

***HON'BLE SRI JUSTICE R.KANTHA RAO**

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+WRIT PETITION NO.13998 OF 2015

% Date:06.08.2015

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Between:

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Mahasivabhattu Venugopalkrishnamraju and eight others

...Petitioners

And

\$ The State of A.P. rep. by its Principal Secretary, School Education,
Hyderabad and another

...Respondents

! Counsel for petitioners: Sri R. Srikanth

^ Counsel for respondents: Govt.Pleader for School Education (AP)

< **GIST:**

>HEAD NOTE:

? Cases referred:

1. (1997) 3 SCC 261
2. (2014) 10 SCC 1
3. AIR 2012 SUPREME COURT 2375
4. AIR 2013 SUPREME COURT 2310
5. AIR 2006 SUPREME COURT 1806

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WRIT PETITION NO.13998 OF 2015

Between:

Mahasivabhattu Venugopalkrishnamraju and eight others

...Petitioners

And

The State of A.P. rep. by its Principal Secretary, School Education,
Hyderabad and another

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R. KANTHA RAO

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|---|---|---------------|
| 1 | <u>Whether Reporters of Local newspapers
may be allowed to see the Judgments?</u> | <u>Yes/No</u> |
| | | |
| 2 | <u>Whether the copies of judgment may be
marked to Law Reports/Journals</u> | <u>Yes/No</u> |
| | | |
| 3 | <u>Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

HON'BLE SRI JUSTICE R. KANTHA RAO

WRIT PETITION NO.13998 OF 2015

ORDER:

The petitioners are unemployed and have been aspiring to pursue teaching profession. It is submitted that as per the norms laid down by the National Council for Teacher Education (for short 'NCTE') to become eligible for the post of Selection Grade Teachers (for short 'SGTs') for getting appointment as teachers for Class I to V, the minimum qualification laid down is intermediate plus Diploma in Education (for short 'D.Ed.'). Similarly, for getting appointment as teachers for Class VI to VIII, the minimum qualification is Bachelor of Education (for short 'B.Ed.'). The petitioners have completed their B.Ed. The 'NCTE' has laid down certain guidelines dated 11.02.2011 to be followed by the State Government for appointment of teachers to primary and upper primary classes. The minimum qualifications for a person to be eligible for appointment as teacher for Class I to VIII is laid down vide notification, dated 23.08.2010. As per the said notification, one of the essential qualifications to be eligible for teaching in schools referred to in Section 2 (n) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 is that he/she should pass the Teacher Eligibility Test (for short 'TET') conducted by the appropriate Government.

2. It is further submitted that as per the above guidelines of 'NCTE' the appropriate Government should conduct the 'TET' at least once in every year and the qualifying certificate obtained by an individual would be valid for seven years. However, 'TET' was conducted twice every year by the State Government in view to meet the requirement of filling up of vacancies to the posts of teachers as the same was growing day by day. There is no age limit or restriction on number of attempts

prescribed by the 'NCTE' for appearing in the 'TET'. After qualifying the 'TET' examinations, the State Government conducts Teachers Recruitment Test (for short 'TRT') through District Selection Committee (for short 'DSC'). The petitioners have been qualified 'TET' examinations and are eligible for writing the 'TRT' examinations conducted by the 'DSC'.

3. Nextly, it is submitted that the State Government vide G.O.Ms.No.4, dated 09.01.2012 has laid down rules for direct recruitment for the post of teachers where the method of recruitment prescribes selection process consisting of written test and other criteria where the total marks shall be 100 out of which 80% shall be for written test i.e. 'TRT' and remaining 20% for 'TET'. Therefore, according to the petitioners earlier there were two different set of examinations i.e. 'TET' and 'TRT'. While appearing for 'TRT' the individual would be given 20% weightage in the 'TRT' examinations which is as per the 'NCTE' guidelines.

4. It is submitted that while the matter stood thus, the second respondent by giving a go-by to the 'NCTE' guidelines for recruitment of teachers, issued G.O.Ms.No.38, dated 19.11.2014. As per the said G.O. both the 'TET' and 'TRT' have been combined into one single test called as the Teachers Eligibility Test-cum-Teacher Recruitment Test, 2014. An information bulletin based on the said G.O. was issued calling for online applications for recruitment to the post of School Assistants, Language Pandits, Secondary Grade Teachers, Physical Education Teachers in Government, Zilla Parishad, Mandal Parishad and Municipal Schools in the State through District Selection Committee.

5. The version of the petitioners is that by conducting the aforesaid integrated test, the respondents have given a complete go-by to the 'NCTE' guidelines and norms and have arbitrarily introduced several

changes to the existing recruitment system, due to which the aspiring candidates throughout the State were forced to write the above test. Apart from clubbing the two examinations of 'TET' and 'TRT', the G.O. arbitrarily prescribes the upper age limit as 40 years for the said examination without any basis. The said G.O. also does not give any clarity as to how weightage would be given with respect to percentage of marks obtained by the candidates in 'TET' and 'TRT' as it was given previously. Apart from that the said examinations are proposed to be conducted only once in every year as opposed to 'TET' exams which were being conducted twice every year. Moreover, the notification has been given combining the Zilla Parishad as well as government schools which is not proper. It is further submitted that the petitioners who have already qualified the 'TET' are once again forcibly made to write the new pattern of examination without considering their earlier qualification. According to the petitioners, due to the new policy adopted by the State, thousands of eligible candidates such as the petitioners would lose the opportunity to become teachers because the impugned G.O. introduces cut off age to appear for exams as 40 years. Similarly, they were also forcibly made to write the examinations in which they have already qualified.

6. The petitioners, therefore, filed the present writ petition to issue a writ of mandamus declaring the G.O. Ms.No.38, dated 19.11.2014 as arbitrary, illegal, unjust and contrary to law and in violation of the fundamental rights guaranteed under the Articles 14, 19 and 21 of the Constitution of India as well as the Right to Education Act, 2009 and 'NCTE' guidelines and consequently to quash the same.

7. W.P.M.P.No.18340 of 2015 was filed to stay the examinations scheduled to be conducted on 09.05.2015 or in the alternative to direct the respondents to allow the petitioners to take up only 'TRT'

examination as they have already qualified 'TET'. The learned single Judge on 01.05.2015 while issuing notice before admission, passed the following interim order:

"The State Government should specifically advert as to whether 2014 Rules have been repealed specifically the earlier rules made on 09.01.2012 or not.

Post on 03.06.2015 in Motion List.

However, by 03.06.2015 the selections may not be finalized."

8. After receiving the notice, the respondents filed their counter along with a petition to vacate the interim order passed by the learned single Judge.

9. In the counter-affidavit, the respondents contended *inter alia* as follows:

a) The Government of Andhra Pradesh issued G.O.Ms.No.38, School Education (Exams Department) dated 19.11.2014 whereby issued rules for Teacher Eligibility test-cum-Teacher Recruitment Test to the posts of teachers. While exercising its powers conferred by Article 309 of the Constitution of India, the said rules were issued duly incorporating the norms and conditions of the eligibility criteria provided by 'NCTE'.

b) It is submitted by the respondents that the impugned G.O.Ms.No.38, School Education (Exams Department) dated 19.11.2014 was issued by duly rescinding earlier government orders issued in the G.O.Ms.No.51 School Education Genl.Department, dated 16.04.2011. The State Government has power to issue such G.O. and the G.O. was issued with non obstacle provision. Under Rule 20(b) of the Andhra Pradesh Teacher Eligibility Test (TET)-cum-Teacher Recruitment Test (TRT) clearly lays down that notwithstanding any provisions to the contrary contained in any other rules relating to recruitment of teachers, the provisions of these rules shall provide and be applicable for the

purpose of recruitment of teachers, 2014. Thus, according to the respondents, the rules have overriding effect over the earlier G.O. and in view of the above, the earlier orders issued are *non est* in the eye of law. It is further contended that even it is not the case of the petitioners that the government has no power to issue the G.O.Ms.No.38, dated 19.11.2014.

