

CWP No.8552 of 2016

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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No.8552 of 2016
Date of Order: 04.05.2016**

Archit Gupta

....Petitioner

Versus

Union of India and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Amar Vivek, Advocate for the petitioner.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Saurabh Goel, Advocate for the respondents.

RAKESH KUMAR JAIN, J (ORAL)

The petitioner has challenged the validity much less reasonableness of Rule XVII no.59, incorporated in the Business Rules for Joint Seat Allocation for the academic programmes offered by the IITs etc for the academic year 2015-16, as well as condition/criterion no.5 in the Information Brochure for the JEE (Advanced) Examination 2016.

In brief, the petitioner appeared in JEE (Main) Examination 2015 for admission to NITs and other colleges and secured 3234 rank. He was, thus, amongst top 1.50 lac students and therefore, was eligible and consequently appeared in JEE (Advanced) 2015 for admission to IITs and secured 5618 rank. The Joint Seat allocation Authority conducted joint counseling for

admission to NITs & IITs in July 2015. Since there was joint counseling of JEE Mains and JEE (Advanced) examination, therefore, the petitioner was offered to fill up his own choice for IITs for the course and Institute and in pursuance thereof, he filled IIT Tirupati as his first choice for the purpose of admission. Initially, the petitioner was allotted I.I.T Palakkad in the government programme of Computer Science & Engineering (four years course in Bachelor of Technology) but later on, he was upgraded to the IIT Tirupati in the same discipline. On 09.07.2015, the petitioner appeared before the IIT-Delhi to pay the prescribed seat acceptance fee for taking admission at IIT Tirupati and submitted his original documents. However, the petitioner did not join the course at IIT Tirupati and opted out. It is alleged that on 19.7.2015, the petitioner sent a representation to the concerned Authority that there is no option to withdraw from the allocation process or surrender of the allocated seat as it is not stipulated in the Business Rule JOSAA. He prayed, *inter alia*, for granting an opportunity to appear in the JEE (Advanced) 2016 examination but his representation was not taken to its logical end as the petitioner was informed that his representation is under consideration.

In the meantime, the fee deposited by the petitioner was refunded to him since clause 59 of the Business Rules for the Joint Seat Allocation (for short “business Rules) provides that the Candidates who accept the allocated seat, by reporting at the admitting institute or a reporting center, irrespective of whether

they attend classes or not, becomes ineligible for JEE (Advanced) in subsequent years. Therefore, the present petitioner filed a writ petition bearing CWP No.6326 of 2016 to challenge the said clause No.59 under Article 14 of the Constitution being unreasonable and arbitrary but the said writ petition was withdrawn by the petitioner because the respondents had taken objection regarding territorial jurisdiction of this Court. Since the petitioner had not pleaded in his petition as to how cause of action arises in territorial jurisdiction of this Court, therefore, in order to plead those facts, the writ petition was withdrawn and permission was accordingly granted. Hence the present writ petition has been filed.

It is averred in the petition that this Court has territorial jurisdiction because both the Online and Offline Examinations of JEE Mains 2016, which in turn decide eligibility for JEE Advanced 2016, have been held at Chandigarh. The offline Test has been held on 3.4.2016 at Chandigarh, in Govt. Sr. Secondary School, Sarangpur, UT, Chandigarh, while the online Test has been held at various colleges in the vicinity of Chandigarh including Landran, Rayat and Bahra and other Engineering colleges in Mohali and Ropar respectively. It is alleged that the same was the position in the year 2015 as well, therefore, under Article 226(2) of the Constitution, this Court has jurisdiction to entertain this writ petition.

The petitioner has submitted that at the time of admission in IIT, pursuant to the rank obtained in JEE

(Advanced) examination, option has to be furnished in terms of clause xx-49, which deals with Freeze, float and slide options.

The said options are defined as under:

“XX. FREEZE, FLOAT AND SLIDE OPTIONS

49. At the time of accepting the seat, a candidate can opt to 'freeze', slide' or 'float' the choice of academic program for subsequent round(s), if any, of joint seat allocation.

