

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 6608 OF 2016

Shalini d/o Harishkumar Kotian;]
Age: 17 years (minor) Through her father]
and natural guardian: Harishkumar Kotian,]
Age: 55 years, Occ: Service; R/p. 6/601,]
Shree Krishna Paradise, Sector 12, Behind]
Prime Mall, Kharghar - 412 210.] ... Petitioner

Versus

1. The State of Maharashtra, Through its]
Secretary, Higher & Technical Education]
Department, Mantralaya, Mumbai - 32.]
2. The State Common Entrance Cell, Through]
its Commissioner, 305, III Floor, Govt.]
Polytechnic Building, 49, Kherwadi,]
Bandra (East), Mumbai - 400 051]
3. Director, Higher Education,]
Maharashtra State, Pune]
4. The Bar Council of India (Through its]
Chairman, Legal Education Committee)]
21, Route Avenue Institutional Area, Near]
Bal Bhawan, New Delhi, Delhi-110002] ... Respondents

WITH

WRIT PETITION NO. 7631 OF 2016

Kedar s/o Sunil Warad, Age: 17 years]
(minor), Through his father and natural]
guardian, Sunil Vijayanathappa Varad;]

Age: 51 years, Occ: Advocate; R/o. Flat 1,]
Shrikrishna Apartment, Opposite Sty Care]
Hospital, Kranti Chowk, Aurangabad] ... Petitioner

Versus

1. The State of Maharashtra, Through its]
Secretary, Higher & Technical Education]
Department, Mantralaya, Mumbai - 32]
2. The State Common Entrance Cell, Through]
its Commissioner, 305, III Floor, Govt.]
Polytechnic Building, 49, Kherwadi,]
Bandra (East), Mumbai - 400 051]
3. Director, Higher Education,]
Maharashtra State, Pune]
4. The Bar Council of India Through its]
Chairman, Legal Education Committee]
21, Route Avenue Institutional Area, Near]
Bal Bhawan, New Delhi, Delhi-110002] ... Respondents

Ms. Pradnya Talekar with Mr. Vinod Sangvikar i/b M/s. Satish B. Talekar for the Petitioners in both the Writ Petitions.

Mr. Shrihari G. Aney, Special Counsel with Mr. L.M. Acharya,, Special Counsel, Mr. A.B. Vagyan, Govt. Pleader and Mr. Vishal B. Thadani, AGP, for the Respondent Nos.1 to 3 - State.

Mr. Sachin S. Deshmukh for the respondent No.4 - Bar Council of India in both the Writ Petitions.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

TUESDAY, 5TH JULY, 2016

ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]

1 Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2 Writ Petition No. 7631 of 2016 was initially filed before the Aurangabad Bench of this Court and came to be numbered as Writ Petition No. 5377 of 2016.

3 Pursuant to an administrative order passed by the Hon'ble Chief Justice, the Writ Petition from Aurangabad Bench came to be transferred and for hearing along with the Writ Petition filed on the Appellate Side of this Court. Since the issue involved is identical and the arguments are common, both petitions are disposed of by this common judgment.

4 Writ Petition No. 6608 of 2016 has been filed by the father and natural guardian of a minor Shalini who, according to the petitioner, completed her Higher Secondary Certificate examination course conducted in February, 2016, securing 65.54% . She was aspiring to pursue her degree course in law. It

is her case that being a meritorious student, she desired to undertake the studies in law and particularly the integrated five year course post HSC examination from one of the reputed colleges in Maharashtra like the Indian Law Society's Law College at Pune or the Government Law College at Mumbai.

5 It is her case that till the current year the admissions in all the Law Colleges across Maharashtra, including the above two Colleges, were based on the results of the HSC examination. However, from the academic year 2016-2017, the respondent No.1 - State introduced a Common Entrance Test ('CET', for short) to be conducted under the directions of the second respondent and the Director, Higher Education, Maharashtra State. The writ petition narrates in paragraph 5 that the petitioner has no objection to introducing such a uniform admission process across all Law Colleges in Maharashtra, but the manner in which the Common Entrance Test has been introduced and the chaos and confusion generated on account of the same, the petitioner's fundamental right to education and right to equality has been violated.

6 It is claimed that this CET was introduced for law degree admissions for five year integrated course as well as three year course vide Government Resolution dated 4th December, 2015. A copy of this Government Resolution is annexed as Annexure-A to the petition. It is stated that this Government Resolution notified the introduction of this CET for admission to the five year as well as three year course in law, commencing from the academic year 2016-2017. The second respondent was to conduct this CET. A Cell was formed styled as the State Common Entrance Test Cell. However, the grievance of the petitioner is that this Government Resolution does not make any reference to the syllabus or the time period within which the syllabus would be notified. By way of a Notification dated 11th March, 2016, the Government of Maharashtra through its Higher and Technical Education declared the eligibility to five years and three years law courses on the basis of marks obtained in this CET. Annexed as Annexure-B is a copy of this Notification.

7 Then, by a further Notification of 13th April, 2016 (Annexure-C) the second respondent declared the dates of this CET. For the five years course the test was scheduled on 18th

June, 2016, and for the three years course it was scheduled on 19th June, 2016.

8 Even in this Notification the syllabus was not notified.

9 The petitioner claims that she checked the website of the second respondent with a view to ascertain the details of this test and how and in what manner the same would be conducted, but it is her claim that she was unable to find any notification with regard to the syllabus or pattern of examination for this CET. The petitioner, therefore, believed that this entrance test would not be held in the current academic year/session but may be held later on or for the next academic session. Then she claims that there was a private website on the internet which had some information about this test and which she gathered through her friends and thereafter she is supposed to have accessed some of these private websites and in one of which it was stated that the application forms would be available from 10th May, 2016. There was some information with regard to the marks, counselling etc. and this information is compiled by her at Annexure-D.

10 It is her claim that this information which is vital for any such test was not available on the official website. She is claimed to have accessed this website but she could not obtain the relevant information. She submits that in other common entrance tests and for several courses such as Masters Degree in Business Administration (MBA) etc., the syllabus is published well in advance. There are helplines which are put in operation, but for the subject CET such information was never generated and on the website. She was, therefore, unable to obtain any clear directions. She also consulted the colleges and she was informed that they were not aware of the date, exact state of affairs in the sense the syllabus and paper pattern. The colleges are supposed to have informed her that none of their academicians have been invited to be a part of the team setting papers or determining the pattern of the CET. Thus, her claim is that if in these reputed colleges there are eminent professors and teachers, but they are not involved in the setting of papers or determining the pattern of the CET, then, it was extremely doubtful whether any research was at all conducted and for a proper conduct of the CET. That is why she claims in paragraph 22 that she has lost a very

significant opportunity to pursue legal education in premier institutions. This was on account of the chaos and confusion prevailing in the State. The petitioner being an academically brilliant student may have to wait for a complete year to pursue her dream. It is then she claims in paragraph 23 that she came across a brochure for five year and three year law course which was already uploaded on 9th May, 2016. This is an official document. However, the syllabus that is prescribed therein is rather vague and without specifications. It is not possible to locate it, much less understand the details of it. She has only annexed a web page as Annexure-G to the writ petition so as to support the allegations in paragraphs 22 and 23 of the petition.

11 Our attention is invited to The Maharashtra Unaided Private, Professional, Educational Institutions (Regulations of Admission and Fees) Act, 2015 (for short “the Act of 2015”) and it is submitted that in pursuance of this Act and the powers conferred thereby, the CET was notified. The Rules under this Act came to be framed and brought into force from 2nd April, 2016.

12 The CET cannot be applied and introduced to admissions in Government and aided law colleges in Maharashtra. Similarly, the Rules framed in 2016 vide Notification dated 2nd April, 2016, would be applicable to Unaided Professional, Private, Educational Institutions, namely, Unaided Law Colleges in Maharashtra. The extension of these Rules to Government and Aided Law Colleges smacks of arbitrariness and non application of mind. The structure in aided and Government colleges is different from unaided colleges. The unaided colleges have a management quota whereas the Government aided colleges do not have a management quota. Thus, this mechanical application of the Rules to diverse colleges would nullify the object and purpose of a CET. Then, the argument is that the students aspiring to join law colleges of their choice are not provided with any guidelines about the preference system counselling. It is claimed that when there is a shortfall in the seats available and more number of students seeking admission, such competitive examination or a CET would be justified. However, there is no such shortfall in the State. Therefore, there is no justification for holding such a CET. Then, it is claimed that there are no guidelines or basis to lay down a cap on the

Maharashtra seats. How a merit list would be prepared of aided and unaided law colleges and the colleges would be allocated to the successful or meritorious students is not indicated. From paragraph 30 onwards several aspects have been highlighted, namely, non involvement of experts in paper setting and the experience of the past of a shortfall in the number of students and the mismatch between the seats available and those taking legal education. The apprehension is that given this disparity, half the seats in law colleges are likely to be unfilled owing to the introduction of CET.

13 These are vital aspects and which have not been considered at all. The petitioner is the daughter of a person who is visually impaired and on account of that difficulty as well, it was not possible to obtain the information.

14 It is in these circumstances that a challenge is laid on the footing that mandate of Article 14 of the Constitution of India is violated so also the United Nations declaration to which India is a party, particularly outlined in Articles 5, 9, 12 and 13 thereof.

15 During the course of arguments on this petition, a request was made to incorporate by amendment a purely legal challenge.

16 Since the intent was to avoid multiplicity of proceedings and the matter being part-heard, we acceded to the request of the learned counsel appearing for the petitioners. Though this request came after notice was issued on the writ petition, it was accepted by the learned Special Counsel and time was sought to take instructions and file a comprehensive affidavit-in-reply. An affidavit-in-reply was also tendered, but given that the petitioner sought to rely upon the provisions of section 65 of the Maharashtra Universities Act, 1995, and raise a challenge based on the same to the legality and validity of the CET, that we permitted introduction of these paragraphs. We have also allowed introduction of certain pleas based on the challenge to the Act of 2015 and the Rules thereunder. The pleadings elaborating the challenge and also introducing the plea of legitimate expectation were thus allowed. We also permitted the counsel to rely on the Advocates Act, 1961, and the Bar Council of India Rules styled as Rules of Legal Education 2008 to

buttress and bring home the point that the field occupied by this enactment and the Rules is now sought to be encroached upon. Certain elaboration with regard to non consultation with experts was also permitted to be introduced based on the contents of the affidavit-in-reply.

