

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

-

W.P.Nos.10530, 10640, 10856, 12100, 14611, 15290,
22519 & 27588 of 2015

-

COMMON ORDER:

Since the issues that fall for consideration of this Court in all these writ petitions are the same and similar and interrelated, this Court deems it appropriate and apposite to hear and dispose of all these writ petitions by way of this common order.

2. In W.P.Nos.10530, 10640, 10856, 12100, 14611, 15290 of 2015 challenge is to the Notification dated 7.4.2015 issued by the A.P. State Council of Higher Education-2nd respondent, inviting applications from registered Educational Societies for starting new private un-aided Degree Colleges to the extent of new Degree Colleges in Piler Mandal of Chittoor District, Allagadda and Gudur Mandals of Kurnool District, all Mandals in Anantapur District, Piler and Pulicherla Mandals of Chittoor District.

3. In W.P.No.22519 of 2015, challenge is to the order passed by the A.P. State Council of Higher Education-2nd respondent vide proceedings No.RU-NDC-1902/APSCH/AC/NDC/2015-16-02 dated 4.7.2015, keeping the permission granted in favour of the petitioner in abeyance.

4. In W.P.No.27588 of 2015 challenge is to the order of the A.P. State Council of Higher Education-2nd respondent in granting permission in favour of 5th respondent vide proceedings dated 26.8.2015 for establishment of Degree College in Nandikotkur Mandal of Kurnool District.

5. Petitioners in W.P.Nos.10530, 10640, 10856, 12100, 14611, 15290 and 27588 of

2015 are the Private un-aided Degree Colleges established by the Registered Societies, imparting training in under graduate courses. According to the petitioners in these writ petitions, they are providing quality education with qualified faculty and infrastructure and having satisfied with the instructional and infrastructural facilities, the University has been extending the affiliation year to year since their inception. Petitioner in W.P.No.22519 of 2015 is a new Degree College established at Maruthi Nagar of Gudur, Gudur Mandal, Kurnool District and in response to the notification dated 7.4.2015, it made an application for starting new Private Unaided Degree College/UG/PG Courses for the academic year 2015-16 and the State Council of Higher Education-2nd respondent vide proceedings No.RU-NDC-1902/APSCH/AC/NDC/2015-16 dated 27.6.2015 granted provisional permission and in pursuance of the orders of this Court dated 3.6.2015 in W.P.No.15290 of 2015 the State Council of Higher Education-2nd respondent vide proceedings No.RU-NDC-1902/APSCH/AC/NDC-2015-16-02 dated 4.7.2015, kept the said provisional permission in abeyance and the same is under challenge in W.P.No.22519 of 2015.

6 .The State Council of Higher Education issued a Notification bearing No.APSCH/AC-II/NDC/UG/PG/2015 dated 7.4.2015, inviting applications from the registered Educational Societies for starting new Private Unaided Degree Colleges in identified mandals, starting of Unaided UG and PG courses in the existing affiliated Aided and Unaided Degree Colleges for the academic year 2015-16 in the State of Andhra Pradesh.

7 . Institutions responded to the notification dated 4.7.2015 and affected by the interim orders passed by this Court filed implead and vacate applications supported by affidavits, denying the averments in the writ affidavits and in the direction of justifying the impugned notification dated 4.7.2015 issued by the State Council of Higher Education.

8 . SUBMISSIONS/CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS IN W.P.Nos.10530, 10640, 10856, 12100, 14611, 15290 OF 2015 AND THE 4TH RESPONDENT IN W.P.NO.22519 OF 2015 WHO IS PETITIONER NO.3 IN WP NO.15290 OF 2015:

8.1 The questioned notification dated 7.4.2015 issued by the State Council of Higher Education is highly arbitrary, illegal, unreasonable and violative of Articles 14 and 19(1) (g) of the Constitution of India and opposed to the very spirit and object of the provisions of the A.P. Education Act, 1982 and the Rules framed thereunder as notified vide G.O.Ms.No.29 dated 5.2.1987.

8.2 The impugned notification is contrary to Section 20 and Rule 4 of the 1987 Rules.

8.3 No mandatory survey to ascertain the educational needs of the locality was undertaken prior to issuing the impugned notification and number of pass outs from Junior Colleges was not taken into account.

8.4 Study for ascertaining the requirement for new colleges is essential and mandatory and is not a mere formality before granting permission.

8.5 The existing Degree Colleges of the petitioners are fully equipped to cater the needs of the localities and there is no further need of other colleges and it would lead to unhealthy atmosphere in the localities if other colleges are permitted.

8.6 Section 20 read with Rule 4 of the Rules obligate the authorities and the applicants to show the needs of the locality and the respondents did not discharge the said statutory responsibility.

8.7 There is absolutely no mention of any survey undertaken in the impugned notification.

8.8 No institution can be established except as per the provisions of Section 20 read with Rule 4 of the Rules.

8.9 Counter is absolutely silent on the particulars of survey and the material on which decision is arrived at by the State Council of Higher Education.

8.10 As per the counter a meeting was held in the office of the state council with the university authorities but what material the universities supplied is not forthcoming and the particulars in the counter disclose improper survey.

