
(2014) 08 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 3412 of 2014

Kunal	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 5 ABR 759 : (2015) 3 ALLMR 791 : (2014) 6 BomCR 636 : (2015) 1 MhLj 790

Hon'ble Judges : S.B. Shukre, J;B.R. Gavai, J

Bench : Division Bench

Advocate : V.V. Bhangde, Advocate for the Appellant; B.H. Dangre, Government Pleader, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—By this petition, the petitioners are challenging legality and validity of the Government Resolution dated 31/10/2012 fixing the eligibility criteria for admissions to Bachelor of Engineering Courses (for short, "B.E. Courses) in the State of Maharashtra at a standard higher than one adopted by respondent No. 3, for the academic year 2014-15.

2. Prior to the year 2003, the admissions to the engineering courses in the State of Maharashtra used to be made only on the basis of marks obtained by the students in 12th standard examinations. However, from the year 2003 onwards, respondent No. 3 introduced a common management admission test at the central level as a common entrance test for admissions to the B.E. Courses. Respondents No. 1 and 2 also started conducting a common entrance test known as MHT-CET from 2003-04. Thus, the admissions to B.E. Courses came to be made through two channels, one of the All India Common Entrance Test and the other of the State Level Examination conducted by respondents No. 1 and 2.

3. The eligibility criteria for appearing at both these examinations was of 35% for

reserved category candidates and 40% for general category candidates, which were further increased to 40% and 45% for the examinations conducted in the subsequent years. Presently, the eligibility criteria for taking the entrance test for B.E. Courses prescribed by respondent No. 3 is of 40% for reserved category candidates and 45% for general category candidates.

4. In the year 2012, some change was introduced in the eligibility criteria as well as in the manner of securing admission to engineering courses. The State Government, by issuing a resolution dated 31/10/2012, has increased the minimum required percentage to 50% for general category students. The Government also scrapped the State Level Entrance Examination i.e. MHT-CET. Now, as per this resolution, the admissions to B.E. Courses would be made only on the basis of clearing by the students of the All India Level Entrance Examination conducted by the respondents No. 4 and 5 at the central level, which is called as Joint Entrance Examination (JEE).

5. According to the petitioners, the measures introduced by Government resolution dated 31/10/2012 are harsh and not based upon any data or study and thus illogical, arbitrary and violative of Article 14 of the Constitution of India.

6. According to respondents No. 1 and 2, the higher qualifications required for appearing at the entrance test for admission to B.E. Courses are permissible under the law as they are consistent with maintenance of high standards in technical and higher education. Respondents No. 1 and 2, who have filed their detailed affidavit, have submitted that the subject matter of this petition was very much under consideration of the Hon''ble Supreme Court and the Hon''ble Supreme Court, by an order dated 22/01/2005 passed in Special Leave to Appeal (Civil) No. 14460 of 2004, has permitted the State of Maharashtra to conduct the entrance test in respect of degree engineering courses by prescribing higher qualification of at least 50% aggregate marks in three subjects, i.e. Mathematics, Physics and Chemistry. It is also submitted on behalf of these respondents that although the said direction was by way of an interim measure, later on, the petitioner therein had withdrawn the Special Leave Petition. However, respondents No. 1 and 2 have further submitted that the fact remains that prescription of higher qualification of 50% marks in three subjects, Mathematics, Physics and Chemistry, was permitted by the Hon''ble the Apex Court.

7. It is also submitted by respondents No. 1 and 2 that the subject matter of the petition is entirely covered by the decision of another Division Bench of this Court rendered in Writ Petition No. 6130 of 2014, Akash Laxman Sakat Vs. The State of Maharashtra and others together with other writ petitions decided on 28/7/2014, in which cases, the Division Bench by following the law laid down by the Hon''ble Apex Court in the case of Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, has upheld the decision of prescribing by the State of higher qualifications of 50% aggregate marks in the concerned subjects for admission to engineering courses in the State of Maharashtra.

8. Shri Bhangde, learned Counsel for the petitioner has submitted that in as many as 49200 seats in the academic year 2012-13 and about 52600 seats in the academic year 2013-14 were vacant in the engineering colleges across the State of Maharashtra. He submits that the prescribing of qualifications of 50% aggregate marks in the concerned subjects by the State of Maharashtra higher than the qualifications prescribed by respondent No. 3 is not conducive to growth and spread of higher technical education in the State of Maharashtra. He also submits that on the one hand respondent No. 3 has kept eligibility of 45% only, the effect of which would be that throughout the country, the students securing similar marks, would get admission, but the students of State of Maharashtra would be deprived of the same advantage owing to raising of eligibility for appearing at the entrance examinations centrally conducted for admission to engineering courses, on the other. He also submits that the impugned Government Resolution has not been given any publicity much less extensive publicity and due notice has not been given to the students who are likely to be affected by the said Resolution.

9. Smt. Dangre, learned Government Pleader for respondents No. 1 and 2 has submitted that the law applicable to the subject matter of this petition is squarely covered by the cases of Visveswaraiah Technological University & another and Akash Laxman Sakat (supra) and therefore, this petition deserves to be dismissed.

