

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
MISC. CIVIL APPLICATION NO. 932/2016 (FOR REVIEW) IN
WRIT PETITION NO.4647/2016 (D)

State of Maharashtra through Principal Secretary, Higher and Technical Education,
Mantralaya, Mumbai and anr. ..vs.. Ritika d/o Mohan Vakil

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.L.M.Acharya, Advocate with Mr.D.P. Thakare, Addl. G. P. for applicants-State.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.
DATE : SEPTEMBER 21, 2016

1. The State has approached this Court seeking review of the order dated 31.08.2016 in Writ Petition No.4647/2016 passed by this Court. Vide the said order, we had directed the respondent no.3 in the writ petition to admit the petitioner to the Master of Technology Degree in Town and Country Planning subject. We had also directed the respondent no.3 to grant approval to the admission of the petitioner. (Parties herein are referred to as they are referred in the original petition).

2. The petitioner had approached this Court seeking admission to the Master of Technology (M.Tech.). The petitioner had passed her Bachelor of Architecture from Vishveriyya National Institute of Technology and had appeared for the Graduate Aptitude Test in Engineering (GATE). She had cleared the said examination and had thereafter appeared for the State Common Entrance Test for Master in

Engineering and Technology. She had cleared the said examination also and was placed at Serial No.1054 in the provisional merit list.

3. The petitioner was seeking admission in the respondent no.3 college for the Post Graduate Degree in M.Tech. in Town and Country Planning. From the perusal of the brochure issued by the respondent no.3, we had noticed that the eligibility for admission to the M. Tech. course in the faculty of Town and Country Planning was as under:

Sr. No	Name of the P.G. degree.	Name of the program	Qualifying exam	GATE subject
1	M.Tech (Civil)	a)Structural Engineering b)Geotechnical Engineering c)Construction Management d)Environment and Water Resource Engineering	BE/B.Tech.in any branch of Civil Engineering domain.	Civil
		e)Town and Country Planning.	BE/B,Tech.in any branch of Civil engineering domain OR B.,Arch/B.Planning/ G.D.Arch/New Diploma in Architecture (Five years of full time) awarded by the Government of Maharashtra with one year's Practical Experience/ARIBA.	Civil OR Architecture and planning

4. The admission of the petitioner was strongly opposed by respondent nos.1 and 2 on the ground that in view of the notification dated 11.03.2016, she was not eligible for admission in the said course. However, when certain glaring lacunae in the said notification were pointed out to the learned Additional Government Pleader, he sought time to take instructions from the Principal Secretary, Higher and Technical Education.

5. When the matter was called out in the post lunch session, the learned Additional Government Pleader informed the Court that the State Government has withdrawn the notification dated 11.03.2016.

6. We had, therefore, observed that when the Government Resolution dated 11.03.2016 is itself being withdrawn by the State Government, there could be no impediment for the petitioner in getting the admission for M.Tech. (Civil) in the subject of Town and Country Planning. We had passed the said order since the petitioner not only possesses the qualification as prescribed by the respondent no.3 but had also cleared the GATE and was in the merit list.

7. Mr. Acharya, learned counsel for the State, submits that various errors of law have crept in the order under review. He made the following submissions:

(i) Under the All India Council for Technical Education (hereinafter referred to as the “AICTE”) Act, it is the AICTE which is authorised to prescribe the requisite qualification for admission in the professional course. He further submits that the State Government has also enacted a law namely; the *Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015* (hereinafter referred to as the “Maharashtra Act”). The learned counsel submitted that under the Maharashtra Act, vide Section 3, the State Government shall notify the eligibility criteria and notifies the same. However, that cannot be less than the one prescribed by the AICTE.

(ii) The eligibility as prescribed by the respondent no.3 was beyond its jurisdiction inasmuch as the respondent no.3, though an autonomous body, was bound to follow the eligibility criteria as prescribed by the AICTE.

(iii) The learned counsel further submits that in view of the law laid down by the Hon'ble Apex Court in the case of

Parshvanath Charitable Trust v. All India Council for Technical Education [(2013) 3 Supreme Court Cases 383],

the admission could not have been granted after 15th of August.

The learned counsel for the State further submits that the learned Additional Government Pleader appearing before the Court had erroneously made a statement that the Government Resolution dated 11.03.2016 is being withdrawn by the State Government. He submitted that what was informed to the learned Additional Government Pleader was that the obvious error in the Government Resolution dated 11.03.2016 is being corrected. He submitted that accordingly a corrigendum is also issued by the State Government on 09.09.2016.

