
(2011) 08 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (C) No"s. 6382, 6384, 6939 of 2011

Dipesh Ku. Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 11, 23(1)
Constitution of India, 1950 — Article 14

Citation : (2011) 2 ILR (Ori) 249

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The common question involved in these three writ petitions is whether the All India Council for Technical Education ("AICTE" for short) was justified in fixing the minimum eligibility criteria of 50% marks at the qualifying examination for general candidates and 45% for reserved category, for admission to Under-Graduate Degree Courses in Engineering & Technology and Post-Graduate Degree and Post-Graduate Diploma Courses in MBA, MCA and similar courses, for the academic year 2011-12 and the Orissa Joint Entrance Examination, 2011 ("Orissa JEE-2011" for short) in implementing the same for the current academic session 2011-2012.

2. W.P.(C) No.6382 of 2011 has been filed by some students aspiring for admission to Post Graduate Degree and Diploma Courses like MBA, MCA and other similar courses. W.P.(C) No.6384 of 2011 has been filed by some of the un-aided private Colleges imparting professional courses like MBA and MCA, whereas W.P.(C) No.6939 of 2011 has been filed by the Association of self-financed private Engineering Colleges of Orissa.

3. The petitioners in all these writ petitions do not question the power and authority of the AICTE to fix the minimum eligibility criteria for admission to technical and professional courses. They however, question the propriety and

fairness of such action of the AICTE in fixing the minimum eligibility criteria suddenly in December, 2010 for the first time, making it applicable for the academic session 2011-12, as a result of which, students who had no prior notice of the same, have been deprived of competing in the joint entrance examination conducted by the Orissa JEE-2011. The petitioners also assail the action of the Orissa JEE-2011 in mechanically implementing the eligibility norms fixed by the AICTE, without taking into consideration the ground realities that prevails in the State, as the same would debar more than 30% of the bona fide students from appearing in Orissa JEE-2011, for admission to Degree Courses in Engineering/ Technology and Post-Graduate Degree and Diploma Courses in MBA, MCA and other similar courses. It is the common plea of all the petitioners that by implementing the minimum eligibility norms prescribed by the AICTE for the academic session 2011-2012, large number of seats in private colleges imparting education in Engineering and Technical courses and professional courses like MBA and MCA will remain vacant.

4. It is the contention of all the petitioners that as Orissa JEE-2011 holds common entrance test to regulate admission to technical and professional courses, there was no justification to impose the minimum eligibility norms. It is submitted that as students appearing in Orissa JEE-2011 come from different States having different types of qualifying examinations, where the standard of marking is bound to vary, the fixing of minimum eligibility criteria is neither proper nor justified. In this regard, learned counsels have relied upon the decision of the apex Court in the case of Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, , wherein the Hon''ble Court has observed as under-

It would be wholly unjust to grant the admissions to students by assessing their relative merits with reference to the marks obtained by them not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution.

5. Learned counsels have also relied upon a decision of the apex Court in Maulvi Issa Qureshi Vs. District Judge, Deoria and Others, , wherein the Hon''ble Court while considering the question of admission to Medical Colleges and the need for a Common Entrance Examination, has observed as under:-

It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the State level, others at the national level. including the Indian School Certificate examination. The percentage secured at different examinations are bound to vary according to standard applied by such examination bodies, which is well known. As such, a common entrance examination has to be held.

6. The petitioners have also relied upon a decision of the apex Court in Ravindra Kumar Rai Vs. State of Maharashtra and Others, , wherein the views taken in the aforesaid decision in Shri Chander Chinar Bada Akhara Udasin Society (supra) has been reiterated.

7. It is alleged by the petitioners in W.P.(C) No.6382 of 2011 and 6384 of 2011 that students coming through other All India Entrance Tests, like CAT, XAT and MAT, securing less than 50% marks at the graduation level qualifying examinations have been issued with allotment letters by the Orissa JEE-2011, for admission to Post-Graduate Degree Course in MBA, while denying such benefit of relaxation of eligibility norms to other candidates.

8. It is contended by the petitioner-Association in W.P.(C) No.6939 of 2011 that subsequent to the joint entrance examination conducted by Orissa JEE-2011, the AICTE has revised its norms by reducing the minimum eligibility criteria to 45% for general category and 40% for reserved category at the qualifying examination, for admission to Degree Courses in Engineering and Technology. It is submitted that candidates who have appeared in the entrance examination conducted by the Orissa JEE-2011, pursuant to the interim order of this Court dated 22.03.2011, are entitled to the benefits of such revised eligibility norms.

9. Learned counsel for the AICTE with reference to the counter affidavit filed submits that to promote quality in technical and professional education, the AICTE in exercise of power u/s 23(1) read with Sections 10 and 11 of the All India Council for Technical Education Act, 1987, framed the All India Council of Technical Education (Grants of Approvals for Technical Institutions) Regulations, 2010, which came into force with effect from 10.12.2010. Pursuant to such Regulation, the AICTE published the "Approval Process Hand Book (2011-12)", under which the eligibility norms for Under Graduate Degree Programme (full time) and Post-Graduate Degree and Post Graduate Diploma Programmes (full time) were specified. As per the said eligibility norms, candidates intending to pursue Degree Courses in Engineering and Technology and Post-Graduate Degree and Diploma Courses in MBA, MCA and similar courses, were required to secure at least 50% marks in the qualifying examination in the specified subjects.

For candidates belonging to reserved category, the said minimum eligibility criteria was fixed at 45%. This eligibility norms have been prescribed by the AICTE with the avowed object of promoting quality in technical education and ensuring excellence, which is applicable to all technical and professional institutions in the country.

It is further submitted that new AICTE Regulation, 2010 was published in the Gazette of India on 10.12.2010 and wide publicity has been given both in the print and electronic media as well as in the AICTE website for the benefit of the concerned students.

10. Learned counsel appearing for the Policy Planning Body and Orissa JEE-2011, submits that Appendix-1 of the "Approval Process Hand Book (2011-12)" issued

by the AICTE contains the norms and standards as regards duration and entry level qualifications for various full time Degree Courses in the Engineering and Technology and Post Graduate Degree and Post-Graduate Diploma Courses in MBA, MCA and similar courses. The members of the Policy Planning Body deckled to follow the norms of minimum percentage of marks at the qualifying examination, as has been prescribed by AICTE, as the eligibility criteria for the candidates appearing in the joint entrance examination conducted by Orissa JEE-2011, as the same is binding on them. It is further submitted that fixation of such minimum eligibility criteria maintains and promotes better standard in technical education and ensures academic excellence. In this regard, it is submitted that the Orissa JEE-2011 has only implemented the norms prescribed by the AICTE, which cannot be faulted.

11. As regard the allegation of the petitioners in W.P.(C) Nos.6382 of 2011 and 6384 of 2011 that students coming through other AH India Entrance Examinations, like CAT, XAT and MAT have been issued with allotment letters, even though some of them did not secure minimum 50% marks at the qualifying examinations, it is submitted that 15% of the seats in private colleges under Orissa JEE-2011 are reserved for the candidates coming through All India Entrance Examinations for MBA programme, from the merit list of CAT, XAT and MAT. It is submitted that, 5% of the seats are allotted to each category in that order, i.e., CAT, XAT and MAT and the seat remaining vacant in any category within the allotted 5% automatically goes to the next category in that order.

12. It is submitted that in the GAT and XAT, which are All India Entrance Examinations, the minimum eligibility criteria of 50% is prescribed and therefore, no students securing less than 50% in the qualifying examination are allowed to appear in those entrance tests. However, in the case of MAT, there is no minimum percentage as eligibility criteria and therefore some students, who have cleared MAT and come within the quota reserved for candidates of All India Entrance Examinations, but do not fulfill the minimum eligibility criteria, have only been issued with the provisional allotment letters. It is fairly submitted that the eligibility norms, prescribed by the AICTE is also applicable to the candidates coming through MAT.

13. Biju Patnaik University of Technology in its preliminary counter affidavit filed in W.P.(C) No.6939 of 2011, has reiterated the stand taken by the Orissa JEE-2011 regarding implementation of the minimum eligibility norms fixed by the AICTE for the candidates desirous of taking admission to Degree Courses in Engineering and Technology and Post-Graduate Degree and Diploma Courses in MBA, MCA and similar courses. It has been stated by the University in its counter, affidavit that AICTE has in the meantime revised and re-fixed the entry level qualifying mark for Under Graduate Degree Courses in Engineering and Technology at 45% for general category candidates and 40% for reserved category for academic year 2011-2012, as per AICTE notification dated 4.7.2011.

14. There is no dispute that the AICTE is a statutory body established under the

All India Council for Technical Education Act, 1987, with a view to ensure proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. It is also not disputed that the AICTE has the power and authority, to fix the minimum eligibility criteria for students intending to take admission in Degree Courses in Engineering and Technology and Post-Graduate Degree and Diploma Courses in MBA, MCA and other similar courses.

15. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. (See T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,).

16. Both in Islamic Academy of Education and Another Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, , the Supreme Court has emphasized the need for merit based admission to technical and professional courses, for ensuring educational standards and maintaining excellence in professions, which is in national interest.

17. In Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , a Constitution Bench of Supreme Court held as under:

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List-III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications, in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education.

