**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Special Civil Application Nos. 10199, 10557, 10703, 10843, 11091, 11100, 12084 and 12141 of 2011

Decided On: 02.12.2011

Appellants: **Prajapati Paresh Govindbhai and Others**
**Vs.**
Respondent: **State of Gujarat through Principal Secretary and Ors.**

**Hon'ble Judges/Coram:**
Honourable The Acting Chief Justice Mr. Bhaskar Bhattacharya and Honourable Mr. Justice A.L. Dave

**JUDGMENT**

**Honourable The Acting Chief Justice Mr. Bhaskar Bhattacharya**

1. All these Special Writ-Applications were heard analogously as the subject-matter of the dispute involved in these applications is identical.

2. The prayer of the writ-petitioners before this Court is for issue of a writ of certiorari and/or mandamus or any other appropriate writ or supervisory writ, order or direction after holding that the decision of the State-respondents to exclude and not to permit the students who have graduated with Sociology as principal subject from appearing in Teachers' Eligibility Test ('TET') for higher primary education in the State of Gujarat, is illegal and unconstitutional. The writ-petitioners have also prayed for granting permission to the students who have graduated with Sociology as their principal subject to appear in the TET for higher primary education in the State of Gujarat to be conducted on August 28, 2011 and for extending the date of on-line registration by a week starting from August 6, 2011.

3. The case made out by the writ-petitioners may be summarized thus:

(a) Thewrit-petitioners are the students who have graduated with Sociology as their principal subject at the graduation level and are desirous of appearing in the TET. Some of the petitioners have also done their post-graduation in Sociology and have also passed B. Ed with method Social Science, as according to them, Sociology is an integral part of Social Sciences across the world. Many of the writ-petitioners also hold the diploma of PTC.

(b) According to the writ-petitioners, the Right of Children to Free and Compulsory Education Act, 2009 ('Act') was introduced in the year 2009 and pursuant to the provision of the Act, the National Council for Teachers' Education ('NCTE') was entrusted with the obligation to lay down the standard of education for Teachers in the schools as well as in the colleges all over India. The writ-petitioners assert that the NCTE has laid down the norms by issuing necessary notification which indicates that one has to necessarily pass TET in addition to holding a Degree of Graduation or equivalent Degree along with B. Ed. or PTC to become a teacher in the school.

(c) According tothe guidelines issued by the NCTE, the minimum qualification for a person to be eligible for appointment as Teacher in Class-1 to Class-8 in a school is that in addition to other qualifications prescribed, he must pass TET.

(d) The obligation to conduct TET is, however, cast upon the State Government in respect of the schools with which the writ-petitioners are concerned through its Department of Education. NCTE does not by itself conduct such test and it lays down only the eligibility criteria, qualifications and issues guidelines through notifications.

(e) In the month of April-May, 2011, the State-respondents laid down eligibility criteria to appear in the TET in the State of Gujarat for the prospective teachers for higher primary education, particularly meant for Standards 6 to 8. It appears that all the subjects which are part and parcel of Social Sciences were excluded and the effect of such notification was that more than 50,000 students were made ineligible to appear even in the TET though they were otherwise qualified in accordance with the qualifications fixed by the NCTE. According to the said criteria fixed by the State-respondents, only those who have graduated with the following subjects are eligible to appear in the TET:

i. Mathematics

ii. Science

iii. English

iv. Hindi

v. Sanskrit

vi. Gujarati

(f) The State-respondents, for the reason best known to them, decided to exclude the students who have graduated in the following subjects from appearing at the TET:

i. Sociology

ii. Political Science

iii. History

iv. Geography

v. Civics

vi. Economics

vii. Psychology

viii. Philosophy

(g) Being aggrieved by such exclusion, some students, 93 in number, who had graduated with Sociology, Political Science, Economics, History, Civics, and Geography, filed Special Civil Application No.6737 of 2011 and Special Civil Application No.6748 of 2011 challenging the eligibility criteria for TET so fixed and seeking direction for inclusion of Social Sciences.