(A) Freezing: Candidates accept the offered seat and indicate that they are content with the allocated academic program and that they do not want to participate in further rounds of seat allocation. Such candidates will NOT be considered in subsequent rounds of admission.

(B) Floating: Candidates accept the offered seat and indicate that, if admission to an academic program of better/higher preference in any institute is offered, they will accept it. Else, they will continue with the currently accepted academic program. Such candidates will be considered in subsequent rounds of admission.

(C) Sliding: Candidates accept the offered seat and indicate that, if admission to an academic program of better/higher preference is offered within the same Institute, they will accept it. Such candidates will be considered in subsequent rounds of admission.

(D) For candidates who choose the float or slide option, allocation of a seat in an academic program of his/her higher preference would automatically result in the forfeiture of the seat accepted by the candidate in the earlier round.

50. Sliding and floating options will be available to

only those candidates who are NOT offered admission to their first choice.

51. Sliding and floating options are NOT available in the last round of seat acceptance.”

The petitioner has admittedly opted for floating, which provides that *Candidates accept the offered seat and indicate that, if admission to an academic program of better/higher preference in any institute is offered, they will accept it. Else, they will continue with the currently accepted academic program and Such candidates will be considered in subsequent rounds of admission.* It is further averred that in the Brochure of JEE (Advanced) 2016, as per Criterion 3, number of attempts given to a candidate, who fails, are two. The language of the said provision reads as under:

“Criterion 3- Number of attempts: A candidate can attempt JEE (Advanced) a maximum of two times in consecutive years. Therefore, candidates who appeared in JEE (Advanced) 2015 for the first time are also eligible.”

But, Criterion 5 debars the Candidate, who has already taken admission but has not joined the course. Criterion 5 is also reproduced as under:

“Criterion 5- Earlier admission at IITs/ISM: A candidate should NOT have been admitted in an IIT/ISM (irrespective of whether or not he/she continued in the program) OR accepted the IIT/ISM seat by reporting at a reporting centre in the past. The candidates whose admission at IITs or ISM was cancelled are also NOT eligible.”

Criterion 5 of Brochure of JEE (Advanced) 2016 and Rule 59 of the Business Rules together disentitle the petitioner from appearing in JEE (Advanced) 2016 examination, which is scheduled to be held on 22.05.2016. The petitioner has also referred to some other provisions of the Business Rules, which require specific mention, namely, Rules 40,41 & 42, which read as under:

“Rule 40. Option to reject (or not accept) the allocated seat: Candidates who want to reject the allocated seat can do so as follows:

(i) By NOT remitting the seat acceptance fee (and hence, not report at the reporting center);

(ii) If the seat acceptance fee has already been remitted, by not reporting at the Reporting Center. Seat acceptance fee will be refunded to such candidates.

41. There is no option to withdraw from seat allocation or to surrender an allocated seat other than by rejecting the seat as mentioned above.

42. Candidates who reject allocated seat cannot participate any more in Joint Seat Allocation for the ensuing academic year 2015-16.”

Learned counsel for the petitioner has argued that Criterion 5 is discriminatory to Criterion 3 because according to him, a candidate who fails, shall get one more opportunity to appear in the subsequent year but the candidate who has passed, is not being granted one more opportunity to improve his rank. Since his right has been infringed, he has filed this petition to challenge the provisions of Criterion 5 as well as Rule 59 of the Business Rules. According to him, the petitioner, as per

Rule 42, is debarred for 2015 examination and is also not eligible under Rule 59 for 2016 examination because as per Rule 42, if a candidate rejects allocated seat, he would not be allowed to participate in Joint Seat Allocation for the ensuing academic year 2015-2016 and as per Criterion 5, if a candidate who has not joined the course after having been admitted, would also not be in a position to appear in the subsequent examination.

Learned counsel for the respondents has averred that this Court does not have the jurisdiction to entertain this petition because no cause of action has accrued to the petitioner within the territorial jurisdiction of this Court. It is also submitted that the principle of estoppel is squarely applicable to the case in hand because the petitioner is now raising his grievance after having appeared in the examination of 2015 and in this regard, the respondents has relied upon a Full Bench Judgment of this Court reported as **Gurleen Kaur and others Vs. State of Punjab and Others, 2009 (5) SLR 690**. It is also the case of the respondents that the petitioner has not approached this Court in time and thus the writ petition suffers from delay and laches because the petitioner withdrew his option somewhere in July 2015 and has now approached this Court in April 2016 when the course of one year has already been over. However, on merits, it is submitted that there is no discrimination much less unreasonableness in the enactment of Criterion 3 & 5 in the Brochure of JEE (Advanced) 2016 as well as clause 42 and Rule 59 of Business Rules. In this regard, the reasons have been

given by the respondents in para Nos.7 to 14 and 16 & 17 of Preliminary Submissions.

“7. That it is pertinent to mention here that admission to an IIT is through a two-stage examination process:

(i) the candidate must be within the top 150,000 successful candidates appearing in the JEE (Mains) which is conducted by CBSE and

(ii) candidate must clear the JEE (Advanced) which is conducted by the IITs.

(Prior to 2015, there was a separate admission process for the IITs, while all other government funded engineering colleges, had their own admissions).

*8. That in the year 2015, with the intention to minimise the number of vacant seats, the seats for centrally funded technical institutes across India, including IITs, ISM, NITs, IITs and Government Funded Technical Institutes were allocated through a common process, as per the decision of the Government of India dated 01.04.2015, the copy of the decision is enclosed herewith and marked as **ANNEXURE R-2**.*

For the said purpose JoSAA was constituted.

This is one of the major contributing factors for a change in the admission process where earlier a candidate was permitted to withdraw/surrender his seat before the start of the final round of counselling (as available in 2013 and 2014), keeping in mind the fact that the seat allocation process was not unified and the counselling/seat allotment at institutes other than IITs started later.

9. That conspicuously, this option of withdrawal was no longer available for year 2015-2016 and

candidates were asked to give a common choice list for IITs/NITs/IITs/Other-GFTIs, in order of their own preference for the course and Institute; this is in respect of approximately 35,000 seats across 87 institutes. As per their priority, the seat allotment was done very fairly by allotting the best possible seats among their choices, as per their rank in the JEE (Advanced). Then, there was no scope of getting their better choices than the one offered.

It is also pertinent to mention here that before allocation of seats a mock allocation was done so that the candidate can get an idea of the seat he/she would get. Before the allocation of seats is carried out, the candidate was given a choice of modifying the filled-in choices. As per the Business Rules for joint seat allocation published by JoSAA, three options, i.e float, freeze, and slide, were permitted during every round of seat allotment. These options did not exist for seat allotment to IITs in 2013 and 2014.

10. That the Business Rules for Joint Seat Allocation make no mention of withdrawal option in 2015, which existed in IITs in 2013 and 2014. This was removed because of the flexibility of the float, freeze, and slide options. It is further submitted that one of the guiding factors behind introducing the common seat allocation process was to minimize vacant seats.

11. The admission rules of the JEE (Advanced) were clearly spelt out for year 2015. There has been a change from earlier years, keeping in mind the unified and joint seat allocation process for approximately 35,000 seats across 87 institutes

to be done within three rounds of allotment only (for IITs). It is for this reason that the candidate had to accept the seat at the first instance, (with the additional options of freezing, floating and sliding becoming available) or reject the same in the manner prescribed, since now the consideration of the admissions in other government funded technical institutes starting later is no longer relevant and instead, every effort has been made to minimise wastage of seats.

12. That the above is also required to be considered in the context of the choice filling to be done by the candidate. At the time of qualifying in the JEE (Advanced), the candidate is called upon to carefully fill in his choice of Institute and course of study, as per his preference. The candidate is also asked to fill in as many choices as possible, so that he does not face the eventuality of not being offered a seat for want of having opted for one, due to reasons of availability and rank/merit. This is now, not restricted only to the IITs, but also to the NITs, IITs and Other-GFTIs, as per the details in the information literature.

