WP-4933-2015

(SIKH EDUCATION SOCIETY Vs ***THE STATE OF MADHYA PRADESH)***

13-07-2015

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

W.P. No.4933/2015

Sikh Education Society

Vs.

State of Madhya Pradesh & Others

W.P. No.3434/2015

Cogent Education Society

Vs.

State of Madhya Pradesh & Others

W.P. No.5018/2015

Bhopal Labour College Society

Vs.

State of Madhya Pradesh & Others

W.P. No.5077/2015

Global Foundation for Medical Education & Research

Vs.

State of Madhya Pradesh & Others

Present: Honâ□□ble Shri Rajendra Menon, J. & Hon'ble Shri Sushil Kumar Gupta, J.

Shri Radhe Lal Gupta, Shri N. S. Ruprah and Shri Vipin Yadav, learned counsel for the petitioners.

Shri Pushpendra Yadav, learned Govt. Adv. For the respondents State.

Shri Shreyas Pandit, learned counsel for Rani Durgawati Vishwa Vidhyalaya in W.P. No.4933/2015.

O R D E R

(13/7/2015)

As common question of law and facts are involved in all these four petitions and as challenge in all these petitions are made to a policy of the State Government in the matter of granting permission for establishment of new educational institutes within the State of Madhya Pradesh, all these petitions are being heard and decided by this common order. For the sake of convenience the documents and pleadings available in the record of W.P. No.4933/2015 is being referred to in the order.

2. The clause in question i.e. â□□Clause 3.4â□□ which is the impugned policy, prohibits establishment of a new college within a radius of 20 kms from a already existing Non-Government college. The said policy is available in page 30 of the paper book and reads as under :-

> â□□**4& izLrkfor egkfo|ky; LFky ls 20 fd0eh0 dh ifjf/k esa dksbZ Hkh v'kkldh; egkfo|ky; lapkfyr ugha gksus ij gh uohu v'kkldh; egkfo|ky; izkjaHk fd;s tkus dh vuqefr ij fopkj fd;k tkosxkA bl gsrq dysDVj vFkok muds }kjk vf/kd`r jktLo vf/kdkjh dk izek.k i= miyC/k djkuk vfuok;Z gksxkAâ□□**

3. In W.P. No.4933/2015 the petitioner society wanted to establish a college in the city of Jabalpur for imparting a course of study in B.A.LL.B. (Hons). They filed an application before the Commissioner of Higher Education, M.P. Bhopal for the purpose of getting its

approval. The Rani Durgawati Vishwavidhyalaya, Jabalpur vide Annexure P/5 granted them affiliation subject to fulfilling the conditions of clause 27 and 28 of the Universities College Code. The matter was thereafter taken up with the Commissioner of Higher Education and initially various communications took place between the institute and the Commissioner of Higher Education in the matter of fulfillment of various conditions and from the record it is seen that after all the conditions were found to be fulfilled, the permission was denied vide Annexure P/5 on account of the fact that in view of Clause 3.4 of the policy and guide lines of the State Government in the absence of proper Certificate from the Collector or Revenue Authorities, permission cannot be granted. It is a case of the petitioners that the aforesaid clause which is reproduced herein above, is wholly unconstitutional, arbitrary and infringes the fundamental right available to the petitioners under Article 19(1)(g) of the Constitution.

4. Shri N. S. Ruprah took us through the documents and material available on record and tried to emphasize that there is no reasonable justification for formulating such a policy. He argues that for the purpose of establishing a law institute, petitioner's institute is required to obtain approval and sanction from the Bar Council of India in accordance to the requirement of Advocates Act and the statutory rules framed thereunder, and thereafter obtain affiliation from the University and the University grants

affiliation in accordance to the provisions of the statutory rules applicable in the matter namely Section 24 and 26 of the M.P. Vishwavidhyalaya Adhiniyam, 1973 so also the college code, by taking us through the aforesaid provisions he emphasized that this rule only contemplates approval from the State Government. He argues that for the purpose of establishment of an educational institute it is the executive council and academic council of the University which is competent to grant affiliation. The rule only provides for a sanction from the Commissioner, Higher Education, the Rule does not permit the Commissioner to formulate a separate scheme for grant of sanction. It is said that the Commissioner exercising his executive power has formulated the guide lines for grant of permission and in the said guide lines and policy for the academic session 2015-2016 the impugned restrictions have been imposed. Contending that the restrictions imposed is highly arbitrary, unreasonable and inconsistent to the mandate of fundamental right available to the petitioner for establishing and running a educational institute, challenge is made to the said provision. By filing certain additional documents and facts along with I.A. No.4280/2015 Shri Ruprah points out that in the District of Ratlam even though more than 8 institutes are functioning, within a radius of 20 kms, still vide I.A.-2 permission is granted to establish another institute. Similarly in the District of Chhatarpur permission is

granted to establish new institute and in support thereof I.A. No.3 and 4 have been filed to show that institutes are being permitted even though such restriction has been imposed by the State Government, whereas, in the present case permission is denied. It is said that State Government has exercised its power in an arbitrary, discriminatory and illegal manner, therefore, clause 3.4 be struck down holding it to be unreasonable and arbitrary.

5. Shri Vipin Yadav, learned counsel appearing for the petitioners in W.P. No.3434/2015 points out that petitioners in the said case want to establish an institute for the purpose of imparting Courses of study in various subjects like Commerce, Bachelor of Business Administration, Post Graduate Diploma in Computer Application and in their case also like in the case of W.P.4933/2015 permission is denied to them only by virtue of Clause 3.4. He invites our attention to the judgment of Supreme Court in the case of **T.M.A. Pai Foundation and others Vs. State of Karnataka and others â□□ 2002 AIR SCW 4957** and the principles laid down in para 241 of the aforesaid judgment and submits that establishment of an educational institute is a fundamental right available to a citizen under the aforesaid Article of the Constitution and except for imposing some reasonable restrictions the State Government does not have any power to completely ban establishment of an institute within the radius of 20 kms.

He submitted that as contended by Shri Ruprah the decision of the State Government is arbitrary.

6. In W.P. No.5077/2015 also Shri Nishant Datt, learned counsel appearing for the petitioners adopted the arguments advanced by Shri Ruprah and Shri Vipin Yadav and points out that in this case petitioner wants to establish an institute for imparting courses of study in BBA (Hospital Management) and Post Graduate in Yogic Science. It is said that in no other educational institute in the entire State of Madhya Pradesh are these faculties or subjects being taught and as the prohibition imposed by the State Government in this case is arbitrary, he submits that the action is unsustainable. By filing an affidavit of the Secretary of the Society it is pointed out that within the radius of 20 kms in the District of Jabalpur, no educational institute is imparting any education in the aforesaid faculty of Hospital Administration or Yogic Science.

7. Shri R. L. Gupta, appears for the petitioners in W.P. No.5018/2015, apart from making contentions as advanced by other counsel, invites our attention to the judgment rendered by Supreme Court in the case of **P. A. Inamdar Vs. State of Maharashtra â (2005)6 SCC 537**, para 91 and 92 of the aforesaid judgment to say that establishment of an educational institute is protected under the provisions of Article 19(1)(g) of the Constitution. State Government can only impose some reasonable restrictions and as restrictions imposed in the

present case is totally unreasonable without any nexus with the purpose for which it is being imposed, the action is arbitrary. Learned counsel invited our attention to the justification given by the State Government in the return and argued that merely because the population ratio of the State Government is such that establishment of the institute is not feasible, that cannot be a reason for imposing a complete blanket prohibition in the manner done. That apart, learned counsel argued by referring to clause 3.4, that it is applicable only to a rural area and if institution as in the present petition are established in urban area, the impugned provision cannot be applied.

8. Accordingly, learned counsel submits that the petitions be allowed and the impugned clause of the policy and guidelines be quashed.

9. Shri Pushpendra Yadav, learned Government Advocate appearing for the State Government at the very outset argued that contention of the petitioners that the clause in question is only applicable to the rural area and not to the urban area is misconceived. He invites our attention to the policy in question filed as Annexure P/2 in W.P. No.4933/2015 and argues that clause 3 of the said policy pertains to Processing of Application for grant of approval. Sub-clause 3 of clause 3 only pertains to establishment of educational institute in rural area. He argues that sub clause 4 of clause 3, the impugned clause is entirely different.

