

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

223

CWP-14984-2016

Decided on : 16.09.2016

Nayan Bansal

... Petitioner

Versus

Union of India and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present : Mr.Sumit Gupta, Advocate
for the petitioner.
Mr.Puneet Gupta, Advocate for
respondents No.1 and 2.

G.S.Sandhawalia, J. (Oral)

The petitioner seeks admission in the course of B.Tech. in IIT/ISM against the seats lying vacant after completion of the last counselling held on 20.07.2016.

It is pertinent to mention here that the petitioner has made representations on 18.07.2016 and 21.07.2016 (Annexures P/9 and P/10) requesting therein to accommodate him in any of the seats in any of the colleges which are lying vacant after 6th counselling. And therefore, only on account of fact that there are only six rounds mentioned in the handbook, there should a procedure for spot counselling rather than the infrastructure go waste by not filling up all the seats.

It is not disputed in the written statement filed by the respondent that there are 96 vacant seats (73 in IITs and 23 in ISM) as on 21.07.2016 on account of non-joining of the candidates. As noticed,

it is apparent that no effort has been made to fill-up the vacant seats on the ground that there are only 6 rounds of counselling which is permissible as per handbook.

The case of the petitioner is that there were 10575 seats in the 233 disciplines of all 23 IITS/ISM for the course of B.Tech available all over the country. He had qualified the JEE (Main) which was conducted by the CBSE and thereafter, on account of merit, he was entitled to sit in the JEE (Advanced), 2016. The result of which was declared on website (Annexure P/3) and his rank was 13060. The counselling was to start from 10.07.2016 to 19.07.2016 (Annexure P/6). Petitioner had locked all the 233 choices in all 23 IITs/ISM in all disciplines/streams on 29.06.2016 thereby showing his willingness to join the B.Tech and other allied courses in all 23 IITs/ISM in any of the 233 streams.

Resultantly, the petitioner had applied for 233 options and only on account of fact that he, due to lower merit, did not come within the zone of consideration. He, having not got admission, immediately made a representation dated 18-21.07.2016 (Annexure P/9) and (Annexure P/10) respectively. He thereafter, approached this Court on 25.07.2016 by way of filing the present writ petition, which came up for hearing for the first time on 28.07.2016.

In the written statement, the plea taken by the respondent that there are 3000 candidates who have secured higher merit than the petitioner. Therefore, the petitioner cannot be accommodated and the

current academic session has already started and no admission can be made in the mid term of the stream.

The objection has also been made that this Court has no territorial jurisdiction to entertain this petition. The Guwahati High Court would have the jurisdiction to adjudicate the matter since respondent No.2-Joint Seat Allocation Authority (JoSAA) and the Indian Institute of Technology Guwahati, is the organizing Chairman of the JEE Advanced (2016) which is situated in Guwahati. Reliance has also been placed on the judgment of Apex Court in **Sonic Surgical Vs. National Insurance Company Ltd., 2010 (1) SCC 135 & Union of India Vs. Adani Exports Ltd. AIR 2002, Supreme Court 126** wherein the Apex court had dealt the issue of territorial jurisdiction.

The said argument is only to be noticed and rejected. The students are sitting in the JEE examination from all over the country. If they are deprived of their rights, they can avail their remedy by filing writ petitions in any of the High Courts where they reside. Moreover the petitioner has submitted his application form for admission in all 23 IIT/ISM institutes for the course B.Tech in all the 233 disciplines and the institute at Ropar where there is one seat vacant to which the petitioner is staking his claim, is very much within the jurisdiction of this Court.

The judgments as cited above by the respondent would not be applicable in the peculiar circumstances as those judgments pertain to contract and consumer protection wherein the issue of case of action

was discussed and not pertaining to education. The admission has to be made in a specific frame-work so that there would redressal of the grievance of the students. Therefore, the argument which is being raised that this Court has no territorial jurisdiction to entertain the present petition, is not acceptable. Moreover, this Court has jurisdiction to entertain this petition since IIT Ropar, Punjab with a capacity of 155 seats falls within the territorial jurisdiction of this Court.

Counsel for the petitioner submits that seats lying vacant with the institutes are required to be fulfilled in the public interest and admission has to be made on the basis of merit list prepared by the respondents. Counsel for the petitioner has also pointed out to Annexure P-6 which shows the list of the vacant seats which has been verified by the affidavit filed.

Reliance has rightly been placed upon the Division Bench judgment of this Court in **Shaifali Mahajan Vs. The State of Punjab and others, 1993(2) SLR 777** , in which it was held that it would be in the public interest that seats lying vacant with the institute be fulfilled. Reliance has also been placed upon the judgment of this Court in **Sanjay Verma Vs. Union of India and other**, CWP No.8509 of 2000, decided on 16.08.2000. The relevant part of the judgment reads as under:-

“It would not be in public interest to allow that seat to go waste and it must necessarily be filled up. The Government instructions on which reliance has been placed by the Institute are not applicable in the instant case. Those instructions apply in the case of

appointments to be made in Government Service by direct recruitment. While making recruitment to any post, the unfilled seat belonging to a reserved category could be left vacant to be filled up later on the availability of a candidate from that category and the post could be carried forward but such is not the case in the matter of admission to educational institutions where seats cannot be carried forward and they will lapse after the admissions are over. We, therefore, direct the Institute to fill up the vacant seat from amongst the candidates in the general category as per their merit.

Since it is not disputed that merit-wise the petitioner is number one on the waiting list of general candidates, it is just and fair that he is granted admission against the unfilled vacant seat and we direct accordingly. No costs.”

A Division Bench of this Court in case **Association of Education Colleges Vs. Haryana State 2009(1) SCT 157** held that the seats should not go waste resulting into loss to the institutions. The relevant part reads as under:-

“14. The next question then is whether this Court should permit admissions or let the available seats go waste, Which out of the two options would serve the ends of justice is the only question that detained us. If one were to adopt a pedantic and hyper technical approach, one could say that admissions need not be made at this stage as the University's apprehension of dilution of academic standards and disturbance of academic calendar should not be disregarded. The wisdom behind that approach however, appears out- weighed by the compelling need to avoid the wastage of seats and denial of an opportunity to eligible students to get admitted against the same. It is true that academic standard needs to be maintained and academic decisions by expert bodies respected as far as possible, but it is equally true that when admissions are delayed, a certain amount of adjustment can and ought to be made by the Institutions as also the affiliating University. These adjustments do not, however, necessarily dilute the academic standard as is apprehended by the University in the instant case.

The Institutions are ready and capable of making up the requisite number of working days by holding special

classes for the students, who have joined late. The admission granted at this stage will not also require the University to compromise on the 40 days practice teaching or the percentage of lectures, which a student must have for being declared eligible for taking the examination. It is noteworthy that candidates admitted to a session has to perform by the same standard as is required of the other candidates in order to be declared successful in the examination. If a student, otherwise admitted late, is unable to come up to the standard of the University, he/she will be declared unsuccessful. Super-added to the above is the fact that the number of students, who may even now seek admissions, may not be very large to require holding of any test to determine their inter-se merit for grant of admission. The argument advanced by Mr. Gupta that the Colleges may have to hold independent CET for granting admissions, which may delay the completion of admission process, is in our opinion, misplaced. Such a situation could arise only where the number of students applying is more than the number of seats available in the Institutions. That, however, is not the position in the instant case. Even so, the apprehension that lesser merited students may be admitted while ignoring meritorious students, can be allayed by directing that the Institutions shall grant admissions strictly in accordance with the merit in the qualifying examination, which is one of the recognized norms for granting such admissions.”

This Court in **Aditya Pratap Duggal and others Vs. Punjab University and others**, CWP-25455-2013 decided on 31.03.2014, had also issued similar directions in a case pertaining to additional seats created in the Law course. The said directions were further affirmed by the Division Bench of this Court in **LPA No.535 of 2014** titled as **Adityajit Singh Chadha vs. Punjab University**, decided on 16.07.2014.

Counsel for the respondent has been fair and enough to place the final seat allotment which as under:-

Final Seat allotment Status

	<i>IITs</i>	<i>ISM</i>
Total Seats	9660	912
Accepted Seats	9587	889
Vacancies	73	23
Percentage of Vacancies	0.76	2.52

<i>Institute Name</i>	<i>Total Seats</i>	<i>Accepted Seats</i>	<i>Vacancies</i>
IIT Bhubaneswar	260	256	4
IIT Bombay	903	905	-2
IIT Mandi	150	150	0
IIT Delhi	851	853	-2
IIT Indore	260	258	2
IIT Kharagpur	1341	1334	7
IIT Hyderabad	240	240	0
IIT Jodhpur	120	119	1
ITT Kanpur	827	827	0
IITMadras	838	835	3
IIT Gandhinagar	180	179	1
IIT Patna	200	199	1
IIT Roorkee	970	967	3
IIT Ropar	155	154	1
IIT (BHU) Varanasi	1090	1052	38
IIT Guwahati	615	614	1
IIT Bhilai	120	119	1
IIT Goa	90	90	0
IIT Palakkad	120	115	5
IIT Tirupati	120	118	2
IIT Jammu	90	85	5
IIT Dharwad	120	118	2
Total	9660	9587	73
ISM Dhanbad	912	889	23

Resultantly, this Court is of the opinion that the present writ petition is liable to be allowed. The petitioner has been representing and running from pillar to post, resultantly, is entitled for admission as no other candidates over and above him have approached

the respondents for any such necessary relief.

A perusal of the final seat allotment list would go on to show that IIT, Ropar has also a vacant seat. The preference is thus to be given to the petitioner at Ropar failing which the petitioner would be adjusted in IITs/ISM against the seats lying vacant, as per the above list.

It is also brought to the notice of this Court that the petitioner has already got admission in *Delhi Technical University* in Mechanical Engineering and therefore, the institute in which he has been given admission and also considering the fact that he has adequate training in the said course, therefore, the shortage of lectures as such might not stand in his way. Even otherwise, it would be the duty of the respondent-institute to arrange extra classes for the petitioner in case, the need so arises. Needful be done within 10 days from today.

Respondents will be well advised, in future, to fill-up all the seats lying vacant even after completion of the last round of counselling by resorting to adequate procedure of spot round counseling etc.

Consequently, present petition is disposed of.

[G.S.Sandhawalia]
Judge

16.09.2016
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No