8.11 The impugned action is contrary to the Full Bench judgment of this Court in **Society of St. Ann's Mehdipatnam, Hyderabad v. the Secretary to Government, Education Department, Hyderabad and others.**

9. Learned Advocates, in support of their submissions and contentions, also placed reliance on the judgment reported in **Dipak Babarla and another v. State of Gujarat and others.**

10. SUBMISSIONS/CONTENTIONS OF SRI V KISHORE, LEARNED STANDING COUNSEL FOR THE STATE COUNSEL OF HIGHER EDUCATION:

10.1 There is no illegality in the impugned action and strictly adhering to the provisions of Section 20 of the Act, the State Council of Higher Education issued the impugned notification dated 7.4.2015.

10.2 Only after holding elaborate enquiry and after receiving sufficient inputs from various sources and taking into consideration the opinions of the academicians only, the 2nd respondent issued the questioned notification.

10.3 Taking into account the educational needs of the locality, the 2nd respondent invited applications by way of impugned notification.

10.4 The very foundation for assailing the notification is untenable and based on presumptions.

11. The learned Standing Counsel relies on the judgments in **Harnam Singh and others v. Regional Transport Authority, Calcutta Region and others** and **Hans Raj Kehar and others v. The State of U.P. and others**.

12. SUBMISSIONS/ CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER IN W.P.No.22519 OF 2015 AND RESPONDENTS IN OTHER WRIT PETITIONS

12.1 There is no illegality nor there is any procedural infirmity in the impugned notification and in the absence of the same, the petitioners in Writ Petition Nos.10530, 10640, 10856, 12100, 14611 and 15290 of 2015 are not entitled for any relief from this court under Article 226 of the Constitution of India.

12.2 The impugned notification is in conformity with the provisions of Section 20 of A.P. Education Act, 1982 and 1987 Rules.

12.3 The order impugned in W.P.No.22519 of 2015 is a result of improper interpretation of the order passed by this Court in W.P.No.15290 of 2015.

12.4 Petitioner in W.P.No.22519 of 2015 and respondents in other writ petitions spent huge sums of money towards infrastructure and for recruiting teaching and non teaching staff.

12.5 Only after holding elaborate survey and only after considering the representations from various quarters and taking into account the acute necessity, the State Council of Higher Education notified the subject mandals.

12.6 Certain colleges are being run in rented premises, as such, they cannot raise any sort of objections for the impugned notification.

13. Sri A.Prabhakar Sarma, learned counsel has placed reliance on the following judgments:

- (1) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and others.**
- 2. Dalbir Singh and others v. State of Punjab.**
- 3. Sakshi v. Union of India and others.**
- 4. Samtel India Ltd., v. Commissioner of Central Excise, Jaipur.**
- 5. Sri Saraswathi Educational Society and others v. Government of A.P., rep. by its Principal Secretary, Higher Education Department and others.**
- 6. S.V. Arts & Science College, West Gudur, SPSR Nellore district and others.**

14. Sri P.Srinivas, learned counsel has placed reliance on the following judgments:

- (1) Andhra Kesari Education Society, Ongole v. Government of A.P., Hyderabad and others.**
- (2) Sri Teja Educational Society v. A.P. State Council of Higher Education, Hyderabad and others.**
- (3) Federation of Railway Officers Association and others v. Union of India**

15. Sri Janakiram Reddy, learned counsel has placed reliance on the judgment in **Superstar Education Society v. State of Maharashtra and others**

16. The material available before this Court vividly discloses that the entire controversy in these cases revolves round the provisions of Section 20 of A.P. Education Act, 1982 and 1987 Rules. The principal grievance of the petitioners in the cases, wherein the notification dated 7.4.2015 issued by the State Council of

Higher Education is under challenge is that without being preceded by any proper survey to find out and ascertain the educational requirements and needs of the locality, the State Council of Higher Education issued the notification, inviting applications.

17. In order to answer and adjudicate the veracity and validity of the said contention, it would be highly essential and appropriate to refer to the provisions of Section 20 of the Act and the principles laid down by this Court in the judgments cited by the learned Advocates. Section 20 of the A.P. Education Act, 1982 (for short 'the Act') reads as under:

"Section 20 - Permission for establishment of educational institutions

(1) The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions.

(2) In pursuance of the notification under sub-section (1), any educational agency including local authority or registered body of persons intending to--

(a) establish an institution imparting education;

(b) open higher classes in an institution imparting primary education;

(c) upgrade any such institution into a high school; or

(d) open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.)

may make an application, within such period in such manner and to such authority as may be notified for the grant of permission therefor.

(3) Any educational agency applying for permission under sub-section (2) shall -
-

(a) before the permission is granted, satisfy the authority concerned,--

(i) that there is need for providing educational facilities to the people in the locality;

(ii) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority;

(iii) that the institution is proposed to be located in sanitary and healthy surroundings;

(b) enclose to the application,--

(i) title deeds relating to the site for building, playground and garden proposed to be provided;

(ii) plans approved by the local authority concerned which shall conform to the rules prescribed therefor; and

(iii) documents evidencing availability of the finances needed for constructing the proposed buildings; and

(c) within the period specified by the authority concerned in the order granting permission,--

(i) appoint teaching staff qualified according to the rules made by the Government in this behalf;

(ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

(4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no educational institution shall be established except in accordance with the provisions of this Act and any person who contravenes the provisions of this section or who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may extend to three years and with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees:

Provided further that the Court convicting a person under this section shall also order the closure of the institution with respect to which the offence is committed.]

