

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWPs No.819 of 2003, 1178, 1188, 1194, 1204, 622 of 2004 & 50 of
2005.

Reserved on:

Date of decision: .01.2006

(For title: Please see over-leaf)

Coram:

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice K C Sood, J.

Whether approved for reporting ?¹

For the Petitioners: *(Please see over-leaf)*

For the Respondents: *(Please see over-leaf)*

K C Sood, J

Under challenge, in this Bunch of writ petitions, except writ petition Bhawana Sharma –v- State of H.P. and others (C.W.P. No.622 of 2004), to which we shall advert little later, is the action of the respondent-State rejecting the request of the Principal of Rameshwari Teachers Training Institute Sarabai Bhunter District Kullu (“Institute” for short) for permission to declare the result of the petitioners who were admitted in the Institute for the Two years J.B.T. Course for the Academic session 1999-2001 and the directions of the State Government (Respondent No.1) to the Examining Body, respondent No.2, H.P. Board for School Education (“Board” for short) to cancel the result

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

of the petitioners who were in-eligible for admission to the J.B.T. Course run by the Institute.

The Background.

For convenience, the documents shall be referred to in CWP No. 1178 of 2004.

The petitioners, in all the petitions, except in Bhawna Sharma, sought and were granted admission in Two Years Junior Basic Training Course ("JBT" for short) in the Institute for the session 1999-2001. The Institute is managed and run by "Bhartiya Education Society" respondent No.2 ("Society" for short). This Society is registered under the Societies Registration Act, 1860. The Institute started Two Years J.B.T. Course in 1997 without any recognition by the National Council for Teachers Education ("NCTE" for short) or affiliation with the "Examining Body", i.e, the "Board". The Institute admitted 160 students for the two years "JBT Course" for the academic session 1999-2001. The Board refused to conduct the examination of 1999-2001 batch on the ground that the Institute was neither affiliated to it nor recognized by the 'NCTE'. The Society and Institute also while admitting the petitioners did not follow the rules and regulations applicable to such admissions as framed by the NCTE. The regulations applicable at that time provided that the students to get admission in Two years JBT Course must be matriculate with second Division as the educational qualification and should not be less than sixteen years or more than twenty-seven years with five years age relaxation for reserved candidates. The

petitioners either have not secured minimum of second division or were not within the age limitation.

However, the State Government by a communication dated October 28, 1999 (Annexure-R2/4) addressed to the Board, informed the Board that the Government has issued no objection certificate to the Society for running JBT classes from the session 1997-99 onwards and, therefore, the Board may take further necessary action under the relevant rules ensuring that all the codel formalities are completed. The NOC was granted by the Government when the students admitted by the Institute had completed maximum of two years of the JBT course. The Institute or the Society even at that time had not obtained recognition from the NCTE and affiliation from the Board. The recognition and affiliation of the Institute was necessary requirement for admission of the students to JBT two years course under the National Council For Teachers Education Act, ("Act" for short) Nevertheless, in view of the directions of the State Government, admission forms for JBT-I examination were supplied to the Institute requesting the Institute to supply the approved list of the candidates for the session 1999-2001 under intimation to the State Government. The approved list was not supplied by the Institute or the Society. By that time, even the students admitted for the session 1997-1999 had not taken the examination.

By a communication dated October 5, 2000 (Annexure R2/6), the Commissioner-cum-

Secretary (Education) to the Government of Himachal Pradesh referring to the discussion of the Minister of State for Primary Education with the Chairman of the Board directed the Board to conduct the examination of the students, of the previous session, i.e, 1997-99, who had obtained 45% marks in matriculation or plus two examination as per the list of the candidates enclosed with the letter. By another communication dated December 11, 2000, the Secretary (Education) of the Government of Himachal Pradesh (Annexure R2/7) informed the Secretary of the Board that the Government has taken a decision that the final examination of all those students of 1997-99 batch may be conducted urgently provided the students had secured minimum of 45% marks in matriculation or plus two examination with relaxation to the upper age limit. By another communication dated May 30, 2001, (Annexure R2/8), the Government directed the Board to conduct the examination of all the students of 1997-99 batch admitted by the Institute irrespective of the age and minimum marks under intimation to the Department.

It appears, all the candidates admitted to JBT two years course (1997-99 Session) by the Institute appeared in the J.B.T. examination conducted by the Board, under the directions of the Government, their result was declared.

So far the batch for the academic session 1999-2001 was concerned, the Government by a communication dated October 1, 2002 (Annexure—

R2/9) informed the Board that the question of regularizing the wrongful admissions by the Institute was engaging the attention of the Government and the Government had constituted a Committee which found that the Institute has made the following admissions for various terms:

(a) Session 1999-2001. 160 Students

(The Institute was neither recognized nor affiliated).

(b) Session: 2000-2002. 50 students.

(Institute was recognized but not affiliated).

© Session 2001-2003. 50 students.

(Institute was both recognized and affiliated)

and the Committee has opined that the examination by the Board of these batches is only possible after special permission is granted by the Government as was done for 1997-99 batch. The Government, looking to the fact that de-recognition of these classes "will generate lot of hue and cry amongst the students" who had already been granted admission for the course has decided to grant one time relaxation. The Board was directed to conduct examination of the students of batches namely, 1999-2001 (160 students), 2000-2002 (50 students) and 2001-2003 (50 students) as a special case.

By another communication dated October 17, 2002 (Annexure R2/11), the respondent-State informed the Secretary of the Board that the Government, in the light of the interim report of the Committee, constituted by it, has taken a decision that

on the analogy of 1997-99 batch, the examination of the students of the Institute for 1999-2001, 2000-2002 and 2001-2003 may be conducted by the Board in the interest of the students under-going training in the Institute as one time settlement and if the Institute indulges in unauthorized admissions in future, they will not be entitled to any leniency from the Government. The Board accordingly supplied the admission forms to the Institute with a request to supply the approved list of the candidates for the concerned sessions, i.e, 1999-2001, 2000-2002 and 2001-2003. The Board by its letter dated December 5, 2002 (Annexure-R3/13), referring to the letter of the Government dated October 1, 2002 informed the Government that the approved lists of the candidates for the concerned session have not been supplied by the Institute even though the last date for submitting admission forms was fixed as November 25, 2002. It further informed that the documents were scrutinized based on prevalent eligibility criteria and it was found that so far batch 1999-2001 was concerned, 92 candidates were ineligible, i.e, five candidates admitted were under-age, 7 candidates admitted were over-age and 80 candidates had secured less percentage of the marks than minimum prescribed. The Board sought the clarification whether the Government has regularized the admission of all these 92 candidates who did not fulfill the eligibility criteria for admission. The Government did not respond. The Chairman of the Board, once again reminded the Government by a communication

dated December 16, 2002 (Annexure R4/14) that clarification sought has not been received by the Board which will necessitate the deferring of the schedule of the examinations. The Secretary (Education) was requested to send the clarification immediately so that appropriate action is taken by the Board/ The Secretary (Education) to the Government of Himachal Pradesh by his communication dated December 19, 2002 (Annexure-R2/5) responded to say that the action in the matter may be taken as per the earlier directions of the Department.

The examination of all the candidates for 1999-2001 batch, including the petitioners, was conducted by the Board. The board by its communication dated April 4, 2003, (Annexure-R2/16) sought the directions of the Government whether the result of the JBT-I of the candidates, including 1999-2001 batch be declared by the Board based on the list supplied by the Institute or the list is to be submitted to the Government for formal approval of the anomalies as pointed out earlier by the "Board". The Government by its communication dated May 6, 2003 (Annexure R2/17) asked the Secretary of the Board to send the list as supplied by the Institute for consideration before the results are declared of part-I Exams of the JBT for the concerned batches including 1999-2001 batch. On May 18, 2003, the Secretary of the Board once again wrote to the Secretary (Education) to the State Government (Annexure R2/18) to give further directions in the matter giving the entire history in the background of

which Board conducted the examination on the basis of the admission forms supplied by the Institute. The Government by communication dated May 26, 2003 (Annexure R2/19) directed the Secretary of the Board to declare the result of only “eligible” candidates and await instructions of the Government so far “in-eligible” candidates were concerned. The Principal accordingly declared the result of the eligible candidates on May 30, 2003 (Annexure R2/20) and wrote to the Government on the same day for the earliest direction.