17 We have on this writ petition, an affidavit which has been filed in reply by the respondents. The affidavit-in-reply filed by respondent Nos.1, 2 and 3 initially is affirmed by the Deputy Secretary, Higher & Technical Education Department. After setting out the introduction of the Act of 2015 and preceding thereto an Ordinance of the State, what is set out is that the Government Resolutions dated 4th December, 2015, 11th March, 2016, 2nd April, 2016, 7th April, 2016 and 12th April, 2016 are admitted and undisputed by the petitioners. These would show that the test was notified well in advance. The State claimed an inherent power whilst giving aid to professional institutions to *inter alia* prescribe regulations and the conditions on the basis of which admission will be granted to different aided colleges keeping in mind merit, coupled with reservation policy of the State. The merit may be determined through a CET conducted by

the State or through the method devised to ensure that admission is granted in an aided professional institution on the basis of merit.

18 The uniform entrance examination and its importance is then highlighted. It is claimed in the affidavit that the emphasis is to take care of larger interest and welfare of the student community to promote merit, achieve excellence, curb malpractices and also to secure grant of merit based admissions in a transparent manner. Once this is the principle of law according to the State which can be relied upon, then, its policy decision is in aid thereof. The syllabus, according to the affidavit, was published and how it was prepared has been set out. It is stated that as early as in January 2016 the State notified a syllabus in draft form. Thereafter suggestions and objections were invited from students. This draft was available on the website of the Directorate of Higher Education. Two prominent Marathi newspapers daily *Lokmat* and *Sakal* were chosen to insert an advertisement which came to be inserted on 16th January, 2016, wherein the students and interested parties were put to notice about publication of this draft and its availability on

the official website of the Directorate. Fifteen days' time was granted to the public for submitting their objections and suggestions to the Government. It is stated that many responded to this and, therefore, it is incorrect to allege that the petitioner and similarly situate students / persons were not aware about the publication of syllabus or examination pattern. Even with regard to preparation and drafting of the Rules a wide consultation was held and it is stated that those consulted are the Director of Higher Education and Principals of several law colleges and professors, including one co-ordinator.

19 A Committee was formed for framing a syllabus. The Principal of the Government Law College of Mumbai was also consulted and who forwarded his opinion in writing on 17th November, 2015. A final syllabus was prepared and published on the website on 8th February, 2016, by the second respondent. It was also made available on the official website of the Directorate of Higher Education. Finally, insofar as setting of the examination paper is concerned, a body of experts comprising twenty persons from the field of law was appointed. Their appointment order is dated 16th April, 2016. A model question

paper was already set out in the information brochure published on 9th May, 2016. Thus, there is no substance in any of the allegations, particularly regarding non consultation with experts while framing of the syllabus or determining the exam pattern. The allegation that the syllabus is vague and general in nature is completely misconceived and misplaced. This is a syllabus for a competitive examination to judge *inter-se* merit of candidates aspiring admission to law courses. That stands on a different footing than a syllabus for degree / diploma course. It is stated that the syllabus of all the law entrance examinations conducted across the country be it the Common Law Admission Test conducted for National Law Universities in India or Common Entrance Test conducted by Delhi Law University or other entrance test conducted by other universities, the syllabus is more or less similar. They are not detailed or exhaustive as is expected by the petitioner. A sufficiently broad outline is indicated enabling the student to prepare himself. Once it is a degree or diploma course for which a detailed or exhaustive syllabus is necessary, then, the allegation that the syllabus was not prepared or framed and notified in advance or the one notified being vague and general has no substance.

20 The reliance placed upon the other BA.LLB and BB.LLB courses is misplaced because all the National Law Universities offer integrated courses. The integrated courses are also offered by unaided institutions in the State.

21 Then what is set out and in paragraph 9 of the affidavit at page 116 is that there are 26340 seats available in the law colleges in the State. Around 36783 applicants had registered for CET and the contention that only 28000 applications were received is factually incorrect. There is enough justification for holding a CET or conducting a Common Admission Process (for short “CAP”) when nearly 36000 students had registered for the process. It is in these circumstances that the petitioner's factual assertions are denied and it is affirmed that they are incorrect.

22 There is an affidavit-in-rejoinder which has been filed on behalf of the petitioner and in which what we have noted is that the legal contentions are elaborated.

23 Once we are going to make a reference to these contentions while setting out the arguments of the petitioners counsel seriatim, then, it is not necessary to refer to the affidavit-in-rejoinder.

24 In the additional affidavit-in-reply and to the amended writ petition what the respondents have sought to project is the fallacy in the arguments of the petitioners and particularly incorporated in the amended petition. What we have noted from this affidavit is that the challenge raised is to the petitioner's locus. It is stated that 30934 number of students appeared for the Common Entrance Test on 18th and 19th June, 2016, and the petitioner being aware of the dates thereof she stays away and out of the process. It is then not open to her to question it when she voluntarily opts out of the CET. Once the stake-holders have been consulted, taken into confidence, then, based on some academic pleas, the writ petition should not be entertained.

25 However, without prejudice thereto, what has been urged in this additional affidavit is that though a challenge to the Act of 2015 is pending, what is apparent is that the prayer for

interim relief made in that petition bearing No. 2511 of 2015 was rejected. A Special Leave Petition challenging that order also came to be dismissed on 8th March, 2016. Reliance, therefore, is placed upon the orders passed in that behalf by several Division Benches.

26 The justification for the examination, how it does not run counter to either the Advocates Act or the Bar Council Rules or the Maharashtra Universities Act, 1994, is then elaborated.

27 It is then also pointed out that there is no substance in the plea of legitimate expectation. It is stated that this plea has been raised essentially on the footing that the petitioners and others believed that the process of admitting students to law degree courses would not undergo a change. There is hardly any basis for such a contention inasmuch as there was an Act made by a competent Legislature, namely, the Act of 2015. The validity of the same may have been challenged, but the Act is not struck down. The Act enables holding of Common Entrance Test or Common Admission Process. The extension of the Act to Government and aided colleges is permissible with the aid of

Article 162 of the Constitution of India. Therefore, the argument is that to the extent the Act of 2015 applies and to the institutions referred therein, it is that Act which is invoked and applied and for other institutions, the power under Article 162 of the Constitution of India is invoked. That enables setting up a Cell to hold a CET or CAP for all types of law colleges and across the State. Therefore, there is no illegality much less unconstitutionality in the process. There being no right vested in the petitioner that too to claim admission and directly to professional courses without a CET or a CAP and right to higher education being not a fundamental right, the doctrine of legitimate expectation could not have been invoked at all. With these reasons the submission is that the petition be dismissed.

28 It is on the above material that we note the rival contentions.

29 Ms. Pradnya Talekar, learned advocate appearing on behalf of the petitioners very ably submitted that this writ petition raises certain fundamental legal questions. She would submit that for the first time, a CET or CAP is introduced for

admissions to law degree courses. The categories of the courses are three year degree course and five year integrated degree course. Ms. Talekar would submit that the field of legal education is occupied by the Advocates Act of 1961. In that regard she would invite our attention to section 7 of the Advocates Act, 1961. She would submit that the functions of the Bar Council of India, *inter alia*, are to promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and the State Bar Councils to recognise universities whose degrees in law shall be a qualification for enrolment as an advocate and for that purpose, to visit and inspect universities or cause the State Bar Councils to visit and inspect universities in accordance with such directions as it may give in this behalf and to do all other things necessary for discharging the aforesaid functions [See section 7(1), (h), (i) and (m)]. Then, our attention is invited to section 49 of the Advocates Act which vests in the Bar Council of India a general power to make rules. Those rules enable discharging of functions under the Act and the Rules may prescribe the minimum qualifications required for admission to a degree course in law in any recognized university and the standards of legal education to

be observed by universities in India and the inspection of the universities for that purpose [See section 49(1)(af) and (d)]. The argument is that once the field is occupied in this way and together with the provisions of the Act and the Bar Council of India Rules, then, nothing contrary thereto and that too by a State Government is permissible. The Parliamentary legislation being in field, it being comprehensive and taking care of all aspects of legal education including admissions to law colleges, then, the State is denuded of any power to introduce a CET or CAP.

30 The next argument is that the Act of 2015 has been brought in by the State. The Act itself is clear inasmuch as the long title of the same reveals that it is for Unaided Private Professional Educational Institutions. The State intends to regulate admissions and fees therein. That is how the Act is promulgated. Its Preamble is clear inasmuch as it is an Act to provide for regulation of admissions and fees by unaided private professional educational institutions in the State of Maharashtra and the matters connected therewith or incidental thereto. Even if it is assumed for the sake of argument that Entry 25 of the

Concurrent List III to the Seventh Schedule of the Constitution of India would empower the State Legislature to enact such a law, what is apparent from a reading of its provisions harmoniously and together is that the centralized admission process carried out by the competent authority through single window system in a transparent manner for admitting the students for various professional courses in educational institutions and holding a CET for determination of merit of the candidates by centralized admission process for the purpose of admission to professional educational courses through single window system, is restricted to private professional educational institutions. That is defined in section 2 clause (2). 'Professional education' is a term defined in section 2(r), the term 'prescribed' means prescribed by rules under the Act of 2015. The stake-holder has a limited connotation and is understood to mean the management, the students studying in the respective institutions and their parents. Importantly the term 'unaided institution' is defined in section 2(x) to mean private professional educational institution which is not receiving aid or grant-in-aid from the Central Government, the State Government or the local authority. The term 'University' is also defined in section 2(y). Chapter II is

entitled Regulation of Admission and section 4 appearing therein would enable the State to commence the process or to introduce a CET only insofar as a professional course in unaided institution. By no stretch of imagination such an enactment can take within its fold the Government, the aided or the university colleges. They having been brought in now by an executive fiat. A mere executive fiat and running contrary to law, namely, Act of 2015, therefore, would not enable the State Government and the respondents to hold a CET for admissions to the aforesaid categories of colleges and that is *per se* illegal. Article 162 of the Constitution of India cannot be relied upon and to introduce something contrary to the Statute.

