

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 1275/2014

CMA No. 1736/2014

c/w

OWP No. 1395/2014

CMA No. 1886/2014

Date of Decision: 04.12.2014

Atman College of Education &ors. v. University of Jammu & ors.
Shri Sai Shyam College of Education v. University of Jammu & ors.

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal-Judge

Appearing counsel:

For petitioner(s):	Mr. Sunil Sethi, Sr. Advocate with Mr. Mohsin Bhat, Advocate
For respondent(s):	Mr. W. S. Nargal, Advocate

(i)	Whether to be reported in Press, Journal/Media:	Yes/No
(ii)	Whether to be reported in Journal/Digest:	Yes/No

OWP No. 1275/2014

1. Petitioners are private/non-Government B. Ed. Colleges affiliated with the University of Jammu, respondent No. 1 (for short the University). They have been allowed different intake of students. Faced with the evil of non-attendance of students in the B. Ed. Colleges, the University by virtue of a decision taken in the 6th meeting of its College Development Council (CDC), respondent No. 4, held on 03.07.2014 has devised a formula to reduce the intake seats of these colleges for the session 2014-2015 proportionate to the level of non-attendance noticed in the course of two

inspections held during the previous session. Pursuant to the said decision and formula, the intake of students in the petitioner-colleges among some other B.Ed. colleges for the session 2014-15 has been considerably reduced. According to the petitioners, the University has issued a list of as many as 76 colleges for participating in centralized counseling for admission showing their sanctioned and reduced intake for the session 2014-15. The sanctioned intake and the reduced intake of the 16 colleges, who are the petitioners, is culled out and tabulated in para 8 of the petition as follows:

S. No.	Petitioner	Sanction intake Seats	Reduced after impugned decision.
1	Petitioner No. 1	310	88
2.	Petitioner No.2	310	88
3.	Petitioner No. 3	310	88
4.	Petitioner No. 4	310	108
5.	Petitioner No. 5	280	88
6.	Petitioner No. 6	310	108
7.	Petitioner No. 7	310	88
8.	Petitioner No. 8	310	88
9.	Petitioner No. 9	310	108
10.	Petitioner No. 10	210	88
11.	Petitioner No. 11	310	108
12.	Petitioner No. 12	150	88
13.	Petitioner No. 13	170	88
14.	Petitioner No. 14	190	88
15.	Petitioner No. 15	310	88
16.	Petitioner No. 16	250	88

2. Feeling aggrieved by and dissatisfied with the reduction in their intake seats for the session 2014-15, petitioners have filed this writ petition under Article

226 of the Constitution of India read with section 103 of the Constitution of Jammu and Kashmir seeking appropriate writ, order or direction in the nature of ***certiorari*** to quash the decision/formula devised for reducing the intake seats and the list issued by the University so far as it reduces intake seats of the petitioner-colleges for the session 2014-15. Besides, the petitioners seek writ, order or direction in the nature of ***mandamus*** commending the respondents to allocate them the students for the session 2014-15 as per their sanctioned intake.

3. I have heard learned counsel for the parties and perused the record on the file and that produced by Mr. W. S. Nargal, learned counsel for the respondents.
4. Petitioner-colleges have assailed the reduction in intake mainly on the ground that the decision is totally illegal, arbitrary and violates the fundamental right of the petitioners. It is contended that before taking the decision to reduce the intake and issuing the impugned list, respondents were required to afford each petitioner reasonable opportunity of being heard by issuing show cause notice asking them to explain their position. However, neither any show cause notice was issued nor opportunity of being heard provided. It is contended further that the impugned decision is arbitrary inasmuch as petitioner-colleges

have been put to suffer financial hardship and difficulty as they have put in place state-of-art infrastructure commensurate to their sanctioned intake and have engaged specialized faculty paying them handsome salaries. Petitioner-colleges have also questioned the *bona fide* of the inspection reports alleging that the same were motivated and maneuvered inasmuch as the inspection teams while conducting inspections have resorted to various malpractices. It is contended that decision has been taken without ascertaining as to whether the inspection reports were genuinely prepared and without confronting the petitioners with these reports. Petitioners have contended also that the reduction in seat violates Article 14 of the Constitution for the reason that they have been singled out as compared to private and Government colleges imparting education in other disciplines and streams. It is also contended that the University vide its communication dated 28.05.2014 had on one hand permitted the petitioners and the other colleges to make up the short fall in attendance of students who had joined late by holding extra classes and on the other hand have reduced the seats on the basis of manipulated and motivated reports. Petitioners have also raised a question as to how such a decision has not been taken in respect of the University in Kashmir

Division. Petitioners have challenged the competence of respondent University to take such a decision contending that reduction in sanctioned intake is alien to University statutes and any other provisions of law. There is no provision for reducing the seats merely on the basis of shortage in attendance and the decision, therefore, is bad in the eyes of law and is a colorable decision. It is contended by the petitioners that they are taking stringent measures to ensure full attendance of students and in addition notices to the absenting students have been issued by the University as well.

5. Besides the grounds taken in the writ petition, Mr. Sunil Sethi, learned Senior Advocate, appearing for the petitioners, in face of the record produced by Mr. W. S. Nargal, learned counsel for respondents, sought to raise a point in regard to the credibility of the decision as also the jurisdiction of the CDC to take such a decision, contending that no such decision was ever taken by the University Council (UC), the decision was taken by the CDC and to justify the decision, the record on the agenda of 75th University Council meeting was manipulated.
6. Respondents have opposed the writ petition and have supported the decision taken by them. In their reply to the writ petition the respondents have given a

detailed account of facts in relation to the decision to reduce the intake seats.

7. I may with a view to deal with the issue in proper perspective, first trace from the record shown to me the sequence of events leading to taking of the impugned decision by the University, sufficient and useful guide map for which is provided in the reply filed on behalf of the respondents:

- a) In the year 2010, the University Council (UC) in its 70th meeting held on 15.12.2010 had resolved *inter alia*:

“Monitoring of colleges should be done regularly for enforcing the quality norms and appropriate strict action should be taken against the colleges, which violate admission and other statutory provisions of the University.”

It is contended on behalf of the respondents in their reply that this decision was taken by the university in order to strengthen the Monitoring Mechanism of the Educational Institutions affiliated with the University. It is contended further that in its 72nd meeting the UC had advised the Vice Chancellors to regularly undertake visits to the affiliated colleges to review the facilities provided by them and their functioning. In the 73rd meeting the UC had stressed that youth must be adequately equipped with knowledge and skills enabling them to successfully compete with their counterparts at the national and international level and had observed that all the necessary measures be

taken to strengthen the monitoring mechanism of the Universities so as to provide quality education.

- (b) As a follow up action, the College Development Council (CDC) of the University vide order Nos. CDC/2012/1965-2040 and CDC/2012/2041-51 both dated 26.12.2012 constituted centralized and college-wise Monitoring Committees to monitor the attendance and check absenteeism in the private B.Ed. Colleges. These Committees submitted their consolidated reports to the CDC, which was taken up for consideration in 3rd CDC meeting held on 11.03.2013 as Agenda item No. 2, which I reproduce as:

“To consider the reports submitted by the Centralized committee and College-wise monitoring Committees constituted to check the absenteeism in the private affiliated B.Ed. Colleges for the session 2012-13.”

The CDC after detailed discussion resolves that “the private affiliated B.Ed. Colleges having less than 75% candidates present in the college be served a show cause notice and the matter subsequently be reported to University Council meeting”.

- (c) Pursuant to the resolution of the CDC, the colleges were served attention notices calling upon them to state the steps taken by them to check the absenteeism of their students and the matter was thereafter placed before the University Syndicate

which took the same for consideration in its 102nd meeting held on 23.09.2013 as Agenda item No. 102.24, which is reproduced as under:

“To consider the action taken by the members of College Development Council regarding surprise checking of attendance in Non-Government Colleges and serving of attention notice to the Non Govt. B. Ed. Colleges affiliated to the University of Jammu, Jammu whose attendance of the candidates was less than 75% and developing a monitoring mechanism for high standard of education.”

- (d) The Agenda note to Agenda item No. 102.24 (supra) would show that pursuant to the decision taken in 3rd CDC meeting held on 11.3.2013, the colleges were issued attention notices vide No. CDC/13/2045-69 dated 09.05.2013, followed by reminder No.CDC/13/2255-77 dated 20.5.2013 in first phase and vide No. CDC/2013/2192-2218 dated 28.5.2013 followed by reminder No. CDC/2013/3681-3697 dated 15.7.2013 calling upon them to state the steps taken to check absenteeism of the students in their colleges. All the colleges had submitted their compliance report showing the measures taken/intended to be taken by them for improving attendance in their colleges and to ensure that in future they would abide by the decision of the University authorities regarding regularity amongst the students pursuing B.Ed. course. In addition, it is important to note, the CDC had also placed before the Syndicate for its endorsement the “Monitoring Mechanism” to ensure the quality

education programme by the private un-aided colleges. The Monitoring Mechanism *inter alia* provided for a disincentive in the shape of reduction of seats proportionately for the colleges having less than 75% average attendance of admitted students. Here I may reproduce verbatim the 'Monitoring Mechanism' that had been placed along with the agenda note to Agenda item No. 102.24 for endorsement of the University Syndicate:

" MONITORING MECHANISIM

A minimum of 3 surprise checking by the inspection team/inspectors appointed by CDC/Vice Chancellor for the purpose. More than 75% average attendance of admitted candidates recorded during 3 surprise checking/inspections by the team/inspectors, constituted/appointed by the CDC/Vice Chancellor will enable the college to have 100% of the seats for the next academic year/session.

Less than 75% average attendance of admitted candidates will attract a disincentive in the shape of reduction of seats proportionately using following formula:-

No. of total students admitted X Average % of students present.

75% of admitted students.

Example:1

Total seats =300

Total Number of students admitted = 300

Average % of students 50% present= 150

Next year seats will be

Next year seats will be $\frac{300 \times 100 \times 50}{75 \times 100} = 200$

Example:2

Total seats =300

Total students admitted = 250

Average % of students present= 60%

Next year seats will be $\frac{250 \times 60 \times 100}{75 \times 100} = 200$

$$75 \times 100$$

Example:3

Total seats =300

Total students admitted = 250

Average % of students present= 50%

Next year seats will be

$$\text{Next year seats will be } \frac{250 \times 50 \times 100}{75 \times 100} = 167$$

If there is less than 20% of average attendance in three surprise inspections, the college shall be recommended for disaffiliation. Similar formula shall work for other courses subject to the already allotted intake capacity course-wise/programme wise. The enhancement of seats will be done only if the college maintains the intake capacity under the proposed formula for three consecutive years. Further to ensure quality check the Directorate of Quality Assurance, Jammu University may work out a mechanism separately.”

- (e) The University Syndicate by its resolution to Agenda item No. 24, in the 102nd meeting, endorsed the action taken and the ‘Monitoring Mechanism’ devised by the CDC. The resolution to item 102.24 reads:

“Resolved that the action taken by the College Development Council regarding surprise checking of attendance (in Non-Government affiliated Colleges) and serving of attention notice to the Non Govt. B. Ed. Colleges affiliated to the University of Jammu, Jammu having less than 75% attendance of the students and devising a monitoring mechanism for high standard of education, be endorsed.

The Syndicate in this context resolved further that possibilities of introduction of biometric attendance system in the University offices and department be explored.

- (f) The matter was then similarly placed before the University Council in its 75th meeting held on 11.10.2013 as Agenda item No. 75.26, which reads:

“To consider the action taken by the College Development Council regarding surprise checking of attendance in Non Government Colleges and serving of attention notice to the Non Govt. B.Ed. Colleges affiliated to the University of Jammu, Jammu having less than 75% of the students and devising a monitoring mechanism for higher standard of education.”

- (g) The Agenda note to Agenda item No. 75.26 comprised of *inter alia* the ‘MONITERING MECHANISM’ at its pages 127, 127-A and 128 devised by the CDC and endorsed by the Syndicate. The University Council confirmed the action taken and the Monitoring Mechanism devised by the CDC. The University Council’s resolution to Agenda item No. 75.26 reads:

“Resolved that the action taken by the College Development Council regarding surprise checking of attendance in Non Government colleges and serving of Attention notice to the Non Govt. B. Ed. Colleges affiliated to the University of Jammu, having presence of less than 75% of the students, and devising a monitoring mechanism for securing a higher standard of education, be confirmed.

- (h) It is averred by the respondents, which is not disputed, that a meeting of the Principals of all the affiliated B.Ed. Colleges was held on 28.10.2013, 30.10.2013 and 31.10.2013, wherein the Director, College Development Council, respondent No. 5, had explained to all of them the mechanism of the surprise inspection to be conducted by the University and allotment of seats for the session 2014-15. It is also

averred that in that meeting it was impressed that the colleges should ensure strict compliance of University statute and attendance of all the students. In support of these averments, respondents have produced along with their reply a copy of the register showing attendance of Principals in these meetings. The register evidences presence of the Principals of all the petitioner-colleges among others.

- (i) As per the respondents' case, pursuant to the University Council resolution adopted in 75th meeting held on 11.10.2013 and the meeting of the Principals, first inspection of B.Ed. Colleges during the academic session 2013-2014 was held in the month of December, 2013 in which a large number of absentees were detected in these Colleges. It is contended that the Members of the Forum of Recognized Colleges of Education (FORCE) had approached the University on 24.02.2014 and requested to stop the surprise inspection till 31st of March, 2014. It was decided that a notice shall be issued to the students not attending the classes by the University giving 31.03.2014 as last date to join with a direction to be regular in their studies. I may reproduce here the record note of that meeting held on 24.02.2014:

"Record note of the meeting of the FORCE and Director (CED) held on 24.2.2014 at 10.30 a.m. in the office chamber of the Director (CDC), University of Jammu

A meeting of the FORCE and Director CDC was held on 23.2.2014 at 10.30 a.m. to discuss the **B.Ed. Course vis-à-vis regular attendance in the B.Ed. Colleges. After threadbare discussion it was decided that** a final notice be served to the students not attending the classes, from the University-side giving 31.3.2014 as last date to join the College with a direction to be regular in their studies otherwise the admission of absentee candidates will be cancelled and they will not be allowed to take their examination for the session 2013-14

