REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 6th DAY OF APRIL, 2022

BEFORE

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ,

CHIEF JUSTICE

&

HON'BLE MR. JUSTICE SANDEEP SHARMA

&

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

CIVIL WRIT PETITION No. 4113 of 2019
A/W CIVIL WRIT PETITION No. 2930 of 2018

1. CWP No. 4113 of 2019

Between:

1. **SHIMLA COLLEGE OF EDUCATION, SHEETAL KUNJ, KAMLA NAGAR, SANJAULI, SHIMLA THROUGH ITS CHAIRMAN DR. R K SHANDIL.**

2. **RAMESHWARI TEACHER TRAINING INSTITUTE, SARABAI, KULLU, DISTT. KULLU, THROUGH ITS CHAIRPERSON DR. USHA SHARMA.**

3. **TRISHA COLLEGE OF EDUCATION, THAIN (JOL SAPPAR), DISTT. HAMIRPUR, THROUGH ITS CHAIRMAN MR. RAJIV SHARMA.**

4. **ABHILASHI D.EL.ED. TRAINING**

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INSTITUTE, NER CHOWK, DISTT. MANDI THROUGH ITS SECRETARY MR. NARENDER KUMAR.

5. KRISHMA EDUCATION CENTRE, NER CHOWK, DISTT. MANDI, THROUGH ITS SECRETARY MR. LALIT PATHAK.

6. SVN COLLEGE OF EDUCATION, TARKWARI (BHORANJ), DISTT. HAMIRPUR, THROUGH ITS CHAIRMAN SH. N K SHARMA.

7. HAMIRPUR COLLEGE OF EDUCATION, RAM NAGAR, HAMIRPUR DISTT. HAMIRPUR THROUGH ITS CHAIRMAN SH. KARNAL JAI CHAND.

8. VAID SHANKAR LAL MEMORIAL COLLEGE OF EDUCATION, CHANDI, DISTT. SOLAN THROUGH ITS CHAIRMAN MR. CHANDER MOHAN.

9. JAI BHARTI COLLEGE OF EDUCATION, LOHARIN, DISTT. HAMIRPUR, THROUGH ITS CHAIRMAN MR. J. K. CHAUHAN.

10. JAGRITI TEACHER TRAINING COLLEGE DEODHAR, MANDI, DISTT MANDI THROUGH ITS CHAIRMAN DR. VEENA RAJU.

11. VIJAY MEMORIAL COLLEGE OF EDUCATION BHANGROTU, DISTT. MANDI, THROUGH ITS CHAIRMAN MR. GAURAV MARWAH.

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12. RAJ RAJESHWARI COLLEGE OF EDUCATION, CHORAB (BHOTA) HAMIRPU2. R, THROUGH ITS CHAIRMAN SH. MANJEET DOGRA.

13. KSHATRIYA COLLEGE OF EDUCATION, KATHGARH ROAD, CHANOUR, INDORA, DISTT. KANGRA THROUGH ITS CHAIRMAN SH. SHATRUJEET.

14. KLB DAV COLLEGE FOR GIRLS, PALAMPUR, DISTT. KANGRA, THROUGH ITS DIRECTOR DR. N. D. SHARMA.

15. KULLU COLLEGE OF EDUCATION, VILLAGE BOHGANA P.O. GARSA, DISTT. KULLU, THROUGH ITS CHAIRMAN MR. SURENDER SOOD.

16. R. C. COLLEGE OF EDUCATION, DHANOTE, P.O. ADHWANI (DEHRA) DISTT. KANGRA THROUGH ITS CHAIRMAN MR. JEEVAN.

17. SHIKSHA BHARTI INSTITUTE OF EDUCATION, TRAINING & RESEARCH, SAMOOR KHURD (UNA) THROUGH ITS CHAIRMAN MR. NIRMAL.

18. SHANTI COLLEGE OF EDUCATION, KAILASH NAGAR, NAKROH (UNA) THROUGH ITS CHAIRMAN SH. VED PRAKASH.

...PETITIONERS

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**(BY SH. SHRAWAN DOGRA,
SENIOR ADVOCATE WITH
MR. TEJASVI DOGRA, ADVOCATE)**

AND

1. **STATE OF HIMACHAL PRADESH THROUGH ITS PRINCIPAL SECRETARY (EDUCATION) TO THE GOVERNMENT OF HIMACHAL PRADESH, SHIMLA-171002, H.P.**

2. **DIRECTOR, ELEMENTARY EDUCATION, GOVERNMENT OF HIMACHAL PRADESH, SHIMLA – 171 001, H.P.**

3. **H.P. BOARD OF SCHOOL EDUCATION, DHARAMSHALA, DISTRICT KANGRA, H.P. THROUGH ITS SECRETARY.**

...RESPONDENTS

**(SMT. RITTA GOSWAMI, ADDITIONAL
ADVOCATE GENERAL FOR R-1 & 2,
SH. VIR BAHADUR VERMA,
ADVOCATE, FOR R-3)**

2. CWP No. 2930 of 2018

Between:
**JAI BHARTI EDUCATION
TRUST, JAI BHARTI COMPLEX,
LOHARIN, P.O. KHIAH,
TEHSIL AND DISTT. HAMIRPUR
(H.P.) THROUGH ITS SECRETARY
SH. UPENDER K. CHAUHAN.**

