

# Devesh Sharma vs Union Of India on 11 August, 2023

**Author: Sudhanshu Dhulia**

**Bench: Sudhanshu Dhulia, Aniruddha Bose**

1

2023 INSC 704

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 5068 OF 2023  
(ARISING OUT OF SPECIAL LEAVE PETITION (C) No.20743 OF 2021)

DEVESH SHARMA ... Appellant

Versus

UNION OF INDIA AND ORS. ...Respondent(s)

WITH

CIVIL APPEAL NO(S).5122 OF 2023  
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO(S). 17633 OF 2023)  
@ D.NO.21388 OF 2022

WITH

CIVIL APPEAL NO. 5070 OF 2023  
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.2069 OF 2022)

WITH

CIVIL APPEAL NO(S). 5086 OF 2023  
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO(S).17630 OF 2023)  
Signature Not Verified

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NEETA SAPRA

@ D.NO.5464 OF 2022

Date: 2023.08.14

12:07:17 IST

Reason:

WITH

CIVIL APPEAL NO(S).5121 OF 2023

2

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO(S).17632 OF 2023)  
@ D.NO.12813 OF 2022

WITH

CIVIL APPEAL NO. 5069 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.2061 OF 2022)

WITH

CIVIL APPEAL NO(S).5071-5084 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS.2578-2591 OF 2022)

WITH

CIVIL APPEAL NO. 5085 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.3222 OF 2022)

WITH

CIVIL APPEAL NO(S). 5087 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO(S). 17631 OF 2023)  
@ D.NO.7368 OF 2022

WITH

CIVIL APPEAL NO(S). 5088-5120 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS.15118-15150 OF  
2022)

WITH

CIVIL APPEAL NO. 5125 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.22923 OF 2022)

WITH

CIVIL APPEAL NOS.5123-5124/2023 OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS.21308-21309 OF 2022)

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WITH

WRIT PETITION (CIVIL) NO.137 OF 2022

WITH

WRIT PETITION (CIVIL) NO.881 OF 2022

WITH

WRIT PETITION (CIVIL) NO.355 OF 2022

JUDGMENT

SUDHANSHU DHULIA, J.

Leave granted.

2. A Division Bench judgment of Rajasthan High Court, dated 25.11.2021, is under challenge before this Court. Apart from the appeals, there are three Writ Petitions as well before this Court, on the same issue. All the same, while dealing with these cases, for facts, we would be referring to Civil Appeal @ SLP (C) No.20743 of 2021 Devesh Sharma versus Union of India, which arises out of the order dated 25.11.2021 passed by the High Court in D.B. Civil Writ Petition No. 2109 of 2021.

3. What lies at the core of the dispute before this Court is the notification dated 28.06.2018, issued by the National Council for Teacher Education (hereafter 'NCTE'), made in exercise of its powers under Section 23(1) of the Right to Education Act, 2009 (hereinafter referred to as the 'Act'). This notification made B.Ed. degree holders eligible for appointment to the post of primary school teachers (classes I to V). All the same, in spite of the above notification, when the Board of Secondary Education, State of Rajasthan, issued an advertisement on 11.01.2021, for Rajasthan Teacher Eligibility Test (RTET Level-1), it excluded B.Ed. degree holders from the list of eligible candidates. This action of the Rajasthan Government was challenged before the High Court. The petitioner Shri Devesh Sharma has a B.Ed. degree, and as per the Notification dated 28.06.2018, he was eligible, like many other similar candidates. Consequently, he filed his petition before the Rajasthan High Court, inter alia, praying that the advertisement dated 11.01.2021 be quashed, as it was in violation of the notification dated 28.06.2018 issued by the NCTE.

4. Apart from the above batch of petitioners, there was another set of petitioners, with their own grievance. These are the candidates who are diploma holders in Elementary Education (D.El.Ed.)<sup>1</sup>, which was the only teaching qualification required for teachers at primary level, and who are aggrieved by the inclusion of B.Ed. qualified candidates. They too filed Writ Petitions before the Rajasthan High Court challenging the legality of the notification dated 28.06.2018. The State of Rajasthan understandably supported these second batch of candidates before the High Court, as they would do before this Court.

5. Out of the three writ petitions before us two (W.P. No. 137 of 2022 and 881 of 2022) are challenging the notification dated 28.06.2018 and the subsequent notifications issued by the Government of Bihar and U.P. respectively calling for application from eligible candidates including B.Ed. W.P. No. 355 of 2022 again challenges the notification dated 28.06.2018. SLP (C) No. 22923 of 2022 is against an interim order of the Calcutta High Court which denied relief to the petitioners who were seeking a stay of the notification dated 28.06.2018.

6. Hence the question of law to be answered in these cases is whether NCTE was right in including B.Ed. qualification as an equivalent and essential qualification for appointment to the post of primary school teacher (Level-1)? The Rajasthan High Court in the impugned judgment has quashed the notification dated 28.06.2018, holding B.Ed. candidates to be unqualified for the posts of primary school teachers (Level-1).

7. On behalf of the Petitioners, we have heard learned Senior Counsel, Mr. Paramjit Singh Patwalia who has assailed the Judgement of the Rajasthan High Court. Mr. Patwalia appeared for the B.Ed. qualified candidates and would support the notification dated 28.06.2018, and the petitioners who had challenged their exclusion before the Rajasthan High Court. Ms. Meenakshi Arora, learned senior counsel was also heard for the appellants. The learned counsel would argue that the High Court failed to consider that the notification dated 28.06.2018 was a policy decision taken by the NCTE after the Central Government had issued directions in this regard, under Section 29 of the NCTE Act, and the High Court was wrong in interfering with the policy decision of the Central Government. The NCTE broadly agrees with the submissions which have been made by Shri Patwalia, and Ms. Arora, while assailing the impugned judgement.

