

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L) NO.39 OF 2015**

Bhagat Kalicharan Makhijani Petitioner.
V/s
The State of Maharashtra & Ors. Respondents.

WITH
WRIT PETITION NO.3986 OF 2015
(APPELLATE SIDE)

Shri Jaymeen Snehal Thakker & Ors. Petitioners.
V/s
The State of Maharashtra & Ors Respondents.

WITH
WRIT PETITION NO.950 OF 2015

Gaurav s/o. Mahesh Sakalgaonkar Petitioner.
V/s
The State of Maharashtra & Anr. Respondents.

WITH
WRIT PETITION NO.978 OF 2015

Rajyashree Prabhakar Rao Borkar Petitioner.
V/s
Directorate of Technical Education
Maharashtra State & Anr. Respondents

WITH
WRIT PETITION NO.981 OF 2015

Aashay Arun Tayde Petitioner.
V/s
Directorate of Technical Education
Maharashtra State & Anr. Respondents.

WITH
WRIT PETITION (L) NO.1013 OF 2015
ALONGWITH
CHAMBER SUMMONS (ST) NO.145 OF 2015

Akkankshaa Girish Paranjpe and Ors. Petitioners.

V/s

The State of Maharashtra & Ors. Respondents.

Mr. Manish Bohra a/w. Dipti Shah i/b M/s. A.S. Khan & Co. for
the Petitioner in PIL (L) No.39 of 2015.

Mr. K.H. Rayani for the Petitioner in ASWP/3986/2015

Mis. Jyoti H. Patki for the Petitioner in WP No.950 of 2015

Mr. Abhijeet Desai i/b Alok Daga for the Petitioner in WP
No.978 of 2015 and WP No.982 of 2015.

Mr. Ameya Gokhale i/b Gireesh U.G. Menon for the Petitioner
in WPL No.1013 of 2015.

Mr. Sandeep Shinde for Intervenor in PIL (L) No.39 of 2015
and WP No.1013 of 2015.

Mr. M.M. Vashi, Senior Counsel a/w. Ms. Aparna Devkar and
Mr. H.S. Venegaonkar, AGP for Respondent No.1 in PIL (L)
No.39 of 2015.

Mr. M.M. Vashi, Senior Counsel a/w. Ms. Aparna Devkar and
Mr. Surinder Sharma and Mr. Makrand Kale for Respondent-
State.

**CORAM: V. M. KANADE &
A.R. JOSHI JJ.**

DATE: 28th APRIL, 2015

ORDER: (Per V.M. Kanade, J.)

1. All these Petitions can be disposed of by a common order. In all these Petitions, results of Common Entrance Test (CET) which was held on 14/03/2015, which were declared on 25/3/2015 are challenged.
2. Two Writ Petitions were filed at Nagpur Bench; one was filed at Aurangabad Bench and two Writ Petitions and one PIL were filed at Bombay Bench. The Hon'ble Chief Justice was pleased to pass an order, directing that all these Petitions should be clubbed together and should be heard by this Bench.
3. Brief facts which are germane for the purpose of deciding these Petitions are as under:-
4. Director of Technical Education framed rules for admission to the first year of full time two year post graduate degree course for Master of Business Administration (MBA), Master of Management Studies (MMS) and Post Graduate Diploma in Business Management (PGDBM) and Post Graduate Diploma Course in Management (PGDM) for the Year 2015-2016 [hereinafter referred to as "the said

Courses”]

5. On 08/01/2015, Director of Technical Education (DTE) announced Examination Schedule of CET for MBA Course to be held on 14/03/2015 and 15/03/2015. Relevant Rules provided that:

- (a) CET examination shall be conducted as and by way of “online method” as against the traditional method of written examination;
- (b) there will be 200 multiple choice objective type questions;
- (c) the duration of examination will be 2 hours 30 minutes;
- (d) Standardized equi-percentile method will be used to equate the marks of the candidates, who have appeared in different sessions and have received different question papers.

6. On 13/02/2015, the DTE invited online registration for the said Courses in Government, University Department and unaided Institutes in the State of Maharashtra. The Notification clearly provided that the CET would be online in multiple sessions and marks of students appearing in sessions will be equated by using standardized equitable

percentile method. Since about 57224 students were to appear for this Examination, the Examination was held in four Batches. The first Batch appeared online on 14/03/2015 at 10.00 A.M. The second Batch appeared on 14/03/2015 at 2.00 P.M. The first Batch consisted of 14618 students. The second Batch consisted of 14817 students. The third Batch appeared on 15/03/2015 at 10.00 A.M. and 14103 students appeared and the last Batch appeared on 15/3/2015 at 2.00 P.M and 13686 students appeared in the said Batch.

7. Soon after the Examination was held, several complaints were received, alleging that either the questions were not properly framed or one or other discrepancy was found in the questions which were asked for each Batch. Accordingly on 18/03/2015, Academic Expert Committee was constituted to identify such questions. Then on 18/3/2015, Technical Expert Committee examined the grievance like display of images, questions and options, slow display of questions, net working problem. On the basis of the Report of the Committee, it was decided that certain questions from each Batch would not be evaluated and the ratio of marks obtained by the students would be provided to the wrong answers. Thus, in Batch-1, 19 wrong questions were found, in Batch-2, 18 wrong questions were found, in Batch-3, 11 wrong questions were found and in Batch-4 also, 11 wrong

questions were found. The standardized equi-percentile method was applied and the results were declared on 25/03/2015 and these results were displayed by DET on its website on 26/03/2015. On 28/03/2015 and 29/03/2015, equi-percentile method adopted by DTE was uploaded on website. The first Petition was filed at Nagpur Bench on 13/03/2015. The second Petition was filed again at Nagpur Bench on 06/04/2015; one at Aurangabad Bench on 06/04/2015. Two Petitions were filed at Bombay Bench on 06/04/2015 and one PIL was filed at Bombay Bench on 07/04/2015.

8. We have heard all the learned Counsels appearing for the Petitioners in each of the Petitions and the learned Counsel appearing on behalf of DTE.

9. The learned Counsels appearing on behalf of the Petitioners submitted that (i) differential number of incorrect questions in each sessions of the Examination had caused hardship which could not be remedied by the method suggested by the State and (ii) differential difficulty level of the four sessions of the Examination had led to unequal treatment of candidates appearing for the Examination. It was submitted that the standardized equi-percentile method which was adopted by the Respondents – DTE was incorrect and could not have been adopted when the Examination was

held in four sessions. It was submitted that the same had resulted in scaling down of the marks received by the Petitioners. It was submitted that the only remedy was to cancel the results which were declared and to hold the Examination again. Reliance was placed on the Full Bench Judgment of this Court. It was submitted that if the difficult levels of question papers across multiple-sessions was inconsistent and not comparable, the method adopted by the DTE was contrary and unfair and it had resulted in students being tested on non-identical parameters.

10. On the other hand, Mr. M.M. Vashi, the learned Senior Counsel appearing on behalf of the DTE, submitted that the standardized equi-percentile method was used in various examinations which were held across the country and even internationally it was approved. Secondly, it was submitted that DTE had adopted this method for last 4 to 5 years. Thirdly, he submitted that in the brochure itself, it was clearly mentioned that the standardized equi-percentile method of evaluation of questions would be adopted. It was, therefore, submitted that the students were very well aware about the method of evaluations of answers and it was not open for them now to raise the objection. He submitted that so far as wrong questions were concerned, equivalent marks were given to each student according to the marks scored by him in the remaining correct answers. It was submitted

that no prejudice was caused to the students. He submitted that the Apex Court also had approved this standardized equi-percentile method. He submitted that, therefore, if the fresh examination is ordered it would have cascading effect on the entire system of giving admission , which would result in curtailment of the actual course for the Year 2015-16. He further submitted that, it was only the students of Batch-1 who had filed Petitions and students of Batch-2, in fact, had filed Chamber Summons opposing the reliefs claimed by the Petitioners.

11. Reliance was placed by the learned Senior Counsel appearing on behalf of DTE on the judgment of the Madras High Court in *Anthony Clara vs. The State of Tamilnadu & Ors.*¹, judgments of the Apex Court in *U.P. Public Services Commission vs. Subhash Chandra Dixit and Ors.*² and in *Pankaj Sharma vs. State of Jammu and Kashmir and Ors AND Amit Abrol vs. State of Jammu and Kashmir and Anr.*³. Reliance was also placed on the judgment of Jaipur Bench of Rajasthan High Court in *Rishabh Saxena & Others vs. State of Rajasthan and Others* delivered in a group of Writ Petitions beginning with S.B. Civil Writ Petition No.7040 of 2014 on 26/06/2014 and the judgment of the Indore Bench of the Madhya Pradesh High Court in *Rutvij Waze & Anr vs.*

1 2014WritLR 113

2 AIR 2004 SC163

3 (2008) 4 SCC 273

Union of India delivered in a group of three Petitions beginning with Writ Petition No.1254 of 2014 on 13/02/2015.

12 The law on the point has been very succinctly reproduced by the Judgment of the Madhya Pradesh High Court in *Rutviz Waze* (supra) and the observations made by the Apex Court in various judgments have been reproduced. It would be fruitful to reproduce paras 37 to 56 of the said Judgment of Madhya Pradesh High Court:-

“37. Learned Sr. Counsel for the petitioners has placed heavy reliance upon a judgment delivered by the Apex Court in the case of *Sanjay Singh* (supra) and his contention is that in light of the aforesaid judgment the respondents are required to disclose the raw-marks obtained by the candidates in the examination. Heavy reliance has been placed upon in paragraphs 35, 36, 37, 41 and 43 of the aforesaid judgment, which reads as under :-

“35. The illustrations given above with reference to the 2003 examinations clearly demonstrate the arbitrariness and irrationality of scaling, particularly in cases falling at the two ends of the spectrum. We, therefore, hold that scaling system as adopted by the Commission is unsuited for the Civil Judge (Junior Division) Examination.

36. We may now summarise the position regarding scaling thus:

(i) Only certain situations warrant adoption of

scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the "hawkdove" effect (strict/liberal valuation).

The material placed does not disclose that the Commission or its expert committee have kept these factors in view in determining the system of scaling. We have already demonstrated the anomalies/absurdities arising from the scaling system used. The Commission will have to identify a suitable system of evaluation, if necessary by appointing another committee of experts. Till such new system is in place, the Commission may follow the moderation system set out in para 23 above with appropriate modifications.

37 We may now refer to the decision of this Court in S.C. Dixit¹. The validity of scaling was

considered in paras 31 to 33 of the judgment
extracted below: (SCC p. 716)

“31. There is a vast percentage difference in awarding of marks between each set of examiners and this was sought to be minimised by applying the scaling formula. If scaling method had not been used, only those candidates whose answersheets were examined by liberal examiners alone would get selected and the candidates whose answersheets were examined by strict examiners would be completely excluded, though the standard of their answers may be to some extent similar. The scaling system was adopted with a view to eliminate the inconsistency in the marking standards of the examiners. The counsel for the respondents could not demonstrate that the adoption of scaling system has in any way caused injustice to any meritorious candidate. If any candidate had secured higher marks in the written examination, even by applying the scaling formula, he would still be benefitted.

32. The Division Bench of the High Court observed that the process of scaling was done examinerwise only and the scaling formula did not take into consideration the average of mean of all the candidates in one particular paper but took the mean of only that group of candidates which has been examined by one single examiner. The counsel for U.P. PSC submitted that the observation made by the High Court is incorrect. The scaling formula was adopted to remove the disparity in the evaluation of 14 examiners who participated in the evaluation of answersheets and the details have also been furnished as to how the scaling formula was adopted and applied. Therefore, we do not think that the observation of the Division Bench that the Commission did not take care of varying standards which may have been applied by

different examiners but has sought to reduce the variation of the marks awarded by the same examiner to different candidates whose answersheets had been examined, is correct. The Division Bench was of the view that as a result of scaling, the marks of the candidates who had secured zero marks were enhanced to 18 and this was illegal and thus affected the selection process. This finding is to be understood to mean as to how the scaling system was applied. 18 marks were given notionally to a candidate who secured zero marks so as to indicate the variation in marks secured by the candidates and to fix the mean marks.

33. In that view of the matter, we do not think that the application of scaling formula to the examinations in question was either arbitrary or illegal. The selection of the candidates was done in a better way. Moreover, this formula was adopted by U.P. PSC after an expert study and in such matters, the court cannot sit in judgment and interfere with the same unless it is proved that it was an arbitrary and unreasonable exercise of power and the selection itself was done contrary to the Rules. Ultimately, the agency conducting the examination has to consider as to which method should be preferred and adopted having regard to the myriad situations that may arise before them." therefore, upheld scaling on two conclusions, namely, (i) that the scaling formula was adopted by the Commission after an expert study and in such matters, the Court will not interfere unless it is proved to be arbitrary and unreasonable; and (ii) the scaling system adopted by the Commission eliminated the inconsistency arising on account of examiner variability (differences due to evaluation by strict examiners and liberal

examiners). As scaling was a recognised method to bring raw marks in different subjects to a common scale and as the Commission submitted that they introduced scaling after a scientific study by experts, this Court apparently did not want to interfere. This Court was also being conscious that any new method, when introduced, required corrections and adjustments from time to time and should not be rejected at the threshold as unworkable. But we have found after an examination of the manner in which scaling system has been introduced and the effect thereof on the present examination, that the system is not suitable. We have also concluded that there was no proper or adequate study before introduction of scaling and the scaling system which is primarily intended for preparing a common merit list in regard to candidates who take examinations in different optional subjects, has been inappropriately and mechanically applied to a situation where the need is to eliminate examiner variability on account of strict/liberal valuation. We have found that the scaling system adopted by the Commission leads to irrational results, and does not offer a solution for examiner variability arising from strict/liberal examiners. Therefore, it can be said that neither of the two assumptions made in can validly continue to apply to the type of examination with which we are concerned. We are therefore of the view that the approval of the scaling system in is no longer valid.

41. The petitioners have requested that their petitions should be treated as being in public interest and the entire selection process in regard to Civil Judge (Junior Division) Examination, 2003 should be set aside. We are unable to accept the said contention. What has been made out is certain inherent defects of a

particular scaling system when applied to the selection process of the Civil Judges (Junior Division) where the problem is one of examiner variability (strict/liberal examiners). Neither mala fides nor any other irregularities in the process of selection are made out. The Commission has acted bona fide in proceeding with the selection and neither the High Court nor the State Government had any grievance in regard to selections. In fact, the scaling system applied had the seal of approval of this Court in regard to the previous selection. The selected candidates have also been appointed and functioning as Judicial Officers. Further as noticed above, the scaling system adopted by the Commission has led to irrational and arbitrary results only in cases falling at the ends of the spectrum, and by and large did not affect the major portion of the selection. We, therefore, direct that our decision holding that the scaling system adopted by the Commission is unsuited in regard to Civil Judge (Junior Division) Examination and directing moderation, will be prospective in its application and will not affect the selections and appointments already made in pursuance of the 2003 examination.

43. The petitions are allowed in part accordingly.”

38. On the other hand, respondents have placed reliance upon a judgment delivered in the case of University Grant Commission Vs. Neha Anil Bobde [(2013) 10 SCC 519]. Para 30 and 31 of the aforesaid judgment read as under :-

30. We are of the considered view that the candidates were not misled in any manner. Much emphasis has been made on the words declaring the National Eligibility Test”. “Clearing” means clearing the final results, not

merely passing in Paper I, Paper II and Paper III, which is only the initial step, not final. To clear the NET Examination, as already indicated, the candidate should satisfy the final qualifying criteria laid down by the UGC before declaration of the results.

31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in [University of Mysore vs. C.D. Govinda Rao](#), AIR 1965 SC 491, [Tariq Islam vs. Aligarh Muslim University](#) (2001) 8 SCC 546 and [Rajbir Singh Dalal vs. Chaudhary Devi Lal University](#) (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any “qualifying criteria”, which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. Candidates declared eligible for lectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only

implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.

The contention of the respondents is that in light of the aforesaid judgment until and unless there is a clear violation of statutory provisions of law or regulation, question of judicial interference in the academic matter is not warranted. The respondents have placed reliance upon a judgment delivered in the case of Sajeesh Babu K. Vs. N.K. Santhosh [(2012) 12 SCC 106] and the respondents have placed heavy emphasis on paragraph 19 and 20, which reads as under:-

19. In the High Court as well as in this Court, the University filed affidavit stating that the Expert Committee consisting of highly qualified 5 distinguished experts evaluated the qualification, experience and the published works of the appellants and found them eligible and suitable. In such circumstance, this Court observed in paragraph Nos. 20 & 21 as under:

20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University."

21. It is the settled legal position that the courts

have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

20) It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee."

Contention of the respondents is that judicial review or interference in selection process in absence of malafide is not permitted.

39. The respondents have also placed reliance upon a judgment delivered in the case of Sanchit Bansal Vs. Joint Admission Board [(2012) 1 SCC 157] and heavy reliance has been placed upon paragraphs 17 to 33,

38 and 39 and once again the Apex Court dealing with IIT and JEE examination has held that the complicated procedure followed in selection does not render the said procedure arbitrary, unreasonable or discriminatory.

40. The respondents have placed reliance upon another judgment delivered in the case of State of Himachal Pradesh Vs. Himachal Pradesh Nizi Vyavsayik Parishikshan Kendra Sangh [(2011) 6 SCC 597] and the paragraphs 20 & 23 of the aforesaid judgment reads as under :-

“20. It is seen that the Cabinet considered the proposal of the State Council for Vocational Training and after deliberation, the decision has been taken to continue various courses under SCVT except for the courses at Sl. No. 1 (Art and Craft), Sl. No. 4 (Library Science) and Sl. No. 7 (PTI). Though in the supplementary affidavit, the State has not highlighted the reason for discontinuing the three courses in the State of Himachal Pradesh, the High Court presumed that the State is precluded from taking fresh/revised policy in the matter of imparting technical education. In fact, in the said decision, the State has not barred all the institutions from continuing the courses already notified under SCVT. The Cabinet decided to discontinue only three courses. Inasmuch as the said Cabinet decision dated 18.07.2009 not being the subject matter or issue of the writ petition, the State was not in a position to highlight all the details before the Court. Accordingly, we are satisfied that the High Court was not justified in interfering with the Cabinet decision dated 18.07.2009 which was not the issue or challenge in the writ petition. We are also unable to accept the conclusion of the High Court that the petitioner's association (respondent herein) is entitled to run all the courses under the principle of 'legitimate expectation'.

23. Under these circumstances, the impugned order of the High Court quashing the Cabinet decision dated 18.07.2009 and issuing various directions including awarding cost of Rs.25,000/- in favour of the

respondent-association are set aside. As observed earlier, the respondent's association or its members are free to challenge the order of the Government in the High Court by way of an appropriate writ by projecting valid grounds, if any. In such event, the State Government is equally entitled to highlight its policy, need for the change, and demand of the society insofar as courses prescribed under SCVTs are concerned. With the above observations, the civil appeal is allowed with no order as to costs"

The contention of the respondents is that a policy decision can be interfered with only if it is against the constitutional mandate.

41. The respondents have also placed reliance upon another judgment delivered in the case of Vishvesswaraih Technological University Vs. Krishnendu Halder [(2011) 4 SCC 606] and the paragraphs 14, 15, 16 and 17 of the aforesaid judgment reads as under :-

"14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, para 41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Dr. Preeti Srivastava and the decision of the larger Bench in S.V. Bratheep which explains the observations in Adhiyaman in the correct perspective. We summarise below the position, emerging from these decisions :

(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 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 Adhiyaman 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.

15. 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.

16. The proliferating unaided private colleges, may need a full complement of students for their comfortable sustenance (meeting the cost of running the college and paying the staff etc.). But that cannot be at the risk of quality of education. To give an example, if 35% is the minimum passing marks in a qualifying examination, can it

be argued by colleges that the minimum passing marks in the qualifying examination should be reduced to only 25 or 20 instead of 35 on the ground that the number of 15 students/candidates who pass the examination are not sufficient to fill their seats? Reducing the standards to 'fill the seats' will be a dangerous trend which will destroy the quality of education. If there are large number of vacancies, the remedy lies in (a) not permitting new colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. Be that as it may. The need to fill the seats cannot be permitted to override the need to maintain quality of education. Creeping commercialization of education in the last few years should be a matter of concern for the central bodies, states and universities.

17. No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or 'adversely affect' the standards if any fixed by the Central Body 16 under a Central enactment. The order of the Division Bench is therefore unsustainable."

The contention of the respondents is that the academic policy is beyond the purview of judicial review.

42.The respondents have placed reliance upon

another judgment delivered in the case of Basavaiah (Dr.) Vs. Dr. H.L. Ramesh & Ors. [(2010) 8 SCC 372] and the paragraphs 20, 21 and 22 of the aforesaid judgment reads as under :-

“20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinized the qualification, experience and published 13 work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinized the merits and de-merits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

22. A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in the Central College, Bangalore, in the case of [The University of Mysore and Anr. v. C.D. Govinda Rao and Anr.](#) AIR 1965 SC 491, in which the

Constitution Bench unanimously held that normally the Courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts who had constituted the Selection Board. The court further observed that it would normally be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be”

The contention of the respondents is that the Courts should not endeavour to sit in appeal over decisions of experts and the review of expert committee not justified.

43.The respondents have placed reliance upon another judgment delivered in the case of All India Council for Technical Education Vs. Surinder Kumar Dhawan [(2009) 11 SCC 726] and the paragraphs 14, 15, 16, 17, 18, 22, 23, 31 and 32 of the aforesaid judgment reads as under :-

“14. There is considerable force in the submission of the appellant. Having regard to clauses (i) and (k) of section 10 of the All India Council for Technical Education Act, 1987 [‘Act’ for short], it is the function of the AICTE to consider and grant approval for introduction of any new course or programme in consultation with the agencies concerned, and to lay down the norms and standards for any course including curricula, instructions, assessment and examinations.

15.The decision whether a bridge course should be permitted as a programme for enabling diploma holders to secure engineering degree, and if permitted, what should be the norms and standards in regard to entry qualification, content of course instructions and manner of assessing

the performance by examinations, are all decisions in academic matters of technical nature. AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.

16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In [Dr. J.P.Kulshreshtha v. Chancellor, Allahabad University](#) [1980 (3) SCC 418] this Court observed :

"Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

18. In [Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth](#) [1984 (4) SCC 27] this court reiterated :

".....the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

22. The decision of AICTE not to permit bridge courses for diploma holders and its decision not to permit those who have passed 10+1 examinations (instead of 10+2 examination) to take the bridge course, relate to technical education policy which fall within their exclusive jurisdiction.

23. Courts will not interfere in matters of policy. This Court in [Directorate of Film Festivals v. Gaurav Ashwin Jain](#) [2007 (4) SCC 737] pointed out:

"Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the

ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review."

The above observations will apply with added vigour to the field of education.

31. These being educational issues, they cannot be interfered, merely because the court thought otherwise. If the AICTE was of the view that only those diploma holders with 10+2 (with PCM subjects) should be permitted to upgrade their qualification by an ad hoc bridge course or that such bridge course should not be a regular or permanent feature, there is no reason to interfere with such a decision. The courts cannot by their orders create courses, nor permit continuance of courses which were not created in accordance with law, or lower the minimum qualifications prescribed for admissions. The High Court's decision to permit candidates who have completed 10+1 plus four years post diploma course to take the bridge course, cannot be sustained.

32. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four year Advance Diploma holders who had passed the entry level

examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one time measure was extended for several years and was also extended to Post Diploma holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education.

The contention of the respondents is that the Courts cannot be substituted in place of technical bodies. Courts cannot interfere with policy.

44. The respondents have placed reliance upon another judgment delivered in the case of *Guru Nanak Dev University Vs. Sanjay Kumar Katwal* [(2009) 1 SCC 610] and the paragraphs 15 & 16 of the aforesaid judgment reads as under :-

“15. The first respondent has passed his M.A. (OUS) from Annamalai University through distance education. Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that appellant university has recognized the M.A. English (OUS) of Annamalai University through distance education as equivalent to M.A. of appellant university. Thus it has to be held that first respondent does not fulfil the eligibility criterion of the appellant university for admission to three year law course.

16. The first respondent made a faint attempt to contend that the distance education system includes 'correspondence courses' and therefore recognition of M.A. (correspondence course) as equivalent to M.A. course of appellant University, would amount to recognition of M.A. - OUS (distance education) course, as an equivalent. For this purpose, he relied upon the definition of "distance education system" in section 2(e) of Indira Gandhi National Open University Act, 1985. But there is nothing to show that Annamalai University has treated correspondence course and OUS (distance education) course as the same. What is more important is that the appellant university does not wish to treat correspondence course and Distance Education Course as being the same. That is a matter of policy. Courts will not interfere with the said policy relating to an academic matter."

The contention of the respondents is that the Courts cannot interfere with the policy relating to an academic matter.

45. The respondents have placed reliance upon another judgment delivered in the case of National Board of Examination Vs. Anand Ramamurthy [(2006) 5 SCC 515] wherein the Supreme Court has held that there should not be an interference in the academic matters and the paragraphs 7 & 9 of the aforesaid judgment reads as under :-

"7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. The High Court was also not justified in exercising its

power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates are requested to refer to the latest bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no unascertain terms that the instructions contained in the Bulletin including

the schedule of examinations were liable to changes based on the decisions taken by the Governing Body of the petitioner from time to time. Hitherto Examinations were being conducted twice a year i.e. in the months of June and December, 2006. There could be no embargo in the way of the petitioner bonafidely changing the Examination Schedule, more so when it had admittedly and categorically reserved its rights to do so to the notice and information of the respondent nos.1 and 2. In any event, the completion of three years training is a necessary concomitant for appearing in the DNB final examination.

9. No malafide has been alleged against the petitioner in the writ petition. The Governing Body of the petitioner in the larger interest of the candidates as well as of the petitioner, and medical education in general has decided to change the current practice of conducting the examinations on biannual basis for all the disciplines of modern medicine with the revised policy to conduct the biannual examination only in those streams where number of candidates is more than 100, from June, 2006 onwards to curtail its expenditure. The above policy decision in our opinion, cannot at all be faulted with.

46. The respondents have placed reliance upon another judgment delivered in the case of Aruna Roy Vs. Union of India [(2002) 7 SCC 368] and the paragraphs 96 and 97 of the aforesaid judgment reads as under :-

“96. As pointed out by learned counsel on behalf of petitioners, if there are certain offending portions in the curriculum, which are not historically correct or has a tendency to misrepresent, suppress or project a wrong information, they can be removed. The learned

Solicitor General on behalf of the Union of India and the counsel appearing for NCERT have very candidly stated that if those portions are identified, there would be no objection to the Government to consider their deletion from the curriculum. It has been emphatically stated that the object of introducing 'study of religions' in the education from primary stage is to ensure all round development of a child and with the object that he grows as citizen with respect for constitutional values. As has been stated by us above, while dealing with the first point, that a National Policy of school education having effect and implications upon children of whole of India should be prepared after careful and thoughtful deliberations. Learned Solicitor General stated that NCERT before finalising the curriculum has not only held symposiums, conferences, talks and debates, but also elicited opinions not only of members of NCERT, but also ex-officio members of CAGE. It is stated that although a formal meeting of the members of CAGE could not be called for seeking their advice, but each one of them individually was sent a copy of curriculum to elicit their views for and against it. It is after long deliberations, discussions and exchange of views that the curriculum has been finalised. It is submitted that any restraint puts on introduction of curriculum could harm the interest of the students, who have already started their academic session and a very large quantity of text books and literatures prepared by NCERT in conformity with the National Curriculum of 2002, would go waste. It is, therefore, stated that this Court should vacate interim order restraining introduction of National Curriculum on certain subjects as mentioned in the Order of this Court dated 1st March, 2002. We have looked into the Constitution and functions of CAGE, copy of which has been provided to us. The Constitution and functions of NCERT are also given to us for perusal. From the language employed therein, we find that the functions of the two Bodies are not so clearly

delineated as to put them in water tight compartments. In evolving a National Policy on Education and based thereon a curriculum, in accordance with long standing practice, it was desirable to consult CAGE although for non-consultation the National Policy and the Curriculum cannot be set aside by the court. In a constitutional democracy, Parliament is supreme and policies have to be framed and approved by the Parliament. Parliament had constituted CAGE and NCERT and if CAGE has any objection to the National Curriculum nothing prevented it from expressing its opinion accordingly. It is ultimately for the Parliament to take a decision on the National Education Policy one way or the other. It is not the province of the Court to decide on the good or bad points of an Educational Policy. The Court's limited jurisdiction to intervene in implementation of a policy is only if it is found to be against any statute or the Constitution. We have not found anything in the Educational Policy or the Curriculum which is against the Constitution. We have found no ground to grant any relief as prayed for by the Petitioners. We would, however, direct the Union of India to consider the matter of filling the vacancies in the membership of CAGE and convening a meeting of CAGE for seeking opinion on the policy and the curriculum.

97.All bodies created by executive power of the State, are answerable to Parliament which is the supreme legislative body with all powers in suggesting and formulating a National Education Policy.It is open to Parliament to fill nominations to CAGE, re-constitute it or do away with it. The court can have no jurisdiction in that subject. This court can enforce constitutional provisions and laws framed by the Parliament. It cannot, however, compel that a particular practice or tradition followed in framing and implementing the policy, must be adhered to. The court has to keep in mind the above limitations on its

jurisdiction and power. It is true that if a policy framed in the field of education or other fields runs counter to the constitutional provisions or the philosophy behind those provisions, this court must, as part of its constitutional duty, interdict such policy.

The contention of the respondents is that the educational policy is not province of courts. The courts must keep in mind its limitations.

47. The respondents have placed reliance upon another judgment delivered in the case of State of Rajasthan Vs. Lata Arun [(2002) 6 SCC 252] and the paragraph 13 of the aforesaid judgment reads as under :-

“13. From the ratio of the decisions noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. it is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

The contention of the respondents is that the courts are not supposed to decide the educational qualifications in respect of a particular post and the same has to be looked into by the appropriate authority.

48. The respondents have placed reliance upon another judgment delivered in the case of Pujab University Vs. Narinder Kumar & Ors. [(1999) 9 SCC 8] and the paragraphs 10 of the aforesaid judgment reads as under :-

“8. The first respondent has contended that if the post of a Lecturer in Gandhian Studies is given to a person who has obtained an M.A. degree in other subjects, the opportunities available to those like him, who have a specialisation in Gandhian Studies from M.A. level onwards, get reduced; and this

would discourage people from taking a specialisation course in Gandhian Studies at the M.A. level. This argument, however, addresses itself on the policy relating to prescribing qualifications for the various posts. Such a policy has to be formulated by the University in accordance with the norms laid down by the University Grants Commission or any other Expert Body that may have been specified under the relevant statutes. We cannot examine such a policy or reframe it.”

The contention of the respondents is that the courts cannot examine a policy or reframe it. It is the job of the expert bodies.

49. The respondents have placed reliance upon another judgment delivered in the case of English Medium Students Parents Association Vs. State of Karnataka [(1994) 1 SCC 550] and the paragraphs 23 and 24 of the aforesaid judgment reads as under :-

“23. As rightly contended by the learned Advocate-General where the State by means of the impugned GO desires to bring about academic discipline as a regulatory measure it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere. In *Hindi Hitrakshak Samiti v. Union of India*⁶ this Court laid down as under: (SCR p. 592 : SCC p. 355, para 6)

“It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi language, or it may be that Hindi or other regional language because of development of that language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in charge of any particular

situation. Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference.”

24. In a matter relating to policy this Court should decline to interfere. In the result, we conclude the writ petition is devoid of merits and is accordingly dismissed.”

The contention of the respondents is that the academic discipline a matter of policy and the Courts should not interfere with the same.

50. The respondents have placed reliance upon another judgment delivered in the case of Neelima Misra Vs. Harinder Kaur Paintal [(1990) 2 SCC 746], wherein it has been held that in the matter of appointment, the courts should not interfere. Paragraph 32 of the aforesaid judgment reads as under :-

“32. It is not unimportant to point out that in matters of appointment in the academic field the Court generally does not interfere. In the University of Mysore & Ant. v. C.D. Govind Rao, [1964] 4 SCR 575, this Court observed that the Courts should be slow to interfere with the opinion expressed by the experts in the absence of mala fide alleged against the experts. When appointments based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and

its recommendation on which the Chancellor has acted. See also the decisions in [Dr. J.P. Kulshreshtha & Ors. v. Chancellor, Allahabad University, Raj Bhavan & Ors.](#), [1980] 3 SCR 902 at 912 and [Dalpat Abasahed Solunke v.B.S. Mahajan](#), [1990] 1 SCR 305 at 309-310.”

51.The respondents have placed reliance upon another judgment delivered in the case of [Hindi Hitrakshak Samiti and Ors. Vs. Union of India & Ors.](#) [(1990) 2 SCC 352], wherein the writ petition filed for holding examination in a particular language has been dismissed and it has been held that for mode of examination no judicial intervention is permissible. Paragraphs 5 and 9 of the aforesaid judgment reads as under :-

“5 We have examined the matter and have heard Mr. L.M. Singhvi. We are of the opinion that the prayers sought for herein are not such which can be appropriately, properly and legitimately dealt with under Article 32 of the Constitution of India. The contention of the petitioners is, as mentioned hereinbefore, that premedical studies in medical and dental examination should be permitted in Hindi and other regional languages and not in English alone, and the admission to the Institutions should not be refused and/or examinations should not be held in English alone if the examinees or the entrants seek to appear in Hindi or other regional language. 9.In the background of the facts and the circumstances of the case and the nature of controversy that has arisen, we are of the opinion that proper and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination for admission in any particular language to the Institution on that basis, is a matter of policy. Whether in particular facts and the

circumstances of this case admission to medical or dental Institution by conducting examination in Hindi or other regional languages would be appropriate or desirable or not, is a matter on which debate is possible and the acceptance of one view over the other involves a policy decision. It cannot be appropriately dealt with by this Court, and order under Article 32 of the Constitution in those circumstances would not be an appropriate remedy.”

52.The respondents have placed reliance upon another judgment delivered in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27] and the paragraphs 29 of the aforesaid judgment reads as under :-

“Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day today working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or byelaw which would bring about the result of rendering the system unworkable in practice. It is

unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”

The contention of the respondents is that the courts should be extremely reluctant in interfering with academic matters and wholly wrong for the court to make an idealistic approach.

53. The respondents have placed reliance upon another judgment delivered in the case of (Dr.) J.P. Kulshrestha & Ors. Vs. Allahabad University & Ors. [(1980) 3 SCC 418], wherein it has been held that the Courts should not interfere in educational matters. Paragraphs 11 and 17 of the aforesaid judgment reads as under :-

“11. The second obscurantism we must remove is the blind veneration of marks at examination as the main measure of merit. Social scientists and educational avant garde may find pitfalls in our system of education and condemn the unscientific aspects of marks as the measure of merit, things as they now stand. But, however imperfect and obtuse the current system and however urgent the modernization of our courses culminating in examinations may be, the fact remains that the court has to go by what is extant and cannot explore on its own or ignore the measure of merit adopted by universities. Judges must not rush in where even educationists fear to tread. So, we see no purpose in belittling the criterion of marks and class the Allahabad University has laid down, although to swear religiously by class and grade may be exaggerated reverence and false scales if strictly scrutinized by progressive criteria.

17. Rulings of this Court were cited before us to hammer home the point that the Court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic

bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the Court out. In Govinda Rao's case (1) Gajendragadkar, J (as he then was) struck the right note:

"What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or finding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board and its recommendations on which the Chancellor has acted."
(Emphasis added)

The later decisions cited before us broadly conform to the rule of caution sounded in Govinda Rao. But to respect an authority is not to worship it unquestioningly since the bhakti cult is inept in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. Moreover, the present case is so simple that profound doctrines about academic autonomy have no place here."

54. The respondents have placed reliance upon another judgment delivered in the case of Dr. M.C. Gupta & Ors. Vs. Dr. Arun Kumar Gupta & Ors. [(1979) 2 SCC 339], wherein it has been held that judges should leave the decisions of academic matters to experts. Paragraphs 7 of the aforesaid judgment reads as under :-

"Before the rival comments are probed and analysed, it would be necessary to keep in view the twilight zone of Court's interference in appointment to posts requiring technical experience made consequent upon selection by Public Service Commission, aided by

experts in the field, within the framework of Regulations framed by the Medical Council of India under s. 33 of the Indian Medical Council Act, 1956, and approved by the Government of India on 5th June 1971. When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226. Even then the Court, while enforcing the rule of law, should give due weight to the opinions expressed by the experts and also show due regard to its recommendations on which the State Government acted. If the recommendations made by the body of experts keeping in view the relevant rules and regulations manifest due consideration of all the relevant factors, the Court should be very slow to interfere with such recommendations (see, *The University of Mysore & Anr. v. C. D. Govinda Rao & Anr.*, (1). In a more comparable situation in *State of Bihar & Anr. v. Dr. Asis Kumar Mukherjee, and Ors.*, (2) this Court observed as under:

"Shri Jagdish Swaroop rightly stressed that once the right to appoint belonged to Government the Court could not usurp it merely because it would have chosen a different person as better qualified or given a finer gloss or different construction to the regulation on the score of a set formula that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the

extraordinary jurisdiction under Art. 226. True, no speaking order need be made while appointing a government servant. Speaking in plaintitudinous terms these propositions may deserve serious reflection. The Administration should not be thwarted in the usual course of making appointments because somehow it displeases judicial relish or the Court does not agree with its estimate of the relative worth of the candidates. Is there violation of a fundamental right, illegality or a skin error of law which vitiates the appointment".

55. The respondents have placed reliance upon another judgment delivered in the case of State of Maharashtra Vs. Lok Shikshan Sanstha [(1971) 2 SCC 410], wherein it has been held that if there is no violation of fundamental rights, courts not to lay down its policy and to leave the State to decide policy matter. Paragraph 9 of the aforesaid judgment reads as under :-

"Before we deal with the above contentions advanced before us on behalf of both sides, it is necessary to state that the High Court in the judgment under attack has made certain observations regarding what according to it should be the policy adopted by the educational authorities in the matter of permitting the starting of a new school or of an additional school in a particular locality or area. It is enough to state that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it when dealing with the claims of the two writ petitioners that their applications had been wrongly rejected by the educational authorities. So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a

reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.”

56. The respondents have placed reliance upon another judgment delivered in the case of Prashant Remesh Chakkarwar Vs. Union Public Service Commission [(2013) 12 SCC 589] and the paragraphs 14, 15 and 17 of the aforesaid judgment reads as under :

“14. Dehors the above conclusion, we are convinced that the impugned order¹ does not suffer from any legal infirmity. In Sanjay Singh case¹¹¹¹ the Court was called upon to decide the legality of the method of scaling adopted by the U.P. Public Service Commission for recruitment to the posts of Civil Judge (Junior Division). After examining various facets of the method adopted by the U.P. Public Service Commission and taking cognizance of the earlier judgment in U.P. Public Service Commission v. Subhash Chandra Dixit¹²¹², the three-Judge Bench¹¹¹¹ observed: (Sanjay Singh case¹¹¹¹, SCC pp. 738-42, paras 20, 23 & 26)

“20. We cannot accept the contention of the petitioner that the words ‘marks awarded’ or ‘marks obtained in the written papers’ refer only to the actual marks awarded by the examiner. ‘Valuation’ is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20(3) specifically refers to the ‘marks finally awarded to each candidate in the written examination’, thereby implying that the marks awarded by the examiner can be altered by moderation.

23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When

more than one examiners evaluate the answer scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is 'hawk-dove' effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer script is given to different examiners, there is all likelihood of different marks being assigned. If a very well-written answer script goes to a strict examiner and a mediocre answer script goes to a liberal examiner, the mediocre answer script may be awarded more marks than the excellent answer script. In other words, there is 'reduced valuation' by a strict examiner and 'enhanced valuation' by a liberal examiner. This is known as 'examiner variability' or 'hawk-dove effect'. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of 'examiner subjectivity' or 'examiner variability' is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/Judges. Where the case is of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this

by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks, etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the examiners. In such a situation, one more level of examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who

checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of 'moderation' would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

26. The Union Public Service Commission ('UPSC', for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in Civil Service Preliminary Examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer scripts are evaluated by computerised scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer scripts of descriptive/conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them."

From the above extracted portion of the judgment in Sanjay Singh case¹¹, it is clear that the three-Judge Bench¹¹ had approved the method of moderation adopted by the Commission.

15. The argument of Shri Tulsi that in the garb of moderation, the Commission has resorted to scaling of marks and thereby deprived more meritorious candidates of their legitimate right to be selected does not commend acceptance because no material has been placed before this Court to substantiate the same. The mere fact that some of the candidates like the petitioner who cleared the preliminary examinations but could not cross the hurdle of main examination cannot lead to an inference that the method of moderation adopted by the Commission is faulty.

16. The suggestive argument made by Shri Tulsi that the award of roll numbers was manipulated by the officers/officials of the Commission for ensuring selection of

their favourites does not merit acceptance because the documents produced before the Court and the information obtained by the petitioner by making application under the Right to Information Act do not show that any candidate selected by the Commission had been deliberately given the particular roll number.

17. Equally meritless is the submission of the learned Senior Counsel that the selection of large number of candidates from the block of first 50,000 should lead to an inference that the entire selection made by the Commission is tainted by mala fides. The table produced before this Court does not show that in each and every examination, 50% candidates were selected from those who were having Roll Nos. 1 to 50,000. That apart, in the absence of cogent evidence, the Court cannot accept such a specious argument ignoring that between 4 to 5 lakhs candidates appear in the annual examination conducted by the Commission for recruitment to Indian Administrative Services and other Allied Services.”

Keeping in view the aforesaid, the contention of the respondents is that moderation process in evaluation of marks is permitted for uniformity in results and merit list preparation.

13. The Apex Court has clearly held that the courts do not have expertise and are not equipped to test correctness or otherwise of methods which have been adopted internationally for assessing the answers and interference in technical and academic matters is allowed only if violation of law or malafide motive is proved. In the present case, admittedly, no allegations of malafide have been made in any of the Petitions.

14. After having carefully considered the facts of each case and the method adopted by DTE for the purpose of

evaluation of answers, we are of the view that no fault could be found with the said method and except for a few glitches which were corrected. The standardized equi-percentile method has been used by DTE for last 4 to 5 years and even the Petitioners were aware that their answers would be evaluated by the said method. We are, therefore, not inclined to interfere with the said evaluation process. The method selected and adopted by the Respondents is based upon the evaluation made by the academicians who are experts in the field and, therefore, it will not be possible for this Court to sit in appeal to test their wisdom. Further, it has to be noted that out of 60,000 students who appeared for the Examination hardly 32 students have challenged the results. If fresh Examinations are ordered, the entire admission process would be delayed. This is therefore not a fit case where this Court should exercise its power of judicial review vested in it under Article 226 of the Constitution of India to interfere with the selection process.

15. All these Petitions are accordingly dismissed and disposed of. Since the Petitions are disposed of, Chamber Summons (St) No.145 of 2015 does not survive and the same is also disposed of.

(A.R. JOSHI, J.)

(V.M. KANADE, J.)