

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2185 OF 2012

Kum.Khayti Girish Purnima Kulkarni)
 minor, through her father)
 Girish Kulkarni, Adult, Occ.:Business)
 r/at 101, Mangal Aarti, Kesar Baug,)
 Mulund (East), Mumbai - 400081) ... Petitioner

Vs.

1. College of Architecture)
 302/A, Deccan Gymkhana, Off.F.C. Rd.)
 Near Gokhale Institute, Pune-4)

2. The Principal)
 College of Architecture)
 302/A, Deccan Gymkhana, Off.F.C. Rd.)
 Near Gokhale Institute, Pune-4)

3. The Director of Technical Education,)
 Maharashtra State, 3rd Mahapalika Marg)
 P.B. No.1967, Mumbai-1)

4. Council of Architecture)
 New Delhi)

5. All India Council for Technical)
 Education, New Delhi)

6. University of Pune)
 Ganesh Khind Road, Pune-7) Respondents

Mr.A.V. Anturkar i/b S.B. Deshmukh for the Petitioner
 Ms.Manjiri Parasnis for Resp. Nos.1 & 2
 Ms.Neha Bhide, AGP, for Resp. No.3
 Mr.A.V. Bukhari, Sr. Counsel, i/b Rahul Nerlekar for Resp. No.4

CORAM: **A.M. KHANWILKAR &
S.S. SHINDE, JJ.**

JUDGEMENT RESERVED ON: **MAY 10, 2012**
JUDGEMENT DELIVERED ON: **JUNE 11, 2012**

JUDGEMENT (PER A.M. KHANWILKAR, J.):

Rule. By consent, rule made returnable forthwith.
Counsel for respective Respondents waive notice. By consent,
heard finally forthwith.

2. The Petitioner, by this Writ Petition under Article 226 of the Constitution of India, has challenged the order passed by the Principal of the Marathwada Mitramandal College of Architecture, Pune bearing No.MM/CA/336/2011-2012 dated 10th February, 2012. The petitioner has also prayed for issuance of writ to direct the respondents to treat the petitioner as duly qualified and having been properly admitted to F.Y.B.Arch. course for the academic year 2011-2012; and allow the petitioner to prosecute her studies. The petitioner, by way of amendment, has sought further relief of declaring Regulation 4 of the Minimum Standard of Architecture Education Regulation, 1983 as *ultra vires* Section 45 of the Architects Act, 1972 (for short, 'the Act of 1972') and to quash and

set aside the same.

3. Briefly stated, the case of the petitioner is that after having passed 10+2 standard examination and having obtained 49.5% marks, she applied for admission in the said college. The petitioner was admitted to the course of F.Y.B.Arch. for the academic year 2011-2012. She completed and passed out the First Semester. However, the Principal of the said college, by order dated 10.2.2012, cancelled her admission purportedly on the ground that the petitioner was not qualified to be admitted to the said course as per the norm specified by the Respondent No.4 - Council of Architecture.

4. In the petition, it is urged that the “architectural education” is a “technical education” within the meaning of All India Technical Education Act, 1987 (for short, ‘the Act of 1987’). The Regulations framed under the Act of 1987 provide for 45% marks, as the qualifying marks for admission to F.Y.B.Arch. Course. Whereas, the regulation framed by the Council of Architecture under the provisions of the Act of 1972 stipulates 50% marks in aggregate, to be eligible for admission to architectural course.

5. The principal contention of the petitioner, as stated in the petition, is that, the provisions of the Act of 1987 and the Regulations framed thereunder by the Council of Technical Education ought to prevail over the regulation framed by the Council of Architecture in exercise of powers under the provisions contained in the Act of 1972. The petitioner, in all fairness, has adverted to the decision of the Division Bench of this court in the case of Shri Prince Shivaji Maratha Boarding House's Council of Architecture, Kolhapur & Ors. vs. State of Maharashtra & Ors., Writ Petition No.5942 of 2004 dated 8.9.2004, which has taken the view that the Act of 1972 is a special legislation and the Act of 1987 is a general legislation. Therefore, the provisions of the Act of 1972 and the Regulations framed thereunder ought to prevail in respect of the matters provided for therein. However, in the submission of the petitioner, the regulations framed by the Council of Technical Education under the provisions of the Act of 1987 must prevail. In the alternative, it is contended that the Regulation 4(a) of the Regulations framed by the Council of Architecture must be so read that, the normal Rule is that the candidate must possess 50% marks in aggregate to be eligible to be admitted to the architectural

