

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9218 of 2016

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1. Exalt Education Trust , Registered office 311/A, Ashiyana Tower, Exhibition Road, Patna through its Chairman, Deepak Kumar
 2. Deepak Kumar, Son of Shri Guneshwar Prasad, Resident of 311/A, Ashiyana Tower, Exhibition Road, Patna, P.S.-Gandhi Maidan, District-Patna (Chairman, Exalt Educational Trust)
 3. Exalt College of Ploytechnic Kanhauli, P.S.- Mahuwa, District-Vaishali (Hajipur) through its Chairman Deepak Kumar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna
3. the Secretary, State Board of Technical Education, Science and Technology Department, Government of Bihar, Patna
5. The Controller of Examination, State Board of Technical Education, Department of Science and Technology, Government of Bihar, Patna
6. Bihar Private Technical and Professional Institutions Association, Corporate Office G-102, Ranjeet Complex, Talpetra Lane, Budha Marg, P.s. Kotwali, District-Patna through its Chairman.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Pandit
For the Respondent/s	:	Mr. AAG-4- ANJANI KUMAR
For Association	:	Mr.Arun Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-08-2017

The petitioner is a trust said to be registered under the Indian Trusts Act, 1982. It is being claimed that the trust has established two separate Colleges, namely, Exalt College of Engineering and Technology and Exalt College of Polytechnic. The present case is concerned with the Exalt College of Polytechnic.



2. This application has been filed through the Chairman of the Trust seeking direction/commanding the State Board of Technical Education, Department of Science and Technology, Government of Bihar, Patna and Controller of Examination, State Board of Technical Education, Department of Science and Technology, Bihar to ensure registration of 300 students admitted in the said Polytechnic Institution for the academic Session 2015-16 for the purpose of examination. It is the claim of the petitioners that the said Polytechnic College is affiliated to State Board of Technical Education for the academic Sessions 2014-15, 2015-16 and 2016-17.

3. This is not in dispute that the said Institution has taken admission of these 300 students without any entrance test conducted either by the State/University or their agencies or , viz, the “Bihar Private Technical and Professional Institutions Association” (BPTPIA) of privately managed institutions conducting such courses (Respondent No.6). It is the stand of the petitioner that Bihar Private Technical and Professional Institutions Association unnecessarily conducts selection tests 4-5 times in a year and it is unthinkable that the entrance examination for technical institution is conducted 4-5 times in a year. It is the further case of the petitioner that said



Association has become a private body functioning on the whims and fancy of its office bearers. According to him, it is not known as to how Chairman and Secretary and other office bearers of the Association have been selected or elected. The petitioner in that background, asserts that he had to approach this Court by filing CWJC No. 9068 of 2016, seeking a direction to disassociate his institution from respondent No.6 and permit them to admit students on the basis of merit list of entrance examination conducted by the BCECEB. By an interim order, dated 24.05.2016, this Court had allowed the said institution to take admission on the basis of merit list prepared by the BCECEB for purpose of admission to Diploma Courses in Engineering College. Subsequently, however, by an order, dated 16.09.2016, this Court dismissed the writ application in following terms:-

“6. The practical problem and the futility of such a direction is well understood even by the petitioner as well as the respondents. However, learned Senior counsel for the petitioner submits that an option should be given to those students who have not taken admission on the basis of the counselling and the institutions should be permitted to take admission on the basis of those list of qualified students and a list be given to the petitioner for contacting the students, if they are interested in taking.

7. The Court is not willing to



permit such a deviation for many a reasons including the fact that if a modality is reacquired to be adopted in terms of a directive issued by the Hon'ble Supreme Court earlier and based on that modality, admissions are being granted to the students by such institutions, merely because the institution in question will go without any students in this academic year an innovation is not required to be made since it will be a bad precedent.

8. No relief, therefore, can be granted in the above factual position in favour of the petitioner for participation in the left over counselling for admission of students.

9. Writ is dismissed.”

4. The said CWJC No. 9068 of 2016 related to academic Session 2016-17. This case relates to academic session 2015-16. A specific statement has been made in paragraph 14 of the writ application, which reads thus:-

“14. That as Respondent No.6 did not recommend the students for admission to the Polytechnic college of petitioner, he was left in lurch. However, Schedule Caste/Schedule Tribe Welfare Department, Bihar organized a camp all over the State and undertook counselling of the applicants and on the basis of counselling the department nominated 150 students from SC/ST category for admission to petitioner No.3 institution in academic session 2015-16. So far remaining 150 seats are concerned, petitioner No.3 conducted its own counselling and on the basis of merit has taken admission of students



in academic session 2015-16.”

5. Apparently, it is the case of the petitioner that it gave admission to 150 students based on counselling done by the institution itself and 150 students belonging SC/ST category on the basis of a Camp organized by the SC/ST, Welfare Department, Government of Bihar, which had undertaken the counselling of the applicants.