13. That the seat allocation process therefore, allots a candidate the course of study at the institute of his choice, in order of preference, as per the availability and rank. The candidate is free to accept or reject the seat. The manner in which the seat can be rejected is clearly spelt out in the JoSAA brochure (Clause 40) and need not be repeated. The eligibility to appear in subsequent JEE is also set out in Clauses 58-62 of

the Brochure. The options of “freeze”, “float”, and “slide” are additional options and are available only if the candidate accepts the seat offered. It is therefore, submitted that the choices available to a candidate, the manner in which the choice may be exercised and the consequences thereof, are all clearly spelt out in the Information Brochures and eventually it is for the candidate to read the same and exercise his options accordingly.

The present petitioner having participated in the admission process and having accepted the offered seat at IIT Tirupati cannot be now allowed to turn around and challenge the conditions clearly spelt out in Business rules for Joint Seat Allocation, much less on the frivolous ground that the facilities and infrastructure at IIT Tirupati are not to his liking.

*14. That the business rules for Joint Seat Allocation framed for the allotment favours serious candidates and discourages frivolous candidates like the petitioner- who got his first choice institute during seat allotment, accepted it by paying the fees and getting his documents verified at the reporting centre, signing for the acceptance of the seat, but did not report at the admitting institute, as would be demonstrated below. These frivolous candidates harm the system by creating vacancies and deprive serious eligible candidates who are in the list after them from getting a seat. A copy of the format of the undertaking which is got signed by the candidates at the time of accepting the allocated seat is enclosed herewith and marked as **ANNEXURE R-2/2**.*

16. However, it is pertinent to point out that since

at least the year 2006, there has been a consistent rule, i.e in the event that a candidate accepts a seat in IITs/ISM, he is not eligible to appear for the joint entrance examination in the subsequent year (subject to the withdrawal option which was available in 2013 and 2014). This rule has been specifically framed to discourage wastage of seats, for the reason that should a candidate be permitted to appear in the subsequent year, the seat already allotted to him would not only go waste, while some other equally deserving candidate would be deprived of an opportunity.

17. That the spirit of the rules for year 2015 and 2016 are consistent with this policy, which provides that a candidate is not eligible to appear in the subsequent year, if he accepts a seat in the IITs already. This is done with the intention to minimize vacancy as the seat in an IIT vacated by a person who improves his performance remains vacant for the rest of the duration of study (4 years). This costs the exchequer and also the chance to another deserving person who might have utilized it. In addition it also gives a fair chance to fresh candidates who may otherwise be deprived by experienced candidates writing the examination multiple times to improve their performance.”

Learned counsel for the respondents has also submitted that similar issues have already been decided by The Gauhati High Court at Guwahati in WP(C) 7337 of 2015 titled Saksham Singh Vs. Union of India and Others, decided on 30.4.2016. Findings recorded by Guwahati High Court in that

case reads as under:

“13. A perusal of the Rules shows that once IIT Authorities allocates a particular centre and acceptance fee is paid by the candidate, the same does not ipso-facto mean that the petitioner has accepted the Education Centre allocated. It is only when the petitioner, after submitting his acceptance fee, has his document verified at the Reporting Centre that it can be said that the petitioner is said to have accepted his allotted seat/centre.

14. A perusal of the petitioner's document verification shows that the petitioner has given the option for “float”, while choosing various centres for study. The option float basically means that besides having accepted the centre of study allotted to him, admission to a better/higher preference academic program in any other institute, if offered, will be accepted, if not offered another academic program, the candidate would continue with the currently accepted program, which in this case is the IIT Indore.

15. The petitioner in the present case, as per the Business Rules has accepted the Mechanical Engineering course in IIT Indore. However, the petitioner has not got himself admitted in the said centre by paying admission fees due to reasons best known to him.