31 It is then urged that the Notifications are also bad in law. The Notifications have been issued in the teeth of section 65 of the Maharashtra Universities Act, 1994. That Act unifies, consolidates and amends the law relating to non agricultural and non technological universities in the State of Maharashtra. It applies not only to universities of the afore-referred nature, but colleges affiliated to it whether Government, aided or unaided. Section 65 therein mandates that in case model rules in respect

of admissions to professional courses are framed by the State Government in the interest of the students, the university shall adopt the same and publish them in the university gazette or the official gazette atleast six months prior to the start of the academic session. The academic session shall begin not later than 1st August every year. The introduction of CET for law courses has violated the mandate of section 65 and as elaborated in the amended paragraph 36C. The applicability of section 65 of the Maharashtra Universities Act, 1994 to private unaided colleges is also not ruled out inasmuch as the Act of 2015 and the Maharashtra Universities Act, 1994, have to be construed harmoniously. There is no contrary legislative intent. In the circumstances, the Act of 2015 and the Rules framed thereunder would show a clear departure from the provisions of the Maharashtra Universities Act, 1994. The rules framed under the Act of 2015 are silent on several important matters. The same does not prescribe any specific period within which the syllabus of the CET has to be published. It is in these circumstances that the mandate of the Universities Act cannot be allowed to be defeated.

32 What we have then been taken through is the aspect of the validity of the Rules of 2016. According to the counsel, the procedure for conducting CET has to be in accordance with the Rules. Section 23 of the Act requires legislative sanction to the Rules framed under the Act by tabling them before both the Houses of the State Legislature for a total period of thirty days and it is only after the expiry of the thirty days that if both the Houses agree to make any modifications or that the Rules should not be made, then, their decision to that effect be published in the Official Gazette and the Rules shall have effect only in the modified form or not at all from the date of such publication as the case may be. Once the legislative sanction is mandated and the Rules have not been tabled before both the Houses for a period totalling thirty days, then, that mandate is flouted according to the learned counsel. The Rules were framed and published on 2nd April, 2016. They were never tabled on the floor of both the Houses although they were in session from 9th March, 2016 to 13th April, 2016. The Houses were in session nearly seven working days after the publication of the Rules. Thus, the Rules could not have been tabled before the State Legislature for a total period of thirty days. Once they were not tabled at all,

then, such Rules have no legal force. If they have no legal force then the CET cannot be held. In any event, there cannot be unbridled power in the Executive to determine the mode and manner for CET for law courses. Unless the academicians in the field of law and statutory bodies as provided in the Universities Act are consulted before hand, no rules could have been made and seen in this manner they are a complete eye wash.

33 Then what is highlighted is that the students have a legitimate expectation that academic decisions would be taken particularly well in advance. If they have repercussions on their career and particularly when they have to face a Common Entrance Test at the State level, then, what is required was that the entire process should be commenced well in advance. There was, in this case, a complete violation of this doctrine because the petitioner missed the deadline for applying for CET. Merely because she did not appear in the examination that cannot be held against her. There was no model question paper in the publication brochure of 9th May, 2016. The petitioner and other students should have been informed about the exact nature of the changes in the exam syllabus and pattern as well as sample

questions. The actual CET exam did not follow the pattern mentioned in the model paper even remotely. The departure in that regard has been highlighted in the amended petition and particularly from paragraphs 36FF onwards. Once the instructions were ambiguous and the exam was held in a haste, then, it is apparent that these discrepancies and as highlighted have flouted the doctrine completely. It is stated that if there is a vital difference inasmuch as in the syllabus for five year the subject Mathematics is prescribed vis-a-vis three year course mathematics is given no weightage, whereas it has been allotted 20 marks in the five year course and at the same time English has been allotted 50 marks in the five years course, whereas 30 marks are allotted in the three year course. A comparative chart is placed before us and it is submitted that even the brochures indicate firstly undated syllabus and thereafter a latter revised syllabus. This would indicate as to how the question papers were prepared and the exam has been held without involving experienced and trained hands. The experts in the field and particularly those concerned with the legal profession were not consulted. Leave alone the Bar Council, even the State's Ministry of Law and Justice has not been consulted. It is in these

circumstances that she would submit that this Court should interfere in its writ jurisdiction and grant the reliefs as prayed. Reliance is placed on several decisions and which have been compiled in a separate compilation.

34 On the other hand, Mr. Aney, learned senior counsel appearing on behalf of the respondents would submit that there is no merit in the writ petition. He has divided his contentions. Firstly on the *locus standi* of the petitioner, Mr. Aney would submit that the petitioner did not participate in the entire process. She did not appear for the examination. Therefore, she cannot be said to be a person aggrieved or having any legal interest. If participation by student rules out the intervention by the Court at his or her instance, then, a voluntary act of not taking the exam despite all opportunities being available all the more will not enable the student like the petitioner to invoke the writ jurisdiction of this Court which is extraordinary, discretionary and equitable. Possibly a university or Bar Council or an educational institution can be aggrieved by the whole process. The students cannot be aggrieved. The petitioner has no interest in the field of education. She is espousing her own cause.

That cause must be seen in the light of the right that is created in favour of the petitioner or students. There is a difference between the right guaranteed by Article 21A of the Constitution of India which is of free and compulsory education between the age of 6 to 14 years. That is an obligation of the State. However, there is no mandate on the State under the Constitution as far as higher education is concerned, all the more for a professional course. A student cannot claim a vested right to be admitted to the course and based on some qualifying exam being cleared. The admission may be based on the marks gained in some qualifying examination, but the law does not rule out prescribing additional qualifications or imposing a condition on fulfillment of which the students can seek entry in a professional course. Looked at from this angle, at the instance of the present petitioner, this Court should not intervene.

35 Mr. Aney then submitted that even on merits the challenge should fail. He has submitted that the private unaided colleges have been brought within the net of CET or CAP by the Act of 2015. By an executive fiat, the Government has applied the CAP and CET to other institutions. Mr. Aney would submit

that the field as far as education is concerned has been clearly demarcated. The Seventh Schedule to the Constitution of India contains the Lists styled as Union List, State List and Concurrent List. As far as institutions falling in Entry 63 of List I and Entry 64 of the same List are concerned what these entries, namely, 62, 63, 64 and 65 carve out are the institutions and agencies for professional, vocational or technical training, including the training of Police officers or the promotion of special studies or research or scientific or technical assistance in the investigation or detection of crime. As far as the Concurrent List is concerned, Entries 25 and 26 are broadly worded and take within their import, education, including technical education, medical education in universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Then, there is an aspect of vocational and technical training of labour. Entry 26 in the Concurrent List enables both the State and the Parliament to deal with legal, medical and other professions. Mr. Aney submits that The Maharashtra Universities Act is a State Act and traceable to Entry 25. A certain overlap may be there, but surely this is not a case of absence of powers. The field and which is covered by the Act of 2015 and the Government Resolutions under Article 162 is

not occupied by either the Maharashtra Universities Act 1994 or the Advocates Act 1961 or the Bar Council of India Rules made thereunder. If the field is not occupied by either enactments and there is no fundamental right to education in law, then, the only right which can be possibly relied upon is the one guaranteed by Article 14. Article 14 guarantees equality before law and equal protection of law. In the instant case, by mere prescription of a CET or CAP, the mandate of equality enshrined in this Article is not violated in any manner. The State has not acted arbitrarily nor it has discriminated in any manner. Rather, professional education and imparted at all levels and by varied institutions, whether Government aided or unaided, are brought under one umbrella and one process. If this is how the State has proceeded, then, there cannot be any complaint of arbitrariness leave alone discrimination. The State has enacted a law for the purposes of professional private unaided colleges and prescribed a common pattern for admission and so far as other institutions are concerned, Article 162 is pressed into service. If that is how the State has proceeded, then, the petitioner must demonstrate that the State has in any manner encroached upon any field reserved or occupied by a Parliamentary or other State Act. There is

nothing of this nature established and proved. Mr. Aney in that behalf relied upon section 24, 31 and 32 of the Maharashtra Universities Act, 1994, to submit that the said Act and these provisions are concerned with university examinations. They do not in any manner touch the professional courses and degrees which are awarded by it to affiliated colleges. However, admissions thereto cannot be said to be governed solely and wholly by this enactment. Once we look at this enactment in such a manner, then, there is no hesitation in turning down the conditions according to Mr. Aney and based on the applicability of section 65. Section 65 has nothing to do with admission to a professional course. It is in these circumstances that he would submit that the legal contentions and about the validity of the examination have no merit.

36 Then, Mr. Aney's attempt is to demonstrate as to how the State has gone about and held the CET. Even the Rules are framed. While it is true that the budget session has ended, but the argument of Ms. Talekar is proceeding on a misreading and misinterpretation of section 23. Mr. Aney would submit that there is nothing in this section which would in any manner

militate against the decision of the State to notify the process by the Notifications. Mr. Aney in that regard relied upon the factual position narrated in the additional affidavit-in-reply. Mr. Aney submits that the CET has been introduced by the State and well in advance. It is submitted that the 2015 Ordinances were converted into an Act of the State Legislature and after the Act was enacted, a Resolution was issued on 4th December, 2015, by the competent Directorate constituting a competent authority to hold the CAP and the CET. For the law course for the academic year 2016-2017, such a test be introduced was the decision taken. Then, there are further Notifications dated 11th March, 2016 and 2nd April, 2016. The State having an inherent power whilst giving aid to professional institutions to prescribe conditions on the basis of which admissions would be granted to different aided colleges keeping in mind the merit and the reservation policy, it then proceeded to take the further steps. How they were taken is then pointed out by Mr. Aney. It is in this backdrop that he would submit that the Rules were framed and made. Prior thereto, the preparatory steps were notified. The petitioner cannot feign ignorance because of the wide publicity given to the decision of the State. The examinations were

scheduled on 18th / 19th June, 2016. The syllabus was also notified on 9th May, 2016. There was a wide consultation and there could be a genuine difference of opinion as to who is the expert. The State has consulted those in the field of law. It is not mandated that the State must consult a Department of Law and within the Government. Once it has consulted Principals of several Law Colleges and the experts within the Directorate, merely because in the opinion of the petitioner a particular gentleman is not an expert would not vitiate the State's decision. Eventually, there is a consultation which has been held. That is not disputed. With the framework in place all that the State was required to complete and in accordance with the steps notified was the process of filling up of applications. While it is true that there is no challenge to the competence of the State Legislature in respect of the matters covered by the Government Resolutions dated 4th December, 2015 and 12th April, 2016, what is being projected is the absence of Rules in place. That argument also has no merit because the State Legislature was in session from 9th March, 2016 to 13th April, 2016. The Rules were framed on 2nd April, 2016. The thirty days' period stipulated under section 23 has not expired at all. The undisputed position is that the State

Legislature has not been in session after 13th April, 2016, till this date. The Rules would definitely be placed before both the Houses of the Legislature in the monsoon session. It is in these circumstances that Mr. Aney would submit that the Act cannot be misread and misinterpreted to mean that the Rules have no legal sanction or legal force. Mr. Aney has also then attempted to meet the contentions based on the legitimate expectation. Mr. Aney would submit that this doctrine by itself is not absolute in its application. It is a right and legal right which is the foundation for it and founded on the same and the expectation of it being fulfilled would enable a party to rely upon it. In the absence of any such foundation that too of a legal right, reliance on this doctrine in abstract or in such absolute fashion is a misreading of the entire principle. Mr. Aney would, therefore, submit that this argument has no merit.

