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Court : Chennai

Decided On : Jul-20-2012

Judge : K.Chandru, J.

Acts : [Constitution of India](#) - Articles 226, 14, 16

Appeal No. : W.P.No.17670 of 2012 and M.P.Nos.1 and 2 of 2012

Appellant : The State of Tamil Nadu

Respondent : All India Council for Technical Education and ors.

Advocate for Def. : Mr.AR.L.Sundaresan, Adv.

Advocate for Pet/Ap. : Mr.A.Navaneetha Krishnan, Adv

Judgement :

This writ petition is preferred under Article 226 of the [Constitution of India](#) praying for the issue of a writ of certiorari to call for the records of the proceedings of the first respondent herein in respect of the impugned regulations in Chapter VI in Appendix I in Clause 1.1 of the Approval Process Hand Book 2011-2012 and to quash the same.

ORDER

1. It is rather unfortunate that the State of Tamil Nadu represented by its Additional Chief Secretary to Government, Higher Education Department, should come up with a writ petition of this nature. In this writ petition, they sought to challenge the regulations framed by the All India Council for Technical Education (for short AICTE) in prescribing minimum norms for admission into engineering courses and they wanted to lower the marks further.

2. The AICTE by its communication, dated 11.7.2011 had informed that entry level qualification for under graduate programs approved by the Council was reviewed in its executive committee meeting held on 28.6.2011. Following the decision taken in the meeting, a notification was issued on 04.07.2011 redefining the entry level qualifications for technical programmes. As per the revised norms, the minimum eligibility for under graduate programmes is 45% for the general category and for the reserved category students, it had been fixed as 40%. The redefined norms of minimum eligibility marks prescribed for the year 2011-2012 was also incorporated in the Approval Process Handbook for the year 2012-2013 under Appendix I, Serial Nos.1 and 2 of item No.1.1. However, the State Government had fixed its own norms for minimum eligibility marks for admission to First year and second year lateral entry courses for the year 2011-2012 and had redefined the AICTE norms made applicable for the year 2012-2013 fixing 50% aggregate in relevant subjects for other communities and 45% aggregate in relevant subjects for Backward class and 40% aggregate in relevant subjects for MBC and denotified community and 35% aggregate in relevant subjects for Scheduled caste Arunthathiyinar and SC and ST.

3. According to the State Government, by prescription of qualification as 45% for other communities and 40% for reserved categories, there has been vacancies in engineering colleges in the State of Tamil Nadu. The last five years statistics from the year 2007-2008 to 2011-2012 showed that there were several seats going vacant. For the sanctioned intake of 2,26,034 for the year 2011-2012, the seats reserved at the rate of 18% for SC and SC(A) was 40,686, whereas there were vacancies of 22,865. Similarly, for scheduled tribes, the seats reserved at the rate of 1% was 2260, but there were vacancies of 1873. Therefore, the AICTE had not taken into account the meagre representation of these weaker sections of the

society in the Technical education. The ground reality showed that large number of seats earmarked for these communities fell vacant. Even mere pass criterion was fixed as minimum eligibly marks for the candidates belonging to SC(A), SC and ST communities. Therefore, prescribing uniform marks of 40% for all reserved categories is not consistent with the ground reality.

4. It was also stated that various factors contributed the standards of technical education, i.e., infrastructure facilities in the institution, qualification and quality of the teaching faculties, staff-student ratio, curriculum, industry-institute collaboration. These factors are primary requirements for ensuring standards rather than the marks obtained by the student at the time of admission alone. Students once enter the college, they work hard and obtain good marks and they cannot be denied the opportunity as they come from a downtrodden background. In the engineering course, the minimum pass percentage in degree level has been fixed at 50%. Both students who were admitted under the general category as well as reserved category will have to get minimum 50% marks for qualifying in the degree examinations like any other student. That being so, when at the degree level all students are required to fulfill the same prescribed minimum criterion, thereby maintaining the standard of education, the academic record of the candidate at the degree level is a true measure of quality of technical education and not the admission criteria at +2 level.

5. It was also stated by the State Government that enhancement of minimum eligibility marks for the SC, SC(A) and ST students will have adverse effect in their availing opportunity to get admission to the professional degree courses, including engineering and consequential implications on their availing the beneficial schemes like scholarships, tuition fee waiver for the first generation graduates and various other schemes extended by the Government. That apart, the State policy enshrined in Part IV of the Constitution to improve the social and economical status of the downtrodden community cannot be achieved. The State Government will be shirking its responsibility from discharging the State obligation under the constitution if the State is to accept the norms of the AICTE. Insofar as the State of Tamil Nadu is concerned, the norms are not in consonance with the AICTE's latest norms only in respect of SC and ST category. While the AICTE had fixed minimum

40% marks in related subjects, the State had fixed 35% of minimum marks. To what extent the shortfall of 5% will have a bearing on the quality of technical education should be seen in the light of the social justice and opportunities to be given to these weaker sections of society to participate in the technical education who are under represented presently. Considering the need of social equity, under representation of these communities in professional higher education especially in technical education, the responsibility of the State to protect the interest of these weaker sections of the society, investment made in the infrastructure in opening of new colleges, institutions after approval by the AICTE and also considering the fact that large number of seats remain vacant to be filled, it is felt that it would be in fitness of things that the eligibility criteria of marks for students belonging to SC, SC(A) and ST may be retained as mere pass of 35% in related subjects as provided in the State Government's order.

6. It was further stated that the students who come from the socially, economically and educationally backward families should be encouraged by the State by providing them the scope for pursuing the professional courses they desire. In the present era of globalisation, it is imminent to generate a large number of professionals to cater to the needs of the international and national community. But by prescription of the minimum norms by the AICTE, the State Government is incapacitated to serve the students. It was also stated that the counseling for admission to BE and B.Tech degree programmes for the year 2012-2013 was scheduled to start on 5.7.2012. Hence the State Government has moved this court.

7. The contention raised was that the AICTE has not made deliberation, discussion and consultation with the State Governments before prescribing minimum qualification marks for under graduate course. The decision of the AICTE would defeat the object sought to be achieved by the founding fathers of the Constitution to bring the downtrodden people to the main stream. The regulation impugned is irrational and unreasonable and has been framed without understanding the ground reality. The students who have passed in the last academic year by securing more than 35% but below 40% are discriminated by the impugned regulations. The right of admission denied this year by the

impugned provision is violative of Articles 14 and 16 of the constitution. The students who are unable to secure high marks in the +2 examination can improve themselves upon joining the engineering colleges where qualified teaching personnel, laboratory facility, workshop and other infrastructure facilities will be available as prescribed by the AICTE. Therefore, the regulation discriminates and denies an opportunity to students who are desirous to improve themselves after joining the course.

8. It was further stated that the AICTE had not considered various aspects including shortage of rural literacy, financial constraints of the students, first generation engineering graduates and day scholar facilities available throughout the State. The AICTE had approved about 400 self financing engineering colleges throughout the State including rural areas. Therefore, the State of Tamil Nadu considering the above aspects had framed a policy to admit the students who have passed +2 examination. Already the State has filed a writ petition in W.P.No.15783 of 2011 in respect of admission for the academic year 2010-2011. As the students are attending classes, the stay order was extended to the academic year 2011-2012 also. Therefore, it was prayed that the impugned regulation of the AICTE in Chapter VI in Appendix-I in Clause 1.1 of the Approval Process Hand Book 2011-2012 should be set aside.

9. Heard the arguments of Mr.A.Navaneetha Krishnan, learned Advocate General, assisted by Mr.E.Sampath Kumar, learned Special Government Pleader, appearing for the State and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for Ms.AL.Ganthimathi, learned counsel for the AICTE.

10. It is shocking to note the kind of arguments that the State had advanced in this writ petition. It is not clear as to whose interest the State is now canvassing. It must be noted that in the State of Tamil Nadu, the largest technical university, i.e., Anna University, was established by the State. Apart from that university, the State is also having Government colleges and Government aided engineering colleges. The admission to professional courses in these colleges were made by the State. There was always stiff competitions among qualified students who got very high marks in the higher secondary course. The class or group for which the present

writ petition is said to have been filed, even if they were to be given admission, they do not have any remote chance of getting admission in the Anna University, Government engineering colleges and the State funded colleges in Tamil Nadu as the cut-off mark for admission into these colleges is somewhere ranging from 95% to 97%. Therefore, it is not as if the State has any interest in making unrepresented classes to be admitted to the State sponsored or funded institutions. On the other hand, the present drive is for gathering fodder for the private self financing colleges where seats were remain unfilled either due to lack of patronage or standards. None of the self financing engineering colleges (which are numbering more than 400) have approached this court seeking for students to be admitted to their colleges on the ground that seats have remained vacant. On the other hand, it is the State which had filed the writ petition to prop up the self financing engineering colleges where seats have remained vacant for reasons well known.

