

**(2010) 10 AHC CK 0279**

**Allahabad High Court**

**Case No:** Misc. Single No"s. 2574, 2597, 2598, 2621, 2623, 2625, 2626, 2627, 4302, 4378, 4398, 4410, 4508, 4510, 4513, 4514, 4524, 4540, 4541, 4542, 4549, 4562, 4563, 4569, 4570, 4576, 4579, 4582, 4583, 4584, 4587, 4588, 4589, 4590, 4594, 4608, 4611, 4616, 4623, 4

Pallavi Tiwari and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision:** Oct. 25, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 226, 246, 254
- Indira Gandhi National Open University Act, 1985 - Section 2
- National Council for Teacher Education Act, 1993 - Section 12, 13, 14, 14(1), 14(3)
- National Council for Teachers Education (Recognition, Norms and Procedure) Regulations, 2009 - Regulation 12, 13, 3, 3(2), 33
- National Council for Teachers Education Rules, 1997 - Rule 3(2)
- University Grants Commission Act, 1956 - Section 2, 3
- Uttar Pradesh Basic Education Rules, 1972 - Rule 8
- Uttar Pradesh General Clauses Act, 1904 - Section 21
- Uttar Pradesh State Universities Act, 1973 - Section 2, 28(5), 3, 45

**Hon'ble Judges:** Anil Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

Anil Kumar, J.

Heard Sri Heera Lal Srivastava, Sri R.K.S. Chauhan, Sri Ashok Kumar Pandey, Sri Amit Srivastava, Sri Jai Narain Pandey, Sri Sunil Kumar Singh, Sri S.A. Jamal, Sri O.P. Tewari, Sri Ajai Kumar Singh, Sri Jai Prakash Singh, Sri K.K. Seth, Sri Arvind Misra, Sri H.G.S. Parihar, Sri Sreesh Chandra Misra, Sri Vimal Kumar Pandey, Sri Kamlesh Kumar Rai, Sri S.P. Dwivedi, Sri Ved Prakash Shukla, Sri Durgesh Vijay Srivastava, Sri Syed Aftab Ahmad, Sri S.K. Misra, Sri Suresh Chandra Shukla, Sri Anil Kumar Misra,

Sri Sanjeet Singh, Sri Ram Nayak Tripathi, Sri Sanjay Kumar Pandey, Sri Maheep Kumar Singh, Sri O.N. Pandey, Sri K.K. Singh Somvanshi, Sri Sarvesh Kumar Misra, Sri Vineet Kumar Pandey, Sri D.P. Singh Somvanshi, Sri A. K. Pandey, Sri K.K. Verma, Sri Pradeep Kumar Singh, Sri V.S. Trivedi, Sri J.N. Misra and Sri Amit Sharma learned Counsel for the Petitioners in connected writ petitions and Sri Vinay Bhushan, learned Counsel for National Council of Teachers Education, Sri Rakesh Srivastava, learned Standing Counsel for State of U.P., Sri S.P. Shukla, learned Counsel for Lucknow University Sri Jayant Singh Tomar, learned Counsel appearing on behalf of Union of India and Dr. Ravi Misra, learned Counsel for one of the Respondents.

2. As the common questions of law and facts are involved in the present writ petitions, so with the consent of the learned Counsel for the parties of the writ petitions, which are clubbed together are being heard and decided by a common judgment.

#### BRIEF FACTS

3. The State Government appointed Lucknow University, Lucknow as nodal agency to conduct the Joint Entrance Examination B.Ed. - 2010 (hereinafter referred to as "Entrance Examination"). The said step was taken by the State Government in view of the law as laid down by the Apex Court in the case of P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537. in which Hon'ble Supreme Court examined various aspects to impart the education of professional courses like B.Ed. in various institutions and colleges and held that the admissions for professional course should be made on the basis of entrance test under single window system and until the institutions themselves are not able to evolve an effective machinery for such entrance test ensuring transparency and merit, the State has to step in and arrange for such entrance test.

4. Thereafter, Lucknow University, Lucknow on 4.2.2010 issued an advertisement/brochure for conducting the Entrance Examination and the last date for submission of examination forms was fixed as 20.3.2010 and the examination was to be held on 5.5.2010. One of the eligibility criteria as mentioned in the advertisement/brochure required to be possessed by a candidate to appear in the Entrance Examination is as under:

Candidates with least 45% marks either in the Bachelor's degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

5. In response to the said advertisement/brochure, Petitioners submitted their candidature after completing all necessary formalities and deposited the requisite fees. Later on, in pursuance to correspondences took place between the authorities of the State Government i.e. Principal Secretary Higher Education, the Lucknow University/Nodal Agency and National Council of Teachers Education (hereinafter referred to as NCTE) the eligibility criteria was change from 45% to 50% to be

possessed by a candidate in his/her graduate/post-graduate degree or any other qualification equivalent thereto.

6. In view of the above development, the State Government wrote a letter dated 28th April, 2010 to the Chairman NCTE inter alia stating therein that minimum qualification for conducting the entrance examination in question may be relaxed to the effect that the candidates with at least 45% marks either in the Bachelor's degree and/or in the Master's degree or any other qualification equivalent thereto may be eligible for appearing in the Entrance Examination. But the NCTE issued a letter dated 29.4.2010 stating therein that in view of the provisions as provided under National Council for Teacher Education Act, 1993 (hereinafter referred to as "Act") read with National Council For Teacher Education Regulations 2009 (hereinafter referred to as "Regulations 2009") notified in Gazette of India on 31.8.2009 by which Clause 3(2)(a) in Appendix-4 framed as per Regulation 9 of Regulation 2009 which provides "Norms and Standards for Bachelor of education programme leading to Bachelor of Education (B.Ed) degree the eligibility criteria for appearing in B.Ed Entrance examination be as follows:

3(2)(a) Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

7. Accordingly the State of U.P. in exercise of power under Sub-section (5) of Section 28 of U.P. State Universities Act, 1973 read with Section 21 of the U.P. General Clauses Act, 1904 issued a notification/order dated 30.4.2010 known as Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) Order (IXth Amendment) 2010 by which the eligibility criteria was fixed as 50% for Entrance Examination.

8. In view of the said development, Lucknow University Lucknow, the nodal agency for holding the Entrance Examination published an advertisement in the newspaper on 3/4th May, 2010 that the minimum eligibility criteria to be possessed by a candidate in order to appear in the Entrance Examination, is 50% marks in graduate/post graduate degree from any University in India. In the advertisement dated 3/4th May, 2010 it was also mentioned that the Candidates, who had submitted their application forms and had secured less than 50% marks can take their application fees.

9. A candidate namely Km. Laxmi, who secured less than eligibility criteria of 50% marks fixed by the Lucknow University, challenged the said change in eligibility criteria before this Court by means of Writ Petition No. 2621(M/S) of 2010 (Km. Laxmi v. University of Lucknow through its Registrar and Ors.) the aforesaid writ petition alongwith other identical writ petitions filed by the candidates challenging the said change in criteria came up for consideration before this Court on 4.5.2010

and on the said date an interim order was passed, the operative portion is quoted as under:

On the basis of instructions learned Standing Counsel submits that the State Government, keeping in view the interest of the students, has submitted a request to the NCTE to permit the whole candidates to appear in the Combined Entrance Examination for B.Ed. course, who possess 45% of marks as per criteria provided earlier for the examination.

I am informed that some of them have already been issued the admit Cards, therefore, at this stage I am of the view that it is not proper to restrain the candidates, who are eligible under the criteria provided under the earlier Notification to the effect that who possess with 45% marks in the Bachelor Degree and Master's Degree, may appear in the examination.

Thus being, *prima facie*, satisfied with the case of the Petitioners, I hereby permit the Petitioners to appear in the forthcoming Combined Entrance Examination for B.Ed. Course 2010. The opposite parties are directed to make a necessary arrangement, to conduct their examination.

Three weeks time as prayed by learned Counsel for the opposite parties is allowed to file the counter affidavit.

List thereafter.

Connect and list alongwith wit petition No. 2574 (MS) of 2010, writ petition No. 2597 (MS) of 2010, writ petition No. 2598 (MS) of 2010, writ petition No. 2623 (MS) of 2010, writ petition No. 2625 (MS) of 2010, writ petition No. 2626 (MS) of 2010, writ petition No. 2627 (MS) of 2010.

10. Thereafter, Lucknow University on the ground of leakage of examination paper, postponed the Entrance Examination scheduled to be held on 5th May, 2010. Subsequently, the next date for conducting the Entrance Examination was fixed as 19.6.2010 and the Lucknow University granted permission to all the candidates, who had filled up their forms in response to the advertisement and secured marks between 45% to 49.99% in their graduate/post graduate degree to appear in the Entrance Examination which took place on 19.6.2010 but their results were not declared, so one of the candidate Km. Dimple Gupta who had earlier filed writ petition and an interim order was granted in her favour on 4.5.2010 filed Writ Petition No. 2625 (M/S) of 2010 and on 4.8.2010 an order was passed, the relevant portion quoted as hereunder:

I am informed that the counseling of those students whose results have been declared is in progress. Keeping in view this fact, I hereby provide that the seats for the Petitioners whose results have not been declared shall be kept reserved, which shall be subject to their results of counseling. I am also informed that till date none of the opposite party has come forward to controvert the facts stated in the writ

petition by filing the counter affidavit.

