

**ORDER**

Petitioners in all the petitions are students who completed their II PUC /XII standard from the Karnataka State PU Board/CBSE/ICSE/Equivalent in the year 2021 and intend to take admission into professional undergraduate Engineering and Technical courses for the academic year 2022-23.

2. The selection of candidates for admission to seats in professional Educational Institutions is governed by the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006 (for short. "the said Rules of 2006") which have been framed in exercise of powers under Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984.

2.1 Rule 3 of the said Rules of 2006 provides for academic eligibility to gain admission into professional courses, while Rule 4 envisages the method for determination of merit of a candidate for admission to the courses under the Rules. Rule 4(1)(c), which is relevant to

the instant petitions contemplates that in respect of Engineering and Technology courses, the merit of a candidate eligible for admission shall be determined with reference to marks obtained by them in the Common Entrance Test (for short, "the CET") and the marks obtained in Physics, Chemistry and Mathematics subjects in the qualifying examination, both taken in equal proportion. The term 'qualifying examination' is defined in Rule 2(t) to mean 2<sup>nd</sup> year PU examination/XII standard or any other equivalent examination.

2.2 On account of cancellation of the aforesaid II PUC/XII standard examinations for the year 2021, the petitioners did not appear for the said examinations. However, the petitioners were awarded marks and completed their II PUC/XII standard by way of internal assessment by the respective Boards, pursuant to the Government order dated 05.07.2021 issued by the State Government.

2.3 The Karnataka Examination Authority (for short, "KEA") is the nodal agency responsible for conducting examinations for admissions to professional courses. The

KEA conducted the CET for the purpose of admission to undergraduate courses in Engineering and Technology in the year 2021 as well. In this regard, the State Government issued a notification dated 01.09.2021 amending Rule 4 of the said Rules of 2006 by inserting a proviso, which contemplated that in respect of admission to Engineering and Technology courses, merit shall be determined with reference to only the marks obtained in the CET conducted for the academic year 2021-22.

2.4 Pursuant to insertion of the said proviso, all candidates who intended to take admission to Engineering and Technology courses for the academic year 2021-22 were directed to be selected on the basis of marks obtained by them in the CET conducted for the academic year 2021-22, irrespective of when they had completed their II PUC / XII standard, as the case may be. Accordingly, the CET results were announced and ranks were assigned, based on which, admissions were made taking into account only the CET marks and not II PUC/XII standard marks.

2.5 Subsequently, on 18.04.2022, the KEA published an information bulletin inviting applications from

students wishing to appear for the CET in 2022 to gain admission to professional courses, including Engineering and Technology courses for the academic year 2022-23. The said bulletin provided for academic eligibility for Engineering and Technology courses by taking both marks obtained in CET and in qualifying examination in equal proportion. Pursuant to the same, petitioners and other students took the CET in 2022 which was conducted during June-July 2022. Subsequently, on 25.07.2022, the KEA issued a circular directing all ICSE/CBSE candidates who have applied for CET 2022 to upload their XII standard marks in the link published in the KEA website on or before 5:00 pm on 26.07.2022.

2.6 On 30.07.2022, the KEA released the CET results and students' rankings. In addition thereto, the KEA also issued the impugned note dated 30.07.2022 to the effect that the qualifying marks of students of the year 2021, which were not considered for CET ranking for the academic year 2021-22, would not be considered for the academic year 2022-23 as well.

2.7 Aggrieved by the impugned note dated 30.07.2022 issued by the KEA and seeking consequential directions to the respondents to take their II PUC/XII standard and CET marks in equal proportion, the petitioners are before this Court by way of the present petitions.

3. Both the State Government and the KEA have contested the petitions and have filed their respective statements of objections and documents.

4. Heard Sri.D.R.Ravishankar, Sri.S.Basavaraj and Sri.A.S.Ponnanna, learned Senior counsel and other learned counsel for the petitioners and Sri.Dhyan Chinnappa, learned AAG for the respondents-State as well as Sri.N.K.Ramesh, learned counsel for KEA and perused the material on record.

5. In addition to reiterating the various contentions urged by the petitioners and referring to the material on record, learned Senior Counsel for the respective petitioners submitted that the impugned note is illegal,

arbitrary and without jurisdiction or authority of law and contrary to law apart from being unreasoned, non-speaking, cryptic and laconic in addition to being highly discriminatory, irrational, unfair and unjust and the same deserves to be quashed. It is also submitted that necessary directions are to be issued to the respondents to redo the CET ranking in accordance with Rules 3 and 4 of the said Rules of 2006 by taking both the II PUC / XII standard marks and CET marks in equal proportion. It is further submitted that the CET ranking would have to be redone without reference to and without applying the proviso to Rule 4 which was inserted for the limited/restricted purpose of CET examination conducted for the year 2021 for the academic year 2021-22 and was not applicable for CET, 2022 for the academic year 2022-23.

6. Per contra, learned AAG for the State and learned counsel for the KEA, in addition to reiterating the various contentions urged in the statement of objections and referring to the material on record, submitted that the proviso to Rule 4 was applicable to CET, 2022 for

admission to Engineering and Technology courses for the academic year 2022-23 insofar as the petitioners and similarly situated students who completed II PUC / XII standard in the year 2021. In this context, it was pointed out that the petitioners and other students did not take / appear in the qualifying examination in 2021 as provided in the Rules and consequently, the marks obtained by them by way of internal assessment were not taken / reckoned for the purpose of CET ranking for CET, 2021 and admission for the academic year 2021-22. Similarly, since the said students did not take / appear in the qualifying examination which was undisputedly not conducted during 2021, the said internal assessment marks obtained by them for II PUC / XII standard for 2021 cannot be taken or reckoned for CET, 2022 and admission for the academic year 2022-23 also.

6.1 Learned counsel also invited my attention to the statistics narrated in their statement of objections in order to point out that as against the total number of students who have passed II PUC / XII standard in the year 2022, the petitioners and other students, who passed in 2021

were comparatively small in number and as such, their marks obtained by way of internal assessment cannot be taken for the purpose of admission to academic year 2021-22 as rightly stated in the impugned note, which does not warrant interference by this Court in the present petition. It is also submitted that Rule 4 mandates that in order to reckon the II PUC / XII standard marks, it is necessary that the petitioners and other students of the year 2021 ought to have taken the qualifying examination during the said year and since the same was never conducted, the question of taking / reckoning their internal assessment marks for the purpose of either CET, 2021 for the academic year 2021-22 or CET, 2022 for the academic year 2022-23 does not arise. It is therefore submitted that there is no merit in the petitions and that the same are liable to be dismissed.

7. I have given my anxious consideration to the rival submissions and perused the material on record.

8. As stated supra, due to the Covid-19 pandemic, the II PUC / XII standard examinations were not conducted during the year 2021 and all students of that batch



including the petitioners were given marks based upon an internal assessment formula in terms of the Government Order dated 05.07.2021 issued by the State Government. So also, the KEA conducted CET in the year 2021 for admissions to Engineering and Technology undergraduate courses for the academic year 2021-22 and in this regard, the State Government issued a notification dated 01.09.2021 amending Rule 4 of the said Rules of 2006 by inserting a proviso after Rule 4(1)(c) for the purpose of determining merit in respect of Engineering and Technology courses for the academic year 2021-22.

Rule 4(1)(c) along with the said proviso reads as under:-

**4. Determination of merit – (1)** *The merit of a candidate eligible for admission to the courses under these Rules shall be determined as follows:*

(a) xxxxxxxx

(b) xxxxxxxx

(c) *In respect of Engineering and Technology courses, with reference to the marks obtained in the Entrance Text and the marks obtained in Physics, Chemistry and Mathematics subjects in the qualifying examination, taken in equal proportions.*

*Provided that in respect of Engineering and Technology courses, merit shall be determined with respect to marks obtained in the entrance test conducted for the academic year 2021-22”.*

9. Pursuant to the same, the respondents conducted CET during 2021 for admission to Engineering and Technology courses for the academic year 2021-22 in terms of the aforesaid proviso. However, until issuance of the impugned note on 30.07.2022, respondents never declared or represented anywhere that the proviso would apply to admissions for the academic year 2022-23 as well. On the other hand, the conduct of the respondents as borne out of the material on record clearly indicates that the proviso would not apply to admissions for the academic year 2022-23.

10. Upon perusal of the entire material on record and on consideration of the rival submissions, I am of the view that the impugned note dated 30.07.2022 issued by the KEA to the effect that the II PUC / XII standard marks obtained by the petitioners in 2021 would not be considered

for the purpose of CET ranking for the academic year 2022-23 deserves to be quashed for the following reasons:-

- A plain reading of the aforesaid proviso to Rule 4 of the said Rules of 2006 makes it explicitly clear that the said proviso was applicable for determination of merit with respect to marks obtained in the Entrance Test (CET) for the academic year 2021-22 only and the same is restricted / limited only to the said period only and not applicable/extended to any other period; any attempt to extend the applicability of the proviso to admissions for the academic year 2022-23 would prove irrational, illogical and unreasonable, since the proviso is restricted to the Entrance Test (CET) conducted for the academic year 2021-22; in other words, in view of the express language employed in the proviso, which was inserted in 2021 and is restricted and limited in its applicability only to the CET 2021 for the academic year 2021-22, the said proviso cannot be extended to the academic year 2022-23 as sought to be done in the impugned note, which is clearly contrary to the proviso and

consequently, the said proviso stood exhausted completely and had spent itself during 2021 itself and the same was clearly inapplicable to CET, 2022 for the academic year 2022-23.

- The proviso inserted to Rule 4 of the said Rules of 2006 on 01.09.2021 was restricted / limited to admissions to Engineering and Technology courses for the academic year 2021-22 and the same cannot be made applicable to the academic year 2022-23, especially when the said proviso stood exhausted and spent in 2021 itself and no further amendment was made in the year 2022 to Rule 4 in any manner, either by way of a new proviso or any other amendment to the extant Rules.
- The proviso to Rule 4 inserted in 2021 clearly indicates that its operation and applicability is restricted and limited to determination of merit with reference to the marks obtained in CET conducted for 2021-22 and the said CET having already been conducted, the said proviso does not survive any longer and is not applicable to CET conducted in the

academic year 2022-23 and the impugned note is contrary to the Rules and deserves to be quashed on this ground also.

- The bulletin issued by the KEA clearly prescribes/provides for eligibility to gain admission by taking both II PUC / XII standard marks and CET marks in equal proportion and in the entire bulletin, there is absolutely no mention as regards not considering the II PUC / XII standard marks for CET ranking for the academic year 2022-23 and consequently, the impugned note is contrary to the bulletin and other documents of the KEA in relation to CET, 2022 and the same deserves to be quashed on this ground as well.
- The KEA having unequivocally and unambiguously represented and held out that eligibility for admission to Engineering and Technology courses for the academic year 2022-23 would be based on taking both II PUC / XII standard marks and CET marks in equal proportion, is estopped from issuing the impugned note directing the said marks not to be

considered for the purpose of CET rankings for 2022-23 and as such, the impugned note is contrary to the principles of legitimate expectation and promissory estoppel and the same deserves to be quashed on this ground also.

- The conduct of the respondents in applying the proviso to Rule 4 dated 01.09.2021 to all candidates, by taking only their CET marks for the academic year 2021-22, irrespective of when they completed II PUC / XII standard, including students of the earlier years i.e., 2018, 2019, 2020 etc., clearly indicates that the respondents were not entitled to apply the proviso only to the students, who completed II PUC / XII standard in 2021 and not to other students of other years and on this score also, the impugned note deserves to be quashed.
- A perusal of the impugned note indicates that the same is neither an executive order as contemplated under Article 162 of the Constitution of India nor a subordinate legislation and since the impugned note does not even purport to amend Rule 4 of the said

Rules of 2006, the impugned note has no legal sanctity or validity and deserves to be quashed.

- The respondents have not placed any material in support of the impugned note which is unreasoned, laconic, non-speaking, cryptic and does not disclose any application of mind and in the absence of any foundation / background shown / established by the respondents prior to the issuance of the impugned note, the same is violative of principles of natural justice and the same deserves to be quashed.
- The marks obtained by the petitioners in II PUC / XII standard in the year 2021 are undisputedly taken into consideration for admission to other undergraduate courses for the academic year 2022-23 and consequently, non-consideration of the same only for Engineering and Technology courses is discriminatory and arbitrary apart from being irrational, unreasonable and unfair and the same deserves to be quashed.
- The impugned note dated 30.07.2022 issued simultaneously along with the CET rankings which

were also issued on the same day is also contrary to the well settled principle of law that “the rules of the game/eligibility criteria cannot be changed after it has begun and/or the selection process is nearing completion”. In this context, it is contended that the impugned note dated 30.07.2022 which seeks to alter the extant selection criteria after the selection process on 18.04.2022 and at the time of its completion on 30.07.2022 is illegal and contrary to the aforesaid principle and the same deserves to be quashed on this ground as well.

- The bulletin issued by the KEA and other documents pertaining to CET 2022, including eligibility, qualifications, merit, etc., which provide taking of both II PUC / XII standard marks and CET marks in equal proportion do not either explicitly or implicitly exclude the marks obtained by petitioners and other students in 2021 and in the absence of any such exclusion, the impugned note is contrary to the aforesaid documents issued by the KEA as well as



the said Rules of 2006 and the same deserves to be quashed.

- The conduct of the KEA in not intimating/informing petitioners and other students who completed II PUC / XII standard in 2021 that their marks would not be considered for the purpose of CET rankings in the academic year 2022-23 until they issued the impugned note on 30.07.2022, has resulted in denying an opportunity to the petitioners and other students to surrender their previous year's II PUC / XII standard marks and retake the II PUC / XII standard Examinations once again is yet another factor/circumstance that would vitiate the impugned order.
- Insofar as the contention urged by the respondents with regard to applicability of the proviso to Rule 4 for the academic year 2022-23 insofar as the petitioners and other students who have completed their II PUC / XII standard in the year 2021 is concerned, as stated supra, a plain and literal reading of the said proviso and the provisions contained in Rules 3 and

4 will clearly indicate that while both II PUC / XII standard marks and CET marks would be taken in equal proportion for the purpose of admission to Engineering and Technology in terms of Rules 3 and 4, only insofar as CET for the academic year 2021–22 is concerned, the proviso carves out an exception by reckoning / taking only the CET marks by restricting and limiting the operation of the proviso only to 2021-22 and not for admissions for the academic year 2022-23 and consequently, the said contention urged by the respondents cannot be accepted.

- Insofar as the reliance placed upon the statistics as regards the number of students, who took CET in 2021 who are repeating the same in 2022, as against students who took CET for the first time in 2022 is concerned, the said statistics cannot be made the basis to either interpret the proviso to Rule 4 nor come to the conclusion that the impugned note is legal, valid and proper and consequently, even this

contention urged by the respondents cannot be accepted.

- Insofar as the contention urged by the respondents that since the petitioners and other students who passed II PUC / XII standard in the year 2021 did not take the qualifying examinations, the marks received by them for the purpose of admission to Engineering and Technology courses in CET, 2022 cannot be taken at all is concerned, accepting the said contention and taking their II PUC / XII standard marks obtained by them through internal assessment as "Nil", would lead to and result in absurd consequences which cannot be countenanced in the facts and circumstances of the instant case and as such, even this contention urged by the respondents cannot be accepted.

11. Though both sides have placed reliance upon decisions in support of their respective contentions, having regard to the fact that the present petitions deserve to be disposed of in the peculiar / special facts and

circumstances obtaining in the instant case, I do not deem it necessary to refer to the said decisions / judgments for the purpose of disposal of the present petitions.

12. In the result, I pass the following:-

**ORDER**

(i) All the petitions are hereby allowed.

(ii) The impugned note dated 30.07.2022 passed by the Karnataka Examinations Authority and the CET Ranking issued by the KEA on 30.07.2022 for admission to undergraduate courses in Engineering and Technology are hereby quashed.

(iii) The respondents are directed to redo the CET rankings for admission to undergraduate courses in Engineering and Technology for the academic year 2022-23 strictly in accordance with Rules 3 and 4 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006 and without reference to proviso to Rule 4 inserted vide Government Order No.ED147TEC2020 dated

01.09.2021 as expeditiously as possible, bearing in mind the observations made in this order.

**Sd/-  
JUDGE**

Srl.

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