

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 9358 OF 2017

Shreeyash Pratishthan's
Shreeyash College of Engineering
& Technology, Gat No.258 (P),
Satara Parisar, Beed Bypass road,
Near SRDF Camp, Aurangabad
Through its Director of Premises
Uttam s/o Baburao Kalwane,
Age 55 years, R/o Laxmi Nagar,
Aurangabad, Taluka and District
Aurangabad

.. Petitioner

Versus

1. State of Maharashtra,
through the Secretary,
Higher & Technical Education,
Mantralaya, Mumbai 32
2. The Director of Technical
Education, Maharashtra State,
3, Mahapalika Marg, Mumbai
3. All India Council for Technical
Education, New Delhi,
7th Floor, Chandralok Building,
Janpath, New Delhi 110001
Through its Member Secretary

.. Respondents

Mr A.M. Karad, Advocate for petitioner
Mr V.S. Badakh, AGP for respondents no.1 and 2
Mr S.V. Advant, Advocate for respondent no.3

**CORAM : R.M. BORDE AND
A.M. DHAVALA, JJ**

DATE : 31st July 2017

ORAL JUDGMENT (Per R.M. Borde, J.)

1. Rule. Rule returnable forthwith. With the consent of parties, petition is taken up for final disposal at admission stage.
2. The petitioner-institution is seeking directions to the respondent no.2 Director of Technical Education, Maharashtra State, Mumbai to

accord sanction for the intake capacity of the petitioner-institution for the Direct 2nd Year Engineering Course in accordance with the extension of approval letter dated 23rd September 2016, issued by the All India Council for Technical Education (hereinafter referred to as "AICTE" for brevity) and further issue directions to allot the students in consonance with the revised intake capacity for the academic year 2017-18.

3. The petitioner-institution is operating a college of Engineering since 2008 on no grant basis. The Engineering College is permitted to admit students by virtue of grant of continuation of affiliation by the AICTE in accordance with the Approval Process Handbook. The College of Engineering imparts training to the students of Engineering Degree in Computer Science and Engineering, Electronics and Telecommunication Engineering and Mechanical Engineering faculties. The approved intake of the Engineering College in respect of these three faculties for the year 2015-16 was 120 students, however, the approved intake was reduced to 30 in respect of all the three courses by virtue of orders issued by the AICTE on 14th Jun 2016. It does appear that the petitioner-institution made representations to the AICTE and in view of the subsequent order issued by AICTE on 23rd September 2016, the intake of the students in respect of three Engineering Degree courses, referred to above has been prescribed as 60 students. However, since intake was increased by 30 students at the fag end of September, the College could not admit the students for the academic year 2016-17 and the strength of the students admitted during the academic year 2016-17 in respect of above said

three courses was limited as 30 students. In the instant petition, challenge is raised to the orders issued by the State Government restricting intake capacity of the college in respect of aforesaid three courses, for admitting the students to Direct Second Year additional batch. In view of the policy prescribed by the AICTE, the College of Engineering is entitled to open additional division for the Second Year Engineering Course. The students who have completed Diploma Course in Engineering and obtained B.Sc. degree are eligible to secure admission to Direct Second Year Engineering Course. The intake capacity of the Direct Second Year Engineering Course shall have to be determined in accordance with Clause 9 of the Approval Process Handbook for the year 2017-18 published by AICTE. It is provided in Clause 9, second paragraph, that "Diploma Engineering students shall be eligible for admission to Direct Second Year Engineer Courses up to a maximum 20% 'Approved Intake' (30% for institutions in Andaman, Nicobar, Lakshdweep, Daman and Diu) which shall be over and above supernumerary to the 'Approved Intake' plus the unfilled vacancies of 1st year as per the Approval Process Handbook."

4. The Government of Maharashtra has published information handbook for admission to undergraduate technical courses for the year 2017-18. The handbook published by the State Government also refers to the admissions for Direct Second Year Engineering and Technology and Pharmacy Courses. The State has formulated rules which are incorporated in Schedule-II relating to Direct Second Year Engineering and Technology admissions. The distribution of seats available are required to be notified on the website before submission

of form for centralised admission process. It is provided that (i) Lateral Entry Seats: "20%" of the Sanctioned Intake for Engineering and Technical would be available (ii) The seats remaining vacant of particular branch less the admission during the previous year with due consideration of the changes of the course or institution as given in Rule 16, would be permitted.