11. Order dated 4.8.2010 passed in Writ Petition No. 2625( M/S) of 2010 was challenged by Lucknow University, Lucknow by way of Special Appeal, Special Appeal No. 535 of 2010, Lucknow University, Lucknow through its Registrar v. Km. Dimple Gupta and Ors., on 10.8.2010 in the said Special Appeal, the interim order has been passed, the relevant portion are quoted as under:

The University felt practical difficulty in allowing the Respondents to participate in the counselling for the reason that without there being any adjudication on the issue involved in the writ petition, namely, whether the cut off marks prescribed as 50% should have been made applicable in the instant examination or not, no admission could be given. The learned Single Judge issued directions for declaration of results of the Respondents and had also allowed them to appear in the counselling. The University also considered that there was a very large number of students, namely, 1,45,000, who were not being allowed to appear in the entrance examination because they had secured less than 50% marks in the qualifying examination, were allowed to appear in the entrance examination in deference to the order of learned Single Judge dated 4.8.2010, are also pressing for declaration of their results, which cannot be done.

Learned Counsel for the University has submitted that though the order passed by the learned Single Judge appears to be relating to the Respondents (Petitioners in the writ petition) only for declaration of the results but in view of the fact that after the aforesaid order, various fresh writ petitions have been filed by such students who had appeared in the examination, though they were having less than 50% cut off marks in the qualifying examination, therefore, they are also pressing for declaration of the results and consequent thereof to appear in the counselling.

We take notice of the fact that very few of the candidates, namely, the present Respondents approached this Court on 4.5.2010. We are informed that none of other students filed any writ petition before 19.6.2010, on which date the entrance examination was held instead of 5.5.2010. Some of the students have filed writ petitions a few days back for taking the benefit of the order passed with respect to the present Respondents, which is under challenge in this appeal.

Prima facie, we are, satisfied that all those candidates, who left themselves to their fate, after the publication made on 3.5.2010 and 4.5.2010 by the University and had chosen not to challenge the said notification, cannot be allowed to come to the Court claiming the benefit of the order, which has been passed in favour of the Respondents, who were conscious of their rights and have approached this Court within time.

Even otherwise, without deciding the eligibility of the candidates, they cannot be allowed to appear in the counselling and seek admission. Thus, eligibility of the candidates needs be decided first, before giving them admission.

We are informed by the counsel for the University that in the present counselling, out of these 12 candidates/students, only two of them have secured that many marks which qualify them for counselling. We, therefore, provide, as an interim measure, that two seats for the aforesaid two candidates shall be kept reserved and for the rest of the Respondents, in case the standard of counselling is lowered down or they are found to be eligible for the counselling, then equal number of seats shall be kept reserved in that counselling.

Let this matter be listed on 18.8.2010 for hearing.

In the meantime, the Appellants may file counter affidavit in the writ petition so that the same may be heard and disposed of at the earliest.

12. Subsequently, the candidates, who had secured less marks than eligibility criteria of 50% marks in their graduate/post graduate degree fixed by the contesting Respondents but allowed to appear in the Entrance Examination approached this Court by filling Writ Petitions, and the leading one is Writ Petition No. 4541(M/S) of 2010 (Pallavi Tiwari v. Union of India and Ors.), on 13.8.2010 this Court passed an interim order, the operative portion is quoted as under:

I am informed that Counselling is in progress and last date is fixed on 20.8.2010. I am of the view that if counselling is permitted to continue without adjudicating upon the right of the Petitioners, since the seats of B.Ed. Course are limited, after fulfilling the seats, their cause of action may be frustrated. Therefore, without interfering in the counselling at this stage, I feel it appropriate to issue an interim direction to the examining body to decide the result forthwith so that as per their rank in the merit list, they may appear in the counselling. It is further provided that the result of the counselling shall be subject to further order of this Court. Accordingly, order is issued.

13. Again, Lucknow University challenged the order dated 13.8.2010 passed in Writ Petition No. 4541(M/S) of 2010 by way of Special Appeal, Special Appeal No. 608 of 2010, Lucknow University and Ors. v. Pallavi Tiwari and Ors., on 25.8.2010 an order has been passed, the operative portion quoted as under:

We are, *prima facie*, of the view that firstly the candidates who had not secured minimum eligibility marks fixed by the statutory regulations, were not eligible to appear in the examinations, particularly when proper notice was published in the newspapers before the written examination, cautioning them that they need not appear in the examination and their fee would be returned and also that allowing these students to appear in the counselling against limited number of seats for B.Ed. course in the State of U.P. in violation of statutory regulations, may encroach upon the rights of all eligible candidates, who have secured 50% or more marks as they would be made to compete with those who are unequal.

We, under the circumstances, direct that operation of the orders passed by the learned Single Judge shall remain stayed and that no result shall be declared of the students, who are 1,45,000 or so in number, whether they were allowed to appear in the examinations under the orders of the High Court or allegedly of their own by the University, who do not fall within the field of eligibility i.e. who have not secured 50% marks in the qualifying examinations, till further orders of the Court or till the final decision in the writ petition, whichever is earlier.

Since the writ petitions are listed before the learned Single Judge, tomorrow, the matter may be considered and decided by the learned Single Judge, as per his own discretion, by giving appropriate findings, on the pleas urged before him.

In the meantime, the present counselling which is going on shall be subject to further orders of the Court.

Let the special appeals be listed on Monday next.

14. In view of the said factual grounds, the present writ petitions which have been filed by the candidates for redressal of their grievances thereby challenging the eligibility criteria which has been changed from 45% to 50% to be possessed by a candidate in his/her graduate or post graduate degree in order to appear in the Entrance Examination can be classified in two categories:

Group A: Those candidates, twelve in numbers, who initially challenged the impugned action on the part of the Respondents thereby changing the criteria from 45% to 50% and in whose favour this Court has passed the interim order on 4.5.2010, the details of the same are given as under:

1. Writ Petition No. 2625 (M/S) of 2010; Km. Dimple Gupta v. State of U.P. and Ors.
2. Writ Petition No. 2621 (M/S) of 2010; Km. Laxmi v. University of Lucknow through Registrar and Ors.
3. Writ Petition No. 2590 (M/S) of 2010; 1. Namita 2. Km. Manorama v. Union of India and Ors.
4. Writ Petition No. 2623 (M/S) of 2010; 1. Km. Lalita Tripathi 2. Smt. Nisha Agnihotri v. University of Lucknow and Ors.
5. Writ Petition No. 2626 (M/S) of 2010; 1. Smt. Babita Yadav 2. Smt. Anupama Tripathi 3. Smt. Gayatri Mishra v. State of U.P. and Ors.
6. Writ Petition No. 2627 (M/S) of 2010; Pinki Lodhi v. Union of India and Ors.
7. Writ Petition No. 2574 (M/S) of 2010; Shashi Bajpai v. State of U.P. and Ors.
8. Writ Petition No. 2597 (M/S) of 2010; Km. Nidhi Yadav v. State of U.P. and Ors.

Group B: Other writ petitions which were subsequently filed by the candidates and were allowed to appear in the Entrance Examination by the Lucknow University but

their results were not declared, had approached this Court.

## STATUTORY PROVISIONS

15. It will be appropriate that before adjudicating and deciding the controversy involved in the present case, the relevant statutory provisions which governs the field, may be taken into consideration.

16. The U.P. State Universities Act (in short the Universities Act), was promulgated by State Legislative Assembly to regulate academic and financial admission for higher education in U.P. and obtained Presidential assent on 2.9.1973. The basic aims and objects were to provide equal opportunity in the field of higher studies to the peoples of the State with better academic atmosphere.

17. u/s 2 and 3 of the Universities Act, certain words like affiliated college, area of the University, associated College, autonomous College, Central Board of Studies, constituent college, existing University, Institute, Management, registered graduate, University etc. have been defined.

18. Chapter VIII of the Universities Act deals with the admission and examinations. Section 45 of the said Act provides the conditions in compliance of which the students may be eligible for admission to the course of study for a degree. For convenience Section 45 is reproduced as under:

45. Admission of Students- (1) No student shall no eligible for admission to the course of study for a degree unless-

(a) he has passed-

(i) the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or of any University or Board incorporated by any law for the time being in force; or

(ii) any examination, or any degree conferred by any other University, being an examination or degree recognized by the University as equivalent to the Intermediate Examination or to a degree of the University; and

(iii) he possesses such further qualifications, if any, as may be specified in the Ordinances;

Provided that the University may prescribe by Ordinances any lower qualifications for admission to a degree in Fine Arts.

(2) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(3) The University shall have the power to recognize (for the purposes of admission to a course of study of a degree), as equivalent to its own degree, any degree conferred by any other University or, as equivalent to the Intermediate Examination

of any Indian University, any examination conducted by any other authority.

(4) Any student whose work or conduct is unsatisfactory may be removed from the University or an institute or a constituent College or an affiliated or associated College in accordance with the provisions of the Ordinances.

19. On 30.4.2010 a Notification/Order has been issued by the State of U.P. known as the Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) (Ninth Amendment) Order, 2010 by which amendment in para-3 sub para (1)(b) in Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) Order 1987 has been made as under:

(b) a graduate or post graduate degree of University established by law with a minimum of 50% marks in case of other candidates and a concession of 5% at degree level in the minimum academic qualification shall be given to the candidates who are of impaired visions seeking admission to B.Ed. Course.