37 As far as the syllabi is concerned, Mr. Aney would submit that this essentially is a factual aspect. It is not for the petitioner to determine whether maths or mathematics should be one of the subjects on which an examination should be taken for admission to an integrated law course of five years. Its absence

for the three year degree course is also not fatal. It is eventually an expert body which has chosen the subjects or topics and assigned marks to the same. It is an exam where the questions have to be answered by picking and tick marking the right choice. It is a common pattern of multiple choice questions. The answers are there in the choice indicated. The right one has to be picked. It is, therefore, a very minimal expectation from an HSC student or a graduate that he knows the basic and such as the position of the President of India or a Governor of the State etc. It is nothing complicated and the questions are framed in such a manner that it is not expected that the student should give elaborate and detailed answers. If he has to select the correct option and based on his reading, awareness and knowledge, then, this pattern which is uniform and applicable throughout the country for such admissions to professional courses. It is not by itself and without anything more legally defective. It is also not academically flawed. There is nothing vague or general in the syllabus. General knowledge is based on the awareness of the happenings and events around. They may be of the recent past and there are several options for the students and even a reading of the daily newspapers would furnish a sufficient guide. Today, in the

modern technological age and when the students are aware of the global events by having an easy access to television, internet etc., it is not difficult to answer the questions. For all these reasons, he would submit that the writ petition be dismissed.

38 The arguments are common for the petitioner in the Aurangabad petition. Equally the reply and rejoinder is common.

39 With the assistance of the learned counsel appearing for the parties, we have perused both petitions. We have also perused the extensive replies and rejoinders. We have further perused the compilations handed in by Ms. Talekar.

39A Ms. Talekar has relied upon the following judgments :

(i) *Bharati Vidyapeeth (Deemed University) and Ors. vs. State of Maharashtra & Anr. (2004) 11 SCC 755.*

(ii) *Gujarat University & Anr. vs. Shri Krishna Ranganath Mudholkar & Ors. AIR 1963 SC 703.*

(iii) *Punjab Water Supply & Sewerage Board vs. Ranjodh Singh & Ors., (2007) 2 SCC 431.*

(iv) *Krishnan Lal vs. State of Jammu & Kashmir, (1994) 4 SCC 422.*

(v) *Ritesh Tewari & Anr. vs. State of Uttar Pradesh & Ors.*, (2010) 10 SCC 677.

(vi) *Zuari Cement Ltd. vs. Regional Director, Employees State Insurance Corporation, Hyderabad & Ors.*, (2015) 7 SCC 690.

(vii) *Dinkar Anna Patil & Anr. vs. State of Maharashtra & Ors.*, (1999) 1 SCC 354.

(viii) *Delhi Cloth and General Mills Co. Ltd. vs. Union of India*, (1983) 4 SCC 166.

(ix) *Association of Management of Private Colleges vs. All India Council for Technical Education & Ors.*, (2013) 8 SCC 271.

(x) *R.M.D. Chamarbaug Walla and Anr. vs. Union of India & Anr.*, AIR 1957 SC 628.

(xi) *Bandhua Mukti Morcha vs. Union of India & Ors.* (1997) 10 SCC 549.

39B Mr. Aney, on the other hand, relied upon the following decisions :

(i) *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors.* (2013) 4 SCC 465.

(ii) *Visveshwaraiah Technological University & Ors. vs. Krishnendu Halder & Ors.*, (2011) 4 SCC 606.

(iii) *Panineeya Law College vs. The Secretary to Government, Education Department, Government of Andhra Pradesh, Hyderabad & Ors.*, 1992 SCC AP338 : (1992) 3 ALT 389.

40 At the outset, we must dispose of the contentions of Mr. Aney based on the locus of the petitioner. Mr. Aney has

relied upon the judgment of the Hon'ble Supreme Court in the case of Ayaaubkhan (supra). Ayaaubkhan's case involved a challenge to a judgment delivered by this Court in a Writ Petition filed at Aurangabad. That was filed by respondent No.5 to that petition challenging the caste certificate issued to the said Ayaaubkhan. A competent authority issued that caste certificate stating that the appellant belongs to Bhil Tadvi (Scheduled Tribe). On the basis of such a certificate he was appointed as senior clerk in the Municipal Corporation of Aurangabad. That was against a reserved seat. By the mandate of a State law, this certificate of the appellant was referred for scrutiny and verification by a Caste Scrutiny Committee. The committee followed the procedure and arrived at the conclusion that the appellant is entitled to a validity certificate. It was, accordingly, issued on 23rd May, 2000. After a lapse of nine years, the fifth respondent filed a complaint to the Scrutiny Committee on 9th January, 2009, to recall this certificate on the ground that it was obtained by misrepresentation. The appellant was accused of having obtained this certificate falsely. Various contentions were raised. The committee, on the strength of all material, came to the conclusion that it has no power to recall or review the caste

validity certificate. The aggrieved fifth respondent filed a writ petition challenging this order of the committee dated 13th March, 2009. It is in this backdrop the question of the fifth respondent's locus arose. That is how the Supreme Court revisited and reiterated the settled principle that the Court's jurisdiction can be invoked by a person aggrieved. That is on the foundation of a legal right. The Court, therefore, highlighted as to how that concept has evolved and has been relaxed in certain circumstances. It referred to the locus of the fifth respondent and found that he being a stranger or a third person having no concern with the case at hand, cannot claim to have any *locus standi* to raise any grievance whatsoever. Then the Hon'ble Supreme Court clarified that in exceptional circumstances, referred by it in great detail by the judgment, on account of ignorance, illiteracy, inarticulation or poverty a person is unable to approach the Court but having no personal agenda or object in relation to which he can grind his own axe, then, the Court can still examine the issue. If his *bona fides* are doubted then a different question arises altogether and a view may be taken accordingly. Even applying these settled principles, we do not find that in the present case, the petitioner, merely because she

attempted to appear or has not appeared or taken a chance, is disentitled from questioning the process. It is open to her to impugn the legality and validity of the process and when this argument is based on an absence or lack of power. We do not see any lack of *bona fides* on the part of the petitioner. In any event, there is a substantive petition by another petitioner filed at Aurangabad Bench and in regard to which the principles in Ayaaubkhan's case or the issue of *locus standi* of that petitioner has not been raised. We do not think, therefore, that the petitions can be thrown out on the issue of *locus standi* or on the ground that the petitioners do not have locus to prefer them.

41 Having disposed of this preliminary objection, we now turn to the merits. We have before us an enactment styled as the Act of 2015. That Act and which is made by the competent Legislature purports to deal with the admissions in the unaided private professional educational institutions. A survey of this Act would reveal that it is divided into several chapters. The general provisions are contained in Chapter I, particularly the definitions. We are concerned with the definition of the terms “Admissions Regulating Authority”, “Centralized Admission Process”,

“Common Entrance Test” and “Competent Authority”. These definitions read as follows :

“2. In this Act, unless the context otherwise requires,-

(a) “Admissions Regulating Authority” means the Authority constituted under section 7 for regulating the admissions in Unaided Private Professional Educational Institutions and conducting CETs;

... ..

(c) “Centralized Admission Process (CAP)” means the centralized process of admission carried out by the competent authority through single window system in a transparent manner for admitting the students for various professional courses in educational institutions;

(d) “Common Entrance Test(CET)” means the entrance test conducted for determination of merit of the candidates by Centralized Admission Process (CAP) for the purpose of admission to professional education courses through a single window system.

(e) “Competent Authority” means the Commissioner of State CET appointed by the Government under section 10, for conducting CET through CAP for the admissions into Private Professional Educational Institutions.”

42 The term prescribed means prescribed by Rules.

“Minority Educational Institution” is also defined in section 2(m)

and what is vital for our purpose is the definition of the word or

the expression “Private Professional Educational Institution”.

That is to be found in section 2(q) and “Professional Education” is

defined in section 2(r). That means any educational course of study declared and notified as such, from time to time by the Government, which includes a course leading to the award of an Under Graduate or Post-Graduate degree, diploma, by whatever name called and recognized by the appropriate authority. The "Private Professional Educational Institution" means any college, school, institute, institution or other body, by whatever name called, conducting any professional course or courses approved or recognized by the appropriate authority and affiliated to any university, but that definition excludes any institution established, maintained or administered by the Central Government, any State Government or any local authority, an institution declared to be a deemed university under section 3 of the University Grants Commission Act, 1956 or a university to which the provisions of the University Grants Commission (Establishment and Maintenance of Private Universities) Regulations, 2003, are applicable. Chapter II of this Act is titled "Regulation of Admissions" and therein appear sections 4 and 5. They read thus :

"4. The admissions to seats for professional course in every unaided institution shall be carried out in the following manner :-

(a) admission to seats in a Private Professional Educational Institution excluding institutional quota declared by Government from time to time, shall be made on the basis of merit by following the procedure of Common Entrance Test (CET) conducted in the manner, as may be prescribed by rules;

Provided that, the admission to institutional quota shall be on the basis of merit and after following the procedure specified by the appropriate authority:

Provided further that, the State Government may by order issued from time to time exempt any professional courses, from requirement of the Common Entrance Test (CET)thereto.

