

(2016) 08 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 7434 of 2016.

**Everest Educational Society, Aurangabad, through its President Dr. Abdul Gaffar Quadri s/o Abdul Razzaq quadri, Age : 59 years, Occu. Medical Practitioner, R/o Azam Colony, Roshan Gate, Aurangabad -
Petitioner @HASH The Admissions Regulating Authority for**

Date of Decision : 12-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALLMR 183

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Kazi, Advocate, for the Petitioner; Mr. S.B. Yawalkar, A.G.P, for the Respondent Nos. 3 and 4; None, for the Respondent Nos. 1 and 2, though served

Final Decision : Dismissed

Judgement

Sangitrao S. Patil, J. - Rule. Rule made returnable forthwith. With the consent of the learned counsel for the petitioner and the learned A.G.P., heard finally.

2. The petitioner has sought the relief of setting side the condition of eligibility of the candidates to be admitted at institutional level after fourth round of Centralised Admission Process (for short, "C.A.P.") for admission to first year Engineering courses from amongst those candidates only who obtained the marks at the qualifying examination and the conditions of non-zero CET (Common Entrance Test) Score/non-zero GATE (Graduate Aptitude Test in Engineering) Score and of his registration with C.A.P. only.

3. The learned counsel for the petitioner, based on the averments made in the petition and the documents annexed thereto, submits that as per the Notification dated 11th March, 2016 (Exhibit-B to the petition) for admission to Engineering and Technology professional courses, first year, Clause 1 (A) (1) (iii) of ScheduleB to the said Notification mandates that the candidate must obtain score in CET conducted by the Competent Authority. Respondent No. 3 - the Director of

Technical Education, Government of Maharashtra issued Circular dated 25th May, 2016 laying the conditions for admission to the first year courses therein making it compulsory that the candidate seeking admission in private institutions shall be from the merit list of the candidates prepared by the C.A.P. It has been clarified in the said circular that the candidate, whose name does not find place in the merit list, would not at all be considered for admission to the seats to be filled up by the Institution.

4. The respondents published Information Brochure for the academic year 2016-17 for admission to undergraduate technical courses wherein also it has been mentioned that after the fourth round of C.A.P. is over, the seats remaining vacant of the respective institutions shall be returned to the respective institutions to be filled up by the institution concerned from amongst the candidates appeared in CET conducted by the State CET, obtained non-zero score (marks) in CET, had applied for C.A.P. and find place in the merit list of C.A.P.

5. According to the learned counsel for the petitioner, there are 1,50,000 seats for the first year of B.E. and B.Tech. Courses in all private aided professional institutions in the State of Maharashtra. There are only 1,12,000 candidates who have applied and whose names are there in the merit list of C.A.P. If the above mentioned conditions laid down by the respondents are to be followed, 38,000 seats would remain vacant in the State of Maharashtra. He submits that the CET is meant for getting selected meritorious candidates from amongst the large number of the candidates appearing for CET for being admitted to the limited number of seats available in the Educational Institutions. When the number of the candidates appearing for CET is less than the seats available for the Engineering professional courses, there is no point in imposing a condition that the candidate to be admitted at the institutional level should be from amongst the candidates who figure in the merit list of C.A.P.

6. The learned counsel for the petitioner further submits that the petitioner sent a representation dated 5th July, 2016 to respondent No.1 for waiver of the above mentioned conditions giving justification for doing so. However, respondent No.1 did not respond to that communication. He, therefore, submits that the above mentioned conditions being illegal and illogical, may be quashed and set aside.

7. The learned A.G.P. appearing for the respondents strongly opposed the petition. He submits that the conditions laid down by the respondents in the above mentioned Notification dated 11th March, 2016, the Circular dated 25th May, 2016 and Information Brochure cannot be relaxed only because there is possibility of certain seats remaining unfilled for want of meritorious candidates. According to him, the petitioner has no legal right to challenge the said conditions. Relying on the judgment in *Visveswaraiah Technological University and another v. Krishnendu Halder and others* (2011) 4 SCC 606, he submits that the eligibility criteria fixed by the respondents cannot be relaxed by this Court in exercise of the writ jurisdiction. He, therefore, submits that the writ petition may be dismissed.

8. In the case of Visveswaraiah Technological University and another (supra), the question involved was whether the eligibility criteria for admission to the engineering courses stipulated under the statutory rules and regulations of the State Government/university could be relaxed or ignored, and candidates who do not meet with such eligibility criteria can be given admission, on the ground that a large number of seats would remain unfilled in professional colleges, if such candidates possess the minimum eligibility prescribed under the norms of the central body (AICTE).

9. The Division Bench of the High Court of Karnataka at Bangalore had directed to relax the eligibility criteria. After considering the facts of the case and the legal position applicable thereto, the Hon"ble the Supreme Court allowed the appeals, set aside the orders of the Division Bench of the High Court with the following observations in paragraph No. 17 of the judgment :

"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."

10. In the present case, the respondents have imposed a condition for admitting a candidate to the seat to be filled up at the institutional level only from amongst the candidates figuring in the merit list of the C.A.P. This will ensure that the standard of the candidates to be admitted would be upto the mark. In any case, there cannot be compromise with the merit of the candidates for the purpose of admission in any Educational Institution. Only because some seats are likely to remain vacant, it would not be desirable that the candidates, who otherwise are not found to be eligible on the touchstone of the merit criteria prescribed by the respondents, should be admitted in any institution. In the circumstances, in view of the judgment in Visveswaraiah Technological University and another (supra) and the fact that there cannot be any compromise with the merit of the candidates to be admitted in any Educational Institution, we are not inclined to interfere in the selection criteria fixed by the respondents for admitting the candidates to the seats at institutional level for Engineering professional courses. In that view of the matter, we do not find any substance in this writ petition. Hence, we pass the following order :-

- (i) The Writ Petition is dismissed.
- (ii) Rule stands discharged accordingly.
- (iii) The parties shall bear their own costs.