



Neutral Citation Number 2023:DH02:4968

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8802/2023 and CM APPL. 33268/2023**

Date of Decision: **11.07.2023**

IN THE MATTER OF:

OMANSH THAKUR
S/O RAMANAND THAKUR
762, J-BLOCK, MANDIR MARG
NEW DELHI-110001

..... PETITIONER

Through: Mr.R.R. Kumar, Mr. Amrendra
Kumar and Mr.Yogesh Gupta,
Advocates.

Versus

UNION OF INDIA
THROUGH
SECRETARY, MINISTRY OF EDUCATION
(SHIKSHA MANTRALAYA), DEPARTMENT OF HIGHER
EDUCATION
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**CENTRAL SEAT ALLOCATION BOARD – 2023
(CSAB-2023)**

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CHOPRA
Signing Date: 19.07.2023
15:53:12

Signature Not Verified
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By: PURUSHAINDR
KUMAR RAURAV

THROUGH CHAIRPERSON,
 PROF. K. UMAMAHESHWAR RAO,
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 ODHISA, INDIA – 769008 AND CO-CHAIRMAN OF THE JOSAA-
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.... RESPONDENT NO.4

Through: Ms. Sarika Singh, Advocate for R-1.
 Mr. Arjun Mitra, Advocate for R-2, 3
 and 4.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

J U D G M E N T

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India seeking the following reliefs: -

“i) Issue a writ of certiorari and/or any other appropriate writ, order or direction to quash/set aside the Office Memorandum dt.17.03.2023 issued by Govt. of India, Ministry of Education, Dept. of Higher Education; and

ii) Issue a writ of mandamus and/or any other appropriate writ, order or direction directing the Respondents/National Institute of Technology, Delhi to admit the Petitioner in allocated academic program B - Tech (Computer Science) for the academic session 2023-24 at National Institute of Technology, Delhi.”

2. The case of the petitioner is that he appeared in Class XII examination in July, 2022 and obtained 63.2% marks in the said examination. The petitioner in pursuance of the Information Bulletin issued by the National Testing Agency (*hereinafter referred to as 'NTA'*) appeared in the Joint

Entrance Examination (MAIN)-2023 (*hereinafter referred to as 'JEE (MAIN)-2023'*) on 25.01.2023.

3. The result of the first session of the said examination was declared on 06.02.2023. Since the petitioner obtained satisfactory marks, he did not appear in the second session and accordingly, the final result was notified on 29.04.2023.

4. The counsel for the petitioner also states that on 30.06.2023, on the basis of the petitioner's merit, the Seat Allocation Board allocated a seat to him in B.Tech course at respondent no.2-National Institute of Technology, Delhi (*hereinafter referred to as 'NIT, Delhi'*).

5. The petitioner, thereafter, attempted to complete the formalities to ensure his admission; however, on account of the guidelines issued by respondent no.3-Dean of NIT Delhi on the basis of Government of India (*hereinafter referred to as 'GoI'*) Office Memorandum dated 17.03.2023, the petitioner was not granted admission.

6. Learned counsel appearing on behalf of the petitioner submits that the decision to not allow the petitioner to take admission against the allocated seat was devoid of reason. He submits that by way of the Office Memorandum of GoI dated 17.03.2023, the rules for admission have been changed so as to incorporate the requirement of obtaining 75% marks in Class XII examination as an eligibility criterion. He also submits that such a criterion was not insisted upon in earlier academic years and as per the decision of the GoI, the requirement of obtaining 75% marks in Class XII examination remained suspended for two consecutive academic years. He further submits that had there been any inbuilt criterion of obtaining 75%

marks in Class XII examination, there was no necessity of issuance of the Office Memorandum on 17.03.2023. According to him, the mere fact of issuance of the Office Memorandum on 17.03.2023 stipulating the requirement of obtaining 75% marks in Class XII examination itself signifies that the respondent nos.1 and 2 amended the eligibility criteria by way of a subsequent Office Memorandum which is impermissible in law.

7. Learned counsel appearing on behalf of the petitioner further states that the petitioner is a highly meritorious candidate and the denial of admission to a meritorious candidate on the basis of a changed criterion would be a casualty of merit and the same would lead to frustration in the mind of a young student. Therefore, this court in exercise of power under Article 226 of the Constitution of India may direct the respondents to admit the petitioner against the allocated seat.

8. This court on 04.07.2023, after hearing learned counsel who appeared on behalf of the petitioner, had directed for issuance of notice to the respondents. This court *vide* order dated 07.07.2023 had also directed the petitioner to implead Central Seat Allocation Board–2023 (*hereinafter referred as 'CSAB'*) as a necessary respondent to the instant petition.

9. Notices were accepted on behalf of the respondents by their respective counsel and they were directed to file counter-affidavit.

10. Learned counsel who appeared on behalf of respondent no.4-CSAB has filed a comprehensive counter-affidavit to contend that the entire understanding and the stand taken by the petitioner is an afterthought. He states that the criterion of obtaining 75% marks in Class XII examination was very much present right from the issuance of the Information Bulletin. He specifically refers to Clause 14.1 from Chapter 14 of the same to

emphasize that the eligibility criteria for admission to NITs, IIITs, and CFTIs explicitly stipulates that the participating candidates must have at least 75% marks in Class XII examination conducted by the respective Boards. According to him, for the candidates belonging to SC/ST category, the requirement was of obtaining 65% marks in Class XII examination.

11. Learned counsel appearing on behalf of respondent no.4-CSAB, therefore, states that when at the time of issuance of the Information Bulletin there was a specific condition therein, the legal validity of the same should have been challenged immediately. The petitioner who willingly appeared without raising any objection, in pursuance of the Information Bulletin cannot, at the stage of final scrutiny, raise any grievance with respect to the conditions enumerated in the Information Bulletin.

12. He also submits that in the instant case, even the stage of examining the eligibility for grant of admission has not been reached. He further states that as per the scheme of admission, various steps are required to be taken by the candidates once the Seat Allotment Slip is issued in favour of any of the candidates.

13. While taking this court through the Business Rules for Joint Seat Allocation for the Academic Programs for the Academic Year 2023-24 (*hereinafter referred to as 'Business Rules'*) published on 07.06.2023, learned counsel appearing on behalf of respondent no.4-CSAB states that in Clauses 41 and 42, the steps for provisional offer of seat and its confirmation and the acceptance of seat, uploading of documents and the payment of Seat Acceptance Fee etc. are prescribed. He, therefore, states that in the instant case if the candidate's Login Trail, which has been made available at *Annexure-R4-2* is perused carefully, the same would indicate that the

petitioner has not even accepted the seat allocation. No steps were taken by the petitioner either to 'Freeze', 'Slide' or 'Float' the choice of academic program and as a necessary consequence, the seat offered to the petitioner stands cancelled in view of the subsequent stipulation made in the proviso to Clause 42 of the Business Rules.

14. Learned counsel for the respondent no.4-CSAB further states that the requirement of obtaining 75% marks has also been upheld by the Hon'ble Division Bench of the High Court of Bombay in Public Interest Litigation (PIL) No.58 of 2023 titled as '*Anubha Srivastava Sahai v. National Testing Agency and Ors*¹.' and the Hon'ble Supreme Court did not entertain the Special Leave Petition (SLP) against the said decision. He also states that under the facts of the instant case, no interference is called for as the same would completely disrupt the entire admission process conducted by the respondent. According to him, the requirement of obtaining 75% marks has been made uniformly applicable to all the candidates. He states that none of the candidates obtaining less marks than the requirement of eligibility, as stipulated under the relevant rules, has been admitted in any of the institutions. He, therefore, states that carving out an exception for a particular candidate would not be in the interest of justice and the same would lead to unwarranted disturbance in academic decisions.

15. In rejoinder submissions, learned counsel appearing on behalf of the petitioner states that firstly, the criteria/stipulation in the Information Bulletin is without any legal support and secondly, the Login Trail which has been brought on record as *Annexure-R4-2* would naturally indicate that the petitioner has not accepted the seat as there was sufficient confusion with

¹ 2023 SCC OnLine Bom 1042

respect to eligibility for grant of admission. After the seat was allotted on 30.06.2023 and the order of allocation was uploaded by respondent no.4-CSAB, the petitioner immediately contacted the concerned Dean, well within the time limit prescribed for accepting the seat. According to him, five days were given to the petitioner either to accept the seat or to forego it and within the said five days, the petitioner made efforts to understand the criteria for grant of admission.

