necessary to be considered on this point. Entry 66 of List I of the Seventh Schedule reads as under :

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Entry 32 of the List II of the Seventh Schedule reads as under :

"32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies."

Entry 25 of the List III of Seventh Schedule reads as under :

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Chapter-I of Part XI of the Constitution containing Articles 245 to 255, provides for legislative relations between the Union and the States. These Articles provide for distribution of legislative powers. Article 246 of the Constitution of India reads as under :

"246. *Subject-matter of laws made by Parliament and by the Legislatures of States.* - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India included in a State notwithstanding that such matter is a matter enumerated in the State List."

11. The contention of the petitioner is that Entry 66 of Union List of the Seventh Schedule does not empower the Parliament to prescribe the qualifications for entry into the State Services or for de-recognition of degrees and diplomas awarded by Universities. According to the learned counsel, the Entry only permits the legislation

on co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. In the garb of co-ordination and determination of standards in institutions, the degrees and diplomas obtained from such Universities established under valid legislation, cannot be declared to be void. It is further contended that Entry 66 of the Union List of the Seventh Schedule cannot over-ride the Rules made under Article 309 of the Constitution of India and cannot compel the State Government not to employ persons having degrees and diplomas from institutions not recognized by the NCTE.

12. On behalf of the respondents, apart from Entry 66 of List I of the Seventh Schedule, reliance is placed on Entry 25 of Concurrent List also which relates to education including technical education, medical education and universities subject to the provisions of entries 63, 64, 65 and 66 of Union List. It is contended that the Parliament will have legislative competence on the basis of Entry 66 of the Union List and Entry 25 of the Concurrent List. The respondents' contention is that entry 32 of the State List only relates to incorporation, regulation and winding up of Universities and does not relate to education or standards of education at all. It is submitted that all the State legislation on Universities is enacted on the basis of Entry 25 of the Concurrent List and, therefore, it has to be subject to Entry 66 of Union List as well as subject to any other law made by the Parliament in the field.

13. Several cases were cited in support of rival contentions.

In *Harakchand Ratanchand Banthia and others etc. v. Union of India and others*,¹ the Constitution Bench of the Supreme Court observed that the entries in the three lists are only legislative heads or fields of legislation; they demarcated the area over which the appropriate legislatures can operate. It is well established that the widest amplitude should be given to the language of the entries, the reason being that the allocation of subjects is not by way of scientific or logical definition but is a mere enumeration of broad and comprehensive categories. But some of the entries in the different lists or in same list may overlap or may appear to be in direct conflict with each other. It is then the duty of court to reconcile the entries and bring about a harmonious construction. An endeavor must be made to solve the conflict by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting and, where necessary, modifying, the language of the one by that of the other. It is a well

recognized canon of construction that a general power should not be so interpreted as to nullify a particular power conferred by the same instrument. In para 24 of this judgment, the doctrine of severability has been explained. It is observed that the real test as to whether the whole statute has to be struck down is whether what remains on the statute is so inextricably bound up with the invalid part that what remains cannot independently survive or as it is sometimes put whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that it *ultra vires*. In *The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and others*,² it was held that the entries in the three Legislative Lists are only legislative heads or fields of legislation that demarcate the areas over which the appropriate legislature operates and it is well settled that the language of the entries should be widely construed. If any entries overlap or are in direct conflict with each other, every attempt should be made to harmonise them, whether the entries belong to the same List or different Lists, so that no entry may be robbed of its entire content and made nugatory. In *State of Bombay v. Narottamdas*,³ the doctrine of pith and substance was held to postulate, for its application, that the impugned law is substantially within the legislative competence of the particular Legislature that made it, but only incidentally encroached upon the legislative field of another Legislature. The doctrine saves this incidental encroachment if only the law is in pith and substance within the legislative field of the particular Legislature which made it. In *Dr. Ram Pal Chaturvedi v. State of Rajasthan and others*,⁴ it was held that the Collegiate Branch Rules having been made pursuant to the power conferred by Article 309 of the Constitution, they must be given full effect subject to the provisions of any Act made by the appropriate legislature regulating recruitment and conditions of service of persons appointed to the Rajasthan Medical Service (Collegiate Branch). Such Act need not specifically deal with aforesaid Medical Services but it must be an Act as contemplated by Article 309 by or under which provision made regulating the recruitment and conditions of service taking within its fold the said Medical Services. In *Ch. Tika Ramji and others etc. v. The State of U.P. and others*,⁵ it was held that the repugnancy arises when the law made by the Parliament and the law made by the State Legislature occupy the same field; if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise. In *Motiram v. N.E. Frontier Railway*,⁶ it was observed that the general rule of interpretation which is common to statutory provisions as well as to constitutional provisions is to find out the expressed intention of the makers of the said provisions from the words of the