(h) During the pendency of those petitions, affidavits were filed and such criteria were sought to be justified by the State Government primarily on the following grounds:

i. that priority should be given to the students who have graduated in Mathematics, Science, English, Hindi, Gujarati and Sanskrit, and

ii. the respondents did not require at the moment primary teachers who had graduated with subjects of Social Sciences as their principal subject.

(i) The aforesaid contentions of respondents Nos. 2 and 3 were prima facie turned down by the Division Bench by its order dated 2nd June 2011 by making the following observations:

Having considered the rival contentions of the respective parties, prima-facie, I am of the opinion that the decision of the respondents in not accepting the application forms online of the petitioners and other similarly situated candidates who have graduated with Social Science as the main subject does not appear to be just and proper. Teacher Eligibility Test is somewhat like an open entrance test. Based on the result of the TET, ultimately, as and when vacancies arise, appointments to the post of Primary Teachers are given. I can understand that the candidates may not have any say so far as the appointment is concerned. But, at least, the respondents ought to have permitted them to appear in the TET to be conduced on 12th June 2011 together with other applicants who are going to appear in the said test. The only ground appears to have been assigned in the reply is the fact that as there is no immediate need of primary teachers with the subject of Social Science as the main subject, the petitioners and other candidates with the subject of Social Science have been omitted. Further, according to the respondents as many candidates are going to appear in the TET, it will not be feasible to conduct the exams along with the applicants of subject of Social Science. This hardly can be a ground to keep such candidates away from the TET.

(j) During the pendency of those two writ-petitions, the respondent Nos.2 and 3 gave an undertaking before this High Court based on order dated 2nd June 2011 and those petitions were disposed of. The order of this court recording the undertaking or the assurance given is quoted below:

However, learned AGP Ms. Bhatt, upon instructions from Shri R.C. Raval, Director of Primary Education, State of Gujarat, Gandhinagar and Mr B.C. Solanki, Secretary, State Examination Board, State of Gujarat, Gandhinagar as well as Mr F.P. Halani, Chairman, State Examination Board, State of Gujarat, who are present in the Court today, tried to explain the difficulties which they are likely to face if the petitioners and other similarly situated candidates are permitted to appear on 12th June 2011. Further, a statement is being made today before this Court by Shri R.C. Raval, Director of Primary Education, State of Gujarat, Gandhinagar that the TET of the petitioners and other similarly situated applicants who have graduated with Social Science as the main subject shall be definitely conducted on or before 31st August 2011. The officers who are present in the Court today have assured the Court that they shall not resile from the statement being made today. I am sure, this situation would not have arisen if little prudence would have been exercised in taking the decision. This confusion could have been easily avoided resulting in heart burning at the end of the petitioners and other candidates.

(k) Thereafter, two affidavits had been filed by the respondent Nos.2 and 3 reiterating on oath their assurance that the students of Social Sciences would be permitted to appear in the TET.

(l) Subsequently, new eligibility criteria were announced on 26th July 2011, which is the subject-matter of these writ-applications and the same declared that the students who have graduated in the following subjects would only be eligible to appear in the TET:

i. Civics (B.A.)

ii. Economics (B.A.)

iii. Geography (B.A.)

iv. History (B.A.)

v. Political Science (B.A.)

vi. Economics (B.Com.)

vii. Civics (B.R.S.)

viii. Economics (B.R.S.)

ix. Geography (B.R.S.)

x. History (B.R.S.)

xi. Political Science (B.R.S.)

(m) However, the subject of Sociology was excluded whereas all other subjects of Social Sciences were included.

(n) In the text book of Gujarat State Board of School Standard 9, following statements are recorded while describing the scope of Social Science:

In this book a well coordinated approach based on new syllabus has been adopted for the first time. It mainly consists of subject matters of various Social Sciences like, History, Civics, Geography, Economics and Sociology. Attempt has been made to present various aspects of human society in reference to place and time and concerns keeping relations between them in mind. An attempt has also been made to reduce the load of subject matter and hypothesis. Four different books on Social Sciences have been incorporated in a single textbook as an independent subject of study.