By another communication dated June 23, 2003 (Annexure-R2/21), the Secretary of the Board wrote to the Principal Secretary (Education) of the State once again reminding the Government for suitable directions/decision of the Government in respect of the in-eligible candidates. It was only on December 1, 2003, the Principal Secretary (Education) to the State Government informed the Secretary of the Board (Annexure R2/22) that the Government has taken a decision that the result of the in-eligible candidates, including the petitioners, be not declared.

The Grievance and prayers.

The grievance of the petitioners is that the Government had taken a decision on the analogy of 1997-99 batch to regularize the admissions of the in-eligible candidates to the Institute and as all the students irrespective of eligibility of “1997-99 batch” were permitted to appear in the examination and their results were also declared, therefore, the result of 1999-2001 batch may also be directed to be declared.

THE PERSPECTIVE

The National Policy of Education, 1986 recognized improvement for quality elementary education which was dependent upon the quality of the teacher education and envisaged establishment of District Institutes of education and training (DIETS) to organize “Induction” and “In-service” courses for elementary teachers. Even though NCTE came into being in 1973 by a Government Resolution as a National expert body to advise Central and State Government on all matters pertaining to teacher education but role of the body was purely advisory and therefore could have little impact on the standards of teacher training institutions in the country. The National Policy on Education stated that the NCTE should be provided with necessary resources and capability to accredit institutions of teacher education and provide guidance regarding curricula and methods. Realizing the inherent difficulties in the constitution of the NCTE to guide the system of “Teacher Education”. It was decided to confer statutory status to the ‘NCTE’. Thus the ‘NCTE’ became statutory body by Act No.73 of 1973. The Act came into force w.e.f. 1.7.1995.

Section 12 of the Act provides for functions of the Council. Section 12 mandates that it shall be the duty of the council to take all such steps as it may think fit for ensuring planned and co-ordinate development of teacher education and for the determination and maintenance of standards for teacher education and for the purpose of performing its functions the Council may:

(a).....

(b).....

©.....

(d).....

(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 recognized institutions for starting new courses or training and for providing physical and instructional facilities, staffing pattern and staff qualifications;

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

Chapter IV of the Act provides for
Recognition of Teacher Education Institutions:

Section 14 under Chapter (IV) of the Act mandate that every institution offering or intending to offer a course or training in “Teacher Education” on or after the appointed day i.e. 1.7.1995 shall make an application to the concerned “**Regional Committee**” of the “**NCTE**” for grant of recognition in such form and such manner as may be determined by regulations:

The Institutes who were already offering a course or training in teacher education immediately before the appointed day, were entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

Sub Section 3 of Section 14 says that on receipt of an application by the Regional Committee from any institution offering a course or training in "Teacher Education" and after obtaining from the concerned institution such other particulars as it may consider necessary shall:

a) If it is satisfied that such an institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations:

b) If it is of the opinion that such Institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing.

Sub section (5) to Section 14 explicitly lay down that every institution, in respect of which recognition has been refused shall discontinue the course or training in "Teacher Education" from the end of the academic sessions next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section(3). The relevant provision reads:

"14. Recognition of institutions offering course or training in teacher education.-

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations;

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,-

(a) If it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) If it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing;

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4).-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused”.

A bare reading of the above provision shows that no institution can offer a course or training in “Teacher Education” unless it is recognized by the Regional Committee of the ‘NCTE’. It further envisages that after the grant of recognition to an institution for a course or training in teacher education is made by the “NCTE” “the Examining Body”, the Board in this case, shall on receipt of such recognition grant the affiliation to the institution or cancel the affiliation of the institution, where the recognition has been refused or not applied for.

(emphasis

given)

Section 15 of the Act mandates where any recognized institution intends to start any new course or training in teacher education, it will have to make an application, to seek permission, to the concerned Regional Committee.

Section 16 of the Act lays down that no “Examining Body” shall, on or after the appointed day:

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution.

Section 17 provides for the consequences if the provisions of the act are contravened or not complied with. It lays down that where the Regional Committee is, either on own or any representation received from any person, satisfied that a recognized institution has contravened any of the provisions of this Act, or the rules, regulations orders made or issued thereunder, or any condition subject to which recognition was granted to an institution, it may withdraw recognition of such institution for reasons to be recorded in writing, after giving a reasonable opportunity of making representation against the proposed action to that institution.

Sub section (3) of Section 17 mandates that once the recognition of an institution is withdrawn such institution shall discontinue the course or training in teacher education and the concerned university or the “Examining Body” shall cancel affiliation of the institution in accordance with the order passed w.e.f the end of the academic sessions next following the date of communication of the said order.

Sub-section (4) of Section 17 stipulates that if any Institution fails of neglect to obtain recognition or permission of the NCTE under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a

valid qualification for purposes of employment under the Central Government, any State Governor or University or in any school, college or other educational body aided by the Central Government or any State Government.

Sub-section (4) of Section 17 reads:

“(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1) or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking the course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, and State Government or University or in any School, College or other educational body aided by the Central Government or any State Government”.

A reading of this provision shows that any qualification in “Teacher Education” acquired by any person from an un-recognized Institution is of consequence so far employment is concerned except in un-aided ‘Private Institutions’.

Admittedly, 1997-99 batch was imparted Teachers education/teachers training without it having

been recognized by the 'NCTE' and therefore, any diploma or certificate granted to that batch is of no consequence. In any event such grant is not in challenge before us. So far 1999-2001 batch is concerned, all the candidates including the petitioner were admitted to the two years Course for teachers training by the Institute without it having been recognized or affiliated under Section 14 and 16 of the Act, noticed above. The NCTE granted affiliation to this Institute only with effect from July 17, 2000 for JBT two years course from the academic session 2000-2001 with only in-take of 50 students,. The recognition was given with certain conditions. Apparent as it is, the Institute was not recognized so far 1999-2001 batch is concerned. In this view of the matter, not only admission which was granted by the Institute for JBT Course but also the conduct of examination by the 'Board' is illegal being violative of the express provisions of the Act. It was also not permissible in law to the Government to have given directions to the Board for holding the examination of the students contrary to the express provisions of the Act as no such power is given to the Central Government or the State Government under the Act. Rather, any training in "Teachers Education" imparted by any Institution without it being recognized by the 'NCTE' is not recognizable by any Central Government or the State Government or University or School or College or other educational body aided by the Central Government or any State Government and such qualification obtained

pursuant to such Course or training shall not be treated as valid qualification for the purpose of employment under the Central Government or State Government or School, College or educational body aided by the Central Government or the State Government as noticed earlier.

This apart, Section 32 empowers the NCTE to make regulations to carry out the provisions of the Act and in particular, such regulations may provide all or any of the matters given in sub-section (2) of Section 32 which includes the norms, guidelines and standards in terms of clause (d) of sub-section (2) of Section 32 which reads:

“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 or carry out the provisions of this Act.*

(2) xx xx

(a) xx xx

(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 recognized 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 teachers education; and identification of institutions or offering teacher development programmes under clause (1) of section 12...”

(emphasis given).

Pursuant to the powers under clause (d) of sub-section (2) of Section 32, regulations for norms and standards for Teachers Education Institutions have been framed by the NCTE. Regulations provide norms and standards for regular institutional programmes of two years duration preparing teachers for elementary Schools which includes essential norms which are minimum that all institutions should fulfill in order to make their institutions eligible to impart 'Teachers Training'. Para 3 provides for norms for space and buildings. Para 4 provides for norms for equipment, books and furniture. Para 5 lays down norms for the teaching staff. Para 7 provides norms regarding admission criteria and fees. Para 7.1. lays down minimum qualification for admission to the Course of Elementary Teachers Education as pass in higher secondary (+2 school certificate examination) with a minimum of 50% marks in aggregate. Para 7.2. mandates that the student should be selected for admission only on the basis of merit as determined by a

written selection test to be conducted by Agency/Organization approved by the 'NCTE'

In the present case, none of the petitioners was selected for admission by agency/organization approved by the 'NCTE', in fact, as noticed earlier. This institution was not recognized by the 'NCTE'.