8. We have also heard the submissions by the learned Senior Counsel Mr. Kapil Sibal and Dr. Manish Singhvi who appeared for the Diploma holders and the State of Rajasthan respectively who would argue, inter alia, that the NCTE being an expert body had to take an independent decision in this case, based on the objective realities. Even if the NCTE had to follow the directions of the Central Government, the NCTE must demonstrate that these directions had been independently considered by them and not implemented in a mechanical manner.

9. On behalf of the Union of India we have heard learned Additional Solicitor General(s) Ms. Aishwarya Bhati and Mr. Vikramjeet Banerjee. They would argue that the Impugned Judgement has been passed ignoring the powers of the Central Government given both under the Act as well as NCTE Act. Moreover, an objection has also been raised that the Union of India was not even made a party in the proceedings before the Rajasthan High Court!

10. During the course of hearing, this Court had passed an order dated 24.08.2022, granting liberty to the Board of Secondary Education for different States, and other stake holders to be impleaded as intervenors. Pursuant to this order, several Interlocutory Applications were filed which are being heard along with these appeals.

11. “The Indian Constitution is first and foremost a social document”, writes Granville Austin<sup>2</sup>. The Rights contained in 2 Austin, Granville. “The Conscience of the Constitution”. The Indian

Constitution, Cornerstone of a Nation, Oxford University Press, 2000, pp. 50 Part III and the Directive Principles of State Policy contained in Part IV together establish conditions which further the goal of this social revolution<sup>3</sup>. Austin goes on to call Part III and Part IV of the Constitution as “The Conscience of the Constitution” <sup>4</sup>. Free and compulsory education for children was a part of the social vision, of the framers of our Constitution.

12. Elementary education for children is today a Fundamental Right enshrined under Article 21A of Part III of the Constitution of India. Every child (upto 14 years of age), has a fundamental Right to have ‘free’ and ‘compulsory’ elementary education. But then ‘free’ and ‘compulsory’ elementary education is of no use unless it is also a ‘meaningful’ education. In other words, elementary education has to be of good ‘quality’, and not just a ritual or formality!

13. Our progress, in achieving this constitutional goal, has been slow. In some ways, it is still a work in progress. Prior to the Constitutional 86th Amendment, the Right to Education was in Part-IV of the Constitution (Article 45), as a Directive Principle of State Policy. Directive Principles, as we know, are a set of goals which the state must strive to achieve. The goal set out in Article 3 Ibid – pp 50.

4 Ibid – pp 50.

455 of the Constitution (as it stood at that time), was to make elementary education free and compulsory for all children up to age of 14 years, within 10 years of the promulgation of the Constitution. All the same, it would take much more than ten years to achieve this goal.

14. The 1986 National Policy on Education, modified in the year 1992, declared that free and compulsory elementary education of ‘satisfactory quality’ be given to all children up to the age of fourteen years, before the nation enters the next century i.e., 21 st Century.

15. Later in the seminal judgment of this court in Unni Krishnan J.P. versus State of Andhra Pradesh and Ors. (AIR 1993 SC 2178), it was held that children have a fundamental right to free education, till they complete the age of fourteen years.

16. In the year 1997, in order to make free and compulsory education a fundamental right the 83 rd Constitutional Amendment Bill was introduced in Parliament, to insert a new Article in Part III of the Constitution of India, which was to be 5 Article 45 of the Constitution as it existed prior to the 86th Amendment:

“Provision for free and compulsory education for children.— The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.” Article 21A. The Bill was sent for the scrutiny of the Parliamentary Standing Committee on Human Resources Development. The Standing Committee not only welcomed the amendment but in addition emphasizes on the ‘quality of elementary education’. This is what it said.

“The eminent educationists felt that the Bill is silent on the ‘Quality’ of Education. They suggested that there should be a reference to ‘quality’ of education in the Bill. The Secretary, Education agreed that the ‘quality’ aspect also has to be seen.

Education definitely must mean ‘quality’ education and anything less than that should not be called education. Therefore, the emphasis would be through strengthening the teacher education content, the Secretary stated.”<sup>6</sup> Finally, by way of the Constitution (86 th Amendment) Act of 2002, Article 21A, was inserted as a Fundamental Right in Part III of the Constitution, and made effective from 01.04.2010. Article 21A of the Constitution reads as under:

“Article 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

6 Para 13 of the Report of the Parliamentary Standing Committee on Human Resource Development.

17. In order to fulfil the above mandate Right to Education Act, 2009, was passed by the Parliament on August 20, 2009, which became effective from 01.04.2010. The object and reasons of the Act declared loud and clear that what the Act seeks to achieve is not merely ‘free’ and ‘compulsory’ elementary education, but equally important would be the ‘Quality’ of this education! The Preamble to the Act states “that every child has a right to be provided full time elementary education of satisfactory and equitable ‘quality’ in a formal school which satisfies certain essential norms and standards”.

