

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No.1267 of 2010 O&M)

Reserved on:08.05.2015

Date of decision:10.08.2015

State of Punjab

.....Appellant

Versus

Self Financed B.Ed. Colleges Association, Punjab (Regd.) & another

.....Respondents

LPA No.1168 of 2012 O&M)

M.C. College of Education

.....Appellant

Versus

State of Punjab & others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Amit Sethi, Addl.A.G., Punjab, for the appellant
(in LPA No.1267 of 2010).

Mr.Sameer Sachdeva, Advocate
and Mr.Sachin Luthra, Advocate, for the appellant
(in LPA No.1168 of 2012).

Mr.Rajiv Atma Ram, Sr.Advocate
with Mr.Ranjit Singh Kalra, Advocate
and Mr.A.P.S.Bhinder, Advocate,
for respondents No.1 & 2 (in LPA No.1267 of 2010).

Mr.Amrit Paul, Advocate, for respondent No.3
(in LPA No.1267 of 2010).

G.S.Sandhawalia J.

1. This judgment shall dispose of two letters patent appeals bearing LPA Nos.1267 of 2010 & 1168 of 2012, as according to learned counsel for the parties, the questions of law involved are identical in both the appeals. However, to dictate orders, facts have been extracted from LPA No.1267 of 2010 titled *State of Punjab Vs. Self Financed B.Ed. Colleges Association, Punjab (Regd.) & another.*

2. The Letters Patent Appeal No.1267 of 2010 is directed against the judgment dated 01.07.2010 of the Learned Single Judge, passed in CWP No.10091 of 2009, wherein it was held that the Unaided Self-Financed Institutions (Minority & Non-Minority Institutions) are entitled to hold a Common Entrance Test (for short, the 'CET') at the State level or even jointly, with the other States, for admissions to the students in the B.Ed. Degree course for the academic session 2010-11. The condition, however, was put that such a procedure shall be merit based, transparent, non-exploitive and in consonance with the educational standards, as provided by the National Council for Teachers Education Act, 1993 (for short, the 'NCTE Act') and the affiliating Universities of the Government, if any. The academic standards were, however, to be maintained and the institutions were not entitled to charge any capitation fees or fees more than provided by the Committee constituted for that purpose. It is pertinent to mention that vide subsequent order dated 14.07.2011, on an application filed for clarification, another direction was issued by the Court that allowed the petitioners to make the admissions w.e.f. academic session 2010-11 onwards, thus, clarifying that it was not only for one particular year but from the said year onwards. Resultantly, the Government order dated 19.05.2009, which was the subject matter of the writ petition, was directed not to be enforced from the academic session 2010-11 onwards and the State was debarred from holding any entrance test for the admission to the B.Ed. Course for the Self-Financed Unaided Institutions. The Learned Single Judge came to the said conclusion on the strength of the policy which had been framed by the State Government and in view of the law laid down by the Division Bench of this Court in CWP No.9547 of 2006 titled *The*

Association of Education Colleges (Self Financing) of Haryana Vs. State of Haryana & others decided on 22.08.2006 and the judgment of the Apex Court in **T.M.A. Pai Foundation & others Vs. State of Karnataka & others 2002 (8) SCC 481** and **P.A.Inamdar & others Vs. State of Maharashtra & others 2005 (6) SCC 537**.

3. Mr. Amit Sethi, learned Additional Advocate General, appearing on behalf of the State has vehemently submitted that the judgment of the Learned Single Judge is legally not sustainable, especially keeping in view the fact that subsequently, the Apex Court in **Adarsh Shiksha Mahavidyalaya & others Vs. Subhash Rahangdale & others JT 2012 (1) SC 213** had occasion to consider the provisions of the NCTE Regulations and had held that CET conducted by the State of Madhya Pradesh was valid and upheld the same. It was accordingly held that by virtue of conducting a CET by the State, it would only facilitate the candidates to sit in the examination of CET, for all the institutes in the State of Punjab and the action of the State was well justified in issuing the notification, keeping in view the subsequent regulations issued under NCTE Act. It was urged that by the impugned judgment, the students seeking admission would be put to inconvenience as they would have to undertake separate examinations conducted by different institutes whether they are Government aided or not, since all were not members of the present respondents' association and a separate examination would be conducted by the respondents' association for its members. Accordingly, the judgments relied upon by the Learned Single Judge were sought to be distinguished by submitting that the autonomy of the unaided institutes was not encroached upon in any manner, by the notification.

4. Counsel for the respondent-association, on the other hand, tried to distinguish the judgment of the Apex Court in **Adarsh Shiksha Mahavidyalaya** (supra) by pointing out that the said colleges were not recognized colleges and that earlier also, a Division Bench of this Court had taken a similar view in the case of **The Association of Education Colleges (Self Financing) of Haryana** (supra) and there was no occasion to take a contrary view by a Co-ordinate Bench. Reliance was also placed upon the subsequent judgment of the Apex Court in **Christian Medical College Vellore & others Vs. Union of India & others 2014 (2) SCC 393**.

5. The question that arises for consideration is whether the members of the respondent-Association, who claim to be Self-Financed/Unaided B.Ed. Colleges have an absolute right to remain out of the CET conducted by the State for the admission to the B.Ed. examinations and any legal right accrues in their favour to hold an independent CET for admission, in view of the NCTE Act and Regulations.

6. Another issue which requires deliberation is whether by holding such a CET, Article 19(1)(g) of the Constitution of India is violated resulting in the State having an absolute authority or control on the admission process of the unaided institutes.

