



**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CM-6231-CWP-2024,  
CM-6232-CWP-2024 in/ and  
CWP-25087-2023 (O&M)**

**Date of decision: 30.05.2024**

**Federation of Self Financed Colleges of Education, Punjab and others**

..... Petitioners

versus

**State of Punjab and others**

..... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL  
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Rajiv Atma Ram, Senior Advocate with  
Mr. Arjun Pratap Atma Ram, Advocate and  
Mr. Brijesh Khosla, Advocate for the applicant-petitioners  
Mr. Amit Goyal, Additional Advocate General, Punjab.  
Mr. Karan S. Gill, Advocate for respondent No.3

**Deepak Sibal, J.**

1. Petitioner No.1 is a Federation of Self Financed Colleges in the State of Punjab. Petitioner Nos.2 and 3 claim to be aspirants for admission to the Diploma in Elementary Education Course (for short – D.Ed. Course). Through the instant petition the petitioners seek quashing of the notice dated 04.10.2022 issued by the State of Punjab declaring therein that for the academic session 2023-25, the minimum qualification for admission to the D.Ed. Course would be graduation.

2. Learned senior counsel appearing for the petitioners submits that under Section 12(e) of the National Council for Teacher Education Act, 1993 (for short – the NCTE Act) one of the functions of the National Council for Teacher Education (for short – the NCTE) is to lay down norms



for specified courses or trainings in teacher education which include determination of minimum eligibility criteria for admission to such courses or trainings; through Regulation 9 of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations 2014 (for short – the NCTE Regulations) the NCTE has laid down norms and standards for admission to various programmes including the D.Ed. Course; as per Clause 3.2 contained in Appendix II attached to the NCTE Regulations, candidates with at least 50% marks in the senior secondary (10+2) or its equivalent examination are eligible for admission to the D.Ed. Course; the minimum qualifications laid down by the NCTE bind the State but through the impugned decision taken by the State, students having 50% marks in their 10+2 examination have been rendered ineligible to seek admission to the D.Ed. Course; once the minimum qualifications for admission to the D.Ed. Course have been laid down through a Central legislation under Entry 66 of list I of the VII<sup>th</sup> Schedule to the Indian Constitution, the State in the exercise of powers conferred under Entry 25 of list III of the VII<sup>th</sup> Schedule cannot lay down a qualification which is repugnant to the minimum qualifications already laid down under the Central legislation; the minimum qualifications for admission to the D.Ed. Course in all other States in the country are senior secondary examinations (10+2) with 50% marks and that since the NCTE is to coordinate education and training of education in the entire country different qualifications for the same course cannot be permitted in different States.

3. In support of his submissions learned senior counsel relies upon the following judgments of the Supreme Court :-



- i) Gujarat University and another vs. Krishna Ranganath Mudhokar AIR 1963 SC 703
- ii) State of T.N. vs. Adhiyaman Edu. & Research Institute (1995) 4 SCC 104
- iii) Parshavanath Charitable Trust and others vs. All India Council for Technical Education and others 2013 (2) SCT 163
- iv) Bharati Vidyapeeth (Deemed University) and ors. Vs. State of Maharashtra and anr. 2004(2) SCT 371

4. Learned senior counsel further submitted that in case this Court was disinclined to agree with the afore submissions then the seats for the session 2023-25 be permitted to be filled up either through a centralized system of counseling to be conducted by the State or by the member colleges of petitioner No.1 from candidates who possess the qualifications prescribed by the State through the impugned decision as unfilled vacant seats would result in the wastage of resources which would not be in public interest.

5. In support of the afore alternate submission reliance was placed on the following judgments:-

- i) Association of Education Colleges (Self Financing) of Haryana, registered office at Swami Devi Dyal College Campus, Village Golpura, Barwala District Panchkula through its General Secretary V.K. Sharma, Tulsi College of Education for Women, Hisar Road, Ambala City vs. State of Haryana through the Secretary to Government of Haryana, Department of High Education, Haryana, Chandigarh and others 2009(1) SCT 157
- ii) Index Medical College, Hospital and Research Centre vs. The State of Madhya Pradesh & ors. AIR 2021 SC 3090

6. Learned counsel for the NCTE submitted that as per clause 3.2 of Appendix II of the NCTE Regulations the NCTE has prescribed the minimum qualifications for making admissions to the D.Ed. Course and that the State could not prescribe a qualification which was lower than the



minimum qualifications prescribed by the NCTE but was well within its rights to prescribe a higher qualification than the one prescribed by the NCTE for admitting students to the said Course.

