

# **Visweswaraiah Technological Univ.& ... vs Krishnendu Halder & Ors on 18 February, 2011**

**Author: R.V. Raveendran**

**Bench: A.K. Patnaik, R.V. Raveendran**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1947 OF 2011

[Arising out of SLP [C] No.12624/2010]

Visveswaraya Technological University & Anr.

... Appellants

Vs.

Krishnendu Halder & Ors.

... Respondent

With

Civil Appeal No. 1948 of 2011

[Arising out of SLP [C] No.13048/2010]

The Registrar, Visveswaraya Technological University

& Anr.

... Appellants

Vs.

Shinde Ajinkya Tanagi & Ors.

... Respondent

O R D E R

R.V. RAVEENDRAN J.

Leave granted. Heard. The question involved in these appeals is whether the eligibility criteria for admission to the Engineering courses stipulated under the Statutory Rules and Regulations of the State Government/University could be relaxed or ignored, and candidates who do not meet with such eligibility criteria can be given admission, on the ground that a large number of seats have remained unfilled in professional colleges, if such candidates possess the minimum eligibility prescribed under the norms of the central body (AICTE).

2. All India Council for Technical Education ( `AICTE' for short) is the council established under the All India Council for Technical Education Act, 1987 ( `AICTE Act' for short) for proper planning and co-ordinated development of technical education throughout the country. AICTE is entrusted the function of laying down the norms and standards for courses, curricula, quality instructions, assessment and examinations. As per the norms fixed by AICTE, the minimum eligibility for admission to engineering courses, during the academic year 2007-2008 was 35% in the qualifying examinations in Physics, Chemistry and Mathematics for candidates belonging to schedule castes and schedule tribes and 40% for all other candidates.

3. The appellant - Visveswaraya Technological University (for short `the University') is the examining body and affiliating authority for Technical Educational Institutions in the State of Karnataka established under the Visveswaraya Technological University Act, 1994 ( `VTU Act' for short).

Section 20(1) of the VTU Act empowers the Executive Council of the University to make regulations regarding admission of students and conduct of examinations. The Executive Council, on the recommendation of the Academic Senate resolved to recommend the fixing of minimum eligibility for admissions to B.E./B.Tech courses as 45% for general category and 40% for reserved category in the qualifying examination, from the academic year 2006-07, on the following reasoning :

"The eligibility for the students for admission to B.E.course was 50% in the qualifying examination up to the academic year 2002-03. As the admission are through the Common Entrance Test of the Government or a Common Management Admission Test, the AICTE relaxed the eligibility criteria to 35% from the year 2003-04 onwards. Many colleges represented to the University that the lowering of the eligibility criteria gave scope for less meritorious students to get into the professional courses leading to deterioration in first and second year examination results. Many of the students were finding it difficult even to obtain the eligibility for the third semester. In view of it, in order to improve the standards of engineering degree course by providing admission to such of the students who can withstand the stress of the professional courses, it is necessary to fix the minimum eligibility as 45% in the

qualifying examination for general category candidates and 40% in the qualifying examination for reserved category candidates, from the academic year 2006-07."

Consequently the University Regulations governing BE/B.Tech degree courses were amended and the amended Regulations are extracted below:

"O.B.2.1 Admission to first year, first semester bachelor degree in Engineering/Technology shall be open for the candidates who have passed the second year Pre-University or XII Standard or equivalent examination recognized by the University.

O.B.2.2 In addition to OB 2.1, the candidate shall have secured not less than forty five percent (45%) marks in the aggregate with Physics and Mathematics as compulsory subjects, along with one of the following subjects: Chemistry, Bio-Technology, Computer Science, Biology and Electronics.

Provided that, the minimum marks for the purpose of eligibility shall be forty percent (40%) in optional subjects in case of candidates belonging to SC/ST and OBC.

Provided that, the candidate shall have studied and passed English as one of the subjects."

Thus the University fixed a marginally higher eligibility criteria, that is 40% for candidates belonging to schedule castes and schedule tribes and 45% for others, as against 35% and 40% respectively suggested by the AICTE norms.

