

**(1998) 03 RAJ CK 0003**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No's. 2012, 2980, 3024, 3046, 3070 and 5892 of 1997

Lokesh Meena and Others

APPELLANT

Vs

Malviya Regional Engineering College, Jaipur and Others

RESPONDENT

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**Date of Decision :** 19-03-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** AIR 1998 Raj 312 : (1999) 1 RLW 13 : (1998) 2 WLC 638

**Hon'ble Judges :** Gyan Sudha Mishra, J

**Bench :** Single Bench

**Advocate :** Mahendra Shah, Anupama Chaturvedi and Manish Bhandari, for the Appellant; N.K. Mallo and Naina Saraf, for the Respondent

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## Judgement

Gyan Sudha Misra, J.—All the petitioners herein who were applicants for Pre-Engineering Test (PET for short), 1997 along with large number of other students who could not have attained the age of 17 years on 1-10-97 had moved this Court for a direction to the Malviya Regional Engineering College, Jaipur (MREC for short) for allowing them to appear in the examination of P.E.T. '97 which was to be held in the month of June, 1997. The application forms had been submitted by the petitioners in response to an advertisement which was issued for the said purpose in which the last date for submission of forms was ear-marked as 31-3-97.

2. It may be stated that an entrance test for admission into the First Year Engineering Degree Course in the Engineering Colleges in the State of Rajasthan is held at Jaipur, Kota, Udaipur, Bhilwara, and Ajmer including Rajasthan State quota for other 16 Regional Engineering Colleges all over the country by a centralised admission procedure called Pre-Engineering Test (PET). It is conducted by the institution turn by turn as per the Government instructions and accordingly a Centralised Admission Co-ordination Committee was constituted by the Government of Rajasthan which was empowered to recommend rules and

regulations as also lay down the required conditions of eligibility for the course. The committee accordingly in 1995 specified the minimum conditions of eligibility for admission into the PET which among other conditions, laid down that the candidates should not be less than 17 years or more than 20 years as on 1-10-95. The State Government is said to have approved this condition vide its order dated 9-2-95. This clause prescribing a particular age limit was however, relaxed in the year 1995 as this had not been mentioned in the information booklet but in the subsequent years i.e. since 1996, this was reintroduced and the respondent-M.R.E.C. as per the decision of the Government of Rajasthan issued advertisement for holding Pre-Engineering Test laying down that a candidate appearing for PET-97 should not be less than 17 years of age or more than 20 years of age as on 1-10-97.

3. This gave rise to a common cause to all the students who would not have completed the age of 17 years on 1-10-97 but were otherwise eligible to appear in the PET-97, to challenge the clause prescribing minimum age for appearing, in the PET examination.

4. Before entering into the correctness or otherwise of the decision impugned, it is extremely relevant to record that 350 seats were available for admission of the students of the State of Rajasthan into the First Year Engineering Course, out of which 175 seats were required to be filled by candidates sponsored by other regional engineering colleges from different states other than the State of Rajasthan. The number of candidates to be brought and sent out of Rajasthan is fixed by the Central Government on the basis of population of the State. While from Rajasthan 123 candidates are sent for admission into different regional engineering colleges, the State of Rajasthan as a matter of reciprocity, has to allow 175 students from other States to take admission into the various regional engineering colleges situate in the State of Rajasthan. Similarly all States in India have specified a certain percentage of seats on which students from outside the State have to be admitted and eligibility conditions have been laid down by each State for admission into the course including the condition of age of the candidates. The State of Rajasthan has also laid down the terms and conditions for admission into the Bachelor Course of Engineering and issued a booklet in this regard for PET examination for 1997 wherein the minimum age for admission into the course is 17 years and maximum 20 years. This booklet also furnishes information about seats which were available in different regional engineering colleges of India including the State of Rajasthan and the essential conditions for admission on such seats. A perusal of the same disclosed that while in the State of Rajasthan a minimum age limit has been prescribed for admission into the engineering course, no such age limit has been prescribed for the students in several other States. In order to illustrate this, a copy of information booklet has been annexed to this writ petition which indicates number the of seats and other criteria for admission into the regional engineering colleges of the State of Rajasthan" as also the conditions of eligibility laid down by other regional engineering colleges of other States. The information

