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

WRIT PETITION NO. 6848 OF 2017

Aldel Education Trust's ...Petitioner
St. John Institute of Pharmacy & Research
& St. John College of Engineering &
management
Versus
State of Maharashtra & Ors. ...Respondents

WRIT PETITION NO. 6968 OF 2017

H.J. Thim Trust's Theem College of ...Petitioner
Engineering at Boisar
Versus
State of Maharashtra & Ors. ...Respondents

The State of Maharashtra & Ors. ...Respondents

WRIT PETITION NO. 6216 OF 2017

Association of the Management of ...Petitioner
Unaided Institute in Rural Areas
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. C.K. Thomas, i/b C.K. Thomas & Associates for
Petitioners in above Petitions.
Mr. A.A. Kumbhakoni, Advocate General, & Mr. Akshay
Shinde, Adv. with Mr. C.P. Yadav, AGP for Respondents
– State in WPs.
Mr. Asadullah Shaikh, h/f Mr. R.A. Rodrigues, Adv. for
Respondent No.6 in WP No. 6848 of 2017 & 6968 of
2017.
Mr. V.M. Thorat, with P.V. Thorat, i/b M.V. Thorat , for the

Petitioner in WP No. 6216 of 2017.
Mr. A.A. Kumbhakoni, Advocate General with Mr. B.V. Samant, AGP for Respondent – State with Akshay Shinde, Adv. in WP NO. 6216 of 2017.

**CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**
DATED: 25th July 2017

PC:-

1. Rule. Rule made returnable forthwith. Heard by consent.
2. Since in the present Petitions the facts and questions of law are identical they are heard and decided by the common judgment.
3. In Writ Petition No. 6848 of 2017, it is the contentions of the Petitioner that when All India Council for Technical Educations (“**AICTE**”) has itself laid down a eligibility criteria required for admission for graduate's courses in Engineering and Technology as well as in Pharmacy at 50% in general category and 45% for backward classes, then it is not permissible for the State Government to change the said criteria.

4. Insofar as degree in the second Writ Petition No. 6216 of 2017 is concerned, it is with regard to the same condition but only so far as degree in technology and engineering is concerned.

5. Heard Shri Thorat and Mr. Thomas, the learned Advocates for the Petitioners, Shri Kumbhakoni, the learned Advocate General for the State.

6. Shri Thomas has submitted that once the eligibility is determined by a body of expert i.e. AICTE, it is not permissible for the State Government to further provide for eligibility which is other than the one provided by AICTE. Shri Thomas further submits that on account of the impugned government notification thereby fixing a higher criteria of eligibility, the students in the rural area are being put to a disadvantageous position.

7. Shri Thorat submits that in view of the judgment of the Apex Court in the case of ***Visvewaraiah Technological***

University and Another Vs. Krishnendu Halder & Ors.¹, the State is required to periodically review the eligibility criteria taking into consideration various factors. He further submits that, when on one hand the seats in the Engineering colleges are remaining unfulfilled, and on the other hand, the act of the State Government in prescribing a higher qualification is totally contrary to the law laid down in the ***Visvewaraiah (Supra)***. He further submits that by the impugned notification different eligibilities are provided for admission in the first year engineering course and the different one for the second year engineering course. He submits that there is no rational in providing different eligibility for the same technical courses merely because the year changes. He submits that when a lower percentage is prescribed for admissions to the second year engineering course, a higher percentage for admission to the first year course in engineering is totally in discriminatory and therefore violative at Article 14 of the Constitution of India. He further submits that the students in rural area in the State of Maharashtra are put to disadvantageous position, inasmuch

1 (2011) 4 Supreme Court Cases 606.

as the students in Maharashtra who could not secure 50% of the marks are deprived at the admission, whereas the students in the other States would be entitled to the admission even if they obtain 45% marks.

8. Shri Kumbhakoni, the learned Advocate General submits that the State is not prohibited from fixing a higher criteria than what is prescribed by the AICTE. He submits that the only prohibition is for prescribing a criteria which is lower than that is provided by AICTE. The learned Advocate General further submits that the issue is no more *res integra*, inasmuch as the Division Bench of this Court at Nagpur in the case of ***Kunal S/o. Haribhau Butle & Anr. Vs. State of Maharashtra & Ors.***² has upheld the notification which is subject matter of challenge in the present Petition.

9. The legal position is no more *res integra*. Right from the judgment of their Lordships in the case of ***State of T.N. & Anr. Vs. Adhiyaman Educational and Research Institute & Ors.***³, the Apex Court has consistently held that the

² [2015 (1)] Mh.L.J. 790.

