

State of Tamil Nadu Vs. Aicte

State of Tamil Nadu Vs. Aicte

SooperKanoon Citation : sooperkanoon.com/964251

Court : Chennai

Decided On : Apr-17-2013

Judge : The Hon?ble Mr.R.K.AGRAWAL ACTING CHIEF JUSTICE

Appellant : State of Tamil Nadu

Respondent : Aicte

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:17::04::2013 Coram: The Honble Mr.R.K.AGRAWAL, ACTING CHIEF JUSTICE and The Honble Mr.Justice N.PAUL VASANTHAKUMAR Writ Appeal No. 1794 of 2012 & Writ Petition No.22832 of 2012 and connected miscellaneous petitions ----- W.A.No. 1794 of 2012 The State of Tamil Nadu, Represented by its Additional Chief Secretary to Government, Higher Education Department, Fort.St.George, Chennai -600 009. Appellant vs.

1. All India Council for Technical Education, 7th Floor, Chanderlok Building, Janpath, New Delh

001.

2. Union of India, Represented by its Secretary to Government of India, Ministry of Human Resources Development, New Delh

001.

3. Union of India, Represented by its Secretary to Government of India, Ministry of Law, Justice & Company Affairs, New Delh

001. Respondents W.P.No.22832 of 2012 Government of Tamil Nadu, Department of Technical Education SC/ST Employees Welfare Association, Rep. by its General Secretary, P.S.Shenbagaraja, AMBU (Regn. No.58/76), CPT Campus, Tharamani, Chenna

113. Petitioner Vs.

1. The Member Secretary, All India Council for Technical Education, 7th Floor, Chanderlok Building, Janpath, New Delh

001.

2. Union of India, Rep. by its Secretary, Ministry of Human Resources Development, New Delh

001.

3. The Secretary, Ministry of Law, Justice & Company Affairs, Government of India, New Delhi

001.

4. The State of Tamil Nadu, Rep. by its Secretary, Higher Education, Fort.St.George, Chennai 9.

5. The Anna University, Rep. by its Registrar, Guindy, Chennai 25. Respondents Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No.17670 of 2012 dated 20th July, 2012 on the file of this Court. Writ Petition filed under Article 226 of the Constitution of India seeking issue of a Writ of Certiorarified Mandamus to call for the records relating to first respondents notification No.1-MS/AICTE/2011 dated 4.7.2011 and the regulations in Chapter VI in Appendix I in clause 1.1 of the Approval Process Hand Book 2012-2013, quash the same and consequently direct respondents 1 to 5 to follow G.O.Ms.No.151, Higher Education (J2) Department dated 14.6.2010 by adhering the mere pass as the minimum eligibility prescription for SC/ST category. For Appellant in W.A.No.1794 of 2012 ::: Mr.A.L.Somayajee, Advocate General, Assisted by Mr.T.N.Rajagopalan, Additional Govt.Pleader For Respondent 1 in W.A.No.1794 of 2012 ::: Mr.AR.L.Sundaresan, Senior Counsel for Mrs.AL.Gandhimathi For Respondents 2 & 3 in W.A.No.1794 of 2012 ::: Mr.K.Mohana Murali For Petitioner in W.P.No.22832 of 2012 ::: Mr. L.Chandrakumar For Respondent 1 in W.P.No.22832 of 2012 ::: Mr.AR.L.Sundaresan, Senior Counsel for Mrs.AL.Gandhimathi For Respondents 2 & 3 in W.P.No.22832 of 2012 ::: Mr.K.Mohana Murali For Respondent 4 in W.P.No.22832 of 2012 ::: Mr.A.L.Somayajee, Senior Counsel Assisted by Mr.T.N.Rajagopalan, Additional Govt.Pleader For Respondent 5 ::: Mr.V.Shanmugasundaram in W.P.No.22832 of 2012

THE HONBLE ACTING CHIEF JUSTICE W.A.No.1794 of 2012 has been filed by the State of Tamil Nadu, represented by its Additional Chief Secretary to Government, Higher Education Department against the order passed by the learned single Judge in W.P.No.17670 of 2012, whereby the writ petition filed by the appellant seeking writ of certiorari to quash the impugned regulations in Chapter VI in Appendix-I in Clause 1.1 of the Approval Process Hand Book 2011-2012 issued by All India Council for Technical Education, New Delhi came to be dismissed.