(o) The contention of the respondents that Sociology is not taught between Standards 6 and 8 and therefore, they do not require teachers with Sociology as their principal subject and consequently, they do not want to allow the students who have graduated with Sociology as principal subject to appear in the entrance examination is not tenable because what is being imparted in the name of Social Science to the students between Standard 6 and Standard 8 is nothing but Sociology along with History and Political Science.

(p) Exclusion of Sociology and not permitting the students of Sociology to appear in the TET is a fatal discrimination and arbitrary and irrational and is thus violative of Article 14of the Constitution of India.

(q) There is no rational classification for depriving the students with Sociology from appearing in the TET when such decision has no connection with the notification issued by NCTE or the National Education Policy. Therefore, the impugned decision is contrary to the Act and the policy of NCTE and, therefore, ultra vires the Act.

(r) Debarring thepersons from appearing in the TET also has the impact on their right to get employment in future. Therefore, the same is violative of Articles 16, 19 and 21 of the Constitution.

(s) Right tooccupation and earn livelihood cannot be deprived by executive fiat which can be effected only by a competent legislation which is able to survive the test of constitutionality.

(t) More than 50% of the students who have graduated in Sociology are women and the exclusion of them will, ultimately, disentitle substantial number of educated women in the State of Gujarat from getting employment in schools.

4. The aforesaid applications have been opposed by the State-respondents and their objections may be epitomized thus:

(a) The Parliament of India with a view to give effect to Fundamental Right of Free Elementary Education has passed the Act in the year 2009 and this Act has come into effect on 1st April 2010. In Sections 19 and 25, the Act mandates that all the schools have to follow certain norms and standards, which have been mentioned in the Schedule of the Act.

(b) The norms relating to the numbers and category of the teachers in Primary for class 1 to 5 and upper Primary for class 6 to 8 which are quoted below are relevant:-

The Schedule (See Sections 19 and 25)
Norms and Standards for A School

|  |  |  |
| --- | --- | --- |
| Sr No | Item | Norms and Standards |
|   | Number of teachers: | Admitted children Up to Sixty | No. of teachers Two |
|   | (a) For first class to Fifth class | Between Sixty-one to ninety | Three |
|   |   |   |   |
|   |   |
| Between Ninety-one to one hundred and twenty | Four Five |
| Between One hundred and twenty-one to two hundred | Five plus one Head teacher |
|   |   | Above One hundred and fifty children Above Two hundred children | Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty |
|   | (b) For sixth class to eight1 class | (1) At least one teacher per class so that there shall be at least one teacher each for (i) Science and Mathematics; (ii) Social Studies; (iii) Languages. |
|   |   | (2) At least one teacher for every thirty-five children. |
| (3) Where admission of children is above one hundred -(i) a full time head-teacher; (ii) part time instructors for |
| (A) Art Education; (B) Health and Physical Education; (C) Work Education. |

(c) It appears from the above norms that in Primary classes (class 1 to 5), the Schedule provides only the number of teachers based on the number of children in the primary sections and does not provide for any subject-wise or group-wise teachers. However, with respect to upper primary classes, the Schedule of the Act lays down not only the number of teachers based on total number of students in the Upper Primary sections but also provides for the following three categories of teachers :

i. Science and Mathematics;

ii. Social Studies;

iii. Languages

The Schedule also provides for part-time teachers with respect to Art Education, Health and Physical Education in case the total number of children in Upper Primary Classes exceeds one hundred.