c) Nextly, it is contended that the said guidelines issued by the 'NCTE' empowers the respective State Governments to conduct 'TET' so as to apply to the schools of the State Government. Under Rule 10(b) (i) of the said Rules the State Government is empowered to issue 'TET' notification and rules thereon. Keeping in view the rules of NCTE, the Government of Andhra Pradesh issued the TET-cum-TRT for the posts of teachers vide G.O.Ms.No.38, dated 19.11.2014 and the said G.O. issued by the Government is in exercise of powers conferred by the Constitution of India under Article 309 and also invoking the respective provisions of the Andhra Pradesh Education Act, 1982. By virtue of the issuance of the said G.O., the earlier orders issued in this connection have been superseded.

d) It is further clarified that under Rule 20 of the G.O.Ms.No.38 dated 19.11.2014 it is specifically mentioned that notwithstanding any provisions to the contrary contained in any other rules relating to recruitment of teachers, the provisions of these rules shall prevail and be applicable for the purpose of recruitment of teachers, 2014. Thereby it is implicit that the earlier government orders issued relating to appointment of teachers is superseded. Therefore, the version of the respondents is that the present rules prevail over the earlier rules. They contended that the executive authority has every right to implement the policy decisions of the government. Unless and until there is infringement of constitutional right or the very rules issued by the government are

repugnant to the constitution, the petitioners can not approach this Court by invoking the extraordinary power vested in this Court under Article 226 of the Constitution of India. The petitioners have no judicially enforceable right to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

e) It is submitted that Rule 4(1)(b)(iv) clearly indicates that the candidates should have either been qualified in earlier Andhra Pradesh 'TET' or should obtain minimum qualifying marks in the present 'TET-cum-TRT'. That apart, Rule 16(b) of the Rules clearly indicates the candidates who have already qualified in earlier Andhra Pradesh 'TET' will be given 20% of weightage for their 'TET' score. Therefore, the contention of the petitioners that the G.O. is silent with regard to weightage of marks in respect of earlier 'TET' has no basis.

f) It is further submitted that Rule 11 of the Rules prescribes the upper age limit as 40 years. In this context, it is contended by the respondents that it is for the authorities to prescribe the educational qualifications, age and a person to be qualified, he shall be within the age restriction imposed by the authorities, otherwise, it will be difficult for the authorities to make scrutiny as to whether a person acquired the requisite qualification or within the age limit and such requirement cannot be termed as arbitrary as there is nexus with the object sought to be achieved.

g) Nextly, it is submitted by citing certain judgments of the Apex Court that the age limit or the eligibility qualifications cannot be indefinite and it is for the authorities to fix the same and not for the Courts to interfere and therefore, prescribing the upper age limit cannot be said to be arbitrary and such a precondition is perfectly valid.

h) Lastly it is submitted that there is no violation of any of the statutory provisions or regulations or the guidelines issued by the

‘NCTE’. As there is no inconsistency between the impugned G.O. and the guidelines issued by the ‘NCTE’ and as the petitioners are not able to establish the infringement of any of constitutional right, the writ petition is not maintainable in law.

i) Contending as above, the petitioners sought to dismiss the writ petition and vacate the earlier interim order, dated 01.05.2015 passed by this Court.

10. The petitioners filed the reply affidavit reiterating the averments made by them in the affidavit filed in support of the writ petition. They submitted that the item of education is in Entry 25 of the List III – Concurrent List. For the items in the Concurrent List, the State Government as well as the Central Government will have powers to make legislations, pass orders, issue G.Os. subject to the constitutional validity. It is well settled law that if any contradiction or dispute arises in between Central Government Legislation and the Legislation made by the State Government in relation to the items in the concurrent list, the Central Government Legislation would prevail over the State Government Legislation. It is submitted by them that the ‘NCTE’ issued notification dated 23.08.2010 laying down the minimum qualifications for appointment as teachers in class I to VIII in a school referred to in Clause (N) of Section 2 of the Right to Children to Free and Compulsory Education Act, 2009. As per the said notification, the candidates have to pass ‘TET’ to be conducted by the appropriate Government in accordance with the guidelines framed by the ‘NCTE’ for the purpose. In pursuance thereof, the Government of Andhra Pradesh has issued notifications for ‘TET’ for four times i.e. May, 2011, January, 2012, May, 2012 and September, 2013 till passing of G.O.Ms.No.38, dated 19.11.2014. The Andhra Pradesh ‘TET’ certificates/marks memo as per the aforesaid notifications shall be valid for a period of seven years. Therefore, according to the