20. Further, the National Council for Teacher Education Act, 1993 (Act No. 73 of 1993) was promulgated by the Parliament and notified on 29.12.1993 and the Section 2 of the said act contains definition clause relating to various words Sub-section (c) of Section 2 of the Act defines the meaning of "recognized institution"; Section 2(h) of the Act, defines the word, "prescribed"; Section 2(i) of the Act defines the word, "recognised"; Section 2(j) defines the word, regional committee" and Section 2(k) of the Act defines the work, "regulations". Section 2(l) of the Act defines the word, "teacher education"; Section 2(m) of the Act defines the word "teacher education qualification"; Section 2(n) of the Act defines the word, "University". For convenience, the relevant sub-sections of Section 2 of the Act is reproduced as under:

(h) "Prescribed" means prescribed by rules made u/s 31;

(i) "recognized institution" means an institution recognized by the Council u/s 14;

(j) "Regional Committee" means a Committee established u/s 20;

(k) "regulations" means regulations made u/s 32;

(l) "teacher education" means programmes of education, research training of persons for equipping them to teach at pre-primary, primary, Secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education;

(m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act.

(n) "University" means a University defined under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University u/s 3 of that Act.

21. Chapter II of the Act deals with the functions of the Council, u/s 3 the Central Government by notifying in the Official Gazette, established a Council Called as the National Council for Teacher Education (in short NCTE) and further Sub-section (4) of Section 3 deals with the constitution of the council.

22. The relevant sub-sections of Section 12 which are necessary for consideration of dispute involved in the present case, are reproduced as under:

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions.

(e) lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum.

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

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

23. Section 13 relates to inspection of the institution which are recognized or proposed to be recognized by the Council to impart education like B.Ed. Courses etc. Section 14 mentions mandatory condition for recognition of institutions offering course or training in teacher education. u/s 15 of the NCTE Act, the regional Committee has been empowered to grant recognition to start new courses. The embargo has been placed for the examining bodies like Universities provided no affiliation shall be granted unless recognition has been granted by the regional Committee of the NCTE. Section 17 of the NCTE Act, lays down that in case, institution is recognized by the regional Committee or the NCTE the University concerned to which an institution has been affiliated shall de-recognize such institution.

24. Section 32 of the NCTE Act in Chapter VII, empowers the council to frame regulation by publication in official gazette not inconsistent with the provisions of the Act and Rules made thereunder generally to carry out the provision, the same is as under:

## 32. POWER TO MAKE REGULATIONS

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

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (j) the procedure and the quorum necessary for transaction of business at the meetings of the Executive Committee under Sub-section (5) of Section 19;
- (k) the manner in which and the purposes for which the Executive Committee may co-opt persons under Sub-section (f) of Section 19;
- (l) the number of persons under Clause (c) of Sub-section (3) of Section 20;
- (m) the term of office and allowances payable to members under Sub-section (5) of Section 20;
- (n) additional functions to be performed by the Regional Committee under Sub-section (6) of Section 20;
- (o) the functions and the procedure to be followed by the territorial jurisdiction of, and the manner of filling casual vacancies among members of a Regional Committee under Sub-section (7) of Section 20.
- (p) any other matter in respect of which provision is to be, or may be, made by regulations.

#### Regulation 33: RULES AND REGULATIONS TO BE LAID BEFORE PARLIAMENT

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule or regulation, or both House agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

25. In pursuance to power conferred u/s 32 of the Act, the NCTE had framed Regulations in the year 2009 notified on 31st August, 2009 known as the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 some of the regulation which are necessary to be taken into consideration for resolving the dispute in question are as under:

#### Regulation 3: Applicability-

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

"Regulation 9": The norms and standards for various teacher education courses, as specified in Appendices 1 to 13, as indicated hereinafter, shall have to be complied

with by an institution offering the said courses as following, namely-

-----  
Norms and Standards for Bachelor of education programme

(iv) leading to Bachelor of Education (B.Ed.) degree.

Append

Regulation 12. Power to relax:

On the recommendations of State Government or Union Territory Administration concerned, or in cases for removal of any hardship caused in adhering to the provisions in these Regulations, keeping in view the circumstances peculiar to the said State or Union Territory it shall be open to the Chairperson, National Council for Teacher Education, for reasons to be recorded in writing, to relax any of the provisions of these Regulations, in respect of any class or category of institutions, in the concerned state or Union Territory, to such an extent and subject to such conditions, as may be specified in the order allowing relaxation. However, in exceptional cases and for reasons to be recorded in writing, the Chairperson, National Council for Teacher Education shall be competent to relax provisions of these Regulations and the related Norms and Standards subject to its ratification by the Council.

Regulation 13 - Repeal of Regulations:

(1) The National Council for Teacher Education (Recognition Norms and Procedure) Regulations 2007 notified vide Notification No. F.51-1/2007/NCTE/dated 27th November, 2007, published in the Gazette of India Extraordinary Part III-Section 4 as No. 231 on the 10th day of December, 2007 is hereby repealed.

(2) The National Council for Teacher Education (the criteria for relaxation in qualifications required for appointment to teaching posts in degree level teacher training courses) Regulations, 2005 notified vide Notification No. f.49-29/2005/NCTE (N&S) dated 28th December, 2005, published in the Gazette of India Extraordinary Part III - Section 4 as No. 12 on the 25th day of January, 2006 is hereby repealed.

(3) The repeal of the aforesaid Regulations shall not affect previous operation of any Regulations so repealed or anything duly done thereunder.

26. Further, in Appendix-4 framed as per the provision of Regulation 9 which deals the norms and standards for Bachelor of education programme leading to Bachelor of Education (B.Ed.) degree therein Clause 3 provides as under:

3. Intake, Eligibility and admission procedure

(1) Intake

There shall be a basic unit of one hundred students divided into two sections of fifty each for general sessions and not more than twenty five students per teacher for a

school subject for methods course and other practical activities of the programme to facilitate participatory teaching and learning.

(2) Eligibility

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

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

(3) Admission Procedures

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

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PETITIONERS.**

27. On behalf of the Petitioners, Sri Heera Lal Srivastava, Sri Tarkesh Tewari, Sri R.K.S. Chauhan, Sri Ashok Kumar Pandey, Sri Amit Srivastava, Sri Ganga Singh, Sri R.K.S. Chauhan, Sri Mohd Shahan and Dr. Ravi Kumar Mishra Advocate have advanced their arguments and other counsel appearing on behalf of the Petitioner have adopted the arguments advanced by Sri Heera Lal Srivastava Advocate. In nut-shell, the arguments advanced by learned Counsel for the Petitioners are summarized as under:

(a) Clause 3(2)(a) in Appendix 4 of framed as per the Regulation 9 of Regulation 2009 notified in the Gazette of India on 31.8.2009 which provide that a candidate with at least fifty percent marks either in the Bachelor's degree and/or the Master's degree or any other qualification equivalent thereto shall be eligible for admission to the B.Ed. Course in academic session 2010-11 is illegal, arbitrary and against the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

(b) The action on the part of the National Council for Teacher Education thereby issuing a letter dated 29.4.2010 to the Principal Secretary, Higher Education, U.P. directing to ensure that the candidates with at least 50% marks either in the Bachelor Degree and/or in the Master Degree or any other qualification equivalent thereto shall be given admission to B.Ed. Education Programme was an arbitrary exercise of power, ignoring the vital fact that before issuing the same, the Lucknow University, Lucknow had already proceeded to conduct the examination on the basis of minimum 45% marks and the candidates have already filled their forms for appearing in the B.Ed. Entrance Examination-2010 with the said qualification, so the Clause 3(3) in Appendix IV relating to the admission procedure which provides that the admission shall be made on merit on the basis of marks obtained in the qualifying examination when read with the Clause 3(2)(a) relating to eligibility rider

of 50% marks for appearance in the entrance examination makes Clause 3(2)(a) absolutely irrelevant and arbitrary because a candidate having 50% marks in the Bachelor Degree if permitted in the entrance examination may not be able to secure the merit and on the other hand, a candidate may having less then 50% marks in graduate or post graduate degree can secure merit in the Entrance Examination for the purposes of admission in B.Ed. Course for the academic session 2010-2011.

(c) The Combined Entrance Examination B.Ed. Course, 2010 is a competitive examination and will not provide any employment to the candidates appearing in the said examination, as such the rider of 50% marks only for the purposes of appearance in the entrance examination is absolutely arbitrary, unjust and illegal, thus {Rule 3(2)(a)} of Appendix IV as framed as per Regulation 9 of the National Council for Teacher Education Regulations, 2009 deserves to be quashed, declaring ultra-vires attracting the infringement of fundamental rights of the citizen as provided under Articles 14 and 16 of the Constitution of India.

(d) The combined Entrance Examination B.Ed. Course, 2010 is a competitive examination alike other competitive examination relating to Indian Administrative Service, Provincial Civil Services and Bank Examinations as well as these competitive examinations do not provide any such harsh/hard rider/condition of any percentage in any bachelor/master degree for the purpose of such competitive examinations, so the strict provisions of 50% in bachelor or master degree for the purposes of Combined Entrance Examination is absolutely discriminatory, arbitrary and violative of the fundamental rights provided under Article 16 of the Constitution of India.