16. Business Rule 58 states that the candidates, who rejected allotted seats and appeared in the JEE (Advanced) 2016, provided them all other eligibility requirements. In the present case, the petitioner has accepted the allotted seat in view of the fact that he has given the acceptance

money and his documents have been verified in the Reporting Centre. In view of the Business Rule 59, the petitioner cannot be allowed to participate in the JEE (Advanced) 2016.

17. The petitioner's downloaded Criterion No.5, which he has challenged in the present writ petition, is as follows:

"Criterion No.5- Earlier admission at IITs/ISM.

The candidate should not have admitted (irrespective of whether or not he/she continued in the program) or even accepted this seat by paying seat acceptance fee at any of the IITs or ISM in the past. The candidates whose admission at IITs or ISM was cancelled are also not eligible. However candidates who have been admitted to a preparatory course in any of the IITs in 2015 can appear in JEE (Advanced) 2016."

18. However, on perusal of the information brochure, JEE (Advanced) 2016, which are given to all candidates prior to the examination, Criterion No.5 is as follows:

Criterion No.5- Earlier admission at IITs/ISM.

The candidate should not have been admitted in an IIT or ISM (irrespective of whether or not he/she continued in the program) OR accepted the IIT/ISM seat by reporting at a reporting centre in the past. The candidates whose admission at IITs or ISM was cancelled are also not eligible.

Candidates who have been admitted to a preparatory course in any of the IITs for the first time in 2015 can appear in JEE (Advanced) 2016. The candidates, who have paid seat acceptance fee but not accepted the seat by reporting at the reporting centre during joint seat allocation 2015 are also eligible".

19. A perusal of the information brochure of JEE (Advanced) 2015 also shows that even candidates, who had paid acceptance fee in the past, are not

eligible for appearing in JEE (Advanced), 2015. The criterion No.5 of the Information Brochure of JEE (Advanced), 2015 is reproduced below:

“Criterion 5- Earlier admission at IITs/ISM: The candidate should NOT have taken admission (irrespective of whether or not he/she continued in the program) OR even accepted admission by paying admission fee at any of the IITs or ISM in the past; even candidates whose admission was cancelled are NOT eligible. However, candidates who have been admitted to a preparatory course in any of the IITs in 2014 can appear for JEE (Advanced) 2015.”

20. A perusal of the eligibility criterion given by the respondents for the JEE Examination for the year 2006 to 2014 also is to the effect that candidates, who have accepted allotment by paying acceptance fee cannot be allowed to appear in subsequent JEE examinations.

21. A perusal of the Business Rules clearly shows that the petitioner having accepted the allotment of the IIT Indore, the petitioner cannot be allowed to participate in the JEE (Advanced) 2016, though he can try for other engineering courses given by other institutes, other than IITs.

22. According to the Senior Counsel for the IIT Authorities, due to the fact that the allotted seats are then kept reserved for the successful candidate and as the same was left unutilized by the candidate, due to his acceptance of the same, the seat goes to waste for 4 years as the seat cannot be allotted to any other deserving candidate in the year that the successful candidate has accepted the same. The academic course is usually for 4 years, the seat goes to waste if the accepting candidate does not utilize the same.

23. The records of the petitioner have been produced. In the present case, the petitioner had given various IITs (50 in all) as his choice for study in Mechanical Engineering, including the IIT Indore, which he has marked at Serial No.28. The petitioner was informed that he was allocated the IIT Indore to pursue the Mechanical Engineering course. Knowing that he had been allocated the same, the petitioner has submitted his acceptance fee of Rs.20,000/-. Subsequently, the petitioner has also gone to the Reporting Centre at Guwahati and had his documents verified. The petitioner and his family had also gone to the IIT Indore. The reason for not taking the final plunge in joining the IIT Indore by not paying the admission fee is best known to the petitioner. However, the fact remains that the petitioner had been allocated the IIT Indore. The petitioner also knew of the Business Rules and the conditions imposed in the information brochure of 2015 and 2016 for JEE (Advanced) as he had taken part in the examination of JEE (Main) 2015. JEE (Advanced) 2015 and is also planning to take part in the JEE (Advanced) 2016, if he succeeds in the JEE (Main) 2016, in which he has participated.

24. The Apex Court in the case of *Sanchit Bansal and Anr Vs. The Joint Admission Board (JAB) and Ors (Civil Appeal No.8520/2011)* at para 18 has held as follows:

“18. In *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [1984 (4) SCC 27] it was observed thus:

“.... the Court should be extremely reluctant to substitute its own views as to what is wise, prudent

and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.

“In All India Council for Technical Education v. Surinder Kumar Dhawan [2009 (11) SCC 726] this court held:

“The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.The role of statutory expert bodies on education and role of courts are well defined by a simple rule If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in.”

(emphasis supplied)

This Court also repeatedly held that courts are not concerned with the practicality or wisdom of the policies but only illegality. In Directorate of Film Festivals v. Gaurav Ashwin Jain [2007 (4) SCC 737] this court held:

“.... Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the

fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.....”

(emphasis supplied)”

25. In the present case, the basic question is whether the petitioner is bound by the Rules and conditions imposed by the respondent authorities for candidates taking part in the examination. The petitioner with open eyes has taken part in the examination knowing fully well the purport of the Business rules and conditions imposed.

26. In the present case, the petitioner has made a challenge only to criterion No.5 of the information brochure to the JEE (Advanced) 2016. He has not made any challenge to the Business Rules No.59, which is as follows:

“59. Candidates who accept the allocated seat by reporting at the admitting institute or a reporting center, irrespective of whether they attend classes or not, become ineligible for JEE (Advanced) in subsequent years.”

27. The petitioner knew of the Business Rules and the terms and conditions in the Information Brochures before giving his examination in JEE (Advanced) 2015 and JEE (Advanced) 2016. The petitioner, after having accepted the allocated centre of study, which had been allotted as per the petitioner's options, has decided not to take admission to the same. I do not find any illegality in the conditions imposed by the respondents in not allowing him to appear in the JEE (Advanced) 2016. Assuming that candidates, who are allotted

seats and accept the same, but do not take admission later on for various reasons are allowed to participate in subsequent examination. This would open a pandoras box. In any event, the candidate is allowed to participate in the future JEE (Advanced) examinations except the immediately preceeding year after the rejection. Thus, barring the loss of one year, no other consequence visits the candidate. It is also to be noted that the candidates applying for IIT seats run into thousands every year and due to the above reasons, the purport of the Business Rules and conditions imposed in the Information Brochure so that the seat does not go to waste, in my opinion, is not arbitrary.

28. The Rules/conditions imposed by the respondents being uniform and non-discriminatory, the same cannot be said to be arbitrary or capricious as a perusal of the Rules/conditions imposed over the year is not a spur of the moment decision but followed consistently with minor changes over the years. The intrinsic value of being allotted a seat in the IIT, which is possible only for the brightest minds, should not be allowed to be whittled down on the whims of a candidate, thereby wasting a precious seat. No doubt, there would be vacancies due to various reasons, but the wasting away of an allocated and accepted seat should not be encouraged.

29. I do not find anything wrong when a candidate who has accepted his seat allocation and has later turned away from the same is barred from taking part in the subsequent (next) examination. The

respondents should not be visited with consequences, against which the candidates were forewarned, or else, the sanctity and aim of the respondents to maintain the standards of the IIT could be affected. In any event, the petitioner is allowed to appear and compete for admission in other institutes, except IITs. This also is only for one year. I am well aware that diverse opinions will be there. However, the petitioner is deemed to have known of the consequences of his action as spelt out in the Business Rules and the Information Brochure. To partake in a selection process, accepted the conditions and the fruits of his hard work, resiled therefrom and then go against the condition which he is deemed to have known does not seem to be proper. If the petitioner had not accepted the conditions/Rules, he should have agitated the same earlier. He cannot be allowed to have his cake and eat it too."

Learned counsel for the respondents has further submitted that as per his instructions, the decision rendered by the Single Bench in the aforesaid WP(C) 7337 of 2015 has now been upheld in the LPA.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The issue involved in this case is only as to whether Rule 59 read with Criterion 5 is arbitrary and unreasonable and liable to be struck down?

As a matter of fact, in Saksham Singh's case (supra), Guwahati High Court has held that Rule 59 has not been

challenged by the writ petitioner, which is of course under challenge in this case. The Court has to see whether there is any reason assigned to the Rule 59 for not permitting the petitioner to appear in JEE (Advanced) Examination after taking admission in IIT earlier. According to the petitioner, he has been discriminated in law by the respondents by providing two chances to a failed candidate and one chance to a candidate, who has passed and did not join the course in the IIT which was not found to be conducive to his choice.

On the other hand, the reason given by the respondents is that Rule 59 has been provided to avoid wastage of seat because once admission has been taken by a candidate as per his choice, either of Freeze, float and slide options, the said seat once vacated is never filled up again for same session in IITs. It is the case of the respondents that at the time of qualifying the JEE (Advanced), the candidate is called upon to carefully fill in his choice of Institute and course of study, as per his preference. The candidate is also asked to fill in as many choices as possible so that he does not face the eventuality of not being offered a seat for want of having opted for one due to reasons of availability and rank/merit. Learned counsel for the respondents has pointed out that as per the Form appended with the petition, filled in by the petitioner, he has given 21 choices of Institutes, all out of State of Haryana and Punjab. In those choice, IIT Palakkad was second whereas IIT Tirupati was his first choice. The petitioner being student of Science should have

been conscious enough to verify before choosing the Institute for which he had opted. He cannot turn around to say that he was not aware about the facilities and infrastructure available at ITI Tirupati. The third reason given by the respondents is that the petitioner was given Option to reject as per Rule 40 whereas as per Rule 58, the candidate, who reject allocated seat can appear for JEE (Advanced) 2016 provided they meet all other eligibility requirements in Rule 40, which provides that Option to reject or not to accept the allocated seat depends upon the remitting the seat acceptance fee and reporting at the Reporting Centre. However, in the present case, the petitioner did not use the option to reject the allocated seat as he not only deposited the fee but also reported at the Reporting Centre i.e IIT, Delhi, therefore the petitioner had consciously taken admission at IIT Tirupati.

It is also the reason given by the respondents that the petitioner who after getting admission if allowed to appear again in the subsequent year on being not satisfied with the IIT concerned, would be an unequal competitor with those students, who would be appearing for the first time in the JEE (Advanced) Exams. However, in this regard, learned counsel for the respondents has submitted that this reasoning adopted by the respondents is not made out because if the respondents can permit a student, who has failed then they could have permitted the petitioner to improve his rank again and there would be no unhealthy competition in that matter. That exercise would be

only for those students, who had failed but here the petitioner had secured rank in the first instance and would compete with totally freshers specially in such a course where there is more competition and students from all over India appear in the exam. Another reason given by the respondents is that in the past, a counselling was separately held for JEE Mains and JEE (Advanced) but in order to avoid confusion and to fill up vacancies in IITs, a unified process of counselling/seat allotment has been started in pursuance to a decision dated 01.04.2015 of Government of India.

The case set up by the respondents appears to be quite reasonable and more convincing than the arguments raised by learned counsel for the petitioner, who has simply contested Rule 59 of the Business Rules on the ground that one more opportunity should have been granted to the candidate to improve his rank.

Consequently, I do not find any merit in the arguments of learned counsel for the petitioner warranting interference to strike down Criterion 5 of the Brochure of JEE (Advanced) 2016 and Rule 59 of Business Rules as unreasonable and arbitrary. The other aspect of the matter regarding territorial jurisdiction and estoppel etc is left open.

With these observations, present writ petition is hereby dismissed.

May 04, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE