

M. Muniyappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-13-1988

Reported in : ILR1989KAR615; 1989(3)KarLJ254

Judge : Bopanna, J.

Acts : [Constitution of India](#) - Articles 14, 15, 19(1), 19(6) and 162

Appeal No. : W.P. Nos. 9461-62, 9478, 11287-11291, 11716, 11837, 12210 and 12292 of 1988

Appellant : M. Muniyappa

Respondent : State of Karnataka

Advocate for Def. : N. Devadas, HCGP

Advocate for Pet/Ap. : B. Veerabhadrappe and ;M. Shivanna, ;N.K. Patil, Advs. for ;Shivraj Patil, ;G.P. Shivaprakash, ;V. Narayanaswamy and ;K.S. Desai, Advs.

Judgement :

ORDER

Bopanna, J

1. These petitions are disposed of by a common order since certain identical points arise for consideration in all these petitions.

2, In Writ Petition No. 9478 of 1988, petitioners who are students and have passed the S.S.L.C. Examination have challenged the impugned order in so far as it relates to the minimum qualification prescribed by the State Government for admission to the Teachers Certificate Higher Course (in short TCH course).

In Writ Petitions Nos. 9461 and 9462 of 1988, petitioners are unaided institutions and they have challenged the impugned order in so far as it relates to the minimum qualification prescribed for the students who are desirous of joining the TCH Course,

In Writ Petitions Nos. 11287 to 11291 of 1988, petitioners are unaided institutions and they have challenged the impugned orders in so far as they relate to the minimum qualification prescribed for admission to the TCH Course and also the allocation of seats to the said course.

Petitioners in Writ Petition No. 11837 have challenged the impugned orders in so far as they relate to the allocation of seats to the TCH Course.

Petitioner in Writ Petition No. 12292 of 1988 claim to be a federation of Private Educational Managements and they have challenged the impugned orders in so far as they relate to the minimum qualification prescribed for admission to the TCH Course and also to the allocation of seats to the TCH Course.

In Writ Petition No. 12210 of 1988 petitioner is a registered Educational Society and it has challenged the impugned orders in so far as they relate to the minimum qualification prescribed by the State Government for admission to the TCH Course.

Petitioner in Writ Petition 11716 of 1988 is a trust established for the purpose of promoting education, particularly the Physical education. It has challenged the impugned orders in so far as they relate to the minimum qualification prescribed by the State Government for admission to the TCH Course and also to the allocation of seats to the said course.

3. In all these petitions the common questions that arise for consideration are:

1) Whether the impugned orders violate the petitioners' fundamental rights under Article 19(l)(g) of the [Constitution of India](#)?

2) Whether these impugned orders impose a reasonable restriction on the petitioners' fundamental rights?

3) Are the petitioners entitled to plead that the impugned orders are violative of the principles of natural justice?

4) Are the petitioners justified in contending that the impugned orders are arbitrary and are violative of Article 14 of the Constitution?

5) Are the impugned orders violative of the provisions of Article 19(6) of the Constitution inasmuch as these orders are executive orders and accordingly, the State Government is not competent to issue such orders but they could have curtailed the rights of the petitioners by recourse to the legislative power in the form of suitable enactment?

4. In order to appreciate these contentions, it is necessary to go into the pleadings of the parties in detail and also briefly trace the history of the Teachers' Training Institutions in this State. These institutions were the subject matter of study by an expert committee and it, is common ground that this committee had recommended a minimum qualification of S.S.L.C. for the TCH Course and two years' study to complete that course. After completion of the course, the students would be awarded Teachers Training Certificate. After obtaining this certificate, these teachers are employed in the Primary Schools, both Government as well as aided and unaided primary schools and they teach the students studying in the Primary Schools. But by the impugned orders, the Government brought about a change in the minimum qualification prescribed for admission to the TCH Course. They prescribed the minimum qualification of PUC with 40% marks in the aggregate for the students of general category and 35% marks in the aggregate for the students belonging to Scheduled Castes and Scheduled Tribes. They also brought about some changes in the methods of selection and admission of the students for this course. The grievances of the petitioners could be summarised as follows:

In the State of Karnataka there are about 14,180 single teacher Primary Schools and 35,740 Higher Primary Schools. The number of teachers working in the different schools in the State is about 2,50,000. Number of existing vacancies in various Primary Schools is about 8,500. In 1986 the number of students who appeared for the TCH Course is 3,98,000 out of which 1,40,000 students passed the examination. In 1987 the number of students who appeared for the S.S.L.C. examination was 4,52,224 and the number of those who passed was 1,29,007. In 1988, the number of students who appeared for the examination was 4,97,600 and out of which 1,20,600 students passed the examination. But in the PUC examination for the very same years the figures are as follows:

Year

Number of students appeared. Number of students passed 1986

1,96,964

67,099

1987

2,06,569

63,247

1988

1,17,489

61,979

From these figures the petitioners in W.P.9478 of 1988 want to make out that by raising the minimum qualification to PUC, petitioners who come from rural areas and who belong to the backward class would not be in a position to take the PUC, course and thereafter seek admission to the TCH Course. According to them, the students from a rural part are not in a position to study PUC because of poverty and non availability of facilities etc; that the expert committee after considering all

these aspects had recommended SSLC as the minimum qualification to join the TCH Course; that the syllabus of TCH Course and duration of TCH Course remains the same; that there is no raising of standard either in syllabus or in the method of teaching or in the staff pattern in the TCH Course; that on account of the impugned orders students in Karnataka are required to study two years TCH Course after completing the PUC whereas in all most all States in India, TCH Course is of two years' duration after SSLC. In other words these petitioners are put to hardship on account of the impugned orders; that the impugned orders deny opportunity to thousands of rural based students from taking teaching profession as their career. They have also challenged the impugned orders on the ground that the Central selection of candidates to different colleges, is without authority of law and it has taken away the rights of the institutions to regulate admission to their colleges subject to satisfaction of the minimum qualification. On these grounds these petitioners who are students have complained of violation of Articles 14, 15 and 19(1) of the Constitution.

The petitioners in W.Ps.Nos. 9461 and 9462 of 1988 have relied on the figures furnished by the petitioners in the Writ Petitions and have contended that in the Pre University Course the percentage of pass for the last 3 to 4 years is only 24 to 34 per cent, whereas the percentage of pass in the SSLC course is higher; that normally students who join the PUC course have an intention to go for higher education in courses like Engineering and Medicine etc., and do not have the intention to go for a certificate course in order to become a teacher in the primary school; that PUC is only a course for taking up higher education in various degree courses and that the students who pass the PUC would not prefer to join the TCH course in order to become a primary school teacher. As such, prescription of PUC qualification for admission to TCH course is basically wrong and no Teachers' Training Institute would get students for admission; that apart a higher qualification of PUC and thereafter a certificate course in Teachers' Training is not at all required for the purpose of teaching primary school students from 1st Standard to 7th Standard; that S.S.L.C. course has been prescribed as the minimum qualification for Agricultural Training Course, Drawing Teachers Course, industrial Training Course, Horticultural Training Course, Nursing Course and 2 years' Diploma in various Engineering Courses, and other various courses; that in the

adjoining States of Maharashtra, Tamil Nadu, Kerala and Andhra Pradesh the minimum qualification for admission to Teachers' Training Course is a pass in S.S.L.C. or equivalent examination and wherever PUC is the minimum qualification, only one year's course is prescribed; that the impugned orders would completely deprive the students seeking TCH course of getting a job and earning their livelihood as 50% of the students who pass S.S.L.C. do not go for any higher education and such persons join Teachers' Training Course and by passing the same they will get employment as teachers; that the action of the respondents in prescribing the minimum qualification as PUC as against S.S.L.C. for admission to two years' training course had affected the right of the petitioners to run the institutions; that the petitioners are minority institutions and the right to run such institutions is being taken away illegally by the respondents in the guise of prescribing higher qualification which cannot be permitted in law; that there are more than 2,50,000 S.S.L.C. passed teachers who are now working in the primary schools but now for persons to become teachers a higher qualification is prescribed which is discriminatory and thereby offends Article 14 of the Constitution.

