

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 16180 of 2015
Decided on : 07.09.2015**

Shishobit Veer Singh

... Petitioner

Versus

Thapar University, Patiala and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Hemender Goswami, Advocate
for the petitioner.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Rajat Khanna, Advocate
for the respondents.

G.S. Sandhawalia , J. (Oral)

The challenge in the present writ petition is for quashing of the minimum criteria of 55% marks in 10+2 examination. The said criteria is to be obtained in physics, mathematics and chemistry in the case of the petitioner. The petitioner is seeking admission in BE-MBA Programme (5 years)/B.Tech.

The sole argument raised by the petitioner is that as per the Regulations of the UGC, namely, Affiliation of Colleges Offering Technical Education By Universities Regulations 2014 notified on 28.02.2014, the criteria was fixed for colleges offering technical education at degree level. Reliance is placed upon the norms and requirements under Clause 6.1, whereby the entry level

qualification has been fixed as provided in Appendix 1. Clause 6.1 reads as under:-

“The duration and entry level qualifications for various technical programmes such as Under Graduate Degree Programme, Post Graduate Degree Programme, Dual Degree Programmes and Integrated Programmes shall as be provided in Appendix-1.”

The appendix fixed the eligibility at 40% in the case of the candidates belonging to the reserve category to which the petitioner belongs and having 52.3% marks would be eligible for admission. On the strength of the said criteria fixed by the UGC, petitioner submits that the criteria in the prospectus could not be over and above the qualifications prescribed.

Reliance has been placed upon the Division Bench Judgement of the Rajasthan High Court in **“The Coordinator of All India Engineering / Pharmacy/ Architects Entrance Examination (AIEEE) Vs. Union of India and others” 2005 (3) SLR 515.**

It is his case that as per Section 26 (1), the UGC is regulating the maintenance of standards and the co-ordination of work or facilities in the Universities and therefore the respondent-University could not have fixed a higher eligibility clause. The said submission is not acceptable. The minimum standard has been prescribed by the UGC. Perusal also of Clause 6.1 talks about the

entry level qualification and the Appendix also talks about the student getting at least 45% marks, which would be the minimum criteria. It is settled principle that the University can always fix higher eligibility than the minimum fixed.

In the case of **“Punjab University, Chandigarh and another Vs. Ashwinder Kaur 1991 AIR (Punjab) 166”**, the Division Bench of this Court reversed the judgment of the learned Single Judge and laid down that the authorities could lay down higher qualifications for the purpose of admission. The relevant portion reads as under:-

“We find substance in this argument of the learned counsel. It will be seen from Regulation No.3.1 prescribing the qualification for admission to M.Lib., that these are the minimum qualifications. In other words, the admission cannot be made by prescribing lower qualifications than mentioned in Regulation No.3.1. However, this did not debar the Authorities to lay down higher qualifications for the purpose of admission. In Lavu Narendranath's case (AIR 1971 SC 2560) (supra), the Apex Court held that though the minimum qualification for admission which was prescribed was 50% at the qualifying examination, but this did not debar the Government which runs the Colleges, the right to make selection out of large number of candidates and for this purpose they could prescribe a test of their own which was not against any law. The Supreme Court went on to say that merely because they tried to supplement the eligibility rule by a written test, the action could not be impeached. It observed as under:- Para 8)”

The Division Bench of this Court in **Ajay Malik Vs. Punjab University through its Registrar, Punjab University, Chandigarh and others** 1992 AIR (Punjab) 308, upheld the power of the University, whereby 45% of the aggregate marks had been fixed for admission in law course. The argument that the Bar Council had only provided that the minimum qualification required for admission was a Bachelor Degree and therefore the University had no jurisdiction to fix a higher qualification condition was rejected. The relevant portion reads as under:-

“It would be seen that, the power of the Bar Council is to prescribe only a minimum condition of eligibility for admission for purposes of recognising a University degree so that a certain level of legal education could be maintained but it does not imply that a University to maintain its own academic standards is prohibited from raising the minimum qualification as prescribed by the Bar Council. In other words, if the University prescribes any condition of eligibility for admission to the law degree course which is lower than the condition of eligibility prescribed by the Bar Council, the latter can refuse to recognise the law degree conferred by the University for the purpose of enrolment as an Advocate. For instance, the University could prescribe that no candidate who has secured less than 50% marks in the Bachelor's degree would be eligible for admission to the law course. Such a clause in the University Regulations would not contravene the rules framed by the Bar Council. In the present case, the University has prescribed the condition of 45% of the aggregate marks in the Bachelor's degree, which is the qualifying

examination for admission. This could certainly be done.”

Similar views have been taken in the case of **Ankush Nayyar Vs. Baba Farid University of Health Sciences, Faridkot 2003 (2) SCT 700** by another Division Bench of this Court.

In the **State of Tamil Nadu and another Vs. S.V. Bratheep (Minor) and others 2004 (4) SCC 513**, a three Judge Bench of the Apex Court set aside the order of the High Court, wherein on account of the differences in norms fixed by the AICTE and the norms fixed by the State Government directions had been issued and students who had not secured the prescribed minimum marks were allowed to take part in the admission process. Accordingly, it was held that if higher minimum was prescribed by the State Government than what had been prescribed by the AICTE, it could not be said to be in any manner adverse to the standards fixed by the AICTE and would certainly add to the excellence in the matter of admission of the students in higher education. The relevant portion of paragraphs No.9 and 13 of the said judgment reads as under:-

“9. 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.

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

Similarly, the Apex Court in **Visveswaraya**

Technological University and another Vs. Krishnendu Halder

and others 2011 (4) SCC 606 set aside the judgment of the

Division Bench and restored that of the learned Single Judge by holding that State is always entitled to prescribe higher standards than what is suggested by the AICTE for admission norms. The relevant portion reads as under:-

“7. Feeling aggrieved, University has filed these appeals by special leave contending that the University and the State are always entitled to prescribe higher standards than what is suggested by the AICTE norms so as to maintain the excellence in higher education; that the rules and regulations of the State and University prescribing minimum higher higher educational qualifications for admission to Engineering Courses, were

minimum higher educational qualifications for admission to Engineering Courses, were valid and binding; and that neither any constituent college nor any candidate could support or defend an illegal and irregular admission by the college, by contending that the rules and regulations of the State and the University were invalid and not binding, or that the University should not apply them, as there are more seats than applicants.

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13. No student or college, in the teeth of the existing an 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 under a Central enactment. The order of the Division Bench is therefore unsustainable."

In view of the settled proposition of law, the reliance upon the judgment of the Division Bench of the Rajasthan High Court in case of ***The Coordinator of All India*** (supra) is not

acceptable. Even otherwise the issue in the said case was that whether one of the colleges was entitled to admit students without taking into consideration the result of the joint entrance test which was being conducted by the State. It was held that the said college could not ignore the Regulations of the UGC and that the deemed University/Central Institutions which can prescribe cut-off-marks/percentage for admission.

Accordingly, there is no scope in the present writ and the same is dismissed accordingly and the interim order dated 07.08.2015 stands vacated.

SEPTEMBER 07, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE