

# Khushboo Patel & Ors. vs National Education Society For Tribal ... on 26 March, 2025

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

\$~P-2-5

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :26.03

+ W.P.(C) 9800/2024 & CM APPL. 40174/2024  
APARNA MISHRA & ORS.

.....Pet

versus

NATIONAL EDUCATION SOCIETY FOR TRIBAL  
STUDENTS THROUGH COMMISSIONER  
& ANR. ....Respondents  
+ W.P.(C) 10731/2024 & CM APPL. 44163/2024  
RAJESH KUMAR & ANR. ....Pet

versus

NATIONAL EDUCATION SOCIETY FOR TRIBAL  
STUDENTS & ANR. ....Respondents  
+ W.P.(C) 11129/2024 & CM APPL. 46012/2024  
KHUSHBOO PATEL & ORS. ....Pet

versus

NATIONAL EDUCATION SOCIETY FOR TRIBAL  
STUDENTS & ANR. ....Respondents  
+ W.P.(C) 11919/2024 & CM APPL. 49578/2024  
RAJNI KUMARI & ORS. ....Pet

versus

NATIONAL EDUCATION SOCIETY FOR TRIBAL  
STUDENTS & ANR. ....Respondents

Appearance:-

Mr. Siddharth Krishna Dwivedi, Advocate  
Petitioners in W.P.(C) 9800/2024, W.P.(C)

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W.P.(C) 9800/2024 and connected matters

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11129/2024 & W.P.(C) 11919/2024.

Ms. Nidhi Singh, Advocate for Petitioner  
10731/2024.

Mr. Amartya Ashish Sharan & Mr. Akash Ki  
Advocate for NESTS.

Mr. Jagdish Chandra, CGSC with Mr. Shubh  
Kumar Mishra, Advocates for UOI in W.P.(  
9800/2024.

Mr. Abhishek Khanna, SPC with Mr. Parves  
& Mr. Ashish Khanna, Advocates for R-2 i  
10731/2024.

Mr. Virender Pratap Singh Charak, SPC &  
Dev Yadav, GP for UOI with Ms. Shubhra P  
Mr. Devender Singh, Advocates for R-1 &  
W.P.(C) 11129/2024.

Mr. Kamal Kant Jha, SPC with Mr. Rohan G  
for UOI in W.P.(C) 11919/2024.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. These four writ petitions concern appointment to the post of Trained Graduate Teacher in Art ["TGT (Art)"], pursuant to a recruitment exercise undertaken by National Education Society for Tribal Students ["NESTS"], for appointment of teaching and non-teaching staff in the Eklavya Model Residential Schools ["EMRS"]. As the issues raised concern interpretation of the same qualification clause, the petitions have been taken up for hearing together.

2. Mr. Siddharth Krishna Dwivedi, learned counsel for the petitioners, states at the outset, that all the petitioners in W.P.(C) 9800/2024, except petitioner Nos. 4 and 10 [Ms. Sheelu and Mr. Pawan Kumar], have already been issued letters of appointment. He, therefore, submits that the said writ petition is pressed only with respect to petitioner Nos. 4 and 10.

3. I have heard Mr. Siddharth Krishna Dwivedi and Ms. Nidhi Singh, learned counsel for the petitioners, and Mr. Amartya Ashish Sharan, learned counsel for NESTS.

#### A. Facts

4. By the advertisement issued in June 2023, several posts were advertised, including TGT (Art). These petitions relate to interpretation of the "Essential Qualification" for the post of TGT (Art), which reads as follows:

"Essential Qualification:

Degree in Fine Arts/Crafts from a recognized University. Or B.Ed. Degree in Fine Arts from Regional College of Education."<sup>1</sup>