provisions themselves. It is also equally well settled that, without doing violence to the language used, a constitutional provision shall receive a fair, liberal and progressive construction, so that its true objects might be promoted.

In *Automobile Transport (Raj.) Ltd. v. The State of Rajasthan*,⁷ it was observed in para 21 that the legislative power conferred on the Parliament as well as State Legislature is subject to the provisions of the Constitution. Article 301 is one such provision and whether other parts of the Constitution are subject to Article 301 or not, legislative power is certainly made subject to it by the opening words of Article 245. To say therefore that the State Legislature had the power to pass the legislation under Entry 56 of List II does not mean that the State Legislature can pass any law under that entry ignoring the other provisions of the Constitution. The Act cannot, therefore, be valid merely because it was within the competence of the State Legislature. Its validity will still have to be judged with respect to the other provisions of the Constitution for the legislative power conferred under Article 245 is subject to the provisions of the Constitution and is not an unfettered power which can ride roughshod over the other provisions of the Constitution.

In the light of the above case law, let us now examine the constitutionality of the Act and its various provisions. The Parliament had power to legislate on Entry 66 of the Union List, is not disputed. It is only the scope of Entry 66 of the Union List which is in dispute. On behalf of the Union of India, it is contended that Entry 66 of the Union List read with Entry 25 of the Concurrent List will make the picture complete and the legislative competence should not be decided on the basis of Entry 66 of the Union List. There is no doubt that the Parliament can legislate on co-ordination and determination of standards in institutions for higher education or research and scientific technical institutions. It cannot also be doubted that the course leading to Bachelor of Education Degree would form part of higher education. It would of course be doubtful whether a Bachelor of Physical Education course could be deemed to be falling under the category of higher education nor research and scientific and technical subject. Entry 25 of the Concurrent List relates to education including technical education, medical education and universities. Read together, Entry 66 of the Union List and Entry 25 of the Concurrent List would mean that the State Legislature will have no power to legislate on the topic of education which is covered by Entry 66 and therefore, the State Legislature is not competent to legislate on coordination and determination of standards in institutions for higher education or research and scientific and technical education. Entry 32 in the State List relates only to incorporation, regulation and winding up of universities etc. It does not relate to

education at all. To say, therefore, that because the Universities established under the State Legislation are taking care of the standards of education, the Parliament could not have enacted law prescribing a particular standard of education to be imparted through universities and institutions, cannot be accepted. The functions of the NCTE enumerated in Section 12 of the Act, recognition of teacher education institutions provided in Sections 14, 15 and 16 of the Act, cannot therefore, be said to be beyond the scope of legislative powers of the Parliament. The difficulty arises only with Section 17(4) of the Act. Sub-sections (1), (2) and (3) of Section 17 of the Act provide for derecognition of an institution and they cannot be said to be, in any manner, beyond the scope of Entry 66 of the Union List read with Entry 25 of the Concurrent List.

14. However, the challenge to sub-section (4) of Section 17 of the Act is a serious one. The consequence of non-recognition or de-recognition of an educational institution provided by sub-section (4) of Section 17 of the Act is that 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 the purpose 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. We have to examine as to whether the Parliament was competent to legislate on this aspect.

15. Article 245 of the Constitution of India in its opening words restricts the legislative power of the Parliament and the State Legislature by making it subject to the provisions of the Constitution. Article 309 of the Constitution of India provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or of any State. So long as the appropriate Legislature does not enact a legislation on the subject, the President and the Governor have been given the powers to make Rules regulating recruitment and conditions of service of persons appointed to the Central or State Services. As we have already seen *Automobile Transport (Raj.) Ltd. v. State of Rajasthan* (supra) the words "subject to the provisions of this Constitution" do not take into account the Seventh Schedule of the Constitution. It is, therefore, clear that so far as the recruitment and conditions of service of persons in State Service are concerned, they shall be regulated by Article 309 of the Constitution and the Parliament or the

President of India will have no competence to legislate on the recruitment and conditions of service of persons in the State Services. The qualifications for entering into the State Service are no doubt conditions of service. Entry 70 of the Union List provides the legislative power to the Parliament to legislate on Union Public Service, All India Service, Union Public Service Commission. Entry 41 of the State List empowers the State Legislature to legislate on State Public Services and State Public Service Commission. There is no Entry in the concurrent List permitting the Parliament and the State Legislature to legislate on the conditions of service of employees of the State. It is, therefore, clear that the legislative power in respect of recruitment and conditions of service of the State Services rests with the State Legislature alone and in absence of legislation on the subject, it is the Governor of the State alone who can promulgate Rules governing the recruitment and conditions of service of the State Services. So far as the Universities are concerned, they are autonomous bodies established under Central or State legislation. They have been given powers to frame Rules relating to recruitment to the services under them. On the basis of legislation based on Entry 66 of the Union List and Entry 25 of the Concurrent List, the Parliament cannot take away the power of the Universities to decide upon the recruitment and conditions of service of their own employees unless such employees fall in the category of Union Public Service or All India Services covered by Entry 70 of Union List. For the same reasons, legislation on the recruitment and conditions of service of the employees of any school, college or other educational body, aided by the Central Government or the State Government cannot be made by the Parliament.

16. Even otherwise, it is for the employer to decide upon the minimum qualifications of his prospective employee. The field of employment is also governed by market conditions. If candidates are available in excess of demand, the employer can call shots by pegging up the requirement of qualifications by demanding higher qualification. If, however, the number of candidates available falls short of the demand, the qualifications have to be lowered. The State Government has to decide upon the qualifications for a post depending upon the availability of candidates with that particular qualification in the State. In our federal structure, the Centre cannot impose on the State such onerous conditions as to qualifications that the chances of employment of candidates from the State are reduced and the State Services are flooded and inundated by outsiders with excessive qualifications. This may also lead to a situation where the State may not get candidates with higher qualifications and for

that reason, the schools in the State may not have teachers. It would always be better to have an untrained teacher than having no teacher at all. It is also to be noted that when the State has the authority to decide upon the qualifications of its employees, it can not be compelled to have a particular qualification from a particular institution. When depending upon the market conditions of employment market it can decide to have an untrained teacher also, why can the State not decide to employ a candidate holding a B.Ed. or B.P. Ed. degree from an University established under law even though such a degree is obtained from an Institution not recognized by the NCTE. When the NCTE can not force any State Govt. or State Funded Institutions to employ only teachers having a particular qualification like B.Ed. or B.P.Ed. or when it can not force them not to employ candidates who do not have B.Ed. or B.P. Ed. Degrees, how can it derecognize any such degree for the purposes of employment with them ?

17. For the aforesaid reasons, we, hold that sub-section (4) of Section 17 of the Act is unconstitutional being *ultra vires* the Constitution of India .

Sub-section (4) of Section 17 of the Act is clearly severable from the other provisions of the Act and it is not necessary to declare the entire Act to be unconstitutional. We would, therefore, declare only sub-section (4) of Section 17 of the Act to be unconstitutional and declare that the challenge to the other provisions of the Act is not tenable.