4. The Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institution Rules, 2006, published by the State Government, vide notification dated 28.2.2006, which was applicable to the selection of candidates for admission to professional educational courses including Bachelor of Engineering/Technology (filled by the Common Entrance Cell) also prescribed similar academic eligibility for admissions during 2007-2008. Relevant portions of Rule 3 thereof are extracted below:

"3. Academic Eligibility (1) No candidate shall be eligible for admission to any of the full time degree courses specified in sub-rule (3) of Rule 1 other than the degree course in Architecture unless he :-

(a) has appeared for the Common Entrance Test conducted by the Common Entrance Test cell.

(b) has passed the second year pre-University or XII standard or equivalent examinations held preceding the Entrance test---

xxx

xxx

xxx

(iii) with Physics and Mathematics as compulsory subjects, along with

one of the following subjects:- Chemistry, Bio-Technology, Computer Science, Biology and Electronics and has secured not less than forty five percent of the aggregate marks in optional subjects with English as one of the languages for admission to Engineering, and technology courses.

xxx xxx xxx Provided further that, the minimum marks for the purpose of eligibility shall be forty percent of aggregate in optional subjects in case of candidates belonging to the Scheduled Caste, Scheduled Tribes and other Backward Classes specified in the relevant Government order for the purpose of reservation in respect of Indian system of Medicine and Homeopathy, Engineering and Technology courses."

The above eligibility criteria prescribed for admission to 'Government seats' under Rule 3 of the Admission Rules did not however apply to candidates admitted directly by the managements of colleges.

5. The respective first respondent in these two appeals secured marks which were more than what was prescribed by AICTE norms, but less than what was prescribed by the University Regulations. They were admitted to the Bachelor of Engineering Course during the academic year 2007-2008 by second respondent college in C.A.No.1947/2011 and third respondent college in C.A.No.1948/2011 under the management quota. When the list of admissions were submitted by the said colleges to the University for approval of admissions, the University refused to approve their admissions on the ground that they had secured less than the minimum percentage required for being eligible to admissions. Feeling aggrieved, the two students filed writ petitions before the High Court for quashing the communications of the University refusing to approve their admission, to treat them as eligible for prosecuting the B.E course and to approve their admission and permit them to participate in the examinations conducted by the University. They also sought a declaration that AICTE norms prescribing eligibility criteria alone would govern admissions to B.E. course and the Rules and Regulations of the State and the University, in so far as they were contrary to AICTE Regulations were unconstitutional, unenforceable and inapplicable.

6. A learned single judge of the High Court, following the decision of this Court in State of Tamil Nadu v. S.V. Bratheep -- (2004) 4 SCC 513, dismissed the writ petition filed by the first respondent in the first matter, by order dated 24.6.2008. The writ appeal filed by the said student, as also the writ petition filed by the first respondent in the second matter were allowed by the Division Bench of the High Court by judgments dated 26.2.2010 purporting to follow the principles laid down by this Court in State of Tamil Nadu v. Adhiyaman Educational & Research Institute -- (1995) 4 SCC 104 (extracted below) :

"41. [v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the center or the Central authority to short-list the applicants.

When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

41. [vi] However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally.

(emphasis supplied) The Division Bench directed that every year, the University should take into consideration, the standards it has fixed as also the standards fixed by AICTE in regard to eligibility criteria, and keeping in view the number of seats that may remain unfilled/vacant during that year, extend benefit to the students who fulfill the conditions mentioned in para 41(v) and (vi) of the decision in Adhiyaman, by voluntarily relaxing/lowering its standards without driving the students to approach the courts for getting reliefs in terms of Adhiyaman. The Division Bench also held that having regard to the decision in Adhiyaman, students who are similarly situated to the writ petitioners, should also be given benefit by approval of their admissions without driving them to court. The Division Bench directed the University to approve the admissions of the two writ petitions as they fulfilled eligibility criteria fixed by AICTE.

7. Feeling aggrieved, University has filed these appeals by special leave contending that the University and the State are always entitled to prescribe higher standards than what is suggested by the AICTE norms so as to maintain the excellence in higher education; that the rules and regulations of the State and University prescribing minimum higher educational qualifications for admission to Engineering Courses, were valid and binding;

and that neither any constituent college nor any candidate could support or defend an illegal and irregular admission by the college, by contending that the rules and regulations of the State and the University were invalid and not binding, or that the University should not apply them, as there are more seats than applicants.

8. We may in this context refer to two subsequent decisions which have the effect of clarifying the decision in Adhiyaman.

8.1) In *Dr Preeti Srivastava and Anr. Vs. State of M.P. and Ors.* (1999) 7 SCC 120, a constitution bench of this court held:

"Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the

field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.....

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education."

(emphasis supplied) 8.2) In State of Tamil Nadu. Vs. S.V. Bratheep (2004) 4 SCC 513 wherein, a three Judge Bench of this Court followed Dr.Preeti Srivastava and explained Adhiyaman thus:

"If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it? In our opinion, it does not.....The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even higher as stated by this Court in Dr. Preeti Srivastava's case. It is no doubt true, as noticed by this Court in Adhiyaman's case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges..... Excellence in higher education is always insisted upon by series of decisions of this Court including Dr. Preeti Srivastava's case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education. Argument advanced on behalf of the respondents is

that the purpose of fixing norms by the AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr. Preeti Srivastava case that the State can always fix a further qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter, which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. One other argument is further advanced before us that the criteria fixed by the AICTE were to be adopted by the respective colleges and once such prescription had been made, it was not open to the Government to prescribe further standards particularly when they had established the institutions in exercise of their fundamental rights guaranteed under Article 19 of the Constitution. However, we do not think this argument can be sustained in any manner. Prescription of standards in education is always accepted to be an appropriate exercise of power by the bodies recognising the colleges or granting affiliation, like AICTE or the University. If in exercise of such power the prescription had been made, it cannot be said that the whole matter has been foreclosed.

(emphasis supplied)

9. The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is two fold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional Engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the Examining Body, to fix higher qualifications is recognized, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective state, unless the AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State. It should be noted that the eligibility criteria fixed by the State and the University increased the standards only marginally, that is 5% over the percentage fixed by AICTE.

It cannot be said that the higher standards fixed by the State or University are abnormally high or unattainable by normal students, so as to require a downward revision, when there are unfilled seats. During the hearing it was mentioned that AICTE itself has revised the eligibility criteria. Be that as it may.

10. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled.

They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, para 41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Dr. Preeti Srivastava and the decision of the larger Bench in S.V. Bratheep which explains the observations in Adhiyaman in the correct perspective. We summarise below the position, emerging from these decisions :

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the Central Body/AICTE. The term 'adversely affect the standards' refers to lowering of the norms laid down by Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the Central Body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the state authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the state and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations.

11. 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 regard 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.

12. The proliferating unaided private colleges, may need a full complement of students for their comfortable sustenance (meeting the cost of running the college and paying the staff etc.). But that cannot be at the risk of quality of education. To give an example, if 35% is the minimum passing marks in a qualifying examination, can it be argued by colleges that the minimum passing marks in the qualifying examination should be reduced to only 25 or 20 instead of 35 on the ground that the number of students/candidates who pass the examination are not sufficient to fill their seats? Reducing the standards to 'fill the seats' will be a dangerous trend which will destroy the quality of education. If there are large number of vacancies, the remedy lies in (a) not permitting new colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. Be that as it may. The need to fill the seats cannot be permitted to override the need to maintain quality of education. Creeping commercialization of education in the last few years should be a matter of concern for the central bodies, states and universities.

13. 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.

14. We, therefore, allow these appeals, set aside the orders of the Division Bench and uphold the dismissal of the writ petitions by the learned Single Judge. Insofar as the two students (first respondent in each of the two appeals) are concerned, we find that they were admitted in the year 2007- 2008 and by virtue of the interim orders, continued their studies and are completing the course in a few months. On the facts and circumstances, to do complete justice, we are of the view that their admissions should not be disturbed, but regularized and they should be permitted to take the examinations.

.....

[ R.V. RAVEENDRAN ]

NEW DELHI

.....

FEBRUARY 18, 2011

[ A.K. PATNAIK ]