course. By way of exception, however, the said general rule will not apply to candidates who have passed the examination of new 10+2 scheme of the Senior School Certificate examination or equivalent with mathematics as subject of the examination at the 10+2 level. This was evident from the expression “unless” appearing in the said provision. In para 4 of the Petition, the regulation 4(a) has been extracted. According to the petitioner, therefore, since the petitioner has completed 10+2 scheme of the Senior School Certificate examination, with mathematics as one of the subjects, the petitioner was eligible in terms of Regulation 4(a) of the Regulations framed by the Council of Architecture. On accepting this interpretation, the impugned decision of the Principal of the said college deserves to be set aside and instead, direction should be issued to the respondents to permit the petitioner to continue the architectural course to which she has been admitted for the academic year 2011-2012. It is further contended that the petitioner took admission after disclosing all the relevant documents and had not practised any fraud whatsoever. While giving admission, the college was fully aware that the petitioner had secured less than 50% marks. Relying on the decision of the apex Court, in the case of *Shri Krishnan vs. Kurukshetra*

University, (1976) 1 SCC 311 and on the decision of the Nagpur Division Bench of this court in the case of *Arsh Deep Gurdev Singh vs. Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur*, 1991 (1) Bom.C.R. 375, it was contended that in cases where no fraud has been played by the candidate, the court should lean in favour of the candidate and direct the respondents to allow the petitioner to continue her further studies in architectural course.

6. During the pendency of this petition, the petitioner has amended the writ petition. In support of the additional reliefs prayed by way of amendment as referred to earlier, the petitioner contends that reliance placed on the regulations framed by the Council of Architecture, in particular regulation 4, is completely untenable as the said regulation goes beyond the power conferred upon the Council under section 45 of the Act of 1972. In the amended petition, it is further stated that section 45 relates to the post-admission stages and the period of study after admission as the Council of Architecture is not concerned with the question of eligibility of candidates for admission. Therefore, the said regulation 4 should be declared *ultra vires* the Act of 1972. These

are the only grounds urged in the petition, as filed. However, at the time of oral arguments, the Counsel for the petitioner went beyond these grounds to which we will advert to a little later.

7. Respondent No.4 - Council of Architecture has filed a detailed affidavit refuting each of the grounds urged by the petitioner. In the reply affidavit sworn by the Registrar of the Council of Architecture, it is stated that the Act of 1972 is a law enacted by the Parliament on the field covered by Entry 66 in List 1 of the Seventh Schedule and Article 19(6)(i) of the Constitution of India. In substance, the stand taken is that all matters connected to and including with imparting education in the course of Architecture is regulated by the Act of 1972. It has to satisfy the qualitative requirement prescribed by the Council of Architecture. By virtue of the enabling provisions contained in section 21 r/w section 45(2) of the Act of 1972, the Council of Architecture has framed the Minimum Standards of Architectural Education Regulations, 1983 (for short, 'Regulations of 1983') with the prior approval of the Central Government and the same were duly published in the gazette of India in Part III, section 4 on 26.3.1983 and 27.8.1983. The said regulations were supplemented by the

Minimum Standards of Architectural Regulations, 2008 (for short, Regulations of 2008). According to the Respondent No.4 - Council of Architecture, the provisions of the Act of 1972 and the said regulations bestow power on the council to regulate matters including pertaining to initial admission to the architecture course and the same ought to prevail. Respondent No.4 - Council of Architecture asserts that the regulations framed in respect of matters covered under regulation 4(a) of the Regulations of 1983 is *intra vires* section 45 of the Act of 1972 and that the interpretation put forth by the petitioner to the said regulation was untenable. Respondent No.4 - Council of Architecture has also contested the plea taken by the petitioner that the petitioner had not practised fraud or for that matter a lenient approach should be adopted in favour of the petitioner by directing the respondents to allow the petitioner to continue the architecture course.