18. As a consequence of our declaring Section 17(4) of the Act *ultra vires* the Constitution, the petitions which were heard along with this, of petitioners who were denied employment on the ground that they did not possess B.Ed. or B.P.Ed. degrees from an Institution recognized by NCTE will have to be allowed. They are being separately allowed. Many of those petitioners had earned their B.Ed./B.P.Ed. degrees prior to enforcement of the Act itself and could not have been denied employment.

19. This takes us to the next question relating to the de-recognition of the B.Ed. (Vacation Course) conducted by the petitioner Institution. The petitioner Institution in response to the queries made by the Northern Regional Committee of the NCTE vide its letter dated 14.10.96 (Annexure-1) had submitted a detailed reply to the queries on 28.12.96 (Annexure-2 to the petition). On 5.4.99 (vide Annexure-4) the Northern Regional Committee of the NCTE passed the impugned order de-recognizing B.Ed. (Vacation Course). The reasons stated in the said order were that (i) according to the

norms set up by the NCTE, only B.Ed. (Regular Course) and B.Ed. (Distance/Correspondence Course) could be conducted; (ii) teaching work was being taken for the B.Ed. (Vacation Course) from the same teachers who taught in the B.Ed. (Regular Course) whereas under the Rules, the staff should be separate; (iii) the entire amount realized as fees from students is not spent resulting in encouragement to commercialization; and (iv) the course does not fit in the norms fixed by the NCTE and therefore, cannot be recognized under section 14. Nothing has been put on record to show that before taking this decision, the petitioner Institution was apprised of the norms set up by the NCTE and was provided an opportunity to make a written representation as required by proviso to Section 14(3)(b) of the Act. Only asking information to furnish the details about the course from the Institution would not meet the requirements of the aforesaid provisions. Whenever it is found by the NCTE that an institution does not fulfill the criteria for recognition, it has to provide a reasonable opportunity to the concern Institution for making a written representation as to how it fulfill the conditions requisite for recognition. This can be only done by issuing the show cause notice stating the reasons and the grounds on which the Institution is proposed to be not recognized or de- recognized. Unless the Regional Committee of the NCTE spells out as to why it considers the Institution not fit for recognition, the Institution will have no opportunity to put forth its point of view and to as as to how it fulfils the criteria. The impugned order, therefore, is clearly vitiated for failure to comply with the principles of natural justice and the requirements of proviso to Section 14(3)(b) of the Act.

20. Even on merits, there is no case for re-recognition. The petitioner Institution has pointed out that when B.Ed. (Distance/Correspondence Course) is being recognized, non-recognition of B.Ed. (Vacation Course) is arbitrary and discriminatory. The NCTE has really given no answer to this. in the B.Ed. (Vacation Course), at least there is some face to face education. In the B.Ed. (Distance/Correspondence Course) obviously, face to face education is at a discount. The NCTE has in its reply, in para III of the preliminary submissions, made a bold statement to the effect that under section 15 of the Act, only face to face teaching mode is recognized and it does not permit correspondence course any mode of teaching and training teachers that does not fulfill the criteria as per the Act. When in the impugned order itself it is admitted that B.Ed. (Distance/Correspondence Course) is recognized, we fail to understand as to how any other Course, be it Vacation Course or quasi regular course, be held to be not up to the standard because face to face education element is absent there from or is

