

# SUPREME COURT OF INDIA

State of Tamil Nadu

Vs.

S.V. Bratheep (Minor)

C.A.Nos.1626-1628 of 2004

(G.P.Mathur, S.R.Babu and A.S.Lakshmanan JJ.)

16.03.2004

## ORDER

**Rajendra Babu, J.**

1. Leave granted in the special leave petitions.
2. In these matters, writ petitions were filed in the High Court of Madras seeking for a writ or order or direction to quash G.O. Ms. dated 29.6.2002 and 13.2.2003 issued by the Higher Education Department in so far as the respondents were concerned and to direct the appellants and others to consider their admission to engineering colleges without reference to the minimum eligible marks prescribed by the appellants.
3. The learned Single of the High Court, who examined the matter, held that the prescription of qualifications or prescription of the minimum eligible marks for SC/ST as mere pass, most backward at 50% average marks in the related subjects, backward at 55% average marks in the related subjects and other classes at 60% average marks in the related subjects, would not be in conflict with the Regulations of All India Council for Technical Education [AICTE) and, therefore, dismissed the writ petitions. On appeal, a Division Bench of the High Court held that there is a glaring difference in the norms fixed by AICTE and the norms fixed by the State Government, and struck down the same and issued the following directions:

"1. The admission of those students who had appeared for the TNPCEE '03 but had not secured the prescribed minimum aggregate marks in their Higher Secondary examinations would be regularised.

2. No action need be taken against those Engineering colleges for having breached the norms of the State Government and no proceedings of dissatisfaction need be started against them on that count alone. The State Government shall, with three weeks from today, with notices to all the Engineering colleges in the State start the process of locating the students by giving such students an opportunity to vie for the seats in the Engineering colleges. If any of such students have already been admitted, as we have

stated earlier, their admissions shall be regularised. However, we make it clear that all the students who are going to be benefited by this judgment must have appeared for the Tamil Nadu Professional Courses Entrance Examinations'03 held by the State Government.

3. Since the learned counsel appearing for the Anna University pointed out that admissions in this late juncture are likely to affect the University attendance regulations, we also direct that the shortage in the attendance of such students shall be compensated by holding special classes on Saturdays, Sundays and other holidays. Learned counsel appearing on behalf of the Engineering institutions have undertaken that teaching staff who are engaged for holding such special classes shall be paid extra and that no amount shall be collected by the institutions from the students.

4. The writ petitions filed by the individual students shall stand allowed only if such students have taken part in the common entrance test Tamil Nadu Professional Courses Entrance Examinations'03.

5. We make it clear that all these directions apply only for the academic year 2003-04."

4. Though this Court while entertaining these matters directed that status quo should be maintained as on the date of the judgment in relation to admission of students in engineering colleges, it is stated that several students in question had been admitted who fulfilled the terms stated by the Division Bench of the High Court and they have been allowed to take the examinations also. In these circumstances, the appellant does not contest their admissions and it is only for purposes of examination of the correct position in law that the State and the University are pursuing these matters. Therefore, that aspect of the matter need not detain us any longer. We think, submission made on behalf of the parties is reasonable and the admissions made so long as they conform to the norms issued by the High Court should not be disturbed.

5. We shall now examine only the question posed before us as to whether the norms prescribed by the State Government are contradictory to the norms fixed by AICTE or are only in the nature of higher qualifications above the minimum prescribed by AICTE for admission to the Engineering Colleges. AICTE prescribed in their Guidelines for the relevant period as follows:

"1.1. Qualification for admission of General Category Students:

The minimum qualification for admission to degree programmes in Engineering should be a pass in the 10-2 (Senior Secondary) Examination with a minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics obtained in a single sitting. The duration of degree programme in Engineering will be 4 years after 12th Standard. This will apply to cases whether admissions are based on the marks in the qualifying examination and not on the basis of entrance tests....."

"1.3. Entrance Tests All States/Union territories (Uts) should conduct entrance tests in the subjects of Physics, Chemistry and Mathematics at 12 + level. The entrance test should be common to all Engineering degree institutions in the State/UTs. The minimum marks from eligibility for the entrance test need not be prescribed in the case of degree courses and all students who have passed the qualifying examination may be permitted to appear in the entrance test. Only the merit ranking in the entrance test should be the basis for admission to engineering degree programmes. Such tests should be conducted by appropriate agencies set up for the purposes."

