

(2015) 06 MAD CK 0307

In the Madras High Court

Case No : W.A. No. 842 of 2015, W.P. Nos. 11707, 16265, 16433, 16906, 16971, 17042, 17443, 17604, 17618, 17655, 17736, 17764, 17800, 17801, 17852, 17853, 17857, 17877, 17953, 17954, 17926, 18009, 18010, 18011, 18019, 18105, 18184, 18230 of 2015 and W.P. No. 9065 of

Minor Kabhilar

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 254

Tamil Nadu Admission in Professional Educational Institutions Act, 2006 — Section 2(g), 3, 4, 5

Citation : (2015) 3 LW 501 : (2015) 6 MLJ 69 : (2015) WritLR 742

Hon'ble Judges : Satish K. Agnihotri, J;M. Venugopal, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; A.L. Somayaji, Advocate General Assisted by D. Krishnakumar, Special G.P. and S.T.S. Moorthy, G.P., Advocates for the Respondent

Judgement

Satish K. Agnihotri, J.—The petitioner in W.P. No. 11707 of 2015, challenging the interim order passed by the learned Single Judge on 12.06.2015, came up with the instant appeal being W.A. No. 842 of 2015. In the course of arguments, the learned counsel for the petitioners in the other writ petitions pending before the learned Writ Court also appeared along with the learned Advocate General for the State. On the joint request made by all the parties, all the writ petitions are listed before this Division Bench for hearing along with the writ appeal, by order of the Chief Justice. All these cases involve a common question of law and facts. Thus, this writ appeal and all the writ petitions, as aforesaid, are being taken up together for consideration and disposal.

2. The common question of law involved herein is as to whether the candidates obtaining qualifying examination certificate in the previous years conducted by

the Tamil Nadu State Board of Secondary Education (for short "the State Board") are eligible to participate in counselling, along with fresh candidates who have obtained qualifying examination certificate in the current year, i.e., 2014-2015, for admission to M.B.B.S./B.D.S. courses.

3. The writ petitioners, having obtained 10 + 2 Higher Secondary examination certificate in the year 2014-2015, have come up with the instant writ petitions and appeal, seeking a direction to restrain the authorities from considering and admitting those students, who have completed their Higher Secondary examinations in the academic years 2012-2013 and 2013-2014, along with the petitioners, who have completed Higher Secondary examination in the current academic year 2014-2015 for admission to M.B.B.S./B.D.S. Courses in 2015-2016 session.

4. The learned counsel appearing for the petitioners would challenge the scheme, which provides for admission to M.B.B.S./B.D.S. Courses to all students, who have obtained Higher Secondary Certificate in (a) Biology or Botany and Zoology (b) Physics and Chemistry in any academic session, without restricting to a particular academic session.

5. The challenge is predicated on the ground that +2 examination itself may be treated as an entrance examination for admission. The evaluation of marks and questions posed in the earlier years were entirely different, and as such, it would result into inequality. It is submitted that the Higher Secondary examination held in 2014-15 was strict and highly competitive as compared with the examination held in earlier years. If students of earlier years are allowed to compete, the students of the current year would have lesser chances of success. It is also contended that abolition of entrance examination and discontinuation of improvement examination necessitates treating +2 examination of the current year as the entrance examination.

6. Mr. V. Raghavachari, learned counsel, in support of his contentions, referring to the particulars annexed to the writ appeal, states that the cut off mark for open category was 199 in the last year as against 198 in the current year. In the case of B.C., it was 198.25 in the last year as against 196.25 in the current year. Likewise, it is in all categories, and as such, those candidates, who could not be admitted last year for the fact that they could not reach the cut-off mark, have fair chance of admission this year. In that view of the matter, the candidates having participated unsuccessfully, cannot be allowed to compete again with the candidates of this year. By way of illustration, it is pointed out by him that one Swathi R.B., who stood at Gr. no. 3376, on the basis of cut off marks 196.75 would be upgraded this year at 2003. Likewise, he had submitted a list of several candidates who were down below in the list for admission would come up, on the basis of their cut off marks obtained last year. He relies on a decision of the Gujarat High Court in Jayesh A. Joshipura Vs. State of Gujarat and Others, (1984) 2 GLR 761 .

7. The next contention of the learned counsel is that normalisation is applicable only in respect of marks obtained in the examination conducted by various boards and authorities, not in respect of marks obtained in the examination conducted by the State Board in different years. Thus, candidates of current year, would not have any benefit of normalisation. The admission to professional courses on the basis of qualifying marks without holding common entrance examination is contrary to principles of law laid down by the Supreme Court. The entrance examination facilitates selection on the basis of merit, unlike the selection on the basis of qualifying marks obtained in different years. Thus, the same be quashed with a direction to hold a common entrance test for admission to the said courses. Section 5 of the Act dealing with normalisation will not permit selection committee to equate students of different years on par with those of current year.

8. It is further contended that permitting all candidates, who have already joined professional courses in the last years to compete with freshers is violative of judgment of a division bench of this Court in *C. Maria Arul Rex and others Vs. The State of Tamil Nadu* 2007 (4) CTC 553 . He also relies on a decision of the Bombay High Court in *Pradnya (Dr.) and Others Vs. State of Maharashtra and Others*, (2002) 3 BomCR 382 and in *Komal Kamlakar Chitnis and Others etc. Vs. Director, Medical Education and Research Bombay and Others etc.*, AIR 1995 Bom 1 . The prospectus for admission to medical courses is not in accordance with the statutory provisions.

9. Mr. R. Gandhi, learned Senior Counsel, urges that some specific percentage of seats may be earmarked for admission to candidates of the previous years.

10. Mr. V.M.G. Ramakkannan, learned counsel, would urge that the method of examination and question papers in different years are different and also evaluation differs from year to year, and as such, the normalisation should be made applicable in case of marks obtained in the Higher Secondary examination certificate from the State Board in different years also.

11. Mr. Isaac Mohanlal, learned counsel, submits that normalisation adopted by the respondent is neither pragmatic nor practical. There should be some method to equalise or normalise the marks obtained by the candidates in the examination conducted in different years by the same Board. According to Mr. Isaac Mohanlal, the normalisation scheme adopted by AIIMS is applicable to students of the same academic year of two shifts examination and the same be made applicable here also. Relying on the figures as annexed with his papers, he would submit that only 3.8% of total seats would go to the candidates of the present year and 49.5% of total seats will go to the candidates of the previous years.

12. He relies on a decision of the Supreme Court in *Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another*, AIR 2007 SC 950 : (2007) 2 JT 534 : (2007) 2 SCALE 1 : (2007) 3 SCC 720 : (2007) 1 SCC(L&S)

870 : (2007) 2 SCR 235 : (2007) AIRSCW 707 : (2007) 1 Supreme 639 . It is also urged that permitting the candidates who had already sought admission in other professional course in the last year would entail in huge wastage of seats in other professional courses, like BDS, Engineering, etc.

13. Mr. K. Selvaraj, learned counsel, reiterates the submission advanced by other learned counsel, while adding that nearly 549 seats would be usurped by unequally placed candidates. He relies on a decision of the Supreme Court in *Mabel Vs. State of Haryana and Others*, AIR 2002 SC 2773 : (2002) 5 JT 402 : (2002) 5 SCALE 337 : (2002) 6 SCC 318 : (2002) 3 SCT 917 : (2002) 2 UJ 1181 : (2002) AIRSCW 3137 : (2002) 5 Supreme 141 .

14. Mr. G. Sankaran, learned counsel, refers to various normalisation methods applicable in different entrance examinations and courses and submits that the respondent should consider adopting normalisation method, which is rational and takes care of all candidates, not only of other boards, but also of the different years of the same board.

15. Mr. A.R.L. Sundaresan, learned Senior Counsel, submits that the petitioner in W.P. No. 16433 of 2015, securing 197.75 marks out of 200 marks, would be ranked 2304 in general rank and 1215 in community rank if the candidates of previous academic years are excluded. The provision permitting the candidates of previous academic years to compete for selection with the candidates of the current year is arbitrary, illegal, discriminatory and unconstitutional. In respect of prohibiting the candidates who are pursuing other professional courses, Mr. Sundaresan is ad idem with other learned counsel appearing for the petitioners. The last contention urged by the learned Senior Counsel is that the candidates obtaining qualifying examination certificate in different years form a different class and as such, they cannot be equated for the purpose of admission, when there is no entrance test and admission is made only on the basis of marks obtained in the qualifying examination.

16. The other learned counsel appearing for the petitioners also reiterate the same contentions.

17. On the other hand, the learned Advocate General appearing for the State would contend that the Legislative Assembly of State of Tamil Nadu, in exercise of its legislative power, has framed The Tamil Nadu Admission in Professional Educational Institutions Act, 2006 (for short "The Act") to regulate the admission to professional courses, including medicine and dental. The qualifying examination prescribed therein is that Higher Secondary (Plus Two) level examination conducted by the Board of Secondary Education, Government of Tamil Nadu or any equivalent examination conducted by the Central Board of Secondary Education or any other State Board of any other State or any other Authority.

18. Further, according to the learned Advocate General, Section 5 of the Act stipulates normalization of marks, whereunder the variation in the highest mark

secured by the students of different boards have been normalized by equating the same, and as such, the contention of the petitioners that marks obtained by candidates in different years from the State Board would vary and tilt the balance against them is unsubstantiated. Such apprehension of the petitioners is misplaced and unfounded.

19. The learned Advocate General would further contend that the State Government, by G.O. Ms. No. 184, Higher Education Department dated 9.6.2005, abolished the Tamil Nadu Professional Courses Common Entrance Examination and also discontinued the improvement examination for admission to professional college in Tamil Nadu. The said G.O. was struck down in *N. Priyadarshini Vs. The Secretary to Government, Education Department and The Secretary, Selection Committee (M.B.B.S)*, AIR 2005 Mad 315 : (2005) 3 CTC 449 : (2005) 3 LW 101 : (2005) 3 MLJ 97 , primarily on the ground that the executive order entrenched upon occupied field of Article 254 of the Constitution of India.

20. Narrating the background of enactment of the present Act, it is submitted by the learned Advocate General that subsequently, the Tamil Nadu Legislature enacted the Tamil Nadu Regulation of Admission in Professional Courses Act, 2006, wherein it was provided that the State Board students would not be required to undergo the common entrance test, unlike students of other Boards. The said enactment was struck down in *Nishanth Ramesh rep. by Mother/Natural Guardian, Mrs. Sandhya Ramesh, Nikita Gandhi rep. by Father/Natural Guardian, Mr. Jayaprakash Gandhi and Joshua Dhivyan and G. rep. by his Father, Rev. E.C. Gnana Sekhar Vs. The State of Tamil Nadu and Pattali Makkal Katchi (PMK) Students Wing*, (2006) 2 LW 21 : (2006) 2 MLJ 382 , basically on the ground that the State Legislature has no competence to legislate in such matters, which falls within the domain of Medical Council of India and All India Council for Technical Education, as the said agencies have already framed and issued regulations for the said purpose. Even otherwise, the difference between the students of State Board and the students of other boards of education was found hit by the provisions of Article 14 of the Constitution of India. Ultimately, the instant Act, i.e., The Tamil Nadu Admission in Professional Educational Institutions Act, 2006 was enacted by the State Legislature and the same was upheld by this Court in *S. Aswin Kumar, rep. by his father and natural guardian Mr. P. Shanmuga Nathan and Others Vs. State of Tamil Nadu and Others*, (2007) 2 CTC 677 . The instant prospectus for the current year issued under G.O.(D) No. 540 is in accordance with the provisions of the said enactment as it prescribes for educational qualification and also normalisation. In absence of challenge to the said provisions, the admission pursuant to the instant prospectus may not be held as invalid, irrational and illogical.

21. The learned Advocate General would further contend that there cannot be mandamus to compel the statutory authorities to act contrary to the statute or rules made thereunder, relying on the decision of the Supreme Court in *State of*

West Bengal Vs. Subhas Kumar Chatterjee and Others, AIR 2010 SC 2927 : (2010) 127 FLR 236 : (2010) 8 JT 651 : (2010) 11 SCC 694 : (2011) 1 SCC(L&S) 785 : (2010) AIRSCW 4926 : (2010) 6 Supreme 369 .

22. It is next contended that an identical ground was raised by the petitioner in S. Narasiman Vs. The State of Tamil Nadu and The Secretary, Tamil Nadu Engineering Admissions, Anna University, (2007) 5 MLJ 15 : (2007) WritLR 926 , which was repelled by this Court. The contention of the respondents that there was change of syllabus and also evaluation was different, was categorically rejected. It was also held that even the change in syllabus could not be a ground to hold that the examinations conducted in different years stand on different footing. The learned Advocate General also relies on a decision of the Supreme Court in State of Kerala Vs. Kumari T.P. Roshana and Another, AIR 1979 SC 765 : (1981) 4 SCC 512 , a decision of the Bombay High Court in Komal Kamlakar Chitnis (supra) and a Division Bench decision of the Gujarat High Court in Aman Piyush Khanna Vs. State of Gujarat (2009) 3 GLR 2382 : (2009) 3 GLR 2382.

23. Further contention of the learned Advocate General is that the same examination conducted in different years by the same board are to be treated as single examination and as such, it does not fall within the category of separate classes. The only distinction in the qualifying examination is that the qualifying examination is conducted by different boards, for which the Act contemplates normalisation. The contention that lesser number of students have secured centums in a particular year will not, by itself, make the examination stand on a different footing. The entire contention was based on speculation without slightest shred of evidence.

24. It is further urged that the contentions of the learned counsel appearing for the petitioners that the candidates of the previous years, who had not participated in the selection or admission process, may be permitted to attend the current year counselling would establish the fact that the qualifying examination of the previous year is one and the same and on par with the qualifying examination of the current year. The scheme contemplates treating all candidates equal, who had taken qualifying examination in different years from the same board and as such, the normalisation of marks would not be applicable in case of those candidates. Therefore, the normalisation of marks across the years which is not permitted by the statute cannot be directed by this court in a writ of mandamus. Further, normalisation of marks can be done by considering the highest marks secured by students in each subject. Even if there is normalisation of marks across the years, the highest marks secured in all the years of the qualifying examination conducted by the State board is the maximum marks which the student could have obtained in those examinations.

25. M/s. Sathia Chandran, Pushpa Menon, A. Mohamed Ismail, S. Pushpakaran and Dr. Fr. A. Xavier Arulraj, learned counsel appearing for the candidates of previous years sought permission for impleadment in the instant controversy and submitted that the writ petitions are to be thrown at the threshold, inasmuch as

the affected candidates are not impleaded as party-respondents, albeit they are before this Court on their own, seeking impleadment.

26. The aforesaid learned counsel appearing for the candidates of previous years, strongly opposed the contention of the petitioners stating that the Act clearly prescribes for the requisite qualification. Once candidates have obtained the prescribed qualification for admission and there is no restriction on the number of attempts for consideration, except the minimum age, such candidates are entitled to consideration along with other qualified candidates irrespective of the years in which the said qualifying examination certificates were obtained.

27. We have given our anxious consideration to the submissions made by the learned counsel for the parties, examined the pleadings and documents appended thereto.

28. In sum and substance, the challenges to the scheme of admission permitting even those candidates, who had obtained qualifying examination certificate in the previous years, are as under:

i The candidates, obtaining qualifying examination certificate in different years form a separate class as the standard of examination and valuation vary from year to year. Sometimes, like in the current academic year, awarding of marks was on a low ebb, whereas, the candidates who appeared for the examinations in the previous year could secure higher marks and as such, treating all the candidates at par is discriminatory, arbitrary and irrational.

ii The normalisation of marks is defective. The method applied by AIIMS, New Delhi, wherein, even for the candidates of the same year, if examination is held in two shifts, normalisation of marks is applicable. In the case on hand, normalisation of marks be made applicable in respect of all the candidates of previous years also vis-a-vis, the candidates of the current year.

iii Dispensing with the common entrance test which ensures fair merit selection replacing by admission to MBBS/BDS courses on the basis of qualifying marks is violative of well settled principles of law and also the mandate laid down by the Supreme Court.

iv Permitting the candidates who had joined professional courses last year for participating for admission in the current year would entail huge loss of seats in the professional courses and the public exchequer. Thus, there should be a restriction on their participation in the counselling or admission to the MBBS/BDS courses in the current year.

29. Indisputably, the admission to MBBS/BDS courses is regulated under the provisions of the Act, which came into force from 07.03.2007. The relevant provisions for adjudication of the dispute involved in these cases are extracted hereunder:

29.1. Section 2(g) of the Act defines "qualifying examination", as under:

"(g) "qualifying examination" means the examination conducted by the Board of Secondary Education, Government of Tamil Nadu, at the Higher Secondary (Plus Two) level or any equivalent examination conducted by the Central Board of Secondary Education or any other State Board of any other State or any other Authority."

29.2. Section 5 of the Act, dealing with the Normalization of marks, reads as under:

"5. Normalization of Marks.--(1) The marks obtained by the students in the relevant subjects in the qualifying examination conducted by various Boards or Authority shall be equated with the marks obtained by the students in the same subjects in the qualifying examination conducted by the State Board, by adopting the method of normalization.

Explanation.--Under the method of normalization, the highest mark obtained by the students of various Boards in each subject shall be equated to the highest mark obtained by the students of State Board in that subject and the relative marks obtained by other students in that subject shall be determined accordingly.

Illustration.--If the highest marks secured by the student of the State Board in Physics is 100 and the highest mark secured by a student of any other Board in the same subject is 90, both the highest marks will be considered to be equal to 100. If a student of the other Board secures 60 marks in Physics when the first mark in Physics in the same Board is 90, the 60 marks will be considered to be equal to 66.66 marks as arrived at below:-

(2) After normalization of marks in the relevant subjects in the qualifying examination conducted by different Boards, the qualified students of different Boards shall be merged into a common merit list.

(3) In cases where more than one student have got the same marks in the common merit list, the inter-se merit among such students shall be determined in such manner as may prescribed.

(4) The appropriate authority and the consortium of unaided professional educational institution shall prepare the rank lists for admission of students to the seats referred to in Section 3 and Section 4, respectively and allot students through centralized counselling."

29.3. In order to implement the object of the Act, a Selection Committee is constituted by the Directorate of Medical Education. The Selection Committee has published a Prospectus for admission to M.B.B.S./B.D.S. Courses.

29.4. Clause 6 provides for restriction of admission to courses, as under:

"6.(a) Candidates who have passed the H.S.C. in the Vocational Stream and private candidates are not eligible to apply for Medical/Dental course.

(b) The selection and admission of candidates of other Universities/Boards will be

provisional subject to recognition of the qualifying examination by the Tamil Nadu Dr. M.G.R. Medical University under which the candidate gets admitted. In case, the recognition is not accorded for the admission of the candidate on any ground, the provisional admission will not entitle the candidate for the continuance of the course and the admission will be cancelled.

(c) Candidates undergoing MBBS course are NOT ELIGIBLE to apply for MBBS course.

(d) Candidates undergoing BDS course are NOT ELIGIBLE to apply for BDS course."

29.5. Clause 7 provides for Minimum Eligibility marks, as under:

"7. Minimum Eligibility Marks;-

A. MBBS:

(i) Other Communities:-

(a) A minimum of 60% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 60% marks in each of the subjects of Physics and Chemistry.

(c) Weighted aggregate of the percentage of marks in (a) and the percentage of marks in (b) should not be less than 140 out of 200 marks.

(ii) Backward Class and Backward Class Muslim:-

(a) A minimum of 60% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 60% marks in each of the subjects of Physics and Chemistry.

(c) Weighted aggregate of the percentage of marks in (a) and the percentage of marks in (b) should not be less than 130 out of 200 marks.

(iii) Most Backward Classes and Denotified Communities:-

(a) A minimum of 55% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 55% marks in each of the subjects of Physics and Chemistry.

(c) Weighted aggregate of the percentage of marks in (a) and the percentage of marks in (b) should not be less than 120 out of 200 marks.

(iv) Scheduled Castes, Scheduled Caste-Arunthathiyar, Scheduled Tribes:-

(a) A minimum of 40% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 40% marks in each of the subjects of Physics and Chemistry.

(c) Weighted aggregate of the percentage of marks in (a) and the percentage of marks in (b) should not be less than 80 out of 200 marks.

v) The minimum marks for the candidates under Orthopaedically Physically

Disabled Category-(Locomotory disability of Lower Limbs alone) is as follows:

a) OC/BC/BCM/MBC/DNC-45% of marks in the above prescribed subjects taken together in the qualifying examination b) SC/SCA/ST-40% of marks in above prescribed subjects taken together in the qualifying examination.

(B) BDS:-

The candidates (OC/BC/BCM/MBC/DC) should have obtained not less than 50% of the aggregate marks in Physics, Chemistry and Biology/Botany and Zoology taken together at the qualifying examination.

Scheduled Caste, Scheduled Caste-Arunthathiyar and Scheduled Tribe the aggregate marks required for admission shall be 40%.

The minimum marks for the candidates under Orthopaedically Physically Disabled Category-(Locomotory disability of Lower Limbs alone) is as follows:

a) OC/BC/BCM/MBC/DNC-45% of marks in the above prescribed subjects taken together in the qualifying examination b) SC/SCA/ST should have obtained a minimum of 40% of marks in above prescribed subjects taken together in the qualifying examination."

29.6. Clause 8 deals with normalization of marks as prescribed under the Act. The only condition, if a candidate has obtained minimum educational qualification, is the requirement of minimum age, i.e., 17 years as on 31st December, 2015. There is no restriction on outer age limit.

30. The prospectus for admission, read with the provisions of the Act, contemplates admission to MBBS/BDS courses on the basis of qualifying examination certificate obtained by the candidates. There is no contemplation that the admission is open to only those candidates who have obtained the qualifying examination certificate in the current year, i.e., 2014-2015. The validity of the said provisions is not under challenge in these writ petitions. The contention of the learned counsel for the petitioners that less number of students have secured less centums of marks in the current year in the qualifying examination as compared with the last year, when more number of students secured more centums of marks and as such, the candidates of this year would be prejudiced, is not a relevant criterion. It is well known that securing of marks depends on several factors, viz., question papers, valuers/examiners and other similar factors. If more number of students have secured more marks, that by itself, cannot be a ground to take a view that the selection on merit would suffer. A student chooses a professional career as per his intention, which he has to pursue life long. If he fails in one attempt to secure admission to the professional course of his choice, he may not be thrown out at the door for admission in the next year. The object of the Act seems to be to permit all the candidates who have obtained qualifying examination certificate, irrespective of the years of obtaining such certificate. The contention of the learned counsel for the petitioners that almost 50% of seats would go to the previous year candidates is

not a relevant and rational criterion, when it is the common examination conducted by the State Board. The year of obtaining qualifying examination certificate is irrelevant.

31. A Division Bench of this Court, while considering the eligibility of candidates of previous years for admission to engineering courses in the year 2007, in *S. Narasimhan (supra)*, considered the identical issues, as pleaded in the instant petitions. The ground raised therein was that the syllabus of higher secondary education has been changed from the academic year 2005-2006 and thus, those candidates who appeared in Plus Two examination in previous years had studied different syllabus, whereas, the students who appeared in 2007 examination, had studied a new syllabus, which was very tough; thus, without the method of equalisation, the students who had passed the qualifying examination before 2007, should be made ineligible for admission to engineering courses, which was rejected observing as under:

"14. Keeping in view the sentiments expressed above, particularly in the decision of the Supreme Court, we are unable to persuade ourselves to come to a conclusion that a level playing field is not available and the students who have passed prior to 2007 should be deprived of an opportunity of pursuing Engineering courses. For the purpose of granting relief to some of the students of the year 2007 likely to be affected, we cannot think of shutting the door for ever in respect of the students of preceding years. We do not find any rhyme or reason in such contention. In such view of the matter, the latter portion of the relief claimed by the petitioner to the effect that the students who had passed during the previous years should be made ineligible is required to be rejected."

32. The identical issue came up for consideration in *State of Kerala vs. Kumari T.P. Roshana (supra)*, wherein, the direction of the High Court to hold common entrance test on the ground that there was disparity in the standard of examination and valuation, was struck down by the Supreme Court, holding as under:

"15. We are not impressed much with the surmise which colours the reasoning of the Full Bench and the learned Single Judge that there is such substantial difference in the pre-degree courses and evaluations between the sister universities within the same State that the breach of Article 14 by equal treatment of the marks unequally secured by examinees in the two universities may be spelt out. It is trite law that every inconsequential differentiation between two things does not constitute the vice of discrimination, if law clubs them together ignoring venial variances. Article 14 is not a voodoo which visits with invalidation every executive or legislative fusion of things or categories where there are no pronounced inequalities. Mathematical equality is not the touchstone of constitutionality. This Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, AIR 1974 SC 1 : (1974) LabIC 1 : (1974) 1 LLJ 121 : (1974) 1 SCC 19 : (1974) 1 SCR 771 cautioned:

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

33. In Jayesh A. Joshipura (supra), relied on by Mr. V. Raghavachari, learned counsel, the learned Single Judge, (as He then was) took the view that those students, who once got a chance to be considered for admission to F.Y. MBBS course and failed to get admission on merits, would, for certain, adversely affect the chances of fresh students who would get entry in the arena of contest for the first time in the given year. This view was taken in the year 1984. The view of the Supreme Court in Kumari T.P. Roshana (supra) was not brought to the notice of the learned Single Judge, while considering Jayesh A. Joshipura (supra) and as such, we are in respectful disagreement with the said view.

34. A Full Bench of the Bombay High Court, in Komal Kamlakar Chitnis and Others (supra), had held that examination of a particular Board or University irrespective of the years a candidate has passed is always treated at par for all purposes and the students passing the same examination in different years cannot be constituted as a different class merely by virtue of the fact that they have given the same examination in different years.

35. For the reasons mentioned hereinabove, we are of the considered view that the Higher Secondary examination conducted by the State Board is the same examination, irrespective of the years. All the candidates, who have obtained qualifying examination certificate, as defined under the provisions of Section 2(g) of the Act, irrespective of the years of obtaining certificate, are eligible to compete for admission to the MBBS/BDS courses in the current year.

36. Regarding normalisation, different examinations conducted by different authorities have adopted different types of normalisation mechanism. The provision of normalisation of marks is enshrined in Section 5 of the Act which is not under challenge. As we have held that examinations conducted by the State Board, irrespective of years, is one and the same and as such, the same cannot be made applicable to the candidates having obtained qualifying examination certificate from the same State Board, but, in different years.

37. Sanjay Singh (supra), relied on by Mr. Isaac Mohanlal, learned counsel, arose from a dispute filed by unsuccessful candidates who appeared in the examination for recruitment to the post of Civil Judge (Junior Division) conducted by the U.P. Public Service Commission, wherein, the scaling process was under consideration. The Supreme Court held that the basic requirement for scaling is that all answer scripts will be mixed thoroughly and that approximately equal number of answer scripts drawn at random will be allotted to each examiner so as to infer equal distribution of ability of candidates in each batch of answer scripts. In the cases on hand, there is no scaling. It is only normalisation of marks which has been prescribed under the statutory provisions which is not challenged and as such, the ratio laid down by the Supreme Court in this case is

of no assistance to the petitioners.

38. The next issue is as to whether the candidates who had already been admitted to professional courses in the last year be not permitted to participate for admission to MBBS/BDS courses in the current year.

39. A Division Bench of the High Court of Gujarat at Ahmedabad in *Aman Piyush Khanna (supra)*, while examining the provisions of Gujarat Professional Medical Educational Colleges (Regulation of Admission and Payment of Fees) Rules, 2009, upheld the Government's policy, wherein, the student of previous year who could not secure admission in professional course previously was permitted for admission to the medical course in the next year.

40. The question as to whether the candidates who have been admitted to other professional courses in the previous year be permitted to participate for admission to MBBS/BDS courses in the current year came up for consideration in *C. Maria Arul Rex (supra)*. A Division Bench of this Court, examining Clause 6 of the Prospectus for the academic year 2006-2007, wherein, the candidates who were undergoing any of the professional courses and also those candidates who had discontinued the professional courses on any ground, were held as ineligible to apply to medical/dental courses, held that the students who have already applied and admitted in different professional courses in the previous years cannot be allowed to compete with the fresh come outs for admission into MBBS/BDS courses for the current academic year.

41. *Pradnya (supra)*, relied on by Mr. V. Raghavachari, learned counsel, deals with admission to post-graduate courses, wherein, the consideration was different and as such, the same is not applicable to the facts of the instant cases.

42. Reliance on *Mabel (supra)* by Mr. K. Selvaraj, learned counsel, wherein, the Supreme Court observed that a candidate can opt for second professional course after completion of the first professional course is not relevant to the controversy involved herein, as, in the said case, Clause 18 of the Information Brochure for admission to MBBS course of Kurukshetra University, clearly prescribed that the candidates already admitted in any medical/dental college will not be considered eligible for admission to the course, contrary to the instant provisions, wherein, there is a provision only for applying to the same course and not to any other course like from MBBS to BDS or from BDS to MBBS or from any other professional course to MBBS or BDS course.

43. In the Prospectus of the current year, there is a restriction only in respect of those candidates who are pursuing MBBS course for admission to MBBS course and for dental course who are pursuing BDS course and as such, the same cannot be widened as the students, who could not be admitted in professional course of their liking in the previous year, had every right to compete with the fresh candidates for the desired professional course, when there is no bar under the provisions of the Act as well as the provisions of the Prospectus. The decision of this Court in *Maria Arul Rex (supra)* and the Division Bench judgment of the

Gujarat High Court referred to hereinabove are based on the rules and Prospectus applicable in the said cases.

44. Regarding common entrance test, there is no dispute that the said test certainly ensures better fair selection on merit and also prevents maladministration as observed by the Supreme Court in *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, AIR 2005 SC 3226 : (2005) 4 CTC 81 : (2005) 3 ESC 373 : (2005) 7 JT 313 : (2004) 8 SCC 139 : (2005) 2 SCR 603 Supp : (2005) 2 UJ 1176 : (2005) AIRSCW 3923 : (2005) 5 Supreme 544 .

45. The Supreme Court, in a catena of cases, has considered the issue of admission to professional courses. In *Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc.*, AIR 1997 SC 399 : (1996) 8 JT 89 : (1996) 6 SCALE 570 : (1996) 5 SCC 732 : (1996) 5 SCR 68 Supp : (1996) AIRSCW 3778 : (1996) 7 Supreme 203 , it was held that the percentage secured at different examinations are bound to vary according to standard applied by such examination bodies and as such, a common entrance examination has to be held.

46. In *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 , it was held that merit for admission to professional colleges is usually determined by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview or by a common entrance test conducted by the institution or in the case of professional colleges, by government agencies.

47. In *Rajan Purohit and Others Vs. Rajasthan University of Health Science and Others*, (2012) 8 JT 265 : (2012) 8 SCALE 71 : (2012) 10 SCC 770 , it was observed that the student who had not passed 10+2 examination from the same board or university, but from different boards and universities, could not be evaluated by a uniform standard and could only be evaluated by competitive entrance examination. However, where there is a single board conducting the State examination and there is a single medical college, the admission can be given on the basis of 10+ 2 exam marks strictly in accordance with the merit, in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate

Regulations, 2002.

48. In the cases on hand, the State Legislature had enacted the present Act for regulating admission to various professional courses. The constitutional validity of the said Act is not under challenge and as such, we are unable to direct the authorities/State Government to conduct a common entrance test in lieu of admission to medical and dental courses on the basis of qualifying examination certificate, as defined in the Act. It is a trite law that no mandamus can be issued against the provisions of the Act or Rules framed therein, unless constitutionality of the same is under challenge. [See *State of West Bengal vs. Subhas Kumar Chatterjee* (supra)].

49. For the reasons mentioned hereinabove, we do not find any merit in the writ appeal as well as in the writ petitions filed by the candidates who have qualified in the academic year 2014-2015. As a sequel, the writ appeal and writ petitions, except W.P. Nos. 17852, 17954, and 18019 of 2015 (filed by candidates of previous years) are dismissed. W.P. Nos. 17852, 17954 and 18019 of 2015 are allowed. Costs made easy. Connected Miscellaneous Petitions are closed.