18. In State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, , the question for consideration was whether it was permissible for the State Government to prescribe higher qualifications for purposes of admission to the Engineering Colleges than what had been prescribed by the AICTE. The Supreme Court, taking note of its earlier decisions, observed as follows:-

xx xx xx. The standards fixed should always be realistic which are attainable and

are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges.....Excellence in higher education is always insisted upon by series of decisions of this Court including Dr. Preeti Srivastava's case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

Argument advanced on behalf of the respondents is that the purpose of fixing norms by the AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr. Preeti Srivastava case that the State can always fix a further qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter, which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State.

19. In the case of Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, , similar question again came" up for consideration as to whether the State Government/University could fix a eligibility criteria higher than those prescribed by the AICTE and whether the eligibility criteria for admission to Engineering courses stipulated under the Statutory Rules and Regulations of the State Government/University could be relaxed or ignored and the candidates who do not meet such eligibility criteria can be given admission on the ground that a large number of seats have remained unfilled in professional colleges, if such candidates possess the minimum eligibility criteria prescribed under the norms of AICTE. In the said case, the State of Karnataka had fixed higher eligibility criteria than those prescribed by the AICTE. The Hon"ble Court after referring to its various earlier decisions on the issue, has come to hold as under:-

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The proliferating unaided private colleges, may need a full complement of students for their comfortable sustenance (meeting the cost of running the college and paying the staff etc.). But that cannot be at the risk of quality of education. To give an example, if 35% is the minimum passing marks in a qualifying examination, can it be argued by colleges that the minimum passing marks in the qualifying examination should be reduced to only 25 or 20 instead of 35 on the ground that the number of students/candidates who pass the examination are not sufficient to fill their seats? Reducing the standards to "fill the seats" will be a dangerous trend which will destroy the quality of education. If there are large number of vacancies, the remedy lies in (a) not permitting hew

colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. Be that as it may. The need to fill the seats cannot be permitted to override the need to maintain quality of education. Creeping commercialization of education in the last few years should be a matter of concern for the central bodies, states and universities.

No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards if any fixed by the Central Body under a Central enactment. The order of the Division Bench is therefore unsustainable.

20. The vexed question of whether the State Government/University can prescribe additional eligibility norms over and above the minimum eligibility criteria prescribed by the AICTE, for admission to Engineering course again came up for consideration before the apex Court in a very recent case of Mahatma Gandhi University and Another Vs. Jikku Paul and Others etc.etc., , wherein the Hon"ble Court has affirmed and reiterated the views taken in Visveswaraya Technological University (supra).

21. On an analysis of the various decisions cited above and the principles decided therein, the legal position that emerges is that both the AICTE as well as the State/University can prescribe minimum eligibility criteria for regulating admission to technical and professional courses, in order to maintain the quality of education and ensure excellence in higher education, which is in national interest. However, the standards so prescribed should be realistic, which are attainable and are within the reach of the candidates. The minimum eligibility norms prescribed by the AICTE/State Government/University cannot be relaxed or reduced to facilitate filling up of vacant seats in private technical and professional colleges, as the need to fill the seats cannot be permitted to override the need to maintain quality of education.

22. As regard the plea of the petitioners in all the writ petitions that the action of the AICTE in suddenly prescribing such eligibility criteria and not providing sufficient time and opportunity to the aspiring students intending to take admission in Engineering and other professional courses, the same is not correct, as the AICTE had published the prescribed eligibility norms since December, 2010, which is much prior to the final semester/term of the respective qualifying examinations as well as the joint entrance examination conducted by the Orissa JEE-2011, which was held in the month of June, 2011.

23. Coming to the three decisions relied upon by all the petitioners, as has been cited above, the same relates to the necessity of holding a common entrance examination, which has no application to the facts of the present case.

24. Applying the principles of law discussed above to the facts of the present case, no impropriety or illegality can be said to have been committed by the AICTE in prescribing the eligibility criteria for admission to technical courses like Engineering and Professional Courses like MBA and MCA. Therefore, the action of the Orissa JEE-2011, in implementing the same for the academic session 2011-12 cannot be faulted. Moreover, the prescribed eligibility norms are very much realistic and attainable. However, as the AICTE has refixed the eligibility criteria for admission to Under-Graduate Courses in Engineering and Technology and reduced the same from 50% to 45% for general category candidates and from 45% to 40% for reserved category, for the academic year 2011-2012, the Orissa JEE-2011 is directed to extend the benefits of such revised norms to the candidates who have appeared in the joint entrance examination, pursuant to interim order of this Court dated 22.3.2011, passed in W.P.(C) No.6939 of 2011. It is made clear that Orissa JEE-2011 must ensure that no admission is given to any candidate who do not fulfill the minimum eligibility criteria, irrespective of the class or category he/she belongs to.

With the above observations/directions, all the writ petitions are dismissed.