18. When the validity of the Act was challenged before this Court<sup>7</sup>, this Court, while upholding its validity emphasized that the Act, was intended not only to impart “free” and “compulsory” education to children, but the purpose was also to impart ‘quality’ education! “The provisions of this Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of ‘quality’ education by providing required infrastructure and compliance of specified norms and standards in the schools.” [See Para 8, (2012) 6 SCC 1] <sup>77</sup> In Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. [(2012) 6 SCC 1]

19. As we can see, the purpose behind bringing this pathbreaking legislation was not to complete the formality of ‘free and compulsory’ elementary education for children, but to make a qualitative difference in elementary education and to impart it in a meaningful manner. Provisions like ‘Right to be admitted in a neighbourhood school’<sup>8</sup>, ‘No denial of admission’<sup>9</sup> and ‘Prohibition of physical punishment and mental harassment’ <sup>10</sup>, are some of the heartwarming provisions of the Act.

20. The Act sets down certain norms and standards which have to be followed in elementary schools, and this is with the purpose of providing a meaningful and ‘quality’ education. To name some of these requirements such as:-

- A. The necessary infrastructure requirement. B. Pupil teacher ratio which is 30:1 and
- C. The absolute necessity of trained as well as qualified teachers.

21. Free and compulsory education for children becomes meaningless if we make compromise on its 'quality'. We must recruit the best qualified teachers. A good teacher is the first assurance of 'quality' education in a school. Any compromise on 8 Section 3 of the Right to Education Act, 2009. 9 Section 15 of the Right to Education Act, 2009. 10 Section 17 of the Right to Education Act, 2009. the qualification of teachers would necessarily mean a compromise on the 'quality' of education. Jacques Barzun, the American educationalist and historian, in his seminal work 'Teacher in America', says "teaching is not a lost art, but the regard for it is a lost tradition" 11. Though this comment was for the state of higher education in America, it is equally relevant here on the treatment of Primary education in our country, as it emerges from the facts before us.

22. Elementary education in India is at two levels. A is the 'Primary' level i.e. class I to V, and B is the Senior primary level i.e., classes VI to VIII. Presently we are only concerned with the "primary level" of education.

23. Section 23 of the Act is extremely important as it not only provides as to who shall determine the qualifications of teachers in a Primary school, but as to who can relax these qualifications, and for how long.

It reads as under :-

"Section 23. Qualifications for appointment and terms and conditions of service of teachers .—(1) Any person possessing such minimum 11 Barzun, Jacques. "Profession: Teacher". Teacher in America, published by Little Brown 7 Co. in association with Atlantic Monthly Press, 1945, pp. 3-13 qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if its deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.] (3) The salary and allowances payable to, and the terms

and conditions of service of, teachers shall be such as may be prescribed.”

24. Whereas sub-Section (1) of Section 23 is the provision where the ‘academic authority’ has been empowered to prescribe qualifications for teachers in elementary schools, sub-section (2) of Section 23 empowers the Central Government to relax the minimum ‘qualifications’ prescribed by the ‘academic authority’, under certain circumstances and for a limited period.

The ‘Academic Authority’ under Section 23(1) of the Act is the National Council for Teachers Education (NCTE), which brought a notification on 23.08.2010, laying down the necessary qualifications for teachers, both at primary, as well as upper primary level. Inter alia, this notification prescribes as under:-

1. Minimum Qualifications: -

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with atleast 50% marks and 2- year Diploma in Elementary Education (by whatever name known) OR Senior Secondary (or its equivalent) with atleast 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with NCTE (Recognition Norms and Procedure), Regulations 2002 OR Senior Secondary (or its equivalent) with atleast 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.) OR Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education) AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for its purpose.

The above notification dated 23.08.2010, does not provide B.Ed. as a qualification for appointment to the post of primary school teachers. Later this notification was amended, but B.Ed. was never included (till the impugned notification dated 28.06.2018), as an essential qualification for teachers of primary school i.e. for classes I to V. A candidate for the post of a teacher in a primary school was to have these three qualifications.

A. He must have passed higher secondary level. B. He must have a Diploma in elementary education (D.El.Ed.), by whatever name it was called in that State. C. He should then pass an examination to be conducted by the State known as Teachers Eligibility Test or TET.

25. The academic authority, which is NCTE considered the appointment of trained and qualified teachers as an absolute necessity in primary schools. It is for this reason that the qualification which was prescribed for a teacher in primary school was a diploma in elementary education (D.El.Ed.), and not any other educational qualification, including B.Ed. Apart from this the teachers eligibility test or TET would further test the skills of a candidate to handle students at primary level.



It must be emphasised that the pedagogical approach required from a teacher at primary level is in some manners unique. These are the initial formative years where a student has just stepped inside a classroom, and therefore needs to be handled with care and sensitivity. A candidate who has a diploma in elementary education (D.El.Ed.) is trained to handle students at this level, as he has undergone a pedagogical course specifically designed for this purpose.

The ‘Academic Authority’ which is NCTE is mandated by the Act to set up a curriculum and evaluation procedure for the all round development of a ‘child’, mindful of all the fears and anxieties which a child may have. Section 29 of the Act reads as under :-

29. Curriculum and evaluation procedure.— (1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.” As we can see the curriculum and evaluation procedure which the ‘Academic Authority’ is mandated to set up requires a pedagogical approach which can be best given by teachers who are trained to deal with child students.

A person who has a B.Ed. qualification has been trained to impart teaching to secondary and higher secondary level of students. He is not expected to impart training to primary level students.