2. W.P.No.22832 of 2012 has been filed by the Government of Tamil Nadu, Department of Technical Education, SC/ST Employees Welfare Association, represented by its General Secretary seeking to quash the regulations mentioned herein before, as also directing respondents 1 to 5 to follow G.O.Ms.No.151, Higher Education (J2)Department dated 14.6.2010 by adhering the mere pass as the minimum eligibility prescription for SC/ST category in respect of admissions to be made in the Engineering Colleges in the State of Tamil Nadu. FACTS OF THE CASE:

3. Briefly stated the facts giving rise to the present appeal are as follows:- In the State of Tamil Nadu, there are number of engineering colleges established with the approval of All India Council for Technical Education (hereinafter referred to as the AICTE)-first respondent. The AICTE is vested with the statutory powers under the provisions of the All India Council for Technical Education Act, 1987 (hereinafter referred to as the Act) enacted by the Parliament. Under the aforesaid Act, the AICTE is vested with the statutory powers to formulate guidelines for entry level qualification for Under-Graduate Degree programmes in the technical education. The Entry Level Qualification prescribed by the AICTE from time to time is detailed below:- Sl.No. Year Entry level qualification prescribed by AICTE 1 1992-2001 AICTE guidelines Dated 15.6.2012 A pass in the 10+2 Senior Secondary examination with a minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics. In respect of SC/ST candidates a pass in the 10+2 Senior Secondary Examinations with a minimum aggregate of marks prescribed by the respective State Government/Union Territory Administration obtained in a single sitting.

2. 2002-2007 1)F.No.- AICTE/UG/Imp-Corr/2002/G-8, dated 31.10.2002. 2)AICTE Advt.not AICTE/Legal/2/ 2004 Should be a pass in 10+2 examination with Physics and Mathematics as compulsory subjects along with one of the following subjects: Chemistry/Bio-Technology/Computer Science/Biology 3. AICTE Handbook for Approval process for the year 2008-2009 Physics and Mathematics as compulsory subjects along with one of the following subjects: Chemistry/Bio-Technology/Computer Science/Biology 4. 2010-2011 AICTE Approval Process hand book published dated 9.1.2010 Should be a pass in 10+2 examination with Physics and Mathematics as compulsory subjects along with one of the following subjects. Chemistry/Bio-

Technology/Computer Science/Biology 5. 2011-2012 AICTE approval process hand book (2011-2012) Passed 10+2 examination with Physics and Mathematics as compulsory subjects along with one of the Chemistry/Biotechnology/Biology Obtained at least 50% marks (45% in case of candidate belonging to reserved category) in the above subjects taken together.

6. AICTE Notification No.1-MS/AICTE/2011 dated 4th July

45. at qualifying level for general category students and 40% for reserved category students.

4. The State Government has also from time to time prescribed the entry level qualification for admission to Under Graduate Degree Programmes (B.E/B.Tech courses), as given below:- State Government Norms -----

1) G.O. (Ms.) No.521, Education Department dated 13.5.1989

2) G.O (Ms.) No.361, ES & T Department dated 9.5.1995 A pass in HSC/Equivalent with minimum mark _____ Community Maths Physics & Chemistry
Minimum taken together aggregate in Maths, Physics & Chemistry -----
----- OC 60.60% 70% -----
----- BC 60.60% 65% -----MBC
55.55% 60% SC/ST Mere pass in the qualifying examination in not more than three appearances Years:

2002. 2007 G.O.(Ms.) No.222, Higher Education (J1) Department, dated 29.6.2002 A pass in HSC/Equivalent with minimum marks ----- OC
60.Average in the related subjects -----
BC 55.Average in the related subjects -----
-- MBC/DNC 50.average in the related subjects -----
----- SC/ST Mere pass Year:

2008. 2009 G.O.(Ms.) No.263, Higher Education (J2) Department, dated 30.6.2008 A pass in HSC/Equivalent with minimum marks ----- OC
55.Average in the related subjects -----
BC 50.Average in the related subjects MBC/DNC 45.average in the related subjects SC/ST Mere pass Year:

2010. onwards G.O.(Ms.) No.151, Higher Education (J2) Department, dated 14.6.2010 A pass in HSC/Equivalent with minimum marks ----- OC
50.Average in the related subjects -----
BC 45.Average in the related subjects -----
-- MBC/DNC 40.average in the related subjects -----

----- SCA/SC/ST Mere pass 5. From a perusal of the aforementioned charts, it would be seen that AICTE norms reveal that entry level qualification prescribed by it since 2002 till 2010 for admission to Under Graduate Degree programmes in Engineering had been a mere pass in the 10 +2 examinations with prescribed subjects of study as applicable to SC/ST candidates . Further, for the year 2011-2012, the AICTE has published the entry level qualification in its approval process handbook 2011-2012 prescribing minimum marks of 45% (40% in case of candidates belonging to reserved categories) in 10 + 2 examinations. According to the State Government, the AICTE in a sudden transition has hiked the marks criteria for admission to Under Graduate programmes in respect of SC/ST candidates from a mere pass, which varies from State to State from 33% to 35%) to 40% for the year 2011-2012. The existing State Government norms comply with AICTE norms for Open Competition - 50%, Backward class Muslims 45%, and Backward Class-45%, it do not comply with the AICTE norms for Most Backward Classes/Denotified Communities and Scheduled Caste/SC-Arunthathiyar/Scheduled Tribe communities. The compliance statement is given below:- Category AICTE norms Existing State Government Norms Compliance of State Norms with AICTE Norms OC 45.50% Complied BCM/BC 40.45% Complied MBC/DNC 40.40% Complied SC/SCA/ST 40.35% Not Complied 6. Thus, the students