The contentions:

Learned counsel for the petitioners in all the writ petitions contend that the petitioners were admitted in the Institute by the

Management of the Institute and they paid their fees, had undergone two years 'JBT Course' have altered their position and should not be permitted to suffer for the irregularities committed by the Institute and the Society. It is the further argument of the learned counsel for the petitioners that the petitioners similarly situate with the earlier batch of 1997-99, who were also irregularly admitted to the JBT course but as a one time relaxation not only their exams were conducted by the Board but the results were also declared under the directions of the Government and therefore, they cannot be treated differently by the State and the Board.

Learned counsel for the petitioners heavily rely upon *Rajendera Prasad Mathur –v- Karnataka University and another, 1986 (Supp) Supreme Court Cases 740* to contend that students cannot be permitted to be penalized for the faults of the Institute and the Society. In *Rajender Prasad Mathur*, the petitioner passed his higher secondary examination conducted by the Board of

Secondary Education Rajasthan and applied for admission to the first year of the engineering degree course in Shri Dharamasthala Manjunatheswara College of Engineering and Technology for the academic session 1981-92. The college was a private engineering college affiliated to the Karnataka University and therefore, admission to the College was governed by the Rules for admission made by the Karnataka University. The condition for eligibility provided for admission to the first year course in the engineering college was pass two years University examination of the Pre-university Education Board Bangalore or an examination held by any other Board or University recognized as equivalent to it with English as one of the languages and Physics, Chemistry and Mathematics as optional subjects with the necessary percentage of marks laid down by the University at the time of admission. The Higher secondary examination in the State of Rajasthan required only 11 years of schooling whereas SSLC Examination is held after 10 years' schooling followed by study for a period of two years whether in school or in college, which is termed as Intermediate course at some places and Pre-university course at others. However, so far as the State of Karnataka is concerned, it followed the pattern of 10+2 ,i.e., ten years' schooling followed by SSLC Examination. While the petitioner was in the second year of the Engineering course, his admission was disapproved by the Karnataka University saying that the petitioner had passed examination from Rajasthan which is equivalent to 11 years' schooling and as per eligibility

requirement, a candidate must have passed two year Pre-University Examination of the Pre-University Examination Board, Bangalore or equivalent to it. Thus, the eligibility requirement, H.S.C, Examination of 11 years' duration was not considered as equivalent to Pre-University examination which involved 10 years plus 2 years i.e, 12 years of schooling. It is in this context that the Apex Court while holding that the action of the University was not arbitrary or not based on reasons but looking to the fact that the petitioner had been pursuing their studies in the College and the University allowed to continue the petitioners to pursue the Course for a considerable length of time and even after the disapproval of the admission of the University, they were allowed to continue their studies by the interim orders of the High Court and the Supreme Court, observed that the students should not be punished for the fault of the College and directed that the petitioners be allowed to continue their studies. However, it directed that the Karnataka University should take appropriate action against the erring engineering colleges.

In the present case, at no point of time either the NCTE or the Board approved the admission of the students. In fact, the Institute never applied for either the recognition by the NCTE or affiliation by the Board.

In *State of T.N. v. St. Joseph Teachers Training Institute, (1991) 3 SCC 87*, the High Court of Madras while dismissing the writ petition filed by the unauthorized Educational Institutions gave direction to admit the students for the examination. The Apex Court set aside

the order of the Madras High Court observing that the students of un-recognised institutions were legally not entitled to appear at the examination conducted by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The following observations of their Lordships in *St. Joseph Teachers Training Institute* are apposite:

“After hearing learned counsel for the parties, we are of the opinion that these appeals must succeed. There is no dispute that the respondent educational institutions were established for imparting education in Teachers Training Course without obtaining recognition from the Education Department of the State Government. In the absence of recognition from the Education Department the students pursuing their studies in these institutions could not appear at the public examination held by the Education Department. The Full Bench rightly held that students of unrecognized educational institutions could not be permitted to appear at the public examination held by the government. On its own findings, the Full Bench should have refused relief to the petitioners, but it was persuaded to issue directions on humanitarian grounds which were in effect destructive of its own findings, and the law laid down by it. The Full Bench issued directions permitting the students to appear at the

examination and directing the appellant authorities to make a special provision for supplementary examination. These directions in our opinion were unauthorized and wholly unjustified”.

Similarly, in *Students of Dattatraya Adhyapak Vidyalya v. State of Maharashtra*, SLP © No. 2067 of 1991 decided on 19.2.1991, Their Lordships of the Supreme Court observed:

“We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognized schools and are made to suffer. Some courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of regulation”.

The Supreme Court again in *State of Maharashtra v. Vikas Sahebrao Roundale and others* (1992) 4 Supreme Court Cases 435 observed:

“The ill-equipped and ill-housed institutions and sub-standard staff therein are counter-productive and detrimental to inculcating spirit of enquiry and excellence in the students. The disregard of statutory compliance would amount to letting loose of innocent and unwary children. The proceedings of the recent seminar held in Delhi, as published by the Times of India dated August 4, 1992, would demonstrate the admission by the teachers that they are not properly trained to cope up with the growing needs of the society and are unsuited to

the duties they have to shoulder in imparting teaching to the children. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. Formal education needs proper equipping of the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities to the students in their pursuits. The Teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of ever-changing techniques, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat

to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.”.

(emphasis given)

The Supreme Court once again in ***State of Punjab and others versus Renuka Singla and others (1994)***¹ **Supreme Court Cases, 175** reminded that the High courts or the Supreme Court cannot be generous or liberal in issuing directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students.

The Apex Court again in ***Maharishi Dayanand University versus M.L.R.Saraswati College of Education (2000)*** **7 Supreme Court Cases** disapproved the approach of the High Court in directing the University to procure increase of the students in the educational institute without it having been approved by the NCTE. Their lordships observed:

“More often, as pointed in the above judgments, colleges or schools which violate the rules, either plead for the students or set up the students to file cases in the courts in

the belief that the courts can be persuaded to grant orders to jump over the rules. This tendency has been on the increase commercialization of education is the reason. This Court has been insisting on discipline and obedience to rules. Where even the High Courts have been granting orders in favour of the institutions/ students, this Court has been setting aside those orders.”

In this petition, the petitioners sought and were granted admission to two years JBT course by the Institute which was neither recognized by the NCTE nor affiliated with the Board. This apart, the petitioners were not eligible for admission to two years JBT course under the norms and standard prescribed by the NCTE under the Regulations framed by it.

CIVIL WRIT PETITION No. 622 of 2004

In this case, the petitioner was admitted to the two years JBT course for the academic session 2002-2004. According to the petitioner, the Board has refused to conduct examination of the students admitted to academic Session 2002-2004, even though the affiliation was granted by the Board for the academic year 2002-2003 and therefore admission of the petitioner along with similar situate students for the academic sessions 2002-2004 was regular and within the four corners of the law. The Institute was also granted recognition by the Regional Committee of Jaipur of NCTE for intake of 50 students for two years JBT course. Stand of the Board in its return is that the Board did not grant affiliation to the respondent Institute for the

academic session 2002-2004 as the institute never applied for affiliation for the session 2002-2004 to the Board, though the Institution was affiliated for the academic sessions 2001-2003 i.e. 2001 1st year and 2003 second year. It is the case of the Board that the Institute admitted the petitioner, without affiliation of the Institute by the Board. The respondent-Board could conduct the examination, only if the institute had been affiliated by the Board. Neither the respondents No.3 nor 4 ever applied for affiliation for the session 2002-2004.