8. The learned counsel further submits that for being entitled to be admitted to the M. Tech. course of any faculty, the candidate must have obtained a Bachelor of Engineering degree. To a specific query as to how a person who has obtained an engineering degree could be entitled to admission in M.Tech. in Town Planning inasmuch as the eligibility provided is Bachelor of Planning or equivalent degree, the learned counsel submitted that in the programme of Engineering and Technology at Post Graduate Level, the subject of Town and Country Planning is specifically included at item No.553 and as such a person

holding a Bachelor of Engineering degree could be entitled to be admitted to the course of M. Tech. in Town and Country Planning.

9. The qualification prescribed by the AICTE for M.E./M. Tech. is as under:

v	M.E/ M.Tech	2 years	Bachelor's degree or equivalent in the relevant field. Obtained at least 50% marks (45% in case of candidate belonging to reserved category) at the qualifying Examination.
---	----------------	---------	--

10. It could thus be seen that the qualification prescribed by the AICTE for taking admission to the M. Tech. course is Bachelor's Degree or equivalent in the relevant field. It could thus be seen that if the argument of the learned counsel for the State is to be accepted then only a person who has obtained Bachelor of Engineering degree in the relevant field would be entitled to be admitted for the Post Graduate course. The situation would be; only a person who has obtained Bachelor of Engineering degree in Chemical Engineering would be entitled to be admitted in the Post Graduate course in the Chemical Engineering; a person who has obtained Bachelor of Engineering degree in the Electronics would be entitled to be admitted in the Post Graduate course in Electronics; a person who has obtained Bachelor of Engineering degree in Civil would be entitled to be admitted for the

Post Graduate course in the Civil Engineering; a person who has obtained Bachelor of Engineering in Aeronautical Engineering would only be entitled to be admitted for the Post Graduate course in the Aeronautical Engineering. The examples are endless. To a specific query as to whether all the undergraduate courses have such a specialization, the learned counsel fairly concedes that there is no such specialization.

11. It is pertinent to note that insofar as the subject of Town and Country Planning is concerned, there is a specialized course of Town Planning even at the undergraduate level. It could be found at Sr. No. (ix) of Clause 1.1 of Appendix-I of AICTE Handbook for the year 2016-17, which reads thus:

ix	Town Planning	4 years	Passed 10 +2 examination with Physics and Mathematics as compulsory subjects along with one of the Chemistry/ Engineering Drawing/ Computer Science/Biology/ Technical Vocational subject. Obtained at least 45% marks (40% in case of candidate belonging to reserved category) marks in the above subjects taken together.
----	---------------	---------	--

12. It is further to be noted that clause 1.2 of the said Appendix-I deals with the Post Graduate Degree and Post Graduate Diploma Programs (Full Time). Clause (xi) thereof specifically deals with the

Post Graduate course in the Town Planning. The qualification prescribed therefor is as under:

xi	Town Planning	2 years	Bachelor of Planning or equivalent degree. Obtained at least 50% marks (45% in case of candidate belonging to reserved category) at the qualifying Examination.
----	---------------	---------	--

13. Thus, only such of the candidates who have passed Bachelor of Planning or equivalent degree in the subject of Town Planning would be entitled to the Post Graduate Course for Town Planning. If that is so, none of the persons who have obtained the degree of Bachelor of Engineering would be entitled to be admitted against the said course.

14. Another argument advanced by the learned counsel for the State is that a person who has passed a degree of engineering would be entitled to be admitted for the Post Graduate engineering degree in the subject of Country and Town Planning, since the subject of Town Planning is included in the Programme of Engineering and Technology at Post Graduate level. The same is also, in our view, without merit.