(b) admission to such institution shall be carried out by the competent authority through the Centralized Admission Process on the basis of Common Entrance Test (CET) and Centralized Admission Process (CAP);

(c) the Competent Authority shall supervise and guide the entire Centralized Admission Process in such manner as it may specify with a view to ensuring that the process is fair, transparent, merit-based and non-exploitative.

5. Any admission made in contravention of the provisions of this Act or the rules made thereunder shall be void."

43 These provisions, therefore, deal with the manner of admission and declare that which admissions shall be void.

44 By Chapter III Admissions Regulating Authority and State Common Entrance Test Cell has been referred to and its

constitution is provided for. Its pertinent provision being that this Regulating Authority is presided over by a Chairperson who is a retired Judge of this Court or retired officer of the Government of the rank of Chief Secretary. It is thus an authority and which is empowered to scrutinize by section 9, the admission process. It can conduct and monitor a Common Entrance Test through a Common Entrance Test Cell. It can also verify the admission proposals and final approval thereof and it can cancel the admission if found contrary to the provisions and redress any grievance of the stake-holders. It has very wide powers in terms of sub-section (2) of section 9 onwards. The State Common Entrance Test Cell is contemplated and provided for by section 10. Its functions are to conduct the examination in such manner as may be prescribed. Chapter IV deals with regulation of fees and the provisions in that behalf are not required to be referred for the purpose of this petition and the controversy therein. Equally we are not required to refer to Chapter V which contains provisions pertaining to accounts and maintenance of records of authorities. Then Chapter VI is titled "Penalties" and there are miscellaneous provisions contained in Chapter VII in which section 23 and other provisions appear. We

will make a reference to this section a little later. Suffice it to state that this is a comprehensive measure and which enables the State to not only regulate the process of admission to the institutions indicated and referred above, but control and monitor its several aspects. It is also permissible thereunder to regulate the fees. Such comprehensive measure is enacted so that the admissions and fees of these unaided private professional educational institutions are regulated.

45 Recently, the Hon'ble Supreme Court of India had an occasion to consider the legality and validity of a more or less similar enactment and enacted by the Madhya Pradesh Legislative Assembly.

46 Before we refer to this judgment, we briefly set out the constitutional entries for ready reference. The Constitutional entries and referable to Article 246 of the Constitution of India are in the VII Schedule. List I – Union List contains the four relevant entries for our purpose, namely, Entry Nos. 63, 64, 65 and 66. They read as under :

“63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University, the University established in pursuance of article 571-E; any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for -

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

47 We skip the List II and come to List III – Concurrent
List wherein entry Nos.25 and 26 read thus :

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

26. Legal, medical and other professions.”

48 Article 246 of the Constitution of India opens with a
non obstante clause and notwithstanding anything in clauses (2)

and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Seventh Schedule styled as the Union List. Clause (2) opens with another *non obstante* clause and overrides clause (3) where Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule styled as the Concurrent List. Subject to clauses (1) and (2), the Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule in the Constitution referred to as the State List. We need not refer to clause (4). The question of inconsistency between laws made by Parliament and laws made by the Legislatures of States is dealt with by Article 254. There, what is stated is if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament whether passed before or after the law made by the Legislature of such

State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Clause (2) deals with a situation where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

49 What the Hon'ble Supreme Court was considering in the decision reported in the case of *Modern Dental College and Research Centre vs. State of Madhya Pradesh, AIR 2016 SC 2601* is whether the medical and dental colleges being private unaided colleges, it is their fundamental right under Article 19 to lay down eligibility criteria for admission and admit the students as well as fix the fees ? They relied upon the judgment of the Hon'ble Supreme Court in the case of *TMA Pai Foundation & Ors. vs. State of Karnataka & Ors. (2002) 8 SCC 481*. It was argued that the right to administer educational institution is recognised

as an occupation and is, thus, a fundamental right to carry on such an occupation as stipulated in Article 19(1)(g). The provisions of the M.P. Niji Vyavasayik Shikshan Sanstha Adhiniyam Act of 2007 and the Admission Rules 2008 and the M.P. Private Medical and Dental Post Graduate Courses Entrance Examination Rules of 2009 foist these private education institutions with the obligation to admit students of reserved class, which was the obligation of the State, then the Act of 2007 made excessive reservations thereby leaving hardly any seats for unreserved categories and the State Legislature was not competent to enact the law as the subject matter falls in the domain that is exclusively reserved for Parliament.

50 The Act of 2007 referred by the Supreme Court in extenso was styled as one made for regulation of admission for fixation of fees in private professional educational institutions in the State of Madhya Pradesh and to provide for reservation of seats to persons belonging to SC / ST and other backward classes in professional educational institutions. After referring to the challenge and the facts that were placed before it so also the impugned judgment of the High Court of Madhya Pradesh, the

Hon'ble Supreme Court set down the rival contentions. One of them being that the area and field is occupied as above by a law of the Parliament. The Hon'ble Supreme Court then reproduced the constitutional provisions and the need for regulatory mechanism. After these observations the Hon'ble Supreme Court in paragraph 111 reproduced the Constitutional entries which we have already reproduced and upon a resume of the complete case law till date, including some of the decisions brought to our notice by the counsel appearing in the present case, concluded that it cannot be held that the State was incompetent to make the law. The area and field covered by the respective entries having been scanned by the Constitution Bench in this decision, it concluded as under :

“133. The two competing rights are the right of the citizen not to be denied admission granted under Article 29(2), and right of the religious or linguistic minority to administer and establish an institution of its choice granted under Article 30(1). While treating Article 29(2) as a facet of equality, the Court gave a contextual interpretation to Articles 29(2) and 30(1) while rejecting the extreme contention on both sides, i.e., on behalf of the institutions that Article 29(2) did not prevent a minority institution to preferably admit only members belonging to the minority community, and the contention on behalf of the State that Article 29(2) prohibited any preference in favour of a minority community for whose benefit the institution was established. The Court concluded, at pages 613-14, para 102, as follows:-

"In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(2), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit."

134. *If we keep these basic features, as highlighted in St. Stephen's case, in view, then the real purposes underlying Articles 29(2) and 30 can be better appreciated.*

135. *We agree with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minority which would enable them to establish and administer educational institutions in manner so as to be in conflict with the other Parts of the Constitution. We find difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.*

136. *Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions*

as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also -- for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality."

51 Thus, the conclusion reached is that the State Government was empowered to regulate admission process in institutions imparting higher education in the State it being responsible for welfare and development of the people of the State ought to take necessary steps for welfare of its student community. The field of higher education being one such field which affects directly the growth and development of the State, it is the prerogative of the State to take such steps. The Hon'ble Supreme Court thus upheld the judgment of the Madhya Pradesh High Court and dismissed the appeals. Following this judgment and when the enquiry ought to be as indicated therein, we should not hesitate to hold that it was open for the State Government to prescribe a Common Entrance Test and Common Admission Process. Entry 66 is a specific entry having a specific and limited scope. It deals with the co-ordination and determination of standards in institutions of higher education or research as well as scientific and technical institutions. The words coordination

and determination of standards would mean laying down the standards. The Hon'ble Supreme Court concludes that when it comes to regulating the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include a conducting of examinations etc. and admission of students to such institutions or prescribing fees in these institutions of higher education. In the above judgment it was the alleged conflict between the Parliamentary legislation in the form of Medical Council of India, 1956 and the State law. The Hon'ble High Court held that the functions that are assigned to the Medical Council of India which is on par in the instant case with the Bar Council of India, include within its sweep determination of standards in medical institutions as well as coordination of standards. When it comes to regulating education as such which includes even medical education as well as universities imparting higher education that is prescribed by Entry 25 of List III thereby giving concurrent powers to both Union as well as State.

52 In the instant case, we have not been shown any enactment made by the Parliament which is dealing with the

same subject as is enumerated in Entries 25 and 26. We have not been shown any provision, much less an inconsistent one in any law made by the State either.

53 The argument before us is that the executive powers of the State conferred vide Article 162 would not empower it to include within its controlling and regulating powers the admission process or the Common Entrance Test, as are sought to be included. If that has to be done, it must be done by a law enacted by the State Legislature and not by a mere executive fiat.

54 For dealing with that argument we would be required to refer to Article 162. Article 162 reads as under :

“162. Extent of executive power of State.- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has the power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.”

55 The extent of executive power of the State is subject to the provisions of the Constitution. That extends to the matters with respect to which the Legislature of the State has power to make laws. Following the judgment of the Hon'ble Supreme Court and rendered by the Constitution Bench (*supra*) and the sweep of Entry 25 and 26 of List III to the VIIth Schedule to the Constitution of India, we are of the opinion that in the instant case, the State could have made a law even for admissions and to the institutions which are not included within the purview of the Act of 2015. The proviso to Article 162 states that in any matter with respect to which the Legislature of the State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by the executive power expressly conferred by the Constitution or by any law made by the Parliament upon the Union or authorities thereof. We have not been shown any law or any power expressly conferred by the Constitution and within the meaning of this provision.

56 The argument that Article 162 could not have been pressed into service begs the question with regard to competence of the State to make the law. If the State was competent to enact

a law and it could have made it even with regard to the admissions to institutions which are not covered by the Act of 2015, then, we do not see any substance in the contentions raised by Ms. Talekar.

57 She has invited our attention to the Notifications and the concerned Government Resolutions. By the first Government Resolution to which our attention is invited, namely, the one dated 4th December, 2015, provides for a Common Entrance Test for law degree course and an appointment of a competent authority for that purpose. That refers to the Act of 2015.