8. Respondent No.3 has also contested this petition by filing affidavit of Deputy Director sworn on 26th March, 2012. In this affidavit, it is stated that Respondent No.5 – Council of Technical Education had issued notification on 4th July, 1991. On the basis of the said notification, the Higher and Technical Education

Department of the State Government issued a G.R. dated 5th July, 2011 providing for minimum 45% marks in aggregate in physics, chemistry and mathematics in 12th Standard for open category. However, the Department noticed that the candidates securing admission in degree course in architecture after obtaining degree, may face difficulty in obtaining registration as an architect from the Council of Architecture. Therefore, it issued a notification on 30th July, 2011 stating therein that the minimum eligibility criteria for admission to degree course in architecture will be the same as mentioned in the information brochure (Rule No.2.2) issued at the time of submission of application form for MAH-AR-CAT, 2011. The affidavit further records that the petitioner had secured only 49.16% in 12th standard. Therefore, Respondent No.3 informed the office of Pravesh Niyantaran Samiti, Mumbai that admission given to petitioner by Respondent Nos.1 & 2 for degree course in architecture was subsequently cancelled by the authorities and that the petitioner was admitted to the said course "at the Institute level".

9. During the course of arguments, the Counsel for the petitioner in the first place contended that the petitioner was

eligible for admission to the degree course of architecture as she had opted for mathematics as a subject for the examination in 10+2 level. According to him, the latter part of Regulation 4(a) will be attracted which is in the nature of exception to the general rule of 50% in aggregate. In addition to the grounds urged in the writ petition, he contended that Regulation 4 of the Regulations framed by the Council of Architecture are *ultra vires* Entry 66 (of List I), Entry 11 (of List II) and Entry 25 and 26 (of List III) of the Constitution. The Act of 1972 was enacted in the year 1972. At the relevant time, Entry 25 was materially different. It was in respect of “Vocational and Technical Training of Labour” - which by way of amendment brought into force w.e.f. 3.1.1977 by the Constitution (42nd Amendment) Act, 1976 has been amended. The same reads thus:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

Therefore, the Act of 1972 could not have been passed under the provisions of Entry 25 in List III. He then contended that the Act of 1972 is not referable to Entry 66 of List I of the Constitution. On

the other hand, the Act of 1987 is an enactment within the meaning of Entry 66 of List I of the seventh Schedule; and the Act of 1972 is an enactment under Entry 26 of List III. For that reason, the provisions of Act 1987 and the Regulations made thereunder must prevail. It was lastly submitted that assuming that the Act of 1972 and the Act of 1987 are ascribable to Entry 66, considering the definition of expression "technical education" in section 2(g) of the Act of 1987, it leaves no manner of doubt that the provisions in the Act of 1987 must prevail. As the Legislature deliberately included architectural education in the definition of technical education, the Legislature wanted to cover all the aspects of architectural education which was not so covered hitherto by the Act of 1972. According to him, the field of providing for eligibility qualification at the initial admission to the course of architecture was not covered by the provisions of the Act of 1972 and, therefore, no Regulation could be framed by the Council of Architecture thereunder. Further, that subject is now exclusively covered by the Act of 1987 and the regulations framed thereunder. The Counsel for the Petitioner placed reliance on the decisions in *Shree Krishnan (supra)* and *Arsh Deep (supra)*, *State of M.P. vs. Nivedita Jain, (1981) 4 SCC 296*, *State of West Bengal vs. Kesoram Industries,*

(2004) 10 SCC 201, *Bharati Vidyapeeth vs. State of Maharashtra*, **(2004) 11 SCC 755** and the unreported decision of the Division Bench of this Court in the case of *State of Goa & Ors. vs. Union of India & anr.*, **Writ Petition No.345 of 2007** decided on 17.6.2008 and another decision of the Division Bench of this Court in *Shri Prince Shivaji Maratha Boarding House's Council of Architecture, Kolhapur & Ors. (supra)*.

10. The Counsel for Respondent No.4 - Council of Architecture has vehemently contended that the petitioner should not be permitted to urge grounds other than the grounds stated in the memo of writ petition in the name of legal questions raised by the petitioner. He has submitted that the petition should be dismissed at the threshold as the petitioner has not approached the Court with clean hands. In the petition, she has asserted that she had secured 49.5% aggregate marks at the 10+2 exams, when in fact she had actually secured only 49.16% in aggregate at the said exams. The petitioner, in spite of serious objection taken in the reply affidavit, has not chosen to amend the said averment in the petition. Further, the petitioner has not produced any record to show that the regulation framed by AICTE and applicable at the