11. In fact, the statistics published in press shows that the performance of the students in many of the colleges are wanting and the pass percentage of majority of the private engineering colleges were less than 20%. Therefore, if a student who did not get even 40% marks, it is unthinkable as to how they will get engineering degrees with difficult syllabus. Though the learned Advocate General referred to the order of the State Government made in G.O.Ms.No.6, Adi Dravidar and Scheduled Tribe Welfare Department, dated 09.01.2012, wherein the State had promised that in respect of seats allotted under the Government quota in self financing engineering colleges reimbursement of fees such as enrollment fee, registration, tuition, games, union, library, magazine, medical examination and such other fee compulsory fees payable by the scholar to the institution or university or board in respect of recognized courses. It is no consolation to admit the unqualified students to engineering colleges thereby making their future uncertain and in this process expend considerable amounts of public funds in this regard. The real question raised here is whether the State has any locus standi to challenge the regulations framed by the AICTE and if so, whether the present ground raised can invalidate the regulation framed by the AICTE?

12. It must be noted that the AICTE was established by the Parliament under the All India Council for Technical Education Act, 1987 in terms of Entry 66 List 1 of Schedule VII of the Constitution. It is for the purpose of coordination and setting standards in higher education as well as to maintain academic excellence. Therefore, if in the exercise of such power, the AICTE had prescribed minimum norms for entry into the technical institution. It is not open to the State Government to lower the standards whatever may be the reasons advanced. In fact, none of the reasons advanced are worth consideration. Ultimately, the students who join the technical education must have minimum norms for getting entry into the institution. By lowering the standards, the purpose for which the centralized body like the AICTE was established will become redundant.

13. In fact, when the State of Madhya Pradesh had fixed different entry level marks between the service candidates and the general candidates in the common entrance test conducted by them wherein minimum qualification was fixed as 50%, the said action of the State Government was frowned upon by the Supreme Court vide its judgment in *State of M.P. v. Gopal D. Tirthani* reported in (2003) 7 SCC 83. The Supreme Court in paragraphs 25 and 26 had observed as follows :

"25.....The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India"

14. Similarly, the Supreme Court had held that if the State consider it necessary to depart from the norms fixed by the centralized body, it has to move the centralized body for making an exception, vide its judgment in *Harish Verma v. Ajay Srivastava* reported in (2003) 8 SCC 69 and in paragraph 17, it was observed as follows:

"17.....If the State has a case for making a departure from the standards laid down by the Medical Council of India or for carving out an exception in favour of any identifiable class of persons, then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification before the Medical Council of India."

15. The Supreme Court (in a case arose from this State itself) in State of T.N. v. S.V. Bratheep reported in (2004) 4 SCC 513 went into the question of the power of the State Government vis-a-vis the AICTE in prescribing entry norms. It was held that in the matter of admission if any prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State Government exercising power under Entry 25 of List III. In paragraphs 9 and 10, the Supreme Court had observed as follows :

"9.Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE..... The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in Dr Preeti Srivastava case². It is no doubt true, as noticed by this Court in Adhiyaman case¹ that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards,

but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including Dr Preeti Srivastava case². If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr Preeti Srivastava case² that the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution has to be understood in the manner as stated in Dr Preeti Srivastava case² and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as on application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration."

(Emphasis added)

16. The Supreme Court once again in Prof. Yashpal v. State of Chhattisgarh reported in (2005) 5 SCC 420 dealt with the interplay between the power under Entry 66 List I and Entry 25 List III and had also stated that lowering of norms of admission will have adverse effect on the standards of education in the institutions of higher education. In paragraph 32, the Supreme Court had observed as follows :

"32. The interplay of Entry 66 List I and Entry 25 List III was again examined by a Constitution Bench in Preeti Srivastava (Dr.) v. State of M.P.¹⁰ in the context of lowering of standards by the State for admission to a postgraduate course in a

medical college and it was held that the State cannot while controlling education in the State impinge on standards in institutions for higher education because this is exclusively within the purview of the Union Government. While considering the question whether norms for admission have any connection with the standards of education and that they are only covered by Entry 25 of List III, it was observed that any lowering of the norms of admission does have an adverse effect on the standards of education in the institutions of higher education....."(Emphasis added)

17. The Supreme Court once again in *Visveswaraiah Technological University v. Krishnendu Halder* reported in (2011) 4 SCC 606 held that while the State may attempt to set an higher standard than the standard prescribed by the AICTE, but certainly it cannot lower the standards prescribed by the AICTE. In paragraph 13, the Supreme Court had observed as follows:

13. The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is twofold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the examining body, to fix higher qualifications is recognised, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State. It should be noted that the eligibility criteria fixed by the State and the University increased the standards only marginally, that is, 5% over the percentage fixed by AICTE. It cannot be said that the higher standards fixed by the State or University are abnormally high or unattainable by normal students, so as to require a downward revision, when there are unfilled seats. During the hearing it was mentioned that AICTE itself has revised the eligibility criteria. Be that as it may."

18. For the other contention that a large number of seats remains vacant, the Supreme Court has held that reducing the standard to fill the seats will be a dangerous trend. In paragraph 16 of the same judgment, the Supreme Court had observed as follows :

"16.The proliferating unaided private colleges, may need a full complement of students for their comfortable sustenance (meeting the cost of running the college and paying the staff, etc.). But that cannot be at the risk of quality of education. To give an example, if 35% is the minimum passing marks in a qualifying examination, can it be argued by the colleges that the minimum passing marks in the qualifying examination should be reduced to only 25 or 20 instead of 35 on the ground that the number of students/candidates who pass the examination are not sufficient to fill their seats? Reducing the standards to fill the seats will be a dangerous trend which will destroy the quality of education. If there are large number of vacancies, the remedy lies in (a) not permitting new colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. Be that as it may. The need to fill the seats cannot be permitted to override the need to maintain quality of education. Creeping commercialisation of education in the last few years should be a matter of concern for the central bodies, States and universities."

(Emphasis added)

19. Perhaps the concern expressed by the Supreme Court led the AICTE to fix certain minimum norms. Therefore, it is not open for the State Government to contend to the contrary.

20. The Government before evolving policy had taken note of only vacancies that were available in the self financing private colleges by adopting the minimum mark eligibility norms fixed by the AICTE. They did not not take note of the number of colleges in the State of Tamil Nadu, their accredited status, their pass percentage for the last five years and even among the pass percentage, the number of candidates who belonged to underprivileged section who had got into the course. By merely looking into the number of seats vacant cannot be a relevant criteria in evolving the policy. On the other hand, the criteria should be whether such

students if admitted will be able to manage to complete the course and come out successful. As they themselves have stated that the minimum percentage of pass marks in the B.E. degree course is 50% and the results so far shown in respect of other communities themselves were far from satisfactory.

21. The present attempt by the State Government to lower the standards and fixing 35% marks will not only do harm to the academic excellence, but also will make students admitted with such marks in not completing their course. In the long run, the precious funds spent by the State will become a waste. If the State is so concerned about such students who have only secured 35%, the State should very well appoint Counsellors and counsel such students to get admitted to other institutions to suit their aptitude and eligibility, so that they can also become useful human resources for this Country. It is not as if every child born in Tamil Nadu should become an Engineer. Even if that happens, there is hardly any scope for employment for those candidates. Surveys done of these self financing engineering colleges published in newspapers showed that most of the colleges produced results with less than 20% pass percentage. If that is the outcome of persons admitted with existing minimum standards, one can understand what will happen if the student with a lower pass marks granting entry into the institution by utilizing the State funding. It will largely result in such students passing time in colleges at the expenses of the State and finally become a drop out with load of arrears on their shoulders, thereby being neither useful to the society nor to the family which had supported their education all through.

22. The State should explore other methods of utilizing those human resources and make them useful citizens. Instead of making such endeavors, the present attempt to confront the AICTE that too through court litigation can hardly be welcomed. It neither serves public interest nor the interest of any section except serving the interests of the self financing engineering colleges. By this process those colleges will fill up seats at the State expense. It is also surprising to note that the State which talks about social justice to underprivileged and the need to accommodate them into the institution of higher learning, but have washed off their hands in restricting their constitutional obligation to provide education only upto 8th standard and not beyond.

23. This court do not think that the State has any legal or constitutional authority to challenge the regulation framed by the AICTE. In view of the above, the writ petition will stand dismissed with a direction to the petitioner not to sponsor students who do not satisfy the AICTE norms to be admitted to engineering colleges lest it should take another dimension which will not be in the interest of any one. No costs. Consequently, connected miscellaneous petitions stand closed.

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