....PETITIONER

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**(BY MS. SUMAN THAKUR,
ADVOCATE)**

AND

1. **STATE OF HIMACHAL PRADESH, THROUGH ITS PRINCIPAL SECRETARY (EDUCATION) HIMACHAL PRADESH).**

2. **THE DIRECTOR, DIRECTORATE OF ELEMENTARY EDUCATION, HIMACHAL PRADESH, SHIMLA -1 (H.P.)**

3. **HIMACHAL PRADESH BOARD OF SCHOOL EDUCATION, THROUGH ITS SECRETARY, DHARAMSHALA, DISTT. KANGRA (H.P.)**

4. **THE STATE PROJECT DIRECTOR (SSA/RMSA) DIRECTORATE OF EDUCATION.**

...RESPONDENTS

**(SMT. RITTA GOSWAMI,
ADDITIONAL ADVOCATE
GENERAL, FOR R-1, 2 & 4,
SH. VIR BAHADUR VERMA,
ADVOCATE, FOR R-3)**

RESERVED ON : 25.03.2022

PRONOUNCED ON : 06.04.2022

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*These Civil Writ Petitions coming on for pronouncement of judgment this day, **Hon'ble Mr. Justice Mohammad Rafiq,** passed the following:*

ORDER

These matters have been referred to the Full Bench by order of the Division Bench dated 10.1.2020, in view of the conflict of opinion between the Division Bench judgment of this Court dated 20.9.2010 in *CWP No. 5728 of 2010,* titled *H.P. B.Ed College Association and ors. vs. State of H.P. & anr.,* and another Division Bench judgment dated 23.7.2014 in *CWP No. 7688 of 2013* titled *HP Private Universities Management Association (H-PUMA) vs. State of Himachal Pradesh and others* and *CWP No. 840 of 2014* titled *Private Technical Institution's Association Himachal Pradesh and others vs. State of Himachal Pradesh and others.*

2. The case as set up in the writ petition by the petitioners herein is that the Petitioners-Teachers Training Institutes are running diploma course in D.El.Ed., recognized by National Council of Teacher Training (NCTE), which is an Apex Regulatory Body created under NCTE Act. NCTE has framed Regulations 'National Council for Teachers Education

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(Recognition, Norms and procedure) Regulations, 2009' pertaining to the norms and standards for Diploma in Elementary Teacher Education Programme leading to Diploma in Elementary Education (D.El.Ed)'. Clause 3 (1) of the said Regulations pertains to Intake, Eligibility and Admission Procedure while Clause 3 (2), as originally framed, provides that the candidates with at least 50% marks in the senior secondary (+2) or its equivalent examination are eligible for admission. Clause 3 (2) (b) provides that the reservation for SC/ST/OBC and other categories shall be as per the rules of the Central Government/State Government whichever is applicable and there shall be relaxation of 5% marks in favour of SC/ST/OBC and other categories of candidates. Clause 3 (3) provides that the admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/UT Administration. The Regulations of 2009 were amended in 2018. Clause 3.2 and Clause 3.3 as amended in 2018, which pertain to eligibility and admission procedure, provide as under:-

"3.2 Eligibility:

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> *(a) Candidates with formal education from a 'School' as defined in clause (n) of section 2 of the Right to Education Act, 2009, with at least fifty percent marks in Senior Secondary or plus two examination or its equivalent, are eligible for admission.*
> *(b) The relaxation in percentage of marks in the Senior Secondary or plus two examination or its equivalent examination and in the reservation for Scheduled Caste or Scheduled Tribe or Other Backward Class or Persons With Disabilities and other categories* Apex *shall be as per the rules of the Central Government or State Government Territory Administration, whichever is applicable.*
>
> *3.3 Admission Procedure:*
> *(a) Admission shall be made on merit basis, considering marks obtained at Senior Secondary or plus two level or equivalent examination or in an entrance examination, or any other selection process as per the policy of the University or State Government or Union Territory Administration.*
>
> *(b) At the time of admission to the programme, the candidate must indicate the subject in which he or she proposes to take the B.A. or B.Sc. Degree. Admissions shall be on the basis of order of merit and availability of seats. Any change in the choice of subjects shall be made within ED TO one month from the date of commencement of the programme,"*

3. The case of the Petitioner-Institutes is that they are running D.El.Ed. course as per the norms and standards prescribed by the NCTE for the last many years. All the Petitioner-Institutes are unaided and they are required to meet the requirements of infrastructure and faculty as per the norms set by NCTE and for the said purpose, the source of their income

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is directly dependent upon number of seats allowed to each institute keeping in view the available infrastructure and the fee chargeable for each seat as approved and authorized by the concerned fee regulating agency in the State. Though the norms and standards, as prescribed by NCTE, provide for the minimum eligibility qualification required for admission to D.El.Ed. course, yet the State Government in its wisdom has also decided to hold Common Entrance Test, which is conducted by respondent No. 3-H.P. Board of School Education, Dharamshala (hereinafter referred to as 'the Respondent-Board' for short). Such test was conducted on 4.8.2019 and its result was declared on 27.8.2019. The purpose of conducting entrance test is to short-list the large number of candidates applying for admission to the said course, so that a reasonable number of candidates are required to be called for three rounds of counselling. In the first round of counselling, the seats in all the Institutes imparting D.El. Ed. Courses are available and offered, including the Government Institutes and unaided private Institutes. In second round of counselling, the process is repeated out of the remaining persons in the list based on the above referred screening test and available unfilled seats

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in different Institutions after first counselling are offered for admission. Similarly, the same course is repeated for the third round of counselling.

4. According to the Petitioner-Institutes, almost all the seats in the Government Institutes are filled at the end of the first counselling itself except a few seats reserved for particular category/sub-category for which no candidate is available in the merit list. The Common Entrance Test for all sanctioned seats, approximately 2450 seats (900 government institutes and 1550 in private Institutes), was successfully conducted by respondent No.3-Board. The first round and second round of counselling for admission to the course were conducted by Respondent-Board and even then also, all seats in all the Petitioner-Institutes could not be filled up. Respondent-Board had to conduct a third round of counselling to fill the seats that remained vacant after the first two rounds of counselling. At this stage, a decision was taken on 22.10.2019 in a meeting held under the Chairmanship of Education Minister, adversely affecting interest of the private unaided Institutions, including the Petitioner-Institutes. This meeting was held in purported compliance of the judgment

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rendered by this Court in *CWP No. 2648 of 2018* titled *Abhilashi JBT Training Institute and others vs. State of H.P*. While Agenda No. 1 in the meeting pertained to implementation of the judgment. Agenda Item No. 2 was regarding conversion of D. El. Ed. seats from reserved categories to General category and lowering of cut off marks whereunder it was decided that although seats from sub-category to main category could be allowed, e.g., Scheduled Caste-Ex-Servicemen to Scheduled Caste, but conversion from one main category to another main category should not be allowed; for example from Scheduled caste category to General category. The demand of lowering the cut off marks was not allowed. Agenda Item No. 3 of the meeting was for providing management quota seats to privately owned and managed unaided institutions. It was decided that the management quota may be allowed upto the extent of 10% but the same may be allowed to be filled up from amongst the candidates who qualify the Common Entrance Test (CET) in order to maintain the quality and merit.

5. Shri Shrawan Dogra, the learned Senior Counsel for the petitioners has invited attention of this Court towards the

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table given in para 12 of the writ petition containing details of total sanctioned seats for D.El.Ed. course against the total number of seats filled after two rounds of counselling for the current academic session, showing that substantial number of seats are still remaining vacant. For the sake facility and reference, we deem it appropriate to reproduce the aforesaid table hereunder:-

Sr. No.	*Name of College*	*No. of Seats*	*Seats allotted by HPBOSE (R-3)*	*Vacant seats after second round counselling*
1.	*Shimla College of Education*	*100*	*66*	*34*
2.	*Rameshwari Teacher Training Institute*	*100*	*64*	*36*
3.	*Trisha College of Education*	*50*	*28*	*22*
4.	*Abhilashi D.EL.ED. Training Institute*	*50*	*38*	*12*
5.	*Krishma Education Centre*	*50*	*34*	*16*
6.	*SVN College of Education*	*50*	*24*	*26*
7.	*Hamirpur College of Education*	*50*	*28*	*22*
8.	*Vaid Shankar Lal Memorial College of Education*	*50*	*32*	*18*
9.	*Jai Bharti College of Education*	*50*	*30*	*20*
10.	*Jagriti Teacher Training College*	*50*	*32*	*18*
11.	*Vijay Memorial College of Education*	*50*	*33*	*17*
12.	*Raj Rajeshwari College of*	*50*	*35*	*15*

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	Education			
13.	Kshatriya College of Education	50	28	22
14.	KLB DAV College for Girls	50	34	16
15.	Kullu College of Education	50	28	22
16.	R.C. College of Education	50	26	24
17.	Shiksha Bharti Institute of Education Training & Research	50	28	22
18.	Shanti College of Education	50	31	19

6. This Court in *CWP No. 5728 of 2010* titled *H.P. B.Ed. College Association vs. State* taking note of the fact that even though the University was authorized to conduct the counselling and allocate students to B.Ed. Colleges if the seats remain vacant and candidates are available otherwise than by counselling, observed that there is no point in putting any rigor or restriction in the matter of admission. This does not mean that the institutions should not comply with the statutory requirements in terms of the minimum qualification and age. However, the admission process was ordered to be completed on or before 8.10.2010 to ensure that the students complete the required number of teaching days prior to their examination. The learned Senior Counsel also placed reliance on the judgment rendered by this Court in *CWP No. 1992 of 2017* decided on 12.1.2018 titled

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Archana Thakur vs. State of H.P. and others. In that case, the Court taking note of the fact that seats available in various academic courses in colleges and universities are far below the number of applicants ordered that all efforts should be made to ensure that as far as possible, the seats are not wasted. Counselling was allowed with the direction to the respondents to impart necessary instructions to the effect that vacant reserved seats meant for SC and ST categories in educational institutes including Schools, Colleges and Universities, which remain unfilled after exhausting the list of available and eligible SC and ST candidates, should be offered and filled from amongst eligible candidates from open category on the basis of merit. The Court took note of the clarification that in case any cut off limit has been fixed, then only those candidates of open category should be admitted against the vacant seats who have gained marks at par with the cut off limit.