booklet clearly discloses that while in the State of U. P. at Allahabad, the maximum age limit for admission into the engineering course is fixed at 22 years, there is no minimum age limit prescribed. In the State of M. P. at Bhopal, there is no age limit at all either minimum or maximum for admission into the course and in the State of West Bengal at Durgapur, the maximum age limit for such course is 23 years but there is no minimum age for admission into the course. Again at Hamirpur in the State of Himachal Pradesh there is no age limit at all and at Jamshedpur in the State of Bihar, while maximum age limit for such course is 22 years, there is no minimum age limit. Similar is the case at Jullunder in the State of Punjab, Kurukshetra in the State of Haryana, Nagpur in the State of Maharashtra, Surat in the State of Gujarat, Surathkul in the State of Karnalaka, Tiruchnapalli in the State of Tamil Nadu and Warrangal in the State of Andhra Pradesh where there is no minimum or maximum age limit. But besides the State of Rajasthan, it is the Calicut University, Rourkela in the State of Orissa and Silchar in the State of Assam which have prescribed minimum age limit of 16 years for taking the Pre-Engineering Test. However, the information booklet has also appended a note which states as follows :-

"The number of seats and other eligibility conditions including candidate's age limit for various Regional Engineering Colleges are tentative and will be applicable as and when changed by the Government of India up to the time of counseling for admission."

5. The petitioners herein who would not have completed 17 years of age on the cut off date i.e. 1-10-97 and hence were ineligible to appear in P.E.T. Examination which was to be held in June, 1997, felt seriously aggrieved with the minimum age condition for admission into the Bachelor's engineering course, since no uniform criteria had been laid down for admission into the course in all the States of India and hence they felt aggrieved that a condition should not have been introduced only in the State of Rajasthan. One additional reason for such grievance is that even if the State of Rajasthan could be held competent to prescribe minimum age limit for admission into the engineering course, yet it could not deprive the students from taking the entrance test at all, for in the event of their qualifying in the entrance test they could claim seats outside the State of Rajasthan which were to be filled on exchange basis and where no minimum age limit had been laid down as given out in the information booklet itself. It was further their grievance that since the note appended in the information booklet declared that all conditions laid down in the information booklet about the age and other criteria were merely tentative in nature, they could not have been restrained from appearing in the admission test itself as even according to the information supplied, the conditions were tentative. For these reasons the petitioners felt genuinely prompted to move this Court by filing these writ petitions challenging the prescription of minimum age limit for the students of Rajasthan State to enter into the Bachelor of Engineering Course. A large number of similarly situated candidates also moved this Court seeking a direction to allow them to appear in the PET, 97 entrance test on the same

grounds.

6. This Court on hearing the counsel for the petitioners as also the caveat or respondent-MREC, Jaipur thought it proper to allow them to appear in the PET, 97 by order dated 28th May, 1997 even though they would not have completed 17 years of age on the cut off date as a prima facie case was found in their favour. By virtue of the order of the Court all the petitioners therein including students irrespective of whether they had moved this Court or not, were allowed to appear in the PET, 97 even though they would have been below the age of 17 years on 1-10-97 and their results were also ordered to be published without seeking any order in that regard from this Court. Accordingly the petitioners and all similarly situated candidates appeared in the examination which was held on 1-6-97 out of which only these 6 petitioners, in these writ petitions have qualified and therefore prefer to press this case. Since the plea on behalf of the petitioners was vehemently contested by the respondent-MREC and also in view of the fact" that seats were denied to the petitioners on the ground of disqualification of age, the matters were ordered to be heard at length at the admission stage itself.

7. Challenging the decision of the respondents prescribing minimum age for admission into the Bachelors Course of Engineering and putting impediment in the way of their admission, Shri Mahendra Shah, Mrs. Anupama Chaturvedi. Shri Manish Bhandari and some other advocates on behalf of the petitioners have contended that the condition prescribed apart from being discriminatory, results in unjust denial of seats to them, for if there has been no age limit prescribed in most of the States of the regional engineering colleges the decision of the State of Rajasthan laying down such condition of minimum age even to appear in the entrance test, deprives them of the opportunity to seek admission even in those regional engineering colleges where the students of the State of Rajasthan can seek admission where there is no age bar. The condition impugned thus results in serious prejudice to their claim since less meritorious students of the State can seek admission outside the State of Rajasthan merely because they are above the age of 17 years even though the institution outside the State where they are sent on reciprocal basis for admission, does not require the students to be above the age of 17 years.

8. It was then submitted that the terms and conditions for admission into the engineering colleges should have been laid down by the All India Council for Technical Education which is alone competent to lay down such terms and conditions for admission into the course and in order to emphasise this fact it has been illustrated by pointing out that in case of medical students it is the All India Medical Council which prescribes the eligibility conditions as also the syllabus for medical students. It has, therefore, been submitted that laying down a set of criteria by the State of Rajasthan alone although the All India Technical Education has not prescribed any condition regarding minimum age limit is wholly uncalled for specially in view of the fact that several other States also have not laid down any condition in that regard as a result of which even if the petitioners are higher

in merit than the students above the age of 17 years, would be deprived of . seats outside the State of Rajasthan in other regional engineering colleges.

9. The respondents" advocate Shri N. K. Maloo, however, has seriously contested the submissions urged in support of the case of the petitioners and it has first of all been submitted by him that education is a subject included in the concurrent list of the Indian Constitution and hence the State has the legal and constitutional authority to legislate or lay down rules on the same and, therefore, the State of Rajasthan has the legal authority vested in it by the Constitution to lay down the terms and conditions or the criteria for admission into the regional engineering colleges which are established in the State of Rajasthan. It has further been submitted by him that the All India Council for Technical Education having not laid down any terms and conditions for regarding age, the reasonable inference would be that it has left the matter to the discretion of the concerned State to lay down the criteria for admission into the engineering course as a result of which different States have laid down different criteria as per their choice based on their reasoning as a result of which, while a few states have laid down the minimum age limit for admission into the engineering course, there are the States which have not laid down any condition regarding the minimum age for admission.

10. Shri Maloo on behalf of the respondents has further tried to reinforce his submission by urging that the grievance of the petitioner is against the policy decision of the body of experts comprising of the five members of the five engineering colleges of Rajasthan who comprised the Centralised Admission Committee to prescribe the requisite norms for conducting Pre-Engineering Tests for admission to various engineering colleges of Rajasthan and in exercise of powers u/s 10(o)(j) of Section 23 of the All India Council for Technical Education Act, 1987, All India Council for Technical Education (Norms and Qualifications for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994 have been framed and in Regulation 3(b) "competent authority" has been indicated as State Government and under Regulation 8(2) it has been empowered to lay down the minimum essential qualifications for the candidates who seek admission in PET. The said committee taking into consideration all aspects, were of the opinion that a certain degree of maturity of body and mind is essential for a student joining the engineering course and hence after due deliberation, 17 years of age was prescribed as a matter of policy decision for entrance examination into the course and hence this Court ought to refrain from substituting its opinion by lifting the embargo of 17 years of age for the PET candidates. Reliance has also been placed on judgment of a learned single Judge of this Court reported in (1997) 1 WLC (Raj). 199, Shyam Sunder Agrawal v. State of Rajasthan, wherein also the petitioners in the said case had challenged the prescription of minimum age as 17 years for the entrance examination of PET. The petitioner in the said case although had qualified, was not granted the relief on the ground that similarly situated candidates i.e. all the candidates who were below the age of 17 years were not granted the opportunity of taking the

examination as they had not applied on the ground of their lower age than the prescribed and it was for this reason that the writ petition was dismissed. This judgment although relied on several other judgments, but ultimately did not address the question as to what would be the effect in regard to those seats which were to be filled up by way of an exchange programme meaning thereby where students are permitted to take admission into the course even below the age of 17 years since no minimum age limit had been laid down.

11. Thus there are two aspects of the controversy in this matter; firstly as to whether the students in the State of Rajasthan can seek admission in the regional engineering colleges established and situated in Rajasthan even if they are below the age of 17 years since no uniform criteria has been laid down in all the States of India, and secondly whether the students below the age of 17 years can be deprived of a seat in the PET even though they have qualified and can also be granted a seat in those States where there is no minimum age prescribed and yet are denied a seat on the ground that he did not fulfill the criterion of age as laid down by the State of Rajasthan.