10. He further invites our attention to the justification, a

reasonableness indicated by the State Government in enforcing the aforesaid policy and submits that according to the census of 2011 the total population of the State of Madhya Pradesh stands at 72 million, 75% of the population resides in villages, while remaining living in town. In the State of Madhya Pradesh there are around 2172 colleges which is 6.23 of the total number of colleges in the entire country. It is said that in terms of the average enrollment per college figure comes to 551 against the all India average is 703. It is said that taking note of all these factors the enrollment rate of student in the State of Madhya Pradesh being less the State Government has taken a policy decision and this decision has been taken for the purpose of prohibiting mashroom growth of educational institute and to impart higher education uniformly and effectively throughout the State.

11. Accordingly, Shri Yadav tried to emphasize that the State Government having imposed a reasonable restriction, the same does not call for any interference.

12. We have heard learned counsel for the parties and we have also gone through the records and judgment cited by the parties. As far as contention of the petitioners that clause 3.4 pertains to establishment of educational institute in rural area and is not applicable to urban area is concerned, the aforesaid contention is wholly misconceived. Shri Yadav is right in contending that clause 3.4 has to be read along with the policy and

the clause as per seriatum given therein. Infact, clause 3 of the policy pertains to the method of submitting the application, its processing and scrutiny. Thereafter, clause 3.1, 3.2, 3.3., 3.4, 3.5 etc. are all independent provisions have been introduced by providing procedure and guidelines for the purpose of processing the application. Clause 3.3 pertains to establishment of a College in the rural area and clause 3.4 is the prohibitory clause impugned in this writ petition. That being so, it is clear that the clause pertaining to establishment of educational institute in rural area is clause 3.3 and the present impugned clause 3.4 is totally different and it is not at all connected with establishment of college in rural area. In fact, clause 3.4 is a independent clause applicable throughout the State of Madhya Pradesh in both rural or urban area. Accordingly, contention of the petitioner that clause 3.4 is applicable in rural area and not in urban area is misconceived. Accordingly, we have no hesitation in rejecting the aforesaid contention.

13. As far as the merit of the contention is concerned, we find that under the impugned clause there is a total prohibition in establishing a new private college in an area within the radius of 20 kms of a private college already functioning. Meaning thereby, that for the academic session in question establishment of a new college is prohibited if within the radius of 20 kms from the proposed site any other private institute is already existing. The reason for such a prohibition is indicated by

the respondents in their return and it only refers to the population of the State of M.P. and certain facts to say that it has been done to improve the conditions of education and to bring about excellence in education. From the return filed by the respondents and the reason given as is narrated herein above, the same is not seen to be based on any study, opinion of experts or any report submitted in the matter of prohibiting establishment or mushrooming of educational institutes. The return only says that taking note of gross enrollment ratio for higher education in the State of M.P. and on comparing it with the national ratio the State Government found that the enrollment ratio for women, SC/ST students in the State of M.P. is very low than the national average and therefore, such a decision is taken. It is not known as to how the gross enrollment ratio in the State of M.P. being lower than the national ratio could be a ground for restricting the establishment of educational institute in a given area.

14. To consider the legal question involved in all these petitions it is necessary to take note of provisions of Article 19 of the Constitution. Article 19(1)(g) of the Constitution contemplates that all citizen have a right to practice any profession or to carry out any occupation, trade or business and thereafter,sub clause 6 of Article 19 contemplates that â□□Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making

any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clauseâ□□. It is clear from the aforesaid provision of the Constitution that under Article 19(1)(g) the right to practice any profession, carry on any occupation, trade or business is a fundamental right but the same is subjected to reasonable restriction that may be imposed by the State under a existing law or by making any law in the interest of general public.

15. In the backdrop of the requirement of Article 19(1)(g) and (6), two things are required to be considered by this Court. The first is as to whether the right to establish and carry out the activities of an educational institute comes within the purview of â□□professionâ□□,â□□occupationâ□□,â□□tradeâ□□ or â□□businessâ□□ and the second is whether the restriction imposed by the State Government by the impugned circular passes the test of reasonable restriction as contemplated under sub clause (6) of Article 19(1)(g) of the Constitution. Further one more question that arises is as to whether without enacting or legislating any law a restriction could be imposed in the manner done by an executive order. These three questions are required to be determined by us in these petitions.

16. As far as the first question with regard to right to establish and run an educational institute is concerned, in the case of **P.A. Inamdar**(supra) the matter has been considered and it is held that education whether for

charity or profit is an â□□occupationâ□□. It cannot be equated to trade or business. This judgment in the case of **P.A. Inamdar**(supra) has been considered by the Supreme Court in the case of **State of Bihar and others Vs. Project Uchcha Vidya, Sikshak Sangh and others â□□(2006)2 SCC 545** and in the aforesaid case after taking note of the law laid down in the case of **T.M.A. Pai Foundation**(supra) in para 69 it has been held by the Hon'ble Supreme Court that the right to manage an institution is also a right to property and establishing, managing and carrying out the activities of an educational institute is held to be part of fundamental right being a right of occupation as envisaged under Article 19(1)(g) of the Constitution. Therefore, a complete reading of the law laid down by the Supreme Court in the judgment of **T.M.A. Pai Foundation**(supra) and **State of Bihar**(supra) would lead us to an inevitable conclusion that right to establish and manage a educational institute is a fundamental right coming within the purview of a right to â□□occupationâ□□ as envisaged under Article 19(1)(g) of the Constitution. Accordingly, the first question formulated by us has to be answered by holding so.

17. As far as the second ground is concerned, the question is as to whether the restriction imposed by the impugned circular comes within the purview of a reasonable restriction as contemplated under the constitutional provision ?

18. There are various judgments which have considered the question of reasonableness in restricting the enjoyment of fundamental right envisaged under Part III of the Constitution and in particular Article 19(1)(g). In the case of **S. Rangarajan Etc vs P. Jagjivan Ram â (1989)2 SCC Pg. 574** while dealing with the question of censorship of film and imposing restriction reasonable in nature, it has been held by the Supreme Court that the freedom available under the fundamental right and their restriction has a constitutional concept which has to be balanced between the interest of freedom, public safety and public policy etc. It has been held that the commitment for freedom of expression cannot be suppressed unless the public interest so demands. The anticipated danger of implementing the freedom should not be remote or far fetched. It should have proximate and direct nexus with the exercise of the restriction. The Supreme Court thereafter in the case of **N. K. Bajpai Vs. Union of India and another â (2012)4 SCC 653** while considering the question of restricting a Member of the Central Excise and Service Tax Appellate Tribunal from practicing in the Tribunal as an Advocate after his retirement, held that Part III of the Constitution is the soul of our Constitution. It is not only a charter of the rights that are available to Indian citizens, but is completely in consonance with the basic norms of human rights. However,exceptions apart, and restriction or power to regulate the manner of exercise of a right

would not frustrate the right itself and while considering the scope of restriction after taking note of principles laid down in the case of **S. Rangarajan** (supra) it has been held that the test of proximate and direct nexus with the exercise of freedom should be fulfilled while imposing a restriction. It is held that the Court should always keep in mind that the restriction should be imposed in a manner and to the extent to which it is inevitable in a given situation. The Court has to see as to whether the anticipated event would or would not create dangerous situation in public interest and thereafter, it has been held that no person can be divested of his fundamental rights and the test laid down is that restriction must be reasonable and should be related to the purpose mentioned in Article 19(2).

19. Similarly, while considering the question of restriction in the case of **State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and others â (2005)8 SCC 534** after considering the principles laid down in the case of **Kesavananda Bharati Vs. State of Kerala â (1973)4 SCC 225,** certain principles laid down by the Supreme Court in the case of **Pathumma Vs. State of Kerala â (1978)2 SCC Pg.1** has been reproduced by the Supreme Court and the reproduced portion pertains to the test and guidelines laid down indicating the particular circumstances with regard to evaluating as to whether the restriction is reasonable or not. In para 4 of the judgment rendered in the case of **Pathumma**

(supra) the following principles are laid down :-

> â□□(4) The following tests have been laid down as guidelines to indicate in what particular circumstances a restriction can be regarded as reasonable:
>
> (a) In judging the reasonableness of the restriction the court has to bear in mind the Directive Principles of State Policy. (Para 8)
>
> (b) The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirements of the interests of the general public. The legislature must take intelligent care and deliberation in choosing the course which is dictated by reason and good conscience so as to strike a just balance between the freedom in the article and the social control permitted by the restrictions under the article. (Para 14)
>
> (c) No abstract or general pattern or fixed principle can be laid down so as to be of universal application. It will have to vary from case to case and having regard to the changing conditions, the values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which must enter into the judicial verdict. (Para 15)

(d) The Court is to examine the nature and extent, the purport and content of the right, the nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit conferred on the person or the community for whose benefit the legislation is passed. (Para 18)

(e) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. (Para 20)

(f) The needs of the prevailing social values must be satisfied by the restrictions meant to protect social welfare. (Para 22)