diluted to some extent. So far as the second reason for de-recognition of the petitioner Institution, namely that the services of the same staff were being utilized for teaching in the B.Ed. (Regular Course) as well as B.Ed. (Vacation Course), the petitioner Institution has explained that the B.Ed. (Vacation Course) is arranged in such a manner that the teachers have not to teach the students of B.Ed. (Regular Course) and the B.Ed. (Vacation Course) simultaneously during the same days. Obviously, B.Ed. (Vacation Course) is conducted when not only the students who are teachers, are on vacation but the students of the regular course are also on vacation. Thus, vacation in the B.Ed. (Regular Course) is being utilized for teaching the students of the B.Ed. (Vacation Course). the impugned order does not show as to why this system is held to be objectionable. After all, if the same staff is asked to teach in double shift, objection could be taken because that will lead to erosion of efficiency. But if during the vacations, the teachers of the B.Ed. (Regular Course) are required to teach the students of the B.Ed. (Vacation Course), it would not be that objectionable. Unless the vacation is held to be so essential for teaching staff for maintenance of their efficiency, then round the year working of the teaching staff should be prohibited. No objection could be taken by the NCTE to the same staff being used for another course in the vacation. Moreover, the petitioner Institution has also contended that it has separate staff for Vacation Course which allegation has not been refuted.

21. On the third ground for de-recognition i.e. the entire amount of fees realized from the students was not being spent, also, there are no details. As to how this conclusion was reached by the NCTE without any information and as to how this leads to commercialization, and as to whether the funds are siphoned off and if so, how, is also not spelled out.

22. The first ground for de-recognition of the petitioner Institution is that the B.Ed. (Vacation Course) does not fit in the norms prescribed by the NCTE. There is nothing on record to show that these norms were made available to the petitioner Institution. It is also vague to say that the B.Ed. (Vacation Course) does not fit in the norms prescribed by the NCTE, without pointing out as to which particular norm is not being fulfilled.

23. At the hearing, Norms and Standards for Teacher Education Institutions (Secondary) published in the year 1995 by the NCTE were shown to us. When asked to point out as to which of the norms have been violated by the petitioner Institution,

learned counsel for the NCTE could only point out clause 5.0 Norms for Staff. It is not the case that teacher taught ratio or the number of teachers or their qualifications is deficient. According to the learned counsel, the entire staff has to be full time on regular basis. Clause 5.4 provides so. It is submitted that taking double work from the same staff will violate the principle of employing the staff on full time and regular basis. It appears that what was intended by Clause 5.4. was that the Institution should not employ part time or temporary ad hoc teachers. If the teachers are employed on full time and regular basis, they will have proper firmness of mind for teaching and will not have to worry about taking any other job for supplementing their income. Taking extra work during vacations from the staff does not make it any lesser the staff employed on full time and regular basis. Actually, it is a better utilization of staff employed on full time and regular basis.

For the aforesaid reasons, we find that the impugned order de-recognizing the petitioner Institution is not tenable on merits also and the same deserves to be quashed and it is hereby quashed.

24. It is to be considered as to whether this Court should direct for granting recognition under section 14 of the Act to the petitioner Institution or should again require the respondent Nos. 1 and 3 to consider the question of recognition under section 14 of the Act afresh after affording proper opportunity to the petitioner Institution. It was contended on behalf of the petitioner that since the B.Ed. (Distance/Correspondence Course) is recognized, B.Ed. (Vacation Course) cannot be said to be inferior than that course and therefore, this Court itself can directly issue a mandamus to the respondent Nos. 2 and 3 to recognize the petitioner Institution under section 14 of the Act. Since both the sides have argued before us on the merits of the case and we have found that all the four grounds on which the Institution was derecognized are untenable, it would be proper for us not to send back the matter again to the NCTE for deciding upon the question of recognition under section 14 of the Act especially when the B.Ed. (Regular Course) of the Institution is already recognized.

We, therefore, direct that the NCTE shall issue the certificate of recognition to the B.Ed. (Vacation Course) also, of the petitioner Institution, which has already been recognized by it for B.Ed. (Regular Course). There shall be no order as to costs.

The writ petition stands disposed of accordingly.

Order accordingly

1. AIR 1970 SC 1453
2. AIR 1962 SC 1044
3. AIR 1951 SC 69
4. 1970(1) SCC 75
5. AIR 1956 SC 676
6. AIR 1964 SC 600
7. 1957 RLW 456