7. The facts would necessarily have to be noticed in the present case in order to resolve the abovesaid issues. The writ petition was filed challenging the notifications dated 19.05.2009 (Annexure P6), published in the Tribune on 10.06.2009 and the prospectus whereby the admissions were being made to all colleges conducting B.Ed. course including the Self-Financed Unaided Private Colleges of Education by including the names of 177 institutes against the 24,500 seats for the State of Punjab including the

colleges of the Association. The petitioners, who are two separate associations, claim to be registered having 65 colleges as members. The writ petitioners substantiated their claim on the strength of the judgments of the Apex Court in T.M.A. Pai Foundation (supra) and P.A. Inamdar (supra). Support was also gathered from the observations of the Division Bench of this Court in Amardeep & others Vs. State of Haryana & others 2007 (2) RSJ 197 and The Association of Education Colleges (Self Financing) of Haryana (supra). It was pleaded that a representation dated 31.01.2009 had been made to the State to issue a notification, authorizing the Association to conduct CET for admission of students in the B.Ed. Self Financing Colleges by following various parameters. However, the State had issued notification dated 19.05.2009, authorizing the Guru Nanak Dev University, Amritsar-respondent no. 3 to conduct the CET for selection of students for the B.Ed. course/session 2009-10 regarding the colleges of education affiliated to Guru Nanak Dev University, Amritsar, Panjab University, Chandigarh, Punjabi University, Patiala and Lovely Professional University, Phagwara, which gave rise to cause of action to challenge the same.

8. The State contested the writ petition by contending that the private colleges were bound by the directions of the Government. No objection certificate had been issued to the colleges that they would abide by the directions of the Government, failing which, their affiliation would be cancelled. It was averred that the Government must hold the CET as the private institutes would select the candidates of their own choice and there would be chances of disparity between the institutes and candidates with low profiles getting admission with the help of donation. It was mentioned

that there were only four government colleges in the State and CET was to provide an equal opportunity to all eligible students. The judgments of the Apex Court was sought to be distinguished by pleading that the petitioners were not minority institutions. It was, accordingly, argued that there was no overall control by the Government and it had not violated any provision of the Constitution of India.

9. Subsequently, an additional affidavit was filed, placing on record the latest guidelines issued under the NCTE Act and the purpose of holding the CET for all Government colleges, private aided colleges and private unaided colleges. The said guidelines provided equal opportunity to the students to compete with each other and a rationale procedure for transparent and merit based selection process. The intention being that the students would be saved from the inordinate burden to appear in multiple entrance examinations and also fixing a common benchmark to bright and prospective students since they could have secured different marks in a qualifying degree examination conducted by respective Universities. It was pleaded that the common counseling process would save the students from the trouble of running from one institute to the other and especially when no complaint had been received for adopting the said procedure. No prejudice had been caused to the petitioners.

10. As noticed, the writ petition was allowed by placing reliance upon the regulations framed under the NCTE Act and the judgments of the Apex Court.

11. The NCTE Act, 1993 was notified for the purpose to achieve planned and coordinated development and for the regulation and proper maintenance of norms and standards in the teacher education system

throughout the country and for the matters connected therewith. The Act further lays down the procedure pertaining to the recognition of the institutions and the Council is barred to make regulations which are not in consonance with the provisions of the said Act. Under Section 12 of the NCTE Act, 1993 the functions of the Council have been delineated and as per Section 12(g), the standards in respect of examinations leading to teacher education qualifications and criteria for admission to such examinations and schemes of training to be done by the Council has been prescribed. Recognition of the teacher education institutions is provided under Section 14 and the affiliation is to be granted after the recognition is granted by the Council. The said Section reads as under:-

“12. FUNCTIONS OF THE COUNCIL

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 surveys and studies relating to various aspects of teacher education and publish the result thereof;*
- (b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised 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 recognised institutions;*
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;*

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

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

(h) lay down guidelines regarding tuition fees and other fees chargeable by recognised 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 recognised institution;

(k) evolve suitable performance appraisal system, norms and mechanism for enforcing accountability on recognised institutions;

(l) formulate schemes for various levels of teacher education and identify recognised 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.”

12. According to Section 16, affiliating bodies are to grant affiliation after recognition or permission by the Council and there can be no admission without recognition. Under Section 32, the bar to make regulations lies with the Council by notification in the official Gazette. Section 32 reads thus:

“32. POWER TO MAKE REGULATIONS

(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of

the foregoing power, such regulations may provide for all or any of the following matters, namely :-

(a) the time and the place of the meetings of the Council and the procedure for conducting business thereat under sub-section (1) of section 7;

(b) the manner in which and the purposes for which persons may be co-opted by the Council under sub-section (1) of section 9;

(c) the appointment and terms and conditions of service of officers and other employees of the Council under sub-section (1) and (2) respectively of section 19;

(d) the norms, guidelines and standards in respect of -

(i) the minimum qualifications for a person to be employed as a teacher under clause (d) of section 12;

(ii) the specified category of courses or training in teacher education under clause (e) of section 12;

(iii) starting of new courses or training in recognised institutions under clause (f) of section 12;

(iv) standards in respect of examinations leading to teacher education qualifications referred to in clause (g) of section 12;

(v) the tuition fees and other fees chargeable by institutions under clause (h) of section 12;

(vi) the schemes for various levels of teacher education, and identification of institutions for offering teacher development programmes under clause (l) of section 12;

(e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of section 14;

(f) conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub-section (3) of section 14;

(g) the form and the manner in which an application for permission is to be made under sub-section (1) of section 15;

(h) conditions required for the proper conduct of a new course or training and conditions for granting permission under clause (a) of sub-section (3) of section 15;

(i) the functions which may be assigned by the Council to the Executive Committee under sub-section (1) of section 19;

(j) the procedure and the quorum necessary for transaction of business at the meetings of the Executive Committee under sub-section (5) of section 19;

(k) the manner in which and the purposes for which the Executive Committee may co-opt persons under sub-section (f) of section 19;

(l) the number of persons under clause (c) of sub-section (3) of section 20;

(m) the term of office and allowances payable to members under sub-section (5) of section 20;

(n) additional functions to be performed by the Regional Committee under sub-section (6) of section 20;

(o) the functions of the procedure to be followed by the territorial jurisdiction of, and the manner of filling casual vacancies among members of a Regional Committee under sub-section (7) of section 20.