petitioners, the G.O.Ms.No.38, dated 19.11.2011 issued by the Government of Andhra Pradesh which mandates the petitioners to compulsorily write the TET-cum-TRT examination is illegal and is liable to be set aside. It is further submitted that in the TET-cum-TRT only 37.57% of the candidates have been qualified and the above said percentage is inclusive of candidates who were already qualified in the previous 'TET' examinations. So, the version of the petitioners is that the public interest, if any, while considering this writ petition shall lean in favour of the writ petitioners and the candidates who have already qualified in the previous 'TET' examinations. Their version is that suppose the candidates who were already qualified in the previous 'TET' examinations, fail in the present TET-cum-TRT examinations, they will not get the jobs, they are losing the opportunity of employment and therefore, the G.O.Ms.No.38, dated 19.11.2014 is violative of principles of natural justice and violative of Articles 14 and 16 of the Constitution of India.

11. I have heard the learned counsel appearing for the petitioners and the learned Government Pleader for School Education appearing for the respondents.

12. The basic contention raised by the respondents in this writ petition is that the writ petition is not maintainable on account of the bar in Sections 15 and 28 of the Administrative Tribunals Act, 1985 (the Tribunals Act, for short).

13. The Andhra Pradesh State Administrative Tribunal (APAT) was created under Article 323-A of the Constitution of India. As per Section 15 of the Tribunals Act, the State Administrative Tribunal exercises all the jurisdiction, powers and authority exercisable immediately before the appointed day by all courts (except the Supreme Court) in relation to –
(a) recruitment and all matters concerning recruitment to any civil

service of the State or to any civil post under the State; (b) all service matters of the State within its jurisdiction with certain exceptions mentioned therein.

14. Section 28 of the Tribunals Act dealing with exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution of India lays down that on and from the date from which any jurisdiction, powers and authority become exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post (no court except – (a) the Supreme Court; or (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

15. The respondents quoting the above said provisions contended that the petitioners cannot directly approach the High Court by invoking the jurisdiction under Article 226 of the Constitution of India without initially approaching the APAT and therefore, the writ petition is not maintainable.

16. Here, it would be necessary to notice that the petitioners challenged G.O.Ms.No.38, dated 19-11-2014 issued by the Government of State of Andhra Pradesh on the ground that it is arbitrary and illegal and violative of Fundamental Rights guaranteed under Articles 14, 19 and 21 of the Constitution of India and also that it is contrary to the provisions of the Right to Education Act, 2009 and NCTE guide lines and to quash the said G.O. The Notification for the integrated test of TET cum TRT, 2014 was issued under the said G.O. The G.O., thus relates to issuing a Notification for conducting an examination to recruit the

teachers but so far no recruitment has taken place. The subject matter of challenge in the writ petition, therefore, does not relate to the recruitment as such but it relates to an examination notified under the impugned G.O. Therefore, in the considered view of this Court, the APAT has no authority, jurisdiction or power to decide upon the validity of the said G.O. Even otherwise, the Tribunals Act does not take away the power of judicial review vested in the High Court under the Constitution of India.

17. In **L.CHANDRA KUMAR v. UNION OF INDIA**^[1], the Supreme Court held as follows:

“We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdiction is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation is equally to be avoided.

Clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional.

Section 28 of the Administrative Tribunals Act, 1985 and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B are, to the same extent, unconstitutional.

The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of

the Constitution.

However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental – as opposed to a substitutional – role in this respect.

The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules.

Therefore, the Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls.”

18. Thus, the APAT though competent to hear matters where vires of the statutory provisions are questioned, its powers are supplemental to the High Court but not substitutional.