Petitioner in W.P.No. 11716 of 1988 is an educational trust, it is a private unaided institution and the only assistance it obtains from the Government is the utilisation of Government Primary Schools for block teaching programme. According to the petitioners, the prescription of minimum qualification would not in any way improve the standard of education of C.P.Ed course; that there is absolutely no rational basis for enhancing the minimum qualification from S.S.L.C. to PUC and the same has no nexus to the object sought to be achieved by the State Government; that the C.P.Ed certificate holders need not teach any subjects in the schools and the main criteria for selecting the candidates for the course is their achievement in sports at the District and State level; that the minimum qualification now prescribed by the respondents does not in any way help in improving the standard of education; that the respondents without applying their mind and without the benefit of any expert opinion in the field had enhanced the minimum qualification which is illegal, arbitrary and liable to be set aside; that the enhancement of the qualification from S.S.L.C. to PUC at the time of, making admissions for the academic year 1988-89 would seriously affect the financial position of the

petitioner inasmuch as no candidate who has passed PUC would prefer to join the one year certificate course of C.P.Ed and the petitioner/Institution is not able to make a single admission; that the respondents should have given an opportunity to the petitioner/Institution of being heard before issuing the orders as the impugned orders would result in serious civil consequences to the petitioner/institution and therefore the said orders are violative of principles of natural justice; that there are 120 physical education colleges in the State and all of them are purely private and unaided institutions and the petitioner/institution is one among them and its fundamental right to carry on business under Article 19(l)(g) of the Constitution is seriously encroached upon by the impugned orders and they are also violative of Article 14 of the Constitution.

Petitioner in W.P.12210 of 1988 is an education society running a TCH course in Bangalore. It has raised contentions similar to those raised in the other petitions.

Petitioner in W.P.No. 12292 of 1988 is a Federation of Private Educational Managements consisting of a number of private educational institutions recognised by the Government and imparting education in various faculties particularly in Teachers' Training Courses. The factual averments made in the Writ Petition are more or less similar to those in the Writ Petitions to which I have already made a detailed reference but the ground on which the impugned orders are challenged are slightly different from the ground raised in the other Writ Petitions. Those grounds may be briefly noticed: They are that the private institutions are well known for the high standard of education and discipline while it is not so in case of Government managed institutions; the Government is therefore prejudiced against the private institutions and it has designed to curb the growth and existence of private institutions; that the standard of education will improve only in an atmosphere of competition between one institution and the other; this can be achieved only by the existence of the private educational institutions along with the Government institutions; that the respondents have not revised the syllabus and texts for the teachers of the training institutions; that they have not given any opportunity for the existing institutions to improve their infrastructure in their institutions; that they have not given any proper notice of change and the change was brought about abruptly and without notice and was not made in

consultation with the educational organisations; that a number of private institutions are run by backward and minority communities who enjoy a special protection under our constitutional scheme and therefore these impugned notifications are opposed to the fundamental rights guaranteed to the minorities under the Constitution.

5. In the return filed by the State Government in W.P.No. 9478 of 1988 which is adopted in W.Ps.Nos. 9461 and 9462 of 1988 and W.P.Nos. 11287 to 11291 of 1988 they have taken up a number of contentions in support of the impugned orders. On a perusal of the same it is clear that the State Government has relied heavily on the document known as 'National Policy on Education - 1986' prepared by the Ministry of Human Resources Development, Government of India. This report was aimed to promote national pride and progress, a sense of common citizenship and culture and to strengthen national integration. It laid stress on the need for radical reconstruction of the education system in our Country and to improve its quality at all stages and to give greater attention to science and technology, the cultivation of moral values and a closer relation between education and the life of the people. The most notable development since the adoption of 1968, education policy has been the acceptance of a common structure of education throughout the Country and the introduction of the 10 plus 2 plus 3 system by most of the States in India.

Certain passages from this report have been excerpted by the respondents in the return filed by them and they would be referred to presently. They are:

'The National Policy on Education - 1986, in its introductory Chapter, has stated thus:

'1.9. Education in India stands at the cross roads today. Neither normal linear expansion nor the existing pace and nature of improvement can meet the needs of the situation.'

'Education develops manpower for different levels of the economy. It is also the substrata on which research and development flourish, being the ultimate guarantee of national self-reliance.'

'In sum, Education is a unique investment in the present and the' future. This cardinal principle is the key to the National Policy on Education.'

'The new policy will lay special emphasis on the removal of disparities and to equalize educational opportunity by attending to the specific needs of those who have been denied equality so far.'

'The new thrust in elementary education will emphasise two aspects: (1) Universal enrolment and universal retention of children upto 14 years of age, and (ii) a substantial improvement in the quality of education.'

The strategy in this behalf will consist of -

- (a) a better deal to teachers with greater accountability;
- (b) provision of improved students services and insistence on observance of acceptable norms of behaviour;
- (c) provision of better facilities to institutions; and
- (d) creation of a system of performance appraisals of institutions according to standards and norms set at the National or State levels.'

'The status of the teacher reflects the socio-cultural ethos of a society; it is said that no people can rise above the level of its teachers. The Government and the community should endeavour to create conditions which will help motivate and inspire teachers on constructive and creative lines. Teachers should have the freedom to innovate, to devise appropriate methods of communication and activities relevant to the needs and capabilities of and the concerns of the community.'

"Teacher education is a continuous process, and its pre-service and in-service components are inseparable. As the first step, the system of teacher education will be overhauled.'

'The new programmes of teacher-education will emphasise continuing education and the need for teachers to meet the thrusts envisaged in the policy.'

'District Institutes of Education and Training (DIET) will be established with the capability to organise pre-service and in-service courses for elementary school teachers and for the personnel working in non-formal and adult education. As DIETs get established, sub-standard institutions will be phased out. Selected Secondary Teacher Training Colleges will be upgraded to complement the work of State Councils of Educational Research and Training. The National Council of Teacher Education will be provided the necessary resources and capability to accredit institutions of teacher-education and provide guidance regarding curricula and methods. Networking arrangements will be created between institutions of teacher education and university departments of education.'

In the light of these policy statements made in the aforesaid report the State Government has averred in the return filed by it as follows:-

'In the light of the new policies and programmes envisaged by the National Policy on Education - 1986, the State of Karnataka is the first State in the Country to introduce vital changes in the system of imparting Teachers' Training Course. In order to improve the standard and quality of elementary education, as a first step, the Teachers' Training Course has to be revitalised as it is the Teachers who make the builders of future India i.e., the children. Unless the Standard of Teachers' Training is raised and maintained, it is not possible to strengthen the base of the educational pyramid so as to ensure to the quality and the type of the pyramid which have been based in the world. In fact, education is an investment which is meaningful and relevant to complete a nation of quality. That a great responsibility lies on the teaching community. Unfortunately, in the recent past, the standard of education has fallen and unless a great effort is made to revitalise the entire system with a new orientation, it is not possible to educate our children with the advanced science and technology and the various facets of the Human Resources Development. In the modern world, a Country which ignores education and which cannot maintain standards in education with acceptable quality, it cannot survive and the sub-standard education may affect the very Human Development apart from endangering the democracy, sovereignty and integrity of the Nation.'

'With the past experience, the Government was constrained to introduce various changes in the system of admission to the Teachers' Training Institutions. The Government have observed that due to the increase in the number of Teachers' Training Institutes in recent years, unauthorised admissions made by private Teachers' Training Institutes in excess of the seats sanctioned has created a Situation in the State warranting immediate change in the policy of admissions by centralising the selections apart from prescribing the higher minimum qualification for admissions. This Hon'ble Court may take judicial note of the fact that, in the recent past, tens and hundreds of Writ Petitions have been filed by unrecognised Teachers Training Institutes and students who have been admitted in excess of the intake and who are ineligible for admission to the very course. These naked facts certainly reflect on the standard of education imparted in the Teachers' Training Institutions and one has to accept without hesitation that many sub standard institutions have come into existence due to the lenient attitude on the part of the Government in allowing mushroom growth of Teachers Training Institutions which cannot maintain standards and due to the fact that such institutions and students were successful before the Courts of law in surviving and getting recognition or getting admissions approved and passing out of the institutions. As a first step, establishing DIETs, the State thought it fit to prescribe higher minimum qualification for admission and selection made by a District Level Selection Committee consisting of experts."In respect of P.U.C. as the minimum qualification for admission:-'Previously, Lower Secondary Examination Certificate was the prescribed qualification for admission to the T.C.H. course. As the syllabus and curriculum were enriched, S.S.L.C. (E.P.S.) was prescribed as the minimum qualification and thereafter, S.S.L.C. (E.C. & P.S.) was introduced as the minimum qualification,'

The reasons for enhancing the qualification from S.S.L.C. to P.U.C. are found in paragraph 6.2 of the return. It is submitted by the State Government that the S.S.L.C. candidate will find it very difficult to cope up with the revised text-books which are in the offing; that P.U.C. candidates will be in a better position than the S.S.L.C. candidates to understand and impart the enriched academic curriculum. They have stated that:

'In the wake of new thrust on educational policy adopted by the National Policy on Education - 1986, the syllabi and curriculum of the elementary schools are enriched. The S.S.L.C candidates will find it very difficult to handle the revised textbooks which are in the offing. P.U.C. candidates will be in a better position than the S.S.L.C. candidates to understand and impart the enriched academic curriculum to the students. In fact, in several foreign Countries, a degree with teachers training course is the minimum basic qualification for the post of a primary school teacher. Even the States like Andhra Pradesh, Tamil Nadu, Maharashtra and Kerala have prescribed P.U.C. as the minimum qualification for the post of primary school teachers. Subjectwise teachers mainly for Core subjects such as Science, Mathematics and Social Studies,, the S.S.L.C. candidates cannot comprehend the syllabi and curriculum prescribed for the elementary schools. The syllabi prescribed for science include many advanced systems in science and technology as part of the academic curriculum. The knowledge of an S.S.L.C. candidate will be poor. At least in 2 year P.U.C., a student studies basic sciences which will enrich him substantially to undertake the job of teaching with teachers training to a satisfactory extent. Apart from this, there is no job opportunity for P.U.C. candidates. After P.U.C., many will not be in a position to join the professional courses such as Engineering and Medicine. Therefore, the introduction of P.U.C. as the minimum qualification will become a terminal course so that such of those who cannot go for higher studies and who have the intention of taking up teaching profession may join the Teachers Training Course. Even mad rush towards the degree classes can be checked up. A candidate with shallow knowledge cannot do justice either to the students or to the subject he handles.'

In respect of Rule 2 - Mode of submitting application and selection of candidates the State Government has averred:

'This Rule contemplates formation of a District Level Committee with the D.D.P.I. of the District concerned as the Chairman, the seniormost Educational Officer and the Principal of the Institution concerned as the Member. The DDPI of the District concerned shall notify the number of institutions and number of seats available therein for admission. The candidates fulfilling the minimum eligibility as

prescribed in Rule 1, can apply to the Selection Committee for admission. The candidates can also mention the names of the Teachers Training Institutions which they intend to join in the order of preference. The admissions are strictly based on Merit-cum-Reservation basis. There is no interview. In case of any reported irregularity in admissions and deviations from these norms, the D.D.P.I. who is the Chairman of the District Level Selection Committee shall be personally held responsible.'

'Under the Old Rules also, for regulating admissions to the Teachers Training Institutions, the D.D.P.I. of the District concerned was the Chairman of the Selection Committee and the Principal of the Institution concerned was the Member.'

The provisions in Rule 2 are made for the following reasons:-

- i. To ensure that the 'admissions are done strictly on the basis of merit;
- ii. That the Policy of the Government regarding reservations is adhered to strictly;
- iii. There is no scope for any kind of irregularity;
- vi. To ensure that the policy of the Government in abolishing the Capitation Fees is followed;
- v. To ensure that the quality of education is maintained by selecting students on the basis of merit; and
- vi. The Government of India has been repeatedly requesting that the State Government should ensure that admissions to the Teachers Training Institutions are done centrally with the maximum involvement of the Education Department.'

According to the State Government, these Rules are made after discussions between the Human Resources Development Department of the Government of India and the Education Department of the State. In proof of the same they have averred:-

'In this regard, a series of discussions between the Human Resources Development Department of the Government of India and the Education Department of the State were held and the same lead to evolving scheme wise points requiring action of the Government of Karnataka and which were pointed out in the letter of the Secretary, Government of India., Human Resources Department (Education Department) dated 12-7-1988, the true copy of which produced herewith at Annexure-R-1. Apart from, the Hon'ble Minister for Human Resources Development of the Government of India in his letter dated 13-4-1988 addressed to the Hon'ble Chief Minister of Karnataka insisted that the Government should phase out substandard institutions and institutions which indulge in mal practice. In fact, he has mentioned that the Central Government was constrained to withhold assistance for the teacher education projects of certain States where evidence of sufficient efforts by the State Government for complying with the directions in the National Policy on Education are lacking. The true copy of the said letter dated 13-4-1988 is produced herewith at ANNEXURE-R-2.'

In respect of Rule 3 - Distribution of Seats the State Government has averred:-

'Rule 3 contemplates that the seats of Aided and Unaided Teachers Training Institutions shall be shared between Karnataka and non-Karnataka students in the ratio of 80:20. Out of the total number of seats sanctioned to each Teachers Training Institutions 50% shall be reserved for Science students and the rest for others. In the Aided institutions, 90% of the total intake of seats shall be Government seats to be filled by Government on merit-cum reservation basis and the balance of 10% shall be filled by the managements. In relation to the unaided institutions, the ratio of distribution of seats shall be 70% (Government) and 30% (Management) (Where Government facilities are made use of) and 50% (Government) and 50% (Management) (Where Government facilities are not made use of).

'The distribution of seats is made as provided under Rule 3 so as to ensure the admission of Karnataka students at least to the extent of 80% for the simple reason that in the past many Teachers Training Institutions have refused admission to the Karnataka Students by preferring non-Karnataka students for

considerations other than merit. It is also within, the power of the Government to reserve certain percentage of seats for Karnataka students while leaving open the remaining for others. Having regard to the requirements of the State and the other factors, the framing of such a Rule is within the law laid down by the Hon'ble Supreme Court in Pradeep Jain's Case.'

On these grounds, it is contended by the learned Government Advocate that the imposition of a minimum qualification was with a view to attain a higher standard of education in the primary schools and to weed out the substandard institutions. He has relied on the following averments in the return:-

'The contention of the petitioners that the prescription of P.U.C. as the minimum qualification for admission to the 2 year T.C.H. course is arbitrary and illegal is untenable inasmuch as the minimum qualification of P.U.C. has been prescribed having regard to the standards to be maintained and to achieve the object of enhancing the standard of elementary education in the State. The prescription of higher minimum qualification was also to attain high standards in education and to weed out the substandard institutions. In fact, the prescription of S.S.L.C. as the minimum qualification was mainly responsible for mushroom growth of institutions resulting in turning out substandard teachers.'

'The contention of the petitioners that the Rules providing for centralised selection of candidates is violative of Articles 14 and 19(1)(g) of the [Constitution of India](#) is untenable inasmuch as centralised selection is evolved so as to remove the mal practices indulged in by the T.C.H. institutions by admitting un eligible candidates and admitting in excess of the intake fixed and not submitting the list of selected candidates in time so that the Department could verify the eligibility of each candidate before approving the admissions. Hence, the Rules are regulatory in nature and do not take away the right of the institutions or the Societies to run the institutions and as such, it is well within the Constitutional power conferred on the State under Article 19(6) of the [Constitution of India](#). The Rules are also not arbitrary inasmuch as there is a direct nexus to the object that is sought to be achieved viz., removing the various mal practices committed by the institutions and to assume merit students getting admission to the T.C.H. course having long

range of interest in enhancing the standard of education as object. Thus, such a Rule is not arbitrary. On the other hand, the right claimed by the petitioners Management to have the right of selection is arbitrary inasmuch as their selections have deprived many merited students from getting admissions and poor students are also deprived of getting admissions etc. The centralised selection having the principal of the institution concerned as the Member of the Selection Committee will give a say for the Management in the selection of candidates inasmuch as the Selection Committee does nothing more than selecting students fulfilling the requirements of the Rules regarding eligibility, reservations etc. Thus the selections made by the Selection Committee will not affect the Institutions from getting students to their institutions inasmuch as admissions are assured by the Selection Committee itself by allotting students to various institutions. Thus, no institution will go without getting students to their full strength.'

'Article 37 of the Constitution found in Part IV dealing with Directive Principles of State Policy provides that the principles laid down therein are nevertheless fundamental in the governance of the Country and it shall be the duty of the State to apply these principles in making laws. Thus the State has to secure to its citizens right to education, right to work as enshrined in Article 41 of the Constitution. The State shall promote with special care the Educational and economic interest of the weaker sections of the people and in particular, of the scheduled castes and scheduled Tribes and shall protect them from social injustice of all forms and exploitation vide Article 46 of the Constitution. Article 14 provides for equality before law. Article 29(2) provides that no citizen shall be denied admission into any educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 15(4) of the Constitution provides that nothing in this Article or Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the scheduled castes and scheduled Tribes, Article 16 provides for equality of opportunity in matters of public employment.'

'It is a fundamental duty of the Government to provide education for its citizens. In a developing Society, a Government, with a view to establish egalitarian Society,

has so many priorities relating to its socio-economic activities Government is concentrating in the area of free and compulsory education for all children until they complete the age of 14 years as directed by Article 45 of the Constitution. Nevertheless, it has established so many professional colleges including T.C.H. and C.P.Ed. Institutions. Apart from its own Institutions, Government have permitted individuals, societies or Associations to establish and run educational institutions on its behalf instead of having a monopoly in the educational activities. Thus the Associations or the Societies or individuals who are permitted to establish educational institutions are in the nature of public trust or act as Agents to the State. Thus the State, has a right to evolve a scheme of admission and regulating the admissions into educational institutions permitted to be run by such private bodies. The individuals or Societies which act for and on behalf of the State cannot claim absolute right available to citizens under Article 19(1)(g) of the Constitution, The educational activities which are claimed as a part of occupation, trade or business by citizens are permitted as if State could have run such activities with its own scheme of regulating admissions. So far as the rights of citizens in the field of education are concerned, they cannot be placed on par With the rights of citizens in respect of their private activities of private business or opportunity or any private profession.'

6. On these contentions the first question that arises for consideration is:

1) Whether the impugned orders are violative of fundamental rights of the petitioners guaranteed under Articles 14 and 19(1)(g) of the Constitution?

That question necessarily raises an important question as to whether the petitioners' rights if any are fundamental rights within the scope of Article 19(1)(g) of the Constitution. It is well settled in the light of the decision of this Court in BAPUJI EDUCATION SOCIETY : ILR 1985 KAR80 and also in HYDERABAD KARNATAKA EDUCATION SOCIETY v. STATE I.L.R (Karnataka) 1983, 251, that a right to impart education is a fundamental right and therefore that right guaranteed under Article 19(1)(g) would be violated if it is made out that restrictions imposed by the State Government under the guise of regulatory measures affects such a right. But in these cases could it be said that by

enhancing the minimum qualification from S.S.L.C. to P.U.C. and by regulating the admission of the students by constituting a centralised committee, the petitioners' right to run these T.C.H. courses has been completely taken away. In my view, once it is conceded that the State Government has got the power to impose regulatory measures for enhancing the standard of education in this State, it is not open to the petitioners to contend that their right to carry on the business of imparting education in the T.C.H. course or the C.P.Ed, course has been taken away by the regulatory measures, introduced by the State Government. A fundamental right to carry on business is distinct from a right to carry on business in whatever manner and wherever possible as observed by the Supreme Court in **RAI SAHIB RAM JAWAYA KAPUR AND ORS. v. THE STATE OF PUNJAB** : [1955]2SCR225 . The business that the petitioners were carrying in that case was printing and publishing books for sale in the State. The Supreme Court examined the question whether any fundamental right of the petitioner was violated on those facts. It observed:

'Article 73 of the Constitution relates to the executive powers of the Union. While the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these Articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the union and the States, following the same analogy as it provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:

'Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.'

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on Clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to the Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also.

Neither of these Articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the State on the other. They do not mean, as Mr. Pathak seems to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be can proceed to function in respect to them.

On the other hand, the language of Article 162 clearly indicates that the powers of the State executive to extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr. Pathak's contention.'

'It may not be possible to frame an exhaustive definition of what executive function means and implies, Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.

The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of

the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature.

It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.'

'The petitioners claim fundamental right under Article 19(1)(g) of the Constitution which guarantees, 'inter alia', to all persons the right to carry on any trade or business. The business which the petitioners have been carrying on is that of printing and publishing books for sale including text books used in the primary and middle classes of the schools in Punjab. Ordinarily it is for the school authorities to prescribe the text books that are to be used by the students and if these text books are available in the market the pupils can purchase them from any book seller they like.'

'There is no fundamental right in the publishers that any of the books printed and published by them should be prescribed as text books by the school authorities or if they are once accepted as text books they cannot be stopped or discontinued in future. With regard to the schools which are recognised by the Government the position of the publishers is still worse. The recognised schools receive aids of various kinds from the Government including grants for the maintenance of the institutions, for equipment, furniture, scholarships and other things and the pupils of the recognised schools are admitted to the school final examination at lower rates of fees than those demanded from the students of non-recognized schools.

Under the school code, one of the main conditions upon which recognition is granted by Government is that the school authorities must use as text books only

hose which are prescribed or authorised by the Government.

So far therefore as the recognised schools are concerned - and we are concerned only with these schools in the present case - the choice of text books rests entirely with the Government and it is for the Government to decide in which way the selection of these text books is to be made. The procedure hitherto followed was that the Government used to invite publishers and authors to submit their books for examination and approval by the Education Department and after selection was made by the Government, the size, contents as well as the prices of the books were fixed and it was left to the publishers or authors to print and publish them and offer them for sale to the pupils. So long as this system was in vogue the only right which publishers, like the petitioners had, was to offer their books for inspection and approval by the Government. They had no right to insist on any of their books being accepted as text books.'

So the utmost that could be said is that there was merely a chance or prospect of any or some of their books being approved as text books by the Government. Such chances are incidental, to all trades and business and there is no fundamental right guaranteeing them.

A trader might be lucky in securing a particular market for his goods but if he loses that field because the particular customers for some reason or other do not choose to buy goods from him, it is not open to him to say that it was his fundamental right to have his old customers forever.'

Though this case dealt with the right of the petitioners' therein to carry on business by printing and publishing text books which had been earlier approved by the Government of Punjab, the Supreme, Court held that that right was not a fundamental right.

7. In these cases, firstly while dealing with the right of the students, I do not think that the students can come before this Court and say that their fundamental right to acquire Teachers' Training Certificate is denied to them by enhancing the minimum qualification from S.S.L.C. to P.U.C. The minimum qualification prescribed for any course for that matter has to be prescribed and regulated by the

Government or the University as the case may be and there is no dispute about that proposition. Therefore the students in the first Writ Petition have not made out any case for interference with the impugned orders. But the case of the institutions which have been imparting training in the T.C.H. course under the old system by admitting students who have passed the S.S.L.C. course stands on a slightly different set of facts and they will have to be examined in the light of the contentions urged by the learned Counsel for the petitioners. A number of cases have been cited by the learned Counsel for the petitioners and also by the learned Government Pleader. The decisions of this Court in *Bapuji Education Society* and in *Hyderabad Karnataka Education Society* cases had not dealt with executive power of the State under Article 162 of the Constitution and therefore they do not require any consideration in order to test the validity of Rule 1. The Judgment in *BIJOE EMMANUEL AND ORS. v. STATE OF KERALA AND ORS* : 1986 CriLJ1736 . which was strongly relied upon by the learned Counsel for the petitioners, in my view, is not applicable to the facts of this case. In that case the point which arose for consideration was: Whether right of a citizen under Articles 19(1)(a) and 25(1) of the Constitution could be interfered with by an executive order. The case related to the compulsory singing of the National Anthem in a Christian institution where 3 students who belonged to the denomination of Jehovah's witnesses refused to participate in the singing of the National Anthem but all the same they stood up and respected the National Anthem by remaining silent at the time it was sung. The Supreme Court observed thus:

'Therefore the expulsion of the children from the school who are faithful of Jehovah' s witnesses for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do stand up respectfully when the anthem is sung, would be violative of their fundamental rights under Articles 19(1)(a) and 25(1), especially when it was sought to be done in pursuance of two circulars issued by the Director of Public Instruction, Kerala, having no statutory force.'

The reasoning of the Supreme Court in that case is as there was no statute which mandates the students to sing the National Anthem, in the absence of a statutory prescription, the executive orders are bad in law. The executive power of the State

under Article 162 did not arise for consideration before the Supreme Court, in that case. So that decision is of no avail to the petitioners. In *D. BHUVAN MOHAN PATNAIK AND ORS. v. STATE OF ANDHRA PRADESH AND ORS* : 1975 CriLJ556 . the Supreme Court was concerned with the rights of a convict for life under Article 21 of the Constitution and 19(1)(a) of the Constitution. What was challenged in that Writ Petition was certain departmental instructions issued by the Superintendent of Central Jail under the provisions of the Jail manual. The Supreme Court held those departmental instructions are not law which could take away the fundamental rights of the petitioners therein protected under Article 19(1)(a) and 21 of the Constitution. In *P. RAJENDRAN v. STATE OF MADRAS AND ORS* AIR 1986 SC 1012. the Supreme Court struck down Rule 8 of the Rules promulgated by the State of Madras for selection of candidates for admission to the First Year Integrated M.B.B.S course on Districtwise basis on the ground that there was no nexus between the classification and the object to be achieved. The Supreme Court observed:

'Though territorial classification is not always bad in all circumstances, districtwise classification which is being justified on a territorial basis in Rule 8 is violative of Article 14, specially when no justification worth the name can be made out.'

In *MOHAMMAD YASIN v. TOWN AREA COMMITTEE, JALALBAD AND ANR* : [1952]1SCR572 . the Constitution Bench of the Supreme Court considered the effect of the Bye-laws made under the provisions of the U.P. Municipalities Act. But in that case the right under Article 19(1)(g) of the Constitution was sought to be taken away not by executive action but by the imposition of a licence fee by the Municipality. The Supreme Court observed as follows:-

'Learned Counsel for the respondent in reply takes a preliminary objection to this line of arguments. He points out that as the levying of a tax without authority of law is specifically prohibited under Article 265 of the Constitution, Article 31(1) must be construed as referring to deprivation of property otherwise than by levying of a tax and that levying of a tax in contravention of Article 265 does not amount to a breach of a fundamental right. He contends, on the authority of the decision of this court in *Ramjilal v. Income-Tax Officer, Mohindar Garh*, 1951, S.C.R. 127 that

while an illegal imposition of tax may be challenged in a properly constituted suit, it cannot be questioned by an application under Article 22.'

In *T.B. IBRAHIM v. THE REGIONAL TRANSPORT AUTHORITY* : [1953]4SCR290 the Supreme Court considered the challenge on the ground of violation of the right guaranteed under Article 19(1)(g) of the Constitution. In that case pursuant to an order of the Regional Transport Authority declaring the bus stand in question as not suitable for the convenience of the travelling public, the Transport Authority resolved to alter the starting places and termini of all public service vehicles (other than motor cabs) arriving at and proceeding from Tanjore from the existing bus stand owned by the appellant to the Municipal bus stand in another area of the town. The impugned order resulted in the closing down of the appellant's Bus-Stand. The appellant having failed before the Madras High Court he obtained special leave under Article 136 of the Constitution and agitated the matter before the Supreme Court. The Supreme Court observed:

'There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. The restriction may have the effect of eliminating the use to which the stand has been put hitherto but the restriction cannot be regarded as being unreasonable if the authority imposing such restriction had the power to do so. Whether the abolition of the stand was conducive to public convenience or not is a matter entirely for the Transport Authority to Judge, and it is not open to the Court to substitute its own opinion for the opinion of the authority, which is in the best position, having regard to its knowledge of local conditions to appraise the situation.'

