

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1842 of 2016

IN

Civil Writ Jurisdiction Case No. 13143 of 2016

=====

Nitish Kumar, son of Naresh Singh, resident of B.N.R. Road, Choudhary
Tola, P.O: Mahendru, P.S: Sultanganj, Dist: Patna, Bihar;

.... Petitioner / Appellant

Versus

1. The Union of India, through the Secretary, Human Resource Department,
New Delhi;
2. The Secretary, Human Resource Department, New Delhi;
3. The Director, National Institute of Technology, Mahendru, Patna;
4. The Registrar, National Institute of Technology, Mahendru, Patna;
5. The Central-in-Charge, JOSAA-2016, National Institute of Technology,
Mahendru, Patna;
6. The Module Officer, National Institute of Technology, Mahendru, Patna;

.... Respondents/Respondents

=====

Appearance :

For the Appellant : Mr. Fakhruddin Ali Ahmad, Advocate
For Respondent, Nos. 1 & 2 : Mr. Anshay Bahadur Mathur, C.G.C.
For Respondent Nos.3 to 6 : Mr. Y. V. Giri, Sr. Advocate
Mr. Sanjay Kumar Giri, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 28.10.2016

Heard parties.

The judgment dated 06.09.2016 passed in

C.W.J.C. No. 13143 of 2016 by a learned Single Judge of this

Court is under challenge in this appeal.

The appellant-writ petitioner qualified in JEE Examination and was allotted a seat in NIT, Patna in OBC - Non-Creamy Layer. The appellant-writ petitioner was called upon to appear in the counselling on 18th July, 2016. He did report but he could not produce the certificate of OBC - Non-Creamy Layer on that date.

It appears from the judgment under appeal that he was supposed to report for admission after the counselling till 20th July, 2016 but he failed to produce the caste certificate, therefore, his allotment of seat was cancelled.

The appellant approached this Court by filing C.W.J.C. No. 13143 of 2016, for quashing of the letter contained in Annexure 2 issued under the signature of the respondent Nos. 5 and 6 by which the allotment of seat to the appellant was cancelled after changing the category of the appellant from reserved category to General Category, due to non-production of the caste certificate. It was urged that the appellant could be issued a certificate for Non-Creamy Layer on 20.7.2016 and, though he approached the authority concerned along with the certificate, no heed was paid.

Learned Single Judge has dismissed the writ petition after recording a finding that, if the appellant-writ



petitioner was opting for admission in the reserved category, he should have been ready with the requisite certificate on the date fixed. It is not in dispute that on the date of counselling, i.e., 18th July, 2016, the appellant did not have/possess the necessary certificate as the same was issued to him on 20th July, 2016 and the deadline for completion of the process of admission was 20th July, 2016. The learned Single Judge did not find any foul play etc. in denial of admission to the appellant, and has observed that the appellant himself can be blamed for cancellation of the allotment and, since academic calendar had begun, no direction could be issued in his favour.

Learned counsel appearing for the appellant has submitted that on 20th July, 2016, which, according to all the parties, was the last date for admission, the appellant had obtained the required certificate and went to the office for taking admission, but Annexure 2 cancelling his admission was issued.

The appellant has placed reliance upon a decision of the Supreme Court rendered in **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and another** [AIR 2016 Supreme Court 1098]. It is submitted, at the strength of the aforesaid decision, that the submission of certificate even after cut off date would not be of much

relevance as the fact remains that the petitioner belongs to OBC category – Non-Creamy Layer by birth and not on acquisition of certificate of this category. A certificate granted to that effect merely acknowledges the aforesaid fact.

However, in our view, the aforesaid decision would not be of much help to the appellant as the case was of offering employment to the persons belonging to the Scheduled Caste Category, whereas, the present case is only for the purpose of granting admission to an institution and getting admission in a particular institution cannot be held to be fundamental right of the appellant. However, the Supreme Court in several of its decisions including one relied upon by the respondent nos. 3 to 6 rendered in **Civil Appeal No. 9048 of 2012 and other analogous matters (Parshavanath Charitable Trust & ors. Versus All India council for Tech. Edu & Ors.)** disposed of on 13 December, 2012, has held that the schedule for test conducted under JEE and its culmination into admission in different courses of the various NITs, cannot be extended as everything has to be closed on the date fixed as per the schedule and the High Courts should not ordinarily exercise its power under Article 226 for extending such dates. In the present case, there is no doubt that on 18.07.2016, the petitioner was not holding any

certificate of Non-Creamy Layer and the competent authority, therefore, had nothing on record to consider him as a candidate belonging to OBC – Non-Creamy Layer category.

A counter affidavit has been filed on behalf of the respondent Nos. 3 to 6 in this appeal, also stating that academic course has already begun and it has reached to mid semester also.

Mr. Y.V. Giri, learned Senior Counsel for the respondent Nos. 3 to 6, has placed reliance upon the decision of the Supreme Court in **Parshavanath Charitable Trust** (supra) to impress upon this Court that the academic course has to start on the date proposed and, after the last date of admission, the process of admission cannot be extended. The dates fixed by the AICTE should not be ordinarily extended by courts.

On appreciation of the rival contentions, we do not find any fault with the judgment under appeal, however, we are dismayed with the fact that admittedly several seats have remained vacant in the NIT Patna in the said course, but, though Non-Creamy Layer certificate was granted on 20th July, 2016, the appellant's allotment was cancelled on technical ground. It is true that in the aforesaid decision, the Supreme Court has held that ordinarily the Courts should not



intervene in such matter and the schedule of admission cannot be extended beyond the date fixed for that purpose by the AICTE but, at the same time, it is also well settled principle of law that the technicality should not come in the way of doing full justice. It is very harsh upon the appellant that he could not get admission on the last date when he was ready with the certificate which he could not produce on earlier date of counselling, i.e., 18th July 2016. There is no dispute to the fact that the petitioner belongs to the reserved category and has successfully cleared the test.

In our view, the case of the appellant should have been sympathetically considered by the competent authority. It is true that counselling is such type of process that another student is already there in queue ready to take that seat, however, the matter would have been different if all the seats would have been filled up but the situation is contrary to that. At the time of hearing, it was admitted that several seats have remained vacant.

Thus, in such a situation, some compassion should have been shown towards the appellant, who had qualified the examination and on the last date of admission, he was having OBC – Non-Creamy Layer Certificate. However, at the same time, it is very difficult for us now to

direct the authorities to take admission of the appellant as technically the appellant should have produced the certificate concerned on 18th July, 2016, but that was not done.

However, this appeal is being disposed of with a liberty to the appellant to approach the respondents once again for the purpose of admission. Thereafter, let the authorities take, within two weeks, a decision in accordance with law also taking into account the plight which the appellant is facing. However, at the same time, we are refraining ourselves from giving any positive direction in this regard.

(Dr. Ravi Ranjan, J.)

I.A. Ansari, CJ : I agree

(I.A. Ansari, CJ)

Spd/-Sanjay/-

AFR/NAFR	NAFR
CAV DATE	17.10.2016
Uploading Date	29.10.2016
Transmission Date	NA