

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1510 OF 2016
IN
WRIT PETITION NO. 6121 OF 2014**

Management Association of MCA InstitutesApplicant/ Org.
Petitioner

versus

Pravesh Nyantran Samitee and ors. ...Respondents

with

**CIVIL APPLICATION NO. 1511 OF 2016
IN
WRIT PETITION NO. 6122 OF 2014**

Association of Management of MBA/MMS InstitutesApplicant/ Org.
Petitioner

versus

Pravesh Nyantran Samitee and ors. ...Respondents

Mr. P. K. Dhakephalkar, senior counsel with Mr. A. M. Kulkarni in civil application No. 1510 of 2016.

Mr. A. A. Kumbhkoni, senior counsel with Mr. A. M. Kulkarni in civil application No. 1511 of 2016.

Mr. Rahul Deo, Acting Advocate General along with Mr. V. M. Mali, AGP for the State.

Mr. S. S. Patwardhan, advocate for respondent No.1.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 26th JULY, 2016.

P. C. :

Heard Mr. Dhakephalkar, Mr. Kumbhkoni, learned senior counsel, Mr. Deo, learned Advocate General for the State and Mr. Patwardhan, advocate for respondent No.1.

2. The applicant in both the civil applications are seeking similar reliefs viz. to permit them to conduct Common Entrance Tests (for short "CETs") in terms of the schedule for the academic year 2016-2017 for filling the seats remaining vacant after the Common Admission Process (for short "CAP") conducted by the Directorate of Technical Education is completed and to admit the students at the institutional level on inter-se merit drawn up as the result of such CET.

3. The applicant in civil application No. 1510 of 2016 is the Management Association of the MCA Institutes and the applicant in civil application No. 1511 of 2016 is the Association of Management of MBA/MMS, PGDM Institutes. Mr. Dhakephalkar and Mr. Kumbhkoni, learned senior counsel for the respective applicant placed on record the details of admission through CETs. They submitted that so far as MBA, MMS and PGDM courses are concerned, the total intake capacity is 56148 and as far as MCA is concerned, the total intake capacity is 9896. They further submitted that after the 3rd round of CAP, 7997 seats are vacant in addition to 5897 seats of the institutional quota. They submitted that the CET in respect of these courses was held in the month of March 2016. Since, at that time, the results of the under graduate courses were not declared, most of the students chose not to appear and these students are not eligible for admission in the said courses in the respective institutions. In order to enable these students

to secure admission, the applicants be permitted to hold CET or in the alternative State may be directed to hold CET. Learned senior counsel submitted that in order to enable the students to participate in CAP, no minimum qualifying marks in CET are prescribed. They submitted that the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015 (for short "the said Act") does not prohibit holding of more than one CET. Lastly they submitted that there would be no prejudice to anybody and holding second CET would be in the interest of the students. They also submitted that, the Government in terms of the second proviso to Section 4 of the said Act, can exempt the said courses from the requirement of CET.

4. Mr. Deo, learned AG contested the applications vehemently. He submitted that total 74305 students registered for on-line examination of CET and, out of these students, 69322 appeared for on-line CET and out of the students who appeared for on-line CET, 35470 students reported for verification of documents for admission to the said courses and approximately 34000 students did not report for verification of documents. He submitted that in the first round of CAP, 18987 students were allotted seats in various institutions. In the second round of CAP, 2935 students were allotted seats in various institutions. In the third round of CAP, 580 students were allotted seats in various institutions. He stated that the fourth round of CAP is still under process.

Mr. Deo submitted that the said Act does not permit multiple CETs. The Act also does not permit Association to hold CETs of their own. Mr. Deo submitted that in terms of the decision of the Apex Court in **Parshvanath Charitable Trust v. All India Council of Technical Education, (2013) 3 SCC 385**, the cut-off date for admission is 15th August and, therefore, not it is not possible for the State to hold CET. Regarding exemption of the said courses from the requirement of CET, learned AG submitted that the State Government took decision as early as in September 2015 not to exempt these courses and decided to hold CET and, therefore, it is not possible to accept the request of the applicants in that regard.

5. The above civil applications were placed before this Court on 1st July, 2016. On that day, learned senior counsel appearing for the applicants made a statement that they will make an application for exemption in terms of second proviso to Section 4 of the said Act within a period of one week. In view of the said statement, we directed the Government to decide the said application on its own merits in the event of the applicant filing the same. The applicants, accordingly, filed the exemption application which was rejected by speaking order dated 11th July, 2016. The applicants have not challenged this order either by amending the civil applications or filing writ petitions. In that view of the

matter, no direction can be given as sought to Government to exempt the said courses from CET.

6. The prayer to permit the applicants to hold CET cannot be granted in the light of provision of sections 4 and 5 of the said Act, which reads as under:-

"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) admissions 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."

Reading of the above provisions makes it unequivocally clear that the admission to the said courses shall be on the basis of CET and CAP, conducted in the manner, as may be prescribed by Rules, and any admission, contrary to the above provisions would be void. In the light of these provisions, the applicants prayer to permit them to hold CET cannot be entertained.

7. As far as submission regarding holding of second CET by the State/competent authority is concerned, the competent authority has held CET in the month of March-2016 and completed the process as per the schedule fixed by the Apex Court in **Parshvanath Charitable Trust (Supra)**. It is not the case of the applicants that there is any irregularity or illegality in holding the said CETS. The applicants have not demonstrated any injustice or glaring irregularity in conducting these CETS. In these circumstances, it is not possible for this Court to accept the prayers made in the civil applications. The civil applications, accordingly, stands dismissed.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]