(e) Notification dated 30.4.2010 issued by the State of U.P. by which the eligibility criteria was changed from 45% marks to 50% marks for the purposes of appearance in the Combined Entrance Examination B.Ed. 2010 is an illegal exercise of power on the part of the Respondents, and thus changing the eligibility criteria from 45% to 50% when the students have already filled up their forms and the last date for submitting the same had already expired, is an action arbitrary in nature and they cannot do the same in view of the principle of promissory estoppel. Learned Counsel for the Petitioner in order to press the said arguments relied on the judgment of Hon'ble Apex Court in the case of [Hemani Malhotra Vs. High Court of Delhi,](#)

(f) There can be no discrimination in respect to the candidates, who are allowed to appear in the entrance examination in pursuance to interim order passed by this Court earlier and to the candidates who are allowed to appear in the entrance examination by Lucknow University, Lucknow having marks between 45% to 49.99% in their graduate/post graduate degree and they are entitled to get their results declared, if successful be admitted to B.Ed course. In support of said contention, learned Counsel for the Petitioners relied on the judgment of Hon'ble Apex Court in the case of [State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha,](#)

(g) In view of the provisions as provided under Regulation 12 of Regulation 2009, the State Government should have taken appropriate steps to remove the hardship in adhering to the provisions in its Regulation 9 Appendix IV Clause 3(2)(a) but the State Government has failed to do so without any reasonable justification or reasons.

28. In addition to the above said arguments Sri H.L.Srivastava, learned Counsel for the Petitioner in Writ Petition No. 4866 (M/S) of 2010 and 2625 (M/S) of 2010 has also argued that the eligibility criteria as laid down in Clause 3(2)(a) in Appendix-IV Regulation 9 of Regulation 2009 is inconsistent with the provisions as provided u/s 32 of the Act and further once there is no minimum qualifying marks as provided u/s 2(m) which deals with the Teacher Education Qualification then the action on the part of Respondents to prescribe the minimum eligibility criteria of 50% by means of Clause 3(2)(a) in Appendix -IV is arbitrary and violative of Article 14 of the Constitution of India. In this regard he relied the meanings of "inconsistent" "standard" and "definition" as given in "Random House Dictionary" are quoted as under:

In-con-sist-ent (in/kan sis/tent), adj. 1. Lacking in harmony between the different parts or elements; self contradictory: an inconsistent story; inconsistent d~~ecor~~. 2. lacking agreement, as one thing with another or two or more thing in relation to each other; at variance: a summary that is inconsistent with the stated facts. 3. not consistent in principles, conduct, etc.: All kinds are inconsistent at that age.

Stand.ard (stan/dard), n. 1. an object considered by an authority or by general consent as a basis of comparison. Fulfilling specific requirements as established by an authority, law, rule, custom, etc: the program was broadcast on the standard broadcast band.

Def.i.ni.tion (def/enish/an), n. 1. the act of defining or making definite or clear. 2. the formal statement of the meaning or significance of a word, phrase, etc. 3, condition of being definite. 4. optics. Sharpness of the image formed by an optical system. 5. Radio and Television, the accuracy of sound reproduction through a receiver or of picture reproduction in a television receiver.

and in support of the above said arguments, he relied on the following judgments:

- (1) [Deepak Sibal Vs. Punjab University and Another,](#)
- (2) [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,](#)
- (3) [A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another,](#)
- (4) [A.P. Public Service Commission Vs. Baloji Badhavath and Others,](#)

29. Lastly, Sri Heera Lal learned Counsel for the Petitioners submits that the judgment dated 20.9.2010 passed by this Court at Allahabad in Writ-C-57516 of 2010 Yashwant Singh and Anr. v. State of U.P. and Ors. and other connected matters by

which the writ petitions were dismissed in respect to the same controversy which is involved in the present case have got no binding precedent because it is well settled proposition of law that a decision neither express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect, as uniformity and consistency are core of judicial discipline but that which escapes in the judgment without any occasion is not ratio decidendi. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent.

In this regard, he relied on the following judgments:

- (1) [State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another,](#)
- (2) [Sunita Devi Vs. State of Bihar and Another,](#)
- (3) [Mayuram Subramanian Srinivasan Vs. C.B.I.,](#)
- (4) [Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others,](#)

30. Accordingly, Sri Heera Lal, learned Counsel for the Petitioners argued that a decision rendered in ignorance of a binding precedent and/or in ignorance of a constitutional provision, would be held to have been rendered per incuriam. In support of his arguments he relied on the judgment of Hon'ble Apex Court in the case of [Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others,](#)

31. Sri Heera Lal Srivastava, learned Counsel for the Petitioners further submits that in the judgment and order dated 20.9.2010 passed by this Court at Allahabad in Writ-C-57516 of 2010 Yashwant Singh and Anr. v. State of U.P. and Ors., the request made by the State Government by means of letter dated 28.4.2010 as per the provisions of Regulation 12 for relaxation of the percentage was not properly dealt with and considered and only on the ground that in spite of this request made by the State Government through Sri R.A. Akhtar states that no such relaxation has been permitted so far for the session 2010-11.

32. In view of the said fact it is submitted by the learned Counsel for the Petitioner that the word "so far" does not mean that request made by the State Government vide letter dated 28.4.2010 for relaxation of qualification from 50% to 45% to be possessed by a candidate in graduate/post-graduate degree for Entrance Examination by the Council cannot be said to be rejected for the said purpose. He relied on the meaning of word "so far" as defined in the Concise Oxford Dictionary of Current English edited by H.W. Fowler and F.G. Fowler based on the Oxford Dictionary Fifth Edition as: "up to this time or point or extent, as so far it has not happened, so far your are right; so or in so far as or arch. So far forth as, to whatever extent." Accordingly, the Council is bound to relax the qualification in the

present case in pursuance of the letter dated 28.4.2010 written by the State Government keeping in view the welfare of the candidates, who had appeared in the Entrance Examination as per the provisions as provided under Regulation 12 of the Regulation 2009.

33. Mohd Shahan, learned Counsel for the Petitioner in Writ Petition No. 5128 (M/S) of 2010 has argued that Dibrugarh University in the State of Assam had issued a brochure/advertisement known as Dibrugarh University Common Entrance Test (CET) 2010 for B.Ed. Course and in the said advertisement the criteria laid down for the said Entrance Examination is:

1. At least 45% marks in Major or in aggregate at the Bachelor Degree or 45% marks in Master Degree.

2. A relaxation of 5% marks to the teacher candidates with minimum of five years teaching experience in a school recognized up to 10th standard by the Board of Secondary Education, Assam.

34. Accordingly, the action on the part of the NCTE/State of U.P./Lucknow University thereby fixing the different eligibility criteria i.e. 50% in the present case is arbitrary and violative of Article 14 of the Constitution of India. He also submits that the action on the part of Respondents thereby challenging the eligibility criteria for entrance examination is in contravention to the principles of "legitimate expectation", in this regard he relied on the judgment of Hon'ble Apex Court in the case of [Union of India and others Vs. Hindustan Development Corpn. and others,](#)

35. Sri Amit Srivastava, learned Counsel submits that the Clause 3(2)(a) framed by NCTE by which eligibility criteria of 50% as qualifying marks and Notification dated 30.8.2009 issued by State Government is an action arbitrary in nature as there is no criteria or minimum eligibility marks for teachers education qualification as per Section 2(m) of the Act so the impugned action is contrary to law as laid down by the Hon'ble Apex Court in the case of [Basic Education Board, U.P. Vs. Upendra Rai and Others,](#)

36. The arguments as advanced by Dr. Ravi Kumar Mishra, learned Counsel for one of the Petitioner are summarized as under:

(a) The education is the subject of the concurrent list under Schedule VII, Entry-66 of the Constitution of India. Centre and State both have right to fix their own norms and standards. In this regard he relied on following judgments:

1. Zuber Bhai v. State of Bombay 1951 SCR 799.

2. Om Prakash Gupta v. State of U.P. 1957 SCR 453.

3. [Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others,](#)

4. [Surjit Singh Vs. Nahara Ram and Another,](#)

6. State of A.P. Vs. K. Purushotham Reddy and Others,

(b) Once an advertisement was issued then thereafter no one has a right to change that advertisement in view of the law as laid down by the Apex Court in the case of Yogesh Kumar v. Government of Delhi and Ors. 2003 (2) LCD 11 , Hemani Malhotra Vs. High Court of Delhi, and Smt. Neelu Devi v. State of U.P. and Ors. 2009 (27) LCD 916.

(c) The nodal agency ignoring the settled proposition of law changed the advertisement during period of the process, after the last date of submission of application form, also after issuing the admit cards to all the students/candidates. This act was wholly illegal and not sustainable in the eye of law.

SUBMISSIONS MADE ON BEHALF OF LEARNED COUNSEL FOR OPPOSITE PARTIES.

37. Arguments as advance by Sri Vinay Bhushan, learned Counsel appearing on behalf of NCTE are summarized as under:

(a) The NCTE Act, 1993 has been enacted by the Parliament and deals with teachers" education, received assent of the President of India on 29th December, 1993 and came into force on 01st July, 1995 as notified by the Central Government in the Official Gazette. The Council, to be called the National Council for Teacher Education, was established by the Central Government u/s 3(1) of the NCTE Act with effect from 17th August, 1995. Thereafter it become the regulatory and controlling body in the field of Teacher Training Education and competent to lay down the norms guidelines, standards to be maintained by the institutions involved in Teacher Training Education.

(b) The main object of the Act is to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

Since for long and need for ensuring certain standards and excellence of education in teachers" training institutes, and establishing institutes with the high objectives of training teachers and educationists who have upon them the task of molding the future of the nation was being felt. So, NCTE was constituted to fulfill the aforesaid requirement.