19. In this context, it is also necessary to go through the judgment of the Supreme Court in **MADRAS BAR ASSN. v. UNION OF INDIA**^[2], wherein the Supreme Court held as follows:

“Thus, clearly judicial review is a part of the basic structure of the Constitution. However, Parliament is competent to amend the Constitution and substitute in place of the High Court another alternative institutional mechanism (court or tribunal), but which is no less effective than the High Court itself. The power of judicial review over legislative action vested in High Courts is a part of the basic structure, and “ordinarily” the

power of High Courts to test the constitutional validity of legislations can never be ousted. The powers vested in High Courts to exercise judicial superintendence over decisions of all courts and tribunals within their respective jurisdictions is also a part of the basic structure of the Constitution. Thus, though Parliament is competent to enact a law transferring the jurisdiction exercised by High Courts in regard to any specified subject under any law, to any court/tribunal, however Parliament cannot transfer power vested in the High Courts by the Constitution itself.”

20. Thus, the APAT has power and jurisdiction to hear the matters relating to recruitment and services of the employees in discharge of its supplemental functions conferred under the Tribunals Act but it cannot exercise the power of judicial review. Merely because the APAT has power and jurisdiction over the matters relating to recruitment and services of the employees, it cannot be said that a party, who intends to challenge the validity of a G.O., issued by the Government, can, in the first instance, has to necessarily approach the APAT before invoking the jurisdiction of the High Court under Article 226 of the Constitution of India. Therefore, this Court is of the considered view that the writ petition filed by the petitioners challenging G.O.Ms.No.38, dated 19-11-2014, is maintainable in this Court and this Court can examine the validity of the G.O., in exercise of its powers under Article 226 of the Constitution of India.

21. The crucial question that arises for determination in the present writ petition is whether the G.O.Ms.No.38, dated 19.11.2014 basing on which the Government of Andhra Pradesh conducted ‘TET-cum-TRT’ is contrary to the ‘NCTE’ norms prescribed by Central Government.

22. The incidental question which also requires determination is whether the petitioners who passed ‘TET’ are able to establish that their legal right has been violated on account of ‘TET-cum-TRT’ conducted by

the State Government.

23. In the affidavit filed in support of the writ petition, the petitioners contended that the impugned G.O. is silent about the weightage of 20% of marks to be given to the persons who qualified the 'TET'. But, the respondents have clarified in their counter that in the rules made under the G.O. it has been clarified that 20% weightage of marks will be given to the candidates who passed the 'TET' and also wrote the integrated 'TET-cum-TRT'. The contention of the respondents is that they conducted the impugned test in exercise of powers conferred on the State Government by Article 309 of the Constitution of India duly incorporating the norms and conditions of the eligibility criteria provided by 'NCTE'. They also specifically contended that G.O.Ms.No.38 was issued by duly rescinding earlier government orders issued in the G.O.Ms.No.51 School Education Genl.Department dated 16.04.2011. As rightly contended by them it is not the specific case of the petitioners that the government has no power to issue the present G.O. The G.O. is liable to be set aside only in the event it infringes the legal rights of the petitioners.

24. In this context, it would be necessary to refer to the following judgments relied on by the learned counsel appearing for the petitioners:

. **STATE OF KERALA AND OTHERS v. M/s. MAR APPRAEM KURI CO. LTD. AND ANOTHER**^[3] .

. **ASSOCIATION OF MANAGEMENT OF PRIVATE COLLEGES v. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION AND OTHERS**^[4] .

25. In the judgment 3rd cited, the Apex Court held as follows:

"Under clause (1) of Article 254 of Constitution of India, a

general rule is laid down to say that the Union law shall prevail where the State law is repugnant to it. The question of repugnancy arises only with respect to the subjects enumerated in the Concurrent List as both the Parliament and the State Legislatures have concurrent powers to legislate over the subject matter in that List.”

26. In the judgment 4th cited, the Apex Court held as follows:

“To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

If there is conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.”