12. The important feature in so far as earlier part of the controversy is concerned, it clearly strikes that it is the All India Technical Education Council which is the competent authority to lay down rules and regulations and has an overall supervision over the institutions regarding admission into the technical course including the engineering course. The fact nevertheless remains, that this expert body has not prescribed any uniform qualification for admission into the B.E. Course, the consequence of which has been that each State has laid down its own set of criteria atleast in so far as the age of the candidates for admission into the course is concerned. As already indicated hereinbefore, different States have laid down different criteria regarding minimum age of students for admission into the course and majority of the States have not laid down any minimum age for admission into this course and it is an acknowledged position that no uniform criteria has been adopted by different States regarding minimum age of candidates. In view of the position, I see no justification why a fetter should be put to the authorities of the State of Rajasthan by directing them not to prescribe the essential qualification for admission into the course including age, specially when this has been introduced in consultation with a body of technical experts of the State before fixing the minimum age for admission into the course. In addition to this, it is also difficult to ignore that the question as to what should be the minimum age of students for admission into the B.E. Course was earlier raised before this Court by some students of the earlier years regarding fixing of minimum age for admission into the course wherein a learned single Judge of this Court took the view that the age prescribed by the State of Rajasthan is not fit to be interfered with. Besides the reasons, which weighed with the learned single Judge in the said case, I also find no rational justification to substitute the views of the experts in this regard interfering with their decision laying down the minimum age for such course and, therefore, the arguments advanced on behalf of the petitioners that the State of Rajasthan

should not fix any minimum age for the Course, does not deserve to be meddled with by this Court only on the ground that Education is not merely a State subject, as contended on behalf of the petitioners, so as to lay down criteria for the course specially when different States have laid down their own criteria. It may be added, that I find no substance in the controversy in order to delve deep into the fact as to whether Education is a State subject or it is a subject included in the concurrent list of the Constitution, because in my opinion this controversy would have been relevant if a body like the All India Technical Education were not in existence, but once the expert body has been constituted, that body alone, in my opinion, is competent to lay down a uniform criteria in this regard which however has not given any uniform guideline in this regard and preferred not to assist this Court on this controversy as it failed to reply in spite of service of show cause notice on it. If therefore, no uniform criteria in this regard has been laid down by the All India Technical Education Council, and different States have laid down different criteria, regarding the essential qualification of students requiring them to appear in the Pre-Engineering Test, it is difficult to direct the State of Rajasthan alone, to act in the same manner as the other States have done. I, therefore, deem it appropriate to hold that in so far as the seats earmarked for the colleges in the State of Rajasthan is concerned, their decision that the minimum age for the Bachelor of Engineering Course should not be less than 17 years before entering into the course, is not required to be interfered with and hence the plea of the petitioners on this count fails and they cannot be allowed to seek admission on the seats for the colleges ear-marked in the Rajasthan State since admittedly they were below the age of 17 years on the cut off date 1 -10-97 i.e. prior to entering into the course of Bachelor of Engineering.

13. This now brings us to the subsequent part of controversy wherein an obvious and a relevant question crops up as to why the students of the State of Rajasthan should be deprived of the opportunity of securing a seat in those States, where the seats are available on the basis of reciprocity by way of exchange programme, yet there is no minimum age limit fixed for admission into the course. Having reflected on this aspect of the matter, it clearly strikes that there are 123 seats which are required to be filled up on reciprocal basis which means that 175 students from other states have to be admitted in various engineering colleges of Rajasthan and on reciprocal basis 123 students are required to be sent to different states where the seats remain earmarked in exchange of the seats of Rajasthan and since in majority of the States, there is no prescribed age limit, it is difficult to reconcile why the students of Rajasthan even though they may be higher in merit than the students above the age of 17 years should be deprived of a seat even in those States where there is no minimum age limit. In view of this situation I consider it is inappropriate on the part of the authorities not to allow the students to sit in P.E.T./entrance test at all merely on the ground of disqualification of age and a suggestion was, therefore, made to the respondents that at the time of entrance test, it could be made clear that students who are below the age of 17 years would be eligible to seek

admission only in those States where there is no prescribed age limit as per their position on the merit list but the same was not acceptable to the respondent-State although no satisfactory explanation or reasonable argument was advanced by the respondents" advocate resisting this suggestion, except that at the time of examination there would be two categories candidates for the entrance test giving rise to confusion. This difficulty envisaged by the respondents, in my view, is purely imaginary as it can very well be clarified by merely including a clause in the notice-advertisement indicating that students below the age of 17 years, in case they qualify in the entrance test would be eligible for admission only in those States where there is no minimum age prescribed. In my opinion this is appropriate to minimize the anomaly of the situation and reduce unjust discrimination to the P.E.T. candidates until a uniform pattern and criteria is fixed by the All India Technical Education in this regard. In fact, it may be recollected that in the information booklet, it already stands noted that the number of seats and other eligibility conditions including candidates' age limit for various Regional Engineering Colleges are tentative and will be applicable as and when changed by the Government. In view of this noting, it was essential in my opinion for the State of Rajasthan to discuss the question of fixing minimum age condition with the All India Council for Technical Education, atleast in regard to those seats which were to be filled by students from all over India on reciprocal basis because discrimination to the students of Rajasthan State while depriving them of seats even in other States is quite obvious, glaring and cannot be overlooked.

14. As it is difficult to ignore this fact of the case, I feel justified in holding that the petitioners who were below the age of 17 years on the cut off date 17-10-97, i.e. prior to admission into the 1st year B.E. Course, but stood qualified in the P.E.T. should not be deprived of a seat in those regional engineering colleges outside the State of Rajasthan where there is no minimum age prescribed, which is meant to be understood that if the petitioners are higher on the merit list than the candidates who have been granted seats outside the Rajasthan although they are lower in merit but are above 17 years should not be given priority over the candidates who are higher in merit but lower in age. It is further directed that henceforth in the Pre-Engineering Entrance Test students even below the age of 17 years should be permitted to appear in the entrance test subject to the limitation that in case they qualify, they would be eligible for a seat only outside the State of Rajasthan where there is no age bar till the time a uniform criteria is laid down by the All India Technical Education directing all the States to follow a uniform pattern. The Advocate for the respondents Smt. Naina Saraf and Shri N. K. Mahto are directed to apprise the competent authorities about the direction of this Court in order to ensure its compliance. It is, however, left open for the State of Rajasthan to discuss the matter with the All India Technical Council regarding the anomaly which has cropped up so that a uniform criteria regarding the essential qualification be followed by each State, and until a decision is taken by the All India Council for Technical Education in this regard,

the direction given hereinabove shall be followed by the competent authority.

17. The fall out of the entire discussion is that the petitioners who have qualified in the Pre-Engineering Test, 1997 but were below the age of 17 years on 1-10-97 are eligible for admission on the seats which were available in the quota of the Regional Engineering College outside the State of Rajasthan where there is no minimum age prescribed for the course or the minimum age is less than 17 years, as it has been admitted by the respondents that persons lower in merit than the petitioners have been granted admission on the seats in several Regional Engineering Colleges outside the State of Rajasthan. It is, therefore, imperative, that the petitioners should be accommodated on those seats in place of the candidates lower in merit than the petitioners and the replaced candidates be granted admission in the State of Rajasthan if they are eligible in the State of Rajasthan as per their merit. However, at this belated stage when all the admissions outside the State of Rajasthan has already been closed and the classes have already been held for almost six months, it may be difficult for the respondents to make such adjustments by admitting the petitioners and removing candidates from those colleges to be adjusted in the State of Rajasthan. Under the circumstances the competent authorities are left with the liberty to make mutual adjustments of seats between the petitioners and the students who have already been sent outside the State of Rajasthan in other Regional Engineering Colleges of the country but are lower in merit than the petitioners.

16. It has further been informed by the advocate for the respondents that the petitioners Navneet Garg in SBCWP No. 3024/97 and Ajay Pal Singh in SBCWP No. 3046/97 did not respond to the letter of counselling which were issued to them by the MREC. Hence they are not entitled to lay any claim for admission either in the State of Rajasthan or on the seats outside the State of Rajasthan falling in the quota of Rajasthan. In regard to the petitioner Ankur Gupta in SBCWP No. 5912/97 also, it has been stated by the respondent-MREC that he appeared for counselling on 10-8-97 and was provisionally admitted to Regional Engineering College, Calicut in the Electrical Branch and thereafter on 5-9-97 he took his documents back for appearing in counselling at Chandigarh and Roorki where also he was selected and had given an undertaking that in case he fails to report by 12-9-97 his admission may be treated as cancelled and seat be offered to another candidate. In view of this information, his counsel Mrs. Anupama Chaturvedi was granted time to ascertain the fact and she stated that she has received no instruction in the matter. Under the circumstances the writ petition of Ankur Gupta bearing No. 5912/97 is dismissed as not pressed.

17. The remaining writ petitions are partly allowed in terms of the directions given hereinabove but in the circumstances without costs.