7. Learned State counsel sought to justify the State's decision by submitting that the State had prescribed a higher minimum qualification than what had been prescribed by the NCTE with the object of achieving academic excellence and that because the State had not prescribed a qualification lower than the minimum qualification prescribed by the NCTE there was no question of any repugnancy between the qualifications laid down by the NCTE and the State.

8. Learned State counsel relied on the following judgments:-

- i) Visveswaraiah Technological University and another vs. Krishnendu Haider and others (2011) 4 SCC 606
- ii) Dr.Preeti Srivastava and another vs. State of M.P. and others AIR 1999 SC 2894
- iii) State of Tamil Nadu and anr. vs. S.V. Bratheep (Minor) and others (2004) 4 SCC 513

9. The afore rival submissions have been considered.

10. The National Council for Teacher Education Act, 1993 was promulgated by the Parliament to provide for the establishment of a council with a view to achieve planned and coordinated development of education system throughout the country as also for regulating and proper maintenance of standards in the teacher education system. The NCTE was established under Section 3 of the NCTE Act and one of its functions, as contained in Section 12 of the NCTE Act, was to prescribe minimum eligibility criteria for admission to specified courses or training in teacher education as also the method of selection of candidates, duration of the course, syllabi and mode



of curriculum. In its exercise of powers under Section 32 of the NCTE Act, the NCTE has made the NCTE Regulations. Regulation 9 of the NCTE Regulations prescribes the norms and standards for teacher education programmes specified in the appended appendixes. The intake, eligibility, admission procedure etc. with regard to the D.Ed. Course is given in Appendix II of the NCTE Regulations and clause 3.2 of Appendix II provides that the minimum qualifications for admission to the D.Ed. Course is at least 50% marks in the higher secondary (10+2) or its equivalent examination. Thus, the minimum qualifications for admission to the D.Ed. Course as laid down through a Central legislation by the NCTE are 50% marks in the higher secondary (10+2) or an equivalent examination. However, through the impugned decision the State of Punjab has determined graduation to be the minimum qualification for admission to the D.Ed. Courses being taught in the State of Punjab. The question posed before us is whether the State of Punjab could do so.

11. In Dr.Preeti Srivastava's case (supra) a Constitution Bench of the Supreme Court held as under:-

*"35. Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for*



*higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.....*

*36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education."*

12. In Bratheep's case (*supra*) a three Bench of the Supreme Court followed Dr.Preeti Srivastava's case (*supra*) and held as follows:-

*"9.... If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it? In our opinion, it does not.....The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into*



*consideration and no other standard could be fixed even higher as stated by this Court in Dr. Preeti Srivastava's case. It is no doubt true, as noticed by this Court in Adhiyaman's case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges..... Excellence in higher education is always insisted upon by series of decisions of this Court including Dr. Preeti Srivastava's case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.*

*10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by the AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr. Preeti Srivastava's case that the State can always fix a further qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter, which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State.*

\* \* \*

*12. One other argument is further advanced before us that the criteria fixed by the AICTE were to be adopted by the*



*respective colleges and once such prescription had been made, it was not open to the Government to prescribe further standards particularly when they had established the institutions in exercise of their fundamental rights guaranteed under Article 19 of the Constitution. However, we do not think this argument can be sustained in any manner. Prescription of standards in education is always accepted to be an appropriate exercise of power by the bodies recognising the colleges or granting affiliation, like AICTE or the University. If in exercise of such power the prescription had been made, it cannot be said that the whole matter has been foreclosed.*

13. The Supreme Court then considered and followed Bratheep's case (*supra*) and Dr.Preeti Srivastava's case (*supra*) in Visveswaraiyah Technological University's case (*supra*) and held as under:-

*“14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, para 41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Dr. Preeti Srivastava and the decision of the larger Bench in S.V. Bratheep which explains the observations in Adhiyaman in the correct perspective. We summarise below the position, emerging from these decisions :*