(c) In view of Section 12 it is the bounded duty of the council to take all such steps as it may think fit for ensuring planned and coordinated development of teachers education and for determination and maintenance of standards for teacher education and for the purposes of performing its functions under the Act.

(d) Section 32 empowers the Council to make regulations not inconsistent with the provisions of the Act and the Rules made thereunder to carry out the provisions of

the Act. The NCTE in exercise of powers conferred u/s 32 has framed regulations from time to time laying down procedure for grant of recognition and permission to various teachers training education programmes as well as fixing the minimum eligibility criteria for admission in specified category of courses or trainings in teacher education and also the method of selection and duration of course, course contents and mode of curriculum.

38. Accordingly, after making an exercise to consolidate all these regulations, so as to make them available at a single point of reference, Regulations, 2002 were promulgated by NCTE which came into force on 18th November, 2002, on publication in the Official Gazette of the Central Government Thereafter, on receiving suggestions for amendments to the regulations and to facilitate their operation, including removal of functional difficulties and after the series of consultations at various levels, the NCTE promulgated Regulation, 2005 which came into force on 13th January, 2006. In the aforementioned Regulations minimum eligibility criteria was fixed as 50% for B.Ed course.

39. Thereafter Regulation, 2007, notified on 27th November, 2007 were made by NCTE in exercise of Powers conferred u/s 32(2) of the NCTE Act, 1993 superseding regulations listed in para 12 of the Regulations. In the aforementioned Regulations minimum eligibility criteria was fixed as 45% for B.Ed. Course.

40. Lastly, NCTE in supersession of Regulations, 2007 made regulations to be called "National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2009". These Regulations came into force with effect from 31st August, 2009 from the date of publication in official gazette. Regulation 9 provides that the norms and standards for various teacher education courses, as specified in Appendices 1 to 13 as indicated hereinafter shall have to be complied with by an institution offering the said course as mentioned in the appendix.

41. Norms and standards for Bachelors of education programme leading to Bachelor of Education (B.Ed.) degree are provided in Appendix-4, para 3(2) and 3(3) of the Appendix-4 provides eligibility and admission procedure as under:

3(2)(a) Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

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

### 3(3) Admission Procedure

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

42. Sri Vinay Bhushan submits that in view of Clause 3(a) the prescribed minimum eligibility criteria of 50% to be possessed by a candidate either in Bachelor's Degree and/or Master's Degree in order to enable a candidate to appear in Entrance Examination in question and after establishment of the Council being the regulatory and controlling body in the field of teacher education and competent to lay down the norms and standards to be maintained by the institutions conducting teacher training education keeping in view the provisions as provided under Chapter III that it shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may take all or any of the functions mentioned in Section 12, including the minimum eligibility criteria for admission in any specified category of courses.

43. The NCTE Act, 1993 has an overriding effect on all matters in relation to teacher education programmes covered under the Act, as being a special Act enacted by the Parliament in exercise of its power contained in Entry 66 of List I of Schedule VII so the regulations framed by the Council laying down the norms and standards which include the eligibility criteria for admission to the B.Ed. Course as provided in Appendix -4 have to be complied with by the State/institution offering the said course, are statutory in nature and have binding force.

44. Further Sri Vinay Bhushan learned Counsel appearing on behalf of NCTE submits that in view of the statement given by Sri R.D. Sharma, Regional Director, Northern Regional Committee, (NCTE), Jaipur on 27.9.2010 an advertisement issued by the Dibrugarh University, Assam i.e. Dibrugarh University Common Entrance Test (CET 2010) for B.Ed. Annexure No. 12 to the Writ Petition No. 5128 (M/S) of 2010 Ausaf Ahmad and Anr. v. Union of India and Anr. when came to the knowledge of the Council on 12th of May, 2010, on the same day a letter was written by the NCTE to the Vice-Chancellor, Dibrugarh University, Dibrugarh, Assam stating therein that "in view of the above, it is clear that your admission notification is not in conformity with the NCTE Regulations and you need to take immediate steps to ensure that the advertisement issued by the University is brought in conformity to the NCTE Regulations i.e. at least 50% marks either in the Bachelor's Degree and/or in the Master's Degree or any other qualification equivalent thereto which is prescribed for admission to B.Ed. regular programme both for pre-service as well as in service candidate. I hope, the University would issue a corrigendum to this effect immediately, with a copy of the NCTE", thereafter the follow up action has been taken in the matter in question by issuing letter dated 22nd of September, 2010 as such the Petitioner cannot derive any benefit in the instant case from the said advertisement issued by Dibrugarh University.

45. In support of his arguments, Sri Vinay Bhushan has relied the following judgments:

(1) Jitendra Kumar Soni and Ors. v. State of U.P. and Ors. 2010 (7) ADJ 403 (FB).

(2) Basic Education Board U.P. v. Upendra Rai and Ors. 2008(3) ALJ 539.

(3) St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another,

(4) National Council for Teacher Education and Anr. v. Committee of Management and Ors. 2006 (3) ALJ 40.

(5) Md. Asgar Azam and Ors. v. Aligarh Muslim University Aligarh and Anr. (2010) 2 UPLBEC 1240

46. Sri Vinay Bhushan submits that in view of the judgment rendered by the Apex Court in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, once the Petitioner participated in the selection process without any demur they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process.

47. Lastly, Sri Vinay Bhushan submits that identical matters have came up for consideration before this Court at Allahabad in Writ - C No. 57516 of 2010, Yashwant Singh and Anr. v. State of U.P. and Ors. and other connected matter, dismissed on 20.9.2010 with the following observations:

Having heard learned Counsel for the parties, it is settled principal of law that estoppel does not operate against a statute. The statutory provisions in the shape of regulations therefore clearly lay down a minimum of 50% marks at the qualifying level. Any wrong mention in the brochure will not confer any right, or any legitimate expectation which can be founded on some right, on the Petitioners to claim admission without having obtained a minimum of 50% marks as provided in the regulations.

The arguments advanced therefore are of no avail. These aspects have already been indicated in the interim order of the Division Bench dated 25.8.2010 which has been continued and even otherwise in view of the conclusions drawn herein above there is no merit in the petition. The Petitioners have not received the minimum of 50% marks in their graduation examinations. The claim, therefore, raised is devoid of merit and accordingly the petition is hereby dismissed with no costs.

48. So the present writ petitions filed by the Petitioners are liable to be dismissed.

49. Sri S.P. Shukla, learned Counsel for Lucknow University submits that for the purpose of conducting the Entrance Examination, the State Government appointed Lucknow University as Nodal Agency in view of the law laid down by the Apex Court in the case of P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537 and accordingly an advertisement/brochure was issued by the University in the month of February,

2010 for conducting the entrance examination in which minimum qualification was fixed as 45% marks either in the Bachelor's degree and/or in the Master's degree or any other qualification equivalent thereto. However, due to subsequent development taken place in view of the letter dated 29.4.2010 issued by the NCTE and the notification dated 30.4.2010 issued by the State Government in exercise of power under Sub-section (5) of Section 28 of U.P. State Universities Act, 1973 read with Section 21 of the U.P. General Clauses Act, 1904 known as Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) Order (IXth Amendment) 2010 by which the eligibility criteria was enhanced from 45% to 50%. Lucknow University Lucknow/Nodal Agency published an advertisement in the newspaper on 3/4th May, 2010 that the minimum eligibility criteria to be possessed by a candidate in order to appear in the Entrance Examination, is 50% marks in graduate/post graduate degree from any University in India. It was also mentioned in the advertisement that the Candidates, who had submitted their application forms and had secured less than 50% marks can take their application fees.

50. Sri Shukla further submits that in view of the order passed by this Court on 4.8.2010 in Writ Petition No. 2625 (M/S) of 2010 (Km. Dimple Gupta v. State of U.P.) the University in order to maintain conformity and to make it infirmity good, allowed all the students to appear in the Entrance Examination having minimum qualification of 45% in Graduate or Post Graduate. So the University had performed its duty as per the directions given by NCTE and the State Government in the matter in question.

51. Sri D.K. Upadhyaya, learned Chief Standing Counsel and Sri Rakesh Srivastava, learned Standing Counsel appearing on behalf of the the State of U.P. submits that in the instant case the State Government by means of letter/order dated 3.12.2010 appointed the Lucknow University, Lucknow to conduct the Entrance Examination and as per the terms of the said letter the eligibility criteria of 50% was required to be possessed by a candidate either in the Bachelor's Degree and/or in the Master's Degree or any other qualification equivalent thereto, in order to be eligible for admission but Lucknow University without any authority and on its own motion had published an advertisement/brochure fixing the eligibility criteria to be possessed by a candidate in order to enable him/her to appear in the Entrance Examination as 45% minimum marks in graduate/post-graduate.

52. Learned Counsels further argued that the Regulation 2009 framed and notified on 31st August, 2010 by NCTE were not informed to the State Government by the NCTE. However, when it came to the knowledge of the State Government that Council had framed Regulations 2009 on 31st August, 2009 directing that a candidate must obtain at least 50% either in Bachelor's Degree and/or in the Master's Degree or any other qualification equivalent thereto to enable him for admission to the programme and every institution has to comply with the said

requirement. A letter dated 28.4.2010 was written by the State Government to relax the said qualification from 50% to 45%. Thereafter in view of the letter dated 29.4.2010 of NCTE the State Government in order to ensure for compliance of the said regulations issued notification dated 30th April, 2010 which provides that a candidate having minimum 50% marks in a graduate or post-graduate degree only can be permitted to appear in the Entrance Examination.