6. While the Government provided for the basic qualification for eligibility is as adverted to by us earlier. The High Court found that there are two streams of admissions of students as prescribed by AICTE, namely,

“(i) Those who were admitted on the basis of the marks secured in the qualifying examinations only; and

(ii) Those who are admitted on the basis of the marks secured in the Common Entrance Test held by the State or the Union Territories.”

7. The High Court is of the view that AICTE has contemplated two categories of students seeking for admission as noted by us above and there is no other category of students contemplated by the AICTE who are aspiring to apply for engineering seat. Therefore, the norms fixed by the State is in a stark contradiction of the norms fixed by the AICTE. To arrive at this conclusion, the High Court very strongly relied upon the decision of this Court in State of T.N. and Another v. Adhiyaman Educational and Research Institute and others.

8. As regards the scope of the Entries in the Constitution arising under Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution was examined in great detail by a Constitution Bench of this Court in Dr. Preeti Srivastava & Anr. vs. State of M.P. & Ors., . After adverting to these two entries in the Seventh Schedule, this Court stated as follows:

"Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview for the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 19/7,

education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher education courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education....." [p.154].

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 exclusively 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 the AICTE. It is no doubt true that the AICTE prescribed two modes of admission - One is merely dependent on the qualifying examination and the other dependent upon the marks obtained at the Common Entrance Test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by the AICTE would allow admission only on the basis of the marks obtained in the qualifying examination the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by the AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by the AICTE is inexorable and that minimum alone should be taken into consideration and no other standard should be fixed even the higher as stated by this Court in Dr. Preeti Srivastava's case. It is no doubt true as noticed by this Court in Adhiyaman's case 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 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 series of decisions of this Court including Dr. Preeti Srivastava's case. 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 the 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's case that the State can always fix a further qualification or additional qualification to what has been prescribed by the 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 the 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 have to be understood in the manner as stated in the Dr. Preeti Srivastava's case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration.

11. The argument advanced on behalf of the respondents that these matters are indeed governed by the decision in Islamic Academy of Education & Anr. vs. State of Karnataka & Ors. , and T.M.A. Pai Foundation vs. State of Karnataka. In fact this Court did not consider the question that has arisen for our consideration in the present case but was dealing with entirely different issue in relation to fee structure of minority and non-minority educational institutions and whether private unaided professional colleges are entitled to fill their seats to the full extent by their own method of admission. That is not the issue before us at all. Therefore, no reliance could be placed by the respondents on the decisions either in TMA Pai Foundation or Islamic Academy case.

12. One other argument is further advanced before us that the criteria fixed by the AICTE was to be adopted by the respective colleges and once such prescription had been made it was not open to the Government to prescribe further standards particularly when they had established the institutions in exercise of their fundamental rights guaranteed under Article 19 of the Constitution. However, we do not think this argument can be sustained in any manner. Prescription of standards in education is always accepted to be an appropriate exercise of power by the bodies recognising the colleges or granting affiliation, like AICTE or the University. If in exercise of such power the prescription had been made, it cannot be said that the whole matter has been foreclosed.

13. In this view of the matter, we think these appeal deserve to be allowed in part and the order of the High Court stands modified to the extent of stating that it is permissible for the State Government to prescribe higher qualifications for purposes of admission to the engineering colleges than what had been prescribed by the AICTE and what has been prescribed by the State and considered by us is not contrary to the same but is only complementary or supplementary to it.

14. It is made clear that if any admission has been made in any of the colleges of students who fulfil the directions issued by the High Court, their admissions shall be taken to have been made validly.

15. The appeals are partly allowed accordingly.

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16. The High Court considered the case of the students in these colleges who did not appear in the common entrance test but appeared for the private entrance tests conducted by the respective engineering colleges and they could be admitted to the engineering colleges on the basis of their performance in such private entrance test. The mere fact that Anna University allowed all the engineering colleges to conduct entrance test by the concerned colleges cannot militate against the prescription of standards of excellence in education both by the AICTE and Department of Higher Education. The High Court rejected the same on the basis that the AICTE had already formulated the policy and that policy had to be strictly followed by the concerned colleges as long as students had not fulfilled those minimum qualifications prescribed by the AICTE but only passed in a private entrance test would not be qualified for admission to the engineering colleges is perfectly in order and does not call for interference.

17. Hence, the special leave petitions stand rejected.