16. He further states that once the guidelines issued by the Dean stipulated that the candidates obtaining less than 75% marks are not eligible for grant of admission, the petitioner immediately approached this court and filed the instant writ petition challenging the basis of the guidelines, and therefore, non acceptance of the seat should not be the criteria for denying the relief to the petitioner.

17. I have heard learned counsel appearing on behalf of the parties and perused the record.

18. For the sake of clarity, it would be appropriate to reproduce Clauses 41 and 42 of the Business Rules in their entirety. The same are reproduced as under:

41. It is the candidate's responsibility to login to the JoSAA portal and check if a seat is allocated in a given round of seat allocation. Schedule of JoSAA activities is available in Annexure 3 of this document. If the candidate is allocated a seat, steps of "Online Reporting" mentioned in point 42 MUST be completed, in order to accept the allocated seat before the last date/time specified for the given round, i.e. the round in which seat is allocated. Please refer to Annexure 3 for the timeline. The allocated seat will then be either confirmed / cancelled on completion of document verification. Failing to complete ALL the steps of "Online Reporting", within the specified wise timeline of the same round of JoSAA [see Annexure 3 for the round-wise timelines], will lead to

cancellation of allocated seat and the candidate will be out of further JoSAA rounds, if any.

42. A candidate who has been allocated a seat needs to download the “Initial Seat Allotment Intimation Slip” which has information regarding the Seat Allotment and steps to be followed for seat confirmation by the candidate.

Step 1: Accept the Seat

The candidate needs to accept the seat allocated and opt for any one of the options ‘Freeze’, ‘Slide’ or ‘Float’ for the choice of academic program for subsequent round(s), if any, of joint seat allocation (see section XX).

Step 2: Upload the documents

The candidate MUST upload all the required documents (as per Annexure 3) on the JoSAA portal.

Step 3: Pay the Seat Acceptance Fee

The candidate MUST pay the seat acceptance fee for continuing with the JoSAA process till the end to avail the seat in HTs or NIT+System. The documents uploaded by the candidate cannot be verified unless the candidate pays the seat acceptance fee. Admission fee varies across the Institutes/category of candidates and is different from seat acceptance fee. At the time of seat acceptance, candidates have to remit the seat acceptance fee only in the round in which the seat is allotted for the first time.

Non-payment of the seat acceptance fee is one of the ways to reject the offered / allocated seat and will be treated as a rejection. In such a situation, the candidate will no longer be able to participate in the seat allocation process in the subsequent rounds. [See points 44 and 45 below]

Seat Acceptance Fee

Rs. 20,000 for candidates with the category tag SC, ST, GENPwD, GEN-EWS-PwD, OBC-NCL-PwD, SC-PwD or STPwD and Rs. 40,000 for all other candidates (the fee includes Rs. 4,000 JoSAA processing charges). The seat acceptance fee excluding JoSAA processing charges of Rs. 4,000 will be adjusted against the admission fee.

Candidates should remit seat acceptance fee using Debit card/UPI/Credit card/Net Banking/E-Challan [See Chapter XXII below].

Step 4: Respond to queries (if any)

At the time of document verification, if the document verification officer raises any query, the candidate must respond in online mode (through candidate portal) within the stipulated time. Failure to respond to the query(ies) on time will lead to cancellation of the allotted seat and the candidate will no longer be able to participate in the JoSAA 2023 process. It is the responsibility of the candidate to check the online portal at regular intervals of time and respond to queries (if any) without fail within the stipulated time.

Candidates MUST complete all the above steps before their details are forwarded to the reporting authorities for verification and provisional allocation of the seat.

Document verification is done ONLY for those candidates who have successfully paid the seat acceptance fee.

Failure to complete all the steps of "Online Reporting" for seat acceptance will be considered as rejection of the offer and the candidate would have forfeited the eligibility for admissions to any of the institutes through JoSAA 2023 and will not be able to participate in the seat allocation process in the subsequent rounds, if any.

19. It is thus seen that so far as the admission process is concerned, once the candidate is allocated a seat, he needs to download the initial Seat Allotment Intimation Slip. The said Slip contains the information regarding the seat allotment and steps to be followed for seat confirmation by the candidate.

20. The first step mandates the candidate to accept the seat allotted and opt for any one of the options 'Freeze', 'Slide' or 'Float' for the choice of academic program for subsequent round(s), if any. In the instant case, the petitioner has admittedly not taken any of the steps stipulated in Clause 42 of the Business Rules.