(d) According to Section 23 of the Act, only those persons possessing such minimum qualifications as laid down by an academic authority, authorized by the Central Government by notifications, shall be eligible for appointment as a teacher. The Central Government has notified NCTE as the academic authority for prescribing the minimum qualifications for various categories of teachers. NCTE under the authority of the Act has, vide its notification dated 23rd August 2010, laid down the minimum qualification for various categories of teachers. The notification provides minimum 12th Standard (known as Senior Secondary or Higher Secondary or by other nomenclatures in various States) along with 2 years Diploma (PTC in the State of Gujarat) for being a teacher in the Primary Sections. It has prescribed minimum qualification of graduation along with PTC or B. Ed. as training qualification for being teacher in upper Primary Sections.

(e) Though thenotification of NCTE dated 23rd August 2010 only mentions B.A. / B.Sc. and also B. Com. (by subsequent amendment) as the minimum educational qualification, it is necessary to read the same along with the requirements of teachers prescribed in the Schedule of the Act. When the qualification of graduation is read along with the category of teachers of Upper Primary Sections, it would come out that the teachers for three categories are required to have educational qualifications of graduation in those subjects which are relevant for these categories. The candidates who have not taken Science subject in graduation level cannot lay claim to become a teacher for the Science and Mathematics category. Similarly, a person, who has not taken any language subject at graduation level, cannot claim to have the eligibility to become a language teacher. Likewise, the candidates who have not taken Social Science subject does not have the eligibility to be a Social Science teacher.

(f). The requirement of graduation for becoming a teacher for Upper Primary Classes has a close nexus with the requirement of depth of knowledge in the subjects which are required to be taught at the Upper Primary level. Had the requirement of adequate knowledge in particular subjects not been the intention of the Act, it would not have provided three separate category of teachers and would have restricted the norms in the Upper Primary also to the number of teachers only as in case of primary section and not provided for group of subject-wise teachers. The fact that norms provide for group of subject-wise teachers implies that qualifications in only those subjects which are relevant for Upper Primary Section are to be considered.

(g). The minimum qualification prescribed by the notification of NCTE has two components; first, the educational qualification which is graduation in relevant subjects, and second, the training qualification which is B. Ed. or PTC. The educational qualification of graduation has been prescribed with a view to ensure that the candidates desirous of becoming teacher in Upper Primary Section should have the depth of knowledge not limited to the standards of 6 to 8 but must have the required depth in the subjects up to the graduation level to enable him or her to fully comprehend the intricacies of the subject. Thus, unless a candidate has done the graduation in the relevant subjects, they cannot be considered educationally competent to teach those subjects in the Upper Primary Section. Similarly, the training qualification of B. Ed or PTC has been prescribed to ensure that the prospective teacher has acquired and learnt the pedagogy suitable for those categories of students looking at their level of mental development and psychology. Both qualifications are required to be possessed separately and one or part of the contents of one qualification is not the substitute for the other or part of the other.

(h). The curriculum, the subjects and the level of complexity to which the chosen subjects should be included in the curriculum are decided by an expert body, viz. Gujarat Council for Educational Research and Training (GCERT) based on the National Curriculum Framework developed by the national level expert body, viz. National Council of Educational Research and Training (NCERT). Both these organizations carry out wide-ranging consultations, workshops, group discussions for years together with experts, field level functionaries like teachers etc. before finalizing the curriculum. They keep in mind the factors like children-age-group, their mental and psychological development, the requirement of knowledge of various fields and the level of complexity to which each subject should be taught at various stages of education. If the relevance and the question as to why certain subjects have been included and other subjects excluded from the curriculum of Upper Primary schooling is to be adjudicated, these bodies, i.e. NCERT and GCERT should be made parties to the present writ-applications.

(i). The books and curriculum of Social Studies in classes from 6 to 8, contain the chapters of subjects of History, Geography, Political Science (also known as Civics) and Economics. None of the chapters or any content of any chapter has any relevance or reference to any other subjects, viz. Sociology, Philosophy or Psychology or any other subject. The subjects of Sociology, Philosophy and others though are also part of the widen canvass of subjects known as Social Science, they are not relevant so far as the contents of the studies in the Upper Primary Section are concerned. Those subjects are introduced at higher levels of education and have relevance in various other fields but they are not relevant for Upper Primary teaching. The candidates belonging to those subjects cannot do justice to the requirement of the students of Upper Primary sections. Similarly, the training qualification covers the method of teaching relevant to that category of children which was fixed by taking into consideration their mental development and child psychology, and for that reason, a candidate having qualification of B. Ed is not qualified to teach in Primary Sections as his training in B. Ed has been designed looking to the children's mental development and psychology of Upper Primary and Secondary section students.