³ (1995) 4 SCC 104.

experts body like AICTE will have a last word in prescribing the minimum qualification. It has been stated that no other authority including the State Government would be entitled to fix up a criteria which is lower than the one prescribed by AICTE. However, the Apex Court has clearly held that if the State taking into consideration the maintenance of higher standard of education, decides to fix a higher criteria then the one which is prescribed by AICTE, the State Government is not precluded from doing so.

10. Insofar as the reliance by Shri Thorat on the judgment of Apex Court in the case of ***Visvewaraiah (Supra)*** is concerned, the said reliance is totally misplaced. The stray observation in a judgment cannot be construed to be a *ratio decidendi*, of the view taken by the Court. No doubt that the Apex Court in the case of ***Visvewaraiah (Supra)*** has held that the State is expected to do periodical review of eligibility criteria. However, while doing so, the State is required to take into consideration the need to maintain excellence and high standard in higher education on one hand and the need to maintain a healthy ration between the total number of seats

available in the State and the number of students seeking admission on the other hand. In the case of **Visvewaraiah (Supra)**, the students who were admitted, contrary to the minimum standard as prescribed by the institute had approached the High Court. The High Court had allowed the Petition and directed the admissions to be regularised. The institute aggrieved thereby had approached the Hon'ble Apex Court. Their Lordships of the Apex Court observed in paragraphs Nos. 15 & 17 which read thus:

15. The primary reason for seats remaining vacant in a State is the mushrooming of private institutions in higher education. This is so in several States in regards to teachers training institutions, dental colleges or engineering colleges. The second reason is certain disciplines going out of favour with students because they are considered to be no longer promising or attractive for future career prospects. The third reason is the bad reputation acquired by some institutions due to lack of infrastructure, bad faculty and indifferent teaching. Fixing of higher standards, marginally higher than the minimum, is seldom the reason for seats in some colleges remaining vacant or unfilled during a particular year. Therefore, a student whose marks fall short of the eligibility criteria fixed by the State / University, or any college which admits such students directly under the management quota, cannot contend that the admission of students

found qualified under the criteria fixed by AICTE, should be approved even if they do not fulfil the higher eligibility criteria fixed by the State / University.

17. No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State / University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or “adversely affect” the standards, if any, fixed by the central body under a Central enactment. The order of the Division Bench is therefore unsustainable.

11. The bare perusal of the aforesaid two paragraphs would reveal that, the contentions raised by Shri Thorat are without any substance.

12. Though Shri Thorat has placed reliance on the judgment of ***Visvewaraiah (Supra)***, he has not been in position to point out any observations of the Apex Court, which can be said to be departed from the well settled principal laid down in the case of ***Adhiyaman (Supra)***.

13. Apart from this, the Division Bench of this Court at Nagpur Bench to which one of us (B.R. Gavai, J.) was party has already upheld the said notification in the case of ***Kunal (Supra)***. Insofar as the Contention of Shri Thorat with regard to discrimination amongst the students in Maharashtra and the students in other State is concerned, it is well settled principle that the rules framed in the other State cannot be made a ground for holding the rules framed by State of Maharashtra as unconstitutional. Unless the Petitioners are in position to point out that their challenge is permissible on any of the grounds to hold an enactment unconstitutional, it will not be permissible for us to exercise a jurisdiction under Article 226 of the Constitution of India.

14. With regard to other contention that the seats are remaining vacant in the State of Maharashtra and, therefore, there is no rational reducing eligibility criteria is concerned, in our view the said contention is also without substance. As has been held in Apex Court in the ***Visvewaraiah (Supra)***, on which Shri Thorat heavily relies, the primary reason for seats remaining vacant in a State is the mushrooming of private

institutions in higher education. If the politicians in the State in their wisdom, have given engineering and medical colleges on a platter, for the reasons best known to them, and on account of the eligibility criteria fixed by the State Government seats are remaining vacant, the said cannot be a ground to hold that the rules are unconstitutional. In any case, the Court while sitting in its jurisdiction under Article 226 will examine only the correctness of the rules within the parameters available to it. It is not possible to strike down a rule only because the shops opened by private institution are not in a position to encash the bounty given to them, in full.

15. In the result, we hold that we see no reason to interfere with the impugned notification which fixes a higher eligibility criteria than the one fixed by AICTE.

16. The Petitions are therefore, found to be without merit and as such dismissed. Rule is discharged.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)