53. Chief Standing Counsel also submits that that prior to Regulations dated 31st August, 2009, the admissions were given by earlier regulations according to which the minimum eligibility requirement for admission in B.Ed. Course was 45% but once Regulation 2009 have come into force, the Universities have to ensure that the eligibility criteria provided in the Regulations is adhered to, so the steps were taken by the State Government and the Notification dated 30th April, 2010 was issued stating that candidates having less than 50% marks in a graduate or post-graduate degree cannot be permitted to appear at the Joint Entrance Examination as such the action on the part of the State Government is in accordance with law and in conformity with the Regulations 2009 framed by the Council so the present writ petitions filed by the Petitioners are liable to be dismissed.

#### FINDING AND CONCLUSION

54. The Parliament enacted an act called as National Council for Teacher Education Act, 1993 (Act) with a view to achieving planned and coordinated development for the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

55. Chapter II of the Act deals with establishment of the Council and Section 3 therein provides the manner and procedure in which the Council is to be constituted.

56. Chapter III of the Act deals with functions of the Council and Section 12 provides the functions to be performed by Council.

57. Further as per the provisions of Section 12 of "The National Council For Teacher Education Act, 1993, it is the duty of the National Council for Teacher Education (hereinafter referred to as the "Council") to take all such steps as it may think for ensuring planned and coordinated development for teacher education and for determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act. The Council can also lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum.

58. Chapter IV of the Act deals with recognition of Teacher Education Institutions and Sub-section (1) of Section 14 deals as under:

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

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

59. Lastly, the regulation making power of Council as provided u/s 32 of the Act which finds place in Chapter VII of the Act provides as under:

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

60. Further Sub-section 2 and 2(e) of Section 32 provide as under:

(2) in particular, the without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters namely: (e) the form and the manner in which an application for recognition is to be submitted under Sub-section (1) of Section 14;

61. In pursuant to said power Council framed regulation known as The National Council for Teacher Education Regulation 2009.

62. Regulation 9 of the Regulations 2009 provides that the norms and standards for various teacher education courses, as specified in Appendices 1 to 13 shall have to be complied with by the Institutions offering the said courses.

63. Appendix IV framed as per provision of Regulation 9 of Regulations 2009 deals with the norms and standards for Bachelor of Education programme leading to Bachelor of Education (B.Ed.) Degree added Clause 3 therein provides as under:

(1) Intake

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

(2) Eligibility

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

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

64. Accordingly, the Council with effect from 31st August, 2009 as per Clause 3(2)(a) of Regulation 9 laid down that a candidate must obtain at least 50% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto for admission to the programme and every Institution has to comply with the said requirements, accordingly the State Government, in order to ensure compliance of the said Regulations, issued the notification dated 30th April, 2010, that a candidate having minimum 50% marks in a graduate or post-graduate Degree of a University established by law would be permitted to appear at the entrance examination.

65. Further, prior to the coming into force of the Regulations dated 31st August, 2009, admissions were governed by the earlier Regulations dated 10th December, 2007 in which the minimum eligibility requirement for admission to B.Ed. Course was mentioned as 45% thereafter Regulation 2009 has come into force with effect from 31st August, 2009 by which candidates having less than 50% marks in a graduate or post-graduate degree cannot be permitted to appear at the joint entrance examination.

66. Now the point which is to be considered whether the above said criteria is arbitrary in nature, violative of Article 14 of the Constitution of India and coming into force of the Regulations 2009 with effect from 31st August, 2009, admissions are to be governed by the said Regulations or not and the Government/Universities have to ensure that the eligibility criteria provided in Regulations 2009 is adhered to.

67. There is always a presumption in favour of the constitutionality of an enactment and that the burden is upon the person who attacks it, is a fairly well-settled proposition that the classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Law made by Parliament or by the legislature can be struck down by the Courts on two grounds alone, namely:

(a) lack of legislative competency, and

(b) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision.

68. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment can not be struck down on the ground that the

Court thinks it unjustified. Parliament and legislatures, composed as they are representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them.

69. The Court can not sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz.,

- (a) unreasonableness, which can more appropriate be called irrationality,
- (b) illegality, and
- (c) procedural impropriety.

70. The Hon"ble Supreme Court in the judgment reported in [Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others](#), following the ratio as laid down in the case of [State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.](#), held that it is the duty of the constitutional Courts under our Constitution to declare a law enacted by Parliament or the State Legislature as unconstitutional when Parliament or the State Legislature had assumed to enact a law which is void, either for want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.

71. Accordingly, for the purpose of sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less in exactitude of language employed. Indeed, any such defects of drafting should be ignored out as part of the attempt to sustain the validity/constitutionality of the enactment.

72. After all, an Act made by the legislature represents the will of the people and that can not be lightly interfered with. As held by the Apex Court in [Karnataka Bank Ltd. Vs. State of A.P. and Others](#), that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt.

73. Where validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and validity of law upheld. In pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or unwisdom, justice or injustice of the law. If that which is passed into law is within the scope of power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it.

74. In State of Uttar Pradesh Vs. Kartar Singh, the Constitution Bench of the Apex Court has held that where a party seeks to impeach the validity of a rule on the ground that such rule is offending of Article 14, the burden is on him to plead and prove infirmity is under:

the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations.

75. In Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., the Hon'ble Supreme Court again reiterated the said legal position as:

The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

76. In Pathumma and Others Vs. State of Kerala and Others, a seven-Judge Bench of the Apex Court highlighted that the legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution:

It is obvious that the legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. It is for this reason that the Courts have recognized that there is always a presumption in favour of the Constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same.

77. The Apex Court in Fertilisers and Chemicals Travancore Ltd. Vs. Kerala State Electricity Board and Another, emphasized that the allegations of discrimination must be specific and that the action of the governmental authorities must be presumed to be reasonable and in public interest. It is for the person assailing it to plead and prove to the contrary.

78. In State of Maharashtra Vs. Marwanjee P. Desai and Others, it has been held by Hon'ble the Supreme Court that the statute shall have to be considered in its entirety and picking up of one word from one particular provision and thereby analyzing it in a manner contrary to the statement of objects and reasons is neither permissible nor warranted. True intent of the legislature shall have to be gathered

and deciphered in its proper spirit having due regard to the language used therein. Statement of objects and reasons is undoubtedly an aid to construction but that by itself cannot be termed to be and by itself cannot be interpreted. It is a useful guide, but the interpretation and the intent shall have to be gathered from the entirety of the statute.

79. In [Praveen Singh Vs. State of Punjab and Others](#), the Apex Court held that in the matter of employment, i.e., selection and appointment, the authority concerned has unfettered power in procedural aspect. The Courts should not interfere unless the appointments so made are found to have been made "at the cost of fair play, good conscience and equity." The eligibility criteria should not be arbitrary or unreasonable and if is found so, it becomes liable to be quashed as it falls within the mischief of Article 14 of the Constitution of India which provides for equality before law and equal protection of law. see also [Bombay Labour Union Representing The Workmen of International Franchises Pvt. Ltd. Vs. International Franchises Pvt. Ltd.](#), and in [Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others](#),

80. Articles 14 and 16 of the Constitution secure equal protection and the doctrine of equality before law is a necessary corollary to the concept of rule of law adopted in the Constitution. However, there is always a presumption in favour of the constitutionality of the enactment and the person who challenges it has to show that there has been a clear transgression of the constitutional principles. Such a presumption stands from the wide power of classification which the legislature must have possessed in making laws operating differently as regards different groups of persons in order to give effect to policies.

81. Legislature is supposed to understand better the needs of the society and its laws are directed to problems made manifest by experience. In [Madhu Kishwar and others Vs. State of Bihar and others](#), the Hon"ble Supreme Court held that every discrimination does not necessarily fall within the ambit of Article 14 of the Constitution of India and becomes liable to struck off as every case has to be examined in peculiar facts and circumstances involved therein, otherwise it would create a chaotic situation.

82. In [Ashutosh Gupta Vs. State of Rajasthan and Others](#), the Hon"ble Supreme Court examined the issue at length and held as under:

The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that

Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally, is rather a vexed question. A legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with. In order to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act. When a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and the object of the Act, the court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. In order that a law may be struck down under this article, the inequality must arise under the same piece of legislation or under the same set of laws which have to be treated together as one enactment. Inequality resulting from two different enactments made by two different authorities in relation to the same subject will not be liable to attack under Article 14. It is well settled that Article 14 does not require that the legislative classification should be scientifically or logically perfect.

83. It is well settled law that hardship or inconvenience of a group of persons cannot be the ground of deciding the law as bad. Vide Commissioner of Agricultural Income Tax v. Keshav Chand AIR 1950; [The Bengal Immunity Company Limited Vs. The State of Bihar and Others,](#) and [Col. D.D. Joshi and Others Vs. Union of India \(UOI\) and Others,](#)

84. As is said, "dura lex sed lex" which means "the law is hard but it is the law." Even if the statutory provision causes hardship to some people, Court has to implement the same and ("inconvenience is not" a decisive factor in such matters) as held by Hon'ble Supreme Court in the case of [The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others,](#)

85. Therefore, it is evident that hardship to an individual/group of persons cannot be ground of not giving the effective to the statutory provisions. More so, it is settled principle of law that the Court would lean in favour of upholding constitutionality of a Statute unless it is manifestly discriminatory as held by the Apex Court in the case of [K. Anjaiah and Others Vs. K. Chandraiah and Others](#), that it is the cardinal principle of construction that the statute and the rules or the regulations must be held to be constitutionally valid unless and until it is established that they violate any specific provision of the Constitution and the Court is under solemn duty to scrutinies the provisions of the Act. Rules or the Regulations within the set parameters if the validity of the statutory provisions is challenged see also [Smt. Parayankandiya Eravath Kanapravan Kalliani Amma and others Vs. K. Devi and others](#), [Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, New Delhi Municipal Committee Vs. State of Punjab, etc. etc.,](#) [Public Services Tribunal Bar Association Vs. State of U.P. and Another,](#) and [State of Gujarat and Others Vs. Akhil Gujarat Pravasi V.S. Mahamandal and Others,](#)

86. Similarly, in [Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore](#), while reiterating the similar view, the Apex Court has held as under:

It is well settled law that merely because of law causes hardship, it cannot be interpreted in a manner so as to defeat its object.... It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning of intendant of the Legislature and in doing so, they should presume that the provision was designed to effectuate a particular object or to meet a particular requirement.

87. Recently, the Apex Court again reiterated the above said view in the case of Nagaland Senior Government Employees Welfare Association and Ors. v. State of Nagaland and Ors. (2010) 7 SCC 643.

88. Thus, keeping in mind the interest of the society at large, the nature of services which are to be rendered by the Petitioners in future as teacher, thereby teaching the students after obtaining the B.Ed. degree, who are the future pillars of the country on which the country will progress on the path of development in present era of Global Competition, which the country has to face in future, it cannot be held that the action on the part of the NCTE thereby enacting the Regulation 09 of 2009 in exercise of the power as vested in it by the provisions as provided u/s 32 of NCTE Act 1993, that a candidate should posses 50% as eligibility criteria by means of Clause 3(2)(a) in Appendix 4 framed as per the provisions of Regulation 9 of Regulations 2009 which has to be implement by the Lucknow University, in view of the provisions as provided u/s 12(e)-(g) of the NCTE Act of 1993 for conducting the Joint Entrance Examination B.Ed. Course 2010, by any means neither infringed nor violated the fundamental rights of the Petitioners guaranteed under Articles 14 and 16 of the Constitution nor it offends any other provision contained in Part-III of the Constitution.

89. Needless to say, the NCTE Act, being an Act of Parliament, shall be applicable being issued in pursuance to the powers conferred by the Entry 66 of List I of Schedule VII of the Constitution. A constitutional bench of Hon'ble Supreme Court in the case reported in: [Dr Preeti Srivastava and Another Vs. State of M.P. and Others](#), while considering the power of State Government under Entry 25 of List II of Schedule VIII and the Entry 66 of List I of Schedule VII of the Constitution has held as under:

35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State Government an exclusive power to legislate on education including universities, subject to the provisions of Entries 63,64,65 and 66 of List I and Entry 25 of List III.

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63,64,65, and 66 of List I; vocational and technical training of labour.

Entry 25 is subject, *inter alia*, to Entry 66 of List I. Entry 66 of List I is as follows:

66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Both the Union as well as the States have the power to legislate on education including medical education, subject, *inter alia*, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, *inter alia*, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by

Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;
- (5) the calibre of the students admitted to the institution;
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7) adequate accommodation for the college and the attached hospital; and
- (8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching....

90. In the above case of Dr. Preeti Srivastava (Supra) Hon'ble Constitution Bench of Hon'ble Supreme Court further held that the minimum standards laid down by the Central statutes, have to be complied with by the State while making admission. It has further been held that under the University Act while laying down any criteria, it shall be necessary that minimum standards laid down by the Central statute should be followed. Para-39 of the said case (supra) is reproduced as under:

39. The Respondents have emphasized the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some of the judgments, the

words "eligibility" and "qualification" have been used interchangeably and in some cases a distinction has been made between the two words - "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norm laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

91. The said view has been reiterated by Hon'ble Supreme Court in a case reported in St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, see also Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. meaning thereby, while framing regulations, Council has got power to confer on the State Government or to Universities to discharge such function within the parameters provided by it keeping in view the statutory provisions contained in the NCTE Act.

92. Further, Clause 3(2)(a) in Appendix IV of Regulation 2009 provides that Candidates with at least 50% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme but the same is subjected to Clause 3.3 which deals with the actual admission procedure. The word, "or" as well as the word, "and" has been used in disjunction. It is settled law that "or" sometimes denotes or may be used as and "and" may be used as "or". In the present case, it appears that admission shall be made in pursuance of qualifying examination. So, the Entrance Examination shall be held in pursuance of the policy of the State Government. Thus, the Entrance Examination can be held either by the State Government and in case the State Government decides, it can delegate such power to the Universities as in the present case it was delegated to the Lucknow University, Lucknow. The NCTE to its wisdom, had provided that admission procedure shall be in accordance with the policy decision taken by the State Government. Thus, instead of proceedings on its own, the NCTE delegated its power to the State Government.

93. Accordingly, the eligibility criteria as provided in Regulation 3(2)(a) in Appendix IV which relates to Norms and Standards for Secondary Teacher Education Programme leading to Bachelor of Education (B.Ed) Degree as per Regulation 9 of Regulations 2009 are mandatory in nature and binding on the State Government/Lucknow University while holding the Joint Entrance Examination B.Ed. Course 2010-2011.

94. One of the submission made by Sri Heera Lal Srivastava, learned Counsel for the Petitioner that in view of the Section 2(m) of the Act of 1993 which deals with qualification not percentage of marks as provided therein when there is no justification or reasons on the part of lay down the eligibility criteria of 50% to be possessed by a candidate as per Regulation 3(2)(a) in Appendix IV of Regulation 9 of Regulation 2009 so the said action on the part of the Respondents is in contravention to the provisions of Section 2(m) read with Section 32 of the Act is wholly misconceived. Because, it is to be kept in mind that the rule making authority has a sole domain to lay down the qualification and other terms in respect to any Entrance Examination or recruitment to a post and the court should not interfere with the same.

95. In this regard the Supreme Court in the case of Sanjay Kumar Manjul Vs. The Chairman, UPSC and Others, has held that:

23. The qualifications for recruitment to a post are laid down in terms of the statutory rules. The Fourth Respondent raised a contention before the Tribunal that several persons named in Ground "G" of the writ petition had occupied the very post in the Archaeological Department, although they were experts in Epigraphy.

25. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefor.

26. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

27. It is well-settled that the superior courts while exercising their jurisdiction under Articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.

96. Further in the case of Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another,

The first Respondent made a faint attempt to contend that the distance education system includes "correspondence courses" and therefore recognition of M.A. (correspondence course) as equivalent to M.A. course of Appellant University, would amount to recognition of M.A. - OUS (distance education) course, as an equivalent. For this purpose, he relied upon the definition of "distance education system" in Section 2(e) of Indira Gandhi National Open University Act, 1985. But there is nothing to show that Annamalai University has treated correspondence course and OUS (distance education) course as the same. What is more important is that the Appellant university does not wish to treat correspondence course and Distance Education Course as being the same. That is a matter of policy. Courts will not interfere with the said policy relating to an academic matter.

97. The Apex Court held that in the matter of policy decision of the authority concerned to lay down the eligibility criteria, the Court will not interfere with the said policy relating to academic matter. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or re-frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words that are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency.

98. The Courts decide what the law is and not what it should be. The Courts of course adopt a construction which will carry out the obvious intention of the legislature but cannot legislate. But to invoke judicial activism to set at naught legislative judgment is sub serve of the constitutional harmony and comity of instrumentalities. The above said view is reiterated by the Hon"ble Supreme Court in the following cases:

(I) Union of India and Anr. v. Deoki Nandan Agarwal AIR SC 96.

(ii) All India Radio Vs. Shri Santosh Kumar and Another,

(iii) Sakshi Vs. Union of India (UOI) and Others,

(iv) Pandian Chemicals Ltd. Vs. Commissioner of Income Tax,

(v) Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,

(VI) J.P. Bansal Vs. State of Rajasthan and Another,

99. In Smt. Kanta Devi Vs. Union of India (UOI) and Another, the Supreme Court has held that the Court can iron out of the creases but cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain, unambiguous. It cannot add or subtract words to statute or read something into in which is not there. It cannot rewrite or recast the legislation.

100. Thus, the regulations which are framed by the NCTE in respect to eligibility criteria that the Candidates with at least fifty percent marks either in the Bachelor"’s Degree and/or in the Master"’s degree or any other qualification equivalent thereto, are eligible to appear in the Entrance Examination Course has got statutory force and the same is to be followed by the State Government/Lucknow University, because it is well settled principle of law as laid down by Supreme Court in the case of State of Uttar Pradesh Vs. Singhara Singh and Others, as well as by Privy Council in the case of AIR 1936 253 (Privy Council) that when the law prescribes a certain mode or specific mode of or for doing a thing or certain mode of exercising certain power of authority or right or for performing certain act then that act or thing has got to be done in that manner alone & not otherwise. Other modes in respect

thereof are necessarily and by necessary implication taken to have been forbidden & closed.

101. In view of the above said facts, the arguments as advanced by the learned Counsel for the Petitioners that the eligibility criteria as laid down in Clause 3(2)(a) in Appendix 4 of Regulation 9 of Regulation 2009, cannot be enforced in view of the principles of "Promissory Estoppel", or against the doctrine "legitimate expectation" are misconceived arguments and cannot be accepted because the Regulations framed under the NCTE Act, in pursuance of powers conferred by Section 14 read with Section 32, have statutory and binding force so the State Government or the Universities have to function under the control and command of the NCTE Act and the Rules and Regulations framed thereunder see also Jitendra Kumar Soni and Ors. v. State of U.P. and Ors. 2010(3) ADJ 403 (FB).