- | | |
|----------------------|------|
| 1. Director, CDC | sd/ |
| 2. President, FORCE | sd/ |
| 3. Sh. R. S. Chib | sd/ |
| 4. Sh. Kuldip Wahi | sd/ |
| 5. Sh. Kamal Gupta | sd/ |
| 6. Sh. Manmeet Singh | sd/” |

- (j) Pursuant to this decision, University issued notices to the absentee students asking them to join their colleges by or before 31.03.2014. It is contended that SMS were also sent to them. Respondents' case is that the second and third rounds of inspections were conducted after 31.03.2014 and the report of inspection teams were placed before the CDC in its 6th meeting held on 03.07.2014. Mr. Nargal, learned counsel for the respondents, pointed out that Annexure-‘H’ is a copy of the consolidated statement showing the attendance status during the surprise inspection held pursuant to UC resolution adopted in 75th meeting held on 11.10.2013.

- (k) The CDC in the 6th meeting held on 03.07.2014 is said to have taken a lenient view as one time exception. The minutes of meeting of CDC held on 03.07.2014 are sufficiently reproduced in the reply filed on behalf of the respondents and its copy is annexed to the petition as well. The CDC in that meeting resolved that average attendance of students found present during two inspections (i.e. inspections during which higher number of students were found present) viz a viz the number of students admitted be reckoned and devised a formula for calculating the students to be allotted for the sessions 2014-15 on the basis of average attendance found during two inspections. The formula devised by DCD this time certainly was lenient than the one earlier devised. I may reproduce the formula so devise:

1.	Where average attendance of two inspections is 60% and above of the admitted candidates, sanctioned intake seats of such college will remain intact.
2.	Where average attendance of two inspections is 45% but below 60% of the admitted candidates, sanctioned intake seats of such college be reduced by 25%.
3	Where average attendance of two inspections is above 30% but below 45% of the admitted candidates, sanctioned intake seats of such college be reduced by 50%.
4	Where average attendance of two inspections is 15% but below 30% of the admitted candidates, sanctioned intake seats of such college be reduced by 75%.
5	Where average attendance of two inspections is 5% but below 15% of the admitted candidates, such colleges be allotted 60 seats.

The impugned list sought to be quashed is said to have been issued on the basis of the formula devised by the CDC in the meeting held on 3.7.2014

- (I) The above formula devised in 6th meeting of the CDC was discussed in the meeting of Admission Committee for admission to B.Ed. Colleges for the session 2014-15 held on 15.07.2014. The Admission Committee, however, recommended that the seats as worked out by the College Development Council be increased by 30% in each college. I may here reproduce the substance of minutes of meeting of the Admission Committee:

“The criteria regarding seats allotment to the B.Ed. Colleges as worked out and approved by the CDC was perused by the members and it was noticed that after applying the approved criteria, total number of seats come to less than the number of students admitted during the last session, Keeping in view the fact that during the last academic session total No. of students admitted to the B. Ed. Course in the Non-Government Colleges was 14620 and also in view of the representation of FORCE, the admission Committee after due deliberations, considers it expedient to at least allot same number of seats for the B.Ed. Course during the current academic session as was admitted during the last session. The Committee, therefore, recommends that the seats as worked out by the office of Directorate of College Development Council on the basis of formula devised and approved by the CDC, be increased by 30% in each college. After increasing the seats by 30%, the total number of seats comes to 14680, which figure is almost

same to number of students admitted during last session.”

(m) The recommendation made by the Admission Committee was approved. Respondents in their reply have stated that due to the Admission Committee’s recommendation, intake of all the colleges has been increase by 30 % so that each college gets minimum 90 students and the intake so calculated is as per the table below:

S. No.	Petitioner	Reduced after impugned decision.
1	Petitioner No. 1	94
2.	Petitioner No.2	94
3	Petitioner No. 3	94
4	Petitioner No. 4	116
5	Petitioner No. 5	94
6.	Petitioner No. 6	116
7	Petitioner No. 7	94
8	Petitioner No. 8	94
9	Petitioner No. 9	106
10	Petitioner No. 10	94
11	Petitioner No. 11	116
12	Petitioner No. 12	94
13	Petitioner No. 13	94
14	Petitioner No. 14	94
15	Petitioner No. 15	94
16	Petitioner No. 16	94

8. Having noticed and narrated the sequence of the events leading to the decision to reduce the intake of the petitioner-colleges for the session 2014-15, the grounds on which this decision has been assailed in this writ petition can now be taken up and I would first take up the point sought to be raised by Mr. Sunil

Sethi, learned Senior Advocate, appearing for the petitioners at bar beyond the pleas taken in the petition.