8. In these cases on hand, the facts are more in favour of the Government. The Government is only introducing a regulatory measure without any financial implications. The Government says that these measures are necessary for improving the quality of education and for preventing the growth of mushroom institutions. A similar case which came before the Supreme Court in *STATE OF M.P. AND ANR. v. KUMARI NIVE-DITA JAIN AND ORS* : [1982]1SCR759 . would advance the case of the State Government. In that case an executive order

completely relaxing certain conditions for admissions to the Medical College as prescribed in the Regulations framed under the Medical Council of India Act, 1956 was challenged on the ground that the State Government could not invoke the provisions of Article 162 of the Constitution for relaxing the conditions imposed under Regulations framed under the Medical Council Act, 1956. The regulation prescribed certain minimum qualifications for admission to the medical course but by an executive order under Article 162 of the Constitution, the M.P. Government relaxed those conditions in the case of Scheduled Caste and Scheduled Tribe candidates. The M.P. High Court quashed those orders on the ground it was beyond the competency of the State Government under Article 162 of the Constitution. The Supreme Court in reversal of the Judgment of the M.P. High Court observed as follows:-

'Entry 66 in List I (Union List) of the 7th Schedule to the Constitution, relates to 'co-ordination and determination of standard in institution for higher education or research and scientific and technical institutions.' This entry by itself does not have any bearing on the question of selection of candidates to the Medical Colleges from amongst candidates who are eligible for such admission. On the other hand, Entry 25 in List II (Concurrent List) of the same Schedule speaks of - 'Education, including technical education, medical education in Universities, subject to Entries 63, 64, 65 and 66 of List I....vocational and technical training of labour.' This entry is wide enough to include within its ambit the question of selection of candidates to medical colleges and there is nothing in the Entries 63, 64 and 65 of List I to suggest to the contrary. We are, therefore, of the opinion that Regulation II of the Council which is merely directory and in the nature of a recommendation has no such statutory force as to render the order in question which contravenes the said regulation illegal, invalid and unconstitutional .'

'In the case of State of Andhra Pradesh v. Lavu Narendranath, : [1971]3SCR699 ; this Court held at page 709 of (SCR): (At page 2566 of AIR) - 'the executive have a power to make any regulation which should have the effect of a law so long as it does not contravene any legislation already covering the field....'

'Under Article 162 of the Constitution the executive power of a State, therefore, extends to the matter with regard to which the legislature of a State has power to make laws. As there is no legislation covering the field of selection of candidates for admission to medical colleges, the State Government would, undoubtedly, be competent to pass executive orders in this regard.'

9. In my view, the ratio of this case is applicable *proprio vigore* to the facts of these cases. The minimum qualification of S.S.L.C. prescribed earlier by the State Government was not pursuant to any legislative provision. That was made under the Grant-in-Aid code a non-statutory provision. So it is open to the Government to substitute that regulation by a new regulation prescribing a higher qualification in the interest of raising the educational standards pursuant to the National Policy of Education evolved by the Ministry of Human Resources. I have already excerpted the relevant portion of the report which persuaded the State Government to enhance the qualification from S.S.L.C. to P.U.C. Though one of the petitioners complained that the State Government was prejudiced in taking the view that there has been mushroom growth of private institutions leading to a steep fall in the standard of education in the State, it is not possible to countenance the view that the Government was actuated by prejudice in coming to the conclusion that there was mushroom growth in the private institutions in this State. This Court can take judicial notice of the number of cases disposed of so far and is satisfied that the standard and the quality of education to be maintained has deteriorated considerably therefore the Government is duty bound to interfere at the right time and impose certain regulatory measures for improving the quality of education and that quality can only be improved by improving the quality of the teachers who in turn teach the students. As averred by the State Government they have only made a beginning in this regard and there is much more to follow up for giving full effect to the National Policy of Education.

For these reasons, it is not possible to contend that the executive power of the State Government under Artic(sic)62 of the Constitution was wrongly exercised with(sic) view to take away the rights of the petitioners from continuing T.C.H. courses with the present staff who have passed only the S.S.L.C. course and for the very same reasons the plea under Article 14 of the Constitution fails. I am at

loss to understand as to how the petitioner-institutions can complain of arbitrariness in these Rules. Both aided, un-aided and Government institutions are all governed by the impugned Rules. They must fall in line with the impugned Rules for the academic year 1988-89. Hence there could be no hostile discrimination as urged by the petitioners to invoke the provisions of Article 14. That the impugned Rules are violative of the principles of natural justice do not require serious consideration as to duty was cast on the State Government to hear the petitioners and no civil consequences affecting the rights of the petitioners flow from the impugned orders.

10. The second point touching the impugned Rules 2 and 3 which deal with the setting up of a Centralized Committee for regulating admission to the TCH courses requires some serious consideration. They read as under:

'Rule-2 Mode of submitting application and Selection of Candidates:-

a) There shall be a divisional level committees with DDPI of the concerned division as Chairman and DDPI of the District as a member to select the candidates, for admission to Teachers Training Institutions,

b) The DDPI of concerned District shall notify the number of Institutions and, number of seats available in Teachers Training Institutions coming under the jurisdiction of his districts.

c) The candidates who satisfies the conditions mentioned in Rule-1, shall obtain application from the concerned D.D.P.I. by paying Rs.10/-towards the application fee and submit the application within the time limit specified.

d) While submitting the application, every candidate shall mention the name of 3 TTI's in order of preference for which he desires to seek admission.

e) Applications so received shall be forwarded to the concerned J.D.P.I. and he shall process them and submit to the Commissioner for public Instruction within the time prescribed.

f) The selection list shall be prepared by the Commissioner for Public Instruction with the help of computer purely on merit cum reservation basis.

g) The Commissioner for Public Instruction shall publish the list of selected candidates at least two weeks before the commencement of Teachers Training Institutions.

h) The verification of certificate shall be made by the concerned Teachers Training Institution at the time of admission.'

Rule 3 reads as follows:-

Distribution of Seats:-

a) While all the seats of Government and private aided TTI's are Government Seats and to be filled up on merit cum reservation basis, the seats of private un-aided TTI's shall be shared between Government and the Teachers Training Institution of the concerned management of ratio of 50:50.

b) All the seats of Government TTI' s shall be filled up by the Karnataka Students only.

c) The seats of un-aided TTI's shall be shared between the Karnataka and non-Karnataka students in the ratio of 80:20.

d) Out of total seats sanctioned to each TTI 50% of them shall be reserved for science students and rest of the seats 'for others.

e) Apart from other reservation quotas, 50% of seats shall be reserved for girl, students in each TTI's.'

