

## Thakur Prasad Singh Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Nov. 11, 2011

**Acts Referred:** Constitution of India, 1950 " Article 226, 29(1), 29(2), 32  
Right of Children to Free and Compulsory Education Act, 2009 " Section 2, 23(1), 23(2)

**Citation:** (2011) 10 ADJ 248

**Hon'ble Judges:** Dilip Gupta, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Hon'ble Dilip Gupta, J.

The relief claimed in these petitions is to include Sanskrit language in Language II along with English and Urdu in

the U.P. Teachers Eligibility Test (hereinafter referred to as the "TET") conducted by the Board of High School and Intermediate Education, Uttar

Pradesh, Allahabad (hereinafter referred to as the "Intermediate Education Board") and to permit the petitioners to opt for Sanskrit language in

Language II.

2. It is stated that in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009

(hereinafter referred to as the "Act") and in pursuance of the Notification dated 31st March, 2010 issued by the Government of India, the National

Council for Teacher Education (hereinafter referred to as the "NCTE") issued the Notification dated 23rd August, 2010 laying down the minimum

qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII in a School referred to in Section 2(n) of the Act, which

amongst others, provides that the person should pass the TET to be conducted by the appropriate Government in accordance with the Guidelines

framed by the NCTE for the purpose. The NCTE framed Guidelines for conducting the TET and the Intermediate Education Board also issued

Information Brochure and the Application Form regarding the holding of the UP-TET. Amongst other, it provides for structure and content of TET

namely that all the questions will be Multiple Choice Questions each carrying one mark, with four alternatives out of which one answer will be

correct and that there will be no negative marking. It further provides that there will be two papers of the TET. Paper I will be for a person who

intends to be a teacher for classes I to V, while Paper II will be for a person who intends to be a teacher for classes VI to VIII. For Paper I, there

will be 150 Multiple Choice Questions in Child Development and Pedagogy, Language-I, Language-II, Mathematics and Environmental Studies

with each of them having 30 Multiple Choice Questions of 30 marks each. For Paper-II, there will be 150 Multiple Choice Question in the

subjects provided. In both Paper I and Paper II, the Language II questions will be from amongst the prescribed options other than Language I and

a candidate can choose any one language from the available language options. Thus, 30 questions in Language II will be relating to the language

opted by the candidates. The Intermediate Education Board, which has been authorised by the State Government to hold such a test, issued

advertisement dated 22nd September, 2011 inviting applications from the eligible candidates for appearing in the UP-TET and the Information

Brochure and the Application Form issued by the Intermediate Education Board gives two language options for Language II namely English or

Urdu for both Paper I and Paper II.

3. It is the contention of learned counsel for the petitioners that Sanskrit language should also have been provided as an option for Language II in

both Paper I and II. It is pointed out that some of the other Boards, which have been directed to hold the TET, have included Sanskrit language as

option for Language II but the Intermediate Education Board has not included it as a result of which the petitioners have been put to disadvantage.

4. Sri. K.S. Kushwaha, learned Standing Counsel appearing for the State and the Intermediate Education Board has, however, submitted that

Language II, either in Paper I or in Paper II, is of 30 marks and contains 30 Multiple Choice Questions and a candidate has to choose any one

language from the available language options and specify it in the application form. The Information Brochure and the Application Form clearly

gave option for either English or Urdu and the petitioners should have opted for one of the two languages. It is his submission that it is for the

Intermediate Education Board to decide as to which languages should be provided as optional language for Language II and the petitioners cannot

insist that Sanskrit language should also be included as an optional language.

5. I have considered the submissions advanced by the learned counsel for the parties.

6. In order to appreciate contentions advanced by learned counsel for the parties, it will be necessary to refer to the provisions of the Act, the

relevant Notifications and the Guidelines framed by the NCTTE.

7. Section 23(1) of the Act deals with the qualification for appointment and terms and conditions of service of teachers and is as follows:

23. Qualification for appointment and terms and conditions of service of teachers.--(1) Any person possessing such minimum qualifications, as laid

down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

8. The Central Government, by means of the notification dated 31st March, 2010 published in the Official Gazette dated 5th April, 2010, has

authorised the NCTE as the "academic authority" to prescribe the minimum qualifications which notification is as follows:

#### NOTIFICATION

New Delhi, the 31st March, 2010

S.O. 750(E).--In exercise of the powers conferred by sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education

Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the

minimum qualifications for a person to be eligible for appointment as a teacher.