The record shows that the Principal of the Institute requested the Secretary of the Board, by a communication dated November 17, 2003 (Annexure R-II/I) to this petition to supply fifty examination forms for the session 2002-2004 for the first year JBT examination. It further informed the Secretary of the Board that the Institute is recognized by the NCTE and affiliation of second year students of batch 2001-2003 had already been given to the bath of 2001-2003 up to December 2003 and the examination for the first year exams of batch 2002 may be considered for 2003. The Secretary of the Board by his communication dated December 8, 2003 (Annexure R-II/II) to this petition, informed the Principal of the Institute that the admission forms, as demanded, cannot be supplied as the Institute was not affiliated to the Board.

The question, therefore, arises whether or not the Institute was affiliated to the Board for the session 2002-2004. There is nothing on the record to show that this Institute was affiliated by the Board. The record further shows that a meeting of the Selection Committee

constituted by the Government of Himachal Pradesh for the purpose of scrutiny of admission records relating to the Institute for the period when no joint entrance test was held by the Board took place on August 7, 2002 in the premises of the Society at Kullu. The Chairman of the Society and Principal of the Institute participated in this meeting. The Committee emphasized that H.P. Board of School Education was conducting joint entrance test on October 6, 2002 for selecting candidates for the JBT course for the session 2002-2004 and the selection process is likely to be over by December and if any candidate admitted by the Management of the Institute of its own, then Selection Committee/Department/Government/Board would not be responsible for such admission. Thus, the petitioner was selected neither by a Body nominated by the NCTE under the regulations framed by it nor by the Selection Committee constituted by the Government in addition to the fact that the Institute was not affiliated by the Board for the academic session 2002-2004. A reading of order dated December 31, 2001 (Annexure R-VII) to the reply of the Board clearly shows that the Board granted affiliation to the Institute for JBT two years only for the academic year 2001-2002. Condition No.1 of this grant reads:

Condition-1 reads:

“The affiliation to the Institution is being granted for JBT course of two years for the academic session 2001-2002 only. The affiliation will not have retrospective effect at all”.

Condition no.3 clearly stipulates that the Management of the Institute shall have to seek fresh

affiliation for the next academic sessions following 2001-2002.

The office order dated December 24, 2002 of the Board (Annexure R-VII) shows that the affiliation of the Institute was renewed in the academic year 2002-2003 in respect of 2001-2003 batch. Condition No. 1 clearly stipulated that the affiliation is being granted only for the second year of two years JBT Course admitted during academic session 2001-2002.

Condition No.1 reads:

“1. The renewal of affiliation is being granted only in respect of second year of Two Years JBT Course admitted during the academic session 2001-2002 by the Institute”.

In view of the record noticed above, there is no scope of dispute that the Institute neither sought nor was granted affiliation by the Board for the academic session 2002-2004 and therefore, the Board was neither obliged nor legally competent to conduct the examination of a student of any Teachers Training Institution which is not affiliated to the Board.

All writ petitions.

This Court, in view of the settled position of law, noticed above, cannot issue directions, in its jurisdiction under Article 226 of the Constitution, which violates express provisions of the Act and the regulations framed there under. However, in view of the observations of the Supreme Court in *M L R Saraswati College of Education* that the Courts should evolve a mechanism for awarding damages to the students whose careers are seriously jeopardized by unscrupulous management of

college/schools which indulge in violation of rules, we are inclined to award damages to all the petitioners.

In result, petitions are dismissed. However, we direct the Institute and Society, respondent No.3 and 4, respectively, as they unscrupulously granted admissions to the students, in violation of all the regulations, norms and statutory provisions regulating such admissions, to refund the fees taken from all the petitioners and to pay each one of them rupees 50,000/- as damages within six weeks from this date. If the fees are not refunded or damages are not paid,

petitioners shall be at liberty to execute the order for the refund of the fees and damages.

No costs.

In view of the disposal of these writ petitions, all the Misc. petitions do not survive and are accordingly dismissed.

(K C Sood)
Judge.

(V.K. Gupta)
Chief Justice.

January, 2006.
(BM)