27. The situation in the present case has to be examined in the light of the aforesaid judgments of the Apex Court.

28. The ‘NCTE’ vide letter dated 11.02.2011 issued guidelines to conduct ‘TET’ under the Right to Children to free and Compulsory Education Act, 2009. The said guidelines issued by the ‘NCTE’ empower

the respective State Governments to conduct 'TET' so as to apply the schools of the State Government. Under Rule 10 (b)(i) of the said Rules the State Government is empowered to issue 'TET' notifications and rules thereon. Keeping in view the Rules of 'NCTE' the Government of Andhra Pradesh issued the Andhra Pradesh 'TET-cum-TRT' for the posts of teachers vide G.O.Ms.No.38, dated 19.11.2014. The said G.O. was issued by the State Government in exercise of powers conferred on it by the Constitution of India under Article 309.

29. It is the specific contention of the respondents that in the present case the G.O. is not in violation of the 'NCTE' norms, but it is inconformity with the said norms. I have gone through the G.O.Ms.No.38 and the norms issued by the 'NCTE'. So long as the G.O.Ms.No.38, dated 19.11.2014 pursuant to which the 'TET-cum-TRT' which is conducted by the State Government is repugnant to the norms prescribed by the 'NCTE', it cannot be said that issuance of G.O. is the result of arbitrary exercise of power and it has to be struck down.

30. Before parting with the order, it is necessary to refer to the following judgment relied on by the learned counsel appearing for the respondents.

SECRETARY, STATE OF KARNATAKA AND OTHERS v.

UMADEVI AND OTHERS^[5] wherein the Constitution Bench of the Hon'ble Supreme Court held as follows:

"The doctrine of legitimate expectation can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has

been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.”

31. If we examine the facts of the present case in the light of the above judgment, the following conclusions would follow:

- i) The ‘NCTE’ issued certain guidelines to the State Governments in relation to conducting the ‘TET’ and it is left to the discretion of the States to work out the details.
- ii) The petitioners cannot contend that the same pattern of examination can be continued forever.
- iii) So long as the legal rights of the petitioners are not infringed and conducting ‘TET-cum-TRT’ by the State Government is in violation of the principles of natural justice, the petitioners cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.
- iv) Even if they passed the ‘TET’, necessarily they have to attend for the ‘TRT’ which according to them has to be separately conducted.
- v) The State Government thought it fit to conduct a single test keeping in view the difficulties which are to be faced by the aspirants of teacher posts as well as the government to conduct a single integrated test. The petitioners were also permitted to appear for the examination and in the rules made under G.O.Ms.No.38 a weightage of 20% marks were given to them.
- vi) Rule 4(1)(b)(iv) of the Rules framed by the government

under the G.O. clearly indicates that the candidates should have either been qualified in earlier Andhra Pradesh 'TET' or should obtain minimum qualifying marks in the present 'TET-cum-TRT'. Therefore, it is obvious that the candidates who appeared and passed in earlier Andhra Pradesh 'TET' are qualified and eligible for the present integrated test.

- vii) This apart, Rule 16(b) of the Rules clearly indicates that the candidates who have already qualified in earlier Andhra Pradesh 'TET' will be given 20% of weightage for their earlier 'TET' score.
- viii) Insofar as regards the upper age limit is concerned, it is for the State Government to prescribe the eligibility criteria as well as the age limit and the said power of the government cannot be questioned.
- ix) A person as per the notification issued has to possess the requisite qualification and also shall be within the age restriction prescribed by the government. The said power of the government cannot be questioned by the petitioners.
- x) This Court is not supposed to interfere with the eligibility criteria and the age limit prescribed by the government in exercise of jurisdiction under Article 226 of the Constitution of India.

32. For the foregoing reasons, this Court is of the considered view that the petitioners are not able to establish that the G.O.Ms.No.38, dated 19.11.2014 is repugnant to the 'NCTE' guidelines. They are also not able to establish that any of their legal rights have been infringed or violated or at least their interest has been prejudiced. Therefore, there are absolutely no valid grounds to set aside the G.O.Ms.No.38, dated

19.11.2014.

33. Consequently, the writ petition is dismissed as not maintainable.
There shall be no order as to costs. Miscellaneous petitions, if any, filed
in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:06.08.2015

Note:

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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[\[1\]](#) (1997) 3 SCC 261
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[\[3\]](#) AIR 2012 SUPREME COURT 2375
[\[4\]](#) AIR 2013 SUPREME COURT 2310
[\[5\]](#) AIR 2006 SUPREME COURT 1806