18. Further, Rule 4 of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for short 'the Rules') reads as under:

"4. Conditions for grant of permission:

1. Permission for the establishment of any of the educational institutions mentioned in sub-rule (2) of Rule 1 or for opening of additional courses in any existing educational institution shall be granted only if the conditions laid down in Section 20 of the Act are satisfied and after obtaining the prior approval of the Commissioner under sub-section (2) of Section 11 of the Andhra Pradesh Commissionerate of Higher Education Act, 1986;

2. No permission shall be granted if the educational needs of the locality are adequately served already and in the opinion of the competent authority, the opening of a new institution is likely to create unhealthy and undesirable competition with another institution of the same class/category, in the area.
3. No permission shall be granted for the establishment of an educational institution by way of upgradation of high school into Junior College, Junior College into Degree College and Degree College into Post Graduation Centre. However with the prior approval of the Commissionerate of Higher Education, they can be permitted to be established within the premises of an existing institution provided the educational agency is prepared to provide the prescribed requirements like accommodation, furniture, library, laboratory and other facilities exclusively for the proposed class/category of institution.
4. No permission shall be granted for the establishment of a Law College unless it is located within a distance of 30 kms from a place where District Court or Additional District Court is located”.

19. A reading of the provisions of Section 20 of the Act and the above provision of law, makes it abundantly candid that the notification, if any, issued by the competent authority i.e. State Council of Higher Education shall necessarily be preceded by survey into the educational requirements and needs of the locality, where there is proposal to establish new institutions.

20. Coming to the judgments cited by Sri A.Prabhakar Sarma.

(1) In *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh* (5 supra), the Hon'ble Supreme Court at paragraph 55 held as under:

“Both Mr. Shetye and Mr. Venugopal submit that judicial discipline required the smaller benches to follow the decisions in the larger benches. This reminds us of the words of Lord Hailsham of Marylebone, the Lord Chancellor, "in the hierarchical system of courts which exists in this country, it is necessary for each lower tier... to accept loyally the decisions of the higher tiers". However, in view of the ratio decided of Hariprasad, as we have seen, there is no room for such a criticism.”

(2) In *Dalbir Singh and others v. State of Punjab* (6 supra), the Hon'ble Supreme

Court at paragraph 10 held as under:

“The judgment under appeal is a hint of the judicial confusion even in this grave area of death penalty. True, the jurisprudence of sentencing in Free India has been a Cinderella and the values of our Constitution have not adequately humanized the punitive diagnostics of criminal courts, which sometimes, though rarely, remained us of the torture some and trigger-happy aberrations of the Middle Ages and some gory geographic segments, soaked in retributive blood and untouched by the correctional karuna of our constitutional culture. But after Ediga Annamds case: 1974CriLJ683 , the law of punishment under Section [302](#) I.P.C. has been largely settled by this Court and the High Courts are bound thereby. Rajendra Prasad's case (supra) and Bishnu Deo Shaw's: 1979CriLJ841 case, have indubitably laid down the normative cynosure and until over-ruled by a larger bench of this Court that is the law of the land under Article [141](#). To discard it is to disobey the Constitution and such, subversiveness of the rule of law, in a crucial area of life and death, will spell judicial disorder. One thing is clear. Counting the casualties is not the main criterion for sentencing to death; nor recklessness in the act of murder. The sole focus on the crime and the total farewell to the criminal and his social-personal circumstances mutilate sentencing justice We express ourselves in this explicit fashion since the deep-rooted Raj criminological prejudices still haunt Free India's courts and govern our emendations from the grave. To-day, the law is what Rajendra Prasad (supra), in its majority judgment, has laid down and that has been done at unmistakable length, Willy-nilly, that binds judges and parties alike.”

(3) In *Sakshi v. Union of India* (7 supra), the Hon'ble Supreme Court at paragraph 23 held as under:

“Stare decisis is a well known doctrine in legal jurisprudence. The doctrine of stare decisis, meaning to stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by court of competent jurisdiction authorised to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a Court of last resort should not be lightly disregarded and set aside but should be adhered to and followed. What it precludes is that where a principle of law has become established by a series of decisions, it is binding on the Courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future.”

(4) In *Samtel India Ltd., v. Commissioner of Central Excise, Jaipur* (8 supra), the Hon'ble Supreme Court at paragraph 8 held as under:

“The principles laid down in Eicher Motors case (supra) are fully applicable, here. It is however submitted that there is no challenge to the validity of Sub-rule 17. It is submitted that this Court cannot, therefore, strike down nor read down Sub-rule 17. It is submitted that in the absence of such a challenge full effect has to be given to the wording of Sub-rule 17. It is submitted that Sub-rule 17 specifically provides that the credit would lapse and that credit shall not be allowed. We are unable to accept this submission. What was then Sub-rule 4A is now Sub-rule 17(a). Sub-rule 17(b) is identical to Sub-rule 17(a) except that it is in respect of a different final product. Once a validity of a provision is challenged and the validity is upheld by reading down that provision, then it is not necessary that in all subsequent proceedings the validity must again be challenged. It is sufficient if a party claims that the provision has to be read in the manner laid down by a judgment of this Court. In the light of the judgment of this Court in Eicher Motors case (supra), Sub-rule 17 cannot apply to vested rights. Therefore to the extent that the goods have already been exported, prior to March, 1997, the assessee would be entitled to a refund.”