6. It is apparent thus that admissions were not based on any entrance test held either by the Association (Respondent No.6) or by the State Government or its agency. This Court in case of *Bihar Private Technical and Professional Institutions Vs. State of Bihar and ors*, reported in *2017 (2) PLJR 701* had the occasion to deal with this question, wherein this Court specifically held that in paragraphs 44,45 and 48 as follows:-

“44. Could it be said that in such circumstance any person who possessed the minimum eligibility criteria should be allowed admission to such technical or professional course on the reasoning that the seats are vacant? The answer, in my opinion, is big No! The entrance test to professional and technical courses are so organized and structured as to select those who are best suited to take up those courses. The tests are conducted to evaluate their ability to cope



with the courses, which may be offered to them on their admission.

45. Apart from fairness, transparency and non exploitativeness, merit and ability of a candidate to take up a particular professional course in order to maintain the desired standard of that profession is equally important, which cannot be ignored. In my view, this will be against public interest and public policy to allow such candidates, who do not have the aptitude and ability to study a technical course, admission to such courses.

48. It is in the public interest that only such persons take up technical and professional courses, who do not have any basic qualification, but also have the merit, ability and aptitude to take up courses designed for a particular purpose. This can be done only through appropriately designed screening test. It will not be in the public interest to promote mediocrity by allowing admission of such persons who could have otherwise done well in the different walks of life, but could not be said to be fit to take up B.Tech. Or similar technical courses. It is now known how these admissions were taken, based on marks obtained in 10+2/10th examination. Whether it was confined to those who had applied pursuant to notice issued by the Association for Combined Entrance Test and had shown willingness to take up the technical courses or they subsequently approached the institutions for their admission, after admission on the basis of entrance tests were over. The manner in which the institutions have taken admission based on 10+2 marks/results cannot have approval of this Court.”



7. After having held the conduct of the Private Technical Institution of having given admission to students in breach of the law laid down by the Supreme Court, this Court had directed the Management to pay a sum of Rs. 50,000/- to all individual students, who were given admission. The said decision in case of ***Bihar Private Technical and Professional Institutions*** (supra) has been subsequently considered and relied on by this Court in case of ***Netaji Subhas Institute of Technology Vs. State of Bihar and ors*** in ***CWJC No. 7072 of 2017*** in the judgment and order, dated 08.08.2017.

8. Following the direction in case of ***Bihar Private Technical and Professional Institutions*** (supra) and in case of ***Exalt Educational Trust Vs. State of Bihar and ors.*** in ***CWJC No. 3060 of 2017***, which was also filed by this petitioner in relation to academic session 2016-17, this Court directed the petitioner to pay a sum of Rs. 50,000/- to each of the individual students within a period of three months.

9. There cannot be any gainsaying that the Institutions in question gave admission to students in a manner not prescribed under law, rather in breach of specific direction issued in this regard. Only for the purpose that the Institution may not be directed to compensate the students who have been



given admission, a plea is being taken that since it was done on the basis of counselling conducted by the SC/ST Department in a fair organized by the Department, the institution should not be blamed for that. It is the specific case of the petitioner that since 150 students have been given admission on the basis of counselling done by SC/ST Welfare Department, the petitioner should not be directed to pay the said sum of Rs. 50,000/-.

10. The SC/ST Welfare Department has taken stand before this Court in one of its affidavits, stating specifically that the plea that students were allowed admission on the basis of nomination made by the Department was absolutely, false and baseless. The Department has relied on a communication, dated 09.02.2016, wherein it was made clear that the Department has not directed any institutions to take admission. It has also been stated in the said counter affidavit that the plea is absolutely incorrect. The said fair in August, 2015 was organized to help the students in taking admission in technical institutions/colleges and also to safeguard the students from extortion of money by touts/middlemen/agent of different technical institutes/colleges in the name of admission in the various courses of technical institutions across the country.

11. This Court in the facts and circumstances of the



case had directed the Chief Secretary, Bihar also to file an affidavit in this regard. The Chief Secretary of Bihar in his affidavit filed on 28.04.2017 has taken sepcific stand that the admissions of 300 students given by the institution is contrary to law laid down by the Supreme Court in case of *Islamic Academy of Education and another Vs. State of Karnatka and others* reported in (2003) 6 SCC 697. The contention made by the Institution that any recommendation was made by the SC/ST Welfare Department, Government of Bihar is absolutely false. He has also stated specifically that no instruction at all, for such admission in any technical education or College had ever been issued by the Department. According to him, statement in this regard made by the petitioner is misleading and false.

12. The petitioner has, however, maintained the stand that admissions given by the institution was based on counselling done by the said SC/ST Welfare Department, Government of Bihar.

13. Mr. P.K. Shahi, learned senior counsel appearing on behalf of the petitioner has made serious efforts to convince this Court that the State Government and the Department are now changing their stand. Referring to some of the documents,



learned Senior counsel has submitted that such admissions have been allowed under the instructions of SC/ST Department. Such submission has, however, do not appear to be convincing to me. The institution in question (Petitioner No.3) has apparently taken admissions illegally. No relief as sought for, in the present application can be allowed. Further, following the direction of this Court in case of Exalt Education Trust, I direct the petitioner to refund the entire fee received by the College to respective students. They will also be required to pay a sum of Rs. 50,000/- to each of the students within a period of three months from today, by way of compensation, following the decision in case of ***Bihar Private Technical and Professional Institutions Association*** (supra).

14. This application stands dismissed with the direction as above.

(Chakradhari Sharan Singh, J)

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CAV DATE	N/A
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