9. The NCTE, accordingly, issued the Notification dated 23rd August, 2010 which was published in the Gazette of India dated 25th August,

2010. The said Notification lays down the minimum qualification for a person to be eligible for appointment as a teacher in Classes I to VIII in a

school referred to in Section 2(n) of the Act, with effect from the date of the Notification.

10. The NCTE also framed Guidelines for conducting the TET which are as follows:

#### Guidelines for conducting Teacher Eligibility Test (TET) Background and Rationale

1. The implementation of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 requires the requirement of a large number of

teachers across the country in a time bound manner. In spite of the enormity of the task, it is desirable to ensure that quality requirement for

recruitment of teachers are not diluted at any cost. It is therefore necessary to ensure that persons recruited as teachers possess the essential

aptitude and ability to meet the challenges of teaching at the primary and upper primary level.

2. In accordance with the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education (RTE) Act,

2009, the National Council for Teacher Education (NCTE) has laid down the minimum qualifications for a person to be eligible for appointment as

a teacher in class I to VIII, vide its Notification dated August 23, 2010. A copy of the Notification is attached at Annexure 1. One of the essential

qualifications for a person to be eligible for appointment as a teacher in any of the schools referred to in clause (n) of section 2 of the RTE Act is

that he/she should pass the Teacher Eligibility Test (TET) which will be conducted by the appropriate Government.

3. The rationale for including the TET as a minimum qualification for a person to be eligible for appointment as a teacher is as under:

i. It would bring national standards and benchmark of teacher quality in the recruitment process.

ii. It would induce teacher education institutions and students from these institutions to further improve their performance standards.

iii. It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality.

4. The TET examination may be conducted by a suitable professional body designated by the appropriate Government for the purpose. It will be

conducted in accordance with the Guidelines hereunder.

#### Eligibility

5. The following persons shall be eligible for appearing in the TET:

i. A person who has acquired the academic and professional qualifications specified in the NCTE Notification dated 23rd August, 2010.

ii. A person who is pursuing any of the teacher education courses (recognised by the NCTE or the RCI, as the case may be) specified in the

NCTE Notification dated 23rd August, 2010.

iii. The eligibility condition for appearing in TET may be relaxed in respect of a State/UT which has been granted relaxation under sub-section (2)

of section 23 of the RTE Act. The relaxation will be specified in the Notification issued by the Central Government under that sub-section.

#### Structure and content of TET

6. The structure and content of the TET is given in the following paragraphs. All questions will be Multiple Choice Questions (MCQs), each

carrying one mark, with four alternatives out of which one answer will be correct. There will be no negative marking. The examining body should

strictly adhere to the structure and content of the TET specified below.

7. There will be two papers of the TET. Paper I will be for a person who intends to be a teacher for classes I to V. Paper II will be for a person

who intends to be a teacher for classes VI to VIII. A person who intends to be a teacher either for classes I to V or for classes VI to VIII will

have to appear in both papers (Paper I and Paper II).

Paper I (for classes I to V); No. of MCQs- 150;

Duration of examination: one -and-a-half hours

structure and content (All Compulsory)

(i) Child Development and Pedagogy 30 MCQs 30 Marks

(ii) Language I 30 "" 30 ""

(iii) Language II 30 "" 30 ""

(iv) Mathematics 30 "" 30 ""

(v) Environmental Studies 30 "" 30 ""

Nature and standard of questions

8. While designing and preparing the questions for Paper I, the examining body shall take the following factors into consideration:

The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning relevant to the age group of 6-

11 years. They will focus on understanding the characteristics and needs of diverse learners, interaction with learners and the attributes and

qualities of a good facilitator of learning.

The Test items for Language I will focus on the proficiencies related to the medium of instruction, (as chosen from list of prescribed language

options in the application form).

The Language II will be from among the prescribed options other than Language I. A candidate may choose any one language from the available

language options and will be required to specify the same in the application form. The test items in Language II will also focus on the elements of

language, communication and comprehension abilities.

The test items in Mathematics and Environmental Studies will focus on the concepts, problem solving abilities and pedagogical understanding of the

subjects. In all these subject areas, the test items shall be evenly distributed over different divisions of the syllabus of that subject prescribed for

classes I-V by the appropriate Government.

The questions in the tests for Paper I will be based on the topics of the prescribed syllabus of the State for classes I-V, but their difficulty standard,

as well as linkages, could be upto the secondary stage.