102. So far as the arguments advanced by the learned Counsel for the Petitioner that the Dibrugarh University has issued an advertisement known as Dibrugarh University Common Entrance Test for B.Ed Course 2010 fixing the eligibility criteria that a candidate must possess 45% either in Bachelor Degree and/or in the Master's Degree or any other qualification equivalent thereto for B.Ed. Entrance Examination, so in the present case the action on the part of Respondents fixing minimum eligibility qualification as 50% in order to enable a candidate to appear in the Entrance Examination is arbitrary in nature thus, hit by Article 14 of the Constitution of India has no force in view of the categorical submission made by Sri R.D. Sharma, Regional Director, Northern Regional Committee, Jaipur, who has appeared before this Court on 27.9.2010 has submitted that after coming to know the said fact, the concerned authority of NCTE wrote a letter to the Vice-Chancellor, Dibrugarh University, Dibrugarh, Assam inter alia stating therein that:

in view of the above, it is clear that your admission notification is not in conformity with the NCTE Regulations and you need to take immediate steps to ensure that the advertisement issued by the University is brought in conformity to the NCTE Regulations i.e. at least 50% marks either in the Bachelor's Degree and/or in the Master's Degree or any other qualification equivalent thereto which is prescribed for admission to B.Ed. regular programme both for pre-service as well as in service candidateI hope, the University would issue a corrigendum to this effect immediately, with a copy of the NCTE.

103. Accordingly, the Petitioners cannot derive any benefit from the said facts as the NCTE has already taken steps to ensure that the minimum criteria is to be fixed by Dibrugarh University for conducting the B.Ed. Entrance Examination to be 50% marks either in Bachelor's degree and/or in Master's degree or any other qualification equivalent thereto as such there is neither violation of principles of natural justice nor Article 14 of the Constitution of India so no interference is called for on the said score.

104. One of the arguments advanced by the learned Counsel for the Petitioner that once an advertisement has been issued for conducting the Entrance Examination in question fixing 45% eligibility criteria either in Bachelor Degree and/or Master's Degree or any other qualification equivalent thereto, the same cannot be changed.

105. As seen above, the Regulations were notified by the Council on 31st August, 2009 which, on publication in the Official Gazette, came into force with effect from 31st August, 2009. Clause 9 of the Regulations provides that in forms and standards for various teacher education course as specified in Appendices 1 to 13 shall have to be complied with by all institutions offering the said courses. The norms and standards for Bachelor of Education programme leading to Bachelor of Education (B.Ed) degree which shows that a candidate possessing 50% marks either in graduate or post-graduate examination is eligible to appear at the entrance examination. As these norms and standards laid down in the said Regulations have to be complied with by all Universities, the State Government issued the notification dated 30th April, 2010 u/s 28(5) of the U.P. State Universities Act, 1973 for bringing the eligibility requirement in accordance with the Regulations framed by the Council. The information conveyed in the brochure is contrary to the norms and standards laid down by the Council in the Regulations framed by it on 31st August, 2009 u/s 32 of the Act. The eligibility criteria as specified in the Regulations will prevail over the advertisement issued by the University and it cannot be urged by the candidates that they will continue to be governed by the eligibility criteria laid down in the advertisement or the brochure. In the case of Basic Education Board U.P. v. Upendra Rai and Ors. 2008 (3) ALJ 539 the Hon'ble the Supreme Court has held as under:

A perusal of the NCTE Act shows that this Act was made to regulate the teachers training system and the teachers training institutes in the country. It may be mentioned that there are two types of educational institutions (1) ordinary educational institutions like primary schools, high schools, intermediate colleges and universities and (2) teachers training institutes. The NCTE Act only deals with the second category of institutions viz. Teachers" training institutes. It has nothing to do with the ordinary educational institutions referred to above. Hence the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualification are prescribed by the local Acts, and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a Junior Basic School is prescribed by Rule 8 of the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rules 8 of the aforesaid Rules cannot validly be appointed as in Assistant Master or Assistant Mistress in a Junior Basic School.

106. Any contravention of the Regulations will attract the provisions of Section 17 of the Act and even the recognition granted to the Institution can be withdrawn. In such circumstances, it will not be appropriate for the Court to permit such

candidates who have obtained less than 50% marks at the graduate or post graduate examination and were allowed to appear in the Entrance Examination by the Lucknow University, so the relief as claimed on behalf of the Petitioners in this regard is wholly misconceived and cannot be granted under Article 226 of the Constitution of India in the present case.

107. Next submission made on behalf of the Petitioners that in view of the Regulation 12 of Regulations 2009, the State Government has to take steps for relaxation of the minimum qualification from 50% to 45%, in this regard a letter dated 28.4.2010 had already been written by the State Government to NCTE but the same does not amount to be rejected. In view of the letter dated 29.4.2010 issued by Chairperson, NCTE. The said fact has already been dealt with in the judgment passed by this Court at Allahabad in the case of Yashwant Singh and Anr. v. State of U.P. and Ors. and it has been held as under:

It appears that taking notice of the aforesaid error in the brochure as published in a Hindi Daily Newspaper "Hindustan" dated 28.4.2010, the State Government for reasons best known to it through the Secretary, Government of Uttar Pradesh wrote a letter of request to the National Council for Teachers Education to relax the aforesaid percentage as prescribed under the regulations to bring it in conformity with the information published in the brochure. It was a request by the Government keeping in view the future of a large number of candidates who were applicants against the said brochure.

108. Thereafter in the body of the judgment dated 20.9.2010, letter dated 28.4.2010 is quoted and it has been further held as under:

It may be noted that in spite of this request made by the State Government through Sri R.A. Akhtar states that no such relaxation has been permitted so far for the session 2010-11.

109. Further, in the present case the State Government after writing a letter dated 28.4.2010 to Chairperson NCTE to relax the minimum eligibility criteria from 45% to 50 % as prescribed in Regulation to bring it conformity with information published in brochure keeping in view of the future of large number of candidate who had appeared in the Entrance Examination, in response to the NCTE a letter dated 29.4.2010 accordingly a Notification/Order dated 30.4.2010 known as the Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) (Ninth Amendment) Order, 2010 by which amendment in para-3 sub para (1)(b) in Uttar Pradesh State Universities (Regulation of Admission to Courses of Instruction for Degree in Education in Affiliated, Associated and Constituent Colleges) order 1987 has been made as under:

(b) a graduate or post graduate degree of University established by law with a minimum of 50% marks in case of other candidates and a concession of 5% at

degree level in the minimum academic qualification shall be given to the candidates who are of impaired visions seeking admission to B.Ed. Course.

110. Above said action has been done by the State Government in exercise of power as provided under Sub-section (5) of Section 28 of the Universities Act 1973, the said exercise of power on the part of the State Government has already been held to be valid by the Hon'ble Supreme Court in the case of State of U.P. v. Anupama Gupta 1992 (2) UPLBEC 1288 so the submission made by the learned Counsel for the Petitioners that the Council shall take steps for relaxation of eligibility qualification as per the provisions as provided under Regulation 12 of Regulation 2009 in view of the letter dated 28.4.2010 written by the State Government has got no force and rejected.

111. Last argument advanced on behalf of the learned Counsel for the Petitioners that the combined Entrance Examination B.Ed. Course, 2010 is a competitive examination alike other competitive examination relating to Indian Administrative Service, Provincial Civil Services and Bank Examinations as well as these competitive examinations do not provide any such harsh/hard rider/condition of any percentage in any bachelor/master degree for the purpose of such competitive examinations, so the strict provisions of 50% in bachelor or master degree for the purposes of Combined Entrance Examination is absolutely discriminatory, arbitrary and violative of the fundamental rights provided under Article 16 of the Constitution of India has also got no force because once the eligibility criteria as laid down in the present case by NCTE is valid and binding in nature, to be followed by State Government/Lucknow University. So the relief claimed by the learned Counsel for the Petitioners cannot be granted in view of the law laid down in the Case of Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, in which Hon'ble the Apex Court has held as under:

The second obscurantism we must remove is the blind veneration of marks at examination as the main measure of merit. Social scientists and educational avant garde may find pitfalls in our system of education and condemn the unscientific aspects of marks as the measure of merit, things as they now stand. But, however imperfect and obtuse the current system and however urgent the modernization of our courses culminating in examinations may be, the fact remains that the court has to go by what is extent and cannot explore on its own or ignore the measure of merit adopted by universities. Judges must not rush in where even educationists fear to tread. So, we see no purpose in belittling the criterion of marks and class the Allahabad University has laid down, although to swear religiously by class and grade may be exaggerated reverence and false scales if scrutinized by progressive criteria.

112. For the foregoing reasons, the eligibility criteria fixed by the Respondents for Joint Entrance Examination B.Ed. Course-2010 that a candidate with at least 50% marks either in the Bachelor's degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme is

perfectly valid and needs no interference rather the same is in accordance with the aims and objects of NCTE Act to coordinate and uplift the standards of teaching in order of provide better education in the field of teaching. As it is an old saying that:

Nations are build in classroom, teachers are architects.

113. Accordingly, the present writ petitions filed by the Petitioners lack merits and are dismissed.

114. No order as to costs.