9. Learned Senior Advocate vehemently pursued to make out a point that the formula said to have been devised by the College Development Council (CDC) was neither laid before the University Council in its 75th meeting held on 11.10.2013 nor was approved by the Council. Mr. Sethi would say that page No. 127 (A) of the Agenda note to Agenda item No. 75.26 of the 75th University Council meeting seems to have been inserted at a later stage as the last line of page No. 127 of Agenda Note can be read in flow with first line on page 128, whereas the contents of page 127 (A), which contain the above said formula, are totally out of framework of the things.
10. Contention of the learned Senior Advocate, however, does not have substance for the simple reason that formula provided at page 127 (A) of the Agenda Note cannot be said to have emerged from nowhere. Fact of the matter, as it emerges from the narration made hereinabove, is that the Monitoring Mechanism and formula to reduce the intake of the B. Ed. Colleges having less than 75% average attendance in three surprise checkings/inspections was devised by the College Development Council (CDC) pursuant to a resolution adopted in the 3rd CDC meeting held on

11.03.2013 and was endorsed by the University Syndicate in its 102nd meeting held on 23.09.2013 and finally confirmed by the University Council in its 75th meeting held on 11.10.2013.

11. The argument that the last line of page No. 127 of Agenda Note of item No. 75.26 of 75th University Council meeting can be read in flow with the first line on page 128 and page 127 (A) is out of the framework is trumpery but without any substance. A plain reading of the Agenda Note to Agenda item No. 75.26 spreading over pages; 123, 124, 125, 126, 127, 127 (A) and 128 in its entirety would show that reading it in isolation of Page 127 (A) would rather defeat the purpose, which the Monitoring Mechanism was aimed at to achieve. The Agenda item No. 75. 26 *inter alia* related to the Monitoring Mechanism devised by the CDC and endorsed by the University Syndicate to tackle with the B. Ed colleges having less than 75% average attendance of students and in that context formula was devised to reduce their intake seats proportionately as a disincentive using the formula given at page 127 (A). If the Agenda Note is read in isolation of page 127 (A) in that case the formula devised by the CDC would remain confined to the colleges having more than 75% and less than 20% average attendance and do nothing to the colleges having average attendance above 20% and below 75%.

The contention raised by learned Senior Advocate, therefore, is without any substance and liable to be rejected.

12. In support of petitioners' contention that the impugned decision is without jurisdiction, Mr. Sethi submitted that University has no authority to reduce the sanctioned intake of candidates of affiliated colleges and such a decision could not have been taken even to tackle the allegation of absenteeism in these colleges. Besides, Mr. Sethi, submitted that drastic reduction, as it is, in intake of petitioner-colleges is an affront to their autonomy which is a settled fundamental right of the owners of the private institutions because such reduction almost tends to closure of these colleges making it impracticable for them to sustain with such a meager strength of students. Mr. Sethi submitted that University may adopt other corrective measures to check absenteeism but cannot have recourse to reduce the sanctioned intake. Mr. Sethi submitted in this regard that absenteeism is related to students for which they may earn disqualification to appear in examination but the colleges cannot be penalized for an act of the students. Mr. Sethi thus concluded in this behalf that drastic reduction in intake seats for a particular session is a punishment disproportionate to the role of the colleges in absenteeism of students.

13. Per contra, Mr. Nargal submitted that the University, having granted affiliation to the petitioners-Colleges, has an obligation and responsibility to ensure that they maintain higher standard of discipline and education. Maintenance of higher standard becomes even of more essence when it comes to B. Ed. colleges because these are the institutions engaged in imparting training to the teachers, who are builders of the nation. Mr. Nargal submitted that students of B.Ed. colleges secure jobs in Government and Non-government schools on the basis of their B.Ed. Degrees and a Degree obtained without attending the college would be nothing more than a useless formality. Mr. Nargal referred to the powers and functions of the University as provided under section 5 of the Kashmir and Jammu Universities Act, 1969 and laid stress on clause (13) of section 5(2) that empowers the University to do all such acts as may be requisite in order to further the objects of University as a teaching, affiliating or examining body inter alia.
14. That Articles 19 (1) (g), 26 and 30 of the Constitution confer a fundamental right on a citizens of this country to establish and administer private educational institutions for imparting education at all levels; under graduate, post graduate or professional is now well settled and no question in that behalf needs to be taken up for discussion in this writ petition. Petitioner-

Colleges have been granted affiliation by the University and their owners/management have a right to administer them. But it is equally well settled that right to administer does not mean right to mal administer nor is free from regulation. It would be in place here to refer to the brief observation of the Constitution Bench of the Supreme Court in para 121 of the reporting in Islamic Academic case, (2003) 6 SCC 697:

“121. The right to administer does not amount to the right to mal administer and the right is not free from regulation. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institution.”

15. The petitioner-colleges are engaged in imparting training to the teachers by conducting B. Ed. courses to teach and train them to educate the students on their entering the field as teachers at various levels in Government and non-Government educational institutions. The students passing out and securing degrees/certificates on the basis of the courses conducted by these colleges would be entering the noble task of contributing to nation-building by imparting education to and skill development of students. These colleges are, therefore, expected not only to develop but to demonstrate a drive to develop themselves into centres of high standards, excellence and morality. By their activities they must look like

what they are expected to be. But how that is possible if they are unable even to secure the attendance of their own students and in effect engage in mock shows.