Paper II ( for classes VI to VIII); No. of MCQs- 150; Duration of examination : one -and-a-half hours

structure and content

(i) Child Development and Pedagogy (compulsory) 30 MCQs 30 Marks

(ii) Language I (compulsory) 30 "" 30 ""

(iii) Language II (compulsory) 30 "" 30 ""

(iv) (a) For Mathematics and Science teacher : Mathematics and 60 "" 1 mark each

Science

60 1 mark each

(b) For Social studies teacher :Social Studies

(c) for any other teacher- either 4(a) or 4(b)

While designing and preparing the questions for Paper II, the examining body shall take the following factors into consideration:

The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning, relevant to the age group of 11-

14 years. They will focus on understanding the characteristics, needs and psychology of diverse learners, interaction with learners and the attributes

and qualities of a good facilitator of learning.

The Test items for Language I will focus on the proficiency related to the medium of instruction, as chosen from list of prescribed options in the

application form.

The Language II will be a language other than Language I. The person may choose any one language from among the available options and as in

the specified list in the application form and attempt questions in the one indicated by the candidate in the application form by him. The Test items

in Language II will also focus on the elements of language, communication and comprehension abilities.

The test items in Mathematics and Science, and Social Studies will focus on the concepts, problem solving abilities and pedagogical understanding

of the subjects. The test items of Mathematics and Science will be of 30 marks each. The test items shall be evenly distributed over different

divisions of the syllabus of that subject prescribed for classes VI-VIII by the appropriate government.

The questions in the tests for Paper II will be based on the topics of the prescribed syllabus of the State for classes VI-VIII, but their difficulty

standard, as well as linkages, could be upto the senior secondary stage.

8. The question paper shall be bilingual -(i) in language(s) as decided by the appropriate Government; and (ii) English language.

Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as TET pass School managements (Government, local bodies,

government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc. in accordance with their extant

reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for

recruitment/employment as it is only one of the eligibility criteria for appointment. ...

Procedure for conduct of the Test

12. The examining body shall formulate a detailed procedure and lay down instructions for conduct of the TET. Candidates should be informed

that a very serious view will be taken of any malpractice or impersonation.

11. The State Government authorised the Intermediate Education Board for conducting the UP-TET. The Information Brochure and the

Application Form issued by the Intermediate Education Board contains the Guidelines and the relevant Guidelines are as follows:

2.1 Syllabus of Elementary Level (classes I-V)-This level is for those candidates who intends to obtain teaching eligibility in Elementary level i.e.

classes I to V.

Sl. Basic structure of question paper Number of questions Marks

(i) Child Development and Pedagogy 30 30

(ii) Language I (Hindi) 30 30

(iii) Language II (English and Urdu) 30 30

(iv) Mathematics 30 30

(v) Environmental Studies 30 30

Structure of syllabus

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The questions of Language II shall be from among the English or Urdu languages, as opted by the candidates and which are relevant for teaching

students of classes I to V.

...

...

2.2 Syllabus of Higher Secondary Level (classes VI-VIII)-This level is for those candidates who intends to obtain teaching eligibility in Elementary

level i.e. classes VI to VIII.

Sl. Fundamental structure of question Number of questions Marks

(i) Child Development and Pedagogy 30 30

(ii) Language I (Hindi) 30 30

(iii) Language II (English and Urdu) 30 30

(iv) (a) Mathematics and Science subject or (b) Social 60 60 60 60

Studies and for any other subject

Structure of syllabus

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The questions of Language II shall be from among the English or Urdu languages, as opted by the candidates and which are relevant for teaching

students of classes VI to VII.

...

...

12. It is seen that the Intermediate Education Board for Language II has provided English and Urdu as the optional language. The contention of

learned counsel for the petitioners is that Sanskrit language should also be included as an optional language in Language II which contains 30

Multiple Choice Questions.

13. The issue that arises for consideration is whether the Courts can direct an academic body to frame a question paper in a particular manner. In

other words, the issue that will arise for consideration is whether the Courts can interfere with the decision taken by the academic bodies in such

matters.

14. The scope of interference of the Court in such matters is very limited. In this connection, reference needs to be made to the decision of the

Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and

Others, in which the Supreme Court examined the scope of interference by the Courts and observed:

It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would

best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by

the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions

will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within

the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of

the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province

of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what

measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects

and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the



question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

...

...

The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a

wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and

improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down

on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the

purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to

matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to

suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of

the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

(emphasis supplied)

15. The aforesaid decision of the Supreme Court in Paritosh Bhupesh Kurmarsheth (*supra*) was followed by the Supreme Court in Pramod Kumar

Srivastava Vs. Chairman, Bihar Public Service Commission and Others, and it was observed:

...There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-

evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single judge had clearly

erred in having the answer-book of the appellant re-evaluated.