belonging to Scheduled Caste/Scheduled Caste-Arunthathiyar/Scheduled Tribe, who were required to have a minimum of 40% marks, will be eligible for admission in the Engineering Courses only if they get 40% marks. According to the appellant, the requirement of higher percentage of marks will put the socially backward students of these categories to a serious disadvantage in gaining admission to B.E/B.Tech Degree programmes. Most of the students from these categories are from rural areas and the very purpose of granting relaxation of marks to the candidates belonging to these categories on account of their social backwardness will fail, if the AICTE norms are to be complied with by these categories.

7. According to the appellant, the fact that there were 52371 vacancies during the year 2009-2010 and 33093 vacancies during the year 2010-2011 will certainly lead to the conclusion that the introduction of the new AICTE norms for entry level qualification prescribing a higher percentage of marks 45% (40% for candidates belonging to reserved categories) for the year 2011-2012 will increase the vacancies in Engineering colleges to a great extent and will not be beneficial to the students. It is also pertinent to note that the introduction of the impugned clause into the present prospectus in Chapter VI of Appendix I in Clause 1.1 and Clause 1.2 (A) & (B) whereby the percentage of marks for eligibility for engineering has been increased is totally against the policy of the State in providing education to the poor, needy students from villages; lower and middle class people in semi-urban and urban areas. The students who have passed +2 examinations are eligible to join the Engineering and Technology courses either from the entry level or from the later entry level (i.e., to the 2nd year for those who obtained diploma course certificate). It is the further case of the appellant that the students who come from socially economically and educationally backward families should be encouraged by the State by providing them scope for pursuing a professional course which they desire. In this 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 the impugned requirement prescribed by the first respondent, the State Government is incapacitated to serve the students.

8. Faced with this situation, the State of Tamil Nadu had approached this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

9. The learned single Judge, after referring to the various decisions of the Honble Supreme Court, had held as follows: - 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 granted 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. The learned single Judge further held that the State has no legal or constitutional authority to challenge the regulation framed by the AICTE. Holding so, the learned single Judge dismissed the writ petition. Feeling aggrieved, the State of Tamil Nadu has preferred this appeal.

10. W.P.No.28832 of 2012 The Government of Tamil Nadu, Department of Technical Education SC/ST Employees Welfare Association represented by its General Secretary has approached this Court by means of public interest litigation challenging the Notification No.1-MS/AICTE/2011 dated 04.07.2011 and the regulations in Chapter VI in Appendix I in Clause 1.1 of the Approval Process Hand Book 2012-2013 and consequently direct respondents 1 to 5 to follow G.O.Ms.No.151, Higher Education (J2) Department dated 14.06.2010 by adhering the mere pass as the minimum eligibility prescription for SC/ST category.

11. According to the petitioner, taking note of the fact and the situation in which the people of SC/STs dwell, the Constitution itself classify three categories of SC/STs as socially, economically and educationally backward families, thereby, either due to suppression or oppression of the community, the Constitution of India has provided reservation protecting the rights to a certain extent so that in the competitive world the representation of these categories of SC/STs are safeguarded not only in the matter of appointment, but also in education, so that minimal representation is achieved. It is further stated by the petitioner that it is on the above said basis and with the avowed objective, the State of Tamil Nadu had prescribed entry level qualification for admission to the Under Graduate Degree programmes, and also prescribed norms for minimum eligibility marks for admission to First year and second year lateral entry courses, in compliance with the new AICTE norms for 2011-2012, and had also redefined AICTE norms, which is made applicable for the year 2012-2013. The said norms read as under:- Admissions to First year B.E/B.Tech Degree courses: Community Minimum Eligibility Marks prescribed as per State Government Norms Compliance with AICTE redefined norms (45% for General and 40% for reserved categories) applicable for 2012-13 Ref: G.O.(Ms.) No.151, Higher Education (J2) Department dated 14.6.2010 AICTE Notification No.1-MS/AICTE/2011 dated 04.07.2011. OC 50.aggregate in relevant subjects 45% - State Government Norms (50%) is higher than AICTE norms. Hence no issues BV/BCM 45.aggregate in relevant subjects 40% = State Government norms (45%) is higher than AICTE (40%) norms. Hence no issues MBC/DNC 40.aggregate in relevant subjects 40% - State Government norms (40%) is equal to AICTE norms. SCA/SC/ST 35.aggregate in relevant subjects 40% - But State Government norms is 35% 12. According to the petitioner, while taking into account the totality of the above statement, it would establish beyond any reasonable doubt that the State Government was always reasonable in fixing the minimum eligibility criteria, as extracted above, and there are no issues in so far as all other categories are concerned. Only in case of SC/STs, the State Government norms are said to have not been properly construed by the AICTE and instead the minimum eligibility has been increased by 5% making it as 40%, which virtually denies and deprives the aspirants for the professional course in disarray and also resulting in there being no representation or aspirants to the extent of reservation earmarked to these categories. The petitioner has stated that the above fact can be established on the basis of the statistics, as obtained from the State Government, that where the minimum eligibility of a mere pass i.e., 35% to reach the quota intended for the SC/STs categories cannot be achieved. Further, there is already a vacuum and there are no takers due to ineligibility at the level of mere pass, and moreover the notification of the first respondent dated 11.07.2011, enhancing the minimum eligibility to 40%, insofar as SC/STs are concerned, would render a further under-representation and would also defeat the constitutional protection. The petitioner, by way of a chart, which is extracted below, has given the vacancy positions in Engineering Colleges in the State during the last five years in respect of SC/SC(A)/ST categories:-

Sl.No	Academic Year	Sanctioned	Intake	Seats	Reserved	Admitted	Vacancy
18.1%	1. 2007-2008	11078					

1108. 903

10906. 904 2. 2008-2009 13614

1361. 1247

12030. 1092 3. 2009-2010 17244

1724. 1266

18372. 1440 4. 2010-2011 19532

1953. 1768

17469. 1550 5. 2011-2012 22603

2260. 1782

22865. 1873 13. It is the case of the petitioner that by the impugned notification the prescription of minimum eligibility criteria of 40% aggregate marks to the reserved category works out against the constitutional protection of the quota intended for the SC/ST which goes without being filled up, and thereby there is a less representation than the quota earmarked for these categories; and by the impugned notification, the further protection, as enshrined in Part IV of the Constitution of India and the rights conferred on the State in and for applying their policy towards upliftment of downtrodden by prescribing minimum eligibility, has now been thwarted, and that the impugned regulations and the policy of the State Government with regard to the admission in the reserved category runs contrary and opposing each other, and the same shall lead to adverse effect thereby affecting the welfare of the reserved category of SC/STs and that of the constitutional protection. It is the further case of the petitioner that the first respondent had failed to consider various aspects such as shortage of rural literacy, financial constraints of the students, etc. Moreover, the AICTE has approved about 400 self-financing Engineering Colleges throughout the State including the rural areas, and therefore, the State Government considering the above aspects framed a policy to admit the students belonging to SC/ST, who have passed the plus two examination with minimum of 35% marks to the Engineering Courses and that the AICTE has failed to miserably consider the same in its proper perspective before issuing the impugned notification, which has resulted in grave injustice to the students belonging to the reserved categories.

14. It is submitted by the petitioner that the first respondent has failed to miserably consider that the economically weaker sections viz., SC/STs should be brought to the level of the main stream by giving proper concession both in the education as well as in employment. However, according to the petitioner, by the impugned notification the same is sought to be defeated. It is submitted by the petitioner that the students, who have passed in the last academic year by securing more than 35%, but less than 40%, are discriminated by the impugned regulations of the AICTE for the sole reason that the above students are having right to get admission in the previous year, but for the same set of students their right of admission is denied by the impugned regulations. This, according to the petitioner is violative of Articles 14 & 16 of the Constitution of India. It is further submitted by the petitioner that the impugned notification of the first respondent without allowing the State Government to apply its policy and prescribing a mere pass to achieve the quota/reservation intended and earmarked for SC/ST categories, as embedded in the Constitution of India, is detrimental to the economically, socially and educationally backward community and hence, the same is liable to be quashed and a direction should be issued to permit the State Government to prescribe its requirement as per policy.

15. A counter affidavit has been filed by the AICTE-first respondent in the writ appeal, wherein it is inter alia stated that the AICTE, which is an expert body created under the provisions of All India Council for Technical Education Act, has got the authority for regulating technical education, prescribing uniform norms and standards, qualification etc. The council has a body of experts constituted under Section 3 of the Act comprising members from various departments representing various stake holders and is a broad based body. The council has got power under Section 10 of the Act to prescribe the norms and standards for technical education. It is stated that the AICTE, while framing the regulations for the year 2011-12, was of the opinion that minimum eligibility marks should be prescribed for admission to Engineering Colleges for the purpose of maintaining good standards in technical education and to maintain excellence in higher education and also to ensure that there is no deterioration in the quality of candidates participating in the professional Engineering Courses. The standards, which have been prescribed by the AICTE, are 50% for General Candidates and 45% for candidates coming under the reserved category in the core subjects viz., Physics and Mathematics along with Chemistry/Bio-technology and Biology. It is stated that subsequently, the Council reviewed the same in its Executive Committee meeting held on 28.6.2011 and in the Council meeting held on 30.06.2011, it had decided to fix the minimum eligibility criteria as 45% for General Category and 40% for Reserved Category for the academic year 2011-12. In the Approval Process Handbook for the year 2012-2013 published by the AICTE, the minimum eligibility marks for admission to Undergraduate Degree programmes was fixed at 45% for General category and 40% for Reserved category. It is stated that the State Government

is bound by the norms that have been fixed by the Central authority established under the Central Act in respect of professional courses and higher education, and power has been carved out for the State Government only to increase the eligibility criteria that has been fixed by the expert body constituted under the Central Act, and the State Government cannot reduce the standards that have been fixed by the Expert Bodies under the Central Act. It is further stated that a stand has been taken by the petitioner that even during the years when minimum eligibility was not fixed by the AICTE and a pass in the qualifying examination was sufficient for admission to Undergraduate degree course there has been vacancy of seats. At any rate, the fact that the seats are vacant cannot be a ground to reduce the eligibility criteria, and if the eligibility criteria are reduced, it will adversely affect the norms and standards and quality and excellence in higher education. Lastly, it is stated that the minimum eligibility prescription, which is applicable all over the country, cannot be reduced for the State of Tamil Nadu alone.

16. RIVAL SUBMISSIONS We have heard the learned Advocate General assisted by Mr.T.N.Rajagopalan, learned Additional Government Pleader in the writ appeal; Mr.L.Chandrakumar, learned counsel appearing in the writ petition; Mr.AR.L.Sundaresan, learned senior counsel, assisted by Mrs.AL.Gandhimathi, appearing for the respondent 1-AICTE; Mr.K.Mohana Murali, learned Central Government Standing counsel appearing for respondents 2 & 3 and Mr.V. Shanmugasundaram, learned counsel appearing for the fifth respondent in the writ petition.

17. Learned Advocate General submitted that the 40% marks fixed by the AICTE in respect of candidates belonging to reserved categories, as the minimum eligibility criteria, is irrational, unreasonable and has been fixed without understanding the ground reality prevailing in the State of Tamil Nadu. Learned Advocate General further submitted that it adversely affects the interest of the students belonging to reserved categories in the State of Tamil Nadu, as the minimum percentage to be obtained in the qualifying examination i.e., plus two level, has been fixed by the State of Tamil Nadu at 35%. Further, the students belonging to reserved categories will not get an opportunity to pursue the engineering/technical education courses. According to the learned Advocate General, the students, who have passed in the last academic year i.e., 2010-2011, and who have obtained more than 35% marks, but less than 40%, in the plus two level, and who have not been successful in getting admission in the Academic Session 2010-11, would become ineligible for getting admission in the engineering courses for the academic years 2011-12 and 2012-2013, which is discriminatory and violative of Articles 14 & 16 of the Constitution of India. The implementation of the minimum eligibility criteria, as fixed by the AICTE, would result in denying admission to the candidates belonging to SC/ST categories on the one hand and on the other, leaving many engineering seats vacant, thus depriving these candidates from pursuing their studies in engineering courses. In support of his submission, he has relied upon the following decisions:-

- 1) The Comptroller & Auditor General vs. K.S.Jagannathan, (AIR 198.SC 537)
- 2) Indra Sawhney vs. Union of India, AIR 199.SC 477
- 3) Dr.Preeti Srivastava vs. State of M.P, 1999 (7) SCC 120
- 4) State of Punjab vs. Dayanand Medical College & Hospital, AIR 200.SC 3006
- 5) M.Nagaraj vs. Union of India, 2006 (8) SCC 21
- 6) Visveswaraiah Technical University and others vs. Krishnendu Halder & others 2011 (4) SCC 606.

18. Mr.L.Chandrakumar, learned counsel appearing for the petitioner in the writ petition, while adopting the arguments of the learned Advocate General, submitted that the implementation of the norms fixed by the AICTE would result in depriving the candidates belonging to SC/ST categories from seeking further studies in technical education like engineering and therefore, the minimum eligibility criteria fixed by the AICTE at 40% should be reduced to 35%, as fixed by the State Government.

19. In reply, Mr.A.R.L.Sundaresan, learned senior counsel appearing for the AICTE submitted that the AICTE has not interfered with the policy of reservation adopted by the State Government. It had only fixed the eligibility criteria which had been fixed after due consideration of the various factors, as also for maintaining the minimum standards of technical education like engineering course. In support of his submission, he has relied upon the following decisions:-

- 1) Harish Varma and others vs. Ajay Srivastava and another, 2003(8) SCC 69.
- 2) State of T.N. and others vs. S.V.Prateep (Minor) & Others, 2004 (4) SCC 513.
- 3) All India Council for Technical Education vs. Surindar Kumar Dawan& others 2009 (11)SCC 726.
- 4) Visveswaraiah Technical University and others vs. Krishnendu Halder & others 2011 (4) SCC 606.

20. DISCUSSION The only question which arises in the present case for adjudication is as to whether the norms fixed by the AICTE for the eligibility criteria, viz. minimum of 40% marks to be obtained at plus two level by the candidates belonging to the reserved categories, is justified or not? 21. We find that the AICTE has been constituted under the All India Council for Technical Education Act, 1987 and has been entrusted with the authority for planning, formulation and maintenance of norms and standards, etc., in respect of technical education in the country. The All India Council for Technical Education Act, 1987 which has been enacted by Parliament under Entry 66 of List I of the 7th Schedule to the Constitution of India derives its powers to make laws in respect of technical education whereas the State Legislature has power to enact laws relating to technical education under Entry 25 of List III to 7th Schedule of the Constitution of India. However, the States power has been made subject to the provisions of Entries 63, 64, 65 & 66 of List I. Thus, the powers, which the State Government can exercise for framing laws for technical education, are subject to the laws made by Parliament under Entry 66 of List I of the Constitution of India. While it is true and admits of no doubt the State Government has the power to make reservation for the Scheduled Caste/Scheduled Tribe candidates in order to uplift them and bring them in the main stream, the AICTE has not interfered with the percentage of reservation accorded by the State of Tamil Nadu for various categories. It has only fixed only the minimum eligibility criteria for admission to various technical courses. Whereas, the AICTE has fixed 40% as the minimum marks to be obtained by the candidates belonging to reserved categories seeking admission to engineering course, the State Government has fixed 35% marks for SC/SC(A)/ST candidates . The difference is only 5%.

22. In the case of The Comptroller & Auditor General vs. K.S.Jagannathan (supra), the Honble Supreme Court has held in paragraph-21 as under:- From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 37of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaza Fazal Ali., in State of Kerala vs. N.M.Thomas (1976) 1 SCR 90.(at page

906) : (AIR 197.SC 49.at p.548) the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.

23. In the case of Indra Sawhney vs. Union of India (supra), the Honble Supreme Court has held as under:- (see para-520, page

692) Articles 15(4) and 16(4) refer to the same classes of backward citizens. But they do not refer to identical remedies. While Article 15(4) speaks of special provisions for the advancement of backward classes, Article 16(4) expressly permits the State to make reservation of appointments or posts in public services in favour of such classes. It is true that both are enabling provisions allowing the State to adopt such affirmative action programmes as are necessary including reservation of seats or posts. But, unlike Art.16(4), Art.15(4) is not so worded as to suggest that it is exclusionary in character. The special provision contemplated in Art.15(4) is an emphatic reference to the affirmative action which the State may adopt to improve the conditions of the disadvantaged members of the backward classes of citizens. Significantly, Art.15(4) does not specifically speak of reservation, but it has been generally understood to include that power. *M.R.Balaji v. State of Mysore*, (1963) Supp (1) SCR 439.(AIR 196.SC 649). While the State may adopt all such affirmative action programmes as it deems necessary for all disadvantaged persons, any special provision amounting to reservation and consequent exclusion from consideration of all the others in respect of the reserved quota in matters falling under Art.16(4) must be subjected to even greater scrutiny than in the case of even greater scrutiny than in the case of those falling under it. The Honble Supreme Court had further held: - (para.526, page

693) The object of the special protection guaranteed by Articles 15(4) and 16(4) is promotion of the backward classes. Only those classes of citizens who are incapable of uplifting themselves in order to join the mainstream of upward mobility in society are intended to be protected. The wealthy and the powerful, however socially and educationally backward they may be by reason of their ignorance, do not require to be protected, for they have the necessary strength to lift themselves out of backwardness.

24. In the case of *Dr.Preeti Srivastava vs. State of M.P* (supra), the Honble Supreme Court has held that the purpose, however, of higher medical education is not to fill the seats which are available by lowering standards; nor is the purpose of reservation at the stage of post-graduate medical education merely to fill the seats with the reserved category candidates. The purpose of reservation, if permissible at this level, is to ensure that the reserved category candidates having the requisite training and calibre to benefit from post-graduate medical education and rise to the standards which are expected of persons possessing post-graduate medical qualification, are not denied this opportunity by competing with general category candidates. The general category candidates do not have any social disabilities which prevent them from giving of their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre well trained professionals for the benefit of the public 25. In the case of *State of Punjab vs. Dayanand Medical College and Hospital* (supra), the Honble Supreme Court has held in paragraph-11 as follows:- Indeed the power to be exercised under Article 15(4) by the States is a power arising under the Constitution. Though in a sense the Medical Council of India could also be a State for certain purposes, such a body would not be suited to make the necessary reservation in respect of socially and educationally backward classes in terms of Article 15(4) of the Constitution because of the need or the necessity for prescription, taking into account several considerations such as different levels of social, economic and educational development of the State or different regions in the State. Such considerations arise in the context of Article 16 as well. It is well known that the States often do appoint Backward Classes Commission to identify the socially and educationally backward classes and the manner in which their conditions have to be ameliorated. These vital aspects of policy necessitated equally by great public and general importance can be properly appreciated by the Government, Central or State, rather than the Medical Council of India, though in the context of fixing the standards and the extent to which the difference in standards have to be maintained between the general category and the reserved category must be left to Medical Council of India as noticed in *Dr. Preeti Srivastavas case* [supra]. Therefore, whatever observations have been made by this Court in *Dr. Preeti Srivastavas case* cannot be considered in isolation and stretched beyond what this Court ultimately stated in its conclusions. The question whether the Medical Council of India Regulations excluded reservation to be made in favour of socially and educationally backward classes either expressly or by necessary implications does not arise for consideration in the view we have taken that the

Government State/Central are better suited to exercise powers under Article 15(4) of the Constitution and hence we do not propose to examine that aspect of the matter. In the aforesaid judgment, the Honble Supreme Court has further held that the prescription made by the respondents reducing the minimum marks to 40% in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses and in respect of the basic subjects fixing no minimum standard is plainly in contravention of the Regulations framed by the Medical Council of India and that part of the notification will have to be ignored.

26. In the case of M.Nagaraj vs. Union of India (supra), the Honble Supreme Court has held that the proviso inserted at the end of Article 335 of the Constitution (Eighty-second Amendment) Act, 2000 was following the benefit of reservation in promotion conferred upon SCs & STs alone. The proviso was inserted keeping in mind the judgment of the Honble Supreme Court in the case of S.Vinod Kumar vs. Union of India, 1996 (6) SCC 580, which took the view that relaxation in matters of reservation in promotion was not permissible under Article 16(4) of the Constitution in view of the command contained in Article 335. Once a separate category is carved out of clause (4) of Article 16, then that category is being given relaxation in matters of reservation in promotion. The proviso is confined to SCs and STs alone and is compatible with the scheme of Article 16(4-A).

27. In the case of Visveswaraiah Techl.University and others vs. Krishnendu Halder and others (supra), the Honble Supreme Court has held that the main object of prescribing the eligibility criteria higher than those fixed by the AICTE is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained. The Honble Supreme Court has further held that the State/University should periodically, at such intervals as they deem fit, review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations.

28. In the case of Harish Verma and others vs. Ajay Srivastava and another (supra), the Honble Supreme Court has held that requirement of minimum qualification marks cannot be lowered or relaxed contrary to the Medical Council of India Regulations framed in this behalf.

29. In the case of State of Tamil Nadu and others vs. S.V.Prateep (Minor) and others (supra), the Honble Supreme Court has held that the standards prescribed by the State Government should not be adverse to or lower than those prescribed by the AICTE for admission in Engineering colleges. But the State Government can prescribe standards higher or additional to those prescribed by the AICTE. However, the standards should be realistic and attainable.

30. In the case of All India Council for Technical Education vs. Surindar Kumar Dawan and others (supra), the Honble Supreme Court has held that Courts interference in academic/educational matters is not proper, except where interpretation of a statutory provision or of law is involved, and the Courts cannot by their orders create courses or continue courses or prescribe lower qualifications for admission.

31. In the case of Visveswaraiah Techl.University and others vs. Krishnendu Halder and others (supra), the Honble Supreme Court, after considering all its earlier decisions, has summarized the position as follows:- (i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term adversely affect the standards refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE. (ii) The observation in para 41(vi) of Adhyanman2 to the effect that where seats remain unfilled, the State authorities cannot deny

admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law. (iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained. (iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations.

32. Insofar as the seats remaining vacant is concerned, the Honble Supreme Court in paragraph-15 of the judgment has held as follows:- The primary reason for seats remaining vacant in a State is the mushrooming of private institutions in higher education. This is so in several States in regard to teachers training institutions, dental colleges or engineering colleges. The second reason is certain disciplines going out of favour with students because they are considered to be no longer promising or attractive for future career prospects. The third reason is the bad reputation acquired by some institutions due to lack of infrastructure, bad faculty and indifferent teaching. Fixing of higher standards, marginally higher than the minimum, is seldom the reason for seats in some colleges remaining vacant or unfilled during a particular year. Therefore, a student whose marks fall short of the eligibility criteria fixed by the State/University, or any college which admits such students directly under the management quota, cannot contend that the admission of students found qualified under the criteria fixed by AICTE, should be approved even if they do not fulfil the higher eligibility criteria fixed by the State/University.