relevant time, provided for only 45% of the aggregate marks as the qualifying marks for admission to F.Y.B.Arch. Course. He has reiterated the stand taken in the reply affidavit filed by Respondent No.4 - Council of Architecture that the Council has ample powers to frame regulations on the subject of eligibility criteria for admission to the course in exercise the powers under the Act of 1972 itself. He submits that the argument of the petitioner is founded on the decision in the case of *Nivedita Jain (supra)* which, however, has been overruled by the Constitution Bench of the apex Court. In *Dr.Preeti Shrivastava vs. State of M.P.*, **(1999) 7 SCC 120**, all issues raised by the petitioner are answered in the negative. Even the other decisions pressed into service by the petitioner will be of no avail. As a matter of fact, the questions raised by the petitioner are non-issues in the fact situation of the present case. For, the norm prescribed by the Directorate of Technical Education, Maharashtra State is minimum 50% marks in aggregate, in terms of Rule 2.2 in information brochure appended to the admission notification. That has not been challenged. He prays that the petition deserves to be dismissed.

11. After having given our anxious consideration, we find

that, it is indisputable that the petitioner has secured only 49.16% aggregate marks in 10+2 examination. The petitioner had applied for admission to F.Y.B.Arch. course pursuant to the admission notification dated 30th July, 2011 for the academic year 2011-2012. The said notification unambiguously provides that for applying to admission to the said course, the minimum eligibility criteria is as per the information brochure (Rule No.2.2) which has been issued at the time of submission of application form for MAH-AR-CAT, 2011. The said rule 2.2. reads thus:

“2.2 Eligibility criteria for Maharashtra State Candidate, J & K Migrant candidate, GOI nominee candidate for admission to first year of degree course in Architecture:

Candidate should be an Indian National and should have passed the HSC (10+2 level) examination of Maharashtra State Board of Secondary and Higher Secondary Education or its equivalent examination with subject Mathematics and secured minimum 50% marks in aggregate (45% marks in aggregate in case of candidates of Backward class categories belonging to Maharashtra state only)

OR

.....

AND

Candidate should have obtained minimum 40% marks i.e. 80 marks out of 200 (minimum 35% marks i.e. 70 marks out of 200 in case of candidates of Backward class categories belonging to Maharashtra state only) at MAH-AR-CAT 2011.

Note:

- GOI Nominees, as they are selected by their respective State can appear for the Aptitude Test for admission to Architecture course conducted by their State or for the MAH-AR-CAT 2011 conducted by the Competent

Authority for the academic year 2011-12 or NATA Examination (Valid for Academic year 2011-12) or Paper 2 of IEEE 2011 and minimum 40% marks in respective CAT. However, they have to fulfill eligibility condition as regard to educational qualification mentioned in rule 2.1.1.

- In case of GOI nominee candidates, belonging to Backward class category nominated from the respective dates as per the reservation policy of the state will get relaxation in educational qualification for eligibility as in case of Maharashtra State backward class category candidates. However, GOI nominees belonging to backward class category do not get any exemption in tuition fee.”

(Emphasis supplied)

12. Admittedly, this Rule formed part of the brochure issued by the Directorate of Technical Education, Maharashtra State. That however, has not been challenged. In absence thereof, the petitioner cannot succeed at all. For, as aforesaid, the petitioner has secured only 49.16% in aggregate in 10+2 level examination. On this ground alone, the petition deserves to be dismissed.

13. Nevertheless, we shall now revert to the first contention in the writ petition. The first contention is that the petitioner is eligible as per Regulation 4(a) of the Regulations framed by the Council of Architecture. The petitioner had taken mathematics as a subject for the examination in 10+2 level. We have no manner of

doubt that this contention is based on Regulation 4(a) as extracted in para 4 of the petition, which, we find, has not been correctly reproduced. In that, the punctuations at the relevant places have been omitted. In the copy of regulations of 1983, however, it reads thus:

Admission to the Architecture Course

“(1) No candidate, with less than 50% marks in aggregate, shall be admitted to the architecture course unless he/she has passed an examination at the end of the new 10+2 scheme of Senior School certificate Examination or equivalent with Mathematics and English as subjects of examinations at the 10+2 level.