*(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the Central Body/AICTE. The term 'adversely affect the standards' refers to lowering of the norms laid down by Central Body/AICTE. Prescribing higher standards for*



*admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the Central Body/AICTE.*

*(ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the state authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.”*

14. Thus, the Supreme Court has held that both the State as well as the Union can legislate on education. However, this power is subject to Entry 66 of list I which deals with the powers of the Union with regard to prescribing norms and standards in institutions for higher education or research and scientific and technical institutions as also for coordination of such standards. The State can also legislate on these subjects but only if the said field is not already occupied by a Central legislation. The State can also not lay down any standard which adversely affects the minimum standard or norm already laid down in the aforesaid field by the Union. However, with the object of achieving academic excellence, the State can prescribe higher standards for admission than which have been laid down by the Union as by doing so the action by the State would have no adverse impact on the minimum standards/norms already laid down by the Union. What the State cannot do is to lower the norms or standards prescribed through the Central legislation.



15. In the case in hand, in the exercise of its powers under Entry 66 of list I, the Union, through the NCTE Act read with the NCTE Regulations, has prescribed 50% marks in the higher secondary (10+2) or an equivalent examination as the minimum eligibility for admission to the D.Ed. Course. Through the decision impugned before us the State of Punjab, to achieve academic excellence, has substituted the said minimum qualification to be graduation. The State's action does not lower the minimum standards laid down by the Union. Thus, it does not adversely impact the standards laid down by a Central Body for admission to the D.Ed. Course. The State's decision is found to be supplementary to the decision taken by the NCTE. The standard fixed by the State is also found to be reasonable and attainable. Thus, the State's action is not inconsistent or repugnant to the minimum norms laid down by the Union through the NCTE Act or the NCTE Regulations, especially when it is the clear stand before us on behalf of the NCTE that the NCTE also does not consider the State's action to be so.

16. To carry out its objects with regard to coordinated development of teacher education throughout the country the NCTE has laid down the minimum standards for admission to various teaching courses including the D.Ed. Course. These minimum standards apply throughout the country. With the object of achieving academic excellence the State of Punjab has decided to set a higher norm than the minimum prescribed by the NCTE which, as per the above discussion, is legally permissible. Even after the State of Punjab has fixed a norm which is higher than the minimum standard laid down by the NCTE, the minimum standards laid down by the NCTE continue to apply, without exception, throughout the country. Thus, the plea



of discrimination sought to be raised on behalf of the petitioners is misconceived.

17. The judgments cited on the petitioners' behalf would also have no application to the facts of the instant case.

18. In Gujarat University's case (supra) the issue before the Constitution Bench of the Supreme Court was that one Shrikant cleared his secondary school examination held in a school at Bombay. While appearing in the said examination he took the instruction through the medium of Marathi and also answered the questions at the examination in the same language. Shrikant then joined St. Xavier's College which was affiliated with the University of Gujarat, in the First Year Arts class where the instructions were imparted through the medium of English. He successfully cleared the First Year of the course and then applied for admission to prepare for the Intermediate Arts examination of the University being conducted through the medium of English. The Principal of the College referred to the provisions of the Gujarat University Act, 1949 and informed Shrikant that he could not be permitted to attend classes in which instructions were imparted through the medium of English. Shrikant's father then represented to the University seeking its sanction to permit Shrikant to attend the "English medium classes" in St. Xavier's College, which request was declined. This action of the University was challenged before the High Court of Gujarat. The High Court allowed the writ petition. The decision of the High Court was appealed by the University and the State of Gujarat before the Supreme Court. In the afore background the Supreme Court was called upon to decide as to whether under the Gujarat University Act, 1949 was it open to the University to prescribe an exclusive medium or media of instruction and examination in



the affiliated colleges and whether legislation authorizing the University to impose such media would infringe Entry 66 of List I of the VII<sup>th</sup> Schedule to the Constitution.

