

(2006) 10 DEL CK 0133

In the Delhi High Court

Case No : Writ Petition (C) . No's. 11814-28 of 2006

Manish Singh Bartwal and Others

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 1, 10, 23(1)
Constitution of India, 1950 — Article 254, 372

Citation : (2006) 10 DEL CK 0133

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : S.K. Rungta, for the Appellant; V.K. Tandon, for respondent Nos. 1 and 2 and C.B.N. Babu, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

Rule.

1. With the consent of the parties the matter is taken up for final disposal. The counsels also contended that no further affidavits are to be filed on behalf of the parties.

2. The petitioners who have qualified 10+2 in vocational engineering stream and claim admission directly to second year/III semester of the diploma course run by the respondents in the present petition. The petitioners have claimed that the eligibility conditions laid down by the respondent Nos. 1 and 2 are contrary to the eligibility conditions prescribed by respondent No. 3, All India Council for Technical Education and are, Therefore, void and are not applicable to the petitioner and they seek the quashing of the same.

3. Brief facts to appreciate the controversies between the parties are that the petitioners passed their Senior Secondary Examination in respective vocational stream subjects with 60% or above marks and they are the students of

(engineering based) vocational courses in Delhi and have qualified their 11th and 12th class from G.B.S.S School, More Gate I; Sarvodaya Bal Vidyalaya, Vikas Puri, A-Block and Sarvodaya Bal Vidyalaya, Ashok Nagar, New Delhi-27. The averment made by the petitioners is that they are eligible for admission to second year of diploma in polytechnics being run by Department of Training and Technical Education, Government of NCT, New Delhi against 10% quota for lateral entry.

4. Vocational education in the school was started by the Government/Directorate of Education, Delhi and the examinations are being conducted by CBSE (Central Board of Secondary Education) with the aims and objectives as detailed hereinafter: -

Central Board of Secondary Education has been making strenuous efforts for the promotion of vocational education in its schools.

Vocational stream would by and large be terminal in nature for those who wish to seek employment in organized sector or wish to seek self-employment. This, however, would also provide base for further educational training to those who complete vocational programme and are desirous to improve their career prospects further. These courses also aim at: Linking education with productivity.

Providing the students with the essential occupational background and technical knowledge along with the related elements of general education.

Preparing students in such a way that they become more employment worthy and may ultimately seek self-employment to become effective agents of industrial and economic growth.

5. According to the petitioners, the Central Board of Secondary Education also offers various vocational courses, which are job linked and job oriented. These job oriented and job linked vocational courses are recognized by the Central Board of Secondary Education for the purpose of higher education. The relevant extracts of the CBSE is as under:

RECOGNITION OF COURSES FOR PURPOSES OF HIGHER STUDIES.

The following engineering based vocational course of the Central Board of Secondary Education, New Delhi have been recognized for purpose of higher studies by Association of Indian Universities vide letter No. EC/II (385)/92/156961 dated Dec.1, 1992.

a) Electrical Technology

b) Electronics Technology and

c) Air Conditioning and Refrigeration Technology.

The students who have passed +2 examination with above-mentioned vocational courses have been considered eligible for admission to the first year of the Engineering Colleges.

Admission of students of vocational stream in Diploma courses in Polytechnic in National Capital Territory of Delhi.

Govt. of India, Ministry of Education and Cultural (Department of Education) Technical-10 has recognized vocational courses for admission in 2nd year of the Diploma course in the concerned vocation in Polytechnics vide letter No. F/-20/84T.10 dated 10th August, 1984 address to the Director, Directorate of Technical Education (Delhi Administration), Rouse Avenue, New Delhi.

The following clauses are/mentioned in the above said letter:

1.The students who have passed Senior School Certificate Examination in Vocational subjects will be entitled for admission to second year of the Diploma course in the concerned vocation in polytechnics.

2. The admission will be entirely on merit basis and 10% seats in the concerned subjects will be reserved for those students, who have passed +2 examination of CBSE offering the concerned vocation.