(j). Although the subjects of Psychology, Philosophy and Home Science may seem to be relevant subjects but that portion of Psychology, Philosophy and Home Science which is relevant to particular category of children is included and taught as part of training qualification. The requirement of educational qualification fulfills the need of knowledge of subjects which are taught at those levels and the training qualifications satisfies the requirement of the method of teaching befitting the mental and psychological development of the children of those ages. One qualification cannot be used for the fulfillment of other requirement.

(k). The students coming to the Government Schools are mostly those under-privileged children who have no access to good private schools, either due to non-availability of private schools in their area or due to poor financial condition of their parents. Most of these children also do not have 'out of school support' from either their parents or tuition which can substitute or supplement the deficiency of school teaching. However, those children also have the fundamental right to quality elementary education to such extent as may be possible under the circumstances and consequently, the State has the duty to frame such policies which facilitates the requirements of good qualification education.

(l). The decision as to the subjects which are required to be included as the qualification of Upper Primary section for different category of subject-teachers is the policy prerogative of the State Government and to include only the relevant subjects has close nexus and direct rational with the requirement of education at those levels, and does not call for interference by this Court in its extra-ordinary jurisdiction. The inclusion of only some subjects and exclusion of the other is based on intelligible differentia.

The writ applications, therefore, are liable to dismissed.

5. After hearing the learned counsel for the parties and after going through the materials on record, we find that according to Section 23 of the Act, a person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher. There is no dispute that pursuant to such power conferred under the Act, NCTE, the body duly authorized by Central Government, by way of notification dated August 23, 2010 has prescribed the minimum qualification of the candidates and for the posts of teacher in upper primary section with which we are concerned, passing of B. A, B.SC and B. Com and in addition, passing of the examination of TET is the minimum qualification. The NCTE has not, while prescribing such qualifications, put any restriction on the subjects of the courses with which one is required to study while acquiring the degree of B.A, B. Sc or B. Com and thus, any person having passed either B.A or B. Sc or B. Com from any recognized University is lawfully entitled to sit for the TET examination irrespective of the subjects with which one studied in the degree course.

6. By a subsequent notification dated February 11, 2011 the NCTE has issued the guidelines for the examination of the TET to be conducted by the State. Clause 5 of the notification prescribes the eligibility for appearing in TET which is as follows:

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

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

ii. A person who is pursuing any of the teacher education courses (recognized by the NCTE or the RCI, as the case may be) specified in the NCTE Notification dated 23rd August 2010.

iii. The eligibility condition for appearing in TET may be relaxed in respect of a State/UT which has been granted relaxation under sub-section (2) of section 23 of the RTE Act. The relaxation will be specified in the Notification issued by the Central Government under that sub-section.

7. According to the said guidelines, a person intending to be a teacher for class VI to VIII should appear at the examination of paper II consisting of 150 marks for duration of one hour and a half and the structure and contents of such examination will be as follows:

Paper II (for classes VI to VIII); No. of MCQs - 150;

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

Structure and Content

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

(ii) Language I (compulsory) 30 ' 30 '

(iii) Language II (compulsory) 30 ' 30 '

(iv) (a) For Mathematics and Science teacher: Mathematics and Science - 60

MCQs of 1 mark each

(b) For Social studies teacher: Social Studies - 60 MCQs of 1 mark each

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

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

• The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning, relevant to the age group 11-14 years. They will focus on understanding the characteristics, needs and psychology of diverse learners, interaction with learners and the attributes and qualities of a good facilitator of learning.