21. It is thus noted that for a candidate who does not opt for the seat, the allocation letter stands cancelled in view of the stipulation made in Clause 42

of the aforesaid Rules, which clearly states that non-payment of the seat acceptance fee is one of the ways to reject the offered/ allocated seat and will be treated as a rejection.

22. In the instant case, the seat offered to the petitioner stands cancelled mainly for the reason that the petitioner has not accepted the seat allocated to him and has not paid the requisite fee within the stipulated time period.

23. A categorical stand has been taken by the respondent no.4-CSAB in this respect in paragraph no.16 of their counter-affidavit. The same is reproduced as under:

“16. In the present case, the Petitioner has neither accepted the seat by exercising the option of Freeze, Float or Slide, nor was the seat acceptance fee paid. Accordingly, the Petitioner has N-rejected the seat and is out of the counselling process. In light of the above, it is evident that (i) the present petition is not maintainable and (ii) the Petitioner has made a false averment to the effect that the Dean of NIT Delhi had refused him admission. The entire process is conducted on-line (except for document verification) and there is no possibility of any official giving or denying admission to an eligible candidate; an admission can only be done through the on-line portal.”

24. It is evident that the admission to the petitioner has been denied mainly on the ground that the petitioner has not taken requisite steps as were required under the applicable instructions. Therefore, in the absence of any challenge in that respect or infirmity in the action so taken, no relief can be granted to the petitioner.

25. Learned counsel appearing on behalf of the petitioner has argued that the petitioner, within the permissible time limit i.e. five days, had contacted the concerned Dean to inquire about the eligibility criteria as according to him, there was a sufficient confusion as to whether the petitioner would

eventually be entitled for admission against the said seat or not. He, therefore, states that even if the petitioner had accepted or paid the requisite fee, the petitioner could have been denied the admission on the ground of the Office Memorandum of the GoI dated 17.03.2023.

26. To examine the aforesaid contention, it is to be noted that Clause 14.1 of the Information Bulletin which was issued in December, 2022 itself stipulates that the candidates must secure at least 75% marks in Class XII examination conducted by the respective Boards. For the sake of clarity, the pertinent extract of Clause 14.1 of the Information Bulletin is reproduced as under:

“14.1 Eligibility for Admission to NITs, IIITs, and CFTIs participating through Central Seat Allocation Board (CSAB):

Admission to B.E./ B.Tech/ B.Arch / B.Planning Courses in NITs, IIITs, CFTIs participating through Central Seat Allocation Board will be based on All India Rank subject to the condition that the candidate should have secured at least 75% marks in the Class 12 examination conducted by the respective Boards. For SC/ST candidates the qualifying marks would be 65% in the Class 12/qualifying examination. The candidate is also required to pass in each of the subjects of Class 12/qualifying examination.

The Admission to NITs, IIITs, and CFTIs will be based on the announced qualifying Percentile by the individual Institutes.

For eligibility regarding details, candidates may refer to the website <https://csab.nic.in/>.”

27. The concerned authority had the requisite jurisdiction to formulate the rules including the eligibility criteria mentioned in the said Information Bulletin and it does not suffer from any legal infirmity. The natural corollary would be that it could not be directed to relax to some extent the said eligibility criteria to create an exception. The High Court, while exercising its power of judicial review in the normal course, would not intermeddle with such policy decisions.

28. This court has affirmed this view in its decision dated 03.05.2023 in the case of ***Buddhabhushan Anand Londhe and Another v. Union of India & Ors.***². While referring to a catena of judgments by the Hon'ble Supreme Court dealing with the interference of the court in the domain of Executive and Regulatory Authority, it was held that:

“27. It is to be noted that the eligibility conditions for appearing in JEE (Advanced) are decided by respondent no.2-JAB after due deliberation. The eligibility conditions such as the age requirement, permissible number of attempts, and are within the realm of the policy decision being taken by examining body and the same are uniformly applied to all candidates without exception. Any interference into the aforesaid aspects will have the effect of disturbing academic discipline. The courts are not expected to have expertise to assess the pros and cons of various policy decisions taken by experts. Unless the decision is de hors the fundamental rights or so arbitrary so as to shock the conscience of this court, the same normally does not require any interference.”