(p) any other matter in respect of which provision is to be, or may be, made by regulations.”

13. Accordingly, the latest regulations, namely, the National Council for Teachers Education (Recognition Norms & Procedure) Regulations, 2009 (for short, the '2009 Regulations') were promulgated. Clauses 3 and 4 of the said regulations are applicable and covers norms and standards and procedures for recognition of institutions and commencement of new programs. Even self financed educational institutions established and operated by “not for profit” societies and trusts registered under appropriate laws are eligible for consideration of their applications. Clauses 3 and 4 of the regulations read thus:-

“3. Applicability.-

These Regulations shall be applicable to all matters relating to teacher education programmes covering norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in existing programmes and other matters incidental thereto.

4. Eligibility.- The following categories of institutions are eligible for consideration of their applications under these Regulations:-

- (1) Institutions established by or under the authority of Central or State Government or Union Territory Administration;
- (2) Institutions financed by Central or State Government or Union Territory Administration.
- (3) All universities, including institutions deemed to be universities, so recognised or declared, as the case may be, under the University Grants Commission Act, 1956.
- (4) Self financed educational institutions established and operated by ‘not for profit’ Societies and Trusts registered under the appropriate laws.

14. The norms and standards for various education courses have been specified under Appendices 1 to 13 which had to be applied with the institutions offering the said courses. The details of the courses are

mentioned which include the elementary teacher education programme in Appendix 3 and the norms and standards for Bachelor of Education Programme leading to Bachelor of Education (B.Ed.) degree under Appendix 4. The relevant clause is as follows:-

“9. The Norms and Standards for various teacher education courses, as specified in Appendices 1 to 13, as indicated hereinafter, shall have to be complied with by an institution offering the said courses as following, namely:-

(i)	Norms and Standards for Diploma in early childhood education programme leading to Diploma in Early Childhood Education (D.E.C.Ed.)	Appendix - 1
(ii)	Norms and Standards for elementary teacher education programme leading to Diploma in Elementary Education (D.El.Ed.).	Appendix – 2
(iii)	Norms and Standards for Bachelor of Elementary Teacher education programme leading to Bachelor of Elementary Education (B.El.Ed.) degree.	Appendix – 3
(iv)	<u>Norms and Standards for Bachelor of education programme leading to Bachelor of Education (B.Ed.) degree.</u>	Appendix - 4

15. As per clause 12, admissions are also to be made only after affiliation by the University or the affiliating body or after the formal recognition order has been issued and as per “the State Policy”. The said clause reads thus:-

“(12) The University or Examining body shall grant affiliation only after issue of the formal recognition order under sub-regulation (11) of Regulation 7 of these Regulations. Further, admissions by the institution shall be made only after affiliation by the University or Affiliating body and as per the State policy.”

16. As per Appendix 4, the norms and standards for Bachelor of education programme is a professional course that prepares the teachers for upper, primary and middle class levels, starting from Class VI to Class XII. The said appendix laid down the intake, eligibility and admission procedure. As per sub-clause (3), the admission was to be made on the basis of merit

obtained in the qualifying examination through the entrance examination or any other selection process, as per the policy of the State Government/U.T. Administration and the Universities. Relevant portion of the Appendix IV of the 2007 Regulations reads as under:

“3. Intake, Eligibility and Admission Procedure

(1) Intake

There shall be a basic unit of one hundred students divided into two sections of fifty each for general sessions and not more than twenty five students per teacher for a school subject for methods courses and other practical activities of the programme to facilitate participatory teaching and learning.

(2) Eligibility

(a) Candidates with at least fifty percent marks either in the bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

(b) The reservation in seats and relaxation in the qualifying marks in favour of the reserved categories shall be as per the rules of the concerned Government,

(3) Admission Procedure

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University.”

17. A combined reading of the above, points out that there is specific Act and Regulations which empowers the State to provide admission procedure which is to be on the strength and the merit obtained in the qualifying examination or the entrance examination or other selection process, as per the policy of the State Government. Admittedly, keeping in view these powers the notification dated 19.05.2009 (Annexure P6) was issued whereby the State proposed to hold the Combined Entrance Test for

all colleges and, as mentioned above, from the prospectus, it would be clear that the list was of 177 institutes totalling 24,500 seats for the academic session 2009-10. Since various material has been placed on record, thereafter, in view of the fact that the judgment was pronounced later, it would show that for the subsequent year 2010-11, the number of colleges swelled to 185 and the number of seats increased to 26,000.

18. The jurisdiction of the State, as such, to hold the CET in view of the statutory power cannot be doubted. However, the learned Senior Counsel, Mr. Rajiv Atma Ram argued that in view of the observations of the Apex Court in **T.M.A. Pai Foundation** (supra) and **P.A. Inamdar** (supra), the Association was entitled to make admissions for the CET for its member colleges being unaided, which are stated to be 65 in number and therefore, not bound by the notification.