6. The petitioners relied on a counter affidavit of respondent No. 3, All India Council for Technical Education in CWP No. 5492/2002 approving lateral entry to the vocational course in second year. The relevant portion of the affidavit filed by All India Council for Technical Education, respondent No. 3 is as under:

11. That on 07.12.2001 Xth Meeting of All India Board of Vocational Education was held and certain recommendations were made making provision for vertical mobility for ITI pass outs to Diploma and Degree classes at +2 stage. The recommendations of the All India Board of Vocational Education was forwarded by the answering Respondent herein on 04.03.2002 to all the Directors of Technical Education of the State Government and Union Territories for their information. It was recommended that the number of students eligible for lateral entry would be 10% above the total sanctioned strength from both the streams together. A copy of the minutes of the meeting dated 07.12.2001 and the letter dated 04.03.2002 of the answering respondent are collectively annexed herewith and marked as Annexure-B.

7. The plea of the petitioners" is that admissions to diploma courses are in two types of institutions, namely, Government institutions and privately managed institutions affiliated to the Board of Technical Education, Delhi and the admission is managed centrally by the Chief Admission Officer. According to the petitioners the respondent Nos. 1 and 2 were earlier giving admission to the students who had passed the senior secondary examination with vocational course to second year of diploma course till 2005-2006. For admission to second year/III semester of full time diploma course, a candidate is required to pass 12th class of vocational stream of CBSE/passed ITI/Apprenticeship from schools located in Delhi/ITI affiliated to BTE, Delhi respectively with subjects analogous to the engineering diploma course with minimum 60% marks aggregate in all the subjects reflected in the marksheet of qualifying examination and minimum 40%

marks in each subject of CET, 2005 i.e. Applied Physics, Applied Chemistry and Applied Mathematics.

8. In 2005 the respondents introduced common entrance test for the students of vocational stream subjects who had passed out senior secondary examination for admission to polytechnics, however, the same was reversed by the Chief Minister of Delhi and the vocational stream students were given admission to III semester without qualifying the Entrance Test.

9. The grievance of the petitioners is that, however, again in 2006 respondent Nos. 1 and 2 has introduced Common Entrance Test for admission to diploma course and the admission procedure adopted by the respondents is in clear contravention of instructions/directions of respondent No. 3, AICTE and the representations made by Central Board of Secondary Education when the petitioners opted for admission in class 11th in vocational stream.

10 The petitioners assertion is that they filled their form for CET, 2006 for admission to first year of diploma course against the 10% supernumerary seats as they had no option except to appear for the CET, however, they are entitled for admission to second year/III semester of the diploma course which is being denied to them in an arbitrary and unfair manner. The petitioner in these circumstances filed the present petition seeking admission to second year/III semester of vocational stream run by respondent No. 1 namely Department of Training and Technical Education, Government of NCT of Delhi through lateral entry against the 10% seats reserved for students of vocational course as per the letter dated 10.8.1984 of the Government of India, Ministry of Education and Culture (Department of Education) Technical and the notifications dated 11.7.1992 and letter dated 4.3.2002, minutes of the meeting dated 7.12.2001 of All India Council for Technical Education and the instructions issued by Central Board of Secondary Education in their prospectus for admission to engineering based vocational courses (11th and 12th class). The petitioners also relied on the judgment dated 23.10.2002 in CWP No. 5492/2002, Himanshu Pathak and Ors. v. NCT of Delhi and Ors. where the students from vocational courses were held to be entitled to lateral entry/direct admission in second year/III semester of diploma course.

11. The petitioners contended that the respondent Nos. 1 and 2 could not change the eligibility conditions for admission to second year/IIIrd semester for the students from vocational stream contrary to the directions of AICTE, which are binding on them.

12. The writ petition is contested by the respondent Nos. 1 and 2 who have filed the counter affidavit of Dr. Bani Baral, Deputy Director, refuting the averments made by the petitioners. The respondent Nos. 1 and 2 contended that 10+2 vocational stream as relied on by the petitioners is a scheme terminal in nature and additional provisions were made under the scheme. Respondent Nos. 1 and 2 pleaded that in 1997 CBSE had revised its curriculum and mathematics was

made an optional subject in lieu of one of the languages and the general foundation course included physics and chemistry in Part II of certain courses.

13. According to the respondents they have written to CBSE and Directorate of Education, Delhi to sort out the deficiencies in 10+2 vocational stream syllabus. The respondent Nos. 1 and 2 admitted that during 1999-2003 vocational stream students were given lateral admission in the second year with the pre- condition that they have to pass BTE 1st year examination in Applied Mathematics, Applied Physics and Applied Chemistry for being eligible for award of diploma.

14. The respondents plea is that to sort out the matter and to comply with the AICTE guidelines the Department had taken an entrance test in 2004 and 2005 notifying the syllabus of Applied Mathematics, Applied Physics and Applied Chemistry of BTE, 1st year in advance and none of the candidates could qualify the entrance test, however, the students were given lateral admission in vocational streams with the intervention of the Hon"ble Chief Minister. According to respondents this created a very anomalous situation where a student ineligible for admission to first year diploma course got admission in second year of the same course in the same polytechnic on obtaining 60% marks in senior secondary examination in vocational subjects. The respondents' objection is that despite various communications to Directorate of Education, All India Council for Technical Education and Central Board of Secondary Education for taking steps to avoid such anomalies nothing has been done. The respondent Nos. 1 and 2 relied on their letter dated 13.12.2002 and 9.11.2005. The relevant portion of respondent Nos. 1 and 2 letter dated 9.11.2005 is as under:

I have been directed to draw your attention on the following matters.

In compliance with your direction we have conducted the CET for lateral entry for 10+2 (vocational stream) and ITI pass outs with first year syllabus of BTE for Applied Physics, Applied Chemistry and Applied Mathematics. None of the 173 students who appeared in 2004 and 405 students who appeared in 2005 could clear the entrance examination. With the intervention of the Hon"ble Chief Minister, Delhi both years they had to be given admission in the second year through lateral entry based on the aggregate marks in the qualifying examination.

This has led to a situation that a student not fit for admission in the particular branch of first year diploma course in Government Polytechnic has got admission in the second year of the same branch in the same institute through lateral entry.

A comparison of the study schemes of 10+2 (vocational) Engineering stream and ITI reveals that 10+2 (vocational) engineering students study the subjects of language I, language II or Mathematics. General foundation course, vocational elective papers, Physics and health Education, Applied Physics and Applied Chemistry are included in part II of General Foundation course or is an optional subject and the marks are not reflected in the marksheet.

ITI students study Trade Theory, Engineering Training, Workshops, Science and Calculation and Social Studies.

In response to the AICTE letter 4th March, 2002 conveying the recommendation of AIB-VE, the department has expressed its reservation on allowing direct admission to 10+2 (vocational) and ITI pass outs in the second year of full time diploma course stating that these students do not study Physics, Chemistry and Mathematics in their 10+2/ITI classes and are not able to keep up with the requirement of diploma course. AICTE issued the directive dated 17.12.2002 without giving any cognizance to the same.

There are diploma courses like Pharmacy and Modern office Practice where the minimum eligibility for admission to the first year is 12th pass.

In view of above AICTE may kindly take a view of reserving 10% of sanctioned intakes of first year diploma course for vertical mobility of ITI and 10+2 (vocational) pass outs instead of giving them lateral entry to second year.

15. The respondents disclosed that there are 211 seats (supernumerary) earmarked for ITI/vocational pass outs in analogous diploma courses. A single test (Test-I) was conducted in 2006 for admission to all 10+2 based diploma courses. According to the respondent Nos. 1 and 2 about 2120 seats are available for admission besides the 211 supernumerary seats and, Therefore, on the basis of minimum eligibility in Test-I and their merit rank the students of ITI/Vocational pass outs can also be considered against additional 211 seats also. The respondent Nos. 1 and 2 Therefore strongly opposed the backdoor entry to the second year of the diploma course relying on AICTE letter as on the basis of their merit rank in the entrance test for admission to the first year course most of the petitioners and other similarly situated students are ineligible for admission even to the first year course. The respondents also contended that petitioners had accepted the revised eligibility and revised provisions and had taken the relevant entrance test without raising any objection. The respondents also raised a plea that respondent No. 3 has delegated various issues to the State Government and the decision to admit 10+2 vocational stream students in the first year was taken in the board meeting of the BTE after the respondent No. 3 did not give any reply to the respondents letter of November, 2005 and they are entitled to lay down and maintain the education standards.

16. An affidavit of professor K.Madhu Murthy, Adviser (Admn), All India Council for Technical Education was also filed on behalf of respondent No. 3. The respondent No. 3 asserted that u/s 10(k) of the AICTE Act the Council has the exclusive jurisdiction to grant of approval for establishing technical institution or for starting a new course or for increasing the intake of students in the existing course and the provisions of the Central Act alone have to be complied with. Reliance was also placed on Section 23(1) of the Act, 1987 under which the respondent No. 3 is empowered to frame suitable regulations from time to time to carry out the purpose of Act of 1987. It was asserted that the responsibility of

the respondent No. 3 is to determine and coordinate the standards of technical education throughout the country and to integrate its development and to maintain certain standards in such education uniformly throughout the country. According to respondent No. 3 Section 10(o) of the AICTE Act, 1987 provides for framing of regulations for admissions in matters of students in engineering degrees and engineering diploma programmes. Consequently, the guidelines were framed which were duly notified in the Gazette of India on 11.7.1992. According to the guidelines, clause 2.0 provides for lateral entry to degree engineering programmes as well as lateral entry for diploma course in second year/III semester level. Relying on the guidelines it was contended that in addition to the sanctioned intake at the first year level maximum of 10% seats are to be reserved for lateral entry of such students. Respondent No. 3 also referred to the circular dated 10.4.1984 of Government of India, Ministry of Education and Culture (Department of Education) for admission to second year of the diploma in the concerned vocations in polytechnics. According to the said circular the criterion for admission is purely on merit basis and 10% seats in the concerned subjects are to be reserved for those students. The reference was also made to recommendations made in the 10th meeting of All India Board of Vocational Education held on 7.12.2001 recommending the provision for vertical mobility for ITI pass outs to diploma and degree courses at +2 stage. According to respondent No. 3 the recommendations were forwarded on 4.3.2002 to all the Directors of Technical Education of State Governments and Union Territories for their opinion and it was recommended that number of students eligible for lateral entry would be 10% above the total sanctioned strength from both the streams.

17. In the circumstances respondent No. 3 contended that students of vocational course including ITI students and 10+2 students with an aggregate 60% marks are eligible to join the second year at the diploma level. The respondent No. 3 emphasized that the guidelines of AICTE were duly notified in the Gazette of India on 11.7.1992 and as such have statutory force and binding on all technical institutions throughout the country. The relevant portion of the affidavit on behalf of the respondent No. 3 is as under:

13:- It is respectfully submitted that the guidelines of AICTE were duly notified in the Gazette of India on 11.7.1992 and as such have statutory force and binding on technical institutions throughout the country. All the stake holders are expected to ensure the compliance of the guidelines for the maintenance of uniform, planned and coordinated development of technical education system throughout the country, promotion of qualitative improvement of such education in relation to planned qualitative growth, regulation and proper maintenance of norms and standard in technical education system and for matters connected therewith.

18. The petitioners filed a rejoinder affidavit and denied the averments made in the counter affidavit of the respondents. I have heard the learned Counsel for the parties in detail and have also perused the documents relied on by them and

the relevant legislations. The All India Council for Technical Education Act, 1987 (Act No. 52 of 1987) was enacted taking into account the growing erosion of standards in technical education. In pursuance to various recommendations made, a National working group was set up in November, 1985 to look into the role of All India Council for Technical Education which recommended that in order to enable the Council to play its role effectively it shall have to be vested with necessary statutory authority. The National Policy of Education, 1986 also stipulated that the Council should be vested with statutory authority for planning, formulation and maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certificates and awards and, Therefore, in order to ensure proper planning and coordinated development of the technical education system throughout the country; promotion of qualitative improvement of technical education in relation to planned quantitative growth; and regulation of the system and proper maintenance of norms and standards the said Act was passed which received the assent of the President on 23.12.1987 which was published in the Gazette of India, Part II, Section 1 dated 28.12.1986. Section 10 of the Act provides function of the council which is as under:

10.Functions of the Council.- It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes for performing its functions under this Act, the Council may-

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the

(b) coordinate the development of technical education I the country at alllevels;

(c) allocate and disburse out of the Fund of the Council such grants on such terms and conditions as it may think fit to-

(i) technical institutions, and

(ii) Universities imparting technical education in coordination with the Commission;

(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for over-all improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and

Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institution or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(I) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialisation of technical education;

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advise the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the Institution or the programme;

(v) perform such other functions as may be prescribed.

19. Section 10(o) provides for formulation of guidelines for admission of students to technical institutes and universities imparting technical education. It also cannot be disputed that respondent No. 3 framed the guidelines u/s 10(o) of the All India Council for Technical Education Act, 1987. The guidelines were duly notified on 11th July, 1992 which provides for lateral entry for Diploma holders in second year/third semester level. The guidelines also provide that the seats in addition to sanctioned intake at the first year level shall be limited to a maximum of 10% for such students. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, it was held by the Apex Court that All India Council for Technical Education Act, 1987 falls under Entry 66 of List I and Entry 25 of List III of 7th Schedule to the Constitution and if the provisions of the Act are in conflict or inconsistent with the State Act then to the extent of such inconsistency provisions of the State Act are void and State cannot lay down standards and requirement higher than those prescribed by the Central Act for technical institutions and cannot deny situation/seats to applicant on the ground that they do not fulfill such higher standards/requirements. The Supreme Court had held that since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country as without this the coordinated and integrated development of technical education all over the country will not be possible which will defeat one of the main objects of the statute. The Court was of the view that unnecessarily high norms or standards for admission to education institutions or to pass the examination may not only deprive the vast majority of the people of the benefit of the educational qualification but would also result in concentrating technical education in the hands of affluent and elite few and depriving country of a large number of otherwise deserving technical personnel. The Supreme Court had held: 22. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, Therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well. What is further important to note is that the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before Parliament. Hence, on the subjects covered by this

statute, the State could not make a law under Entry 11 of List II prior to Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty-second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.

20. In State of Tamil Nadu (*supra*), the debate was centered around the right of the States to prescribe standards higher than the one laid down by the Council. The Supreme Court was of the view that the regulation made by the Council and the rules to be made by the Central Government under the Act are to be laid before Parliament and consequently on the subjects covered by the statute, the State could not make a law under Entry 11 of List II prior to 42nd Amendment nor can it make a law under Entry 25 of List III after 42nd Amendment. The relevant observation of the Apex Court are as under:

22...Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel.

21. From the pleas of respondent Nos. 1 and 2, it is apparent that the respondent No. 1 has not even made the laws pertaining to admission to the diploma courses but the plea of respondent Nos. 1 and 2 is based on their administrative decision to rectify the alleged anomalies noticed by them where the students even after failing in the entrance examination and thus not eligible for admission to first year of the diploma course, become entitle for admission to second year/3rd Semester on the basis of lateral entry to the course. The fact that 173 students who had appeared in 2004 and 405 students who had appeared in 2005 could not clear the entrance examination were subsequently given admission to the second year/third semester by respondents themselves at the intervention of the Chief Minister of Delhi, does not negate the regulations of respondent No. 3. Respondent Nos. 1 and 2 had addressed these anomalies by

letter dated 9th November, 2005 to respondent No. 3 which it seems had gone un-replied but this will not clothe respondent Nos. 1 and 2 to enact a statute or give them powers by administrative decisions contrary to the regulations of respondent No. 3. Respondent Nos. 1 and 2 have not enacted any statute contrary to the regulations of respondent No. 3 but only took administrative decisions to conduct an entrance examination even for those students who are entitled for admission to second year/third semester according to the regulations of respondent No. 3. Even if a statute is enacted by respondent Nos. 1 and 2, which is contrary to the regulations of respondent No. 3, it will be void in terms of the ratio of the Supreme Court in State of Tamil Nadu (supra) and Therefore any administrative decisions by respondent Nos. 1 and 2 also cannot be implemented and shall also be void to that extent.

22. A learned single Judge of this Court in the case of Himanshu Pathak and others (supra) has already held that the respondents are bound by the directives/regulations of respondent No. 3, which is an independent body of Government of India. In this case the plea of the candidates was that by taking into account 275 seats in the first year 10% additional seats ought to have been reserved for vocational stream seeking admission directly in the second year which amounted to 27 seats in addition to 275 seats and as only 15 students were given admission to second year/third semester, 12 more seats were available for 10% quota earmarked for direct admission to the second year course of vocational stream. The admission to the second year course of vocational stream was approved and upheld by the single Judge. This decision of the learned single Judge was not challenged by the respondents.