16. I may refer and quote, what Supreme Court observed about the importance of teacher's training institutes in *N.M.Mageshwaramma v. State of Andhra Pradesh* 1986 (Supp.) SCC 166:

"The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organized and equipped Training Institute is probably essential before a teacher may be duly launched."

17. Supreme Court seems to have felt necessity of reiterating the above observation made by the Court three decades ago recently in *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale*, (2012) 2 SCC 425 and *NCTE v. Venus Public Education Society*, (2013) 1 SCC 223.
18. Statement of facts narrated hereinabove and the record produced before this Court would show that an astonishingly contemptuous situation was created in majority of the B. Ed. Colleges including the petitioner-colleges under the pious garb of establishing and

running the institutions imparting teaching training to the students ignoring the solemn occupation of teaching they were being prepared for. Respondents in Annexure-H to their reply have produced a consolidated statement of attendance of students noticed in three or more inspections by the inspection teams made after the impugned decision. In almost all the colleges shown in this statements attendance of the students on a particular day and average attendance had been shockingly dismal. It is disturbing to note that in one of the colleges attendance against 326 admitted students on a particular day was 12 and in another attendance was 7 against 227. In one college it had been as low as 1.52 per cent of the admitted students. Attendance status of the petitioner-colleges is culled out by the respondents in paragraph 2 of the para wise reply in their reply which is not only disturbing but shocking. The most shocking aspect of the scenario was that the management of the colleges had been unable to exercise control and arrest the rot even after and knowing well that their affiliating authority, that is, the University has taken the matter seriously and the attention notices having been issued to them in the first half of the year 2013, that is, the academic session 2012-2013 and the rot spilled over to the session 2013-2014.

19. In backdrop of the situation so arising, for which none other than the colleges themselves can be held responsible, petitioners cannot be heard saying that University has no jurisdiction to take the decision of reducing the intake seats. If one has to think as to what could have been the possible reason for nearly mass absenteeism in these colleges, the plausible explanation would be either lack or deficiency of infrastructure in the colleges sufficient to accommodate all the students granted admission or lack of administrative capacity and zeal on the part of management to ensure attendance of all the students. To reduce the intake of students for one session, therefore, is the most appropriate measure for restoring the health of these colleges and providing them opportunity to create suitable conditions for next academic session. Correct it is that absenteeism has its fall out on a student as undisputedly only a student having secured 75% or above attendance can be allowed to appear in examination. But such a fall out would be viable and useful when it comes to short fall in attendance of one or few students but situation would be disastrous when it comes to mass absenteeism. What would be the logic in running an educational institution if a situation is allowed to arise in which vast majority of its students are debarred

from taking part in examination due to short fall in attendance.

20. Clause (13) of section 5 (2) of the Universities Act confers vast power on the University to do all such acts as may be requisite in order to further the objects of University as a teaching affiliating or examining body. Having regard to the situation in which the University took the decision to reduce the intake of seats, to the extent of erring colleges, for one academic session, therefore, cannot be said to be a decision without jurisdiction or excluded from the vast power conferred on the University.
21. Another ground on which the impugned decision has been assailed by the petitioners is that the same has been taken without issuing notice to the petitioners and affording them opportunity of being heard. Mr. Sethi, submitted with vehemence that principles of natural justice impose a duty on a decision making body to issue notice and afford opportunity of being heard to a person against whom an adverse decision is likely to be taken. Any adverse decision taken without notice and affording any opportunity of being heard is illegal. Learned counsel argued keenly that denial of right of hearing and passing of adverse order against the petitioners without hearing them has caused

prejudice to them and the decision is vitiated and is liable to be set aside.

22. In reply Mr. Nargal would say with no less vehemence that all the petitioners by virtue of various inspections of their colleges by the inspection teams had all along been associated with the proposed decision and were made aware about the Universities anxiety with the prevailing absenteeism in their colleges. The decision taken by the University Council in 75th. Meeting on 11.10.2013 was conveyed and discussed with all the Principals of petitioner-colleges in the meetings held with them by the Director, CDC on 28-30.10.2013. Mr. Nargal would say that petitioners were actively involved in making of this decision inasmuch as the FORCE, which is a representative body of all the B.Ed. colleges, had discussed the matter with Director CDC in the meeting held on 24.2.2014 and sought postponement of inspection up to 31.3.2014, which was done but even then the colleges were unable to set their house right.
23. On examining the record, referred to and produced on behalf of the respondents, I find sufficient reason to agree with the respondents' stand that petitioner-colleges were suitably and sufficiently associated with the decision making process and the University had accorded consideration to their view and made all