19. It is in the above facts that the Supreme Court went on to decide both the afore referred questions holding that the State had the power to prescribe the syllabus and courses of study in the institutions named in Entry 66 (but not falling within Entries 63 to 65) and that the State would also have the power to indicate the medium in which instruction should be imparted. However, the Parliament had an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all India or other basis impossible or even difficult. Thus, the Supreme Court held that though in the powers of the Union and of the States a degree of overlapping was inevitable but it was not possible to lay down any general test which would afford a solution for every question which might arise on this head. The Supreme Court further held that if there was a Central legislation in respect of coordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Article 254(1) of the Indian Constitution and that even if that power be not exercised by the Parliament the relevant legislative entries being in List I of the VII<sup>th</sup> Schedule of the Constitution, a State law trenching thereupon would be invalid.

20. The facts in Gujarat University's case (supra) when compared to the facts in the present case are completely distinguishable. As noticed and observed earlier, in case in hand the State has nowhere trenched on the field held by a Central legislation. It has only supplemented the minimum



standards laid down by the Union and that too in a manner which has been held to be permissible by the Supreme Court in Dr.Preeti Srivastava's case (supra).

21. In Parshavanath Charitable Trust's case (supra) the Parshavanath Charitable Trust was running several colleges in the district of Thane in the State of Maharashtra. The Trust had all the necessary approvals. It then shifted to another premises but since to run the institution from the shifted premises the necessary approvals had not been obtained, the All India Council for Technical Education, which was the national body authorized to grant one of the approvals, decided not go include the institutions being run by the Trust in the Centralized Admission Process. This issue was taken up by the Trust before the Bombay High Court which allowed the Trust's petition. The Municipal Corporation of Thane was directed by the High Court to consider the grant of occupation certificate to the Trust with regard to the building in which the engineering college and the pharmacy college were being run. The AICTE was also permitted to proceed with the show-cause notice and if any adverse order was to be passed against the Trust, the same was directed not to be implemented for a period of two weeks from the date of the order. The AICTE then withdrew the approval granted to the Trust which action of the AICTE was challenged by the Trust before the Bombay High Court. The Trust's petition was dismissed *inter alia* on the ground that the Trust had not established a clear title to or ownership of the land where they had shifted its premises and that they also had not obtained the requisite 'No Objection Certificate' from the State government or from the University of Mumbai. It is in this background that the Trust knocked the



doors of the Supreme Court. The Supreme Court dismissed the appeals filed by the Trust.

22. The judgment of the Supreme Court in Parshavanath Charitable Trust's case (supra), in the above facts, would have no application in the instant case.

23. Similarly in Bharati Vidyapeeth's case (supra), a society in Pune, Maharashtra was running several colleges which were affiliated to the Pune University. It was declared as a deemed University and under that status Bharati Vidyapeeth decided to keep themselves outside the scope of the State authority at the time of making admissions. At that time Bharati Vidyapeeth also filed a writ petition before Bombay High Court challenging the Admission Rules to Medical, Engineering and Dental colleges for the year 1996-97 whereby the colleges run by Bharati Vidyapeeth had been included in the admission proposed to be controlled by the CET authority. The High Court dismissed the writ petition occasioning the filing of a petition by Bharati Vidyapeeth before the Supreme Court. It is in afore factual matrix that the Supreme Court went on to reiterate the settled position in law that if the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament then once an institution comes within the scope of Entry 66 of List I, it would fall outside the control of the provisions of Entry 25 of List III. After holding so the Supreme Court set aside the order of the High Court and allowed Bharati Vidyapeeth's writ petition to the extent of restraining the State to enforce their instructions for bringing the institutions of Bharati Vidyapeeth within the scope of the Common Entrance Test Examination.



24. The judgment of the Supreme Court in the afore facts would also not apply to the facts of the present case as in the instant case the only issue to be decided is as to whether while laying down minimum eligibility for admission to a technical course could the State prescribe a higher qualification than the minimum qualification prescribed through a Central legislation.

25. Thus, the judgments cited on behalf of the petitioners would not apply to the present case.

26. At this stage the alternative prayer made on behalf of the petitioners to permit them to make admissions for the academic session 2023-2025 in terms with the qualifications laid down by the State of Punjab cannot be granted as the academic year 2023-2024 is already over.

27. Dismissed.

28. All pending miscellaneous application(s), if any, also stand disposed of.

(Deepak Sibal)  
Judge

30.05.2024  
gk/sunil yadav

(Deepak Manchanda)  
Judge

Whether speaking/reasoned : Yes / No  
Whether reportable : Yes / No