7. Shri Shrawan Dogra, learned Senior Counsel for the petitioners argued that according to Entry 66 of List-1 (Union List) to the Constitution, it is the responsibility of the Apex Body like NCTE to ensure compliance regarding standards of

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education. No doubt, the State Government can exercise power vide Entry 25 of List-III (Concurrent List) of the Seventh Schedule to the Constitution to introduce additional and higher requirement, over and above the standards provided by NCTE, so as to achieve the standard of education. But in the facts of the case, decision of the State Government to hold the entrance examination in terms of its power recognized by Clause 3.3 of the Regulations of 2009 cannot be taken as introducing additional and higher standard of education because the Respondent-Board despite convening three rounds of counselling was unable to provide sufficient number of candidates and large number of seats from the approved intake of all the Petitioner-Institutes remained vacant. There is no reason not to allow the Petitioner-Institutes to fill up unfilled seats subject to candidates securing minimum marks of 50% in senior secondary and 10+2 examination or its equivalent, as envisaged in Clause 3 (3) and Clause 3 (2) of Regulations of 2009 with relaxation of 5% in favour of SC, ST/OBC candidates or persons with disability and other analogous categories. In the facts of the case, when the Respondent-Board has failed to provide sufficient number of

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candidates despite holding three successive counsellings, the entrance examination by itself cannot be taken to introduce any additional and higher standards of education.

8. The learned Senior Counsel has argued that the reference Court has wrongly relied on the judgment passed in *HP Private Universities Management Association vs. State (CWP No. 7688 of 2013)* decided on 23.7.2014, wherein the dispute involved was entirely different. In that case, the Association of the private Universities, who are imparting technical education, approached this Court with a grievance that despite the H.P. University, holding several rounds of counselling on the basis of common entrance test conducted by it, it has failed to make sufficient number of candidates available for admission, resultantly a large number of seats remained vacant. The argument of the petitioners in that case before this Court was that the requirement of holding CET violates their right of occupation under Article 19 (1) (g) of the Constitution of India and this amounts to unreasonable restriction. Data was made available that large number of seats in government institutions as well as private IITs and NITS as also the government aided private

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Educational Colleges and private universities and technical institutions remained vacant despite holding a common entrance test. It was argued that right to admit students is guaranteed under Article 19 (1) (g) of the Constitution of India so far as private self financed unaided institutions are concerned and the restriction of taking students only on the basis of CET violates the freedom as despite empty seats, these institutions are unable to admit students. It was argued that right to establish includes the right to administer the institutions which broadly compromises the right to admit students, the right to set up a reasonable fee structure etc. The freedom of occupation to run an institution is rendered nugatory when the members of the institutions are not able to determine their own admissions policies and carry out their business in a manner they deem fit, of course, so long as the educational objectives of the institution are not compromised. By mandating admissions through the CET, this freedom is violated when the institutions cannot choose their admissions policies and at the same time, the seats also remain vacant. Learned Senior Counsel therefore argued that there is in fact no difference of opinion between the judgment rendered in

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2010 and another judgment in 2014, supra, as both turned out of their own peculiar facts. There was therefore no justification for the learned Division Bench for making reference to the Full Bench and there is no occasion for this Full Bench to answer the Reference. It is argued that 2010 judgment of this Court would squarely apply to the present matter and the law declared in 2014 judgment would not be applicable. The matter may, therefore, be sent back to the regular Bench for being decided accordingly.

9. Per contra, Ms. Ritta Goswami, learned Additional Advocate General argued that the very purpose of holding the entrance examination is to ensure that the merit in the matter of admission is not compromised at any stage of the process and that the power of the State Government on making admission only on the basis of entrance examination envisaged in Clause 3 (3) of the Regulation of 2009, cannot be questioned. It cannot be held that merely because in first, second and third rounds of counselling held by the Respondent-Board certain seats remained vacant, then the petitioners can be allowed to take students from the open market only on the basis of their securing; 50% in the general category and 45% marks in reserved category; obtained at Senior

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Secondary or plus two level or its equivalent examination. It is argued that by this method, even those candidates who might have appeared in the entrance examination but failed to secure minimum pass marks would be able to secure admission by indirect method solely on the basis of their securing 50% or 45% marks, as the case may be, in the senior secondary or plus two examination or its equivalent examination.