19. We are unable to accept the aforesaid contention, for the reasons to be delineated hereinafter. Similar issue was considered by one of us (G.S. Sandhawalia, J.) in ***Punjab Private Self Financed Dental College Association vs. State of Punjab and others 2015 (1) SCT 571*** where a common entrance test was being held for the MBBS and BDS courses for the academic session, 2014. The notifications issued by the State were challenged by the unaided institutes and the plea taken was that they were entitled to hold an independent common entrance test to admit students in medical courses. Learned Counsel arguing the said case had also relied upon the judgments of the Apex Court in *T.M.A. Pai Foundation's case* (supra), *P.A.Inamdar's case* (supra) and **Islamic Academy of Education Vs. State of Karnataka (2003) 6 SCC 697**. The said argument was repelled by noticing that by virtue of a statute namely The Punjab Private Health

Sciences Educational Institutions (Regulations of Admissions, Fixation of Fee and Making of Reservation) Act, 2006, the common entrance test was prescribed. Once the statute was enforced, the validity of which was not challenged and the same was upheld by the Full Bench of this Court in **Navdeep Kaur Gill Vs. State of Punjab 2014(3) SCT 110**, of which one of us (Ajay Kumar Mittal, J.) was a Member, the Government was fully justified in rejecting the representations of the colleges whereby, the right to hold the common entrance test had been projected. Applying the aforesaid principles, it was concluded that the petitioner was entitled to take the benefit of the judgments relied upon by him till the regulations were not brought in place. It was further noticed that the principles laid down were to apply to the non-minority unaided institutions till regulations were framed and the admission committees prior to that were to monitor admissions to ensure that the merit was not a casualty. The Apex Court in paragraph 155 of the judgment in *P.A. Inamdar's case (supra)*, recorded that State and the Central Governments were required to enact a detailed legislation on the subject. Para 155 thereof reads as under:-

“155. It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well thought out legislation on the subject. Such a legislation is long awaited. States must act towards this direction. Judicial wing of the State is called upon to act when the other two wings, the Legislature and the Executive, do not act. Earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a

suitable mechanism and appoint competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments, shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction.”

It is emphasized that the NCTE Act, 1993 is already in place and the Regulations of 2009 specifically provide the norms and guidelines and standards in respect of the specified categories of courses of training and teacher education and starting of new courses. The admission procedure has also been laid down in clause 3(iii) and it is to be as per the policy of the State Government whether on the basis of the marks obtained in the qualifying examination or the entrance examination or any other selection process. Once that is so, the learned Single Judge was not justified in adjudicating the issue against the State by relying upon the judgments to contend that the respondent-Association were entitled to hold a common entrance test jointly. It was not justified to quash the notification which prescribed that all colleges would be covered and granting the liberty to the respondents to hold so. In the light of NCTE Act, 1993 and the regulations of 2009 empowering the State, it could not be negated without there being any challenge to the validity of the Act and the regulations.

It would be advantageous to refer to the observations of the three Judges Bench of the Apex Court in ***Peoples Union of Civil Liberties (P.U.C.L.) & another Vs. Union of India 2003 (4) SCC 399***, wherein the issue was the right of information about the candidates contesting elections to the Parliament or State Legislature and the right to vote. The directives given by the Court were held to be operative only till the time the law was

enacted by the Legislature and had ceased to be effective thereafter once legislation had been made. It was summarized that an independent assessment has to be made and not the word to word effect has to be given to the directives issued by the Court as an *ad hoc* measure, when the field was unoccupied by the legislation. Relevant observations read as under:

“32. When the Parliament, in the aftermath of the verdict of this Court, deliberated and thought it fit to secure the right to information to a citizen only to a limited extent (having a bearing on criminal antecedents), a fresh look has to be necessarily taken by the Court and the validity of the law made has to be tested on a clean slate. It must be remembered that the right to get information which is a corollary to the fundamental right to free speech and expression has no fixed connotation. Its contours and parameters cannot be precisely defined and the Court in my understanding, never meant to do so. It is often a matter of perception and approach. How far to go and where to stop? These are the questions to be pondered over by the Legislature and the Constitutional Court called upon to decide the question of validity of legislation. For instance, many voters/citizens may like to have more complete information-a sort of bio-data of the candidate starting from his school days such as his academic career, the properties which he had before and after entering into politics, the details of his income and tax payments for the last one decade and sources of acquisition of his and his family's wealth. Can it be said that all such information which will no doubt enable the voter and public to have a comprehensive idea of the contesting candidate, should be disclosed by a prospective candidate and that the failure to provide for it by law would infringe the fundamental right under Article 19(1)(a)? The preponderance of view would be that it is not reasonable to compel a candidate to make

disclosures affecting his privacy to that extent in the guise of effectuating the right to information. A line has to be drawn somewhere. While there cannot be a lip service to the valuable right to information, it should not be stretched too far. At the same time, the essence and substratum of the right has to be preserved and promoted, when once it is brought within the fold of fundamental right. A balanced but not a rigid approach, is needed in identifying and defining the parameters of the right which the voter/citizen has. The standards to be applied to disclosures vis--vis public affairs and governance AND the disclosures relating to personal life and bio-data of a candidate cannot be the same. The measure or yardstick will be somewhat different. It should not be forgotten that the candidates' right to privacy is one of the many factors that could be kept in view, though that right is always subject to overriding public interest.

33. In my view, the points of disclosure spelt out by this Court in the Association for Democratic Reforms case should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court, though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(a). Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters

and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any objective standards, is not denied. It is for the Constitutional Court in exercise of its judicial review power to judge whether the areas of disclosure carved out by the Legislature are reasonably adequate to safeguard the citizens' right to information. The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the stand- point whether the legislation implicitly and word to word gives effect to the directives issued by the Court as an ad hoc measure when the field was unoccupied by legislation. Once legislation is made, this Court has to make an independent assessment in the process of evaluating whether the items of information statutorily ordained are reasonably adequate to secure the right of information to the voter so as to facilitate him to form a fairly clear opinion on the merits and demerits of the candidates. In embarking on this exercise, as already stated, this Court's directives on the points of disclosure even if they be tentative or ad hoc in nature, cannot be brushed aside, but should be given due weight. But, I reiterate that the shape of legislation need not be solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot be placed in straight jacket formulae and the perceptions regarding the extent and amplitude of this right are bound to vary.”