(2)

(3)

(4)

14. On a bare reading of this provision, it leaves no manner of doubt that the conditions specified therein will have to be conjointly read to mean that the candidate seeking admission to the architectural course must have passed an examination at the end of the new 10+2 scheme of Senior School Certificate Examination or equivalent with Mathematics and English as subjects of examinations at the 10+2 level with not less than 50% marks in aggregate. The interpretation given by the Petitioner to the expression “unless” is completely misplaced. That

interpretation if accepted, would result in doing violence to the intent behind the said Regulation. Further, Rule 2.2, as reproduced hitherto, in the information brochure also stipulates for the same criteria. We have, therefore, no hesitation in taking the view that the mandate of Regulation 4(a), is that, the candidate must pass the specified examinations with not less than 50% marks in aggregate at the said examination, to become eligible to be admitted to first year F.Y.B.Arch. Course. This is the twin requirement.

15. Reverting to the decision of the Apex Court in the case of *Bharati Vidyapeeth (supra)*, it has restated the principle expounded in the case of *Preeti Srivastava (supra)*. In para 12 of this decision, the Court has adverted to the dictum in paragraph 36 in *Preeti Srivastava's case (supra)* which has explained that the process of admission falls within the scope of determining standards. In this decision, the Court was considering the controversy in the context of the norms prescribed by the State authority regarding the admission process in the appellant deemed university for professional courses. In the present case, the issue is about two central enactments enacted with reference to the field

covered by Entry 66 of List I of Seventh Schedule, which of them should prevail. It is indisputable that the Act of 1972 and the Act of 1987 are ascribable to Entry 66 of List I of Seventh Schedule, but, as has been held by this Court, the Act of 1972 is a special Act and, therefore, the matters covered under the said Act and Regulation framed thereunder must prevail. It was faintly argued by the Counsel for the petitioner that there cannot be two central legislations in respect of the field covered by one entry such as Entry 66 of List I of Seventh Schedule. We are not impressed by this argument. No provision in the Constitution or any precedent has been brought to our notice which disrobes the legislature from enacting two different laws in respect of one entry. If it were to be a case of conflict between the legislation on the same subject matter, made by the Parliament and the other by the State Legislature, it would be a different matter. In that case, the doctrine of repugnancy would be attracted. The doctrine of repugnancy cannot be invoked in respect of two central legislations. Moreover, in view of the opinion recorded by the Division Bench of this Court in *Shri Prince Shivaji Maratha Boarding House's Council of Architecture, Kolhapur & Ors. (supra)*, the Act of 1972 and the Regulations framed thereunder must

prevail, the doctrine of subsequent legislation ought to prevail also is of no relevance. For, the Act of 1972 is a special enactment. That must prevail. In other words, the Act of 1972 and, in particular, Regulation 4 framed by the Council of Architecture, which, if *intra vires* the said Act, should hold the field for answering the matter in issue about the eligibility of the petitioner.

16. In our view, the argument that the regulations framed by the Council of Technical Education must prevail over the regulations framed by the Council of Architecture, the same is squarely answered by the decision of Division Bench of this Court in the case of *Shri Prince Shivaji Maratha Boarding House's Council of Architecture, Kolhapur & Ors. (supra)*. In that case, the Court posed direct question as to whether the Act of 1987 overrides the provisions of the Act of 1972 in the matter of prescribing and articulating norms and standards of architectural institutions. After analysing the provisions of the respective Acts, the Court noted that the Act of 1987 is a general legislation. Whereas, the Act of 1972 is a special legislation in relation to the architectural education and the matters covered thereunder. Hence, it must prevail. We are in respectful agreement with the

said opinion. This judgment is binding on us. No doubt this judgment has been challenged before the apex Court. But, as we are informed, the apex Court has refused to stay the effect of the judgment, it is open to us to rely on the same.

17. The Counsel for the petitioner would then rely on the Division Bench judgment of this Court in the case of *State of Goa (supra)*. In the first place, the earlier Division Bench of this Court, which is directly on the point and had occasion to examine all the relevant aspects, was obviously not brought to the notice of the Bench at Goa. Moreover, the later decision (Goa Bench) deals with issues which are entirely different. The question considered, by the Court, is, whether the Council of Architecture had power to direct that the students shall not be admitted in a given Architecture College. The Court on analysing section 20 of the Act of 1972 held that the said power vests in the Central Government, which can be exercised on the recommendation of the Council. The Court then considered the question in the context of the purport of Section 21 of the Act of 1972. The Court held that the said provision does not include the power to direct freezing of the intake of students in the College as ancillary or incidental to the power prescribing minimum

standards. We fail to understand as to how this decision will be of any avail to the petitioner - unless it is shown that field providing for eligibility for admission to F.Y.B.Arch. course is not covered by the Act of 1972 and the Regulations framed thereunder. As is noted earlier, Regulation 4(a) of Regulations, 1983 framed by Respondent No.4 directly covers the field of grant of admission at the F.Y.B.Arch. Course.