58 The latter Government Resolution of 5th February, 2016, and preceding thereto the advertisement deals with the proposed schedule for CET for different courses. The Notification dated 11th March, 2016, is referring to the State's decision notifying the full time professional courses mentioned in column III of Schedule A for diploma courses, Schedule B for Under Graduate courses and Schedule C for Post-Graduate degree courses for the purpose of admissions and in terms of the Act of 2015. The said Government Resolution has not been referred in

further details but what has been brought to our notice is the decision of the State Common Entrance Test Cell dated 7th May, 2016, and which sets out the procedure for admission to first year of the five years integrated full time regular under graduate degree course in law for the academic year 2016-2017. Then what has been referred to is the Government Resolution dated 7th April, 2016, which has made applicable the CET to law courses which are conducted by the affiliated colleges, namely, those affiliated to non agricultural universities. The admission to this would be by a Common Entrance Test and the Competent Authority is notified. Then, what has been relied upon is the Resolution dated 12th April, 2016. That refers to the decision of the State dated 16th June, 2015 and thereafter 11th March, 2016, and the Common Entrance Test under the auspices of the Commissioner, namely, respondent No.2 before us. In that the law degree courses have been included. Now, the State decided to include within the process the Government colleges, the non Government, aided / non aided and permanently no grant basis colleges or those operating as permanent unaided colleges, but imparting the law degree courses. Now, the extension comes to these categories of colleges in addition to those covered by the

Act of 2015. We have, therefore, no hesitation in accepting the contentions of Mr. Aney that this Government Resolution and traceable as it is to Article 162 of the Constitution of India complements the Act of 2015 insofar as the Common Admission Process and the Common Entrance Test. Once the State was competent to enact a law, then, merely because it resorts to the power conferred by Article 162, the entire exercise cannot be said to be flawed. It cannot be said to be illegal and unconstitutional to such an extent as is projected by the petitioner before us.

59 The petitioner ought to have demonstrated that there was in the field a legislation and by which the admissions to these categories of colleges was also an aspect covered and dealt with. That having been exclusively covered by such enactments it was not open to issue any Notification and on the above lines. Further, such an enactment having been in the field, but not taking care of the admission process, the only way for the State to introduce the CET is to amend the existing legislation. Such a position not emerging from the record and restricting the controversy essentially raised before us, we conclude that the State

Government was empowered by the subject Resolutions to bring within the purview of the Act of 2015 the process of admission and control it through a competent authority under the Act of 2015. That process of admissions to such colleges not being covered by the Act of 2015, therefore, could have been brought within the purview of the competent authority by issuing the said Government Resolution. It is permissible by exercise of executive power under Article 162 of the Constitution. Once we are of the above view, then, we do not think that the petitioners' contentions and their reliance upon some decisions is well placed. First of all we must clarify that the reliance placed on the decision in the case of *Bhartiya Vidyapeeth & Ors. vs. State of Maharashtra and Anr.* reported in (2004) 11 SCC 755 has been noted in the Madhya Pradesh case by the Hon'ble Supreme Court. Relying upon that judgment, certain contentions were raised. Dealing with them the Hon'ble Supreme Court clarified that the observations in *Bhartiya Vidyapeeth* that the entire gamut of admission was covered by Entry 66 of List I does not lay down the correct law. In paragraph 93 to 97 of this judgment, the Hon'ble Supreme Court has held thus :

“93. To our mind, Entry 66 in List I is a specific Entry having a very specific and limited scope. It deals with co-ordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words 'co-ordination and determination of standards' would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such co-ordination and determination of standards, insofar as medical education is concerned, is achieved by Parliamentary legislation in the form of [Medical Council of India Act, 1956](#) and by creating the statutory body like Medical Council of India (for short, 'MCI') therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as co-ordination of standards and that of educational institutions. When it comes to regulating 'education' as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in Entry 25 of List III, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject matter of Entry 11 in List II. Thus, power to this extent was given to the State Legislatures. However, this Entry was omitted by the [Constitution \(Forty-Second Amendment\) Act, 1976](#) with effect from July 03, 1977 and at the same time Entry 25 in List II was amended. Education, including university education, was thus transferred to Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two Entries relating to education, one in the Union List and the other in the Concurrent List, co-exist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to co-ordination and laying down of standards in the higher education or research and scientific and technical institutions, power

rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by Entry 25 of List III is wide enough and as circumscribed to the limited extent of it being subject to Entries 63, 64, 65 and 66 of List I.

[25 Entry 11: 'Education' including universities, subject to provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.

26 Unamended Entry 25 in List III read as: 'Occasional and Technical Training of Labour.']

94. Most educational activities, including admissions, have two aspects: The first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the caliber and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was though desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the [Constitution](#) makers provided for Entry 66 in List I with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

95. The second/other aspect of Education is with regard to the implementation of the standards of

education determined by the Parliament, and the regulation of the complete activity of Education. This activity necessarily entails the application of the standards determined by the Parliament in all educational institutions in accordance with the local and regional needs. Thus, while Entry 66 List I dealt with determination and coordination of standards, on the other hand, the original Entry 11 of List II granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the [Constitution \(Forty-second Amendment\) Act, 1976](#), the exclusive legislative field of the State Legislature with regard to Education was removed and deleted, and the same was replaced by amending Entry 25, List III, granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of Education, except that which was specifically covered by Entry 63 to 66 of the List I.

96. No doubt, in *Bharti Vidyapeeth* it has been observed that the entire gamut of admission falls under Entry 66 of List I. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In *Gujarat University*, a Bench of five Judges examined the scope of Entry 2 of List II (which is now Entry 25 of List III) with reference to Entry 66 of List I. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to the Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by Entry 66 of List I must prevail over power of the State. Validity of a state legislation depends upon whether it prejudicially affects 'coordination or determination of standards', even in absence of a union legislation. In *R. Chitralekha v. State of Mysore*, the same issue was again considered. It was observed that if the impact of State law is heavy or devastating as to wipe out or abridge the central field, it may be struck down. In *State of T.N. & Anr. v.*

Adhiyaman Educational & Research Institute & Ors., it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Dr. Preeti Srivastava (AIR 1955 SC 2894) and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidalaya & Ors. Though the view taken in State of Madhya Pradesh v. Kumari Nivedita Jain & Ors. and Ajay Kumar Singh & Ors. v. State of Bihar & Ors. to the effect that admission standards covered by Entry 66 of List I could apply only post admissions was overruled in Dr. Preeti Srivastava, it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharti Vidyapeeth.

97. *We do not find any ground for holding that Dr. Preeti Srivastava excludes the role of states altogether from admissions. Thus, observations in Bharti Vidyapeeth that entire gamut of admissions was covered by Entry 66 of List I cannot be upheld and overruled to that extent. No doubt, Entry 25 of List III is subject to Entry 66 List I, it is not possible to exclude the entire gamut of admissions from Entry 25 of List III. However, exercise of any power under Entry 25 of List III has to be subject to a central law referable to Entry 25."*

60 Similar is the case with the Gujarat University (supra) judgment relied upon. There, the controversy was with regard to a Secondary School Certificate Exam held by the State of Bombay. The student before the Supreme Court took instructions in various subjects prescribed for the examination through the medium of Marathi which is his mother tongue and answered the questions in the examination also in the medium of

Marathi. He joined a college affiliated to the University of Gujarat in the first year Arts class and was admitted in the section in which instructions were imparted through the medium of English. After successfully completing the First Year the student applied to the classes preparing for the Intermediate Arts examination of the university through the medium of English. The Principal of the college informed him that in view of the Gujarat University Act, 1949 and the Statues 207, 208 and 209 framed by the Senate of the University, as amended in 1961, he could not, without the sanction of the University, permit him to attend classes in which instructions were imparted through the medium of English. That is how the Vice Chancellor of the University was approached. The Registrar of the University declined the request, but by another letter, the student was allowed to keep English as a medium of examination. However, it was not for a medium of instructions. Thereupon, the student moved the petition in the High Court of Gujarat for a writ or order in the nature of a mandamus declaring certain sections of the Gujarat University Act, 1949, and the Statues as noted above, void and inoperative and to forbear from acting upon and invoking these provisions requiring the Vice Chancellor to treat

the letters or circulars issued by him in connection with the medium of instruction as illegal. The High Court of Gujarat allowed the petition and issued the writ. The university thereupon appealed to the Supreme Court. It is in dealing with such a controversy and which arose in the backdrop of the medium of instruction that the Hon'ble Supreme Court, after referring to all the sections of the University Act and the concerned Statutes so also the provisions in relation to the languages, then commented upon the powers and which vest in the State Legislatures and the Parliament. It is in that context that the observations which have been relied upon by the counsel must be noted and seen. In fact, the clarification issued is clear inasmuch as if such a legislation is covered by Items 63 to 66 even if it otherwise falls within the larger field of education, including the university's power to legislate on that subject, must lie with the Parliament. The plea raised by the counsel for the university and for the State of Gujarat that legislation prescribing the medium or media in which instruction should be imparted in institutions of higher education and in other institutions always falls within item 11 of List II has no force. If it is assumed from the terms of that Item that power to legislate in respect of

medium of instruction falls only within the competence of the State Legislature and never in the excluded field, even in respect of institutions mentioned in Items 63 to 65, then, that power to legislate on medium of instruction rests with the State, whereas legislation in other respect for excluded subjects would fall within the competence of the Union Parliament. That would lead to somewhat startling results and would then affect the character of national institutions or universities of national importance. They would be denuded of the power to legislate. It is in this context and the enquiry being on the above lines that the observations in paragraph 23, on which heavy reliance is placed, follow. We must not, therefore, forget the context and the backdrop in which these observations have been made. We have proceeded on the line of enquiry as mandated by these judgments and the principles laid down therein. These have been quoted with approval in the recent Constitution Bench judgment as well. It is, therefore, apparent that we are not in any way departing from the line of enquiry that is mandated in such cases.

61 The other decisions relied upon are on the scope of the power under Article 162. In the *Punjab Water Supply and*

Sewerage Board case (supra) what we have found is that there was in field the specific Rules. It was the case of a purported policy decision of the State as regards regularisation of services of the employees of the appellant-Board. The employees prayed for a writ of mandamus directing the Board to implement the scheme of regularisation of their services and set aside the orders rejecting the prayers made on their behalf. It is in that context and finding that such policy decision or circular cannot displace specific rules framed under Article 309 of the Constitution of India that the Hon'ble Supreme Court made the observations and which have been heavily relied upon. There, the terms and conditions of service, including recruitment were to be governed either by the statutory rules or rules framed under the proviso to Article 309 of the Constitution of India. The policy decision referable to Article 162, therefore, would be illegal and without jurisdiction. Once we have pointed out above that our attention is not invited to any statutory enactment or any specific rules having the force of Statute, then, the reliance on these observations is entirely misplaced. We, therefore, do not refer to any of the judgments on the principle of what would be the effect of a nullity. The Hon'ble Supreme Court has amply clarified that

what is within the powers, but not done regularly can be regularised but when there is patent lack of power or absence thereof, then, one cannot press this principle into service. Meaning thereby, what is *ex facie* unauthorised and illegal cannot be regularised and only something which is irregular can at best be regularised. The principle that when statute prescribes a manner in which a thing has to be done, then it must be done in that manner alone and deviation therefrom is not permissible is too well settled to require any reference to the judgments. These judgments are relied upon on the question of the rules and the validity thereof.

