

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 04<sup>th</sup> August, 2011

**W.P.(C) 5545/2011 and C.M.No.11331/2011**

Master Vaibhav Bhardwaj .....Petitioner

Through: Mr.Sanjeev Ralli and  
Mr.Sandeep Anand, Advs.

**Vs.**

GGSIU & Anr. ....Respondent

Through: Mr.Mukul Talwar & Mr.S.Mahapatra Advs.  
Mr.Mayank Manish for Mr.Amitesh Kumar,  
Advs.

CORAM:

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**KAILASH GAMBHIR, J.Oral:**

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to direct the respondent university to comply with the eligibility norms for B.Tech course as laid down by the AICTE.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner appeared for the Common Entrance Test (CET) 2011 for the course of B.Tech from the respondent university. The petitioner scored 54% marks in the aggregate of three subjects of Physics, Chemistry and Maths (PCM) in class 12<sup>th</sup> CBSE whereas the minimum percentage required in PCM for the B.Tech course in the respondent University is 55%. The grievance raised by the petitioner herein is that the as per the norms laid down by the AICTE, minimum percentage in PCM required for B.Tech is 50% and the respondent cannot flout the same and fix its own qualifying criteria.

3. Arguing the present petition, learned counsel appearing for the petitioner submits that the University has to necessarily follow the criteria laid down by the AICTE for admission in B.Tech course. Counsel also submits that once the admissions in the said course are to take place through common entrance test(CET), then

the students qualifying the common entrance test with the minimum eligibility criteria laid down by AICTE deserve to be considered for admission and not as per the criteria laid down by the University which, as per the counsel, is in conflict with the criteria laid down by the AICTE. Counsel further submits that the same eligibility criteria laid down by the Council is being followed by the Central Counseling Board under the aegis of Ministry of Human Resource Development and in AIEEE examination, 2011 conducted by the CBSE in respect of the same very course, where more than 10 lac candidates had appeared. In support of his arguments, counsel for the petitioner has placed reliance on the judgment of this court in *Narender Singh Negi Vs. NCT of Delhi & Ors., 134 (2006) DLT 436* and *Sumit Bhatia & Ors. Vs. Govt. of NCT of Delhi & Ors. 2007(99) DRJ 518*.

4. Opposing the present petition, Mr. Mukul Talwar, learned counsel for the respondent who enters appearance on advance notice submits that the criteria of qualifying marks laid down by the respondent University is not in any manner adverse to the criteria laid down by the AICTE. The contention of the counsel is that it is only when in a case where the criteria laid down by the University is either adverse or it reduces the standard laid down by the AICTE that the grievance can be made and not otherwise. In

support of his arguments, counsel for the respondent has placed reliance on the judgment of the Apex Court in *State of T.N. & Anr. Vs. S.V. Bratheep(Minor) & Ors. (2004 4 SCC 513.*

5. I have heard learned counsel for the parties.

6. The cause of heartburn of the present petitioner is that he could not have been denied admission in the B.Tech Course by the respondent University merely because he has failed to secure the qualifying percentage i.e. 55% aggregate marks in PCM in the 12<sup>th</sup> CBSE examination to seek admission in the said course whereas he fulfills the eligibility criteria as laid down by the AICTE. The contention of the petitioner is that as per the eligibility criteria and the norms laid down by the AICTE for admission in the B.Tech Course, the candidate is required to secure 50% aggregate in 12<sup>th</sup> exam (now 45% as per recent notification issued by the Council on 4<sup>th</sup> July, 2011) in three subjects i.e physics, chemistry and maths (PCM) and the petitioner who had secured 54% marks in the PCM in 12<sup>th</sup> exam is fully eligible to seek admission in the said course as per the norms laid down by the AICTE. It is therefore contended that the higher percentage of 55% in PCM in 12<sup>th</sup> exam as laid down by the respondent University is in clear conflict with the criteria of qualifying percentage laid down by the AICTE and therefore the

same cannot be enforced against the petitioner or such candidates seeking admission in the said B.Tech course. It is also the case of the petitioner that the respondent University cannot be permitted to adopt a different criterion which is higher in standard than that laid down by the AICTE.

7. It is not in dispute that as per the eligibility conditions laid down by the respondent University, the qualification to seek admission in B.Tech course is that the candidate must pass 12<sup>th</sup> class of 10+2 pattern of CBSE or equivalent with a minimum aggregate of 55% marks in physics, chemistry and maths, while as per the AICTE norms the qualifying percentage required in 12<sup>th</sup> exam in PCM was 50% which now has been reduced to 45%. As per the petitioner, this fixation of higher percentage by the respondent university is in conflict with the qualifying percentage as laid down by the AICTE. The said grievance raised by the petitioner cannot be redressed in view of the legal position settled by the Apex Court in ***State of T.N. Vs. S.N. Bratheep(Supra)*** where the court has clearly taken a view that if higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, then it cannot be said that such a criteria laid down by the State Government in any manner would be adverse to the standards fixed

by the AICTE or the same will reduce the standard fixed by it. The Apex Court also observed that the standard fixed should always be realistic, attainable and within the reach of the candidates. The Apex Court further observed that excellence in higher education has always been insisted upon in a series of decisions of the Apex Court and this court and if higher minimum marks have been fixed as the qualifying marks then it would certainly add to the excellence in the matter of admission of the students in higher education. The relevant para is reproduced as under:

*"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 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 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'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."*

The above view has been since reiterated by the Apex Court till recently in the case of **State of U.P vs. Bhupendra Nath Tripathi(2010)13SCC203** wherein the Court held that there is no quarrel with the proposition that the State in its discretion is entitled to prescribe such qualifications as it may consider appropriate for candidates seeking admission so long as the qualifications so prescribed are not lower than those prescribed by or under the concerned Act and the State can always prescribe higher qualification. Hence, in the present case also there can be no dispute with the proposition that the respondent university can set its own standards for admitting students as it is responsible for

maintaining the quality of education administered and thus cannot be faulted with for setting a limit higher than the one prescribed by the AICTE.

8. Another hurdle which comes in the way of the petitioner for claiming the said relief is that he was well aware of the said eligibility criteria through the prospectus issued by the respondent University much prior to the conducting of Common Entrance Test. It is not the case of the petitioner that some new condition has been introduced by the respondent university laying down higher standards. The petitioner was fully conscious and well aware of the fact that if he has to seek admission in the B.Tech course in the respondent university then necessarily he has to meet the eligibility criteria of securing 55% in PCM in 12<sup>th</sup> exam. The petitioner never chose to challenge the said criteria before declaration of result of his 12<sup>th</sup> exam. The petitioner is thus estopped from challenging the said criteria on the basis of principle of estoppel. The Apex Court in ***Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors. (2008)4SCC171*** clearly held that if unsuccessful candidates challenge that the recruitment was not done according to the statutory rules they are estopped from challenging the selection

criteria after having participated in the selection process without any demur. The relevant para is reproduced as under:

*"7. It is not disputed that the writ petitioners- respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion **inter alia** that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.*

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*9. In a recent judgment in the case of **Marrupati Nagaraja v. The Government of Andhra Pradesh** : JT2007(12)SC407 at p.516 SCR this Court has succinctly held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.*

*We are of the view that the Division Bench of the High Court could have dismissed the appeal on this score alone as has been done by the learned Single Judge."*

9. Admittedly, the petitioner herein has sought to challenge the criteria laid down by the University on the alleged ground of the same being in conflict with the criteria laid down by the AICTE after the declaration of his result in 12<sup>th</sup> exam not securing 55% marks in 12th exam in PCM and therefore he is now estopped from challenging the said criteria after having appeared in Common Entrance Test fully conscious and aware of the fact that he

would be eligible only if he would secure 55% marks in the 12<sup>th</sup> exam in PCM.

10. The judgments of this court cited by the petitioner in the case of *Narender Singh Negi(supra)* and *Sumit Bhatia(supra)* relate to the lateral entry of the petitioners to the second year of the diploma course run by the Govt of NCT of Delhi and in both the cases, the Court relied upon the judgment of the Apex court in the case of *State of Tamil Nadu & Anr. vs. Adhyan Educational and Research Institute & Ors. (1995)4SCC104*, wherein the court held that the setting of higher standards may lead to a situation where a large number of seats may fall vacant and thus allowed them. However apparently the judgment of the Apex Court in the case of *S.V Bartheep(supra)* was not before the court while delivering the said two judgments in case of *Narender Singh Negi* and *Sumit Bhatia* and it may be pertinent to mention that the Apex Court while deciding the case of *Bartheep(supra)* has discussed the judgment in the case of *Adhyan Educational and Research Institute* and for the sake of repetition, the relevant para is reproduced again here as under:

*"It is no doubt true as noticed by this Court in Adhyan'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."*

Hence, it is clear that the court insisted upon attainable and realistic standards and in the case at hand, prescribing 55% marks is not a very high standard so far class 12<sup>th</sup> marks in PCM are concerned and is only view a view to promote excellence and quality and therefore cannot be dubbed as illegal or arbitrary.

11. Hence, in the light of the above, there is no merit in the present petition and the same is accordingly dismissed at the preliminary stage itself.

**AUGUST 04, 2011**  
Dc/mg

**KAILASH GAMBHIR, J**