15. No doubt that the learned counsel is right in pointing out item no.553 in clause 2.3 of the said appendix i.e. Town and Country Planning. However, it could be seen that the Programme of Architecture at the Post Graduate level, which is in clause 2.11, at more than one

item, deals with the subject of Planning. It will be relevant to refer to clauses 12, 13, 17, 21, 22, 23 and 24 of the said clause, which read thus:

Sr. No.	Name of Subject
12.	Industrial Area Planning and Management
13	Infrastructure Planning
17	Planning
18 to 20	
21	Planning
22	Urban and Regional Planning
23	Urban Design
24	Urban Planning

16. It could be thus seen that there are at least 7 items in the Programme of Architecture at the Post Graduate level which are directly concerned with the aspect of planning. Not only that but the Undergraduate Level Programme for Architecture, which is at Clause 2.12 also has the subject of Town Planning. The same are as under:

Sr. No.	Name of Subject
7.	Planning
8.	Urban and Regional Planning

17. When we compare the Programme for Architecture at Undergraduate level with the Programme of Engineering at Undergraduate level, it could be seen that there is not even a single

subject which deals with the planning either urban or rural. It could be clearly seen that the programme which are available at undergraduate level for architecture has some subjects which have a direct relation with the planning and design. Whereas, for the programme at undergraduate level for the engineering and technology, there is not even a single subject which deals with the urban or rural planning. In that view of the a matter, the said argument will also have to be rejected.

18. We may clarify that we do not possess the expertise in the subject and what has been prescribed by the AICTE will have a last word in the matter. Their Lordships of the Apex Court right from the case of *State of T. N. and anr..vs.Adhiyaman Educational & Research Institute and others; (1995) 4 SCC 104* have upheld the primacy of the experts body in such matters. However, since the arguments are advanced by the State Government to test the correctness of the said argument, we were compelled to prima facie compare the Programme for Engineering and Technology and Architecture both at the Undergraduate and the Post Graduate levels.

19. Apart from that, the argument advanced by the State Government is contrary to its own notification issued on 11.03.2016,

which is subsequently corrected on 09.09.2016. It will be relevant to refer to clause (4) (1) (iii) of the notification dated 11.03.2011, which reads thus:

“4. Engineering and Technology:

(1) For Maharashtra Candidature Candidates and All India Candidature Candidates.-

(i)

(ii)

(iii) Passed Bachelor Degree in the relevant course of Engineering and Technology as specified in the eligibility criteria for admission to a Post Graduate Degree course of the concerned University for which admission is being sought.”

20. Perusal of Clause 4 (1) (iii) clearly reveals that the State Government itself has provided that a person should have passed Bachelor's Degree in the relevant course of Engineering and Technology as specified in the eligibility criteria for admission to Post Graduate degree course of the concerned university for which admission is being sought. Undisputedly, respondent no.3 was originally a Government engineering college and has now been bestowed with the status of autonomous body. It is a college owned and managed by the Government of Maharashtra. The respondent no.3 has specified the eligibility criteria. We are of the considered view that in view of Clause 4 (1) (iii) of the Government notification, it is the respondent no.3 who

could have specified the eligibility criteria. In any case, it is nobody's case that the eligibility provided by the respondent no.3 can be said to be less than the one which is stipulated by the AICTE.

21. We have come across various cases wherein on account of errors committed either by the AICTE or by the State Government in not framing rules properly, the situation had led to a confusion in the mind of students and institutions. It is also not in dispute that for all these years for being eligible to be admitted in the respondent no.3 college for the Master's Degree in Town and Country Planning, a degree of Bachelor of Engineering or Bachelor of Technology in any branch of the civil engineering or a degree of Bachelor of Architecture, Bachelor of Planning, was held to be eligible. We do hope and expect that the AICTE and the State Government would be more diligent in framing rules henceforth so that the poor students are not made to suffer unnecessarily.

22. That leads us to deal with last submission of the learned counsel for the State which is the only one in which we find some merit.

23. The petition came to be disposed of on the basis of the statement made by the learned Additional Government Pleader that he

had spoken to the Principal Secretary, Higher and Technical Education and he had informed that the State Government had withdrawn the notification dated 11.03.2016. We are in agreement with the learned counsel for the State that such a statement could not have been made by the Principal Secretary as the Government could not have withdrawn the notification only on the basis of the statement of Principal Secretary as the same is quasi legislative in nature. It appears that there was some communication gap between the learned Additional Government Pleader for the State and the Principal Secretary, Higher and Technical Education. It appears that what was sought to be informed was that the Government was issuing the corrigendum to correct the mistake which had crept in.

24. In that view of the matter, we are inclined to partly allow the review. Paragraph 8 of the order dated 31.08.2016 stands recalled. However, in view of the reasonings given by us, the prayer for review of the rest of the order is rejected.

JUDGE

JUDGE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: Y. A. Kahale.

Uploaded On:04.10.2016