10. The learned Additional Advocate General argued that the judgment of this Court in *HP B. Ed. College Association vs. state (CWP 5728/2010)* was passed in a peculiar fact situation and it cannot be considered as a precedent to be followed in the present case. Relying on the judgment of this Court in CWP No. 7688 of 2013, titled *HP Private Universities Management Association vs. State,* learned Additional Advocate General argued that this Court therein held that:

> *"The equity and excellence in academic institutions have to be maintained and what better way can it be maintained than by ensuring that each students competes in the same examination i.e. CET so as to ensure that in terms of the access to education (equity) and merit of students (excellence) a common platform is that for admissions into professional colleges."*

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11. The learned Additional Advocate General also relied on the judgment of the supreme Court in ***Mahatma Gandhi University and another vs. Tikku Paul and others*** reported in ***(2021) 2 SCC 564*** and argued that despite many rounds of counsellings, seats remaining vacant, cannot provide a justification for doing away with the requirement of qualifying such entrance test for the purpose of admission and grant of admission merely on the basis of pass marks in the eligibility examination. Relying on the judgment of the Supreme Court in ***Visveswaraya Technological University & anr vs. Krishnendu Halder & ors*** reported in ***(2011) 4 SCC 606*** the learned Additional Advocate argued that the State cannot be faulted for such unfilled seats nor can quality of education be compromised by admitting the students even though they may not have either appeared or not qualified the entrance examination, only in order to fill up such vacant seats.

12. We have bestowed our anxious consideration to rival submissions and perused the material on record.

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13. In *CWP No. 5728 of 2010,* titled *H.P. B.Ed College Association and ors. vs. State of H.P. & anr.,* the petitioners approached this Court with the prayer that they may be permitted to fill up the seats left unfilled after last date of counseling held on 30.8.2010 of their own from any source, without insisting for participation in counseling held by respondent-University, for the sessions 2010-2011, on the basis of academic merit without compromising with the NCTE Norms. The University conducting centralized counseling for admitting the students had issued second advertisement for spot admission on 30.8.2009, permitting the students to apply afresh even if they had not applied earlier. Still there was no response. The case of the petitioners before this Court was that as far as the vacant seats are concerned against which candidates could not be provided by the University despite its best efforts, there is no restrictions for the petitioner to fill up the vacancies by not compromising with the minimum academic merit required for admission. This prayer was opposed by the University. Division Bench of this Court held that once admission has been closed in terms of the prospectus and since the efforts taken by the

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University itself for filling-up the vacant seats has not yielded any fruits and still seats remained vacant, there is no point in putting any rigor or restriction in the matter of admission. This does not mean that Institutions should not comply with statutory requirements in terms of the qualification and age. Hence, it will be open, in the above circumstances, for them to make admission against vacant seats subject to the fulfillment of the statutory condition regarding qualification and age.

14. The view contrary to the above was taken by another Division Bench of this Court in *HP Private Universities Management Association (H-PUMA) vs. State of Himachal Pradesh and others, supra.* Therein the petitioner approached this Court seeking mandamus to the respondent to allow the petitioner-institutions to fill up the seats which remained vacant after all rounds of counseling in various technical courses being offered by them after admitting the candidates provided by respondent No.2-University by initiating process in this regard simultaneously with the process of admission to be initiated by the respondent No.2-University for making admissions to various technical courses in the institutions affiliated with it. Reference

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was made to Section 19 (1) of the AICTE Act which provides that one of the functions of the AICTE is to lay down norms and standards for courses, curricula, physical and instructional facilities staff pattern, staff qualifications, quality instructions, assessment and examinations. A Notification was issued by the respondent for admission to B. Tech. (direct entry/lateral entry), B-Pharma (direct entry/lateral entry), MCA, MBA, M. Tech and M-Pharma in the Government or private affiliating institutions of Himachal Pradesh Technical University, Hamirpur for the Session 2014-15. For admission to B.Tech. first year direct entry course, the criteria was merit of rank score obtained in JEE (Main)-2014 and the aspirant candidates were to apply only through JEE Main, 2014 online between 15.11.2013 to 26.12.2013 for appearing in the Joint Entrance Examination, 2014 to be conducted by JEE Apex Board. For the purpose of admission to B.Tech first year direct entry, the admission criteria was merit of score/marks obtained in a Common Entrance Test to be conducted by the respondent No.2-University. The desirous candidates were to apply on the prescribed application form available in the prospectus to be issued by the University in due course of time for

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appearing in the Common Entrance Test. For admission to MBA course, the criteria of admission was merit of rank/score obtained by the candidate in CMAT, 2014 to be conducted by AICTE, New Delhi. It was specifically stated that the university will not conduct any separate test for MBA, however, the candidates appearing in CMAT, 2014 will have to apply separately on the prescribed application form available in the prospectus to be issued by the University in due course of time for seeking admission in affiliated institutions of the University on the basis of marks of rank/score obtained in CMAT, 2014. For the purpose of admission to M.Tech Course, the admission was to be made on the basis of rank obtained by a candidates in GATE, 2014 to be conducted by IIT Kharagpur. Similarly for the purpose of admission to M. Pharmacy, course, criteria for admission as mentioned in the aforesaid Notification was marks of rank/score obtained in GPAT, 2014 to be conducted by AICTE. For admission to MCA course, the criteria of admission was merit obtained in a Common Entrance Test to be conducted by HP University, Shimla.

