

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3060 of 2017

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1. The Exalt Educational Trust, through its Chairman, namely Dipak Kumar, son of Guneshwar Prasad, Resident of 311/A, Ashiana Tower, Exhibition Road, Patna, P.S.- Gandhi Maidan, District- Patna.

.... Petitioner/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 State Board of Technical Education through its Secretary, Science and Technology Department, Bihar, Patna.
5. The Secretary, State Board of Technical Education, Science and Technology Department, Bihar, Patna.
6. The Examination Controller, State Board of Technical Education, Science and Technology Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. K. shahi, Sr. Adv.
Mr. Awadhesh Kumar Pandit, Adv.
For the Respondent/s : Ms. Archana Meenakshee, G.P. 6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 19-06-2017

In tune with the Supreme Court's decision, in the case of **Islamic Academy of Education and Another v. State of Karnataka and Others**; (2003) 6 SCC 697, a Committee has been constituted by the State of Bihar, headed by a retired Judge of this Court, to make supervision and to issue necessary guidelines in respect of admissions to such



privately managed recognized engineering/polytechnic colleges, which are not getting any assistance from the State of Bihar, with the nomenclature Namankan Paryavekshan Committee "नामांकन पर्यवेक्षण समिति " (hereinafter referred to as the 'Committee'). Based on a decision taken by the said Committee, the Science and Technology Department, Government of Bihar, issued a communication, vide Memo No. 781, dated 13.03.2014, to the effect that admission to privately managed professional institutions shall be made on the basis of combined admission test, to be held by an Association of such private institutions and the said Association only shall have the right to conduct the entrance test.

2. The present writ application has been filed on behalf of Exalt Educational Trust, through its Chairman, Deepak Kumar, and it is being claimed that the said Trust has established Exalt College of Engineering and Exalt College of Polytechnic, at village Kanhauli, in the district of Vaishali, at Hajipur. The dispute, in the present writ application, relates to Exalt College of Polytechnic. From the facts available on record, it appears that the petitioner had grievance against the decision of the Committee, as communicated through Memo No. 781, dated 13.03.2014, which mandated that admissions in private engineering and polytechnic colleges



shall be allowed on the basis of entrance test to be held by Association of private colleges, conducting same/similar professional course. Accordingly, the petitioner put to challenge Memo No. 781, dated 13.03.2014, by filing writ application, giving rise to CWJC No. 9068 of 2016, seeking following relief:-

"(i) For issuance of writ in the nature of certiorari to quashed the letter contained in letter no. 781, dated 13.03.2014 as it was issued without framing any rule in this regard.

(ii) For direction to the respondent authorities to declare the validity/recognition if any of Bihar Private Technical and Professional Institutions Association as bad in law for conducting Entrance Test.

(iii) For direction to respondent authorities not to accept the list of selected candidates as provided by the association for enrolment of Polytechnic students through State Board of Technical Education."

3. When the matter was taken up by this Court on 24.05.2016, the Court, while asking the respondents to file their counter affidavits, passed an interim order, directing the respondents to allow the petitioner to take admissions on the basis of result declared by the Bihar Combined Entrance



Competitive Examination Board (BCECEB). The relevant portion of the order is being reproduced hereinbelow:-

"Keeping in mind the law laid down by the Apex Court in the case of Islamic Academy of Education vs. State of Karnataka (2003) 6 S.C.C. 697, the petitioner, who is the Chairman of the Institution, recognized by All India Council for Technical Education as well as Science and Technology Department, Government of Bihar, is directed to take admission on the basis of results declared by BCECE Board, otherwise the recognition and permission will prove illusory keeping in view the conduct of respondent Nos. 4 and 5."

4. However, no admissions were taken before the writ application was finally dismissed by judgment and order, dated 16.09.2016. The Court took note of this aspect of the matter in paragraph 4 of the said judgment and order, dated 16.09.2016, in the following terms:-

"4. The directive has ended up with a result in favour of the petitioner. However, the delay in the decision making by the concerned respondents including the Department of Science and Technology, Government of Bihar, does not help the petitioner because he cannot still take admission of students who have qualified in the examination held by Bihar



Combined Entrance Competitive
Examination Board."

5. From the judgment and order, dated 16.09.2016 of this Court in CWJC No. 9068 of 2016, it appears that a plea was taken on behalf of the petitioner that an option should be given to such students who had not taken admission on the basis of counseling based on the result prepared by the BCECEB and that the petitioner should be permitted to take admission on the basis of list of qualified students and a list be supplied to the petitioner for contacting the students, if they were still interested in taking admission in the petitioner's College. This Court rejected the plea and observed, in paragraph 7 of the said judgment and order, dated 16.09.2016, as follows:-

"7. The Court is not willing to permit such a deviation for many a reasons including the fact that if a modality is required 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."

