**IN THE HIGH COURT OF RAJASTHAN**

D.B. Civil Writ Petition No. 3068/2011

Decided On: 13.04.2011

Appellants: **Ritesh Tripathi and Ors.**
**Vs.**
Respondent: **State and Ors.**

**Hon'ble Judges/Coram:**
Dinesh Maheshwari and C.M. Totla, JJ.

**JUDGMENT**

1. On the mention being made, the matter has been permitted to be placed on Board today.

2. The Petitioners in this writ petition seek to question the eligibility criteria as laid down by the National Council for Teacher Education (‘the National Council’ hereafter) in exercise of powers under Sub-Section (1) of Section 23of the Right of Children to Free and Compulsory Education Act, 2009 (‘the Act of 2009’ hereafter) in a notification issued on 23.08.2010 and published in the Gazette on 25.08.2010 (Annex. 4); and have prayed for the following reliefs:

A/ By an appropriate writ order or direction, the Gazette notification dated 23.8.2010 (Annex. 4) may kindly be quashed and set aside. To the extent that it debars the holder of qualification of graduation in Commerce as ineligible for TET.

B/ By an appropriate writ, order or direction, the Respondents may kindly be directed to consider the Petitioners eligible for TET with B.Com. as graduation subject in combination with B.Ed.

C/ By an appropriate writ, order or direction, the guidelines/advertisement dated 30.3.2011 (Annex.5) for RTET 2011 may kindly be quashed and set aside to the extent that it disqualifies the Petitioners on account of B.Com. With B.Ed.

D/ Any other appropriate writ, order or direction which this Hon’ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

E/ Writ petition filed by the Petitioner may kindly be allowed with costs.

3. This writ petition was initially filed as a "SB Civil Writ Petition" and was placed before the learned Single Judge of this Court for admission. However, the learned Single Judge, while taking up this writ petition on 11.04.2011, formed an opinion that the National Council was exercising legislative function of prescribing the qualification as per Section 23 of the Act of 2009; and construed the impugned notification as an order of legislative nature. The Hon’ble Single Judge, thus, was of opinion that the matter was required to be placed before a Division Bench in terms of the order issued by Hon’ble the Chief Justice on 28.02.2011 read with the order dated 18.03.2011. The learned Single Judge observed and ordered as under:

As per Chief Justice's order dated 28.2.2011 read with order dated 18.3.2011 the cases challenging the vires of any act or statute or any order of legislative nature or rule or regulation made under any act or statute shall be heard by Division Bench.

In this petition for writ, a challenge is given to Notification issued as per the provisions of Sub-rule (1) of Rule 23 of the Right Of Children to Free and Compulsory Education Act, 2009 prescribing minimum qualifications for facing Teachers Eligibility Test. As per Section 23 of the Act of 2009, any person possessing such minimum qualification as laid down by the academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a Teacher. In the instant case, such academic authority is the National Council for Teachers Education. The National Council as a matter of fact is exercising legislative function of prescribing the qualification as per Section 23. Thus, the Notification dated 25.8.2010 is an order of legislature nature, therefore, its validity can only be examined by Division Bench.

Let this writ petition be listed for before Division Bench.

Learned Counsel for the Petitioner is directed to satisfy all the necessary requirements to place the record of case before Division Bench during the course of the day.

4. The said order dated 28.02.2011 whereby certain matters have been directed to be placed before the Division Bench reads as under:

It is hereby ordered that the cases challenging the vires of any act or statute or any order or rule or regulation made under any act or statute shall be heard by Division Bench.

This order will be applicable at the principal Seat of Judicature for Rajasthan at Jodhpur and Bench Jaipur.

5. The expression "any order" as occurring in the above quoted order was clarified by the subsequent order dated 18.03.2011 as being such an order which is "of legislative nature" in the following terms:

In continuation to the earlier Order No. RHC/DR(J)/2011/286, dated 10.03.2011 regarding hearing of vires matters by Division Bench, it is hereby clarified that the word "any order" appearing in said order relates to "any order of legislative nature.

6. Though the learned Single Judge has directed this matter to be placed before the Division Bench but, in our opinion, the purport and effect of the aforesaid orders dated 28.02.2011 and 18.03.2011 does take within their sweep the matters of the present nature.

7. The impugned notification has, of course, been issued by the National Council pursuant to the authority available with it per Sub-section (1) of Section 23 of the Act of 2009 and thus, the said notification has the legislative sanction and authority behind it but then, the notification itself is not of legislative nature nor partake the character of any such rule or regulation or order as envisaged by the aforesaid two orders issued by Hon’ble the Chief Justice.

8. The said orders dated 28.02.2011 and 18.03.2011, in our opinion, essentially relate to such kind of matters where the vires of any particular Act or Rule or Regulation or the like is in challenge. The expression "order of legislative nature" takes it colour and meaning from the other expression used in the said orders on the basic principle of Noscitur a sociis. The said orders as issued by Hon’ble the Chief Justice, in our opinion, envisage that such matters are to be placed before a Division Bench where constitutionality/vires of any particular piece of legislation, be it in the nature of primary legislation or delegated one is in question. We may notice that there are several Orders ‘of legislative nature’ issued by the Government in the nature of laws; say for example, several Control Orders issued under the Essential Commodities Act, 1955. Such legislative nature ‘Orders’ may fall within the purview of the said orders issued by Hon’ble the Chief Justice but not the notification in question.

9. We may add that any body or authority acting under the statutory powers would obviously be issuing several administrative/executive orders with reference to the statutory power available with it and the authority granted to it by such statute. However, all such actions are not ‘of legislative nature’; rather they follow the legislative nature orders or rules or regulations. They are consequential to the legislative nature orders and themselves are not legislative in character.

10. The impugned notification, in the present case, is of the same nature that follows a statutory provision and which, in our opinion, is itself not of legislative nature.

11. Thus, in our opinion, this matter does not fall within the purview of the aforesaid orders dated 28.02.2011 and 18.03.2011; and is cognizable by the learned Single Judge. Hence, this matter be placed before the learned Single Judge.

12. For the urgency shown, the learned Counsel for the Petitioner may make a mention for taking up of the matter before the appropriate Single Bench.

13. A copy of this order be also placed on the record of CWP Nos. 3061/2011 & 2584/2011 wherein too the learned Single Judge had passed the similar nature orders but these matters shall now be governed by the instant order.