In order to appreciate the difference between Diploma in Elementary Education (it is called by different names in each State), and Bachelor of Education (B.Ed.), we look no further than the Notifications issued by National Council for Teacher Education (NCTE) itself from time to time.

The Appendix 2 to the NCTE Regulations, 2009 spells out as to what is the aim of Elementary Education. It is stated to be as follows:

“1. Preamble 1.1 The Diploma in Elementary Education (D.El.Ed) is a two year professional programme of teacher education. It aims to prepare teachers for the elementary stage of education, i.e. classes I to VIII. The aim of elementary education is to fulfill the basic learning needs of all children in an inclusive school environment bridging social and gender gaps with the active participation of the community.

1.2 The elementary teacher education programme carries different nomenclatures such as BTC, J.B.T, D.Ed. and (Diploma in Education). Henceforth, the nomenclature of the programme shall be the same across all states and it shall be referred to as the ‘Diploma in Elementary Education’(D.El.Ed).” The same Regulation in its appendix 4 describes B.Ed as follows:

"1. Preamble The Bachelor of Education programme, generally known as B.Ed., is a professional course that prepares teachers for upper primary or middle level (classes VI-VIII), secondary level (classes IX-X) and senior secondary level (classes XI-XII). The programme shall be offered in composite institutions as defined in clause (b) of Regulations 2.” It is therefore clear that a B.Ed. course is not designed for teaching at primary level.

Moreover, the inclusion of B.Ed. candidates for primary classes is in the teeth of several decisions of this Court, as this Court has consistently held that Diploma in elementary education (D.El.Ed.) and not B.Ed., is the proper qualification in Primary Schools.

26. In Dilip Kumar Ghosh and Others versus Chairman and Others<sup>12</sup>, this Court had to decide on the question whether B.Ed degree candidate can be equated with a candidate who holds training in Primary School teaching or in other words who is trained specifically for Primary Schools. The Contention of the 12 (2005) 7 SCC 567 appellants (in the aforesaid case) who were B.Ed. candidates was that, their course (B.Ed.), equips them to teach Primary Classes. Their contention was rejected by this Court. In Para 9, it stated as under:

“In B.Ed. curriculum such subjects like child psychology are not found. On the other hand, the curriculum is of a generic nature and deals with subjects like the principle of educational-curriculum studies, educational psychology, development of education in modern India, social organization and instructional methods, etc.” Then again in Para 10 it was stated as under:

“.....For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in B.Ed. degree are not necessarily to be equipped to teach the students of primary class. They are not trained and

equipped to understand the psychology of a child of tender age.” In P.M. Latha and Another versus State of Kerala and Others<sup>13</sup> the argument that B.Ed. qualification is a higher qualification than Diploma in Elementary Education (D.El.Ed.) was rejected. Again, it was a case before the Apex Court where B.Ed candidates, were claiming appointment as Primary School teachers on the basis of the claim that their educational qualification (i.e. B.Ed.) was even higher than the Diploma in

13 (2003) 3 SCC 541 Elementary Education (D.El.Ed.) which was held by the other candidates. In para 10 of the said case, it was stated as under:

“We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post.....” These findings were reiterated by Supreme Court in Yogesh Kumar v. Government of NCT, Delhi <sup>14</sup>, holding that though B.Ed. is a well-recognized qualification in the field of teaching, yet it is a training which equips a candidate to teach higher classes, not classes at primary level.

27. B.Ed. is not a qualification for teachers at Primary level of schooling. The pedagogical skills and training required from a teacher at Primary level is not expected from a B.Ed. trained teacher. They are trained to teach classes at higher level, post primary, secondary and above. For Primary level i.e. class I to class V the training is D.El.Ed or what is known as diploma in elementary education. It is a D.El.Ed. training course which is designed and structured to impart skills in a teacher who is to teach Primary level of students.

14 (2003) 3 SC 548 Therefore, by implication the inclusion of B.Ed. as a qualification amounts to lowering down of the ‘quality’ of education at Primary level. ‘Quality’ of education which was such an important component of the entire elementary education movement in this country, which we have discussed in the preceding paragraphs of this order.

28. We are also conscious of the fact that, till the notification dated 28.06.2018, the consistent policy of NCTE had been to exclude B.Ed. candidates from the eligibility criteria of Primary School Teachers. In the 23.08.2010 notification – the first given by NCTE in its capacity as the “academic authority” under Section 23 of the RTE Act, which has been referred in the preceding paragraphs, B.Ed. qualified teachers were not considered for primary classes. All the same, purely in order to equip the various State governments to establish enough training colleges/centres for imparting specialised training centres for elementary teachers, the B.Ed. candidates were to continue for a very limited period.

29. This was during the initial period starting from the year 2010 onwards, when the Act and the subsequent order of NCTE laid down the qualifications for Primary School Teachers throughout the country. But essentially B.Ed. qualified teachers were kept out from the purview of the eligibility of the teachers in primary schools as B.Ed. was not considered a “qualification” for teachers at primary

level.

The inherent pedagogical weakness in B.Ed. courses (for primary classes), is well recognised, and it is for this reason that in the impugned notification itself it is provided that B.Ed. trained teachers will have to undergo a six months training in elementary classes, within the first two years of their appointment.

In this background, the inclusion of B.Ed. candidates for primary level classes is beyond our comprehension.

We have seen so far that the need for ‘quality’ and meaningful primary education was emphasized by the legislature as well as by the academic authority all throughout. In primary education, any compromise on ‘quality’ of education would mean going against the very mandate of Article 21A and the Act. The value of Primary education can never be overstated.

Myron Weiner in his important book on Child Labour in India<sup>15</sup>, links child labour problems in India to the lack of 15 Weiner Myron (1991) : The Child and the State In India in Comparative Perspective -- effective measures in the past in the field of elementary education. Great care must be taken to nurture these institutions as our future takes shape in these classes. Victor Hugo had famously said ‘one who opens a school door, closes a prison.’ Children still working in hazardous environment and juveniles in conflict with law, in some measure, do point towards the weakness in our elementary education system, both on its accessibility and its ‘quality’.

The pedagogical skills of a teacher must be given a very high priority. But our priority seems to be different. It is not to impart ‘quality’ education, but to provide more job avenues to B.Ed. trained candidates, as this seems to be the only reason for their inclusion, in presence of overwhelming evidence that B.Ed. course is not a suitable course for primary classes.

The material which has been placed before this Court in the form of official communications and meetings at the highest level makes it clear that in the present case the decision taken by NCTE is not an independent decision of an expert body which is created by the statute and mandated to take independent decisions. The aim of NCTE is to improve the standard of Princeton University Press education and not to provide further avenues for employment to B.Ed. trained teachers. We may also mention that this is being done when teachers trained in elementary education can be employed only as teachers in elementary schools and nowhere else, when compared to B.Ed. qualified teacher, who can be employed in senior elementary classes (VI to VIII), as well as secondary and higher secondary classes. It is therefore in any case not fair on the Diploma holders, who will now be seeing the only space available for them shrinking further.

The inclusion of B.Ed. as a ‘qualification’ was done by the notification dated 28.06.2018, which was impugned before the Rajasthan High Court. This notification is reproduced below: -

“National Council for Teacher Education Notification New Delhi, the 28th of June, 2018 F. No. NCTE-Regl 012/16/2018-In exercise of the powers conferred by

sub-section (1) of Section 23 of Right to Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of notification number S.P. 750(E), dated the 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby makes the following further amendments to the notification number F.N. 61-03/20/2010/NCTE/(N&S), dated the 23rd August, 2010 published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 25th August, 2010 hereinafter referred to as the said notification namely:-

(1) In the said notification, in para 1 in sub-para (i), in clause (a) after the words and brackets “Graduation and two year Diploma in Elementary Education (by whatever name known), the following shall be inserted, namely:-

OR “Graduation with at least 50% marks and Bachelor of Education (B.Ed.)”

2. In the said notification in para 3, for sub-para (a), the following sub-para shall be substituted namely:-

“(a) who has acquired the qualification of Bachelore of Education from any NCTE Recognized institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge course in Elementary Education recognized by the NCTE, within two years of such appointment as primary teacher” (Emphasis supplied)

30. The sequence of events, which are now well established by the documents which were placed before the Rajasthan High Court and before this Court, make it clear, that the decision to include B.Ed. as a qualification was apparently triggered by a letter of the Commissioner of KVS 16, who made a request requested that since in the Primary classes of Central Schools sufficient number of trained Diploma holders are not available, they may be permitted to appoint B.Ed. qualified teachers, who are readily available. The Ministry takes cognizance of this letter, meetings are held and ultimately it directs NCTE to appoint B.Ed.

16 Kendriya Vidyalaya Sangathan – An autonomous body under Ministry of Education, Government of India, which looks after the management of Central Schools throughout the country.

trained teachers not just in central schools but in primary schools throughout the country, which would include State run schools. The sequence of how it happened is as under.

A meeting was held on 28.05.2018 in the Ministry of Human Resource Development, headed by the Minister concerned. In the meeting it was decided to recognize B.Ed. as an additional eligibility criterion for the appointment to the post of primary teachers in KVS Schools. This was followed by a note on the very next day, i.e., 29.05.2018, which says that since B.Ed. qualified candidates were

eligible to be appointed as primary teachers in KVS Schools, there should be no objection to implement this direction in other schools as well. These communications culminate in a letter dated 30.05.2018 issued by the Ministry of Human Resource Development, which was in the form of a direction issued under Section 29 of the NCTE Act which required NCTE to amend the eligibility criteria to include B.Ed. qualified candidates as Primary Teachers. Complying with the above directions, NCTE issued the impugned notification on 28.06.2018.

The minutes of the meeting dated 28.05.2018, disclose the reason as to why B.Ed. should be included as a qualification. These minutes state as under :-

“.....

2. The matter was considered in this Ministry and HRM has approved the proposal of KVS to recruit primary teacher with higher qualification (i.e. B.A./B.Sc., B.Ed.+ TET). Further, HRM has also directed that NCTE may amend the qualification and make B.A./B.Sc., B.Ed. also eligible for teaching at Primary level with provision of completing Pedagogical module in 2 years of joining the service, these directions were conveyed to NCTE on 12.04.2018, however, the action is still pending at their part.

3. The matter was again discussed and deliberated in detail in the meeting held today (28th May, 2018) chaired by HRM and attended by Special Secretary, Chairperson, NCTE, MS, NCTE, Joint Secretary (SE.I) and KVS Commissioner. KVS Commissioner raised the issues of insufficient number of candidates applying for the post of Primary teachers and candidates applying from few states rather than across the country. It was informed by MS, NCTE that approximately 7.5 lakh seat are available for D.El.Ed across the country out of which 50% seats are filled. However, the TET pass D.El.Ed.

candidate would be much less as the result of TET varies from 6% to 16%. This makes the availability of eligible D.El.Ed. candidates much less than the desired. HRM also pointed out the need for better equipped teachers to ensure quality education in schools. Recruitment of Teachers with higher qualifications will ultimately be beneficial and in the interest of the students.

4. In addition to above, NCTE will roll out four year B.Ed. integrated course from next academic year, therefore, the prevalent D.El.Ed./B.Ed. etc will phase out in time bound manner. Further similar kind of request has also been from the state of Uttrakhand.

5. In view of the above discussions, HRM directed NCTE to change its regulations, Directions are required to be given under section 29 of the NCTE Act, 1993. Section 29 of the NCTE Act is as follows:

(1) The Council shall in the discharge of its functions and duties under this Act be bound by such directions on questions of policy as the Central Government may give

in writing to it from time to time.

(2) The decision of the Central Government as to whether a question is one of policy or not shall be final. (6) We may request NCTE to submit draft notification to amend NCTE regulations at the earliest. The draft letter is attached for approval please. Once the draft notification is received, the same will be sent to Legislative Department for vetting with the approval of HRM.

Submitted.” The minutes of the meeting dated 29.05.2018 state as under :-

“Note dated 29.05.2018 Please place on file the letter from NCTE which was handed over to the HRM by the MS, NCTE during the meeting, the details of which have been referred to in the draft reply. The meeting clearly took the decision that in view of the facts presented by the Commissioner, KV and since the NCTE did not have any objection to permit KV schools to recruit primary teachers with higher qualifications, then there should be no objection to extending this to other schools, and therefore, this Ministry could issue directions to the NCTE under Section 29.”

Letter dated 30.05.2018 from the Government to NCTE.

“Letter Dated 30.05.2018 Priority F.No.11-15/2017-EE.10-Part (1) Government of India Ministry of Human Resource Development Department of School Education & Literacy Shastri Bhawan, New Delhi, Dated the 30th May, 2018 To, The Chairperson NCTE, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi – 110002.

Dear Madam, Kindly refer to the letter of even no. dated 12.04.2018 regarding request of Kendriya Vidyalaya Sangathan for recruiting primary teachers with higher qualifications i.e. B.A./B.Sc., B.Ed. plus TET pass and letter no. NCTE-REG1012/16/2018-

US(Regulation)-HQ dated 23.05.2018 received from NCTE regarding the same.

2. The above request has been considered in this Ministry. In order to safeguard the interest of the students and ensure the quality of education, the competent authority has decided to agree to the request of KVS to recruit Primary Teachers with Higher Qualifications. The insufficient number of eligible D.El.Ed. candidates due to low pass percentage of TET examination has also become an issue for recruitment of primary teachers. Further, with the roll out of four year B.Ed. integrated course from next academic year, the existing D.El.Ed./B.Ed. courses will be phased out in due course of time.

3. NCTE vide their letter No. NCTE-

REG1012/16/2018-US(Regulation)-HQ dated 23.05.2018 stated that “the MHRD may consider implementing the direction in the detailed noting of Hon’ble Minister of Human Resource

Development, Government of India”. Further, in view of the facts presented by the Commissioner, KV and since the NCTE did not have any objection to permit KV schools to recruit primary teachers with higher qualifications, then there should be no objection to extending this to other schools. Therefore, considering the powers vested in MHRD under Section 29 of the NCTE Act, 1993, the NCTE Regulation 25.08.2010 (Determining qualification of teacher to be appointed at primary level Classes 1st to 5th) shall be amended to include that any person who has acquired the qualification of B.Ed. from any NCTE recognized course will also be considered for appointment as a teacher in classes 1st to 5th provided the person so appointed as a teacher shall mandatorily undergo a 6 month bridge course, which is recognized by NCTE, within two years of such appointment as primary teacher.

4. It is therefore, requested that the draft notification to amend the NCTE regulations may please be submitted to this Ministry. This may please be treated as most urgent.

With regards, Yours Sincerely, Sd/-

(Rashi Sharma) Director(TE)” This is followed by the notification dated 28.06.2018, issued by NCTE, which has already been referred above.

31. The sequence of events show that what started as an exercise for consideration of B.Ed. qualified candidates as teachers for Primary classes in Central schools, was expanded to include all primary schools throughout the country. The apparent reasoning given is that B.Ed. qualified candidates are better suited for appointment as teachers in Primary schools, as they have ‘higher qualifications’, and as such they should be appointed as teachers in all Primary schools. Another reason for doing this is the dearth of qualified TET candidates. The figures given in the meeting suggests that only 6% to 16% of the candidates who appear in the TET examination qualify the test. The suggestion appears to be that with the inclusion of B.Ed. candidates the number of TET qualified candidates would increase. But this logic does not hold good when B.Ed. as a qualification has not passed the basic pedagogical threshold for teaching primary classes.

We have already examined this aspect in great detail. B.Ed. is not a qualification for teaching at Primary level of classes, much less a better or higher qualification, in context of Primary classes. This finding is self-evident in the very admission of NCTE which mandates that all B.Ed. qualified teachers who are appointed to teach Primary level classes must mandatorily undergo a pedagogical course for elementary classes within two years of their appointment.