29. In the case of ***Indian Institute of Technology, Kharagpur and Others v. Soutrik Sarangi and Other***³, while placing reliance on a decision in the case of ***All India Council for Teacher Education v. Surinder Kumar Dhawan***⁴, the Hon'ble Supreme Court was of the similar view and held that:

“19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts' scrutiny in judicial review has to be careful and circumspect. Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general

² 2023/DHC/3121

³ 2021 SCC Online SC 826

⁴ (2009) 11 SCC 726

administrative issues concerning the institution or university. It was held by this court in All India Council for Technical Education v. Surinder Kumar Dhawan:

“16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.”

30. The argument that the rules of the examination were changed after the examination had begun also does not seem to be correct. It is to be noted that if the Information Bulletin in the month of December, 2022 was not having any legal support, the petitioner was required to challenge the said Information Bulletin then and there only. On the contrary, the petitioner has accepted the same and has appeared in the examination which was conducted in the month of January, 2023 and at the stage of final scrutiny, cannot be allowed to assail the stipulations/conditions mentioned in the Information Bulletin.

31. The Hon’ble Supreme Court in the case of ***Union of India v. S. Vinodh Kumar***⁵, while placing reliance on its earlier pronouncements in the cases of ***Munindra Kumar v. Rajiv Govil***⁶ and ***Rashmi Mishra v. M.P. Public Service Commission***⁷, held that:

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

⁵ (2007) 8 SCC 100

⁶ (1991) 3 SCC 368

⁷ (2006) 12 SCC 724

32. It is also to be noted that the requirement of obtaining 75% marks in Class XII examination has already been examined by the Hon'ble Division Bench of the High Court of Bombay in *Anubha Srivastava Sahai (supra)*. Paragraph nos.10 to 16 of the said decision are reproduced as under:

"10. Mr. Anil Singh, the Ld. Additional Solicitor General of India would oppose the petition. He would submit that the criteria of minimum 75% marks has not been introduced for the first time in the year 2023 and the same has been in existence since the year 2017-2018. That the said criteria was prescribed even for the year 2020-2021 and 2021-2022 but by separate letters, relaxation was granted to that condition on account of Covid-19 pandemic. That petitioners cannot seek continuation of such relaxation forever. There cannot be any legitimate expectation in a hope. In support of his contentions Mr. Singh would rely upon judgments of the Apex court in Maharashtra State Board of Secondary and Higher Secondary Education and Ann v. Parisosh Bhupesh Kurmarsheth, (1984) 4 SCC 27 : AIR 1984 SC 1543 and State of Bihar v. Sachindra Narayan, (2019) 3 SCC 803.

11. We have considered the submissions canvassed before us. There is no denial to the fact that the condition of securing 75% marks (65% for SC/ST) or being in top 20 percentile of the board was incorporated in JEE (Main) 2018. The same was repeated in JEE (Main) 2019. The same was also present in JEE (Main) 2020. However, on account of outbreak of Covid-19 pandemic, the Government of India, Ministry of Human Resource Development, Department of Higher Education issued letter dated 24th April 2020 directing as under:

"2. For admissions in NITs and other Centrally Funded Technical Institutions, apart from qualifying the JEE (Mains), the eligibility is to secure a minimum of 75% marks in 12th Board exams or rank among the top 20 percentile in their qualifying examinations. Due to prevailing circumstances, as recommended by CSAB-2020 it has decided to relax the eligibility criterion for admission to NITs and other CETIs. JEE (Mains) 2020 qualified candidates will now only need to a passing certificate in class XII examination irrespective of the marks obtained.

3. Above relaxation is one time shall be applicable for the academic year 2020-2021 only. CSAB - 2020 shall follow all

other conditions for admission to under graduate programmes of NITs and other CFTIs.

12. For JEE (Main) 2021, the criteria of minimum 75% marks (65% for SC/ST) or being within 20 percentile of the board was repeated. However, by letter dated 21st January 2021, the Government of India extended the relaxation granted in the previous year for JEE (Main) 2021 by directing them the qualified candidates needed just passing certificate in class 12th examination irrespective of the marks obtained. For JEE (Main) 2022, similar relaxation was granted by letter dated 20th June 2022.

13. The Government of India has not extended the relaxation granted in previous 3 years owing to Covid-19 pandemic for JEE (Mains) 2023. We find that the relaxation was granted on account of existence of special circumstances by the Government of India. Petitioner and Intervener do not have any vested right to claim relaxation for the current year's examination also. Merely because relaxation in criteria of minimum 75% marks (65% marks for SC/ST) in 12th Std. was granted in the previous 3 admission processes, the same would not entitle the students to continue to claim relaxation indefinitely.

14. It would not be possible for this court to sit in judgment over the decision of the National Testing Agency in prescribing the eligibility criteria for admissions to NITs, IITs and CFITs. Though National Testing Agency has filed additional affidavit dated 26th April 2023 offering justification for prescription of criteria of 75% marks, we cannot go into the merits of the said justification. In this regards, reliance placed by Mr. Singh on the judgment of the Apex Court in Paritosh Bhupesh Kurmarsheth (supra) is apposite, wherein it is held:

“16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are

the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly, Sections 18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. Section 3(39) of the Bombay General clauses Act, 1904, which defines the expression "rule" states: "Rule shall mean a rule made in exercise of the power under any enactment and shall include any regulation made under a rule or under any enactment". It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The Legislature has thus maintained in the statute in question a clear distinction between "bye-laws" and "regulations". The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and laying down the manner in which the provisions of the Act are to be carried into effect have been reserved to be

provided for by regulations made under Section 36. The Legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness.”

15. Petitioners cannot claim relaxation in eligibility criteria as a matter of right. Whether relaxation is to be extended or not is in the realm of policy decision of the government. The government may or may not relax the eligibility conditions depending on fact situation. Undeniably, the very same eligibility condition existed during the years 2017-2018, 2018-2019 and 2019-2020 and the students seeking admission during those years accepted the said condition and the entire process of admissions was completed by following the said eligibility criteria. We do not find the said eligibility condition to be arbitrary in any manner. Petitioner or intervener have also not challenged prescription of the said condition. What they seek is essentially relaxation of the said condition. The relaxation is sought under legitimate expectation that the government would extend relaxation for the current year as well. However, in absence of any vested right, no legitimate expectation would exist. In State of Bihar v. Sachindra Narayan (supra), the Apex Court has held:

“23. In view of the above judgments, legitimate expectation is one of the grounds of judicial review but unless a legal obligation exists, there cannot be any legitimate expectation. The legitimate expectation is not a wish or a desire or a hope, therefore, it cannot be claimed or demanded as a right”

16. The students, whose cause petitioner is allegedly espousing, neither have any vested right nor legitimate expectation to claim relaxation in the eligibility criteria for admissions to NITs, IITs and CFITs during the current year. Since grant of relaxation is a policy decision, the same can be taken by the Government of India in appropriate circumstances. This court would not be in a position to issue Writ of mandamus directing the government to grant relaxation in the eligibility criteria for admissions.”

33. It is also to be noted that the challenge to the said decision has not been accepted by the Hon'ble Supreme Court in SLP No. 11913/2023 and the same has been dismissed *vide* order dated 05.06.2023.

34. The relaxation in the eligibility criteria requiring minimum 75% marks (65% marks for SC/ST) in Class XII examination was granted during the tumultuous times of Covid-19 pandemic, however, the said relaxation was not extended for the academic year 2023-24. Sometimes, extraordinary situations call for extraordinary measures, however, such unprecedented measures may not continue to attract enforceability on the touchstone of legitimate expectations till eternity, unless expressly stated otherwise. In the case of *Union of India v. Hindustan Development Corporation*⁸, the Hon'ble Supreme Court while striking a distinction between anticipation and legitimate expectation held that:

"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 a 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 followed 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."

⁸ (1993) 3 SCC 499

35. In the case of *Kerala State Beverages (M&M) Corporation. Ltd. v. P.P. Suresh*⁹, the Hon'ble Supreme Court while taking a similar view, held that:

"19. An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government.

20. The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated."

36. It is thus clear that while the petitioner may have an expectation to be treated in a certain manner, it does not create an indefeasible right on the part of the petitioner to claim the seat without fulfilling the prescribed eligibility criteria. The petitioner admittedly does not fulfil the requirement of obtaining 75% marks in Class XII examination, as he obtained only 63.2% marks. No mandamus, thus, can be issued to grant admission *de hors* the applicable scheme of admission.

37. In view of the aforesaid, this court does not find any substance in the instant petition. The instant petition is, therefore, dismissed alongwith the pending application.

PURUSHAINDRA KUMAR KAURAV, J

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⁹ (2019) 9 SCC 710