• The test items for Language I will focus on the proficiency related to the medium of instruction, as chosen from list of prescribed options in the application form.

• The Language II will be a language other than Language I. The person may choose any one language from among the available options and as in the specified list in the application form and attempt questions in the one indicated by the candidate in the application form by him. The Test items in Language II will also focus on the elements of language, communication and comprehension abilities.

• The test items in Mathematics and Science, and Social Studies will focus on the concepts, problem solving abilities and pedagogical understanding of these subjects. The test items of Mathematics and Science will be of 30 marks each. The test items shall be evenly distributed over different divisions of the syllabus of that subject as prescribed for classes VI-VII by the appropriate government.

• The questions in the tests for Paper II will be based on the topics of the prescribed syllabus of the State for classes VI-VII but their difficulty standard as well as linkages could be up to the senior secondary stage.

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

8. According to those guidelines, the persons obtaining 60% and above in the said examination should be treated to have passed TET subject to the following relaxation:

School managements (Government, local bodies, government aided and unaided)

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

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only of the eligibility criteria for appointment.

At this stage, it will be profitable to refer to clause 10 of the guidelines framed by NCTE which provides for applicability of the result of the TET conducted by the Central Government or the State Government, as the case may be, to the process of appointment of the teachers in various types of schools as provided therein and the same is quoted below:

Applicability

(a) TET conducted by the Central Government shall apply to all schools referred to in sub-clause (I) of clause (a) of section 2 of the RTE Act.

(b) TET conducted by a State Government/UT with legislature shall apply to:

(i) a school of the State Government/UT with legislature and local authority referred to in sub-clause (I) of clause (n) of section 2 of the RTE Act; and

(ii) a school referred to in sub-clause (ii) of clause (n) of section 2 of the RTE Act in that State/UT.

A school at (i) and (ii) may also consider eligibility of a candidate who has obtained TET Certificate awarded by another State/UT with legislature. In case a State Government/UT with legislature decides not to conduct a TET, a school at (i) and (ii) in that State/UT would consider the TET conducted by the Central Government.

(c) A school referred to in sub-clause (iv) of clause (n) of section 2 of the RTE Act may exercise the option of considering either the TET conducted by the Central Government or the TET conducted by the State Government/UT with legislature.

9. Section 2(n) of the RTE Act defines school as follows:

(n) 'school' means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

iv.an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

10. The terms 'appropriate government' has been defined in Section 2(a) of the Act and is as follows:

(a) 'appropriate Government' means:

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of-

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

11. From the aforesaid provisions of the Act and the guidelines framed by NCTE, it appears that the minimum educational qualification for appearing at the TET cannot be altered by the State Government by adding to or deleting from the ones prescribed by NCTE as provided in the Act and there is no dispute that graduation in any of the three streams - Science, Arts or Commerce, is the minimum educational qualification for becoming a teacher in any of the subjects in Upper Primary section without any restriction on the subjects. By the decision impugned in these writ-applications, the State Government has disqualified a section of the applicants who are graduate and otherwise eligible for appearing at the TET in accordance with the norms fixed by the NCTE although the State has no right to disqualify an otherwise qualified candidate eligible to appear under the Act for the purpose of appearing at the TET.

12. It appears that for the schools in the State of Gujarat, the State Government is entitled to hold examination of TET and prepare question papers based on the guidelines given by the NCTE. We have already pointed out that Paper-II of the examination is meant for the persons who intend to be teachers for classes 6 to 8. The total number of marks for such examination is fixed by the guidelines. The said Paper-II consists of three compulsory subjects for all the applicants, viz: Child Development and pedagogy, language-I and language-II, each consisting of 30 marks. For those candidates who want to become teachers for Science or Mathematics, additional 60 marks are allotted for the subjects of Mathematics and Science whereas for a person intending to be a teacher of Social Studies, additional 60 marks are fixed for Social Studies. A candidate, who wants to be a Teacher for any other branch than Science or Mathematics or Social studies, is obliged to appear and opt for either Mathematics and Science or Social Studies for additional 60 marks as indicated above according to his/her wishes.