11. The contention of the learned Counsel for the petitioners is that in the light of the decisions of this Court in Hyderabad Karnataka Education Society Gulbarga and others v. State of Karnataka and in Bapuji Educational Association v. State, the right to select candidates and also to admit them is a right which is concomitant to the right to carry on the business of establishing and promoting educational institutions and, therefore, such right could be taken away only by a

law made by the legislature and not by an executive order. Reliance is placed on the decision of the Supreme Court in KHARAK SINGH v. STATE OF U.P AND ORS : 1963 CriLJ329 . as also the recent decision of the Supreme Court in Bijoe Emmanuel and Ors. v. State of Kerala and Ors. There are a number of decisions of the Supreme Court on the nature of the restrictions that could be imposed in public interest under Article 19(1)(c) of the Constitution. In Kharak Singh case Regulation 236 under Chapter XX of U.P. Police Regulations was questioned before the Supreme Court on the ground that the same is violative of Article 21 of the Constitution. The Supreme Court in that case considered the scope of Clauses (2) to (6) of Article 19 of the Constitution and held that Regulation 236 of the U.P. Police Regulations has no statutory basis and, therefore, it is not a law that the State is entitled to make under Clauses (2) to (6) of Article 19 of the Constitution. The Supreme Court observed in para 5 of its Judgment as follows:-

'Before entering on the details of these regulations it is necessary to point out that the defence of the State in support of their validity is two-fold: (1) that the impugned regulations do not constitute an infringement of any of the freedoms guaranteed by Part III of the Constitution which are invoked by the petitioner, and (2) that even if they were, they have been framed 'in the interests of the general public and public order' and to enable the police to discharge its duties in a more efficient manner and were therefore 'reasonable restrictions' on that freedom. Pausing here it is necessary to point out that the second point urged is without any legal basis for if the petitioner were able to establish that the impugned regulations constitute an infringement of any of the freedoms guaranteed to him by the Constitution then the only manner in which this violation of the fundamental right could be defended would be by justifying the impugned action by reference to a valid law, i.e., be it a statute, a statutory rule or a statutory regulation. Though learned Counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the Police Officers. They would not therefore be 'a law' which the State is entitled to make under the relevant Clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor

would the same be 'a procedure established by law' within Article 21, The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations.'

Relying on these observations, of the Supreme Court, Mr. Veerabhadrappa and the other learned Counsel for the petitioners contended that Clauses 2 and 3 of the impugned order would not have the force of law since they are admittedly not statutory Rules but executive instructions and the right of selecting candidates and the right of granting admission to them is a fundamental right recognised by the Court both in Hyderabad Karnataka Education Society case and in Bapuji's case. A reference, to these decisions would be necessary. The Judgment of this Court in Hyderabad Karnataka Education Society case has become final. Justice M.P. Chandrakantaraj Urs relying on the decisions of the Supreme Court in ALL SAINTS HIGH SCHOOL v. GOVERNMENT OF ANDHRA PRADESH : [1980]2SCR924 , KERALA EDUCATION BILL CASE AIR 1958 SC 956 and D.A.V. COLLEGE CASE : AIR 1971 SC1737 observed:

'Whether the extent of interference is regulatory in character or otherwise, an impediment to the proper exercise of the rights guaranteed under Article 19 of the Constitution should be examined having regard to the nature of the restrictions imposed with the object of regulating. In the instant case, what the petitioners have questioned is the interference with their right in selecting and admitting students of their choice. The right to charge capitation fee or admission fee, according to the particular needs of the institutions, the petitioners contend, is taken away as 90 per cent of the seats available to the institutions as fixed by the State Government are reserved for being filled up by the Selection Committee constituted by the State Government which is not regulatory but restrictive and prohibitive in character and therefore, offends Article 19(g) of the Constitution and more so in the case of minority institutions protected as well by Article 30 of the Constitution.'

When this decision was rendered there were no statutes controlling the selection and admission of students to the educational institutions in this State. Presumably

after this decision, the Government thought it fit to enact what is known as the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, This Act was challenged in this Court by certain educational institutions. Justice Rama Jois, had struck down Section 2(e) and Sub-clause (a) of Clause (2) of Section 4 which empowered the State Government to declare a part of the intake of seats in the educational institutions as Government Seats and to make selection for these seats as void on the ground that they offended Articles 14 and 19(1)(g) of the Constitution. Section 2(e) of the Act defines what 'Government Seats' mean and Sub-clause (a) of Clause (2) of Section 4 enables the Government to fix the minimum number of seats in Educational Institutions by making orders from time to time in exercise of the power under the aforesaid subjection. The reasoning of the learned Judge is found in paras 47 to 62 of the decision in Bapuji's case. What the, learned Judge observed is that the right to establish an educational institution is a fundamental right and it is protected under Article 19(1)(g) of the Constitution and it, therefore, follows that the right to administer the institution is also a fundamental right and that right could be properly exercised only if the institutions had the power to select and admit students of their choice. The contention urged by the learned Government Advocate that these provisions are made for the purpose of curbing certain mischievous malpractices that had crept into the collection of capitation fee was rejected by this Court. The learned Judge observed:

'I see no force in the submission. If the apprehension is that Capitation Fee would be collected even in respect of free seats clandestinely, if the selection is left to the management, then even if those seats are filled up by the Government, the managements could also collect any amount higher than the maximum Capitation Fee prescribed in respect of management seats clandestinely and the higher amount so collected might be to such extent as to compensate themselves for the loss occasioned by Government seats. Therefore, unless Rules are framed not only to ensure that no amount is collected in respect of number, of seats for which the collection of Capitation Fee is prohibited, but also to ensure that no amount in excess of the maximum amount of Capitation Fee is collected in respect of other seats, the evil would continue unabated and clandestinely and might get aggravated. Therefore, I am unable to agree that declaration of Government seats

and the taking over of reservation in respect of those seats are essentially for achieving the object of the Act, I do agree that by mere declaration of certain number of seats as free seats and by fixing the maximum rate of Capitation Fee in respect of other seats, the evil cannot be eradicated. But, as pointed out above, in addition to such declaration, it is absolutely essential for the Government to frame Rules for effective implementation of the Act. Therefore, the Government should frame Rules for the purposes of the Act requiring the management of the institutions: To submit to the State Government the Rules or policy made by them if they so desire for the purpose of ensuring that the availability of substantial number of seats both free and with Capitation Fee in favour of candidates of the region or the classes for whose benefit the institutions had been established.'

12. The very same observation would apply to the facts of these cases, since the State Government has urged in their return that a certain amount of control is necessary in the matter of selection and admission of candidates to private institutions on account of these institutions admitting more than the prescribed intake by the Government. If that mischief has to be curbed, that could be curbed by cancelling the admission of those students admitted in excess of the permitted intake. The State Government can also cancel the affiliation granted to those institutions if they admit the students in excess of the prescribed intake. Therefore, the very same objectives could be achieved by recourse to the provisions of the Grant-in-Aid Code under which the power of cancellation of admission and affiliation is always available to the State Government.

Mr. Devadas, contended that this Court has to take into consideration the social objectives to be achieved by these Rules. From the return filed by the State Government, 2 things are evident. Firstly, the qualification is enhanced from S.S.L.C. to P.U.C. and it was sought to be effected with a view to comply with certain requirements of educational policy which the Government of India has adopted as its national programme. In the report captioned 'National Policy on Education - 1986' at page 19 there is a reference to the provisions for promoting efficiency and effectiveness at all levels. Para 6.15(vii) of this Policy Report reads as under:

'Excellence in performance of institutions and individuals will be recognised and rewarded. The emergence of substandard institutions will be checked. A climate conducive to excellence and innovation will be promoted with full involvement of the faculty.'