5. The learned Counsel for the petitioner relying upon Clause (ii) referred to above contends that since the institution was permitted to admit additional 30 seats in view of corrigendum issued by the AICTE on 23rd September 2016, the unfilled seats or vacancies remaining shall have to be computed for the purposes of determining the intake for the Direct Second Year Engineering and Technology Courses. The petitioner contends that since the additional 30 seats were permitted by AICTE in the month of September 2016, after completion of process of admission, the institution could not fill those seats and as such, seats remained vacant. It is contended that the vacancies remaining during the year 2016-17 shall be considered to be vacant seats, for the purpose of computing the total intake for Direct Second Year Engineering and Technology Courses admissible for the college. The contention raised by the petitioner to the extent permitting the sanctioned intake in respect of Lateral Entry Seats i.e. 20% of the sanctioned intake for Engineering and Technology Courses deserves to be considered favourably. The sanctioned intake for Engineering permitted by AICTE in view of the permission accorded on 23rd September 2016 was 60 seats for the above referred three courses. While granting extension of approval for the year 2017-18, AICTE has

recorded the intake approved for the year 2016-17 First Year Engineering and Technology Courses in respect of the three Courses referred to above as 30 students and accordingly State has computed the approved intake for the Direct Second Year Engineering and Technology Courses permissible for the college. According to us, the petitioner-institution shall be permitted to fill in Lateral Entry Seats, 20% of the sanctioned intake in Engineering and Technology Courses based upon the approval accorded by AICTE and we direct the respondent-State to compute the seats accordingly and permit the institution to admit the students based upon such calculations.

6. The contention of the petitioner that institution shall be permitted to fill in the vacancies, based upon number of seats, which remained vacant within the sanctioned intake and as such 30 seats permitted by the AICTE by virtue of the corrigendum issued on 23rd September 2016, shall be computed for the purposes of determining the intake for Direct Second Year Engineering and Technology Courses does not deserve consideration. The institution was permitted the revised intake of additional 30 seats in the month of September 2016 and by then, the process of admitting the students to Engineering Courses regulated as per the programme declared by the State of Maharashtra was already over. Even otherwise, as per the directive issued by the Supreme Court in the matter of **Parshavanath Charitable Trust & Ors. Vs. All India Council for Tech. Education & Ors.**, reported in **(2013) 3 SCC 385**, it was not permissible for the petitioner-institution to admit the students after the programme/schedule for admission prescribed by the State was

over. The unfilled seats, which were sanctioned after the cut off date by the AICTE cannot be considered to be the vacancies so as to facilitate the institution to admit additional students. AICTE has published the regulations under the heading “Approval Process Handbook 2017-18” and in view of Regulation 9 Chapter VI, it is permissible for the institution to admit 20% of Lateral Entry Seats (+) unfilled vacancies of First Year as per the Approval Process Handbook.

7. The Approval Process Handbook prescribes time frame for admitting the students and since the admission programme was not adhered to and the revised strength was made available after the schedule of admission prescribed by the State Government was already complete, the so called vacancies on which the petitioner is placing reliance were, in fact, not available for the college/technical institution. The revised seats permitted by the AICTE under the orders dated 23rd September 2016 were not available for the college to be filled in for the year 2016-17, for the simple reason that by the time the revised seats were permitted, the whole process of admission regulated by the Director of Technical Education/State Government was already over and as such, the revised seats permitted by AICTE under the orders issued on 23rd September 2016 cannot be computed for the purposes of the term “vacancies”, appearing in Regulation 9 of Chapter VI of the Approval Process Handbook for the year 2017-18. The vacancies shall be available as per the “Approval Process Handbook” as well as the judgment in the matter of Parshavanath Charitable Trust Vs. All India Council for Technical Education (cited supra) delivered by the Supreme Court prescribing the time frame and

since the revised seats were made available after the admission programme was over, those resultant vacancies cannot be said to be available to the institution in consonance of Regulation 9 of Chapter VI of the Approval Process Handbook. We, therefore, decline to grant benefit in respect of the 'vacancies' in favour of the institution for determining the strength of Direct Second Year Engineering and Technology Course.

8. The petitioner-institution as such shall be permitted to fill in Lateral Entry Seats for each of the Course referred to above.

9. Rule is made absolute to the extent specified above. There shall be no order as to costs.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)

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