efforts to avoid the decision of reducing the intake of these colleges. Record shows that immediately after the University Council's 75th meeting held on 11.10.2013, in which the decision to reduce the intake seats for the session 2014-15 had attained finality, the Director, CDC held a meeting with the Principals of 17 Colleges on 28.10.2013 which comprised among others of the Principals of petitioner Nos. 1, 2, 3, 4, 5, 6, 7, 9 & 10. Meeting with Principals of 24 Colleges was similarly held on 30.10.2013, which comprised among others of the Principals of petitioner Nos. 11, 12, 13, 14 & 15. Likewise, meeting with Principals of 24 colleges was held on 31.10.2013, which comprised of among others the Principals of petitioner Nos. 8 & 16. The attendance register of these meetings would show that Principals of all the colleges including the petitioner-colleges have evidenced their participation in the meeting by putting their signatures in the said register. That apart, the representatives of all the B. Ed. colleges under the banner of FORCE had held a meeting with the Director CDC on 24.02.2014. In that meeting, it was decided that notice to absenting candidates shall be issued by the University also which was done. It would thus not be correct to say that the decision had been taken behind the back of the petitioners and without hearing them. Rather the petitioners had all along been associated with the decision making but they had

failed in securing regular attendance of their students, even after the University Council's meeting dated 11.10.2013 and meeting of the Principals with Director CDC and meeting of their representative body with the Director CDC.

24. The impugned decision is also assailed on the ground that inspection reports were motivated and maneuvered and the petitioners have been singled out for the adverse decision. It is contended that inspection reports were prepared with ulterior motive and actuated with *mala fides*. Contention on this score, however, is without any substance and when considered in the backdrop of the sequence of events leading to the impugned decision. To say that the petitioner-colleges have been singled out is negated for the simple reason that undisputedly, besides the petitioners, number of other colleges have been put to similar treatment. The consolidated statement prepared after the inspections held after University Council decision, annexure-H (supra) produced by the respondents shows that as many as 36 colleges in Jammu District were inspected and in most of them, position was found not better than that of the petitioner-colleges. Similarly, colleges in other district were also inspected. Same was the position in those colleges also. Not more than five colleges were having average attendance of more than 75% of the admitted

students. It is not the petitioners' case that they alone have been put to suffer reduction of intake seats. Rather the list produced by the petitioners would show and it is undisputed that the impugned decision covers a number of B. Ed. Colleges other than the petitioners. To that B.Ed. colleges have been discriminated as against colleges importing education in other stream has no substance without there being a plea that they were also suffering from absenteeism of their students. No question of, discrimination, *mala fide* or ulterior motive as against petitioners, therefore, should arise. Mere allegation of *mala fides* or ulterior motive does not suffice to question a decision. No reason or object other than the exigency of the situation is evident in this case and no reason is forcible to accept the petitioners' contention that University has maneuvered the inspection reports.

25. The impugned decision is assailed also on the ground that the University by its letter dated 28.5.2014 had allowed the B.Ed. Colleges to make up the deficiency in attendance of the students who had joined late and having done so decision to reduce the intake was contradictory and not justified. This contention from its very nature is without any substance. Letter dated 28.5.2014 had been issued in respect of the students who were late in joining the course commenced on 3.10.2014 and would not justify the general trend of

mass absenteeism and has nothing to do with the impugned decision.

26. For all that said and discussed above, conclusion to be arrived at is that University has the power and was justified in reducing the intake of the petitioner-colleges among others in the situation as it prevailed. The decision taken by the University cannot be said to be actuated with *mala fide* against the petitioners or to have been taken with ulterior motive.
27. The one question raised on behalf of the petitioners, which has substance in their favour, is, whether reducing of the intake seats to the level as it has been done is justified and would help in restoring the health of these institutions? It needs to be underlined in this behalf that intake has been reduced for one academic session of 2014-15, which gives sufficient indication that action is aimed at providing opportunity to the erring colleges to act in the direction of improving the situation and setting their house right by the next academic session.
28. It has been contended on behalf of the petitioners that drastic reduction of intake seats has put them to suffer severe hardship and financial in viability and has threatened their survival. It was urged by Mr. Sethi that due to meagre number of students, it would

become impossible for the colleges to maintain minimum required standard and may compel them to call off the day. Per contra Mr. Nargal submitted that financial viability of the colleges cannot be allowed to survive at the cost of the standard of education.

