Union Of India & Ors vs Shah Goverdhan L. Kabra Teachers ... on 23 October, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3675, 2002 AIR SCW 4325, 2002 (10) SRJ 182, 2002 (7) SCALE 435, 2002 (4) LRI 563, 2002 (8) SCC 228, 2002 (2) UJ (SC) 1506, (2003) 1 ALLMR 384 (SC), (2003) 2 RAJ LW 177, (2003) 1 JCR 34 (SC), (2002) 8 JT 269 (SC), 2002 (6) SLT 152, 2003 (1) UPLBEC 421, (2003) 1 UPLBEC 421, (2003) 1 MAD LW 453, (2002) 4 SCT 885, (2002) 4 SCJ 674, (2002) 7 SUPREME 318, (2002) 7 SCALE 435, (2003) 1 WLC(SC)CVL 115, (2003) 1 KCCR 10

Author: Ruma Pal

Bench: Ruma Pal

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           CASE NO.:
Appeal (civil)  7404 of 2000

PETITIONER:
Union of India & Ors.

RESPONDENT:
Shah Goverdhan L. Kabra Teachers College

DATE OF JUDGMENT: 23/10/2002

BENCH:
G.B.  PATTANAIK & RUMA PAL.

JUDGMENT:
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JUDGMENT With Civil Appeal Nos. 6040, 6043, 6044, 6038, 6046, 6042, 6041, 6039, 6045, 6049, 6047, 6048 and 6050 of 2001 and C.A. No. 3225 of 2002.

PATTANAIK, J.

This Appeal by the Union of India is directed against the Judgment of Rajasthan High Court allowing the Writ Petition filed before it. A private educational institution conducting courses leading to the degree of Bachelor of Education filed a Writ petition challenging the order passed by the Northern Regional Committee of National Council for teachers education rejecting the application of the institution for recognition of the B.Ed (Vacation Course). The institution was directed not to admit students in the vacation course from 1999-2000 onwards. In the Writ Petition, the constitutional validity of the National Council for Teachers Education Act, 1993 (Act 73 of 1993, hereinafter referred to as 'the Act') was also challenged. The High Court by the impugned judgment

came to hold that the order de-recognising the vacation course is bad in law. The High Court also struck down Section 17(4) of the Act.

The parliament enacted the Act and provided for the establishment of a council for teacher education with a view to achieving planned and coordinated development of the teacher education system throughout the country and for regulation of proper maintenance of norms and standards in the teacher education system. Section 17 of the Act, with which we are concerned in the present case, is extracted herein below:

> Section 17. "Contravention of provisions of the Act and consequences thereof. (1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section 15 was granted, it may withdraw recognition of such recognised institution for reasons to be recorded in writing:
>
> Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:
>
> Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.
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> (2) A copy of every order passed by the Regional Committee under sub-section (1),-
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> (a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the university or the examining body to which such institution was affiliated for cancelling affiliation; and
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> (b) shall be published in the Official Gazette for general information.
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> (3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.
>
> (4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under

> this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government."

On and from the date of enforcement of the Act, every institution, offering or intending to offer the course or training in teacher education, was required to make application to the Regional Committee in such form and manner as may be determined by the regulations as provided in Section 14 of the Act. In accordance with the said provision the respondent institution made an application for grant of recognition to the Bachelor of Education (vacation course). This application, having been rejected by the Northern Regional Committee of the Council, the respondent had approached the High Court. Having regard to the Entry 66 of the List I of the Seventh Schedule of the Constitution, the High Court did record a conclusion that the Parliament has the legislative competence for enacting the Act with a view for achieving planned and coordinated development of the teacher education system. But so far as Section 17(4) of the Act is concerned, the High Court held that the Parliament cannot make law prescribing qualification for entry into the service under the State Government and such law can be made only under the Proviso to Article 309 of the Constitution. In the opinion of the High Court, when NCTE cannot force a State or State funded institution to employ only teachers having a particular qualification like B.Ed or B.P.Ed. or it cannot force the State Government for the employee to have B.Ed degree then it cannot have power under any law to de-recognize any such degree for the purpose of employment and as such Sub-section (4) of Section 17 is unconstitutional and ultra-vires of the Constitution. Having struck down Section 17 (4) of the Act, the High Court further directed the NCTE to issue certificate of recognition to the B.Ed (vacation course) of the institution since the regulation of B.Ed course imparted by the same institution was recognised by the council.

It is contended, on behalf of the council, that sub-section (4) of Section 17 is in fact a law dealing with coordinated development of the teacher education system to provide consequences if an institution, without obtaining recognition or after the recognition being withdrawn, offers any course or training in teacher education. According to the learned counsel, the legislation in pith and substance is a legislation dealing with the topic of coordination and determination of standards in institutions for higher education coming within the legislative Entry 66 of the List I of the Seventh Schedule and even if it is construed to be an encroachment relating to service under a State Government the same is merely consequential and, therefore, the legislation cannot be declared to be ultra-vires.

Mr. Sanghi, appearing for the respondent, on the other hand contended that though it would be within the competence of the Parliament to make law for coordinated development of education but if the law deals with the question of minimum qualification for the service under the State Government the same would be a law referable to Article 309 of the Constitution and not referable to a law dealing with coordinated development of the teacher education system and therefore, sub-section (4) of Section 17 must be held to be ultra-vires of the Constitution.

