

(2010) 09 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 12639 of 2009, 5361 of 2010 and C.A. No. 6480 of 2010 in Spl. C.A. No. 5361 of 2010

Shri Jay Sitaram Kelavani Mandal

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 51 GLR 2562

Hon'ble Judges : S.J. Mukhopadhaya, C.J;K.M. Thaker, J

Bench : Division Bench

Advocate : B.M. Mangukiya and Bela A. Prajapati, for the Appellant; P.K. Jani, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—The Petitioners in the captioned two petitions are aggrieved by the Resolution dated 2-6-2009 and the subsequent resolution (modifying the earlier Resolution dated 2-6-2009) dated 29-10-2009 whereby the Respondent No. 1-State has prescribed eligibility criterion for admission in the "Certificate Course for Physical Education" ("C.P. Ed." for short) under which the Respondent No. 1-State has included the requirement regarding minimum height and minimum-maximum Body Mass Index ("B.M.I." for short).

1.1. The Respondent No. 1-State, after prescribing the criterion vide Government Resolution (G.R. for short) dated 2nd June, 2009 in view of the representation by the Association of Self-Finance Institutes imparting education in course of C.P. Ed., issued another G.R. dated 29-10-2009 and modified the requirement qua B.M.I. by scaling it down from B.M.I. 20-25 to 18-25.

2. In both the petitions, the Petitioners are registered Trust which are administering various institutions imparting education in different subjects/ courses. Both the Petitioner-Trusts are also administering educational institutions

imparting education in C.P. Ed.

3. On the ground that the prescribed requirement of minimum height and minimum-maximum B.M.I. is impracticable and irrational, as a result of which the institutions run by the Petitioner-Trusts may not be allotted any students during the centralized admission process, the Petitioner-Trusts have preferred present petitions.

Since, the subject of the challenge, the issues raised, the relief prayed for and the opponents are common, the petition are heard together and decided by this common judgment. In view of the subject-matter of the petitions and the request by the Petitioner for early final hearing and decision at this stage, the petitions are heard and finally decided with the consent of the contesting parties. The learned A.G.P. has waived notice of admission.

4. The facts involved in and relevant for the purpose of present petitions, are as follows:

4.1. The Petitioner of the writ petition being Spl. C.A. No. 12639 of 2009 runs an institution which offers course in C.P. Ed. It has been granted recognition by the recognizing body i.e. National Council for Teacher Education (N.C.T.E. for short) in March, 2009 with intake of 50 students per batch; whereas the Petitioner in the writ petition being Spl. C.A. No. 5631 of 2010 also runs an institution offering C.P. Ed. course which has been granted recognition by N.C.T.E. in October, 2000 and has been allowed intake, with effect from 11th March, 2008, of 100 students (earlier the permissible intake was of 50 students).

4.2. The Respondent No. 1-State Government issued a G.R. dated 2nd June, 2009 prescribing the criterion for admission of students in C.P. Ed. course. Under Clause-3 of the said G.R., the Respondent No. 1-State prescribed below mentioned requirement:

C.P. Ed. - Male

Sr.

No.

Item

1.

2.

3.

4.

1

2

3

5.

....

....

6.

Height of candidate

165 cms.

7.

B.M.I.

20-25

C.P.ED. - Female

Sr. No.

Item

Minimum Point

1.

....

....

2.

....

....

3.

....

....

4.

....

....

5.

....

....

6.

Height of candidate

150 cms.

7.

B.M.I.

20-25

4.3. After the aforesaid G.R. was issued, the association of C.P. Ed. College Management approached the Minister for education and raised objection vide letter dated 22-6-2009, against the said G.R., particularly against the aforesaid fitness requirement. The said objection was followed by another communication dated 25th August, 2009.

4.4. Since, the admission process in C.P. Ed. course, in Government Institute and Self-Finance Institute is centralized, an intimation was issued, on or around 21st July, 2005, asking the Self-Finance Institutions to attend the admission process to be held on 31st July, 2009. The Petitioners have alleged that though more than 8,000 candidates had submitted their applications, about 7,000 candidates were debarred on the ground that they did not comply with the prescribed requirement of height and B.M.I. and only about 1,400 candidates were called for actual tests and only 113 candidates could clear the tests and at the end only 96 candidates actually opted for admission in C.P. Ed. Colleges. The Petitioners have also alleged that on account of such state of affairs none of the Self-Finance Institutions could get allotment of any students.