62 Before we refer to these judgments we must take note of the contentions of the learned counsel for the petitioners and particularly regarding compliance with section 23 of the Act of 2015. The Act empowers making of rules. The substantive provision section 23 reads as under :

“23. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Every rule under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period

of thirty days, which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification, or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.”

63 By sub-section (1) it is stated that the Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. It is undisputed that such rules have been made and notified in the Official Gazette.

64 Sub-section (2) requires every rule made under the Act to be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, then that decision has to be notified in the Official

Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification, or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule. The argument is that section 23 mandates that the Legislature shall sanction the rules and that the rules must be tabled before both the Houses for a period totalling thirty days. The rules were framed and published on 2nd April, 2016, whereas those were never tabled on the floor of both the Houses of the Legislature to get sanction for the same any time after 2nd April, 2016. The State Legislature was in session from 9th March, 2016 to 13th April, 2016, nearly seven working days after the publication of the rules. Thus, the rules could not have been tabled before the State Legislature for a period totalling thirty days.

65 We do not see how the provision can be read in this manner. The rules have been made in terms of the power conferred by section (1) of section 23. There is much substance in the contentions of Mr. Aney that the period has to be reckoned

in the manner set out in sub-section (2) of section 23 for fulfilling the requirements of such rules to be laid before both the Houses of the State Legislature. The additional affidavit-in-reply assures that such rules would be laid before the Houses in the ensuing monsoon session, then, we do not think that the statutory mandate, if at all one can term the requirement of laying down the rules and as relied upon by the petitioner, is in any way flouted. It is not the case of the petitioner that the rules could not have been the basis for proceeding with the CET or the process as a whole. The argument is that they have not been laid as required. The laying down of the rules, as set out in sub-section (2) of section 23, has been a subject of number of decisions of the Hon'ble Supreme Court. The one which is relied upon before us is in the case of *Association of Management of Private Colleges vs. All India Council of Technical Education & Ors.*, reported in (2013) 8 SCC 271. The issue in that case must be first noted and then the reliance can be better understood. The issue before the Supreme Court in that case arose out of the affiliated institutions and to the universities whose names are set out in paragraph 2 of the judgment. The institutions offered certain seats for the MCA course which had the approval of AICTE. The number of such

institutions in the State of Tamil Nadu is set out and it is stated that apart from the member-colleges of the first appellant and college of the second appellant, all the institutions offering MCA have obtained the approval of the AICTE. Then, the regulations and relevant ones are referred and they correspond with the AICTE. The AICTE indicated to the member colleges of the appellant in both the appeals to furnish information regarding the proposed land and building. A writ petition was filed by the petitioner-Association seeking relief to prohibit AICTE from exercising jurisdiction over the member-colleges with reference to the MBA and MCA courses conducted by them. A single Judge dismissed the writ petition upholding that the AICTE Act and Regulations are enforceable against these member-colleges against which the Association filed appeal. The appeal was also dismissed and thus, the single Judge's judgment came to be affirmed. The connected appeals also raised somewhat identical controversy and issues. The questions of law, therefore, and framed in paragraphs 8 to 8.5, *inter alia*, referred to the power of the AICTE and whether the Regulations or Rules that have been relied upon can be applied and enforced. It is in this backdrop that the Hon'ble Supreme Court made the observations and which

have been relied upon, namely, in answer to points 47.4 and 47.5. There is no dispute about the proposition that if the Statute prescribes a particular mode to do an act in a particular way, that act must be done in that manner. Otherwise, it is not at all done. The Rules, therefore, were required to be made. The requirement of laying the rules is with a view to fulfill the object of a sanction to the action from the competent legislature. It is in order to fulfill that mandate and as enshrined in sub-section (2) of section 23 that the Rules have to be laid. It is nobody's case that the Rules would not be laid. It is only that they were not laid, as alleged by the petitioner, till the House was in session, namely, from the date of their making (2nd April, 2016) till 13th April, 2016. However, when we look at the period within which the requirement to lay down the Rules before both the Houses is to be fulfilled and in terms of sub-section (2), then, there is no hesitation in concluding that the Government can lay the Rules before the Houses of the State Legislature in the ensuing monsoon session. We do not think, therefore, that the reliance on these judgments and the other judgments that the Rules cannot be given retrospective effect unless there is a specific provision in that behalf is well placed.

66 We do not think that the principle of severability is in any way attracted and, therefore, the decision in *R.M.D. Chamarbaug Walla & Anr.* (supra) need not be referred in further details.

67 The argument that right to education extends to professional education as well and that is a fundamental right is not what can be culled out from the decision in the *Bandhua Mukti Morcha's* case. The reliance on this judgment overlooks the fact that in that decision the Hon'ble Supreme Court was concerned with a completely different controversy. There, the issue was that employment of the children in any industry or any hazardous industry is violative of the mandate of Article 23 and 24 of the Constitution of India and as contained in the directive principles of State policy. Article 45 was pressed into service and which must be immediately referred for it is to be found in the chapter pertaining to directive principles of the State policy. In furtherance of a report placed before the Court, the primary contention of the petitioner on behalf of the children below the age of 14 years is that the employment of such children by the

carpet weavers in Varanasi, Mirzapur, Jaunpur and Allahabad areas is violative of Article 24. How they are exploited and how their right and which is fundamental and now recognized under Article 21A is taken away or completely breached and violated is, therefore, highlighted in this judgment. It is in that context that the right to education and vesting in such children and which ensures their complete development and growth must not be denied to them is the conclusion reached. We are not dealing with such children. We are not dealing with cases of those who have been deprived of this right by the State. We are dealing with the right and claim to professional education post attaining this age. In other words, the right to higher education. That being not admittedly recognised as a fundamental right, the reliance on this judgment is entirely misplaced.

68 Finally what remains for consideration is the reliance on The Maharashtra Universities Act, 1994. The Maharashtra Universities Act, 1994, is an Act which seeks to unify, consolidate and amend the law relating to non agricultural and non technical universities in the State of Maharashtra. It is common ground that prior to the enactment of this Act, there were various Acts

governing the universities. There was a complete lack and absence of one and a single Statute. It is with that intent and object that the competent Legislature made this Act. It is, therefore, an Act dealing with the universities, their powers, their functions, their jurisdiction, the control over them and the extent of the same by the State Government, the officers of the university and their appointment etc. When the admissions are referred to in Chapter VIII titled “Admissions, Examinations and Other Matters Relating to Students”, what we find there is section 65. It reads as under :

“65. In accordance with the reservation policy of the State Government for the weaker section of society, admissions to all courses in the university departments and affiliated colleges shall be made on the basis of competitive merit in accordance with the rules, if any, made by the State Government and published in the Official Gazette, or by the university and published in the university gazette by the university:

Provided that, where model rules have been framed by the State Government in the interest of students throughout the State, the university shall adopt the same and such rules shall be published in the university gazette or Official Gazette as the case may be at least six months before the start of any academic session which shall begin not later than first August every year:

Provided further that, having regard to the maintenance of discipline, the authority concerned shall have the power to refuse admission to a student.”

69 A bare perusal of this section would indicate that in accordance with the reservation policy of the State Government for the weaker section of society, admissions to all courses in the university departments and affiliated colleges shall be made on the basis of competitive merit in accordance with the rules, if any, made by the State Government and published in the Official Gazette, or by the university and published in the university gazette by the university. The section speaks of admission to all courses of the university department and affiliated colleges and that has to be made on the basis of competitive merit in accordance with the rules, if any, made by the State Government and published in the Official Gazette. Therefore, the proviso speaks that where model rules have been framed by the State Government in the interest of students throughout the State, the university shall adopt the same and such rules shall be published in the university gazette or Official Gazette at least six months before the start of any academic session which shall begin not later than first August every year. We do not see how the argument and which is very seriously and strenuously made can be premised on this section. If the Act of 2015 is, according to the learned counsel for the petitioners, to be read together with and

harmoniously with the University Act, then, there was no warrant for urging that the Maharashtra Act of 2015 is a stand alone legislation. Apart therefrom, there is nothing in the Act or the Rules framed thereunder to indicate a legislative intent contrary to the one couched in section 65. The mandate of section 65 would apply to the private unaided colleges as well. This argument, according to the petitioner, is based further on the Rules. Now, we have the set of Rules under the 2015 Act as well. The admissions that are referred to in section 65 are to be made in accordance with the Rules, if any, made by the State Government or by the university and published in the university gazette by the university. We have not been shown any rules nor in the written arguments based on the amended pleas there is any reference to the Rules framed by the university. This section is pressed into service more for the compliance with the proviso and that is at least six months before the start of any academic session the Rules should be published in the university gazette. The present set of Rules under the Act of 2015 have not been so published and that is why a decision to conduct the CET is taken hastily and hurriedly according to the petitioner.

70 The argument was understood by Mr. Aney and based on section 65 not so much on this aspect, but on overlapping of powers. We do not see that when there is a State Act, namely, The Maharashtra Universities Act, 1994, even if this Act is perused as a whole and all its provisions are read together and harmoniously, there is anything therein which takes care of the aspect and particularly taken care of by the Act of 2015. This is not a case of the two State Statutes containing overlapping or inconsistent provisions. The area and field covered by them is altogether different. We, therefore, do not think that any argument can be build on the basis of section 65 or its provisos.

71 True it is that it would have been ideal if the Rules were made promptly and the requirement of the Statute fulfilled. True it is that even the Notifications ought to be promulgated and issued much prior to the examinations. True it is that even this Court would have been happy to note that the syllabus was made and notified to the students well in advance. However, merely because all this has not been done in the manner suggested by the petitioners does not mean that the exercise as undertaken by the State is unlawful or unconstitutional. It is the legality and

validity of the actions which we are testing. The manner in which the State has proceeded may leave a lot to be desired. It may also indicate that the State took a somewhat hasty step. However, by that alone we cannot declare the whole process and commenced by the State in terms of the Act of 2015 and the Government Resolutions to be illegal, invalid and unconstitutional.