It is open to the Government to make the necessary statutory rules to achieve this object. It is also open to the Government to achieve the very same object by recourse to its powers under the Grant-in-Aid Code, i.e., as noticed earlier by cancellation of the admission in excess of the prescribed intake or by cancellation of the affiliation itself. They can also withdraw the financial aid in respect of Government aided institutions. But any interference in the selection and admission of students in my view would operate not as a regulatory measure, but as a prohibitory measure which would effectively inhibit the exercise of the fundamental right of the petitioners in running these institutions and, therefore, these rules will have to be tested by the decision of this Court in *Bapuji's case* and *Hyderabad Karnataka Education Society Case*

13. Rule 2(a) deals with the District Level Selection Committee with D.D.P.I. as the Chairman and a senior most Education Officer and Principal of the Institution as its members that would tilt the balance in favour of the Government Officials since the Principal of the institute would be in a minority and he would not have effective control over the selection of the candidates. But that Rule may be applicable to Government institutions and not to private institutions either aided or unaided. Rule 2(b) which authorises the D.D.P.I. of the concerned District to notify the number of institutions and number of seats available in Teachers Training Institutions coming under the jurisdiction of, his district will not in any way interfere with the petitioners' right. Likewise, Rule 2(c) will not affect the petitioners' right. Rule 2(d) and Rule 2(e) also will not affect the petitioners. Rule 2(g) also comes under the very same category and it does not call for interference.

14. Under Rule 3, the petitioners are aggrieved by Rule 3(c), (e) and (f). Rule 3(c) provides that the seats of Aided and Unaided Teachers Training Institutions shall be shared between the Karnataka and Non-Karnataka students in the ratio of 80:20. The petitioners, in my view, cannot have any grievance about the

distribution of seats in that ratio for Karnataka and non-Karnataka students in the light of the decision of the Supreme Court in PRADEEP JAIN v. UNION OF INDIA : (1984)IILLJ481SC . However, it is made clear that if enough Karnataka students are not available to fill the quota of 80% reserved for them, it is open to the Aided and Unaided Training Institutions to admit non-Karnataka students. Rule 3(e) provides that in the Aided Institutions, 90% of the total intake of seats shall be Government seats to be filled up by Government on merit-cum-reservation basis and the balance of 10% by management seats. Under Rule 3(f) regarding Unaided Institutions, the ratio of distribution of seats shall be 70% Government seats and 30% management seats where the unaided institutions make use of the Government facilities. The petitioners say that they are seriously aggrieved by these two Rules.

Learned Government Advocate relied on the decision of the Supreme Court in Ram Jawaya's case on which I have relied for upholding the validity of Rule 1. I am unable to get any assistance from that decision since in that case the Supreme Court upheld the validity of the executive instructions because the right allegedly infringed was not a fundamental right. But in these cases, in the light of the decisions in Bapuji and Hyderabad Karnataka Education Society's cases read with other decisions of the Supreme Court on which the learned Judges have relied, there could be no doubt that the right of selection and admission is a fundamental right which underpins the petitioners' right to establish and manage their educational institutions and therefore an executive instruction cannot take away that right protected under Article 19(1)(g) of the Constitution. It is in this context the petitioners have pressed into service the decisions of the Supreme Court in Kharak Singh and Bijeo Emmanuel cases. So, these rules are bad in law and liable to be struck down. Rule 3(a) appears to be wholly arbitrary since no rationale could be found in that rule for dividing the seats in the ratio 50% as Government seats and 50% as Management seats when the institutions do not make use of any Government facilities. When the institutions do not make use of any Government facilities they should be permitted to take students of their choice subject to the qualifications prescribed and therefore this rule is arbitrary and liable to be struck down under Article 14 of the Constitution. Rule 4 is not challenged and it cannot be challenged because it does not apply to minority institutions.

15. The last point for consideration is whether Rule 1 should be made applicable from the academic year 1988-89 and onwards.

Having held that Rule 1 does not affect the rights of the petitioners, the further point for consideration is, whether the petitioners who had admitted students pursuant to the interim order made by this Court, for the T.C.H. course contrary to the stipulation in Rule 1, should be permitted now to prepare the students for the T.C.H. course notwithstanding the fact that they had not obtained a pass in P.U.C. Examination with 40% aggregate or 35% aggregate as the case may be.

Learned Counsel for the petitioners submitted that the petitioners are not in a position to make any arrangements in the middle of the academic year to ensure compliance with the requirement of Rule 1 and therefore, these students should be permitted to take the T.C.H. course without passing the P.U.C. examination. All interim orders are made in Education matters subject to the result of the Writ Petitions, since in the very nature of things, this Court is slow to disturb, the careers of the students pending final disposal of the Writ Petitions. But here, we are concerned with the case of a minimum qualification for obtaining the certificate in the T.C.H. Course. This minimum qualification should not be interfered with by this Court either on the ground of sympathy or hardship to the students. It cannot be disputed that a number of other institutions have admitted students for this academic year in compliance with the requirement of Rule 1 and therefore, the proper order to make is to direct the students who are admitted without obtaining a pass in the P.U.C. Examination to apply for the P.U.C. course during the next academic year and after obtaining a pass in the next academic year they could continue the T.C.H. course in the institutions in which they had already been admitted. But these students should be permitted to continue the T.C.H. course and they will be given the T.C.H. Certificate only after they obtain a pass in the P.U.C. course. So, by this order the career of the students who had already obtained the interim order of this Court will neither be disturbed nor be jeopardised.

Rule 2(a) is applicable only to the Government Institutions and not to the petitioners-institutions. But selection to the T.C.H. course in the petitioners-

institutions would be made on the basis of the earlier Rules which are in force. Rule 2(b) is declared as valid as the same does not in any way violate the fundamental rights of the petitioners. Likewise, Rule 2(c)(d), (e), (f) and (g) are also declared as valid. As regards Rule 3, 3(a) does not call for interference since it applies to Government Institutions. Rule 3(b) also does not call for any interference for the very same reason. Rule 3(c) is declared to be good in law in the light of the decision of the Supreme Court in the case of Pradeep Jain Rule 3(d) is also declared as valid in law in the light of the new education policy. There should be more emphasis in training teachers for teaching science. The aforesaid rule provides that if sufficient number of science students are not available, the available seats could be allotted to other students. Rule 3(e) and (f) are declared as bad in law in the light of the decision of this Court in Hyderabad Karnataka Education Society and Bapuji Education Society cases. Rule 3(g) is also declared as bad in law since this Rule has no nexus to the object to be achieved. Rules 4, 5 and 6 do not call for interference since they do not affect the rights of the petitioners.

Accordingly, these petitions are partly allowed and there shall be a declaration as stated in paras 13, 14 and 15 above. It is made clear that in the case of the petitioners, who had not admitted any students to the T.C.H. course pending disposal of the petitions, they are given two weeks' time to admit the students subject to fulfilment of the requirement of the attendance for the academic year 1988-89. Admissions made to other institutions through the Selection Committee appointed by the Government are not disturbed by this order. Parties to bear their own costs in all these petitions.