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REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6870 OF 2019

1. **PRIYANKA MANGESH SHINDE,**
d/o Mangesh Shinde, r/o Room No.
[redacted]

2. **NACHIKET PRASAD JOAG,**
s/o Prasad Arvind Joag, r/o A-305
[redacted]

3. **ADITYA SANDEEP DESAI,**
[redacted]

4. **LAKA PARVEZ KUWARI,**
r[redacted]

5. **SALONI SANJAY BOKARE,**
[redacted]

6. **SANIKA PRASHANT DESHMUKH,**

[redacted]

7. **Raj Milind Karkhanis,**
[redacted]1

8. **Moin Ismail Memon,**
[redacted]

9. **Prerna Prabhakar Gaikwad,**
[redacted]

10. **Dishant Krishna Koli,**
[redacted]

11. **Nishant Anil Nawadkar,**
[redacted]

12. **Aneesh Pradeep Mulay,**
[redacted]

13. **Pranav Anand Dengale,**
[redacted] ... **Petitioners**

~ versus ~

1. **All India Council for Technical Education**

through the Chairperson,
Department of Higher Education,
Ministry of Human Resource
Development, Nelson Mandela Marg,
Vasant Kunj, New Delhi 110 070

2. **Directorate of Technical Education Maharashtra,**
through the Director, 3, Mahapalika
Marg, Mumbai 400 001

3. **Government of Maharashtra,** through the
Secretary, Education and Sports
Development, Mantralaya,
Mumbai 400 032

4. **Union of India,**
through the Secretary, Ministry of
Human Resource Development,
Shastri Bhavan, Delhi 110 001 ... **Respondents**

AND

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 843 OF 2019

1. **Pranav Abhijeet Samant,**
B/302, Guru Prasad Co-operative
Housing Society, Hanuman Road,
Vile Parle (East), Mumbai 400 057

2. **Trisha Manoj Naik,**
Harikesh Apartment, Waterfield Road,
Bandra West, Mumbai 400 050 ... **Petitioners**

~ versus ~

1. **All India Council for Technical Education**

through the Chairperson,
Department of Higher Education,
Ministry of Human Resource
Development, Nelson Mandela Marg,
Vasant Kunj, New Delhi 110 070

2. **DIRECTORATE OF TECHNICAL EDUCATION MAHARASHTRA,**
through the Director, 3, Mahapalika
Marg, Mumbai 400 001

3. **GOVERNMENT OF MAHARASHTRA,** through the
Secretary, Education and Sports
Development, Mantralaya,
Mumbai 400 032

4. **UNION OF INDIA,**
through the Secretary, Ministry of
Human Resource Development,
Shastri Bhavan, Delhi 110 001 ... **RESPONDENTS**

APPEARANCES IN WRIT PETITION NO. 6870 OF 2019

FOR THE PETITIONERS	**Ms Gayatri Singh,** *Senior Advocate, a/w Kartikya Bhadhur, Sangram Chinappa and Kaustub R Gidh*
FOR RESPONDENT NO 1	**Mr Abhijeet A Joshi**, *Advocate*
FOR RESPONDENTS NOS. 2 AND 3	**Ms Ashwini A Purav**, *AGP*
FOR RESPONDENT NO. 4	**Mr Rui Rodrigues**, *Advocate, a/w Pavan S Patil*

APPEARANCES IN WRIT PETITION (L) NO. 843 OF 2019

FOR THE PETITIONERS	**Mr Mihir Desai,** *Senior Advocate, a/w Kartikya Bhadhur, Pranav Samant and Kranti LC*
FOR RESPONDENT NO 1	**Mr Abhijeet A Joshi**, *Advocate*
FOR RESPONDENTS NOS. 2 AND 3	**Mr Kedar Dighe**, *AGP*
FOR RESPONDENT NO. 4	**Mr Rui Rodrigues**, *Advocate, a/w Pavan S Patil*

CORAM : S. C. Dharmadhikari & G.S.Patel, JJ.

RESERVED ON : 26th June 2019

PRONOUNCED ON : 5th July 2019

JUDGMENT: (*Per GS Patel, J*)

ARRANGEMENT OF SECTIONS

A. INTRODUCTION

1. The world we have fashioned for ourselves today is remarkable most of all for its dizzying complexity. We are wont to yearn for the apparent simplicity and straightforwardness of an era long lost to time. This complexity has its own social consequences and repercussions. One of these is the intensity and ferocity of competition in virtually every aspect of our lives; and education — higher education and professional qualifications in particular — is no exception. There are more educational opportunities now than ever before, and a bewildering array of specializations and super-specializations. Engineering is no exception. The sheer number of persons seeking degrees in higher or professional education has forced more and more regulation, and, with it, the establishing of regulatory and supervisory authorities under dedicated statutes. It is the duty of the State to make provision for educational opportunities, but these are not all necessarily run by the State at its cost. This makes it imperative to have overall regulations and supervision. Throughout, the emphasis is — at least ostensibly — on the pursuit of excellence. Merit gains its reward by placement in the best institutions of higher learning. Those who rank lower in

merit have narrower and perhaps less optimal choices. Regulation on this scale demands an across-the-board 'flattening', so that all may be assessed by a common measure. This has led to the advent of what are called 'common tests', and these are applied in medicine, engineering, law and other disciplines.

B. THE TWO ROUTES IN ENGINEERING EDUCATION

2. The young petitioners before us in these two writ petitions brought under Article 226 of the Constitution of India are all studying engineering. But they are in the final year of a three-year diploma course, not the four-year degree course; and that, precisely, is the problem they bring to us. All of them aspire to a full-fledged engineering degree. Normally, a graduate degree in engineering requires a student to take a competitive centralized test administered after the 12th standard. Successful candidates are then enrolled in a four-year degree course. This is therefore a total of 16 years of education, on the 10+2+4 paradigm (ten years in school, two years in what is or used to be called junior college, and then four years in the engineering degree course). The other 'route' is for a student to directly enrol after finishing school, i.e. completing the 10th standard, in a three-year diploma course. This earns the student a diploma, not a degree, and the total education is 10+3, or 13 years. Assuming a student completes school at the age of 16, an engineering degree will require him to study for another six years, until the age of 22. A diploma in engineering, on the other hand, can be obtained at the age of 19. Therefore, if two students complete

school together, and one takes the diploma course, he enters the workforce three years ahead of his classmate who chose to do two further years of school or college, then took the very competitive exam, and obtained admission to a four-year engineering degree course. This is where market forces begin to operate. A diploma-holder may, technically, have three years' greater work experience than one who takes the degree course (which finishes later), but the job opportunities for the two are not the same. There is a decided preference for those with degrees over those with diplomas. For this reason, and given the education-length disparity, engineering diploma students are allowed what is called a 'lateral entry'. After completing the three-year diploma course, they can enrol 'laterally' in the second year of the four-year engineering course. In the result, they spend exactly the same time in engineering education; only the component break-up is different. Diploma students taking the lateral entry into the second year engineering degree course would finally have a 10+3+3 education, in aggregate the same as those who directly enrolled in the engineering degree course, following the 10+2+4 pattern.

3. The Common Entrance Test, or CET, for engineering admission in Maharashtra is administered by the State Government's Department of Technical Education, or DTE. The number of seats per institute is decided by the All India Council for Technical Education, the AICTE, a regulatory body established under the All India Council for Technical Education Act, 1987 ("**the AICTE Act**").

C. THE ISSUES IN THE PETITIONS

4. The issue, shortly stated, before we turn to the statutory provisions, the propositions canvassed and the authorities cited, is this: by a gazetted Notification dated 31st December 2018,[1] departing from its norms since 2010 or 2011, the AICTE reduced the percentage of this lateral entry from 20% to 10%. In other words, prior to the impugned Notification, each engineering degree institute had a provisioned intake of 20% of its second-year seats for laterally entering engineering diploma holders who had finished the three-year diploma. Now, this isreduced to 10%. The petitioner students are aggrieved by this halving. They say their career prospects are jeopardized, if not outright ruined, their dreams in tatters. When they took up the diploma course, they did so in the legitimate expectation that there would be a 20% allowable intake into the second-year of the engineering course; this was the norm at the time of enrolment, and it cannot, they contend, be altered to their prejudice. This is the first argument, posited on the principle of legitimate expectations (or at least an approximation of it).

5. The second argument most energetically canvassed is that this reduction is somehow mala fide. It is meant to commercially benefit smaller college that have plenty of unfilled or surplus seats. That purpose, the argument goes, is ultra vires certain provisions of the AICTE Act.

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1 Exhibit "C" at pages 57-77 of the paperbook in writ petition 6870 of 2019.

6. This is the sum and substance of the challenge before us presented by Mr Desai and Ms Singh. These are the main prayers in their respective petitions:[2]

In Writ Petition No. 6870 of 2019

a. This Hon'ble Court be pleased to issue a writ of Certiorari, and/or any writ, order or direction in the nature of Certiorari and quash and set aside Clause 4.9(b) of Notification dated 31.12.118 at Exhibit C to the extent that it limits the number of lateral entry seats to 10%.

b. This Hon'ble Court be pleased to issue a writ of Mandamus, and/or any writ, order or direction in the nature of Mandamus and direct the Respondents to continue to allow Diploma Holders to be eligible to take admission to second year engineering degree courses up to a maximum of 20% of the sanction intake as was provided at clause 4.35 of the previous Regulation dated.

c. This Hon'ble Court be pleased to issue a writ of Mandamus, and/or any writ, order or direction in the nature of Mandamus and direct the Respondents not to give effect to Clause 4.9 of the impugned Notification at Exhibit C from the academic year 2022-2023 onwards.

In Writ Petition (L) No 843 of 2019

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2 There is an evident error in prayer (c) of Writ Petition No. 6870 of 2019; the 'not' is incorrect, and the prayer seems to be to give effect to the impugned Notification of 31st December 2018 only from the academic year 2022-2023 onwards and not before. This is consistent with the wording of prayer (b) in the companion Writ Petition (L) No. 843 of 2019.

a. This Hon'ble Court be pleased to issue a writ of Certiorari, writ, order or direction in the nature of Certiorari and quash and set aside Clause 4.9 of Notification dated 31.12.118 at Exhibit E reducing the number of lateral entry seats to 10% from 20% of the total number of allotted seats.

b. This Hon'ble Court be pleased to issue a writ of Mandamus, writ, order or direction in the nature of Mandamus and direct the Respondents not to give effect Clause 4.9 of the impugned Notification at Exhibit E from the academic year 2022-2023 onwards.

7. We consider both arguments a little later in this judgment, and weigh them against Mr Joshi's response on behalf of the AICTE, the 1st Respondent to both petitions. His submission — we will come to the supporting data later — is that these petitions seek something else entirely, and not what they suggest on their face. What the petitioners advocate, he submits, is that they have some sort of enforceable right to a defined percentage for lateral entries. This is without support in law. Further, the fact of the matter is that lateral entry is being sought in overwhelming majority to prestige colleges, such as the VJTI in Mumbai, and it is not mere happenstance that the demand is for lateral entry seats to engineering colleges in major urban centres. Overall, there is statistical data to show that there are tens of thousands of unfilled seats in engineering degree courses. All these courses are AICTE-approved. Therefore, they meet the minimum standards set by the AICTE. Some of these colleges are just not in big cities. What, therefore, the petitions seek in truth is not a percentage of lateral

entry, but some sort of right to take a lateral entry admission to an urban college. That, Mr Joshi submits, and in our view quite correctly, is no right at all, let alone an enforceable right. Once the AICTE has, after due deliberations and based on cogent material, taken a studied decision to alter the lateral entry maximum percentage, keeping in mind in particular the number of unfilled seats (i.e. that there are seats still to be had and going a-begging), then there is simply no basis at all for these petitions.

8. We turn first to the AICTE Act and the relevant Regulations.

D. THE AICTE ACT

9. The AICTE Act is intended to establish the AICTE with a view to the proper planning and coordinated development of the technical education system across India. It aims to promote qualitative improvements in such education in relation to *planned* quantitative growth. It also provides for the regulation and proper maintenance of norms and standards in the technical education system.

10. Section 2(b) defines 'Council' to mean the AICTE. This is established under Section 3. Section 2(f) says that 'regulations' means regulations under the AICTE Act, and Section 2(e) tells us that 'prescribed' means prescribed by rules under that Act. The definitions of technical education and technical institution are to be noted:

2(g) "Technical education" means programmes of education, research and training in engineering, technology, architecture, town planning, management, pharmacy and applied art and crafts and such other programme or areas the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

2(h) "technical institution" means an institution, not being a university which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions.

11. The AICTE is established under Section 3. It is a body corporate with a common seal and perpetual succession. It can contract, sue and be sued in its own name. Its head office is in Delhi. It has a representative composition including persons from industry, commerce, professional bodies, the University Grants Commission, and the Director-General of the Council of Scientific and Industrial Research. It is a body that brings together diverse technical fields and expertise. Chapter III deals with the AICTE's powers and functions. We note Sections 10 and 11.

S.10: FUNCTIONS OF THE COUNCIL:

(1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

(a) undertake survey in the various fields of technical education, collect data on all related matters and make

forecast of the needed growth and development in technical education;

(b) co-ordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to—

(i) technical institutions, and

(ii) Universities imparting technical education in co-ordination with the Commission;

(d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new, technologies to meet developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and

set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advice the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialisation of technical education;

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may

be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advice the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme;

(v) perform such other functions as may be prescribed.

S.11: INSPECTION

(1) For the purposes of ascertaining the financial needs of a technical institution, or a University or its standards of teaching examination and research, the Council may cause an inspection of any department, or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.

(2) The Council shall communicate to the technical institution or University the date on which any inspection

under sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.

(4) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (3).

12. Section 23 provides for the AICTE's rule-making power:

S. 23: POWER TO MAKE REGULATIONS

(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the Rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) regulating the meetings of the Council and the procedure for conducting business thereat;

(b) the terms and conditions of service of the officers and employees of the Council;

(c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(d) the area of concern, the constitution, and powers and functions of the Board of Studies;

(e) the region for which the Regional Committee be established and the constitution and functions of such Committee.

E. THE AICTE REGULATIONS OVER TIME

13. In exercise of this power under Section 23, the AICTE has framed the All India Council for Technical Education (Grant of Approval for Technical Institutions) Regulations ("**the AICTE Regulations**"), with periodic revisions. It is in these Regulations that we find the provisions for lateral entry. We consider the AICTE Regulations of 2011, 2016 and, finally, 2018 with specific reference to the lateral entry provisions.

14. The 2011 AICTE Regulations had these material provisions:

AICTE REGULATIONS 2011

2.32 **"*Lateral Entry*" means admission of students into the second year of Diploma/Under Graduate Degree/MCA Programmes as specified in Approval Process Handbook.**

4.35 **Diploma holders** and B.Sc Degree holders **shall be eligible for admission to second year engineering degree**

courses up to a maximum of 20% of sanctioned intake, except Andaman, Nicobar, Lakshadweep, Diu and Daman where it shall be 30%, **which will be the supernumerary of the approved intake.**

Provided that Students who have completed Diploma course in Architectural Assistantship & Town Planning shall be eligible for admission to second year Architecture degree courses up to a maximum of 20% of sanctioned intake except Andaman, Nicobar, Lakshadweep, Diu and Daman where it shall be 30%, which will be the supernumerary of the approved intake.

Provided further that students who have completed Diploma course in Pharmacy shall be eligible for admission to second year Pharmacy degree courses up to a maximum of 20% of sanctioned intake except Andaman, Nicobar, Lakshadweep, Diu and Daman where it shall be 30%,which will be the supernumerary to the approved intake.

We note that the record indicates that this 20% in 2011 was an increase from the previous level of 10% that operated until 2010-2011. In 2016, while the 'lateral entry' definition remained unchanged, this is how the lateral entry provision read:

AICTE REGULATIONS 2016

4.44 Admissions under lateral entry in Degree/Post Graduate Degree/Diploma Programme.

a. **Diploma holders and B. Sc. Degree holders shall be eligible for admission to second year Engineering degree up to a maximum of 20% of sanctioned intake** (30% for Institutions in Andaman, Nicobar, Lakshadweep, Daman and Diu) **which shall be over and above, supernumerary to the sanctioned intake, plus the**

unfilled vacancies of 1st year as per the Approval Process Handbook.

b. Provided that, students who have completed Diploma course in Pharmacy shall be eligible for admission to second year Pharmacy degree up to a maximum of 10% of sanctioned intake (20% for Institutions in Andaman, Nicobar, Lakshadweep, Daman and Diu) which shall be over and above, supernumerary to the sanctioned intake, plus the unfilled vacancies of 1st year as per the Approval Process Handbook.

c. Provided that students who have completed Bachelor's Degree of minimum 3 years duration in BCA, B.Sc. (IT/Computer Science) with Mathematics as a Course at 10+2 level or at Graduate level shall be eligible for admission to second year MCA Course up to a maximum of 20% of sanctioned intake (30% for Institutions in Andaman, Nicobar, Lakshadweep, Daman and Diu) which shall be over and above supernumerary to the sanctioned intake, plus the unfilled vacancies of 1st year as per the Approved Process Handbook.

d. Students passing 12th Science (with Mathematics as one of the Subject) or 12th Science with Vocational (Or) 12th Science with Technical or 10th + (2 years ITI) with appropriate specialization in that order shall be eligible for admission to second year Diploma Courses of appropriate Programme up[to a maximum of 20% of sanctioned intake (30% for Institutions in Andaman, Nicobar, Lakshadweep, Daman and Diu) which shall be over and above, supernumerary to the sanctioned intake, plus the unfilled vacancies of 1st year as per the Approval Process Handbook.

Finally, these are the relevant provisions of the 2018 AICTE Approval Regulations. Again, the definition of 'lateral entry' has not changed.

AICTE REGULATIONS 2018

4.9. Admission under Lateral Entry in Diploma/Under Graduate Degree/Post Graduate Course(s).

a. Lateral Entry to Second Year Diploma Course(s) shall be permissible up to a maximum of 10% of the "Approved Intake" which shall be over and above, supernumerary to the "Approved Intake", plus the unfilled vacancies of the first year as specified in the Approval Process Handbook.

b. Lateral Entry to Second Year Degree Course(s) in Engineering and Technology/Pharmacy/MCA Course shall be permissible up to a maximum of 10% of the "Approved Intake" which shall be over and above, supernumerary to the "Approved Intake", plus the unfilled vacancies of the Firsts year as specified in the Approval Process Handbook.

c. Any Foreign National who has obtained Diploma in a Foreign Institution (having an equivalency Certificate issued by the Association of Indian Universities) or Diploma in and Indian Institution shall also be eligible for Lateral Entry into the Second Year Degree Course(s). The Institutions having approval for the supernumerary seats in such Course(s) are ONLY eligible to admit the Foreign Nationals as per the norms, else the Institution shall apply for the same on AICTE Web-Portal. However, the total Foreign Nationals admitted under supernumerary seats and

the Lateral Entry shall not exceed the 15% of the "Approved Intake" in an Academic year.

d. The Council shall not permit the Introduction or Continuation of Lateral Entry Separate Division in Second Year Engineering and Technology/ MCA Courses.

(*Emphasis added*)

15. It is at once evident that the AICTE Regulations of 2018 now provide for a bi-directional lateral entry: into the Diploma course second year (vide Regulation 4.9(a) above), and into the second year of the degree course. The maximum intake is 10%, down from the 20% of previous years (but reverting to the pre-2010 level of 10%). This is not an absolute percentage: it is 10% of the approved intake and is over and above (and supernumerary to) the approved intake itself. In addition, the unfilled vacancies of the first year are also available. The only change is in this percentage. Everything else has remained the same for nearly a decade.

F. AICTE'S RESPONSE JUSTIFYING THE REDUCTION

16. AICTE has filed an Affidavit in Reply in Writ Petition (L) No. 843 of 2019.[3] Mr Joshi was unable to get an affidavit affirmed in the other Writ Petition No 6870 of 2019, but we permitted him to refer to the affidavit already filed for both petitions. In this Affidavit, the Amit Dutta, the Regional Officer and Deputy Director, Western

3 *Pranav Abhijeet Sawant & Anr v AICTE & Ors*. The affidavit is from pages 78 to 88.

Regional Office of the AICTE, says that the AICTE Approval Regulations are meant to maintain quality and norms in technical education. He points out that until the Academic Year 2010-2011, the lateral entry seats percentage to the second year engineering degree course was 10%. It was raised to 20% in view of the increased demand from the Academic Year 2011-2012 This continued until 2018. What was available for lateral entry was 20% of the approved intake *plus* all vacant seats from the first year. However, in the last five years, the AICTE found that admissions to the first year itself were only around 50% of the approved intake. In Maharashtra, admissions to the first year of the engineering degree course have been around 55% since 2015. There is reference to a letter dated 28th March 2019 from the 2nd Respondent, the DTE of the State Government to the AICTE pointing this out.[4] This show that despite the approved lateral entry seats, admissions to the second year in Maharashtra for the last few years *is only around 60%*. In other words, despite the lateral entry provision, there are still empty seats in the second year.

17. Some portions of this affidavit merit reproduction.

> 2(i) **I state that it is also observed by the Respondent No.1 that the lateral entry rule and percentage apply equally to the colleges in Rural, Urban and the Mega and Metro areas. I state that the reduction of admission in the First Year Engineering Courses and Second Year lateral entry admission have affected the colleges in rural areas. I state that the rules of admission, lateral entry, as well as all other rules as to maintaining standards apply equally to colleges in all areas except**

4 Exhibit "A", *p.* 87.

the norms of land. I state that as such it was observed that comparatively there are more admissions in urban and mega and metro areas than in rural areas and therefore there is disproportionality. I state that by reducing lateral entry intake from 20% to 10% of the First Year approved intake, the admission to these courses can be spread across the Mega, Metro, Urban and Rural areas, thereby creating equality among the colleges in these different areas.

2(j) Apart from the above, due to the supernumerary seats of TFW, PIO/Foreign National, J&K PMSSS students and lateral entry seats **the class strength of second year onwards was increasing from 60 to 94 which was counterproductive for quality education and even seating arrangement in class is meant for 60 students.**

2(k) Therefore in view of the second year vacant seats and for the sake of quality education, the lateral entry seats were reduced to 10% of the first year approved intake, plus the vacant seats of the first year. The reduction from 20% of first year approved intake plus vacant seats of first year to 10% of first year approved intake plus vacant seats of first year is effected by the AICTE Regulations annexed at Exhibit "E" to the Writ Petition.

2(l) In view of the above, considering the last five years trend and the decrease in admissions to second year the interest of prospective students is not affected since even at 10% of first year approved intake plus vacant seats of first year there are enough seats available for lateral entry to second year for every passed out Diploma Student.

2(m) **I state that the percentage of lateral entry was 10% till AY 2010-2011, however based on past experience it was increased to 20% from 2011-12. Similarly the current reduction of percentage of lateral entry seats to 10% is a**

policy decision taken by the Respondent No.1 based on its experience of past many years. I state that the said decision of Respondent No.1 is therefore taken in the interest of students and maintaining quality of education and therefore cannot be faulted with.

3(b) As to the contents of paragraph no.3 I state that, the said reduction in the percentage of lateral entry seats from 20% to 10% is in view of the reduced admissions to the First Year of Engineering Courses and also the reduced admissions through the direct Second Year admissions through lateral entry over the years. **I state that the direct admissions of the Second Year of the Engineering Courses are not allowed only at a percentage of the First Year approved intake but also to the seats which remained vacant after the first year admissions. I state that considering the trend of admissions in Maharashtra as mentioned at Exhibit A herewith it is obvious that in the last few years the admissions to the first year and second year of engineering courses is nearly half the approved intake and therefore the reduction from 20% of First Year approved intake plus First Year vacant seats to 10% of First Year approved intake plus First Year vacant seats is not going to deprive any student willing to seek admission through lateral entry.**

(*Emphasis added*)

18. There is a table of statistics annexed to the DTE letter at Exhibit "A" to this Affidavit. It shows that for 2018, 41,288 engineering degree course seats remained vacant. The figure for 2017 was 41,205 vacant seats. In 2015, there were 48,246 vacant seats.

19. On facts, therefore, AICTE's Affidavit in Reply is a complete answer to both petitions. The essential points may be summarized thus:

(a) The decision to reduce the lateral entry percentage to 10% is a policy decision.

(b) The change in policy is for good and demonstrated reason.

(c) Earlier, the lateral entry percentage was actually 10% of the First Year approved intake — exactly what is approved now. This was until 2010-2011. It was increased to 20%. It was found, and this is now studied and recorded, that despite the increase, tens of thousands of seats were left unfilled in the second year.

(d) The lateral entry is not restricted to 20% of the First Year approved intake. In addition, all unfilled seats from the first year are also available for lateral entry.

(e) Across the state, there are enough seats to accommodate all lateral entry applicants.

(f) The AICTE norms are minimum standards applied to all approved institutions. But institutions outside the more seductive metro and mega-city areas are languishing and suffering. They do not receive adequate applications and they have empty seats. There is a complete imbalance between urban and rural institutions. This is unhealthy and counter-productive to the development of higher technical standards across the state. Where the rush is higher — in metros — the

class size has burgeoned to unacceptable proportions (94 students instead of 60) and there is not even sufficient seating for all.

(g) There is absolutely no prejudice to the petitioners. None will be denied lateral entry. There are enough seats to accommodate all.

20. The essence of this response is that the petitioning students are seeking a judicial imprimatur to a desire for elitism, i.e. inequality. What they in fact claim is not just non-existent; it is inconceivable — namely, the right to a lateral entry seat in a college in a city of their choice. There can be no such right. The real objective is sought to be papered over and concealed behind a wholly incorrect, false and baseless contention that diploma holders' will be denied admission by the lateral entry route to the second year of engineering courses. Data shows otherwise. There are more than enough seats to accommodate all.

G. THE ULTRA VIRES ARGUMENT

21. We will first despatch the argument on behalf of the petitioners that the drive to a more equitable or equalized distribution of filled seats across the State by making this distribution more even between urban and rural engineering degree institutes is ultra vires the AICTE Act. It seems to us that this is an argument of desperation. Reference is made to Section 10(n), the mandate to AICTE to take all necessary steps to prevent

commercialisation of technical education. In Writ Petition No. 6870 of 2019, it is urged that the reduction to 10% is at the behest of private colleges which are unable to attract students. There is not a shred of material to support this assertion. No data of any kind is marshalled. Before a Constitutional court, it is impossible to accept such an argument — one that is essentially of a fraud on statute and mala fides — on a barebones allegation of the kind we find in paragraph 13(g) that the impugned regulations are at the behest of and to protect the financial investments of private colleges, whose seats are not being filled by regular students.

22. There is a reference in Writ Petition No. 6870 of 2019 to the Supreme Court decision in *State of Tamil Nadu v P Krishnamurthy*,[5] to suggest that some fundamental rights are violated, that there is a failure to conform to the governing statute, that the impugned regulation is in excess of statutory authority, and that there is manifest arbitrariness. The reliance on *Krishnamurthy* is misplaced, and again, albeit couched in high-minded language, these are only allegations with no demonstration of their correctness. There is nothing arbitrary in the reduction. It is not an elimination. The old level used to be 10%. The reduction is in clear exercise of authority conferred by statute, and the change is for good and sufficient reason, backed (in sharp contrast to the petitions) by statistical data.

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5 (2006) 4 SCC 517.

H. THE COLLEGES OF PRESTIGE

23. As always, the truth will out. And we have it in paragraph 13(l) of Writ Petition No. 6870 of 2019, where the petitioners specifically allege that

> top and reputed colleges like Veermata Jijabai Technological Institute (VJTI), Sardar Patel Institute of Technology (SPIT), College of Engineering Pune (COEP) etc have a next to none vacancy in first year owing to their prestige. It is colleges of ill-repute, which suffer from poor quality faculty and infrastructure that have vacant seats, and reducing the quota of lateral entry thereby forces diploma students who would otherwise have secured admission to prestigious colleges to move to these lower quality colleges, which is also the admitted case of respondent AICTE.

This lets the cat out of the proverbial bag. The claim, masked and disguised and made up to look like a fundamental right violation, discrimination, and arbitrariness, is nothing but a claim to prestige. It is not accidental that all three colleges named in this paragraph are in urban areas. The allegation that other colleges are of ill-repute and have poor faculty is without demonstrated basis. As we have seen, the AICTE regulates all technical institutes, and prescribes minimum standards applicable to all. There is no fundamental right to admission in any particular college or institute. There is no fundamental right to prestige.

24. This is not in pursuit of excellence at all. This is the promotion of mediocrity, as a simple arithmetical exercise will show. Let us say A Certain Prestigious College has 100 engineering degree

course seats. This is its approved intake. Because it is prestigious, all 100 seats are filled in the first year. There are no vacant seats to carry forward to the next year. But the AICTE Regulations allow for a 10% lateral entry by diploma holders into the second year. That means another 10 diploma holders will join the second year. The total strength goes up to 110. If the figure was 20%, it would go up to 120. This means, necessarily, that the same facilities at this prestigious college that were available to 100 students are now to be shared with another 20. That this is conceivably unfair to the students who sat for the competitive exam and got placement — which the diploma holders could not, or chose not to do — is wholly elided from the petitioners' construct of their case. What they say is that they have an *entitlement* to have 20 diploma students crowd into the prestigious college, even if this comes at the cost of the 100 students who gained entry via the difficult route of the competitive exam. This is why the AICTE affidavit points to the overcrowding in classes. It is hard to think of a more lopsided or inequitable argument being dressed up to look like a violation of fundamental rights. Viewed from another angle, the result is plain: the *best* 10 diploma students will now gain admission to the prestigious college by lateral entry. The AICTE believes this is manageable. We are in no position to supplant that technical view, one based on normative data and experience. If those from 11 to 20 are not good enough to obtain placement in the competitive exam, or to make it to the top 10 gaining lateral entry, then they cannot possibly fall back on an argument that some notional right is violated. There can be no fundamental right to mediocrity, and we trust that this is not what the petitioners seek to espouse, even inadvertently or by implication.

25. The argument also overlooks a very basic tenet that informs every such statutory body charged with setting minimum standards. The attempt by such bodies is always to act as a societal leveller, to remove, and not exacerbate, the invidious socio-economic disparities and incongruities that make us so fractured a society. Our Constitutional mandate is clear on one thing above all: equality. The divide between rich and poor, educated and uneducated, between those in cities and those outside — each of these is a societal imbalance, and the Constitution demands that we bridge these gaps. At the heart of both these petitions lies a plea for exactly the reverse: a claim for urban-centric elitism. Education is actually impervious to geography, and we know this from global experience where the best and greatest seats of learning are often not in major urban hubs but far removed from them (the university towns in the United Kingdom, and the very many exceptional universities in the US being examples). Therefore, absent any material whatever to substantiate the claim that other than the 'prestige' institutes, all others are utterly useless, the petitions before us do not in fact portray any arbitrariness or inequality in the revised admission process but seem to us to promote a principle our Constitution decries. When, consequently, the AICTE attempts to provide a level educational playing field, it is not only fulfilling its statutory mandate, but it acts in furtherance of a more fundamental principle.

I. GREAT EXPECTATIONS — BUT ARE THEY LEGITIMATE?

I General Principles

26. Both sets of petitioners have urged that the impugned Notification violates the principle of 'legitimate expectations'. The argument runs like this. When the diploma students entered the three-year diploma course, right out of school, the governing regime was of a lateral entry of 20% of the approved intake. They are entitled, they say, to have this kept unchanged until they complete their course. They are all in the final year or semester, and therefore the impugned change affects them immediately.

27. The argument is without basis in logic or law. If final year students can be said to have such a legally enforceable 'legitimate expectation', then it must apply to the students in the two years below them too. Indeed, the petitioners seem to advocate precisely this, because prayer (b) in Writ Petition (L) No. 843 of 2019, and prayer (c) in Writ Petition No. 6870 of 2019 (corrected for its obvious typographical error) seek a mandamus directing that the implementation of clause 4.9(b) the AICTE Regulations 2018 be deferred until the academic year 2022-2023. In other words, their submission is that AICTE cannot make any change except at three-year intervals; else it would violate this legitimate expectations norm. By an extension of that logic, every kindergarten student could claim a right to keep his future 10th standard passing

threshold unchanged for the next ten years. The argument stumbles at the first stile.

28. There is another, equally evident problem with any such proposal of deferment of clause 4.9(b) until the academic year 2022-2023. It overlooks that between in the academic years 2020, 2021 and 2022, there will be a *fresh* intake of first year diploma students. If the clause in question is deferred, then at the time of first year diploma entry of each of these three years, the governing regime will be 20%; and they, too, will lay claim to a 20% lateral entry quota. Consequently, the net result must inevitably be that the reduction from 20% to 10% can simply never be implemented. In other words, the policy change must be quashed for all time to come. Clearly, this is bereft of logic.

29. There is simply no warrant for this in law either. The doctrine of legitimate expectations first evolved in administrative law in England; specifically, in the context of an additional ground for judicial review of administrative action. It was meant to protect against both a procedural illegality or a substantive interest. It has its roots in basic principles of natural justice, prevent abuse of power and some form of procedural or substantive due process — the requirement of fairness in action, a fundamental tenet of administrative law. In the present case, what is urged before us is *substantive* legitimate expectations, i.e. the taking away of an identifiable, enforceable legal right. The doctrine reinforces the obligation of public authorities to always act fairly, that is to say not in an arbitrary or invidiously discriminatory manner. Historically, its evolution can be traced to prominent English cases from the late

1960s, including *Schmidt v Secretary of State for Home Affairs*[6] and *O'Reilly v Mackman*.[7] It found full voice in the seminal cases of *Council of Civil Service Unions v Minister for the Civil Service*,[8] and *R v North and East Devon Health Authority, ex parte Coughlan*.[9] Many tests have evolved over time, but these may be taken to be settled:

(a) The representation must be clear, unambiguous and without qualification or condition;

(b) The party's 'expectation' must have been induced by the representation.

(c) The representation must be by one who or which had authority to make it; and

(d) The representation must be applicable to the party approaching the court.

30. On this fundamental formulation, it is difficult to see how the petitioners can hope to sustain a case. First, it is doubtful if the 20% lateral entry provision is or ever was a 'representation' properly so called. We bear in mind that the immediately previous provision was for 10% of the approved intake being meant for lateral entry. Second, it is even more dubious that students took up the diploma course *only* because, or even principally because, of this lateral entry provision. We are shown nothing in this regard. At best, the lateral entry provision is itself a concession of sorts. It is no assurance. Third, by its very nature, such a provision can never constitute a

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6 [1969] 2 Ch 149. The principle was not applied on facts.

7 [1983] 2 AC 237, HL

8 [1985] AC 374, HL; the *GCHQ* case.

9 [2001] QB 213, CA.

representation sufficient to warrant or justify an 'inducement'. It is no different from claiming a right to have the passing marks kept at a low 35%, and protesting when the governing body raises the passing marks required to 45% or 50%. One established test is the conduct of the parties, and there is nothing before us to show that AICTE made the lateral entry provision as one that was immutable for all time or, indeed, for any specified duration of time.

31. The doctrine of substantive legitimate expectations was definitively applied in *ex parte Coughlan*. There, a health authority explicitly promised a disabled applicant that the facility in which she lived would be her 'home for life'. The Court of Appeal held that she had a legitimate expectation that the facility would be kept open for her lifetime, and that the decision to close it could not be sustained. The *Coughlan* court drew out three classes of legitimate expectations: (i) a change of policy affecting substantive legitimate expectations; (ii) procedural legitimate expectations being violated, such as no consultation or hearing; and (iii) violation of a promise in the character of a contract, also a species of substantive legitimate expectation. Our present petitioners may, at best, seek to bring themselves in the first category.

32. But the argument must fail, and it does, once it is shown that (a) the 'expectation' canvassed is unlinked to the representation made; and (b) that there is no loss, injury or prejudice to the petitioner at all. As we have noted, the reduction in the lateral entry percentage does not deny a single diploma holder of lateral entry into the second year of the engineering degree course. Every single one will find a seat. There is, therefore, no loss, injury or prejudice.

What is being espoused, though it is carefully concealed, is the 'expectation of admission to a high-prestige college in an urbanized area, a metro or a mega-city'. There can be no such legitimate expectation and, more importantly, any such expectation is wholly unrelated to the policy. That policy only deals with overall percentages applicable to the entire class. It does not speak of percentages or quota for a particular college or institute.

33. Central to any application of the doctrine of legitimate expectations is the concept of an 'accrued right'. For, without such a right being established, the doctrine can have no application. A very old decision of the Privy Council in *Abbot v The Minister for Lands*[10] tells us that the mere right, existing at the date of a repealing statute, to take advantage of the provisions of the statute repealed, is not a 'right accrued' within the meaning of the usual savings clause commonly found in such repealing laws. That was in the context of a conditional purchase of land, but we see no reason the principle, one that has stood the test of time, should not apply mutatis mutandis to the present case. Therefore, even if the petitioners had a right under the pre-2018 AICTE Regulations to a 20% lateral entry quota, that would be a mere right, not a 'right accrued'. If it is not a right accrued, then it cannot be enforced against the changed or amended regulations. The decision in *Abbot* was cited and approved several decades later by the Supreme Court in *Kanaya Ram & Ors v Rajender Kumar & Ors*.[11] The Supreme Court said that the mere

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10 [1895] AC 425.

11 (1985) 1 SCC 436 : AIR 1985 SC 371. See also: *Howrah Municipal Corporation & Ors v Ganges Rope Co Ltd & Ors*, (2004) 1 SCC 663.

right to take advantage of the provisions of an Act is not an accrued right, and that *Abbot*'s case has been consistently followed.

II Legitimate Expectations in Indian law

34. Almost predictably, in support of their legitimate expectations argument, the petitioners cite before us the Supreme Court decision in *Food Corporation of India v Kamdhenu Cattle Feed Industries*,[12] *Union of India v Hindustan Development Corporation & Ors*,[13] and *Bannari Amman Sugars Ltd v CTO & Ors*.[14] We believe the reliance to be entirely misplaced, and the invocation of the doctrine to be without a established legal foundations.

35. In *Kamdhenu Cattle Feed*, the Supreme Court was considering a tender issued by the Food Corporation of India. The issue related to fairness in contractual transactions by the State. The Food Corporation invited tenders for stocks of damaged foodgrains. Kamdhenu Cattle Feed Industries' tender was the highest. Yet the Food Corporation of India rejected all tenders and called all bidders for negotiations. The High Court held for Kamdhenu Cattle Feed Industries in its writ petition which assailed the action on the ground that the highest tender could not have been so rejected just because in negotiations a higher price might have been obtained. In appeal, the Supreme Court reiterated that even in contractual matters, a State must act fairly and not arbitrarily. There is no unfettered discretion in public law. A public authority exercises

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12 (1993) 1 SCC 71.

13 (1993) 3 SCC 499.

14 (2005) 1 SCC 625.

power only for the common good. This imposes on it the duty to always act fairly. Its procedure must demonstrably be 'fair play in action'. The due observance of this obligation raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interactions and dealings with the State and its instrumentalities. While all discretion is not eliminated, it must be exercised judiciously. Yet the mere reasonable or legitimate expectation of a citizen in such a situation may not by itself be a distinct enforceable right, even though the failure to give it due weight may render a particular decision arbitrary. This is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Whether a particular expectation is reasonable or legitimate is to be adjudged in its context and is necessarily fact-dependent. Most importantly, whenever the question is raised, it is to be determined not according to the claimant's perception of it, *but in the larger public interest* where other more important considerations may well outweigh any legitimate expectation. Where a public authority reaches its decision bona fide and in the public interest, following a fair procedure, it satisfies the test of non-arbitrariness and withstands judicial scrutiny. In *Kamdhenu Cattle Feed Industries*, the Supreme Court relied on the English decision in the *GCHQ* case.

36. *Hindustan Development Corporation* was also a government contract and tender case, this time with the railways in relation to contracts with established manufacturers for the supply of cast steel railway carriages. Three major manufacturers, being accused of cartelization, were offered a lower rate per carriage than other manufacturers. These three manufacturers came to the Delhi High

Court in a writ petition and succeeded. On 14th January 1993, the Supreme Court passed an order disposing of the Special Leave Petitions filed by the Union of India, setting out its conclusions and saying that reasons would follow.[15] Then followed the main judgment with reasons. Reiterating the requirement of fairness and non-arbitrariness in all government actions, including contractual matters, the Supreme Court said that legitimate expectations take many forms, but it is never the same as anticipation, wish, desire or hope. It cannot amount to a claim or demand on the ground of a right. A mere disappointment will not invite legal consequences. A pious hope even leading to a moral obligation does not amount to a legitimate expectation. The legitimacy of any expectation is inferred only if it is shown to be founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. A legitimate expectation should be justifiably legitimate and capable of protection, and every legitimate expectation does not by itself fructify into a right. A genuine legitimate expectation furnishes a ground for judicial review, but is to be confined by and large to the right to a fair hearing before a decision is taken negativing a promise or withdrawing an undertaking. Importantly, the doctrine does not give scope to claim relief straightaway from administrative authorities as no crystallised right as such is involved. Any legitimate expectation must yield to an overriding public interest; and that public interest must be shown. By itself, the doctrine confers no absolute right. It only ensures the circumstances in which that right may be curtailed. To succeed on such a claim, the claimant or petitioner must establish the foundation of the claim and his or her locus standi to make it. The reasons for not allowing a claim are

15 Reported at (1993) 1 SCC 467.

almost always stronger than those for accepting it. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds, if the decision is taken fairly and objectively, the court will *not* interfere at the instance of a person claiming a breach of his or her legitimate expectations. If it is a question of policy, or a change in an old policy, the courts cannot interfere. A claim based solely on a legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. The doctrine, a late recruit to this branch of the jurisprudence, must be restricted to the general legal limitation applicable to the exercise of administrative power. The doctrine is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shut the court out of review on merits," particularly when there are elements of speculation and uncertainty. Courts must, the Supreme Court finally said, exercise restraint in accepting such invocations.

37. This principle was reiterated in *Bannari Amman Sugars* (which also dealt with the promissory estoppel concept, but with which we are not presently concerned).

38. On any reading of these judgments, and for the present we restrict ourselves to these three since they are cited by the petitioners themselves, no invocation of the legitimate expectations doctrine is remotely possible. The AICTE decision is a policy decision. True, it is a change in policy, but it is indeed taken objectively for valid reasons and based on quantified metrics and data. It subserves a much wider public interest of cross-sectional technical education dispersed across a wide geographical area. It

seeks to restrict the concentration of students flooding a handful of colleges and thereby compromising by overcrowding the standards of those very colleges. The Affidavit in Reply, as we have noted, sets out a complete answer. The most telling circumstance of all is that there is simply no denial to any engineering student of any lateral entry seat at all. There is an overabundance of such seats.

39. These three judgments are by no means the only ones on the subject. There is much learning in this field, and all of it reinforces the position we have outlined. Fundamentally, the doctrine of legitimate expectation is not an independent legally enforceable right.[16] A reasonable government policy change, one that meets the Wednesbury reasonableness test, and shown to be in the larger public interest will prevail over any legitimate expectation claim.[17] The doctrine cannot be invoked against a statutory provision.[18] Where it is not demonstrated that any facilities have been withdrawn or revoked, the doctrine would have no application.[19] All these principles have been consistently reiterated.[20]

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16 *Ghaziabad Development Authority v Delhi Auto & General Finance Pvt Ltd*, (1994) 4 SCC 42.

17 *Madras City Wine Merchants' Association & Anr v State of Tamil Nadu & Anr*, (1994) 5 SCC 509; *Punjab Communications Ltd v Union of India & Ors*, (1999) 4 SCC 727; *Kuldeep Singh v Government of NCT of Delhi*, (2006) 5 SCC 702; *Union of India v Lt Col PK Choudhary & Ors*, (2016) 4 SCC 236.

18 *Howrah Municipal Corporation & Ors v Ganges Rope Co Ltd & Ors*, (2004) 1 SCC 663.

19 *Confederation of ex-Servicemen Associations & Ors v Union of India & Ors*, (2006) 8 SCC 399.

20 *Ram Pravesh Singh & Ors v State of Bihar & Ors*, (2006) 8 SCC 381.

40. Specifically in the context of educational policy, the Supreme Court in *State of HP v Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*[21] held that the doctrine of legitimate expectation is inapplicable to policy matters concerning the continuance or discontinuance of courses or subjects in technical educational institutions. The government is best suited to frame policy and to effect changes. Court cannot interfere lightly on the presumption that the government is unaware of what it is doing. A court will not substitute its views for those of the authority in policy matters. In fact it must refuse to sit in appeal or to legislate, and it must not weigh the wisdom of the policy or legislation in question.

41. A 'legitimate expectation' is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a demonstrated promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course.

42. In the present case, we find it impossible to hold that the petitioners could have any such legitimate expectation. Three or four telling circumstances put the matter beyond the pale: first, that

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21 (2011) 6 SCC 597.

the impugned 2018 Notification is a policy change for demonstrably good reason by an authority empowered to make it, and the change cannot be said to be arbitrary, irrational or perverse. Second, the policy subserves a wider public interest, to which any legitimate expectation must yield. Third, the historical trajectory of the lateral entry provision itself shows that the 20% of the approved intake was not immutable, nor ever intended to be so. It was, on the contrary, previously at 10%, a figure to which it is only returned, and for cogent and balanced reasons. Fourth, there are the twin factors of available unfilled seats on the one hand and overcrowding to the detriment of existing students in prestige urban-based colleges on the other.

43. Finally, and this may be determinative, we note that no college or technical institute has come forward to challenge this change. Therefore, the institutes governed by the AICTE Regulations accept the policy change, and therefore its correctness and wisdom. The policy does not operate only for students. It operates to regulate institutes and colleges as well.

44. We are, therefore, unable to hold for the petitioners on the ground of legitimate expectations.

J. CONCLUSIONS & FINAL ORDER

45. We therefore find no merit in these petitions. But before we part with them, we must hasten to clarify, lest we be misunderstood,

that we are not unsympathetic to the petitioner students before us. But we cannot find in their favour if it means compromising on quality standards and a policy change intended to promote a more equitable distribution of student intake. That the world is so fiercely competitive may be regrettable, but we can do nothing to change it. We respect the petitioners' dreams, hopes and aspirations of gaining engineering degrees from colleges of renown. It is not our intention to impede or in any way imperil these aspirations. Our duty, however, is first and foremost to the law and to the wider public interest, one that we explicitly recognize as underlying the policy change. Courts are often said to be *in loco parentis* vis-à-vis students and children. This case is no different, and it is in precisely that role that we wish them all the best and every success in their careers as engineers. We trust they will constantly remain in the pursuit of excellence their chosen field demands.

46. The petitions are dismissed. No costs.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)