13. Therefore, even a graduate in Science with mathematics may opt for becoming a teacher of Social Studies or any other subjects whereas a graduate in Arts or Commerce subjects may also choose the subject of Mathematics and Science provided however that those candidates, in addition to the compulsory subjects, must be prepared to sit in the examination for the relevant optional subjects containing 60 marks and they are required to compete in such examination with the candidates who are graduate in the relevant subjects.

14. We do not find any substance in the contention of the learned counsel for the State that a person who has become a graduate by taking Sociology as the principal subject cannot be fit for the TET. Even if a person having graduation in Arts stream without Science and Mathematics as principal subjects undertakes the optional subjects of Mathematics and Science and becomes successful in the examination of paper-II, he can be selected in preference to other candidates having obtained lesser marks in the total subjects notwithstanding the fact that those persons were graduated in science. The pattern of choice of optional subject disclosed in the guidelines of NCET does not stand in the way of a candidate in choosing any other subject than the one with which he undertook the graduation course.

15. We, therefore, find that the State Government is entitled to set appropriate questions in paper-II by following the guidelines issued by the NCTE but has no right to disqualify an otherwise duly qualified candidate having the required qualification fixed by NCTE from appearing in the said examination. In other words, TET is the forum, where any candidate having the required minimum qualification fixed by NCTE, can justify his ability to appear in any subject he likes by competing with others. If an Arts graduate without Mathematics and science in his graduation level takes the risk of competing with the science graduates by taking the option of 60 marks in science and Mathematics subjects out of total 150 and becomes successful, the State Government cannot refuse his appointment on the ground that the science graduates having obtained lesser marks would be more effective. Similarly, a science graduate can opt for social studies by proving his excellence in TET on basis of his knowledge of social studies acquired at the Higher Secondary Level.

16. By imposing restriction in the matter of qualification for sitting in the TET, the State Government has acted in violation of the Act as well as the guidelines framed by NCTE and thus, the aforesaid decision, which is the subject-matter of these writ-applications, is liable to quashed being violative of the provisions of the Act itself which does not authorize the State Government to deviate from the qualification fixed by the NCTE for becoming a teacher in upper primary section.

17. Since we propose to allow these writ-applications on the ground of the illegal decision of the State Government disqualifying the qualified candidates by acting ultra vires the Act, we do not enter in to other points raised by the writ-petitioners, such as, whether the decision impugned violates Articles 16, 19 or 21 of the Constitution of India or whether the subject of social studies taught in the upper primary classes is part of sociology. For the selfsame reason, the writ-applications cannot be held to be 'not maintainable' in the absence of NCERT and GCERT.

18. We, therefore, find substance in these writ-applications and hold that the decision of the State Government debarring some of the candidates having the requisite qualifications of passing B.A., B.SC. or B.Com., fixed by NCTE merely on the ground that some specified subjects were not their principal subject at the graduation level is liable to be set aside as those restrictions are violative of the provisions of the Act being beyond the power of the State Government to impose.

19. We, therefore, allow all these writ-applications and hold that any graduate, whether he is B.A, or B.Sc., or B. Com., can appear at the TET examination and is entitled to get appointment if the said candidate becomes successful in the merit list on the basis of his performance in the TET based on the guidelines prescribed by the NCTE. The persons who have been permitted to appear in the last TET by virtue of the interim order passed in these applications, though had no required qualification as per the impugned decision of the State Government dated July 26, 2011, will be entitled to be considered for appointment in accordance with their performance reflected in the merit list if they had the requisite qualification fixed by NCTE.

20. We make it clear that the persons, who have not appeared in the last TET examination, will not get any benefit for being considered in this year by taking aid of this order, but will be entitled to appear in the TET for the subsequent years.

21. All the writ-applications are thus disposed of with the above directions. In the facts and circumstances of the case, there will be no order as to costs.