5. The educational qualifications of each of the petitioners in these petitions are tabulated below:

Writ Petitioner Name of the Diploma/Bachelor Post Graduate Other Petition No.  
 petitioner Degree Diploma/Degree Qualification W.P.(C) 4 Sheelu Bachelor of Arts  
 Master of Arts Bachelor of 9800/2024 (Drawing & Education Painting) 10 Pawan  
 Kumar Bachelor of Arts Master of Arts Bachelor of (Painting) Education W.P.(C) 1  
 Rajesh Kumar Diploma in Arts and Master of Arts N/A 10731/2024 Craft (Painting) 2  
 Km Pratima Not submitted Master of Arts N/A Sharma (Painting) W.P.(C) 1  
 Khushboo Patel Diploma in Creative Master of Arts N/A 11129/2024 Arts (Drawing &  
 Painting) 2 Rabina Art & Crafts Teacher Master of Arts N/A Training Course  
 (Painting) 3 Shivani Sharma Advance Diploma in Master of Arts N/A Drawing  
 Teacher (Drawing & Emphasis supplied.

|                       |   |                              | Training   | Painting) (   |
|-----------------------|---|------------------------------|--|---|
|                       | 4 | Rishi Batham                 | Not submitted  | Education)<br>Master of Ar<br>(Drawing<br>Painting) |
| W.P.(C)<br>11919/2024 | 1 | Rajni Kumari                 | Chitra Bhushan [Fine Arts (Painting)]  | N/A   |
|                       | 2 | Divya Sahu                   | Chitra Visharad [Fine Art (Painting)]<br>Shree Chitra Bhushan [Fine Arts (Painting)] | Chitra [Fine<br>(Painting)]                         |
|                       | 3 | Rahul Raj                    | Chitra Visharad [Fine Art (Painting)]<br>Chitra Bhushan [Fine Arts (Painting)]       | Chitra [Fine<br>(Painting)]                         |
|                       | 4 | Avinash Samdarshi            | Chitra Bhushan [Fine Arts (Painting)]  | N/A   |
|                       | 5 | Biswajit Biswas              | Chitra Visharad [Fine Art (Painting)]<br>Junior Diploma (Painting)                   | N/A   |
|                       | 6 | Gauswami Daxaben Babubharthi | Chitra Visharad [Fine Art (Painting)]<br>Diploma [Art Teacher]                       | N/A   |
|                       | 7 | Chaudhari Nimitkumar         | Diploma [Drawing & Painting and Art]   | N/A   |

|   |   |   |
|---|---|---|
| 8 | Mohanbhai<br>Chaudhari<br>Vijaybhai<br>Chhanabhai | Teacher]<br>Diploma [Drawing & N/A<br>Painting] |
|---|---|---|

6. The cases of all the petitioners have been rejected on the basis that they do not meet the qualifications prescribed in the advertisement.

B. Questions for consideration

7. In the context of the above qualifications held by the petitioners, learned counsel for the parties have urged two questions for consideration in these writ petitions:

A. Whether the degrees of Master of Arts (Drawing and Painting) or Master of Arts (Painting), held by all the petitioners in W.P.(C) 9800/2024, W.P.(C) 10731/2024 and W.P.(C) 11129/2024, qualify as "Degree in Fine Art/Crafts from a Recognized University". B. Whether the diploma qualifications, held by all the petitioners in W.P.(C) 11919/2024, and some of the petitioners in W.P.(C) 10731/2024 and W.P.(C) 11129/2024, qualify as "Degree in Fine Arts/Crafts from a Recognized University".

C. Discussion regarding Question A

8. The prescribed qualification speaks of a "Degree in Fine Arts/Crafts from a recognized university". To appreciate the significance of these terms, the following provisions of the University Grants Commission Act, 1956 ["the UGC Act"], are relevant:-

"2 (f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

xxx xxx xxx

22. (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette."<sup>2</sup>

9. In exercise of the powers under Section 22 of the UGC Act, the University Grants Commission ["UGC"] has issued several notifications specifying "Degrees" for the purposes of the said section. The degrees of Bachelor of Arts ["BA"], Master of Arts ["MA"] and Bachelor of Education ["B.Ed."], all find mention in a UGC notification dated 01.12.1958, issued under Section 22 of the UGC Act. An MA in the relevant subject is, thus, a "Degree", in terms of the UGC Act and notifications.