In view of the rival submissions at the bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of the List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State legislatures. They neither impose any restrictions on the legislative powers nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any List it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. The Court sometimes is duty bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature.

It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of the Parliament as well as the State legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to over-ride another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the Court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra-vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object and scope and effect, is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made.

Bearing in mind the aforesaid principles of rule of construction, if the provisions of the impugned statute, namely, the National Council of Teacher Education Act, 1993 are examined and more

particularly Section 17(4) thereof which we have already extracted, the conclusion is irresistible that the statute is one squarely dealing with coordination and determination of standards in institutions for higher education within the meaning of Entry 66 of List I of the Seventh Schedule. Both Entries 65 and 66 of List I empower the Central Legislature to secure the standards of research and the standards of higher education. The object behind being that the same standards are not lowered at the hands of the particular State or States to the detriment of the national progress and the power of the State legislature must be so exercised as not to directly encroach upon power of Union under Entry 66. The power to coordinate does not mean merely the power to evaluate but it means to harmonise or secure relationship for concerted action. A legislation made for the purpose of coordination of standards of higher education is essentially a legislation by the Central legislature in exercise of its competence under Entry 66 of List I of the Seventh Schedule and sub-section (4) of Section 17 merely provides the consequences if an institution offers a course or training in teacher education in contravention of the Act though the ultimate consequences under sub-section (4) of Section 17 may be that unqualified teacher will not be entitled to get an employment under the State or Central Government or in a university or in a college. But by no stretch of imagination the said provision can be construed to mean a law dealing with employment as has been held by the High Court in the impugned Judgment.

In our considered opinion, the High Court committed gross error in construing the provisions of sub-section(4) of Section 17 of the Act to mean that it is a legislation dealing with recruitment and conditions of services of persons in the State service within the meaning of Proviso to Article 309 of the Constitution The High Court committed the aforesaid error by examining the provisions of sub-section (4) on its plain terms without trying to examine the true character of the enactment which has to be done by examining the enactment as a whole, its object and scope and effect of the provisions. Even, the High Court does not appear to have applied the doctrine of "pith and substance" and, thus, committed the error in interpreting the provisions of sub-section (4) of Section 17 to mean to be a provision dealing with conditions of service of an employee under the State Government.

In the aforesaid premises, the conclusion of the High Court that Section 17(4) is ultra-vires being beyond the competence of the Union legislature cannot be sustained and the said conclusion is accordingly set aside. On examining the statute as a whole and on scrutiny of the object and scope of the statute, we have no manner of doubt that even sub-section (4) of Section 17 is very much a law dealing with the coordination and determination of standards in institution for higher education coming within Entry 66 of the List III of the Seventh Schedule and, thus, the Union legislature did have the competence for enacting the said provision.

We are also of the further opinion that the de-recognition of the B.Ed (Vacation course) cannot be nullified on the ground of failure to comply with the principle of natural justice. In the judgment under challenge, the High Court has held also that when the institution is imparting the B.Ed (Vacation Course) then National Council for Teacher Education could not have refused to recognise the said course. We are unable to accept this reasoning inasmuch as the NCTE is an expert body created under the provisions of the National Council for Teacher Education Act, 1993 and the Parliament has imposed upon such expert body the duty to maintain the standards of education,

particularly, in relation to the teachers education. Education is the backbone of every democracy and any deterioration in the Standard of teaching in the B.Ed course would ultimately produce sub-standard prospective teachers who would be teaching in schools and colleges throughout the country and on whose efficiency the future of the country depends. Inasmuch as the teacher himself has received a sub-standard education it is difficult to expect from him a higher standard of teaching to the students of the schools or other institutions. It is from this perspective, the conclusion of an expert body should not be lightly tinkered with by court of law without giving due weightage to the conclusion arrived at by such expert body. From this standpoint, we are of the considered opinion that the High Court committed error in holding that there was no reasonable justification for not recognising the B.Ed (Vacation Course) which was being imparted by the institution of Shah Goverdhan Lal Kabra Teachers College. In the aforesaid premises, we set aside the impugned Judgment of the High Court and allow this appeal.

In other Civil Appeals which have been filed by the State of Rajasthan, the respondents having been denied employment to them, had approached the High Court for issuance of mandamus. The High Court allowed the same in view of its judgment in Shah Goverdhan Lal Kabra Teachers College case striking down Section 17 (4) of the Act. Since the appeal of the Union Government against the said Judgment has been allowed, Section 17(4) of the Act has been held by us to be intra-vires, the impugned judgment cannot be sustained. The counsel appearing for the respondents, however, contended before us that there are several other grounds which are required to be examined and since the impugned judgment proceeded because of invalidity of the Section 17(4) of the Act, in Shah Goverdhan Lal Kabra Teachers College case and the said judgment of the High Court having been reversed by this Court the matter should be remitted back to the High Court for reconsideration of other grounds. We are not in a position to appreciate as to what other grounds are to be urged. However, since the impugned judgment proceeds because of Section 17(4) of the Act having been struck down, and the judgment of the High Court in Shah Goverdhan Lal Kabra teachers college case having been reversed by us, we set aside the impugned judgment in each of the appeals and allow the Civil Appeals filed by the State of Rajasthan.

We, however, remit the Writ Petitions back to the High Court for being considered if any other point survives for consideration.