29. The University's decision to reduce intake seats certainly is not aimed at punishing the petitioners and to my considered understanding the object is to restore health of these institutions lest it comes to their disaffiliation. Health of an institution, however, cannot be restored if it is relegated to the verge of collapse due to inadequacy of resources. The object may not be achieved if the colleges are made to run with meager number of students because, as the unaided colleges they are, it may become difficult nay impossible to meet their operational cost from fees and admission charges of these students. The object of maintaining high standard may be causality in that case. It is seen and may be pointed out here that as per the initial formula devised by the CDC and approved by the University Counsel, the reduction in the intake was to be worked out on the basis of average attendance in three surprise inspections. The CDC, however, in its 6th meeting held on 03.07.2014, having regard to the result of three inspections, took a lenient view and decided to take into consideration the average attendance found during two inspections on which

higher number of students were found present. The Admission Committee showed further leniency by increasing the intake by 30 per cent so that each college gets 90 plus students. There thus had been an obvious endeavor to work out a suitable to which the intake may be reduced. It is contended in para 8 of the respondents' reply that the Admission Committee had taken into consideration factors like available infrastructure and expected intake based upon the previous year's intake and providing chance to the colleges before starting proceedings for their disaffiliation. What, however, seems to have not attracted the due consideration of the University authorities is the financial viability vis a vis the minimum number of students which a college must be allowed to admit, having regard to its sanctioned intake and operational cast. This should have been and must be done by the University lest the colleges may struggle for their existence and lose the battle for improvement in their health.

30. In sequel to all that said and discussed above;
 - i) while upholding University's decision to reduce the intake seats of the petitioner-Colleges, writ petition to the extent of quashing the decision is dismissed;

- ii) while not completely agreeing with the formula devised by the College Development Council in the 6th meeting read with the decision taken by the Admission Committee, respondent-University is directed to accord reconsideration to the matter on this score to increase the limit of intake seats for the session 2014-15 to a reasonable level, having regard to the observations made hereinabove.
- iii) Further the University may issue requisite directions to the petitioner-Colleges to make up the deficiency of the students, who are granted admission pursuant to this judgment.

OWP No. 1395/2014 :

1. Statement of facts-- right up to the stage of the decision taken by College Development Council (CDC) in its 6th meeting held on 03.07.2014, whereby the CDC, while taking a lenient view had devised the impugned formula for reducing intake seats and the decision taken by the Admission Committee in its meeting held on 15.07.2014-- made in OWP No. 1275/2014 (supra) applies mutatis mutandis to this writ petition as well. However, the reduction of seats in case of petitioner-college calls for reconsideration as it suffers from violation of principle of natural justice inasmuch as the decision was taken behind the back of

and the petitioner was not given right of hearing at the relevant time.

2. It has been noticed from the record that one of the post decision inspections of petitioner-college was held on 09.06.2014. The inspection report prepared by the inspectors, which was signed by the Principal of the college, shows that out of 216 students 210 were found present and 6 were found absent. The respondent-University on 28.07.2014 vide No. CDC/2014/2803-7 renewed temporary affiliation of petitioner-college for academic sessions 2014-15 with intake of 326 seats. On 01.08.2014, Assistant Registrar (CDC) vide his No. CDC/2014/3117 submitted the compilation of the reports submitted by the Inspection teams. In this compilation, petitioner-college figures at serial No. 19, which, however, does not reflect the figures incorporated in inspection report of 09.06.2014 (supra). On 03.09.2014, the Director of College Development Council (CDC) issued order No. CDC/14/3696-3702, which is also impugned in this writ petition, showing that contrary to the inspection report dated 09.06.2014 (supra), only six candidates were found present in the College on 09.06.2014. The Director thus recorded a finding that 'as per the best two inspection, reports of the College, the average presence of students in the above college is 3.7% and not 5.69%' and therefore, the Director, pursuant to the

formula devised by the CDC, modified order No. 28.07.2014 to the extent that intake of the petitioner-college for the sessions 2014-15 was reduced to 94 seats.

3. Version of the respondent-University in this regard, briefly, is that inspection team in its report dated 09.06.2014 had wrongly filled up the columns of the report and had wrongly mentioned '210' as the students found present whereas on verification, it was found that only six students were present on that day.
4. It was pointed out by learned counsel for the petitioner and rightly so that the order dated 03.09.2014 (supra) whereby the renewal of affiliation was modified and the intake of petitioner-college for the session 2014-15 was reduced has been issued by the Director, CDC, without jurisdiction inasmuch as the renewal of affiliation was granted at a level higher than the CDC and the CDC had no jurisdiction to modify the same. Besides, it is pointed out and rightly so that order dated 03.09.2014 has been passed without hearing the petitioner. Respondents have not come forward with a plea that order dated 03.09.2014 had been passed after notice to and hearing the petitioner.
5. In sequel to all that said and discussed above;
 - i) while upholding Universities decision to reduce the intake seats of the B.Ed Colleges, writ petition

to the extent of quashing the decision is dismissed;

- ii) the order No.CDC/14/3696-3702 dated 03.09.2014 whereby the renewal of affiliation of the petitioner-college has been modified and intake of students reduced, is set aside with a direction to the respondents to reconsider the matter and pass fresh order after affording opportunity of being heard to the petitioner and having regard to the observations made in SWP No.1275/2014 (supra); and
- iii) Further the University may issue requisite directions to the petitioner-Colleges to make up deficiency of the students, who are granted admission pursuant to this judgment.

(Janak Raj Kotwal)
Judge

Jammu
04.12.2014
Karam Chand