16. In Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, AIR 2006 SCW 3601 the Supreme Court also observed:

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit

the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the

Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Asif Hameed and

others Vs. State of Jammu and Kashmir and Others, M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, The scope of

judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the

fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the

Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter

of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from

different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not

shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive

in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of

the Government.

The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company v. City of Chicago*

(1912) 57 L Ed 730 . ""The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it

may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any

choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [ See: *State of Orissa and Others Vs.*

*Gopinath Dash and Others,*

(emphasis supplied)

17. In *State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, the Supreme Court has also observed:

...Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy

or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their

views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super

legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

18. The decision of the Supreme Court in *Hindi Hitrakshak Samiti and others Vs. Union of India and others*, also needs to be remembered. In this

case, the issue that arose for consideration was whether the pre-medical studies in medical and dental examination should be permitted in Hindi

and other regional languages and not in English alone, and the examinations should not be held in English alone if the examinees desire to appear in

Hindi or other regional languages. Repelling the contention of the petitioners, the Supreme Court observed:

5. We have examined the matter and have heard Dr. L.M. Singhvi. We are of the opinion that the prayers sought for herein are not such which can

be appropriately, properly and legitimately dealt with under Article 32 of the Constitution of India. The contention of the petitioners is, as

mentioned hereinbefore, that pre-medical studies in medical and dental examination should be permitted in Hindi and other regional languages and

not in English alone, and the admission to the institutions should not be refused and/or examinations should not be held in English alone if the

examinees or the entrants seek to appear in Hindi or other regional languages.

6. Article 32 of the Constitution of India guarantees enforcement of fundamental rights. It is well settled that the jurisdiction conferred on the

Supreme Court under Article 32 is an important and integral part of the Indian Constitution but violation of a fundamental right is the sine qua non

for seeking enforcement of those rights by the Supreme Court. In order to establish the violation of a fundamental right, the Court has to consider

the direct and inevitable consequences of the action which is sought to be remedied or the guarantee of which is sought to be enforced. Dr.

Singhvi, counsel for the petitioners, contends that under Article 29(2) of the Constitution no citizen shall be denied admission into any educational

institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. He contends

that by not holding the test in Hindi or other regional languages, there is breach of Article 29(2). He also draws out attention to Article 29(1) of the

of the Constitution which enjoins that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script

or culture of his own, shall have right to conserve the same. It is difficult to accept that in not holding entrance examination in any particular

language, be it Hindi or regional language, amounts to denial of admission on the ground of language. Every educational institution has right to

determine or set out its method of education and conditions of examination and studies provided these do not directly or indirectly have any casual

connection with violation of the fundamental rights guaranteed by the Constitution. It may be that Hindi or other regional languages are more

appropriately medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise,

in any particular regional or Hindi language, or it may be that Hindi or regional language because of development of that language, is not yet

appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation

of policy by the State or educational authorities in charge of any particular situation. Where the existence of a fundamental right has to be

established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which

there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a

means to indicate policy preference.

7....

8....

9. In the background of the facts and the circumstances of the case and the nature of controversy that has arisen, we are of the opinion that proper

and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination for admission in any

particular language to the institution on that basis, is a matter of policy. Whether in particular facts and the circumstances of this case admission to

medical or dental institution by conducting examination in Hindi or other regional languages would be appropriate or desirable or not, is a matter on

which debate is possible and the acceptance of one view over the other involves a policy decision. It cannot be appropriately dealt with by this

Court, and order under Article 32 of the Constitution in those circumstances would not be an appropriate remedy.

(emphasis supplied)

19. What, therefore, transpires from the aforesaid decisions of the Supreme Court is that the Court should not substitute its own opinion for that of

the body which is entrusted with the work to find out as to what principle or policy would best serve the objects and purposes of the examination

and nor should the Courts sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the academic body. It is

exclusively within the domain of the academic body to determine, as a matter of policy, what measures should be incorporated for the efficient

holding of the examination. Further, not holding entrance examination in any particular language does not amount to denial of admission on the

ground of language as every educational institution has a right to determine or set out its method of education and conditions of examination and

studies and that though a particular language may be an appropriate language for very many and it could also be appropriate to hold the

examination in that language, yet it may not be the appropriate medium to test the knowledge of a candidate, particularly as it is a matter of

formulation of policy by the educational authorities in charge of the situation.

20. Such being the position, it is not possible for the Court under Article 226 of the Constitution to direct that Sanskrit language should be added

as an optional language in Language II of the UP-TET.

21. The petitioners are, therefore, not entitled to any of the reliefs.

22. The writ petitions are, accordingly, dismissed.