(5) In *Sri Saraswathi Educational Society and others v. Government of A.P., rep. by its Principal Secretary, Higher Education Department* (9 supra), this Court at paragraphs 30, 32, 36, 61 & 68 held as under:

“30. This Court would not take upon itself the task of assessing the educational needs of the locality or enquire into the feasibility of establishing new degree colleges in the subject mandals, as these are all matters to be examined and determined by the APSCHE. It would be wholly inappropriate for this Court to conduct a microscopic examination of the deficiencies in the survey, or the errors in the survey report, which are sought to be highlighted by the petitioners-Institutions. The scope of judicial review is limited to an examination whether the criteria prescribed by the expert committee, for conducting the survey, has been adhered to by it or not; whether the recommendations of the expert committee is based on the material gathered by it during the course of the survey; and whether the provisions of Section [20](#) of the Act and Rule 4(2) of the Rules have been adhered to by the APSCHE in issuing the impugned notification.

32. It is the admitted case of the APSCHE, in its counter-affidavit, that they had requested the Board of Intermediate Education, vide letter dated 03.10.2012, to give data of the number of student pass-outs in the year 2011-12, in the attached proforma, for the purpose of the survey; the Board of Intermediate Education had submitted a soft copy to them; they had requested all the concerned universities, by their letter dated 03.10.2012, to provide data - mandal wise; another reminder, vide letter dated 01.11.2012, was sent requesting all the sixteen universities in the State of A.P. to furnish data, for the purpose of the survey, as per the proforma attached; in reply thereto both Sri Venkateswara University, Tirupati and Satavahana University, Karimnagar had, by their letters

dated 20.11.2012 and 06.11.2012 respectively, provided data of the number of degree colleges - affiliated to the university-mandal wise; they did not, however, provide information as per the enclosed proforma; though Sri Krishnadevaraya University had furnished some data, the complete data as sought by the expert committee was not furnished by them; the expert committee submitted its survey report, in the month of December, 2012, to the APSCHE identifying the mandals where there was a need to start new un-aided private degree colleges; thereafter the notification dated 16.01.2013 was issued and societies, which desired to start new private unaided degree colleges, submitted their applications; a joint inspection committee was constituted, thereafter, to physically verify the instructional and infrastructural facilities provided by the prospective colleges in the said mandals; this exercise has been completed and the JIC reports, of all the prospective colleges in the mandals, have been submitted to the APSCHE; the APSCHE had requested various Universities, by their letter dated 22.02.2013, to furnish details of the admission and infrastructural facilities in existing private un-aided degree colleges located in the subject Mandals, in the prescribed proforma, for taking necessary action as the notifications had been challenged in the High Court of Andhra Pradesh, and interim directions had been passed directing the APSCHE not to process the applications; the proforma, specified in the said letter dated 22.02.2013, required the Universities to furnish information, among others, regarding the sanctioned intake and the admitted strength of the existing degree colleges; in reply thereto that the affiliating Universities furnished the information, sought for by the APSCHE, in March, 2013; the information provided by the affiliating universities in March, 2013, in accordance with the proforma data sought by the APSCHE, demonstrates that there is a need to grant permission for new colleges in the said mandals; though data was sought by the APSCHE, in the prescribed proforma, prior to the survey being undertaken, various authorities such as the Board of Intermediate Education, and the 16 Universities in the State of A.P., did not, for reasons best known to them, provide information regarding one of the components i.e., the admitted strength of students in the existent degree colleges.

36. The question which arises for consideration, in this batch of writ petitions, is not whether the expert committee, constituted by the APSCHE, has taken into consideration factors which are relevant, but whether the survey report submitted by it, which resulted in the impugned notification dated 16.01.2013 being issued, was based on the data collected with respect to the criteria or factors which it had itself prescribed as relevant. As noted hereinabove among the criteria stipulated by the expert committee, for conducting the pre-notification survey, is the admitted strength/in-take of students by the existing degree colleges in the year 2012. The relevance or otherwise of this criterion is not in issue in this batch of writ petitions, and all that is under examination is the validity or otherwise of the survey report (submitted by the expert committee without obtaining data in relation to a criterion which it had itself stipulated as amongst the relevant criteria for assessing the educational needs of the locality) which preceded the notification dated 16.01.2013 issued under Section [20\(1\)](#) of

the Act. The submission urged on behalf of the petitioners, that the survey report is vitiated, merits acceptance.

61. The consequence of the survey report of the expert committee, constituted by the APSCHE, being declared illegal on the ground that relevant criteria, which it had itself prescribed, was not taken into consideration in assessing the educational needs of the locality; and the notification dated 16.01.2013 issued by the APSCHE, under Section [20\(2\)](#) of the Act, being held to be vitiated on the ground that it is vague and the pre-notification survey for identifying the educational needs of the locality is illegal; would only mean that a notification, in compliance with the requirements of Section [20\(1\)](#) of the Act, has not been issued. As a result the applications submitted by the educational agencies seeking grant of permission to establish educational institutions in the locality, pursuant to the notification dated 16.01.2013, would be the applications submitted directly to the competent authority. It would, therefore, still be open to the applicant educational institutions to satisfy the concerned authority, under Section [20\(3\)\(a\)\(i\)](#) of the Act, that there is a need for providing educational facilities to the people in the locality.

