

(2011) 08 CAL CK 0060

Calcutta High Court

Case No: Writ Petition No. 13583 (W) of 2011

Debabrata Sardar

APPELLANT

Vs

All India Council For
Technical Education

RESPONDENT

Date of Decision: Aug. 19, 2011

Citation: (2011) 4 CHN 610

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Saikat Banerjee, Avijit Chakraborty, for the Appellant; Ahhijit Gangopadhyay for the respondent No. 1 Arindam Banerjee, Bharat Bhushan for the State Council and Arun Kumar Maiti for the State, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.

Heard the parties.

2. The writ petitioner, in the instant case, has, inter alia, prayed for an Order commanding upon the West Bengal State Council for Technical Education (respondent No. 4) to act in accordance with law without making any deviation from the Central Act being the All India Council for Technical Education Act, 1987 and in doing so, promptly withdraw the impugned Notification dated 16th June, 2011, as contained in Annexure P-4, whereby and whereunder and in partial modification to the advertisement published in the daily newspaper with regard to the admission of students in the different polytechnic Institutions of West Bengal for the Academic Session 2011-12 through JEXPO 2011, it notified that the eligibility of the applicant must be, apart from other criteria, that he should have at least 50 per cent marks, in aggregate (45 per cent in case of a candidate belonging to the reserved category).

3. Petitioner further challenges the Notification published by the West Bengal Council for Technical Education and, as contained in Annexure P-5, being the

communication dated 19th April, 2011, whereby and whereunder it's Secretary was purported to have communicated the aforementioned guidelines including the types of admissions. The same also indicates that under, the management quota, the minimum admission criteria would be that 50 per cent of the intake may be filled up through the management quota in the self-financing Institutions.

4. Mr. Saikat Banerjee, learned Counsel appearing for the petitioner, has challenged the validity, or otherwise, not only of these Circulars/Notifications but a portion of the Notification dated 15th August, 2011 as contained in Annexure in P-9 whereby and whereunder the aforementioned criteria was slightly modified indicating that the minimum eligibility criteria for admission to such courses would be a Madhyamik passed or equivalent examination passed candidate securing at least 40 per cent in aggregate with 45 per cent marks in Mathematics and Physical Science, taken together.

5. Learned Counsel for the petitioner submits, with reference to Annexure P-1, that as per AICT Guidelines, which have been formulated by the Central Government, the minimum eligibility criteria for Engineering and Technology courses has been fixed at 35 per cent and therefore, the Government of West Bengal, Department of Technical Education and Training (Polytechnic Branch) could not have enhanced such criteria to 40 per cent with 45 per cent marks in Mathematics and Physical Science taken together. Learned Counsel submits that under the provisions of the 7th Schedule, List I (Union List) it is only the Government of India alone which can coordinate and determine the standards in Institutions for higher education or research and scientific and technical Institutions and the function of the Government of West Bengal is limited only to matters pertaining to education including technical education but subject to the provisions of Entry 66 of List I and therefore, the impugned Notifications and/or Communications of the Government of West Bengal are totally illegal and ultra vires the Constitution of India.

6. Learned Counsel then submits that the All India Council for Technical Education Act, 1987 (Act 52 of 1987) was enacted by the Parliament and its preamble, inter alia, indicated that it was an Act to provide for the establishment of such a Council with a view to proper planning and coordinated development of technical educational system through out the country and in that process if they had already fixed a minimum eligibility criteria of 35 per cent marks, the same was in tune with the objects of the Council, which could not have been upset by a fresh set of Rules enforcing higher eligibility criteria by the State. Learned Counsel submits that such an action therefore, amounts not only to an exercise of unconstitutional power by the State but it also amounts to a usurpation of power by the State.

7. With respect to the learned Counsel for the petitioner, this Court is unable to accept any of his contentions. In a Constitution Bench Judgment passed in the case of [Dr Preeti Srivastava and Another Vs. State of M.P. and Others](#), , it has been held in paragraphs 36 to 37 that a State has the right to control education and while

controlling education, it can prescribe a criteria for admission to Institutions for higher education. It has also held that a State may, for admission to the postgraduate medical courses lay down qualifications in addition to those prescribed under the Entry 66 of List I and by doing so, it would only foster and promote higher standards of education for admission to higher educational courses. Paragraphs 37 and 38 of the said judgment of the Apex Court is also worth noticing. In effect and reading the Judgment of the Apex Court, this Court is constrained to say that the Apex Court has, inter alia, held that additional qualifications/criteria framed by the State Government for admission, are not inconsistent with the norms framed by the University and they do not diminish the eligibility norms and therefore, will not affect the standards laid down but in fact, would only foster and promote such standards.

8. Mr. Arindam Banerjee, learned Counsel appearing for the West Bengal Council for Technical Education, has ably and very succinctly been able to demolish the submissions of the learned Counsel for the petitioner. In fact, Mr. Banerjee has submitted and, in the opinion of this Court, rightly so, that the State Government by fixing and indicating the modes of eligibility, has acted as a model State for promoting higher standard of education in such an Institution and it has not done anything by which it can be said that it has been instrumental in lowering the standards of education. He has, apart from assisting the Court and drawing its attention to Dr. Preeti Srivastava's case (supra), has also referred to the case of [Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others](#), This Court notices that in paragraphs 9,11 and 12, Their Lordships have duly taken note of Dr. Preeti Srivastava's case and in paragraph 13 they have held that the object of the State for fixing an eligibility criterion, which is higher than those fixed by AICTE is twofold. The first being to maintain excellence in higher education and the second is to shortlist the applicants in an effective manner so that the best are taken in. Paragraph 13 of the said Judgment reads 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.

9. Considering the aforementioned facts and circumstances and after also having heard Mr. Abhijit Gangopadhyay, this Court comes to the conclusion that there is no conflict in so far as the impugned notifications are concerned qua Entry 66 of List I of the 7th Schedule with regard to the Notification published.

10. The writ petition, therefore, does not deserve any consideration. It is, accordingly dismissed.

11. However, in the facts and circumstances of this case, there shall be no Order as to costs.

12. If urgent certified copy of this Order, duly photocopied, is applied for by the parties, the same should be given expeditiously.