18. The next question is: whether Regulations of 1983 on the subject covered by Regulation 4(a), is, within the powers conferred by clauses (e), (g), (h) and (j) of subsection (2) of section 45 r/w section 21 of the Act of 1972. Indisputably, section 21 of the Act of 1972 stipulates that the Council may prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India. We would now usefully refer to clauses (e), (g), (h) and (j) which read thus:

“45(1). The Council may, with the approval of the Central Government (by notification in the official Gazette) make regulations not inconsistent with the provisions of this Act, or the rules made thereunder 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 -
- (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;
 - (g) the standards of staff, equipment, accommodation, training and other facilities for architectural education;
 - (h) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations.
 - (i) ...
 - (j) any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.
- (3) ...”

19. Clauses (e) and (h) are wide enough to provide for regulation in respect of eligibility criterion for admission at the initial stage to the Architecture degree course, to maintain standards of proficiency. The same are, inter alia, in respect of conditions of admission to concerned examinations. Those provisions, in our view, fully empower the Council of Architecture to provide for qualification or eligibility for admitting the candidate to the course in which he would be admitted to its examination. We may skip

matters referred to in clause (g). Clause (j) also has a wide import. It provides that the Council is competent to frame regulations to provide for any other matter which is to be or may be provided by Regulations under this Act and in respect of which no Rules have been made. Thus, the power to frame such Regulation is fully covered even under this clause. A priori, there is no merit in the ground under consideration that the Regulation, in particular Regulation 4(a), framed by the Council of Architecture, is *ultra vires* section 45 of the Act of 1972. For the same reason, the argument of the petitioner that the Regulation framed by the Council of Technical Education in exercise of powers under the Act of 1987 must prevail will have to be stated to be rejected.

20. We may usefully refer to the decision of the Constitution Bench of the Apex Court in *Preeti Srivastava (supra)*. The Court dealt with the provisions of the Indian Medical Council Act, which are *para materia*, to the provisions of Act of 1972. No doubt, the question in *Preeti Srivastava (supra)* was apart from providing reservation for admission to the post-graduate courses in engineering and medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the

sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category. In support, reliance was placed on the dictum of the Division Bench of the Apex Court in the case of *Nivedita Jain (supra)*. The Constitution Bench held that it did not agree with the observations made in the said decision to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education: or that the standard of medical education; really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. The Constitution Bench instead referred to the decision in the case of *State of Kerala vs. Kumari T.P. Roshana, (1979) 1 SCC 572* at page 580 wherein it has been held that the Medical Council of India is set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit powers of supervising the qualifications or “eligibility standards for admission” into medical institutions. Under the Indian Medical Council Act, 1956, there is overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical course. This position has been restated by the

Constitution Bench. A priori, there is hardly any doubt that the Regulations such as Regulation 4(a) could be framed by the Council of Architecture for supervising the qualifications or eligibility standards for admission into the architectural institutions in exercise of powers u/s 45 r/w 21 of the Act of 1972.

21. To get over this position, the Counsel for the Petitioner argued that the enactment of the Act of 1972 is not ascribable to Entry 25 of List III in the seventh Schedule of the Constitution of India as it stood then. No doubt, when the Act of 1972 was legislated by the Parliament, Entry 25 in List III of seventh schedule of the Constitution was in respect of matters concerning the Vocational and Technical Training of Labour. It may appear that the enactment was ascribable to Entry 26 of List III which dealt with legal, medical and other professions. However, this argument does not commend to us. We have no hesitation in accepting the stand of Respondent No.4 - Council of Architecture that the enactment of 1972 is unmistakably ascribable to Entry 66 in List I of seventh Schedule. Entry 66 pertains to coordination and determination of standards in institutions for higher education or research and scientific and technical educations. The Constitution

Bench of the Apex Court while examining the efficacy of the enactment of Indian Medical Council Act, 1956 has already held that the said enactment is ascribable to Entry 66 of List I. The same logic applies in respect of the enactment of the Act of 1972. This is amply clear from the conclusion in paragraph 47 of the said decision which reads thus:

47. The other case where a contrary view has been taken is *Ajay Kumar Singh v. State of Bihar* decided by a Bench of three Judges. It also held, following *Nivedita Jain* (at SCC p.417, para 22) that:

Entry 66 in List I does not take in the selection of candidates or regulation of admission to institutes of higher education. Because standards come into the picture after admissions are made.

For reasons stated above we disagree with these findings.”

22. Notably, the validity of the provisions of the Act of 1972 is not under challenge. What is challenged is Regulation 4 of the Regulations of 1983 framed in exercise of power under section 45 of the Act of 1972. We have already concluded that the Respondent No.4 - Council of Architecture had ample power to frame regulation in respect of matter of eligibility for admission to the F..Y.B.Arch. Course. For the same reason, even the other argument of the petitioner which is another shade of the same

argument deserves to be stated to be rejected. It was argued by the Counsel for the Petitioner that Regulation 4(a) framed by the Respondent No.4 - Council of Architecture could be made applicable only if the candidate eventually intends to register himself as a qualified architect to practice that profession and not otherwise. He submits that it is open to the candidate not to register himself as an architect, but only obtain a degree of having passed the final Bachelor of Architecture examination. The Petitioner through her Counsel was willing to give an undertaking that she would not register herself as an architect with the Council of Architecture even after passing out the final degree examination. As aforesaid, even this argument will have to be stated to be rejected for the reasons already noted hitherto.

23. The only other contention of the petitioner which needs to be dealt with is that the petitioner has not practised any fraud and since she was admitted to the course after complete disclosure coupled with the fact that she has already successfully completed the first term of the first year course, therefore, the respondents should be directed to allow her to complete the graduation course. No doubt, in support of this submission,

reliance has been placed on the decision in the case of Supreme court in *Shree Krishnan (supra)* and of the Nagpur Division Bench of this Court in *Arsh Deep (supra)*.

24. Reverting to the decision of the Apex Court, the Court found that the procedure followed by the College was that the admission forms were forwarded by the head of the Department in December preceding the year when the examination was held. The examination form was forwarded in December 1971, whereas the examination took place in April/May 1972. The Court noted that during this 5-months time, it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally, it was the duty of the Head of the Department of Law before submitting the form to the University to see that the petitioner complied with all the requirements of law. The University authorities acquiesced in the infirmities which the admission form contained and “allowed the appellant to appear in part I examination” in April 1972. The Court, therefore, held that the University had no power to withdraw the candidature of the appellant. In the decision of this Court in *Arsh Deep's case (supra)*, the court noticed that admission card was handed over to

the student and she was allowed to take part in the practical examination by the Board. In the present case, however, the admission of the petitioner has been cancelled by the Principal of the said college in terms of order dated 10.2.2012. The petitioner was not issued any admission form to appear in the examination nor permitted to appear in the examination by the University or Respondent No.4 - Council of Architecture. On the contrary, the process of cancellation of admission was resorted to by Respondent No.1 college so as to save itself from the action of derecognition by Respondent No.4 - Council of Architecture. The Council of Architecture had recommended for derecognition by Respondent No.1 college on the ground that "illegal admissions have been given by Respondent No.1 college" and the college had not complied with the minimum norms prescribed by the Council of Architecture. It is only after verification, it was noticed that the candidates who did not possess even basic eligibility criteria were admitted by Respondent No.1 college in breach of the norms prescribed by the Respondent No.4 - Council of Architecture. It is not as if Respondent No.4 - Council of Architecture or the University has acquiesced of the illegal admission given to the Petitioner by Respondent No.1 college. No material fact has been

pleaded in this behalf in the writ petition except to state that the petitioner had taken admission in good faith and had not practised fraud. The plea of acquiescence has to be clearly pleaded and proved.

25. In the present case, since the petitioner does not possess the “basic eligibility qualification” prescribed by Respondent No.4 - Council of Architecture, the admission granted to the petitioner by Respondent No.1 college was void ab initio and not a mere irregularity. Therefore, merely because the petitioner has passed the first Semester conducted by Respondent No.1 college, that will not create any legal right in favour of the petitioner.

26. Accordingly, there is no merit in this petition.

27. Taking overall view of the matter, therefore, the petition deserves to be dismissed with no order as to costs.

28. Rule discharged.

(S.S. SHINDE, J.)

(A.M. KHANWILKAR, J.)