68. The impugned notification dated 16.01.2013 in so far as it relates to the four mandals, which are the subject matter of this batch of Writ Petitions, is set aside. It is made clear that this order shall not preclude the competent authority from examining the applications submitted by the applicant - colleges and, on their satisfying the competent authority of the need to establish new degree colleges in the locality, from granting permission in accordance with the provisions of the Act and the Rules made thereunder.”

(6) In *S.V. Arts & Science College, West Gudur, SPSR Nellore district* (10 supra), this Court at paragraphs 8 & 9 held as under:

“8. Section [20](#) of the Act read with Rule 5 of the Rules is, undoubtedly, envisage the criteria required to be followed by the competent authority. However, the power of the Government to establish a college at a location based upon the need is not subject to satisfaction of the competent authority. The decision of the Full Bench in *Society of St. Ann's* case (1 supra) has already considered the very same issue and it would be appropriate to extract paras 49 and 50 of said decision, as under:

"49. If the State Government takes a policy decision in the exercise of the statutory power vested in it under Section [18](#) as regards the establishment of educational institutions in the State on the basis of relevant considerations referred to above, and such a policy decision is not opposed to either fundamental rights or principles of natural justice and it is not found to be otherwise unreasonable or arbitrary, such a policy decision shall not generally be interfered with by the Courts. It will not be possible to lay down precise principles for testing the validity of a policy decision taken by the State Government. It depends upon the facts and

circumstances of the case subject to the general principles referred to by us supra.

50. The need for providing educational facilities to the people in the locality, contemplated under Section [20\(3\)\(a\)\(i\)](#) has to be understood in the context of the educational needs of the locality identified by the competent authority under sub-section (1) of Section [20](#). Even in a case where the educational needs of a locality have been identified by a competent authority, the need for providing educational facilities to the people in the locality shall be subject to the policy decision, if any, taken by the State Government in that regard in exercise of its power under Section [18](#) of the Act. If a competent authority has either not been appointed or after appointment it has not issued any notification calling for applications for establishing educational institutions as contemplated under sub-section (1) of Section [20](#), even then, it is open to any educational agency to apply to the State Government for the grant of permission for establishing an educational institution. In such a case, it is for the State Government to pass appropriate orders on the application submitted to it, on the basis of the principles underlying sub-section (3) of Section [20](#) and the policy decision, if any, taken by it as regards the need. But, the State Government has to take appropriate decision having regard to the relevant criteria, whether the educational needs of the locality or of the area or of the entire State shall be taken into account."

9. As per the ratio of the aforesaid decision, therefore, irrespective of there being a notification issued, the power of the State Government to consider any applicant, who desires to establish an educational institution at a particular location, cannot be considered to be vitiated merely because the competent authority has not notified the location. Though the learned counsel for the petitioners tried to distinguish the Full Bench decision in Society of St. Ann's case (1 supra), in my view, the question which fell for consideration before the Full Bench under question No. 1 was precisely this, as is extracted below:

"(1) Whether it is open to an educational agency to apply for permission to establish an institution in the absence of the competent authority under Section [20\(1\)](#) of the Act, notifying in the prescribed manner, calling for applications from the educational agencies desirous of establishing educational institutions?"

The answer to the said question, in the conclusion, in paras 65(1) and (2) is also extracted hereunder:

"65. Therefore, questions 1, 2, 3, and 4 are answered as follows:

(1) Even in the absence of a notification issued by a competent authority under Sub-section (1) of Section [20](#) of Andhra Pradesh Education Act, 1982 calling for applications from the educational agencies desirous of establishing educational institutions, it is open to any educational agency including a religious or linguistic minority, to make an application to the

State Government for the grant of permission for establishing an educational institution.

(2) It is for the State Government to decide whether the educational needs of a locality or area or of the entire State shall be taken into account in considering the applications. Even in a case where the educational needs of a locality have been identified by a competent authority under sub-section (1) of Section [20](#) of the Act, the need for providing educational facilities to the people in the locality contemplated under sub-clause (i) of Clause (a) of sub-section (3) of Section [20](#) of the Act, shall be subject to the policy decision, if any, taken by the State Government in that regard in exercise of its power under Section 18 of the Act."

21. Coming to the judgments relied on by Sri P.Srinivas:

(1) In *Andhra Kesari Education Society, Ongole v. Government of A.P., Hyderabad* (11 supra), this Court at paragraphs 14 and 15 held as under:

14. The Supreme Court, in *State of Maharashtra v. Lok Shikshan Sanstha*:AIR1973SC588 (supra) even while holding that it is not for the Court to lay down a policy in the matter of providing educational facilities and it is essentially for the State, observed (at p. 592) :

"Such policy will depend upon, an over-all assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a treasonable basis, it is not for the Courts to interfere with the policy leading up to such assessment."

From the above discussion, it is clear that the only factor that seems to have weighed with the Government in laying down a policy not to permit opening of new educational institutions as there are 13,066 trained teachers unemployed. But what Clause (a) of Sub-section (3) of Section requires the authorities concerned to take into account is the need for providing educational facilities for the people of the locality. If the people of a particular locality need such educational facilities, the Starting of an educational institution cannot be denied. If the Government itself intends to start a college, it can, of course decide upon a policy not to permit opening of a private college. If, on account of financial constraints or for any other reason, the Government itself is unable to start a college, when there, is need to provide educational facilities, it cannot refuse permission to an educational Society or individual citizens, when they come forward to provide educational facilities to the people in the locality. It is the right of every citizen to adopt the profession of teaching or to get himself trained or train teachers for adopting the profession of teaching: only he has to obtain

permission to establish such an institution. Permission cannot be refused on extraneous grounds or without taking the factors referred to in Section [20\(3\)](#). There is nothing in the Order refusing permission to indicate that this factor was kept in view in rejecting permission to the petitioner-society. So far as the petitioner's request for permission to start a B. Ed. College is concerned, it was urged at the bar on behalf of the Government that it should first approach the Andhra University and obtain a feasibility report from the university for establishment of the college. The stand taken by the Andhra University, in its counter-affidavit however is that unless the Government permits a college to be established, it would not send any team to visit the college and submit a report. In our view, the role of the University is only to examine the facilities provided and assess whether the facilities are sufficient so as to grant affiliation. Section [20\(2\)](#) of the Act requires that any person intending to establish a college should make an application to the appropriate authority. Obviously such application has to be made to the authority which is empowered to grant or refuse permission and only after that authority permits the establishment of the college, the petitioner-society can provide the requisite facilities. Only then, the University would be in a position to send a commission to visit the college and assess whether the facilities are up to the standards laid down by the university. The Government would therefore, be in error in refusing permission to the petitioner-society on the ground that the applicant had not submitted a feasibility report from the University. In fact, Section [20](#) lays down that any person intending to start a college should first approach the authority concerned for grant of permission. No provision of the Act or rule was brought to our notice which insists upon the applicants to first approach the University.

15. So far as the Teachers Training Institute is concerned, on the direction of the Commissioner of School Education, a report has already been submitted by the District Educational Officer after inspecting the institute. The District Educational Officer reported that there are adequate facilities for training the teachers evidently, acting upon that report, the teachers, who were already trained during the academic year 1982-83 were permitted to appear for the examination. The refusal of the permission in the instant case is without having due regard to the factors mentioned in Clause (a) of Sub-section (3) of Section of the Act. If the authority required to consider the factors mentioned in Clauses (a) to (f) of Sub-section (3) of Section [20](#) ignores them and refuses permission without having due regard to these factors then such an order cannot be sustained. The percentage of literacy in the State of Andhra Pradesh is 29.4 while the national average is 34.5 per cent. So long as the percentage of illiterates in the population of the country in general and Andhra Pradesh in particular, which is less than the national average remains so abnormally low, no Court can accept that there is no need for providing educational facilities for the people of the locality and countenance refusal of permission to establish an educational institution. The necessity to provide educational facilities cannot be judged from the number of students seeking admission in Government Institutions alone; nor having regard only to the number of teachers required for being appointed in Government or private institutions. It has to be decided having regard to educational needs of

the locality. While there are so many millions of illiterate, semi-literate and uneducated persons in the State of Andhra Pradesh itself, it cannot be said that there is no need for further Schools or Colleges in any locality of the country; much less in Andhra Pradesh where the percentage of literacy is less than the National average. Either the Government itself must establish Schools, Colleges and Educational Institutions, or, if it is not in a position to establish them for reasons of finance or other constraints or reasons of policy-priorities, it cannot legally prevent the citizens of the country from establishing such Schools, Colleges or other Educational Institutions by refusing permission. So long as there is educational need in the locality and there cannot, be any doubt that there is such a need, any refusal on any grounds of policy, would be contrary to the statute and the fundamental rights of the citizens to educate themselves. While the citizens cannot insist upon the Government to provide educational facilities at the cost of the State and the State may very well be within its bounds in not starting Schools, Colleges and Educational Institutions it cannot deny the right of the citizens to educate themselves and to establish such Institutions. If it were to do so, it would give an impression that the State and the authorities have a vested interest in keeping the masses illiterate and uneducated by denying them even the right to educate themselves. A reading of Section [20](#) would lead us to the conclusion that the statute requires the authorities to see that requisite educational facilities are provided in the locality and if other requirements of the statute as laid down in Section [21](#) are satisfied by an applicant for grant of permission to start a School, College or Educational Institution, permission should be accorded. There may be a thousand educated unemployed but so long as large number of illiterate persons seek to educate themselves and apply for admission into Educational Institutions and when Educational Institutions are proposed to be started by those interested in making the Nation educated and are prepared to provide the facilities envisaged by the statute, the State cannot reject permission. The authorities cannot under the statute deny the educational facilities to the people of the locality. If the establishment of Schools or "Educational Institutions is otherwise feasible as proposed by the applicants and they are able to provide the requisite facilities as envisaged by the Act and sufficient number of students are seeking admission, in our view, the Government is legally bound to grant permission to start such Educational Institutions. In seeking permission to start Educational Institutions, they are not seeking employment with the Government or with the existing Educational Institutions. That the existing Schools and Colleges do not require any more trained teachers or trained graduates cannot be a valid criteria on which decisions to grant or refuse permission for establishing an Educational Institution may be based. Students may seek self-employment and not service under anybody. If such students want to educate themselves Schools, Colleges and other Educational Institutions must be available and persons or institutions proposing to start such institutions cannot be denied permission on the grounds now mentioned by the respondent or on the ground that there are already large number of unemployed. In the face of this vast illiteracy and need for establishing Schools, it would be futile to contend that there is no need to provide this educational facility for the people in the locality."

(2) In *Sri Teja Educational Society v. A.P. State Council of Higher Education, Hyderabad* (12 supra), this Court at paragraph 9 held as under:

“We have perused the entire pleadings and the provisions of the Act and the guidelines issued by the Government and also the regulations for the conduct of business of the A.P. State Council of Higher Education. In our view, the rules framed in G.O. Ms. No.29 dated 5.2.1987 have been fully complied with. The rule only says that there should be no permission in cases where it would lead to an unhealthy competition and where educational needs of the locality are adequately served. As stated earlier, the educational needs of the locality are not adequately served and, therefore, the permission to start a new Degree College with B.Sc. and B.Com. (Computers) has been granted to the third respondent. The Inspecting body has also taken into consideration the relevant factors and only thereafter has recommended for sanction of the College to the third respondent. When an Expert Body submits an inspection report that there is feasibility for starting another Degree College, it is not proper for this Court to sit in appeal over the recommendations made by the said Committee. In fact on the recommendations of the Joint Inspection Committee and the Vice-Chancellor of Kakatiya University, Warangal, only the permission was accorded to the 3rd respondent for starting a new Degree College. It is also not in disputes that the 3rd respondent-college has well equipped campus with its own building and playgrounds and teaching staff and that it is located in the center of the town. It can be seen from the records produced before us that after grant of permission by the first respondent, the third respondent also admitted 110 students in these new courses, which goes to show that there is adequate demand for starting another Degree College in the area in question. Once, permission is granted from the first respondent, the second respondent would have to grant affiliation to the new college and the said action of the 2nd respondent cannot be found fault with. In our view, it is not for the appellant-society to say that the educational needs of the student community in the area in question are already met by their college and, therefore, starting of another college there would create an unhealthy competition. In fact, as could be seen from the Inspection Reports and other records that there is a big gap between the needs of the students and the present facilities which gap has to be filled up by granting permission to another Degree College and accordingly permission has been granted to the third respondent to start a new Degree College which cannot be found fault with. The learned single Judge has considered all the aspects of the matter and also gave categorical findings by the impugned judgment that the authorities have objectively assessed the need and permitted the third respondent to start a Degree College which in his opinion cannot be termed as arbitrary and illegal.”

(3) In *Federation of Railway Officers Association and others v. Union of India* (13)

supra, the Hon'ble Supreme Court at paragraphs 12 and 15 held as under:

“12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters.

15. The credibility of the said report is questioned and its bonafides are doubted on behalf of the petitioners. The various factors considered by them are also certainly relevant for the efficient administration of the Railways. None of these factors taken note of by the study group can be stated to be irrelevant in this context. But what is to be seen is whether the report made by them would, in essence, be not worthy of credit and not merely on imaginary basis such as they are officers of the Government and they would have worked under pressure of the Minister concerned to draw up a report to suit his whims. Therefore, we do not think, we can accept the attack made by the petitioners on the report of the study group.”

22. In the judgment relied on by Sri Janakiram Reddy in *Superstar Education Society v. State of Maharashtra* (14 supra), the Hon'ble Supreme Court at paragraphs 11 to 13 held as under:

“11. It is the duty of the State Government to provide access for education. Unless new schools in the private sector are permitted it will not be possible for the State to discharge its constitutional obligation. Permission has been granted to 1495, new schools under the order dated 18.3.2000 on permanent no-grant basis without any financial commitment or liability on the part of the State Government, even in future, and at the same time ensuring that the schools follow the parameters and conditions prescribed by the Education Code, reserving liberty to the authorities to take appropriate action, should there be any violation. The said order does not contravene any provision of law. It was not even the case of the writ petitioner that the schools permitted did not fulfil the conditions and requirements relating to such schools.

12. The High Court has quashed the order dated 16.5.2008 without even noticing that many of the schools which have been permitted under the said order, were English Medium schools or non-Marathi schools or schools run by religious and linguistic minorities, which were not intended to be covered by the proposed Master Plan. It also failed to notice that any delay in drafting or finalizing the Master Plan cannot be a bar for new schools being permitted, particularly in view of the subsequent orders of the Aurangabad Bench. When the permission

had been accorded and schools had started functioning on that basis, the High Court ought not to have quashed the permission granted to those 1495 schools, without impleading the Schools or without hearing them. On the facts and circumstances, the assumption that the order dated 16.5.2006 violated the order in Gramvikas Mandal does not appear to be sound. Even if the High Court wanted implementation of the decision in Gramvikas Mandal, it ought to have directed that the Master Plan should be prepared within a time bound schedule rather than quashing the permission granted to 1495 schools thereby denying access to a large number of students aspiring for higher secondary education.

13. We therefore allow these appeals, set aside the judgment of the High Court. The government order dated 16.5.2006 permitting new schools will, therefore, continue to be in force. We however make it clear that if any school is found to have flouted or not fulfilled the parameters prescribed by the Education Code or the conditions stipulated by the State Government in the order dated 16.5.2006, the concerned authorities of the State Government will be at liberty to take appropriate action against the defaulting schools, including cancellation of the permission. Appeals are disposed of accordingly. Parties to bear their respective costs.”

23. In support of his submissions that only after undertaking survey by way of calling and receiving the out puts from various sources and only after holding a meeting and only after procuring necessary information with regard to the educational needs of the locality, certain documents have been placed on record along with the counter affidavit filed by the State Council of Higher Education.

24. The letter bearing No.APSCHE/ACAD CELL-II/NDC-UG-PG 2015/GUIDELINES/2015 dated 25.3.2015 is placed on record by the State Council of Higher Education, which shows that the Council constituted a Committee consisting of 10 Deans of different Universities to review the criteria to be followed for sanction of new private Unaided Colleges and Unaided UG & PG courses for the academic year 2015-16. The constitution of the said committee is as under:

1. The Dean, College Development Council, Andhra University, Visakhapatnam.
2. The Dean, College Development Council, B.R. Ambedkar University, Srikakulam.
3. The Dean, College Development Council, Adikavi Nannaya University,

Rajahmundry.

4. The Dean, College Development Council, Acharya Nagarjuna University, Guntur.
5. The Dean, College Development Council, Krishna University, Machilipatnam.
6. The Dean, College Development Council, Sri Venkateshwara University, Tirupati.
7. The Dean, College Development Council, Yogi Vemana University, Kadapa.
8. The Dean, College Development Council, Vikrama Simhapuri University, Nellore.
9. The Dean, College Development Council, Sri Krishnadevaraya University, Ananthapur.
10. The Dean, College Development Council, Rayalaseema University, Kurnool.

25. It is very much clear from the above document that the State Council of Higher Education requested the Deans of various Universities to attend the meeting on 2.4.2015 at 11.00 a.m. in APSCHE Conference Hall with the information as mentioned therein. A copy of the survey report including the minutes of the meeting held on 2.4.2015 is also placed on record by the learned Standing Council for A.P. State Council for Higher Education. A perusal of the said report shows the process and exercise undertaken by the respondent State Council of Higher Education. The above factual situation is to be analyzed in the light of the judgments cited supra.

26. As per the law laid down in the judgments referred by the learned Standing Council for Higher Education, it is very much limpid that this Court cannot sit in appeal as an appellate authority against the opinions expressed by the Committee of Experts and no other judgment which expressed contra view has been brought to the notice of this Court. It is also the submission of the learned counsel for

Respondent No.5 in W.P.No.10640 of 2015 that 3rd petitioner in the said writ petition applied for Allagadda in response to the impugned notification dated 7.4.2015 and having applied for, it is not open for the 3rd petitioner to question the same. This Court finds sufficient force in the said submission.

27. In view of the reasons shown by the respondents in their responses and the material placed on record by the learned counsel for State Council of Higher Education and the legal position as mentioned supra, this Court is of the considered opinion that the petitioners in W.P.Nos.10530, 10640, 10856, 12100, 14611, 15290 of 2015, wherein notification dated 7.4.2015 is under challenge have utterly failed in making out a case, warranting any interference or indulgence of this Court under Article 226 of the Constitution of India. Therefore, this Court does not find any valid reason to meddle with the notification dated 7.4.2015 issued by the State Council of Higher Education.

28. Coming to W.P.No.27588 of 2015, in this case earlier petitioner filed W.P.No.24319 of 2015 before this Court assailing the action of the State Council for Higher Education in processing the application of the Respondents 4 and 5 for starting new Degree College as being illegal, arbitrary and unconstitutional and contrary to the provisions of A.P. Education Act, 1982 and the Rules framed thereunder. In the said writ petition, it was submitted that the respondent authorities were proceeding only in accordance with the provisions of A.P. Education Act and the writ petition was filed on assumptions and presumptions and there was no valid foundation for the apprehension of the petitioners. It was also submitted that no direction can be granted in favour of respondents 4 and 5. It was also submitted that the respondent authorities would adhere to the mandatory provisions of the Act. By recording those submissions, this Court disposed of the writ petition on 20.8.2015 while directing the respondent authorities to proceed in accordance with the provisions of A.P. Education Act, 1982.

29. According to Section 20 of the Act, it is mandatory on the part of the State

Council for Higher Education, which is the competent authority to issue notification and in the instant case, as the impugned order was obviously never preceded by any such notification under Section 20 of the Act, this Court has absolutely no hesitation in holding that the very grant of permission in favour of unofficial respondents in this writ petition is invalid in the eye of law. The contention that no notification is required to be issued by the State Council of Higher Education cannot be sustained in view of the express language employed in Section 20 of the Act and the law declared by the Full Bench of this Court in *Society of St. Ann's Mehdipatnam, Hyderabad* (1 supra).

30. For the aforesaid reasons, W.P.Nos.10530, 10640, 10856, 12100, 14611, 15290 of 2015 are dismissed and W.P.Nos.22519 & 27588 of 2015 are allowed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:09.12.2015
DA

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

-

-

-

-

-

-

-

-

DA