

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1116 of 2017

IN

Civil Writ Jurisdiction Case No. 7072 of 2017

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Netaji Subhas Institute of Technology through its Member Secretary Madan Mohan Singh, son of Sri T.N. Singh at Netaji Subhas Institute of Technology (NSIT) Campus, Amhara, Bihta, Patna - 801118 (Bihar). Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
3. The Director, Department of Science and Technology, Govt. of Bihar, Patna.
4. The Secretary, State Board of Technical Education, Govt. of Bihar, Patna.
5. The All India Council for Technical Education (AICTE) through its Secretary, Ministry of Human Resources, Govt. of India, New Delhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nidhesh Gupta, Sr. Advocate
Mr. Sanjay Singh, Advocate
Mr. Yashraj Bardhan, Advocate

For the Respondent/s : Mr. P. N. Shahi, AAG-6
Dhirendra Kumar, AC to AAG-6

For the AICTE : Mr. Rajesh Prasad Choudhary, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 11-08-2017

The appellant is aggrieved with the judgment and order of the writ Court dated 08.08.2017 in C.W.J.C. No.7072 of 2017, whereby the writ court on consideration of the submissions of the parties and various judgments of the Apex Court and of this Court declined to issue direction for holding 2nd admission test or to allow the appellant Institute to take admission on the basis of marks obtained by the candidate in 12th examination.



2. Pivotal issues involved in the present Letters Patent Appeal are:

(i) Whether the writ Court should issue direction to the respondents to depart from the modality of selection and admission in the Private Technical Institute contrary to notification no. 678 dated 05.03.2014, particularly, when the same is in tune of the judgment of Apex Court in **Islamic Academy of Education and Another Vs. The State of Karnataka & Ors.**, reported in **(2003) 6 SCC 697**?

(ii) Whether writ Court can issue direction to follow the draft Rule dated 11.07.2017 in the absence of any clear indication or administrative decision to follow the said draft Rule, particularly, when there are objection of the General and Administrative Department of State of Bihar on framing of such rule?

3. Initially, the writ application was filed on 10.05.2017: For a direction to the respondents to frame Rule/Regulation/Procedure for admission against the sanctioned vacant seats in respective institutions on the basis of open counselling and after preparing merit list on the marks obtained in the qualifying examination (12th) in the light of the law laid down by the Apex Court in **T.M.A. Pai Foundation and others Vs. State**



of Karnataka & others, reported in **(2002) 8 SCC 481** and **Islamic Academy of Education and another Vs. State of Karnataka and others**, reported in **(2003) 6 SCC 697** and also prayed for modification in the notification no. 678 dated 05.03.2014 and the Press Note dated 06.02.2014, whereby the modality for admission in the AICTE approved Private Engineering / Polytechnic Institute has been notified. They also prayed for modification or to read down the notification with regard to selection process for admission in the AICTE recognition. The petitioner has also prayed for a direction to the respondent authorities to dispose of the representation dated 23.08.2016 whereby the institute requested the respondents to frame Rule / Regulations or modification of the existing admission Rules.

4. During the pendency of the writ petition, the petitioner filed I.A. No. 5238 of 2017 on 24.07.2017 for seeking direction to the respondents to permit the petitioner institution to take admission against the vacant sanctioned/approved seats in B.Tech / Polytechnic Courses (Session 2017-18) on the basis of merit list to be prepared on the marks obtained by the candidates at 10+2 examination in the Sessions 2017-18.

5. The writ application was heard by the learned Single Judge of this Court and from the order-sheet it appears that the writ Court in order to decide the issue raised in the writ



application expeditiously and out of turn, issued various orders to the respondents to file their return and the writ application was finally heard by the learned Single Judge and vide judgment dated 08.08.2017, the writ Court dismissed the writ application relying upon various judgments of the Apex Court and the decision in the **Bihar Private Technical and Professional Institutions Association and Ors. Vs. State of Bihar and Others**, reported in **(2017) 2 PLJR 701**.