4.5. Upon being aggrieved by such fact-situation (regarding admission), some of the Self-Finance Institutions as well as the Association of Self-Finance P.T.C./C.P. Ed./B. Ed. Colleges, filed writ petitions being Spl. C.A. Nos. 10390 and 10127 of 2009 and other similar petitions. In the said group of petitions, the Division Bench, initially passed an order dated 8th October, 2009 directing the Petitioners to make representation which was required to be decided within stipulated time. The said order dated 8-10-2009 reads thus:

Oral Order

(Per: Hon''ble The Chief Justice Mr. K. S. Radhakrishnan)

Leave to amend is granted.

The Petitioners approach this Court seeking a Writ of Certiorari to quash resolution dated 2-6-2009 produced at Annexure B. According to the Petitioners, the stipulations contained in the said resolution cause serious concern to the Petitioner-institutions. There are 38 colleges conducting such C.P. Ed. course and they could get only three students. Practically, these colleges will have to be closed and teachers and non-teaching staff will have to be sent out. Considering the seriousness, we feel it appropriate that the Petitioners may make a representation to the Government within a period of one week from today. The

Government will examine the same after hearing the Association and take appropriate decision within a period of two weeks thereafter. Post the matters on 30th October, 2009.

4.6. After the aforesaid order, a representation was made on 12-10-2009 by the associations/institutes which was followed by another representation dated 15-10-2009. After considering the objections/representation of the Self-Finance Institutes engaged in imparting C.P. Ed. course, the Respondent No. 1-State passed the aforesaid G.R. dated 29-10-2009 whereby the Respondent No. 1-State made following provisions:

5. After having made detailed consideration on all the points raised in this case, the following decision is hereby taken:

(1) There is no any necessity to make reduction in the height.

(2) The standard of B.M.I is hereby fixed at 18-25 instead of 20-25.

(3) ...

6...

4.7. The G.R. dated 29-10-2009 (which modified the earlier G.R. dated 2-6-2009) also did not fulfil the needs and expectations of the Self-Finance Institutes.

4.8. The details and the copy of the G.R. dated 29-10-2009 was placed on the record of the above-referred petitions wherein the earlier order dated 8-10-2009 was passed. The Division Bench, after hearing the parties and upon taking into account the G.R. dated 29-10-2009 disposed off the said petitions by an order dated 3-11-2009 observing:

Petitioners approach this Court seeking a Writ of Certiorari to quash and set aside the resolution dated 2-6-2009 (Annexure-B), and to implement a similar resolution dated 11-6-1998, and prayed for other consequential reliefs. The Petitioners also prayed for a direction permitting the members of Petitioner-Association to invite applications for filling up vacancies of C.P. Ed. course in their colleges by public notice, and conduct tests wholly and fully, adhering to the earlier resolution dated 11-6-1998.

When the matters came up for hearing on 8-10-2009, learned Counsel appearing for the Petitioners submitted that there are 38 colleges conducting C.P. Ed. course, and they could get only three students, and practically these colleges will have to be closed and teachers and non-teaching staff will have to be sent out. Considering the seriousness of the matter, we felt that the same required consideration at the end of Respondent-authorities and Petitioners made representations accordingly before the Government. Pursuant to the representations made by Petitioners, Education Department in Government of Gujarat passed a resolution dated 29-11-2009 amending the qualifications for admission to the C.P. Ed. course.

Today, learned Assistant Government Pleader, submitted a letter dated 2-11-2009 of the Office of the Commissioner, Mid-Day Meals Scheme and Schools, Gujarat State, wherein it is stated that they will complete the admission process within 35 days, considering the fact that 180 days of attendance is required for the students as per N.C.T.E. norms.

Learned Counsel appearing for the Petitioners submitted that the entire selection process may be completed at the earliest so that sufficient attendance for the students can be secured by June, 2010.

Under the circumstances, we are inclined to direct the Respondent-authorities to complete the admission process within 30 days from today so that norms of N.C.T.E. for 180 days attendance can be adhered to by June, 2010. Needless to say that if the Petitioners have any other grievances against the resolution dated 29-10-2009, they can challenge the same before appropriate forum.

(Emphasis supplied)

With the aforesaid direction, all the Special Civil Applications stand disposed of.

4.9. It is claimed that pursuant to the aforesaid order dated 3-11-2009, the Association of the institutes made representation dated 1-12-2009 to the Respondent No. 1-State which was followed by another representation dated 4-1-2010 addressed to the Minister and to the Secretary, Education Department. It is further claimed that since the said representation did not yield any positive result, another writ petition being Spl. C.A. No. 1356 of 2010 was preferred by the Association, however, since the Court was of the view that the petition would not be maintainable it was withdrawn so that the aggrieved institution may prefer separate petitions. Thereafter, the Petitioners have preferred present petitions.

5. Mr. Sirish Joshi, learned Advocate and Mr. B. M. Mangukia, learned Advocate have appeared for the Petitioners, Mr. P. K. Jani, learned Government Pleader has appeared for the Respondent Nos. 1, 2 and 4 (Spl. C.A. No. 5361 of 2010) and Mr. A. J. Shastri, learned Advocate has appeared for the Respondent No. 4-N.C.T.E. (Spl. C.A. No. 5361 of 2010). We have heard the learned Advocates and perused the record.

6. The learned Counsel for the Petitioners have submitted that the prescribed requirement of minimum 165 centimeters height and B.M.I. 18-25 (for men) and 150 centimeters (for female) is arbitrary and irrational. It is also submitted that the said requirement does not have any nexus with the object viz. admission to the course for C.P. Ed. It is also claimed that for the course for D.P. Ed., B.P. Ed., or even for police personnel such requirement is not prescribed. The Petitioners have also contended that the authority to prescribe eligibility criteria rests with N.C.T.E. and the Respondent No. 1-State does not have any authority of law to prescribe eligibility criteria. The Petitioners have also alleged that the Life Insurance Corporation also does not prescribe such requirement. The Petitioners

have claimed that on account of the impugned prescription sufficient candidates fulfilling such requirement so as to bridge the gap between the available candidates and the requirement of the self-finance institutions, would not be available which will result into closer of the institutions.

7. Per contra, Mr. Jani, learned Government Pleader, has submitted that the G.R. dated 29-10-2009 was issued after considering the representation and objections of the Petitioners and was placed before the Court when the earlier petitions were heard and after taking the G.R. into account the Court disposed of the petitions without interfering with the said resolution. Thus, second round of petitions against the same G.R. and for the same relief/s are not maintainable and may not be entertained. Mr. Jani further submitted that with the object of improving the standard of physical education and faculty, the Respondent No. 1-State has after careful consideration of relevant material and opinions, prescribed the requirement which is neither arbitrary nor irrational nor without nexus. He has submitted that the Petitioners are not right or justified in alleging that the G.R. prescribing the requirement is without authority of law or contrary to the regulation of the N.C.T.E. Mr. Jani, learned Government Pleader also urged that in view of the order dated 3-11-2009, the issue stands concluded inasmuch as after the G.R. dated 29-10-2009 was issued, the Petitioners had submitted before the Court that the admission may be completed within 35 days, and that therefore, any grievance against the G.R. stands waived hence, the Petitioners are now not justified in raising the said issue once over again.

8. We may first deal with the contention raised on the ground of regulation of N.C.T.E. It is claimed that as per the regulation by N.C.T.E. the State Government does not have authority to prescribe such condition/ eligibility criterion. Reliance is placed by the Petitioners on Clause 3 of the Regulation by N.C.T.E., which was in operation prior to 27-12-2007 as well as the regulation which have been brought in force after 27-12-2007. The relevant part of the erstwhile Clause 3 reads thus:

3. Eligibility:

(a) ...

(b) Admission should be made either on the basis of marks obtained in the qualifying examination or in the entrance examination conducted by the State Government, with due weightage for physical fitness/proficiency, as per the policy of the State Government.

(c) ...

The relevant part of the amended Clause 3 which has been brought in force since 27-12-2007 reads thus:

3.0 Intake, Eligibility and Admission Procedure.

3.1 Intake

3.2 Eligibility

(a) ...

(b) Additional weightage to be given to those candidates who participated in State/National Level sports/games.

(c) ...

3.3 Admission Procedure:

Admission shall be made on merit on the basis of marks obtained in the entrance examination (written test, sports proficiency test, physical fitness test, interview and marks obtained in qualifying examination) or any other selection process as per the policy of the State Government.

9. Upon examining the provision cited by the Petitioners to support their submissions we find that the contention is not acceptable.

10. Having regard to the erstwhile Clause (prior to 27-12-2007) which provided that "admissions should be made either on the basis of marks obtainedor in the entrance examination conducted by the State Government with due weightage for physical fitness/proficiency, as per the policy of the State Government" and the Clause 3 which is in operation as of now inter alia provides that admission shall be made on merit on the basis of marks obtained ...or any other selection process as per the policy of the State Government", it appears that the words "Admission shall be made on... or another selection process as per the policy..." lend support to the decision and action of the Respondent No.

1. Under the said regulation, it appears permissible to the State Government to take policy decision and frame appropriate policy prescribing criteria of physical fitness etc. for selection process for admission purpose and such authority is not reserved only for N.C.T.E., but is also available to and within the powers of the State Government. It follows that in view of the said provision, it would be permissible to the State Government to prescribe criteria for admission either on the basis of marks obtained in the entrance examination or other selection process as per its policy, and that therefore, the G.R. dated 29-10-2009 reflecting State's policy prescribing the requirement cannot be branded as, or set aside on the ground that it is, without authority or amounts to usurping N.C.T.E.'s authority.

Any provision vesting such authority exclusively in N.C.T.E. and/or denying the authority to prescribe any requirement (for admission) to the State Government is not brought to our notice.

In absence of any provision which denies the authority to State Government or which vests and restricts such authority exclusively in favour of N.C.T.E., it is not possible to accept the contention of the Petitioners.

10.1. However, with a view to having further clarification and to understand the view of the regulating body i.e. N.C.T.E., notice to N.C.T.E. was issued. The

N.C.T.E., has though entered its appearance, "not made any clarification and/or has not even raised any objection with regard to the contention of the Government. Even after entering appearance, the N.C.T.E. has not supported the claim and contention of the Petitioners and has also not expressly and vocally claimed that the stand of the State Government is incorrect.

Thus, when the N.C.T.E. has also not supported the contention of the Petitioners and not opposed the impugned prescription, it is not possible to set aside the impugned G.R. on the ground that it is contrary to said regulation and/or that it is without authority.

10.2. It deserves to be noted that until now the N.C.T.E. on its own has not raised any objection against the said G.R. and even after the issuance of Notice in present proceedings N.C.T.E. has not raised any objection. This leads to a safe conclusion, at this stage and in light of the regulation as it stands as of now, that N.C.T.E. also acknowledges, or does not dispute, that the action of the Respondent No. 1-State cannot be said to be without authority. We are, therefore, not inclined to accept Petitioners' contention.

10.3. We may, however, clarify that if the N.C.T.E. considers that in terms of its regulation the requirement prescribed by the Respondent No. 1-State amounts to prescribing eligibility criteria and that it is not within the authority of the State Government to prescribe such requirement, this order would not come in the way of N.C.T.E. making necessary clarification or issuing appropriate instruction in accordance with the Act and its regulations.

11. It also deserves to be noted that the regulations of N.C.T.E. are, as admitted by the Petitioner, silent on the point of fitness requirement/ standard and at present there is no provision regarding fitness standard in the regulation, much less any provision prescribing requirement different than what is prescribed by the State neither there is any provision prohibiting such prescription.

Absence of any provision in the regulation cannot be construed or treated as negative or prohibitory provision or covenant. So long as prescription of such criterion is not expressly prohibited, it cannot be said that since N.C.T.E. has not prescribed any requirement or standard it is not necessary to prescribe or that it cannot be prescribed by the Respondent No. 1-State or it is impermissible to prescribe such criterion. We cannot accept such submission.

12. Now, so far as the challenge against the impugned G.R. is concerned, it is pertinent to note that the objection against the prescribed requirement is not raised by any of the candidates/students, but is raised by college management.

13. The candidates who had submitted the application and/or the prospective candidates (i.e. those who intended to apply but did not or could not apply in view of the prescribed requirement) have not challenged the provision and the students have not approached the Court. Thus, the candidates/students i.e. those who are required to fulfil such requirement are not aggrieved by, not

challenged, the said provision. It is only the management who have raised the challenge, again, after the order dated 3-11-2009.

14. It may be recalled that the G.R. dated 2-6-2009 was under challenge in earlier group of petitions, and thereafter, the subsequent G.R. dated 29-10-2009, which has in fact reduced the B.M.I. requirement was also placed on record and after considering both resolutions, the Court disposed of the petitions by the order dated 3-11-2009.

Once, the grievance has been considered and addressed by the Court, another petition against the same G.R. does not deserve to be and cannot be entertained.

It, however, appears that the Petitioners are trying to take shelter under the words "...they can challenge the same before appropriate forum" in the order dated 3-11-2009 to claim that fresh petitions against the same G.R. dated 29-10-2009 are maintainable and that the Court permitted the Petitioners to file fresh petitions.

15. We do not think that the Petitioners are justified in the construing the said order as permission to file fresh petitions against the said G.R. dated 29-10-2009 inasmuch as the Petitioners are conveniently overlooking and ignoring the words "if the Petitioners have any other grievances against the resolution...", meaning thereby, the Court permitted the Petitioners to approach "appropriate forum" if the Petitioners had "any other grievance" i.e. any grievance other than those which were in the said petitions. Since, the Petitioners had raised similar objections against the G.R. dated 2-6-2009/ 29-10-2009, in earlier petitions the Respondent No. 1-State is justified in contending that fresh petitions against the same G.R. are not maintainable.

16. We have, however, considered the submissions made by the Petitioners against the G.R.s impugned in the petitions.

17. Now, the contentions and submissions regarding the justification and/ or maintainability of the prescribed criterion. The Respondent No. 1 has asserted, by its affidavit, that as per the W.H.O. guidelines B.M.I. of less than 18.5 is considered as underweight and it indicates malnutrition, an eating disorder and other health problems whereas B.M.I. of above 25 is considered to be overweight.

The Respondent No. 1-State has averred in the affidavit that the policy decision of the State Government has been taken with a view to upgrading the standard of education and that such policy decision cannot be challenged. With regard to the objection raised on the ground that even in B.P. Ed. or D.P. Ed. such requirement has not been prescribed, the Respondent No. 1-State has clarified in its affidavit that the Joint Director, Education has made a proposal for prescribing such criteria for C.P. Ed. and D.P. Ed. courses and while the decision regarding C.P. Ed. course is already taken, the proposal to change the criteria for D.P. Ed. course is pending before the State Government. It is also claimed that the impugned requirement is prescribed after taking the aforesaid aspect into

consideration. The relevant provision, after the notification dated 29-10-2009, reads thus "the candidates who obtains less than 18 and more than 25 B.M.I. would not be eligible for the admission". The B.M.I. is to be calculated as per the formula mentioned below:

Weight (Kg.) Body Mass Index (B.M.I.) = _____
Height (mtr.) x height (mtr.)

18. So far as the decision as to whether criterion as eligibility norm should be fixed or not and what criterion should be prescribed as eligibility norm for admission and the task of actual determination of the standard are concerned, they are the matters within the realm of policy making and they are the functions of the concerned body i.e. of the authority granting the admission or authorized and competent to take the decision. The Court would not interfere with and/or substitute its own views or decision, in the policy decision regarding the eligibility criteria for admission.

The extent and scope of judicial review in such matters is restricted and Court would not go beyond certain well-defined limits.

As regards the restrain in judicial review, reference may be made to the judgment of the Hon"ble Apex Court in the case of State of Orissa and Others Vs. Gopinath Dash and Others, wherein the Hon"ble Apex Court in Paragraphs 6 and 7 observed thus:

6. The correctness of the reasons which prompted the Government in decision making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

(Emphasis supplied)

19. In another case, while dealing with the objections from the residents of a housing society against the action of the Municipal Corporation of sanctioning plans and permitting the Cinema Theatre to come up in the residential area, mainly on the apprehension that the theatre would cause serious traffic problems in the area, the Hon"ble Apex Court observed in Paragraph 56 that:

56.... Although, it has been argued on behalf the Appellants that the Deputy Commissioner of Police (Traffic) had mechanically given his consent to the plan,

we have to respect his decision and the decision of the Municipal Corporation who are the experts in such matters

The Hon''ble Apex Court in the said judgment further observed in Paragraph No. 58 that:

... once the authorities who are competent to do so have indicated that the apprehension was unfounded it is not for the writ Court to interfere with such decision.

(Emphasis supplied)

Then, in Paragraph 60, the Hon''ble Apex Court observed that:

In our view, the Division Bench was justified in observing that the learned single Judge had in effect sat in appeal over the decision of the executive authorities which he was not entitled to do in law.

In State of U.P. and Another Vs. Johri Mal, the Hon''ble Apex Court, in Paragraph 28 observed thus:

28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court.

(Emphasis supplied)

20. The challenge raised against the impugned Government Resolution is required to be examined in light of the aforesaid observations by the Hon''ble Apex Court and by keeping in focus the well-defined restrictions in the matter of judicial review of policy decision and eligibility criterion. So far as the facts of present case are concerned, it is not possible to hold that the physical fitness of the students and/or the measure or standard of physical fitness has no nexus with the object i.e. matter of admission of students who would be teacher and instructors of physical education. Consequently, it also cannot be said that the decision of fixing the criterion regarding physical fitness in respect of the students who, upon completion of their study, would become eligible for being teachers of physical education, has no nexus with the object viz. admission of students-and the "would be physical education teachers/instructors" in the course related to physical education. In our view, in the facts of the case the impugned decision of including physical fitness and prescribing a standard/

measure for it as one of the eligibility criteria cannot be said to be without nexus with the object and the said decision is not such which can be dismissed on the ground that it has no nexus. The issue being in the nature of policy decision and in the realm of the body authorised for the purpose, the Court would not be justified in interfering with the said decision. In view of the explanation by the Respondent No. 1 stating, inter alia, as to why and on what basis the decision to prescribe the requirement came to be taken and also in view of the material on record, it is not possible to hold that the decision is arbitrary or irrational.

21. Furthermore, the Petitioners have failed to produce any reliable and cogent material on record to support and justify their contention that the decision to prescribe the criterion as well as the standard fixed by the Respondents are arbitrary or irrational or too high and impractical to fulfil and cannot be achieved or met with.

22. In present case, the ground urged in support of the challenge is that the non-availability of sufficient number of students during the admission process which got concluded, is in itself the evidence which supports the contention that the requirement prescribed by the G.R. is unjustified and arbitrary and not possible to be achieved. However, it is relevant to note that even as per the Petitioners' allegations about 1,400 candidates were called for the tests and the said fact belies the said allegation and submission, likewise the fact that about 113 candidates could clear all the tests (including the actual physical tests, besides the impugned requirement) does not support the allegation that the standard prescribed by the G.R. is inachievable. While alleging that out of almost 7,000 applicants only 1,400 candidates were called for the test, the Petitioners have conveniently not stated the reasons on which the applications of the other candidates were found to be not acceptable. The Petitioners have also not stated the various grounds on which the persons from amongst the 1,400 candidates could not be selected or called for further test/interview. In absence of such relevant details it cannot be presumed that all the applicants or candidates who were not considered or who did become eligible for selection process, failed only because they did not fulfil the requirement of physical fitness prescribed by said G.R. Even the advertisements placed on record (by the Petitioners) do not demonstrate any significant or material difference or gap. Furthermore, none of the candidates has made any grievance about the prescribed standard.

23. Insufficient number of students available to meet the large-scale demand for more and more number of students by innumerable institutions which have mushroomed cannot be the reason to reach the conclusion that the provision is arbitrary or irrational and it cannot be the reason for setting aside any eligibility criterion determined by the competent authority. More so, when none of the candidates has made grievance about the criterion and/or challenged it claiming it to be inachievable or irrational or impractical.

24. The Petitioners have attempted to justify their contentions on the ground that such specifications have not been prescribed in military or police department

or even by Life Insurance Corporation. However, as noted above, the Petitioners have not been able to produce any material to support such contention in spite of the fact that the proceedings of these petitions were repeatedly adjourned, at the request of Petitioners' Counsel, for sufficient number of adjournments and length of time to enable the Petitioners to gather the details and material necessary to support their submissions. However, the Petitioners' Counsel could not produce any reliable supporting detail and relevant material.

25. Actually, an eligibility criterion fixed by one body may not be relevant for, or cannot be the standard for, another body or institute and a criterion fixed by one body cannot be set aside on the ground that it is higher or lower than the eligibility criterion prescribed by some other body or institute since each institution would decide and prescribe its own criterion as per its own purpose and need. The requirement and object or purpose for determining any criterion would defer from one institute to another and would essentially and necessarily depend upon the object and need, at given point of time, of each institution.

26. Nonetheless, so as to examine the contention of the Petitioners, we had, as aforesaid, granted time to the Petitioners to place on record relevant and cogent material to support their contention that such specification or such allegedly higher specification are not prescribed or required anywhere else. However, except placing on record the two advertisements by police department any other reliable material is not placed on record by the Petitioners. Of course, besides the said two advertisements, some material from wikipedia and some portion out of a chapter from a school text-book and criteria prescribed by another institute named Laxmibai Rashtriya Sharirik Shiksha Vishvidyalay is placed on record, however, one can hardly consider such material reliable (in absence of any details as to the data and basis on which it is prepared/compiled) and good enough to set aside any eligibility criterion.

26.1. We may, at this stage, refer to the said two advertisements placed on record by the Petitioners. In the first advertisement, (for appointment of Lokrakshak) while any B.M.I. is not specified, the minimum height of 162 cm., for male, is prescribed, as against 165 cm. in present case. The difference is of only 3 cm., which is too insignificant to render present prescription arbitrary or irrational. In case of the other advertisement (Jail Personnel) the requirement is of 165 cm. which is at par with impugned specification. Specification for female, in all cases, is 150 cm. Hence, that also does not help the Petitioners.

26.2. Now, merely because B.M.I. is not prescribed in said two advertisements, though it is a recognized and acknowledged measure for physical fitness, the G.R. prescribing the requirement of B.M.I. cannot be discarded and thrown out, when undisputedly it is a standardised measure for determining physical fitness.

26.3. In such facts, and in absence of any cogent material to prove otherwise, the prescribed requirements cannot be bracketed as redundant or irrational or arbitrary.

26.4. As noticed earlier the institutions have challenged the specification prompted by the fact that sufficient number of students have not been allotted to them. It has been urged that the specifications are so high that candidates who can fulfil the same are not available and that would result into closure of the institutions. In our view, the grounds urged by the Petitioners can be addressed only by the policy-making body.

27. For the reasons discussed earlier and in light of the fact of present case, coupled with the fact that none of the candidates has made any grievance against or challenged the criterion, we are unable to entertain the objection of the Petitioners against the impugned notifications and we are not convinced to hold that the criteria prescribed by the Respondent No. 1 are arbitrary or irrational or do not have any nexus to the object.

Whether to prescribe any eligibility criteria or not and if yes what criterion should be prescribed, is the matter purely in the realm of the body authorized to prescribe the regulation and is a matter in the nature of policy decision with which the Court cannot interfere.

In this view of the matter, we are not inclined to accept the petitions. The petitions fail and do not deserve to be entertain. Thus, the petitions are hereby rejected. However, in the facts of the case there shall be no costs.

In view of the order passed in the main matter, the Civil Application stands disposed of.(SBS) Petitions dismissed.