32. In *Society for Unaided Private Schools of Rajasthan v. Union of India & Anr.* (supra) this Court while upholding the validity of the RTE Act, held that primary education, which is now a part of fundamental right under Part III of the Constitution, has to be a meaningful education, and not just a formality. When Diploma in elementary education (D.El.Ed.), was placed as an essential qualification for teachers in Primary school, it was with a purpose, and the purpose was to declare only such teachers as qualified who are trained to impart education to children at ‘primary level’. The pedagogy for a child who has just entered the school, is an important consideration. A child has come to face a “teacher”, so to speak, for the first time in a class room. It is the beginning of a



journey for the child student and therefore world over great care is taken in laying down proper foundations in these formative years. Well qualified and trained teacher in elementary school is an extremely vital aspect. A teacher must be trained to teach students at “primary level”, and this is precisely what the training of Diploma in elementary education (D.El.Ed.) does; it trains a person to teach children at primary level. B.Ed. is not a ‘higher qualification’, or a better qualification, as is being canvassed in its favour, while comparing it with ‘Diploma in elementary education’. B.Ed. is a different qualification; a different training. Even assuming it is a higher qualification, it would still not be a suitable qualification for primary level of classes. Unlike Diploma in elementary education (D.El.Ed.), B.Ed. does not equip a teacher to teach at primary level. This fact is implicitly recognised in the Notification as well (notification dated 28.06.2018), which still requires a person, who is appointed as a teacher with B.Ed. qualification to ‘mandatorily undergo a six-month Bridge Course in Elementary Education’. This defeats the very logic of including B.Ed. as a qualification, as the very notification which pushes for the inclusion of B.Ed., also recognises its inherent pedagogical weakness in its relation to primary classes. It is to cover this defect, that all such candidates, must undergo a mandatory six months Bridge Course in elementary education! The irony here is that all this is being done when the State of Rajasthan already has more than the required number of Diploma qualified candidates available. This is besides the fact that there is presently no such “bridge course” available; at least there was none till the disposal of the petition by the Rajasthan High Court.

33. Under these circumstances, we are unable to comprehend as to what was the pressing need to include B.Ed. candidates, who are admittedly not fully trained to take up Primary Classes! Consequently, the decision of the NCTE to include B.Ed. as a qualification for teachers in a primary school seems arbitrary, unreasonable and in fact has no nexus with the object sought to be achieved by the Act i.e. Right to Education Act, which is to give to children not only free and compulsory but also ‘quality’ education.

34. In our considered opinion therefore NCTE was not justified in including B.Ed. as a qualification for appointment to the post of primary school teacher (Level-1), a qualification it had so far consciously kept out of the eligibility requirement. The Rajasthan High Court by way of the Impugned Judgement had rightly struck down the notification dated 28.06.2018, on the following grounds:-

“(i) The impugned notification dated 28.06.2018 is unlawful because: -

(a) it is under the direction of the Central Government, which power the Central Government under Subsection (1) of Section 23 of the RTE Act did not have; and

(b) it is not in exercise of power of the Central Government under Sub-section (2) of Section 23 of RTE Act relaxing the eligibility criteria prescribed by the NCTE, nor there has been any exercise for ascertaining existence of the conditions precedent for exercising such power.

(ii) The petitioners have locus standi to challenge the notification dated 28.06.2018. Merely because an additional qualification is recognized as one of the eligibility criteria, the petitioners cannot be prevented from challenging it.

(iii) Accepting a candidate with B.Ed. degree as eligible for appointment and thereafter subjecting him to complete the bridge course within two years of appointment is in the nature of relaxing the existing eligibility criteria, which the Central Government could have done only within Sub-section (2) of Section 23 and subject to existence of circumstances necessary for exercise of such power.

(iv) The State Government could not have ignored the notification of NCTE dated 28.06.2018 while issuing advertisement for REET. However, when we have declared that this notification is illegal and are in the process of setting aside, the issue becomes one of academic value.

35. One important aspect of the present case must now be dealt with, on which much emphasis was laid by the counsel for the appellant. The submission is that the Central Government in any case is the final authority in deciding as to what qualification has to be there for teachers and the NCTE is bound to follow the directions of the Central Government in this regard. Reliance was placed on two provisions of National Council for Teacher Education Act, (NCTE Act), Section 12A and Section 29. We must examine these provisions in the light of the submissions made before us.

Section 12A of the Act, reads as under:

“12A. Power of Council to determine minimum standards of education of school teachers. -- For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre- primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).]” Section 12A was inserted in the NCTE Act that is after the enactment of Right to Education Act,

2009. Section 12A only compliments Section 23 of the Right to Education Act, which we have already discussed in the preceding paragraphs.

Next, we come to the Section 29 of the NCTE Act which is as under:

“29. Directions by the Central Government : (1) The Council shall, in the discharge of its functions and duties under this Act be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

(2) The decision of the Central Government as to whether a question is one of policy or not shall be final.” It was submitted that by a notification dated 28.06.2018, NCTE has only followed the directions of the Central Government which are in the nature of a policy. Further it is also evident from the minutes of the meeting dated 28.05.2018 where it was clarified that the direction of the Central Government to include B.Ed. as a qualification is a direction under Section 29 of the Act.

The NCTE is bound to follow the directions of the Central Government in this regard and the direction in the present case was to include B.Ed. as a qualification for teachers in primary school, which has been done by NCTE through notification dated 28.06.2018, are the submission of the learned counsel for the appellants as well as that of the learned ASG Ms. Aishwarya Bhati on behalf of the Union of India. Moreover, as per sub- Section (2) of Section 29, the decision of the Central Government as to what constitutes a policy decision will ultimately matter, is also the argument.

36. The introduction of B.Ed. as a qualification by NCTE on the directions of the Central Government is a policy decision of the Government, as has been submitted before this Court, and is also evident from the sequence of events, the minutes of the various meeting and the order passed in this regard. Section 29 of NCTE Act which mandates that NCTE must follow the directions of the Central Government in discharging of its functions. It is a policy decision which binds NCTE.

We have absolutely no doubt in our mind that policy decisions of the Government should normally not be interfered with, by a constitutional Court in exercise of its powers of judicial review. At the same time if the policy decision itself is contrary to the law and is arbitrary and irrational, powers of judicial review must be exercised.

A policy decision which is totally arbitrary; contrary to the law, or a decision which has been taken without proper application of mind, or in total disregard of relevant factors is liable to be interfered with, as that also is the mandate of law and the Constitution. This aspect has been reiterated by this Court time and again.

Judicial review becomes necessary where there is an illegality, irrationality or procedural impropriety. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service<sup>17</sup> (commonly known as CCSU case). The above decision has been referred by this Court in State of NCT of Delhi v. Sanjeev<sup>18</sup>. This view was reiterated again by this Court in State of M.P. & Ors. v. Mala Banerjee<sup>19</sup> :-

“6. We also find ourselves unable to agree with the appellants' submission that this is a policy matter and, therefore, should not be interfered with by the courts. In *Federation of Railway Officers Assn. v. Union of India* [(2003) 4 SCC 289], this Court has already considered the scope of judicial review and has enumerated that where a policy is contrary to law or is in violation of the provisions of the Constitution or is arbitrary or irrational, the courts must perform their constitutional duties by striking it down...” 17 (1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL) 18 (2005) 5 SCC 181 19 (2015) 7 SCC 698 In *Brij Mohan Lal v. Union of India*<sup>20</sup> this Court reiterated on this aspect and made out a distinction as to where an interference to a decision is required, and whereas it is not :-

“100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

- (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
- (II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.

(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc. (IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or legislations.

(VI) If the delegate has acted beyond its power of delegation.

101. Cases of this nature can be classified into two main classes: one class being the 20 (2012) 6 SCC 502 matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land;

while in the latter class of cases, the scope of such judicial review is far narrower.

Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy.” The decision whether to include or exclude B.Ed. as a qualification for teachers in primary school is an academic decision, which has to be taken after proper study by the academic body i.e. NCTE and should be better left to

this expert body.

But as we have seen the decision to include B.Ed. as a qualification is not an independent decision of NCTE, but it was the decision of the Central Government and NCTE was simply directed to carry it out for that being a direction under Section 29 of NCTE Act, a direction NCTE followed.

In the present case and in the larger context of the matter, we cannot even see this as a policy decision. But without getting into this argument, even presuming for the sake of argument that the decision taken at the Government level to include B.Ed. as a qualification for teachers at primary level is a policy decision, we must say that this decision is not correct as it is contrary to the purpose of the Act. In fact, it goes against the letter and spirit of the Fundamental Right enshrined in the Constitution under Article 21A. It is against the specific mandate of the Act, which calls for a free, compulsory and meaningful primary education to children. By including B.Ed. as a qualification for teachers for primary school, the Central Government has acted against the provisions of the Constitution and the laws. The only logic given by the Central Government to include B.Ed. as a qualification is that it is a 'higher qualification'. This we have already seen is not correct. Under these circumstances, we have no hesitation to say that the notification has rightly been quashed and the decision of the Division Bench of the Rajasthan High Court has to be upheld.

In our considered opinion therefore the direction of the Central Government dated 30.05.2018 culminating in the notification dated 28.06.2018 of NCTE are violative of the principles as laid down in RTE Act. Not only this, the notification goes against the purpose and the mandate of law, which is to provide a meaningful and 'quality' primary education to children.

The entire exercise is also procedurally flawed. The notification dated 28.06.2018 is not an independent decision of NCTE taken after due deliberation, but it simply follows the direction of the Central Government, a direction which fails to take into consideration the objective realities of the day.

Having made the above determination we, all the same, are also of the considered opinion that the State of Rajasthan was clearly in error in not calling for applications from B.Ed. qualified candidates, for the reasons that till that time when such an advertisement was issued by the Rajasthan Government, B.Ed. candidates were included as eligible candidates as per the statutory notification of NCTE, which was binding on the Rajasthan Government, till it was declared illegal or unconstitutional by the Court. The Rajasthan High Court had rightly observed as under :-

“..we are of the opinion that the State Government could not have ignored the notification while inviting applications for REET. Even if the State Government was of the opinion that such notification was unconstitutional or for any reason illegal, the same had to be stayed or set aside by a competent court before it could be ignored.” [Para 45 of the Impugned Judgement] What the Rajasthan High Court had stated above is the settled legal position. In a recent three Judge judgment of this Court in State of Manipur & Ors. v. Surjakumar Okram & Ors.<sup>21</sup> this position that a statute which is made by a competent legislature is valid till it is declared

unconstitutional by a court of law; has been reiterated.

37. Consequently, the Appeals are dismissed and the judgement dated 25.11.2021 of the Rajasthan High Court is upheld. The notification dated 28.06.2018 is hereby quashed and set aside.

The Writ Petitions and all pending applications stand disposed of in light of the above order.

.....J. [ANIRUDDHA BOSE] .....J. [SUDHANSHU DHULIA] NEW  
DELHI 11th AUGUST, 2023.

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