15. The argument of the petitioner before this Court in

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the aforementioned case was that the condition of admitting the students in different technical courses on the basis of merits obtained in different entrance tests has not successfully worked on the ground as due to restriction on admitting students only through the merit list prepared consequent to CET, several seats remained vacant in the various courses for grant of CET qualified students. The members of the Association cannot admit students either on their own or through any other agency in view of the norms laid down by the respondents. Reliance was placed on the judgment of the Supreme Court in ***State of HP and others vs. Himachal Institute of Engg. and Technology, Shimla (1998) 8 SCC 501***. While taking note of the similar problem, the Supreme Court in that case required the learned counsel for the State to seek response of the State Government and place the same before it. Reliance was also placed on the judgment in ***T.M.A. Pai Foundation and others vs. State of Karnataka and others (2002) 8 SCC 481, P.A Inamdar and others vs. State of Maharashtra and others (2005) 6 SCC 537*** and ***Christian Medical College, Vellore and others vs. Union of India and others (2014) 2***

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SCC 305, to argue that it is well established that the right to admit students in different educational and medical institutions is an integral part of the right to administer and cannot be interfered with except in cases of maladministration and lack of transparency.

16. The Division Bench of this Court however, repelling all the aforestated arguments, and relying on the judgments of the Supreme Court in ***Visveswaraiah Technological University and another vs. Krishnendu Halder and others (2011) 4 SCC 606*** and ***Mahatma Gandhi University and another vs. Jikku Paul and others (2011) 15 SCC 242,*** in paras 20 and 23, held as under:

> *"20. In view of the various pronouncements of the Hon'ble Supreme Court, it can safely be concluded that in a right to establish an institution, inherent is the right to administer the same which is protected as part of the freedom of occupation under Article 19 (1) (g). Equally, at the same time, it has to be remembered that this right is not a business or a trade, given solely for the profit making since the establishment of educational institutions bears a clear charitable purpose. The establishment of these institutions has a direct relation with the public interest in creating such institutions because this relationship between the public interest and private freedom determines the nature of public controls which can be permitted*

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to be "permissible". Even the petitioners concede that they have established the institutions to ensure good quality education and would not permit the standard of excellence to fall below the standard as may be prescribed by the State Government. The petitioners also conceded that the State makes it mandatory for them to maintain the standard of excellence in professional institutions. Thus, ensuring that admissions policies are based on merit, it is crucial for the State to act as a regulator. No doubt, this may have some effect on the autonomy of the private unaided institution but that would not mean that their freedom under Article 19 (1) (g) has in any manner been violated. The freedom contemplated under Article 19 (1) (g) does not imply or even suggest that the State cannot regulate educational institutions in the larger public interest nor it be suggested that under Article 19 (1) (g), only insignificant and trivial matters can be regulated by the State. Therefore, what clearly emerges is that the autonomy granted to private unaided institutions cannot restrict the State's authority and duty to regulate academic standards. On the other hand, it must be taken to be equally settled that the State's authority cannot obliterate or unduly compromise these institutions' autonomy. In fact it is in matters of ensuring academic standards that the balance necessarily tilts in favour of the State taking into consideration the public interest and the responsibility of the State to ensure the maintenance of higher standards of education.

21 & 22. xxxx xxxx xxxxx xxxxxxx

23. The State has power to regulate academic excellence particularly in matters of admissions to the institutions and, therefore, is competent to prescribe merit based admission processes for creating uniform admission process through CET. Any prayer for seeking dilution or even questioning the

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> *authority of the State to act an regulator is totally ill-founded in view of the various judicial pronouncements, particularly in Visveswaraiah Technological University (supra)and reiterated in Mahatma Gandhi University (supra)"*

17. The Supreme Court in ***Union of India vs Federation of Self-Financed Ayurvedic Colleges Punjab and others*** relying on its earlier judgment in ***Veterinary Council of India vs. Indian Council of Agricultural Research (2000) 1 SCC 750*** upheld the judgment of the Punjab and Haryana High Court. The petitioners therein had questioned validity of the Notification dated 7.12.2018 amending the Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Regulations, 1986 whereby Clause 2 (d) was inserted providing for a uniform entrance examination for all the medical institutions at the undergraduate level, namely, the National Eligibility and Entrance Test (NEET) on the ground that it was beyond the rule making power conferred by the parent Act of 1970. The High Court vide its judgment dated 18.12.2019 not only dismissed the writ petition but also directed that the admissions granted to large number of students pursuant to its interim order, without clearing the NEET, subject to final

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outcome of the writ petition, are not liable to be saved as such the admission did not confer any right or equity in their favour. The Supreme Court relied on its judgment in ***Veterinary Council's case,*** which had upheld the validity of similar regulations made by the Veterinary Council providing for admission on the basis of Common Entrance Examination and held that Veterinary Council was authorized to frame such regulations to prescribe standard of education and such powers includes power to make regulations relating to grant of admissions and veterinary qualifications. Upholding judgment of Punjab and Haryana High Court it was held that 2018 Regulations cannot be said to be *ultra vires* the Act. Argument was also made before the Supreme Court that large number of seats remained vacant and therefore, the insistence on minimum qualifying marks in the NEET would result in all such seats going waste. While repelling the argument, the Supreme Court saved the admission granted pursuant to interim order as one time measure. Following observation in para 12 of the judgment is worth quoting and we quote:

> *"12.Prescribing a minimum percentile for admission to the Under Graduate courses for the year 2019-2020 was vehemently defended by the Central Council and the Union of*

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India by submitting that the minimum standards cannot be lowered even for AYUSH courses. We agree. Doctors who are qualified in Ayurvedic, Unani and Homeopathy streams also treat patients and the lack of minimum standards of education would result in half-baked doctors being turned out of professional colleges. Non-availability of eligible candidates for admission to AYUSH Under Graduate courses cannot be a reason to lower the standards prescribed by the Central Council for admission. However, in view of admission of a large number of students to the AYUSH Under Graduate courses for the year 2019-2020 on the strength of interim orders passed by the High Courts, we direct that the students may be permitted to continue provided that they were admitted prior to the last date of admission, i.e., 15th October, 2019. The said direction is also applicable to students admitted to Post Graduate courses before 31st October, 2019. This is a one-time exercise which is permitted in view of the peculiar circumstances. Therefore, this order shall not be treated as a precedent."

18. The Constitution Bench of the Supreme Court in ***Dr. Preeti Srivastava and another vs. State of M.P. and others*** reported in ***(1999) 7 SCC 120*** while holding that the State was competent under List III Entry 25 of Seventh Schedule to control or regulate higher education subject to the standards so laid down by the Union of India, in the context of Post Graduate Medical

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Education under List-I Entry 66, of Seventh Schedule, held that State has competence to prescribe rules for admission to postgraduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India or its delegate. Fixing of minimum qualifying marks for passing the entrance test for admission to postgraduate courses is concerned with the standard of postgraduate medical education. Once minimum standards are laid down, states are competent to prescribe any further qualifications for selecting better students as that would not adversely affect the standards so laid down It is for the Medical Council of India to determine reservation of seats, if any, to be made for SCs/STs/OBCs, the extent thereof and lowering of qualifying marks in their favour, on the basis of proper balancing of public interests. But the States are fully competent to control admission of postgraduate medical courses, provide for reservation of seats, and lay down criteria for shortlisting of eligible candidates for postgraduate courses under List III Entry 25 of Seventh Schedule in the absence of any Central Legislation on these aspects. Following observations of the Supreme in paras 35 and 36 are pertinent to quote:

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"35. xxxx xxxx xxxxxx 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 co-ordination 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.

36. 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 post-graduate 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

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higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. xxxx xxxxxxx"

19. The Constitution Bench of the Supreme Court in ***Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others (2016) 7 SCC 353*** considering the arguments advanced on behalf of the Private Educational Institution with regard to their right to freedom of occupation and autonomy, held as under:

"101. To our mind, Entry 66 in List I is a specific Entry having a very specific and limited scope. It deals with co-ordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words 'co-ordination and determination of standards' would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such co-ordination and determination of standards, insofar as medical education is concerned, is achieved by Parliamentary legislation in the form of Medical Council of India Act, 1956 and by creating the statutory body like Medical Council of India (for short, 'MCI') therein. The functions that are assigned to MCI include within its sweep determination of

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standards in a medical institution as well as co-ordination of standards and that of educational institutions. When it comes to regulating 'education' as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in Entry 25 of List III, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject matter of Entry 11 in List II 5 . Thus, power to this extent was given to the State Legislatures. However, this Entry was omitted by the Constitution (Forty-Second Amendment) Act, 1976 with effect from July 03, 1977 and at the same time Entry 25 in List II was amended 6 . Education, including university education, was thus transferred to Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two Entries relating to education, one in the Union List and the other in the Concurrent List, co-exist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to co-ordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by Entry 25 of List III is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66.

102. Most educational activities, including admissions, have two aspects: The first deals with the adoption and setting up the minimum standards of education. The objective in prescribing

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minimum standards is to provide a benchmark of the caliber and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was though desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution makers provided for Entry 66 in List I with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

103 to 105 xxxx xxxxx xxxxx xxxxxx

106.In view of the above, there was no violation of right of autonomy of the educational institutions in the CET being conducted by the State or an agency nominated by the State or in fixing fee. The right of a State to do so is subject to a central law. Once the notifications under the Central statutes for conducting the CET called 'NEET' become operative, it will be a matter between the States and the Union, which will have to be sorted out on the touchstone of Article 254 of the Constitution. We need not dilate on this aspect any further."

20. In ***State of T.N. and another vs. S.V. Bratheep (Minor) and others (2004) 4 SCC 513*** the Supreme Court held

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that the standards prescribed by the State Government should not be adverse to or lower than those prescribed by the AICTE but the State Government can prescribe standards higher or additional to those prescribed by the AICTE. The State Government can prescribe certain percentage of marks in related subjects higher than the minimum in the qualifying examination prescribed by AICTE, as eligibility criterion for appearing in common entrance test. Following observations in paras 9, 10 and 12 are relevant and we quote:

> *"9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by the AICTE. It is no doubt true that the AICTE prescribed two modes of admission - One is merely dependent on the qualifying examination and the other dependent upon the marks obtained at the Common Entrance Test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination*

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in order to be eligible for admission. 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. On the other hand, if we proceed on the basis that the norms fixed by the AICTE would allow admission only on the basis of the marks obtained in the qualifying examination the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by the AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by the AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the 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. It is not very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon

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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.

10.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's 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 the AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution have to be understood in the manner as stated in the Dr. Preeti Srivastava's case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration.

11. xxxx xxxxxxxxx

12. One other argument is further advanced before us that the criteria fixed by the AICTE was 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

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> *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."*

21. The Supreme Court in A.***P.J. Abdul Kalam Technological University and another vs. Jai Bharath College of Management and Engineering Technology and others (2021) 2 SCC 564*** held that the State will provide standards in institutions for higher education or research and scientific and technical institutions, having regard to Entry 66 of List I, and it would be struck down as unconstitutional only if the same is found to be so heavy or devastating as to wipe out or appreciably abridge Central field and not otherwise. When State Act is in aid of parliamentary Act, the same would not entrench upon latter. Thus University/State Government concerned certainly has the power to fix higher eligibility criteria than the minimum prescribed by Central Governing Body/AICTE, to achieve excellence in education. Though the Universities cannot

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dilute standards prescribed by AICTE, but power of universities to prescribe enhanced norms and standards cannot be doubted.

22. In ***Visveswaraiah Technological University's*** case supra, the Supreme Court was dealing with the similar issue and held that the very fact that there are unfilled seat 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 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. Fixing higher standards, marginally higher than the minimum, is seldom the reason for seats in some colleges remaining vacant or unfilled during a particular year. 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

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second reason is that certain disciplines are 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. Paras 13 to 15 of the judgment are apt in the facts of the present case to quote:-

> *"13. 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*

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unfilled seats. During the hearing it was mentioned that AICTE itself has revised the eligibility criteria. Be that as it may.

14. 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.

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(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 are 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.

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 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

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> *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.*

23. In view of the afore-discussed law on the subject, we are not inclined to countenance the argument that inability of the Respondent-Board to provide sufficient number of students for admission to the D.El.Ed course to the Petitioner-Institutes despite three rounds of counseling, Common Entrance Test in facts like these cannot be taken as introducing additional, further and higher norms for maintaining the standards of education. The power of the State in introducing such norms by means of holding common entrance test to admit the students in the above mentioned course, over and above the norms provided by the NCTE, can be traced to Entry 25 List III of the Seventh Schedule to the Constitution. Holding of common entrance test is not intended to ensure that all seats in the institutes are filled up but to ensure that excellence in standards of higher education is

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maintained and merit of the students is tested on certain parameters. This can never be cited as the reason for the seats remaining vacant. Merely because certain seats have remained vacant with the Petitioner-Institutes does not justify allowing them to admit students by adhering to only minimum eligibility criteria prescribed by the NCTE. In our considered view, the introduction of the common entrance test by the State, as has also been envisaged even in Clause 3.3 (a) of the Regulation of 2009, is certainly intended to introduce additional, further and higher standards of education. If what the Petitioner-Institutes are arguing is accepted, that would mean that the candidates who secure 50% or 45% marks in Senior Secondary or Plus 2 examination, as the case may be, should be straightaway permitted to be admitted to D.EL.Ed. course even though either they did not choose to appear or if appeared, failed to qualify the common entrance test. In either eventuality, such candidates do not deserve to be admitted as both situations would be attributable to them. No fault for that reason can be found with the policy of the State in insisting on their qualifying the common entrance test for admission. It is upto the State to decide whether

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or not to do away the requirement of holding common entrance test and if so, whether the factum of seats against the approved intake of the Petitioner-Institutes remaining unfilled, should be taken as a relevant criteria for arriving at that decision. Primary reason of the seats remaining vacant in all these Institutes is mushrooming growth of such private institutions and because degrees or diplomas they award are going out of favour with the students as they are no longer considered promising or attractive for future career prospects and also because of the fact that some of these institutions enjoy bad reputation due to lack of infrastructure, bad faculty and indifferent teachings. We, in taking this view, are fortified from the judgment of the Supreme Court in ***Visveswaraiah Technological University's*** case, supra.

25. In view of the position of law, as discussed above, we are inclined to hold that the 2010 judgment of this Court in *CWP No. 5728 of 2010,* titled *H.P. B.Ed College Association and ors. vs. State of H.P. & anr.,supra* does not lay down good law and later judgment of 2014 in *CWP No. 7688 of 2013* titled *HP Private Universities Management Association (H-PUMA) vs. State of*

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Himachal Pradesh and others, supra, being in tune with the settled proposition of law on the subject, is correctly decided.

26. The question referred to the Full Bench is answered accordingly. Let these matters be laid before the appropriate Division Bench for further proceedings.

(Mohammad Rafiq)
Chief Justice

(Sandeep Sharma)
Judge

(Jyotsna Rewal Dua)
Judge

April 06, 2022
(cm Thakur)

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