10. A similar issue was involved in the case of Akash Laxman Sakat (supra). In that case, circular dated 06/3/2014 issued by the Director of Technical Education prescribing 50% aggregate marks for open category candidates and 45% aggregate marks for reserved category candidates in the concerned subjects for admission to first year degree course in engineering and technology Colleges, whether aided or unaided, was under challenge. The Division Bench, by following the law laid down by the Hon'ble Apex Court in the case of Visveswaraiah Technological University & another has held that the policy by the State for the academic year 2014-15 prescribing qualifications of 50% and 45% aggregate marks in the concerned subjects for general category and reserved category candidates respectively is not arbitrary or unreasonable as same has been done to maintain higher standard of education in the technical stream.

11. In the case of Visveswaraiah Technological University & another, the Hon'ble Apex Court, after considering the judgments in the cases of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, summarised the legal position in respect of prescription of qualifications higher than the one prescribed by All India Council for Technical Education ("AICTE", for short) in paragraph 14 as under.:

"14.....

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of *Adhiyaman* to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examination."

It would be thus clear from these observations that it is permissible for the State authority to prescribe qualifications for admission to engineering courses higher than the one prescribed by the Central authority i.e. respondent No. 3 so as to maintain quality and high standards in higher technical courses such as engineering and so on. It would also be clear that the fact that there are unfilled seats in a particular year, would not mean that in that year the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. All that the State/University is required to do, while prescribing the eligibility criteria for admissions, is to balance the need to maintain excellence and high standard in higher education on the one hand and a need to attain a healthy ratio between the total number of seats available and number of students seeking admission on the other.

12. It may also be noted that in paragraph 14 of the judgment in the said case of *Visveswaraiah Technological University*, the Hon'ble Apex Court has further held

that if the State/University, in spite of the vacancy, continues with the higher eligibility criteria to maintain better standards, same being part of the academic policy of the University would be 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 in Central enactment. The petitioners have not shown as to how the prescribing of higher qualifications by the State Authority is arbitrary and is not in the interest of achieving excellence in higher education. It is also not shown by the petitioners that these higher standards "adversely affect" the standards fixed by the Central body, within the meaning of what is laid down in para 14(i) of the said judgment. Thus, it is clear that there is nothing illegal about prescribing of higher qualifications for admission to engineering courses by the State of Maharashtra.

13. So far as the other challenge as regards scrapping of MH-CIT by the State of Maharashtra is concerned, we are of the opinion that the same being a policy decision, which has not been shown to be arbitrary or in violation of any law, would be beyond the scope of judicial review.

14. Learned Counsel for the petitioners has referred to us the cases of Sindhi Education Society & another Vs. Chief Secretary, Government of NCT of Delhi & others-(2002) 8 SCC 49 and Jayrajibhai Jayantibhai Patel Vs. Anilbhai Jayantibhai Patel and Others, in support of the stand of the petitioners that the State action must be supported by some valid reasons and that the administrative decisions or actions should be based on relevant considerations or material. We have already noted that the impugned resolution is consistent with the maintenance of excellence in the higher education and, therefore, it cannot be said that the State action in this regard is arbitrary or illogical or not supported by any reasons or material.

15. As regards the contention that no sufficient notice has been given to the prospective aspirants to the engineering courses before reviewing the qualifications for admissions, we find that the resolution which has been issued on 31/10/2012, has been made applicable w.e.f. the academic year of 2014-15 and that respondents No. 1 and 2 have stated on oath that this resolution and notification regarding change of eligibility criteria have been notified in several newspapers by the Directorate of Technical Education, State of Maharashtra. This assertion made on oath by respondents No. 1 and 2 has not been controverted by the petitioners by filing appropriate re-joinder. Therefore, we find no merit in the said argument of the learned Counsel for the petitioners.

16. Learned Counsel for the petitioners has also referred to us the following cases.:

- i. All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others,
- ii. Christian Medical College Vellore and Others Vs. Union of India and Others,

iii. Nimesh Mehta Vs. State of Maharashtra & others-(2005) 13 SCC 707.

In the case of Surinder Kumar Dhawan (supra) it is held that the function like grant of approval to new course can only be done by an expert body like AICTE and it cannot be taken over or discharged by the Courts.

In the case of Christian Medical College, Vellore (supra), the majority view is that freedom to run private educational institutions includes the right to conduct examinations for admitting students and it cannot be taken away by MCI or DCI.

None of the issues involved in the present petition is similar to any of the issues in the above referred cases. Therefore, we do not think that both the said cases would be of any assistance to the petitioners.

In the case of Nimesh Mehta (supra) the Hon"ble Apex Court in the facts and circumstances of that case has held that prima facie it is evident that before any amendment to the existing norms is introduced, prior notice be given to the students at the time when they have to opt for the subjects, particularly, the optional subjects.

17. We have already found that in the instant case, there is no dispute about publication of the impugned resolution in several newspapers and the petitioners getting notice of the same well in advance.

In the circumstances, we are of the opinion that the present petition is devoid of any substance and it deserves to be dismissed.

The Writ petition stands dismissed.

Rule is discharged.

There shall be no order as to costs.