72 The essential arguments have been taken care of by us.

73 We are only now required to refer to The Advocates Act, 1961, and the powers of the Bar Council thereunder.

74 The Advocates Act, 1961, as we have noted in the foregoing paragraphs, is an Act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All India Bar. The functions of the Bar Council of India and which are salutary are to promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and the State Bar Councils. It is also to recognise

universities in terms of section 7(1). The Bar Council of India, therefore, is conferred with power to make rules and section 49 enables rules to be made. The rules enable discharging of the functions under the Act and in particular they may prescribe for the matters set out in clauses (a) to (j). Clause (af) has been pressed into service and that lays down the minimum qualifications required for admission to a course of a degree in law in any recognised university.

75 The further aspect of the matter is highlighted by referring to clause (d), namely, the standards of legal education to be observed by universities in India and the inspection of universities for that purpose. We have carefully perused the rules framed by the Bar Council of India under this power conferred upon it by law. Chapter II of those rules made in 2008 set down the standards of professional legal education. Therein appear Rules 4, 5 and 7. They read as under :

“4. Law courses.

There shall be two courses of law leading to Bachelors Degree in Law as hereunder,

(a) A three year degree course in law undertaken after obtaining a Bachelors' Degree in any discipline of

studies from a University or any other qualification considered equivalent by the Bar Council of India.

Provided that admission to such a course of study for a degree in law is obtained from a University whose degree in law is recognised by the Bar Council of India for the purpose of enrolment.

(b) A double degree integrated course combining Bachelors' Degree course as designed by the University concerned in any discipline of study together with the Bachelors' degree course in law, which shall be of not less than five years' duration leading to the integrated degree in the respective discipline of knowledge and Law together.

Provided that such an integrated degree program in law of the University is recognized by the Bar Council of India for the purpose of enrolment.

Provided further that in the case of integrated double degree course the entire double degree course can be completed in one year less than the total time for regularly completing the two courses one after the other in regular and immediate succession meaning thereby, that if the degree course in the basic discipline, such as in Arts, Science, Social Science, Commerce, Management, Fine Arts, Engineering, Technology or medicine etc. is of three years' duration of studies, integrated course in law with the basic degree in the discipline could be completed in five years' time but where the degree course in law with such degree course in the discipline would take one year less for completing in regular time than the total time taken for the two degrees taken separately if completed back to back.

Explanation 1: Double degree integrated course such as BA, LLB can be completed with (3+3-1) i.e. 5 years. But if one intends to do B.Tech., LL.B., it can be done in (4+3-1) i.e., 6 years.

Explanation 2: Suppose in a University one can have a two years' graduation in any social science leading to BA degree in that case also the composite double degree

integrated course leading to BA, LLB would be of five years duration because double degree integrated course cannot be of less than five years' duration.

5. Eligibility for admission:

(a) Three Year Law Degree Course : An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State Legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree program in law leading to conferment of LL.B. degree on successful completion of the regular program conducted by a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(b) Integrated Degree Program : An applicant who has successfully completed Senior Secondary course ('+2') or equivalent (such as 11+1, 'A' level in Senior School Leaving certificate course) from a recognized University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted in to the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognized by the Bar Council of India for the purpose of enrolment.

Provided that applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years' LL.B. course, as the case may be.

Explanation: The applicants who have obtained 10 + 2

or graduation / post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses.

... ..

7. Minimum marks in qualifying examination for admission.

Bar Council of India may from time to time, stipulate the minimum percentage of marks not below 45% of the total marks, in case of general category applicants, 42% for OBC category and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 Examination in case of Integrated Five Year course or Degree course in any discipline for Three years' LL.B. course, for the purpose of applying for and getting admitted into a Law Degree Program of any recognized University in either of the streams.

Provided that such a minimum qualifying marks shall not automatically entitle a person to get admission into an institution but only shall entitle the person concerned to fulfill other institutional criteria notified by the institution concerned or by the government concerned from time to time to apply for admission."

76 A bare perusal of these Rules would indicate that firstly they take care of the courses and their duration. There are two courses of law as set out in Rule 4. Rule 5 sets out the eligibility criteria for admission to three year law degree course and integrated course particularly styled as five year degree course. Then comes Rule 7 which lays down the minimum marks. However, the proviso to this Rule is very important and it states that such a minimum qualifying marks shall not automatically

entitle a person to get admission to an institution but shall only entitle the person concerned to fulfill other institutional criteria notified by the institution concerned or by the Government concerned from time to time to apply for admission. This does not rule out the admissions to law colleges imparting training in degree courses by a CET or a CAP. There is no compromise with the minimum marks and the qualifying examination for admission. The source of entry to the law colleges remains the same. The source and essentially is from the graduation level in case of three years law course and from 10 + 2 or 12th standard or HSC in case of five year integrated law course. However, there is a further prescription of clearing an examination or a CET which will enable the student to get admitted to the law colleges and such admission would be by single window system by the competent authority in terms of the State Legislation. We do not think that prescription of such examination by itself and without anything more interferes with the above powers of the Bar Council of India in any manner. The Bar Council's powers and its functions as enumerated in the Advocates Act 1961 are in no way interfered with nor is the Bar Council obstructed in discharge of the same. There is no lowering of standards as is apprehended.

There is no interference with the existing standards and prescribed by the Rules. What is provided is an additional requirement and for admission into a legal institution. The proviso to Rule 7 itself leaves such a power in the State or upon the institution concerned. A criteria can still be notified over and above what is the essential one and, namely, obtaining of minimum marks in the qualifying examination for admission. That, however, does not guarantee admission to the law colleges of choice. If the Rules themselves do not prohibit any holding of CAP or CET, then, we do not find how reliance on these provisions of the Advocates Act and the Bar Council of India Rules carries the case of the petitioners further.

77 Rather, at the fag end of the proceedings, an attempt was made by the Bar Council of India to impress upon us that the Advocates Act 1961 and the mandate flowing therefrom is interfered with. When we brought to the notice of Mr. Deshmukh appearing for the Bar Council of India this statutory scheme and the Bar Council Rules themselves, he fairly conceded that the Bar Council has no objection to holding of the CET and the CAP. Equally, the petitioner's challenge is not premised on a plea that

such a test cannot be prescribed. The manner of holding the test is what was really put in issue.

78 Once we take care of all above aspects and come to a conclusion that the challenge is without any merit, then the writ petitions deserves deserve to be dismissed. They are, accordingly, dismissed.

79 Before parting we must take care of two things. First is reliance on the doctrine of legitimate expectation. However, reliance on it is entirely misplaced. That could be explained in the words of the Hon'ble Supreme Court itself. In the case of *Union of India Vs. Hindustan Development Corporation*, reported in *AIR 1994 SC 988*, the Hon'ble Supreme Court has held as under :-

“27. Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law. Since we have not come across any pronouncement of this Court on this subject explaining them meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage. Who is the expectant and what is the nature of the expectation ? When does such an expectation become a legitimate one and what is the foundation for the same ? What are the duties of the

administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation.

28. Time is a three-fold present : the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure following in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

33-34. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest

requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors."

80 The Petitioners before us rely on this doctrine to urge that the CET could have been well organised, had it been notified well in advance. The students expect a major academic shift to be effected only by taking them into confidence much earlier and not thrusting upon them Entrance Exams hastily and hurriedly.

81 What we feel that there was no need for the State to have side tracked the Bar Council and the concerned stakeholders, namely, the Law and Judiciary Department of the Government. The Bar Council of India, which is a functionary under a Parliamentary Statute, is very much concerned with legal education. If a CET is prescribed, then, the subjects and syllabi for it ought to be finalised by also consulting the Bar Council of the State. Nothing would have been wasted if such consultation had taken place. The involvement of the Bar Council may have improved the standards. Those teaching the theory of law and those actually practising it, if consulted, could have brought about a blend which the State ought to welcome. It is no use consulting some teachers and Principals and then finalising the process, that too hurriedly. If the Bar Council had been consulted, possibly some modifications and changes would have

to be made. Mr. Aney, on taking instructions, stated that in the ensuing years, the State would involve all “stake-holders” including the Bar Council and would not, therefore, construe the definition of the term “stake-holders” in the Act of 2015 so narrowly as is understood by the petitioners and rather misunderstood by the Bar Council. They would all be involved and their suggestions, views and opinions would be duly considered. If any modifications and changes are required to be made in the syllabi, subjects or the allocation of marks, then, that would be made in the coming years and academic sessions. We accept this statement made by Mr. Aney as an undertaking given to this Court on behalf of all concerned and we would also emphasize that when the State has indicated the number of seats and the colleges, it should have taken care of the fact that whether these colleges and institutions which are imparting these degree courses are really equipped to teach and impart education in these subjects and the degree courses. Whether they have a full time Principal and whether they have a permanent faculty and have the professional staff, whether the infrastructure is in place or otherwise. If any action in that regard is pending then the process should have been undertaken

prior to the introduction of this CET and the CAP. Now, possibly a situation may arise where after the students are allocated seats in these colleges, it would come to the notice of the concerned authorities that the colleges are ill-equipped, ill-furnished and possibly in one structure or in one building together with several other courses even law courses have been commenced and a college of law established. Apart from causing inconvenience to all concerned, it would result in a situation where the recognition of such colleges might be withdrawn by the University or the Bar Council of India. Then it would be for the appropriate authorities to deal with such grievances and situations and we have no doubt in our minds being presided over as a Chairperson by a retired Judge of this Court, due note would be taken of the students' grievances and they would be redressed and if possible by accommodating them in other institutions which are duly recognised.

82 The petitions are, accordingly, dismissed.

83 Once we have dismissed the petitions, we cannot accede to the request of the petitioners' advocate to restrain the

respondents from completing the further steps and undertaking the further measures in terms of the law. We do not think that there was any interim order in force which halted or interfered, much less obstructed this process. Therefore, there is no question of any restraint and hence the request is refused.

DR.SHALINI PHANSALKAR-JOSHI, J. S.C. DHARMADHIKARI, J.