(g) The restriction has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by the statute. In other words, the Court must see whether the social control envisaged by Article 19 (1) is being effectuated by the restrictions imposed on the fundamental right. However important the right of a citizen or an individual may be it has to yield to the larger interests of the country or the community. (Para 24)

(h) The Court is entitled to take into

consideration matters of common report history of the times and matters of common knowledge and the circumstances existing at the time of the legislation for this purpose. (Para 25)"

20. Thereafter, another judgment of Supreme Court in the case of **State of Kerala Vs. N. M. Thomas â□□ (1976)2 SCC 310** has been relied upon and the final principle laid down is that even though the State has a right to impose certain restriction in enjoyment of the fundamental right enshrined in the Constitution but the restriction imposed should pass a test of reasonableness and should be in the interest of general public. It has been held that each case has to be evaluated in its own merit and the question of reasonableness tested.

21. It is no doubt true that for justifiable reasons State Government can impose restrictions and when it is found that restrictions are necessary to prevent certain evil or ill to the society in larger public interest, the State is well within its right in imposing such restriction but for imposition of restriction these has to be a nexus with the object to fulfill and the reason and justification for imposition of such restriction should be reasonable and should not be arbitrary.

22. That being so, we are required to see as to whether the operation of the impugned clause and the act of the State Government in incorporating the aforesaid clause of the policy in question comes within the purview of imposing the same in the interest of general public, is a

reasonable restriction on the exercise of right and whether the enforcement of this restriction is justifiable on grounds of reasonableness, and fulfills the requirement as laid down in the cases referred to herein above. Except for contending in the return that the gross enrollment ratio in the State of M.P. with regard to Higher Education is very less compared to national average. Nothing is brought on record to say as to how and in what manner the establishment of an educational institute within the radius of 20 kms in a particular place enhances the educational enrollment ratio or in what manner it prevents the mushrooming of educational institutes. That apart, it seems that before imposing the aforesaid restriction no feasible study, expert opinion or research has been done by the State Government and without any supporting material the impugned restrictions have been imposed. Prima facie therefore, we are of the considered view that the restriction has been imposed without there being sufficient material to justify imposition of the restriction. Having so found, we now proceed to deal with the question of reasonableness of the restriction imposed.

23. In the District of Jabalpur it is an admitted position that there is no law institute imparting a course of study in B.A.LL.B. (Hons). If that be so, it is not known as to how the restriction imposed by State Government in establishing a Law institute imparting education in B.A.LL.B. (Hons) would come within the purview of

reasonable restriction and what is the nexus between the policy for prohibition and establishment of a law school in the area in question i.e. Jabalpur city. Similarly as indicated by Shri Datt in the case of Global Foundation the course of study proposed to be introduced by the aforesaid institute are Bachelor of Business Administration and Post Graduate Diploma in Yogic Science. According to the petitioners in the said case, there is no institute in the entire State of M.P. Which is imparting course of study in the aforesaid faculty. If these conditions are true then restricting an institute from imparting course of study only on the ground that there are other private or government college within radius of 20 kms would be prohibiting further development of education in the region and a education institute or society which wants to introduce new courses or enhancing the standard of education area would be prevented from doing so.

24. While imposing the aforesaid prohibition in such a wide term, various factors have not been taken note of. Like non availability of a particular course in a particular area, requirement for enhancing the standard of higher education in a particular area, the nature of colleges already functioning and a subjective satisfaction to find out whether the new college to be established is necessary in the area due to existence of similar colleges imparting education in the same course, the nature of college proposed to be established, the facilities provided

and the requirement of the area with reference to the proposal for establishment of a new college. These are all factors which have to be considered while granting or refusing permission to establish a college in a particular area. Therefore, when the mandate of Section 24 and 26 of the M.P. Vishwavidhyalaya Adhiniyam was to seek approval of the Commissioner, Higher Education, the legislative intention behind incorporating the aforesaid provision was to ensure that the Commissioner for Higher Education will subjectively analyze the proposal for establishment of an institute and after taking note of various relevant factors which are necessary to see whether a new institute in the area should be established, should either give or refuse approval. A prohibition so wide with no guiding principles, imposing a blanket prohibition in our view is clearly arbitrary and unreasonable. The Commissioner, Higher Education while considering the question of granting approval has to apply his mind, evaluate the request for establishment of the institute, analyze it in the backdrop of the purpose for which the institute is established, the Course of study to be imparted, the requirement of the area, existence of institutes similar in nature, their standard, requirement of general public at large, particularly with reference to the student community, social and economical background of the area and on subjectively analyzing all the relevant factors a decision has to be taken whether permission should be granted or not. Without such a

scrutiny of the request for permission, application of mind, recording of reason in each case after proper consideration, a blanket order prohibiting establishment of any institute within a radius of 20 kms in our view is nothing but an arbitrary and unreasonable decision giving uncontrolled, unlimited and wide power to the authority for acting in a manner, which can be discriminatory, arbitrary and which would be detrimental to the interest not only to development of the area but also not in accordance to the requirement of law. That being so, we find that the restrictions imposed does not meet the requirement of the law. Prescribing such a unreasonable restriction totally uncontrolled by any guidelines or rules is apparently unconstitutional.

25. Now, we may consider the third question as to whether the restriction as envisaged under Article 19(6) can be imposed without authority of law by an executive instruction, policy or circular? As already indicated herein above Article 19(6) of the Constitution empowers the State Government to impose or prevent reasonable restriction either by any existing law or by making any law imposing the same in the interest of justice. The question is as to whether without making any law or without any statutory backing can such a restriction be imposed by an executive order ? This question is again considered by the Supreme Court in the case of **State of Bihar and others Vs. Project Uchcha Vidya, Sikshak Sangh and others** (supra) and it has been held by the

Supreme Court that a citizen cannot be deprived of a right available to him under Article 19 except in accordance with law and the requirement of law for the purpose of Clause 6 of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution. Therefore, from the aforesaid, it is clear that for imposition of restriction as contained in Article 19(6) it has to be done not by a policy decision or an executive order but only by a law brought into force for the said purpose. The same principle is laid down by the Supreme Court in the case of **State of Madhya Pradesh & Anr. v. Thakur Bharat Singh - AIR 1967 SC 1170.** It has been held in the aforesaid case that all executive action which operates to the prejudice of any person must have the authority of law to support it. Accordingly, it is clear from the aforesaid enunciation of law that even for imposing any restriction as is permissible under Article 19(6) of the Constitution, the same has to be done by enacting the law or on the basis of alternate existing law. As far as the Circular is concerned, it is also executive in nature. It is not issued on the basis of any statutory or legal provision existing as on date which has the force of law. Nothing is brought to our notice on the basis of Madhya Pradesh Vishwavidhyalaya Adhiniyam or any law governing regulation for establishment of a educational institute which permits the State Government to impose such a restriction. On the

contrary the provisions of Section 24 and 26 of the Vishwavidhyalaya Adhiniyam relied upon by Shri N. S. Ruprah, only permits approval to be obtained from the Higher Education Department. Accordingly, we have to hold that a executive order cannot be issued for imposing a condition for restriction of a fundamental right as already held by the Supreme Court in the case of **State of Bihar and others Vs. Project Uchcha Vidya, Sikshak Sangh and others** (supra).

26. That being so, we are of the considered view that the restriction imposed is nothing but an arbitrary decision and it cannot be given effect to. Learned counsel also submit that in certain places like Ratlam and Chhatarpur even though such a policy was imposed, permission has been granted for establishment of various institute. Prima facie therefore, we are of the considered view that the restriction imposed as indicated herein above, is nothing but an arbitrary and unreasonable restriction implemented by the State Government in a hurry without conducting proper research, fact finding enquiry and without getting any expert opinion and is brought into force in such a wide term that its misuse is more apparent than achievement of the purpose for which it has been introduced.

27. Accordingly, we are unable to uphold the aforesaid policy. We quash the same and grant liberty to the State to consider imposition of such a condition after undertaking proper step for getting statistics facts and

figures and thereafter impose restriction by specifying the grounds, the procedure for imposing such a restriction and also classifying the category in which the restriction can be imposed, a blanket prohibition for all courses and for all institutes in the manner done cannot be justified and such a blanket prohibition cannot be upheld by us.

28. In view of above, we allow this petition, quash the impugned clause and policy and direct the respondents to permit the petitioners to admit students to the courses in question after granting them due approval and sanction in case they fulfills all other conditions required under the statutory rules or policy except the impugned clause.

29. Accordingly, this petition stands allowed and disposed of.

(RAJENDRA MENON)
JUDGE

(SUSHIL KUMAR GUPTA)
JUDGE