6. Mr. Nidhesh Gupta, learned Senior Counsel appearing on behalf of the appellant institute has contended that the writ court has committed error of jurisdiction in not issuing direction to the respondents to allow the appellant institute to admit the students on the vacant sanctioned seat following the criteria of preparing select list based on the marks obtained in the qualifying examination (10+2), as the State Government has prepared Draft Rule and sent for approval/Consent/No Objection of the Member Secretary, AICTE on 11.07.2017 vide Memo No. 1600 and the AICTE vide communication dated 24.07.2017 has replied the Director, Science & Technology Department, Government of Bihar that the AICTE has no role to play in the admission of the students in State Level Technical Institutions except prescribing the entry level qualification for admission to these courses at various levels.



However, AICTE expected that admission should be made on merit and in transparent manner.

7. Mr. Gupta, learned senior counsel of the appellant on the strength of the correspondence between Science and Technology Department and AICTE submitted that the writ court ought to have issued direction to the respondents to allow the appellant institute to take admission, as there was clear indication of the intention of the Science & Technology Department to adopt the definite mechanism for preparation of merit list on the basis of marks obtained in qualifying examination (10+2) for filling the remaining vacant seats. He also submitted that in the proposed rule of AICTE, which is applicable w.e.f. 2018-19 Sessions there is provisions for multiple examination and as such the institute should be allowed to admit the students on the basis of second competitive examination to be conducted by the Association of Private Unaided approved Engineering Institutions or on the basis of marks of the candidate obtained in 10+2 examination. He placed reliance on the judgment of the Apex Court in case of **Chandigarh Administration through the Director Public Institutions Vs. Usha Kheterpal Waie and others**, reported in (2011) 9 SCC 645 to buttress his point that draft rule can be acted upon and necessary direction can be issued by the writ Court to follow the draft rule in



the matter of filling the vacant sanctioned seats in appellant institute. In fact all the submissions of the writ petitioner/appellant was succinctly discussed by the writ Court. The writ Court has considered the submission of the appellant institute threadbare with reference to the judgment of the Apex Court in Chandigarh Administration through the Director Public Institutions Vs. Usha Kheterpal Waie and others (supra) and rejected the claim for the reason that in the judgment under reference there was clear indication to follow the draft Rule whereas in the instant case the fact is otherwise, as there was no decision of the State Government that it proposes to enforce the proposed draft rule, to the contrary there are materials on record that the General Administrative Department, Government of Bihar has objected to the Draft Rule prepared by the Science and Technology Department.

8. Mr. Gupta placing reliance on judgment of **P.A. Inamdar & Ors vs State of Maharashtra & Ors**, reported in **(2005) 6 SCC 537** submitted that the High Court should step in the matter when the legislature or the Executive do not act and failed to devise suitable mechanism to regulate admission process. We do not agree with the submission of Mr. Gupta, as a matter of fact the State of Bihar vide Notification No. 738 dated 05.03.2014 has adopted admission mechanism strictly on the line of the Apex Court



judgment by following the process of selection strictly on the basis of merit list of combined entrance test and as such the said scheme of admission need no interference in the current academic session, more so when AICTE has already framed draft Rule in this regard for the purpose of selection and admission from academic session 2018-19.

9. Adverting to the pleading of parties in this case, it is seen that the Principal Secretary, Science & Technology Department filed counter affidavit and supplementary counter affidavit whereby the Principal Secretary has submitted before the writ Court the stand of the Department with regard to the modality to be followed in the matter of selection and admission and the stand of the department on draft Rule. Referring to the various judgments of the Apex Court in various paragraphs of the counter affidavit, the Principal Secretary has stated in para 16 that the matter requires concurrence of General Administrative Department and Law Department and in the light of queries made by the General Administrative Department the issue as to the draft rule will have to be placed before Council of Ministers after taking concurrence of Finance Department. In the Supplementary counter affidavit filed in compliance of the direction of the writ court dated 30.06.2017, the Principal Secretary, Science & Technology Department in para 7



has mentioned that as a matter of fact the respondent Department is not confident that at this stage when AICTE is in process of framing regulation, whether it would be proper or not to frame a rule on State level. Thus from the counter affidavit and supplementary counter affidavit of the Principal Secretary, Science & Technology Department one cannot decipher that there was clear intention of the State of Bihar to act upon the Draft Rule when the framing of Draft Rule itself is under doubt.