33. From the aforesaid decisions of the Honble Supreme Court, the following principles emerge: - (1)The State Government is empowered under Articles 15(4) and 16 of the Constitution of India read with Article 335 to make reservations for the Scheduled Caste/Scheduled Tribe candidates in order to uplift them and to bring them in the mainstream. This power is not vested with the All India Council for Technical Education. (2)The State cannot prescribe minimum eligibility criteria lower than what has been prescribed by the AICTE. However, it can prescribe higher eligibility criteria. (3)If the State fixed a higher minimum eligibility criteria than that fixed by the AICTE, admissions to the technical courses has to be made only on the basis of the eligibility criteria fixed by the State, even though seats meant for reserved category candidates remained unfilled.

34. Applying the above principles laid down by the Supreme Court to the facts of the present case, we find that the State Government could not have prescribed lower eligibility criteria in respect of reserved category candidates belonging to Scheduled Caste/SC-Arunthathiyar/Scheduled Tribe i.e., 35% instead of 40% prescribed by the AICTE. It could have, at the best, only prescribed equal to or higher than the minimum eligibility criteria prescribed by the AICTE.

34. So far as the issue that many seats had remained vacant in the Engineering Colleges in the State on account of the prescribed 40% eligibility criteria for Scheduled Caste/Scheduled Caste-Arunthathiyar/Scheduled Tribe is concerned, from the chart, which has been reproduced herein above, we find that even before the AICTE had prescribed the minimum eligibility criteria of 40% for these reserved categories, seats in the Engineering colleges relating to such categories remained vacant. In the year 2007-08, about 10906 seats reserved for Scheduled Caste/Scheduled Caste-Arunthathiyar and 904 seats for the Scheduled Tribes remained vacant. Similarly, in the year 2008-09, 12030 seats reserved for the candidates belonging to Scheduled Caste/Scheduled Caste-Arunthathiyars and 1092 seats for Scheduled Tribe candidates remained vacant. Similar is the position with regard to the year 2009-10, where 18372 seats reserved for the

candidates belonging to Scheduled Caste/Scheduled Caste-Arunthathiyars and 1440 seats reserved for Scheduled Tribe candidates remained vacant. In fact, for the year 2011-12, when for the first time the AICTE had prescribed the eligibility criteria of 40% for the reserved categories, the number of seats, which were lying vacant in respect of Scheduled Caste/Scheduled Caste-Arunthathiyars, was reduced to 17469 as compared to 18372 seats during the previous year. The seats remaining vacant had reduced, even when number of seats reserved for Scheduled Caste/Scheduled Tribe candidates had increased from 31040 to 35158. For the year 2011-12, there was a increase in the seats reserved for Scheduled Caste/Scheduled Caste-Arunthathiyars from 35158 (previous year) to 40686 i.e., a increase of 5500 seats. The seats which remained vacant for Scheduled Caste/Scheduled Caste-Arunthathiyars candidates during the year 2011-2012 was only 22865 i.e., about 5400 more than the previous year, which corresponds to the increase in the seats for these categories. Thus, the seats, which remained vacant for Scheduled Caste/Scheduled Caste-Arunthathiyars/Scheduled Tribe candidates cannot be attributed to fixing of 40% marks as the minimum eligibility criteria for the reserved categories by the AICTE. It may be for other reasons.

36. CONCLUSION In view of the foregoing discussions, we find no legal infirmity in the order passed by the learned single Judge. The writ appeal fails, and it is hereby dismissed. Likewise, we do not find any good ground to exercise our extra-ordinary jurisdiction under Article 226 of the Constitution of India to direct the respondents to lower the minimum eligibility criteria from 40%, as fixed by the AICTE to 35% as fixed by the State Government for the reserved Scheduled Caste/Scheduled Tribe candidates. The writ petition also fails, and it is hereby dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

37. Before parting, we may mention here that vide order dated 22nd August, 2012 passed in the present writ appeal and writ petition, this Court directed the parties to the writ appeal and writ petition to maintain status quo. Interim order was also operating during the pendency of the writ petition before the learned single Judge. Students belonging to SC/SC(A)/ST candidates, who have obtained 35% marks, but less than 40% marks, in the 10+2 examinations, got admission in the Engineering Colleges in the State of Tamil Nadu and at present they are pursuing their studies. Hence, all such admissions made during the years 2011-12 and 2012-13 in respect of SC/SC(A)/ST candidates shall not be disturbed, and they shall be allowed to pursue their course as per the statutory provisions applicable in the respective Engineering Colleges. Index:Yes (R.K.A., ACJ) (N.P.V.,J) Internet:Yes 17:::04:::2013 Pv/- The Honble Acting Chief Justice and N.Paul Vasanthakumar, J -----
----- pv/- Pre-delivery Judgment In W.A.No.1794 of 2012 & W.P.No.22832 of 2012 Delivered on:

17. :04::2013