10. It is undisputed that the concerned petitioners, enumerated above, hold MA qualifications in Fine Arts, from recognized universities. On the express terms of the essential qualification, therefore, MA degree holders would qualify. I am fortified in this view by a decision of the Supreme Court, delivered on 20.03.2024, in Chandra Shekhar Singh v. State of Jharkhand<sup>3</sup>. The Court was considering a similar qualification, and observed as follows:

"29. The term 'degree' is defined under Section 22(3) the UGC Act, which states that the 'degree' means the 'Bachelor's Degree', 'Master's Degree' and the 'Doctorate Degree'. Thus, wherever the word 'degree' is used, unless a specific exclusion is provided, the same would include within its scope and ambit all three, 'Bachelor's Degree', 'Master's Degree' and a 'Doctorate Degree'."

Emphasis supplied.

2025 SCC OnLine SC 595.

11. Further, by the same advertisement, NESTS opened recruitment for the post of TGT in several subjects. In many of those cases, the essential qualification prescribed in the advertisement specifically mentioned "Bachelors Degree". By way of example, the essential qualification prescribed for TGT (Music) and TGT (Physical Education Teacher) are set out below:

"TGT (Music) Essential Qualification:

A Bachelors Degree with Music from a recognized University/Institution.

TGT (Physical Education Teacher) Essential Qualification:

Bachelor degree in Physical Education from a recognized institution/university."<sup>4</sup>

12. In contrast, the essential qualification for TGT (Art) and TGT (Librarian) referred to "Degree in Fine Arts/Crafts" and "Degree in Library Science", without specifying that the degree sought is only

a Bachelors degree.

13. To support the rejection of candidates in this category of cases, Mr. Sharan submits that in the context of Fine Arts qualification, the UGC Model Curriculum recognizes only the professional qualification of Bachelor in Fine Arts ["BFA"], and not BA or MA degrees in the general stream, even if the said degrees are in Fine Arts. He submits that the intention of the employer, consistent with the UGC Model Curriculum, was to limit the qualification to holders of BFA degrees, and not to include general stream degree holders, even if their degrees were in Fine Arts/Crafts, and from a recognized university.

14. Mr. Sharan, for this purpose, relies upon a UGC Model Curriculum

- Visual Arts, published in the year 2001, which has been placed on record in W.P.(C) 11129/2024. The said Model Curriculum, in the "Preamble and Objectives", notes that art education should be made more scientific and systematic, and at par with professional courses, to improve the standards in need with changing times. With these objectives, the Model Curriculum inter-alia makes the following recommendations:

"1. The professional stream in Visual Arts comprises the Bachelor's Degree and Master's Degree in a full-fledged form. This will not include the BA or MA of general stream opting Visual Art as one of the subject.

2. The institutions/universities offering a Visual Art subject, as one of the optional at Graduate or Post Graduate level will continue under the general stream of BA and MA. For them the Visual Art subject is an accomplishment but not a profession. For the job opportunities and admission for Post Graduate course in Professional stream, the students coming from the general stream should be categorically rejected.

3. To make a clear distinction between the general stream and professional stream and to clear the confusion of interpreting Visual Arts in terms of Performing Arts under the existing 'Fine Arts', the committee recommended the Bachelor's degree in Fine Arts (BFA) and M.Fine or Master's degree in Fine Arts (MFA) will be regarded as BVA-Master's degree in Visual Arts. This will be purely a professional degree-after +2,4 years BVA (including one year foundation course) and 2 years MVA. However, in the degree certificates the specialisation will be mentioned as BVA (Painting)."5

15. Mr. Sharan relies upon the recommendations quoted above, that professional stream candidate alone should be given job opportunities. As far as this aspect is concerned, NESTS could well have followed this recommendation, and formulated the prescribed qualifications in the advertisement accordingly. It did not do so, but instead used the word, "Degree", without any limiting specification.

Emphasis supplied.

Emphasis supplied.

16. Further, even the UGC Model Curriculum does not prohibit, and in fact, recognises degrees in Fine Arts/Crafts in the general stream, but only distinguishes them from professional degrees. The purpose of the UGC Model Curriculum, in any event, is to prescribe the courses to be taught at the University level for a candidate to attain a particular degree qualification. The UGC does not prescribe any particular qualification as necessary for the post of TGT (Art).

17. Further, to a specific query, Mr. Sharan submitted, upon instructions, that NESTS has offered appointment as TGT (Art), to general stream BA degree holders in Fine Arts, after establishing that they have studied courses similar to those studied in the BFA curriculum. No such exercise of comparison has been undertaken with regard to the persons who hold MA degrees in Fine Arts, with the MFA curriculum. Mr. Sharan clarified that this is because NESTS understood the qualification to be limited to the Bachelor level qualifications, and would have rejected MFA degree holders also. It is evident from this submission that the distinction drawn in the UGC Model Curriculum, between the general stream and the professional stream, is not what has led to the rejection of MA degree holders in Fine Arts. NESTS has in fact, accepted general stream BA degrees (albeit after establishing equivalence with BFA degrees), and would not have accepted a professional stream MFA degree.

18. The real issue is that NESTS regards only Bachelors degree holders as qualified for the position of TGT. To support this interpretation, Mr. Sharan relied upon a Division Bench judgment of this Court in *Rajnish Sharma v. Delhi Subordinate Services Selection Board & Ors*<sup>6</sup>. The question before the Court arose in the following context:

"5. The petitioner in W.P.(C) No.45/2020 had obtained a Degree of Bachelors of Arts in the year 2011 and Bachelors of Arts (Additional) in Art & Clay modeling in the year 2017. The eligibility criteria for TGT (Drawing) is set-out hereinbelow :

"Educational Qualification:- Essential:-

1. Five years Diploma in Drawing/Painting/Sculpture/ Graphic Art from a university/institute recognized by the Govt. of India.

OR

2. Master's Degree in Drawing and Painting/Fine Art from a recognized university.

OR

3. Bachelor's Degree in Drawing/Painting/Fine Art plus two years full time Diploma in Painting/Fine Art from a recognized university/ institution.

Desirable:-Studied Hindi as a subject up to Secondary/Senior Secondary school level."

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7. The table set-out in para 6 above would show that while all petitioners had graduated and had a Bachelor's degree in a particular subject or had a general Bachelor's degree, the petitioners had applied for the post of Trained Graduate Teacher (TGT) for a subject in which the petitioners only had a degree as an 'additional subject'."

In the context of this issue, the Court, relying upon an earlier decision 7, held as follows:

"13. ....we are of the view that the essence of the matter is that for being qualified for the post of Trained Graduate Teacher in a particular subject, a candidate must hold at least a Bachelor's Degree in that subject, having studied that particular subject as the main subject in the course of obtaining such degree. Having a Bachelor's Degree in a subject that is studied by way of an additional subject is not adequate, inasmuch as evidently a Bachelor's Degree in a subject taken as an additional subject would lack the width and depth of study 2020 SCC OnLine Del 271 [hereinafter, "Rajnish Sharma"]].

Govt. of NCT of Delhi v. Sachin Gupta [WP. (C) 1520/2012, decided on 07.08.2013].

that would be necessary to qualify as a Trained Graduate Teacher in that subject. To us this appears to be elementary, in the sense that if the candidate lacks in-depth knowledge of a subject, he would hardly be qualified to teach it as a Trained Graduate Teacher."

19. It is evident from the above that both, the qualifications required and the question before the Court, were quite different in Rajnish Sharma, than in the present case. The qualifications there specifically provided for Masters degrees and Bachelors degrees; the advertisement in the present case does not contain corresponding specifications, which is why the problem has arisen. More significantly, the judgment holds that taking a subject as an additional subject in a Bachelors degree does not qualify as holding a Bachelors degree in that subject. The Court was not concerned with the question of whether a Masters degree in the particular subject was sufficient, probably because the advertisement there expressly provided that it was. The reasoning of the Court that study of a subject as an additional subject at the Bachelors level would not impart in-depth knowledge of the subject, is also inapplicable to a Masters degree.

20. For the aforesaid reasons, I am of the view that Question A must be answered in favor of the petitioners, i.e. an MA degree in Fine Arts/Crafts from a recognized university, satisfies the prescribed qualification.

21. The above discussion covers the case of the petitioners in three writ petitions, i.e. W.P.(C). 9800/2024, W.P.(C). 10731/2024, and W.P.(C). 11129/2024.



#### D. Discussion regarding Question B

22. As far as W.P.(C) 11919/2024 is concerned, the petitioners are admittedly not holders of degrees in Fine Arts/Crafts from recognised Universities or B.Ed. in Fine Arts from Regional College of Education. They are all holders of Diplomas from Pracheen Kala Kendra, Chandigarh, which is not a recognised university. Their qualifications have not been included in any notification issued by the UGC under Section 22 of the UGC Act. Ex facie, therefore, they do not qualify in terms of the prescribed qualifications.

23. In support of their cases, Mr. Dwivedi submits that the institution has certified that the Diplomas awarded by it includes the subject of Fine Arts, and further stated as follows:

"Pracheen Kala Kendra is a recognized institution of repute and conducts examinations in the subjects of Music, Dance & Fine Arts (Painting). The diploma of Sangeet Visharad which is a five years course is equivalent to Bachelor's degree in Music as recognized by various universities, education boards and state governments. The diploma of Chitra Visharad in the subject of Fine Arts (Painting) which is a five years course is awarded on the same pattern as Sangeet Visharad (B.Mus.) and therefore is to be treated as equivalent to BFA subject to fulfillment of other academic qualifications, as the Kendra is a recognized institution."8

24. Mr. Dwivedi submits that, in other cases involving appointment to the post of TGT (Art), the respondent has accepted similar certification issued by universities, drawing equivalence between their BA and MA degrees in "Drawing and Painting" with the degree of Bachelor in Fine Arts or Bachelor in Visual Arts. He further submits that the Navodaya Vidyalayas permit Diploma holders to apply for the position of TGT (Art), and the EMRS being admittedly on the same pattern as Navodaya Vidyalaya, ought to follow the same practice. Learned counsel contends that, in the present case, the petitioners were in fact issued provisional letters of appointment and also appointment letters dated 03.06.2024, but have not been granted final appointment and posting orders.

25. As far as diploma holders are concerned, I am unable to agree with Mr. Dwivedi. The stipulated qualifications are of a "Degree in Fine Arts/Crafts from a recognised university" or a "B.Ed. degree in Fine Arts from a Regional College of Education". The petitioners' qualifications admittedly do not answer to either of these descriptions. They do not claim to hold BA degree in Fine Arts. Their diplomas are not equivalent to degrees.

26. As far as the certificates issued by Pracheen Kala Kendra are concerned, these do not take the case much further. The institution which has awarded the diplomas has itself certified that the diplomas are "on the same pattern as Sangeet Visharad (B.Mus.) and therefore to be treated as equivalent to BFA". The advertisement issued by NESTS did not permit diploma holders to apply, and the certification by the institution itself cannot bind NESTS.

27. In any event, the stipulated qualification prescribes that the 'degree' must be from a "recognised university". The provisions of the UGC Act, quoted above, are clear as to the meaning of this term, and Pracheen Kala Kendra does not fall within that definition. The petitioners therefore cannot succeed on this additional ground.

28. The significance of holding "degrees" from recognised universities Emphasis supplied.

has been emphasised in the judgment of the Supreme Court in Prof. Yashpal v. State of Chhattisgarh<sup>9</sup>, cited by Mr. Sharan. However, in view of the discussion above, I do not consider it necessary to dilate upon this aspect further.

29. The question of equivalence is generally best left to the employer, as has been held by the Supreme Court in Mukul Kumar Tyagi v. State of U.P.<sup>10</sup> and Zahoor Ahmad Rather v. Imtiyaz Ahmed<sup>11</sup>. This is also supported by a recent decision of a coordinate Bench of this Court in Ankit Kumar v. National Education Society For Tribal Students & Anr.<sup>12</sup>, where the Court was dealing with the issue of equivalence of degrees applicable for the post of Post Graduate Teacher (Computer Science), arising out of the same advertisement issued by NESTS as in the present case, and held as follows: -

"10. The only issue that arises for consideration is whether the degree of the Petitioner in Master of Science by Research issued by IIT, Madras can be considered as M.Sc. degree in Computer Science. It is a settled law that Courts cannot prescribe the essential qualifications and/or declare the equivalency of a degree. Equivalence of a technical degree is purely an academic matter and is best left to the academic experts in the field. There is no material before the Court nor does the Court have the expertise to rule on equivalence of the degree furnished by the Petitioner to an M.Sc. degree in Computer Science much less to hold that the degree is a degree of M.Sc. in Computer Science. Judicial review cannot expand to deciding equivalence of prescribed qualifications with the given qualification and is the domain of the employer who advertises the post in question"

30. The Court's interference is called only if the employer's decision shows arbitrariness or unreasonableness. In the present case, I do not (2005) 5 SCC 420, paragraphs 36-38.

(2020) 4 SCC 86, paragraph 59.

(2019) 2 SCC 404, paragraph 26.

W.P.(C). No. 13463/2024, decided on 25.09.2024.

discern any such deficiency in the view taken by NESTS.

31. In the facts of this case, I am of the view that the appointment letters issued to the petitioners are also of little assistance to them. One of the applications submitted by the petitioners [petitioner No.

2] has been placed on record, and I was informed that all the applications were similar. In the applications, the petitioners represented that they hold a "Degree in Fine Arts/Crafts from a recognised University"<sup>13</sup>, under the heading "Qualifying Exam Marks Details". It is on the basis of these representations, that the petitioners were granted provisional letters of appointment, subject to document verification. Even the final letter of appointment dated 03.06.2024, was subject to further verification of documents. NESTS cannot be bound by those letters, when the qualifications are found to be at variance with the representations of the petitioners in their applications.

32. There is also no merit in the suggestion that NESTS is duty bound to follow the Navodaya Vidyalaya pattern in setting the qualifications of its teachers. Such a plea cannot be accepted at this stage, when the petitioners have participated in the recruitment process on the basis of advertisement and qualifications issued.

33. For the aforesaid reasons, I am of the view that Question B must be answered against the petitioners, i.e. that diploma holders do not qualify for the post of TGT (Art) in terms of the advertisement.

#### E. Conclusion

34. As a result of the above discussion: -

i. W.P.(C) 11919/2024 is dismissed.

ii. W.P.(C) 9800/2024 is dismissed as withdrawn, in respect of all petitioners, except petitioner Nos. 4 and 10.

iii. W.P.(C) 9800/2024 [qua petitioner Nos. 4 and 10], W.P.(C) 10731/2024 and W.P.(C) 11129/2024 are allowed. The respondent is directed to treat these petitioners as qualified for the position of TGT (Art) and process their applications accordingly.

35. There shall be no orders as to costs.

36. All pending applications stand disposed of.

PRATEEK JALAN, J MARCH 26, 2025 SS/Ainesh/ Emphasis supplied.