23. Perusal of the information bulletin for Common Entrance Test 2006 also reflects that admission was to be conducted after receiving the final decision of All India Council of Technical Education, respondent No. 3, for the year 2006- 07. The information bulletin specifically stated that the course of studies and intake for admission of vocational/ITI pass out from Delhi schools/ITI to full-time diploma courses in analogous discipline against the supernumerary seats will be subject to final decision of All India Council for Technical Education. If that be so, the stand of respondent Nos. 1 and 2 that in order to sort out the anomaly that lateral admission to second year/third semester directly which has been termed as back-door entry can not be allowed as the students who failed to qualify the entrance test for first year becomes eligible for admission to second year/third semester, cannot be justified and approved and relied on by the respondents contrary to the regulations of respondent No. 3. If on the basis of regulations of respondent No. 3 the students are eligible for admission to second year/third semester scoring 60% marks in the senior secondary examination, the same cannot be denied on the ground that some of the petitioners had taken the entrance examination and on the basis of merit ranking they were not entitled to admission to the first year of diploma course and since they had taken the entrance examination they are estopped from claiming admission to second year on the basis of regulations of the respondent No. 3. It cannot be disputed that

there will not be estoppel against the statute. What is also relevant is that all the students who scores 60% marks in the senior secondary examination and who have vocational courses may not be eligible for admission to second year/third semester of the diploma courses as the number of seats are restricted to 10% of the total seats and number of such students may be more than 10% seats and in that case though a student may be having 60% marks in senior secondary examination or ITI pass out with vocational subjects, still may not get admission. In such circumstances the student may opt for admission to first year of the diploma course instead of wasting his year and again taking a chance next year on the basis of his performance in the senior secondary examination after appearing in the senior secondary examination in the category of improvement of performance.

24. If the anomalies pointed out by the respondent Nos. 1 and 2 by their letter dated 13th December, 2002 and 9th November, 2005 have not been considered and the regulations amended by respondent No. 3, the rights of the petitioners for lateral admission in accordance with the regulations of respondent No. 3, which has statutory force, cannot be negated in the facts and circumstances.

25. In another similar writ petition being WP(C) 12057-72 of 2006, Narinder Singh and ors, some the candidates had also challenged the eligibility conditions of securing 33% marks in each subjects (separately in theory and practical) and had contended that it was not applicable for admission to the Diploma courses. Perusal of record had reflected that no such condition was imposed by respondent No. 3 nor the said condition was contrary to the regulations of respondent No. 3. This was the condition for qualifying the senior secondary examination or other qualifying examinations. Therefore, it was held that the respondent nos. 1 and 2 were entitled to insist for the conditions of qualifying examination also for admission to the diploma courses. It has been held that the candidates are, Therefore, not entitled to challenge the conditions for qualifying examination, senior secondary. Consequently the respondent No. 1 and 2 are entitled to admit those students only who have minimum 33% marks in each subject separately as well as in theory and practical in those subjects which have practical.

26. Consequently, the petitioners shall be entitled for admission to the diploma courses in second year/third semester in consonance with the regulations of respondent No. 3 and on the basis of eligibility criteria in consonance with letters dated 10th August, 1984 and 4th March, 2002 against 10% quota for lateral entry and such other eligibility conditions imposed by the respondent nos. 1 and 2 which are not contrary to the regulations of respondent No. 3. The eligibility conditions imposed by the respondent No. 1 and 2 contrary to the eligibility norms of the respondent No. 3 are void and are quashed

27. Therefore considering the facts and in totality of circumstances and for the foregoing reasons, the rule is made absolute and the writ petition is allowed and the respondents are directed to admit the petitioners forthwith in second year/

third semester of respective diploma courses in the quota of 10% seats, if available, provided the petitioners fulfill all the norms as contemplated under the regulations of respondent No. 3 and other norms insisted by the respondent nos. 1 and 2 in respect of qualifying examination which are not inconsistent with the regulations of respondent No. 3. Parties are, however, left to bear their own costs.