10. In the aforesaid factual background the Judgment of the Apex Court in the case of **Chandigarh Administration through the Director Public Institutions Vs. Usha Kheterpal Waie and others** (supra) is not applicable in this case for the reasons; Firstly; in that case there was no issue for issuance of writ in the nature of mandamus or direction to the respondents to act upon the Draft Rule, as in the instant case. Secondly; there was clear intention, rather administrative decision on the line of the draft rule. No such administrative decision was taken to act on the basis of the proposed draft rule in the present case. Accordingly, we concur with the finding of the writ Court on this point and hold that the writ court has committed no illegality in refusing to issue direction to the respondents to allow the appellant institute to take admission of the students in the absence of any



administrative decision by the Government either to hold second competitive examination for admission in the AICTE recognized private institute like the appellant institute or permit admission on the basis of 10+2 marks. We are of the considered view that the communication dated 11.07.2017 of the Director, Science & Technology Department, Bihar, Patna and the reply of the AICTE dated 24.07.2017 does not create any right in favour of the appellant institute, much less, for issuance of direction to the respondents to allow the institute to take admission against the vacant sanctioned seat by holding 2nd competitive examination or on the basis of marks obtained in 10+2 examination. We are also not impressed with the submission of Mr. Gupta that the court should consider the fact that the AICTE in its draft rule to be applicable for 2018-19 Session has recognized multiple examination and on the said line the Science and Technology Department has framed draft rule, as such the court should issue direction to the respondents to hold second competitive examination in view of the peculiar facts that in the State of Bihar 70% to 85% sanctioned seats are vacant. The draft rule of AICTE is to be applicable for 2018-19 Session, and not for the current Session and as such directing the State of Bihar to follow the same modality in the current Session would amount to usurping the executive power of the State Government. We are not inclined



to enter into the policy domain of the Government, particularly in view of the Apex Court judgment in **Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others**, reported in (2016) 7 SCC 353 wherein Apex Court has discussed the role of the State in order to ensure triple test of fairness, transparency and non-exploitativeness. We are tempted to quote the relevant paragraphs of the Apex Court judgment in **Modern Dental College**, which is illuminating on the points:

144. As laid down in the decision in Preeti Srivastava, it is within the legislative competence of the State Legislature, in exercise of power under Entry 25 of Concurrent List to prescribe higher educational qualifications and higher marks for admission in addition to the one fixed by the Indian Medical Council in order to bring out the higher qualitative output from the students who pursue medical course. Following the above dictum, in paras 13 and 14 of the decision of this Court in [Visveswaraiah Technological University v. Krishnendu Halder & Ors.](#), reported in (2011) 4 SCC 606, held as under:-

“13. The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is twofold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the examining body, to fix higher qualifications is recognised, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be



applicable in the respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State. It should be noted that the eligibility criteria fixed by the State and the University increased the standards only marginally, that is, 5% over the percentage fixed by AICTE. It cannot be said that the higher standards fixed by the State or University are abnormally high or unattainable by normal students, so as to require a downward revision, when there are unfilled seats. During the hearing it was mentioned that AICTE itself has revised the eligibility criteria. Be that as it may.

14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, paras 41(v) and (vi) of State of T. N. vs. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Preeti Srivastava vs. State of M. P., (1999) 7 SCC 120 and the decision of the larger Bench in State of T. N. vs. S.V. Bratheep, (2004) 4 SCC 513 which explains the observations in Adhiyaman (1995) 4 SCC 104 in the correct perspective. We summarise below the position, emerging from these decisions:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term “adversely affect the standards” refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down



qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman (1995) 4 SCC 104 to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in



education and at the same time being realistic about the attainable standards of marks in the qualifying examinations.”

It is clear from the above decision that the State legislation fixing higher qualification than the one prescribed by the AICTE is not outside the legislative competence of the State.

158. In T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481, in paras (58) and (59), the Constitution Bench reiterated that for seeking admission into the professional educational institutions, merit plays an important role and held as under:-

“58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the



institution, or in the case of professional colleges, by government agencies.”

159. In order to clarify the doubts/anomalies in In T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481, the Constitution Bench was constituted in Islamic Academy of Education vs. State of Karnataka, (2003) 6 SCC 697 wherein this Court reiterated that admission to professional colleges should be based on merit by a common entrance test conducted by government agencies. Furthermore, in exercise of power under [Article 142](#), this Court directed setting up of two committees headed by a retired High Court Judge nominated by the Chief Justice of the State to oversee the entrance test conducted by the association and also to approve the fee structure proposed by the institute. In paras (19) and (20) of the said judgment, it was held as under:-

“19. We now direct that the respective State Governments do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State.....The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least,



25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government.....It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

20. Our direction for setting up two sets of Committees in the States has been passed under [Article 142](#) of the Constitution of India which shall remain in force till appropriate legislation is enacted by Parliament. The expenses incurred on the setting up of such Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government.”

160. In P.A. Inamdar vs. State of Maharashtra, (2005) 6 SCC 537, this Court observed that there has to be one common entrance examination to be conducted by the State Government or by the competent authority appointed by the State Government in case more than one university exist in the State and in para (136) of the judgment held as under:-

“136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several



admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen."

161. In para (138), it was further held that having regard to the larger interest and welfare of the student community, it would be permissible to



regulate the admissions by providing a centralized and single-window procedure. Para (138) reads as under:-

“138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.”

162. Affirming the view taken in *Islamic Academy* (2003) 6 SCC 697 on constitution of two committees and the responsibilities of the State Governments to come out with a well-thought out legislation on the subject, it was held in *P.A. Inamdar* (2005) 6 SCC 537 in paras (144) and (155) as under:-

“144. The two Committees for monitoring admission procedure and determining fee structure in the judgment of *Islamic Academy* (2003) 6 SCC 697, are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under [Article 30\(1\)](#) or the right of minorities and non-minorities under [Article 19\(1\)\(g\)](#). They are reasonable restrictions in the interest



of minority institutions permissible under [Article 30\(1\)](#) and in the interest of general public under [Article 19\(6\)](#) of the Constitution.

155. It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well- thought-out legislation on the subject. Such a legislation is long awaited. The States must act towards this direction. The judicial wing of the State is called upon to act when the other two wings, the legislature and the executive, do not act. The earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a suitable mechanism and appoint a competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments, shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction.”

163. In para (155) of P.A. Inamdar (2005) 6 SCC 537, as quoted above, the State Governments have been directed to frame a detailed well-thought out legislation on the subject with a further observation that any decision taken by the Committees and by the Central or State Governments shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction. The impugned legislation-the 2007 Act has thus been enacted in compliance with the directions issued by this Court in T.M.A. Pai, Islamic Academy and P.A. Inamdar (Supra) with a view to ensure fairness



and transparency in the admissions process.

169. By holding common entrance test and identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss will be caused to the private educational institutions. There is neither restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students. The freedom of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact.

In the instant case the notification dated 05.03.2014 is on the line of the principle discussed in **T.M.A. Pai, Islamic Academy and P.A. Inamdar** (Supra) with a view to ensure fairness and transparency in admission process and as such does not require any interference in this proceeding.

11. During the course of hearing of this appeal, Mr. P. N. Shahi, Additional Advocate General appearing on behalf of the State categorically submitted that the present writ petition/appeal does not deserve any consideration in view of the fact that the State of Bihar has decided not to act upon the Draft Rule and as such no relief can be granted to the appellant institution on the basis of proposed Draft Rule. Thus, the stand of the State as per Additional



Advocate General on the draft Rule leave no room for speculation that the State of Bihar has not expressed its willingness to follow the draft Rule.

12. The second limb of argument of Mr. Gupta that in various other State, the Institutions are allowed to take admission on the basis of merit list of the candidate prepared on marks obtained at the entry level examination (10+2 examination) and as such the State of Bihar should also follow the same modality in allowing admission in the Private Institution, as in the State of Bihar approximately 85% seats are lying vacant in the private institute. Mr. Gupta submitted that 9 states are following the same modality for admission, then the State of Bihar should also follow the same modality. He submitted that if AICTE in the proposed Draft Rule/Regulation for admission in Sessions 2018-19 provide for multiple admission test to be conducted every year, then the writ court should issue a direction for holding multiple admission test, as only one admission test was conducted by the State of Bihar. We reiterate that this is precisely an administrative decision within the realm of the executive and the writ court is not expected to usurp the power of the executive and decide the matters of selection and admission in the Private Institutions.

13. Mr. Gupta, placing reliance on the judgment of



the Apex Court judgment in case of **T.M.A. Pai Foundation Vs. State of Karnataka** (supra) and in case of **Islamic Academy of Education and another Vs. State of Karnataka and others**, reported in **(2003) 6 SCC 697** submitted that 15 years has elapsed by now, the State of Bihar has not framed the regulation or rule regulating selection and admission in the Technical institution, as such the State of Bihar should be directed to follow the draft rule sent for approval vide Memo no. 1600 dated 16.07.2007.

14. Mr. P. N. Shahi on this point is his reply argument has submitted that the institute has already published its prospectus for selection and admission in this academic Session on the line of the Apex Court judgment in **Islamic Academy of Education** (Supra) and as such the institute cannot resile from their declaration in prospectus and seek direction in breach of the prospectus which contains their professed norms. We find substance in the submission of Mr. Shahi that the institute once issued prospectus for selection and admission in the present academic Session on the basis of CET then it cannot resile from the professed norms indicated in the prospectus and seek direction of the Court in breach thereof.

15. The Apex Court has repeatedly held that admission in the professional courses should be only on the basis of



a common entrance test conducted by the Government agencies or association of the Educational institution. The relevant part of the judgment of the Apex Court in **Islamic Academy of Education** (Supra) is reproduced:

“.....we thus hold that the management could select students of their quota, either on the basis of Common Entrance Test conducted by the State or on the basis of Common Entrance Test to be conducted by an Association of all colleges of a particular type in the State e.g. Medical, Engineering or Technical etc. The common Entrance Test held by the association must be for admission to all colleges of that type in the State. The option of choosing between either of those tests must be exercised before issuing of prospectus and after intimation to the concerned authority and committee set up hereinafter. If any professional College chooses not to admit from the Common Entrance Test conducted by the association then that college must necessarily admit from the Common Entrance Test conducted by the State.”

16. Mr. Gupta then submitted that due to non-holding second combined competitive examination or allowing the institute to admit students on the basis of marks obtained in 10+2



examination, the students of the State of Bihar are forced to leave the State and take admission in technical institute out side the Bihar and as such poor students, who are not in a position to pursue the technical course out side the State of Bihar are worst sufferer.

Mr. Gupta in this connection has placed reliance on the interim order of the Apex Court in **Islamic Academy of Education & Another Vs. State of Karnataka and others** dated 23.09.2005, wherein the Apex Court while allowing I.A. No. 96 of 1993 issued direction for filling all the remaining vacant seats to be filled up on the basis of merit marks obtained in 10+2 examination conducted by the C.B.S.E. or the other Boards. The said direction was for the academic year 2005-06. He submits that the Apex Court has issued permission for filling of the vacant post on the basis of marks obtained in 10+2 conducted by the C.B.S.E. or the other Board and as such this Court should also issue direction keeping in view the vacant seat in the private institution.

17. We are afraid whether in exercise of jurisdiction under Article 226 of the Constitution, this Court can issue such a direction when the State Government in the Department of General and Administrative has not decided to allow admission on the basis of marks obtained in the qualifying level examination (10+2) examination. To the contrary, we find that the writ Court relying



upon the judgment of **Mirza Ghalib T.T. College Vs. The State of Bihar & Others**, reported in **2017 (1) PLJR 256** and the decision in case of **Bihar Private Technical & Professional Institutions Association and Ors. Vs. State of Bihar & Others**, reported in **2017 (2) PLJR 701** and considering the stand of the State that the General Administrative Department has returned the Rule with objection, we hold that the writ Court has rightly rejected the prayer of the writ petitioner for any direction in the matter of admission against the sanctioned and vacant seats in the institute in question.

18. We are of the considered view that the vacant seat in the technical institution cannot be a ground to make a departure from the norms and standard prescribed for admission in the Technical institution in the State of Bihar, which was drawn in the light of the judgment of the Apex Court in case of **T.M.A. Pai Foundation (Supra)** and in case of **Islamic Academy of Education and Another Vs. State of Karnataka and others**, reported in **(2003) 6 SCC 697**. The admission in the technical institution is required to be taken on the basis of Combined Entrance Test either conducted by the State Government or the Private Technical Institution Organization and since the State of Bihar is following the modality on the line of judgment of the Apex Court, by following the procedure of selection on the basis of Combined Entrance Test



and the said admission procedure is still holding the field in the matter of selection and admission in Technical Institute and we see no reason to make exception and direct the State Government to follow different procedure on the ground that the willing candidates are not available to fill up the sanctioned vacant post in the Private Engineering Colleges. In fact even in institution like IIT several seats are lying vacant on account of lack of seat of choice, in the IIT concerned, the vacant seat cannot be a ground to dilute the standard and depart from the professed norms and modality and allow the institution to take admission on the basis of marks obtained at the time of qualifying level examination (10+2 examination).

19. The Apex Court has in fact addressed the situation when large number of engineering seats remained unfilled in a particular year in the case of State of **T. N. vs. S.V. Bratheep**, reported in (2004) 4 SCC 513 and **Visveswaraiah Technological University v. Krishnendu Halder & Ors.**, reported in (2011) 4 SCC 606 and noted in para 144 of **Modern Dental College** (Supra) that vacant seat is no ground to depart from and the professed norm, as such we cannot take discordant view in this case.

20. We are of the considered view that the direction of the Apex Court with regard to holding of combined competitive examination is being followed in the State of Bihar and the



notification no. 678 dated 05.03.2014 was issued on the line of Apex Court judgment in the case of **Islamic Academy of Education and Another Vs. State of Karnataka and others** (Supra) and so long the State of Bihar is following the guide lines of the Apex Court in the matter of allowing admission in technical institution on the basis of combined competitive examination, we do not find any fault in the action of the respondents and as such we are not inclined to issue direction to the respondents to depart from the admission mechanism as notified vide notification dated 05.03.2014 only because large number of seats approved by the AICTE are still vacant.

21. On consideration of the entire facts and circumstances, we are of the considered view that the writ Court has committed no illegality warranting any interference in this intra Court appeal. We are also of the view that the mater involved in this case is primarily Policy decision and as such Executive/Administrative decision at the level of the Government is necessary having regard to the standard to be followed in the matter of selection procedure in the admission in Engineering and Technical Institution, we are not competent to determine the modality of selection process and as such. We are not persuaded to make any indulgence in the matter of selection and admission in the



Technical Institute and issue direction to the State of Bihar to depart from the selection process based on the notification dated 05.03.2014 which was followed by the State of Bihar on the line of the guide line of the Apex Court in **Islamic Academy of Education case** (Supra).

22. We do not find any merit in this present intra Court Appeal and the appeal is accordingly, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.08.2017
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