20. The Apex Court in *Indian Medical Council & another Vs. Union of India & others, (2011) 7 SCC 179* did not approve the right of the Army Welfare Education Society to make admissions in the Army College of Medical Sciences located at New Delhi which was only admitting students who were wards and children of the present and the former army personnel. It was held that the admission procedure devised for admitting students to the MBBS course from a predefined source carved out by itself was ultra vires of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non Exploitative Fees and other Measures to Ensure Equity and Excellence) Act, 2007. It was further noticed that care must be taken in interpreting *P.A. Inamdar's case (supra)* and few sentences here and there ought not to be taken to indicate an actual holding or ratio laid down therein and the ratio of the judgment upon which heavy reliance has been placed was explained by the later Bench. It was also observed that the seats had to be filled in the non-minority institutions on the basis of merits of the students as per the ranking determined and in accordance with the marks secured and that the majority of the questions dealt with related to minority institutions.

Relevant paras read thus:-

“83. Minority institutions have to choose from their own minority group who are otherwise qualified, and non- minority institutions have to choose from the entire group who are otherwise qualified. The modality of choosing within those groups has to be on the basis of inter-se ranking determined in accordance with marks secured in the common entrance test. When we look at the following paragraph, no. 125 in P.A. Inamdar, it might also appear that the State is not entitled to impose a state quota, whereby the private unaided institutions

are compelled to give up a share of available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This Court made the observation that such an act, of imposition of a quota, would be an encroachment on the freedoms granted pursuant to Article 30(1) to minority institutions, and an unreasonable restriction under Article 19(1) (g) read with Article 19(6) when imposed on non-minority educational institutions.

84. The Court in *P.A. Inamdar* was not suggesting that insistence, by the State, on making merit based selections within the groups, general category for the non-minority institutions, and the specific minority group to which the minority educational institution belonged, from which the two kinds of institutions were expected to select students from, amounts to an imposition of a State quota. The context of the discussion was of imposition of reservations on private unaided non-minority educational institutions. This is borne out by the last sentence in paragraph 125, where it is stated: (SCC p. 601)

"125....Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates."

85. The jurisprudence of *TMA Pai* with respect to unaided non-minority educational institutions, as explained by *P.A. Inamdar*, clearly seems to be that private unaided educational institutions seek to provide better professional education, and hence they should not be saddled with less meritorious students, i.e., those who get lesser marks in a qualifying examination such as a common entrance test, by imposition of reservations.

86. With respect to minority educational institutions,

the imposition of reservations or the imposition of the duty to select non- minorities beyond a sprinkling would be an encroachment of freedom guaranteed by clause (1) of Article 30. With respect to non-minority unaided institutions, imposition of reservations was deemed to be an unreasonable restriction on the freedom to engage in the occupation of "education" pursuant to sub-clause (g) of clause (1) of Article 19. In as much as Clause (5) of Article 15 is now part of the Constitution, reservations by the State for "socially and educationally backward classes" without the creamy layer, and for Scheduled Castes and Scheduled Tribes are now constitutionally permissible categories of state imposition on non- minority educational institutions.

87. The status of constitutional permissibility removes the basis for finding reservations to be an unreasonable restriction in the freedom to select students only on the basis of merit with respect to all the seats in a non-minority unaided educational institution. Consequently, the unaided non-minority educational institutions would have to comply with the State mandated reservations, selecting students within the specified reservation categories on the basis of inter-se merit.

88. The question then is whether with respect to the remaining seats, can the state insist that non-minority private unaided institutions select the most meritorious students, as determined by the marks secured in the qualifying test? The answer to that question is in the affirmative. As we have seen above that at p. 604, para 136 in P.A. Inamdar it was held that a Common Entrance Test "*would better ensure the fulfillment of twin objectives of transparency and merit*" (emphasis supplied) and further on in para 138, it stated again: (SCC p. 605)

*"138. It needs to be specifically stated
that having regard to the larger interests and*

welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admission by providing a centralized and single window procedure. Such a procedure, can secure grant of merit-based admissions on a transparent basis."

89. Clearly, the continuing concern expressed by the Seven Judge Bench in Inamdar, echoes the concern of this Court in TMA Pai: the need to ensure merit, as determined by the marks secured on the qualifying exam, is taken care of and thereby achieve academic excellence. In the post clause (5) Article 15 scenario, we are looking at all the seats that are available in the non-reserved category. Those seats have to be filled by non-minority institutions on the basis of merit of students, i.e., ranking determined in accordance with marks secured, in the general category, comprising of the entire set of students who have taken the qualifying examination and secured the minimal marks.

90. It should be clear from the above that simply taking a few stray sentences from here and there in P.A. Inamdar and asserting from those sentences a ratio or a categorical holding would be an incorrect appreciation and leads to an inaccurate assessment of what this Court actually said and meant. The judgments of this Court in TMA Pai, Islamic Academy and in P.A. Inamdar are long, dealing with extremely complex issues of law and fact, and diverse zones of similarities and dissimilarities between the various types of educational institutions being considered, both by the ownership structure - such as minority or non-minority, and aided or unaided - as well as by the level of education being sought to be imparted. On top of that the issues related to whether recognition and affiliation was being sought or not. So, before arriving at an applicable principle from within those huge judgments, for particular

cases that courts deal with, it is imperative that context of observations be closely scrutinized, and also follow the many lines of delineation of many different ratios and principles.”

21. The judgment of the Apex Court in *Adarsh Shiksha Mahavidyalaya's case (supra)*, vigorously cited by Learned State Counsel fully support his case. The said judgment was delivered by the Apex Court after the passing of the judgment by the Learned Single Judge and therefore, the Learned Single Judge did not have the occasion to notice the same

22. The provisions of the NCTE Act, 1993 were under consideration before the Apex Court in *Adarsh Shiksha Mahavidyalaya's case (supra)*, wherein the challenge was also to the common entrance test which was held by the State of Madhya Pradesh and after considering Clause 3(3) of the Appendix I of the Regulations, it was held that students who had not appeared in the CET, were not entitled to appear in the examination conducted by the examining body. The relevant observations read thus:-

“27. The next issue which requires examination is, whether the private institutions could have made admissions de hors the entrance examination conducted by the State Government. The High Court has answered this question in the negative by relying upon the admission procedure contained in para 3.3 of Appendix-I, which contains the Norms and Standards for Secondary Teachers Education Programme. The appellants have not questioned the vires of the admission procedure. Therefore, they cannot contend that they were entitled to admit students de hors the list prepared on the basis of entrance examination conducted under the directions of the State Government.”

23. Accordingly, it was concluded that the students admitted by the

recognized institutions otherwise than through the entrance eligibility test conducted in accordance with the admission procedure contained in Clause 3(3) of the Appendix 1 of the Regulations were not entitled to appear in the examination. Additionally, writ petitioner no. 2 had approached this Court by filing CWP No.19194 of 2007, seeking direction to conduct centralized counseling for admission to the Elementary Teacher Training Course/B.Ed. and had been successful in getting the desired directions vide judgment dated 15.07.2009 (Annexure A-1). It had been held that the State was to hold the CET as per its policy before the commencement of every academic year for admission to the ETT/B.Ed. Courses. The relevant observations read thus:-

“1) The State is directed to hold Common Entrance Test as per its policy before the commencement of every academic year for admission to ETT/B.Ed. Courses in the petitioner-institution and such other institutions as have already been established, recognized and affiliated with the appropriate University.

2) Based upon the test so conducted, the students will be admitted in each institution in accordance with the laid down norms and to the extent of intake capacity prescribed. If there are no norms by equitable distribution subject to intake capacity.

3) In the event the State is unable to conduct such Common Entrance Test for any academic year, it shall permit the petitioner-institutions or authorize any other authority or body to hold such a Common Entrance Test or by constituting a Committee of the representatives of the institution(s) under the over-all control of the Director of Education of the State. In such an eventuality, the institutions shall invite applications for Common Entrance

Test and adopt a fair and transparent procedure/method for admission to various courses being pursued by the institutions. The allocation of students will be on equitable basis, though preference shall be given to the students to opt for a particular institution based upon their assessment of the infrastructure and other facilities, including the proximity to their residence etc. However, such preference will be subject to intake capacity of each institution.

4) It would be appreciated if the State Government itself holds such a Common Entrance Test every year. The State Government will also constitute a Committee of experts to conduct survey regarding future requirement of such institutions and while conducting such survey, at least 1/4th of the Members of the Committee shall be the representative of the existing institutions. On completion of such survey, the State Government will take a policy decision whether to permit any more institutions to come up in the State of Punjab in general or with reference to any backward or rural area in particular. Till such survey is conducted, it shall not permit any new institution to be established in the State.

5) No order as to costs.”

24. According to Appendix 13, various courses are conducted under the NCTE Act, 1993 and the Elementary Teachers Education Program is one such course. It would not be apt to be bound by the judgment of the Division Bench in the *The Association of Education Colleges (Self Financing) of Haryana's case (supra)* decided on 22.08.2006 (Annexure P-3) which was heavily relied upon by the writ petitioners for acceptance of their claim. The writ petitioners cannot derive any advantage from the said pronouncement. In the absence of the 2009 regulations, there was no specific procedure laid down and it was in those circumstances that the

Division Bench had directed that the Association could be permitted to conduct the common joint entrance test under the supervision of the observers keeping in view the observations of the Apex Court.

25. Similarly, reliance upon Amardeep's case (supra) by the Senior Counsel for the writ petitioner would be of no help as therein, the challenge was to the separate tests being conducted by the Association of the Privately managed Unaided Medical/Dental Institutes. The State Government had permitted the said Association vide a specific order, leaving the unaided Colleges and it was, accordingly, held that once the State itself had excluded the said Institutes from the notification/prospectus and given them permission to hold independent/separate admission tests, this action could not be violative of the prospectus. Here again, no specific regulations whereby the State was entitled to hold the CET was under consideration.

26. Again the Apex Court in *Christian Medical College's case* (supra) was considering the validity of the notification and regulations issued by the Medical Council of India. They were struck down on the ground that the right guaranteed under Article 30 of the Constitution of India to religious and linguistic minorities to establish an education institution of his choice would be curtailed and that the regulations were beyond the authority of the Medical Council of India and Dental Council of India.

27. The benefits of a CET which over 26,000 students, would be undertaking being eligible for admission to all the colleges in the State of Punjab, cannot, as such, be lost sight of. The holding of different entrance test for different institutes who have only 60-65 members as colleges of two different Associations would only lead to the inconvenience of the students.

The advantages of CET have been noticed by a Full Bench of this Court in ***Desh Bhagat Dental College & Hospital, Muktsar & others Vs. State of Punjab & others 2004 (1) PLR 166*** which pertained to admissions made to the BDS course for the academic session 2002-03 wherein the public notice issued by the Department of Medical Education & Research (Health-III Branch) Punjab was subject matter of challenge by the petitioner-College on the ground that it was an unaided privately managed professional institution and entitled to admit students on its own which was repelled by observing as under:

"It is apparent from the conclusions drawn by the Apex Court that in an unaided, privately managed, professional colleges, admissions to students (for seats other than the seats reserved for the management quota) can only be on the basis of merit determined in a common entrance test conducted collectively for all such colleges either by themselves or by an agency nominated by the government.

Under the notification issued by the Government of Punjab, Department of Medical Education and Research (Health-III Branch) dated 10.5.2002, admissions to the first year BDS course for the academic session 2002-03 have to be made on the basis of marks obtained in the PMET-2002 conducted by the Medical University. The notification dated 10.5.2002, vests eligibility for taking the common entrance test only in such candidates who fulfil the minimum standards prescribed by the Dental Council of India. No combined test was held by the institutions collectively at their own level, for the academic session 2002-03, there is, as such, no escape from the merit list prepared on the basis of the PMET-2002. In the background of the aforesaid factual position, admissions (to seats other than those allotted to the management quota) could only have been made by the petitioner-college out of students who were allotted to it by the Medical University on the basis of their merit in the PMET-2002.

10. In so far as the management quota is concerned, the question that arises for consideration in this case is whether the admissions made by the petitioner-college at its own level without reference to the combined entrance test, can be acceptable for the management quota? The answer to the aforesaid question has been rendered indirectly by the Apex Court in Islamic Academy of Education's case (supra) in paragraph 13 of its judgment (already extracted above). Observations were made by the Apex Court in respect of admissions in the management quota for institutions enjoying privileges under Article 30 of the Constitution of India i.e. in respect of minority (religious or linguistic) institutions. Even for such institutions, it has been held that admissions to the management quota must be based on merit determined in the combined entrance test. A minority institute can fill up the management quota seats by confining the students admitted against the said quota to students belonging to the particular minority (religious or linguistic) which manages the institute. Even in doing so it is required to make its choice from the merit list prepared on the basis of the combined entrance test, by picking out a candidate higher in the merit list in preference to a candidate lower down in merit. In other words, even a minority institution has not been permitted to admit students by adopting an admission procedure of its own choice. There is, therefore, no question of an institution like the petitioner, which does not enjoy the protection of Article 30 of the Constitution of India, to effect admissions to a professional course without reference to merit determined in the combined entrance test. It is, therefore, inevitable for us to return a finding that an unaided privately managed institution like the petitioner-college does not enjoy the right of filling up seats even in the management quota, by devising its own procedure, or by ignoring the merit of candidates determined through the combined entrance test. We, therefore, find no-merit in the first contention of the learned counsel for the petitioner-college that the petitioner-college is free to make admissions by evolving its own merit criteria and/or without reference to the PMET-2002.

XXXX XXXX XXXX

23. Having dealt with the submissions advanced by the rival parties, we have arrived at the following conclusions:-

Firstly, it is not open to petitioner-college conducting a professional course to make admissions thereto in a manner other than on merit determined through 'a common entrance test held by an agency nominated by the State Government.

Secondly, admissions claimed to have been made by the petitioner-college in furtherance of communication issued by the State Government dated 14.11.2002, 20.11.2002 and 17.12.2002 cannot be approved. Thirdly, breach in the process of regulating admissions whereby less meritorious candidates have been allowed admissions superseding the claims of numerous candidates possessing higher marks cannot be approved.

Fourthly, the interim order passed by the Apex Court on 27.1.2003 will have the effect of restraining the medical university from conducting fresh counselling in furtherance of the public notice dated 9.1.2003 till the decision by the Apex Court in furtherance of the judgment rendered by this Court in Hemlata's case (supra)."

28. Similarly, a Division Bench in ***Vaish College of Education, Rohtak vs. State of Haryana and others, 2007 (4) SLR 839*** held that the State was bound to provide a procedure before the regulations were framed for holding of a common entrance test. The question posed before the Division Bench was whether the State was bound to conduct entrance test for all the institutions which are granted recognition irrespective of the date on which recognition was granted or irrespective of the date on which the entrance test, if any, is scheduled. The relevant portion reads as under:-

“20. In view of above, though the State has right to regulate by providing a centralized and single window procedure, but if the State does not do so, the private institutions can jointly hold a Common Entrance

Test satisfying the test of non-commercialisation, merit and transparency and in absence of any regulatory measure, even a single institution can hold such a test. Right of the State to regulate does not include right to prohibit private institutions from themselves holding admissions, subject to the triple tests mentioned above, if the State does not propose to provide a centralised procedure. Thus, the State is bound either to provide a procedure for holding a single entrance test or to permit private institutions to themselves collectively or individually hold entrance test for admissions subject to non-commercialisation, merit and transparency.”

Following the dictum in *Islamic Academy of Education's case (supra)*, it was held that the State has a right to regulate and provide a centralized single window procedure but if the State did not do so, the private institutions could claim a right to hold the common entrance test.

29. A Division Bench of this Court in **Punjab Private Unaided Medical & Dental Colleges Association Vs. State of Punjab 2012 (4) PLR 722**, approved the CET and dismissed the writ petition whereby admissions were sought to be made against the Management Category Seats by reconducting admission at a centralized place. It was held that inconvenience to the students was to be avoided. Relevant observations read as under:

“11. The Private Unaided Institutions are claiming a right to admit students against the management category seats. Such right would be exercised by the Management in its campus, meaning thereby that a student has to move from one institute to another for seeking admission. Such admission process has the possibility of alluring the management to admit the students otherwise than on the basis of merits picking up a student down

below in the common entrance test. The possibilities of any infraction of the merit has been addressed by the State Government by regulating admission at a centralized place, wherein students will be admitted in order of merit and allowed to deposit the fee. Therefore, at one place, all the aspirants will be able to seek admission without any difficulty and ensure that merit is not given a go by. If there is delay in sending fee, the process can be streamlined, but the action of the University in regulating admission at one place is in the interest of all students, who can seek admission on the basis of merits in a private institution of their choice at one place only. On the other hand, apart from the harassment of the students, the possibility of admitting students otherwise than on merit cannot be ruled out as the students as per the merit will not be able to reach the institutes located throughout the State. In fact, such process finalized by the University will be able to meet the apprehension and challenges noticed by the Supreme Court in Indian Medical Associations case (supra).”

30. A Full Bench of this Court in Navdeep Kaur Gill (supra), upheld the Punjab Private Health Sciences Educational Institutions (Regulations of Admissions, Fixation of Fees and Making of Reservations) Act, 2006, which provided a centralized admission to medical colleges in the State of Punjab. The argument raised whether the admission procedure violated the fundamental right of the colleges under Article 19(1)(g) was rejected by repelling the argument that the making of the admissions by the CET was not an interference with the autonomy of the unaided institutions and was only a permissible regulatory measure. Relevant questions framed by the Full Bench reads as under:

"In view of above pleadings, the questions raised can be framed as under:-

1. Whether fee fixation by FFC for the period prior to sessions 2006-07 is excessive as stated by the students (Category I) or low as stated by the colleges (Category II)?
2. Whether fee fixation and admission procedure violate fundamental right of the colleges under Article 19(1)(g) of the Constitution (Category IV) and whether the impugned notification issued under the said Act prescribes exorbitant and arbitrary fee violating right of students (Category III)?"

31. Question No.2 was answered in paragraphs No.44 & 45 of the judgment and it was held that the admissions regulated on the basis of common entrance test inter se merit was not to be held invalid, being permissible regulatory measure and were not held as interference with the autonomy of the unaided institutions. Relevant paragraphs read as under:

"44. We may now consider the contention raised on behalf of the Colleges that the Act was violative of Article 19(1)(g) of the Constitution in authorizing fee to be fixed and admissions to be made. Section 7 is enabling provision for determining the fee. It provides for fixing the fee having regard to the minimum norms of infrastructure and facilities prescribed by the concerned council. Criticism against the provision is that the institutions are denied right to fix fee as per their own infrastructure and such fee could be interfered with only on the ground that the same was exploitative and did not have nexus to the cost incurred. Conduct of Common Entrance Test and making of admissions by the State under Sections 3 to 6 is challenged as being interference with the autonomy of unaided institutions.

45. We are unable to accept the submissions. The Act is a regulatory measure. Section 3 provides for regulation of admissions, fixation of fee and making of reservation. The fixation of fee by the State is by way of regulation. We have already left the question of reservation open in absence of challenge to Article 15(5) or any other

statutory provisions. The admissions are regulated on the basis of Common Entrance Test and are made on inter se merit and cannot be held to be invalid being permissible regulatory measure."

32. Identical issue was under consideration before a Division Bench of the Himachal Pradesh High Court in **H-Private Universities Management Association Vs. State of Himachal Pradesh & others 2014 (4) RSJ 388**, wherein it was held that the autonomy granted to Private Unaided Institutions would not be curtailed in any manner and that the State had the power to regulate in matters of admission and for creating a uniform admission process through the CET for ensuring equity and excellence in academic institutions. It was specifically noted that if the parent enactment did not provide for or enable such regulations to be framed, then only it would have the effect of take over of seats which was an impermissible nationalization. Distinguishing the judgment in *Christian Medical College* (supra), it was held as under:

"25. The aforesaid observations cannot be read out of context because the Hon'ble Supreme Court in this case was dealing with the validity of regulations framed by the MCI which mandated the Combined Entrance Test (CET) for all medical colleges i.e. aided as well as unaided. The Hon'ble Supreme Court was primarily concerned with a situation where the parent enactment did not provide for or enable such regulation to be framed and in this background, the Hon'ble Supreme Court held that such regulations were not permissible and that any regulation which had the effect of take-over of seats, or reserving some part of unaided college's intake, would be an impermissible nationalization. This is not the fact situation obtaining in the present case.

26. Unlike in *Christian Medical College*, where the rights of minorities were involved, the present case is

confined to the applicability to the scope and ambit of Article 19 (1) (g) and for this purpose, we have to fall back to the law laid down by the larger Bench decisions of the Hon'ble Supreme Court in T.M.A. Pai Islamic Academy and P.A. Inamdar which have recognised the State's power to direct a joint entrance examination, so long as it does not nationalize the intake "and result in imposition of a reservation policy". The equity and excellence in academic institutions have to be maintained and what better way can it be maintained than by ensuring that each students competes in the same examination i.e. CET so as to ensure that in terms of the access to education (equity) and merit of students (excellence) a common platform is that for admissions into professional colleges."

33. Having analysed the legal position, it is to be noticed that the State cannot be permitted to take a vacillating stand and deny the institutes admission on account of not holding the CET and by not having a specific policy in place.

34. Accordingly, in our opinion, a direction is liable to be issued to the State of Punjab that the State should hold a Common Entrance Test as per its policy for the B.Ed. Course before the start of every academic year for admission to the College of Educations situated in the State which are recognized and affiliated. The admission shall be made upon the merit obtained in the test conducted in accordance with the laid down norms and to the extent of the intake capacity prescribed by the Council. The said exercise should be carried out two months in advance before the start of the academic session so that the students are not left in suspense and can apply for admission on the basis of the result so declared.

35. Consequently, the issues arising in these appeals are answered against the association and it is held that they do not have any absolute right

to remain out of the CET to be conducted by the State even though they are unaided and recognized institutes, in the absence of any challenge to the regulations issued under NCTE Act.

36. It is also held that by holding CET, Article 19(1)(g) of the Constitution of India is not violated as the paramount consideration being merit and the State having the authority under the Statute can hold the test and it only amounts to a regulatory measure on the admission process and does not impinge on the autonomy of the unaided institutes to run and administer the same.

37. As a upshot of the above discussion, the present appeals are allowed. The judgment of the Learned Single Judge dated 01.07.2010 passed in CWP No. 10091 of 2009 is set aside and the writ petitions are dismissed. However, the State shall remain bound by directions hereinbefore made and shall comply with the same for the next academic session, i.e., 2016 onwards as the admission for the year 2015-16 is under process. It is further clarified that any admissions, made in pursuance of the judgment of the Learned Single Judge and in view of the examinations conducted by the Association, will not stand affected by the present judgment, directions of which are to operate from the academic session 2016-17.

(G.S.Sandhawalia)
JUDGE

10.08.2015
sailesh/shivani

(Ajay Kumar Mittal)
JUDGE