6. The writ application was resultantly



dismissed.

7. It is the case of the petitioner in the present writ application that pursuant to the interim order of this Court, dated 24.05.2016, passed in CWJC No. 9068 of 2016, as asked by the BCECEB, it issued advertisement inviting candidature of students for admission in the College. After dismissal of the writ application, the Director of Science and Technology Department, Government of Bihar, had made available data of qualified candidates on the basis of entrance test conducted by BCECEB on or around 10.12.2016. Subsequently, by communication, dated 30.12.2016, the data of qualified candidates, to enable the petitioner to take admission, was made available to the petitioner. The said communication, dated 30.12.2016,. has been brought on record by way of Annexure-5 to the writ application. After the petitioner received the said data, through communication, dated 30.12.2016, the petitioner admitted 300 students for academic sessions 2016-17 in the Polytechnic College of the Trust. After having taken admission after 30.12.2016, the petitioner informed the Director, Science and Technology Department, Government of Bihar, and sought permission for registration and form filling process.

8. In the background of the facts as noted above, the petitioner has filed the present writ application



seeking following relief:-

"That this is an application for issuance of appropriate writ for direction to the respondents to ensure the registration of students of the polytechnic batch 2016-17 (total 300 students) of petitioner's polytechnic college, namely, Exalt College of Polytechnic, Kanhauli, Hajipur (Vaishali) and further for direction to hold a special examination of students of 2016-17 batch."

9. From the facts, which has been stated in the writ application, it is amply clear that the petitioner took the admission of 300 students in Polytechnic College not in the light of any order passed by this Court, interim or final, in CWJC No. 9068 of 2016; rather, despite order of dismissal of the writ application by the judgment and order, dated 16.09.2016, wherein the Court had refused to permit the petitioner to take admission on any basis other than what was decided by the Committee, as contained in Memo No. 781, dated 13.03.2014.

10. Disturbing it is that despite clear judgment of the Supreme Court and judgment of this Court in the case of the petitioner in CWJC No. 9068 of 2016, the petitioner took admission of 300 students in Polytechnic College on 30.12.2016 for the academic sessions 2016-17. The



petitioner, as a matter of fact, acted contrary to the decision rendered in his case by this Court in CWJC No. 9068 of 2016. This Court had rejected the petitioner's plea to take admission on the basis of result prepared by BCECEB and the petitioner is claiming that it took admission on the basis of such result, three months after the claim was specifically rejected by this Court.

11. The conduct of the petitioner allowing admission of 300 students in Polytechnic College for the academic sessions 2016-17 is highly reprehensible and deplorable. No relief, as claimed in the present writ application, can be granted.

12. This application is accordingly dismissed with a direction to the petitioner to return all the fees and charges received from the said 300 students of Polytechnic College of the Trust, admitted for the academic sessions 2016-17, within a period of one month from today.

13. In a recent judgment and order, dated 17.04.2017, in the case of **Bihar Private Technical and Professional Institutions Association and Another v. The State of Bihar and Others (CWJC No. 605 of 2017)** and analogous cases), having found the institutions to have taken admissions in technical and professional courses illegally, this Court had directed the management to pay a sum of Rs.



50,000/- to each of the students so admitted by way of penalty. Paragraph nos. 61 and 62 of the said judgment and order is relevant and is being reproduced hereinbelow:-

"61. After having held such admissions to be illegal, I cannot lose sight of the fact that these institutions made the students to take admission, which was legally impermissible. For that reason, in my view, such institutions need to be penalized in a manner which is deterrent and compensatory at the same time. Penalty needs to be imposed to compensate those students who have been given admission in a manner, not approved by law, which has adversely affected career of young men and women, putting them to substantial financial loss, additionally. It should be deterrent too, so that other institutions do not indulge in such activities in future and they run their institutions strictly in accordance with law.

62. I accordingly direct the private managements of respective institutions, namely, (1) Netaji Subhas Institute of Polytechnic, (2) Netaji Subhas Institute of Technology, and (3) Patna Sahib Technical Campus, to refund all fees and charges so far received by them from the students who have been illegally admitted on the basis of their marks in 10th/12th examination, excluding only hostel and mess charges, in their favour.



In addition, the managements shall be required to pay a sum of Rs. 50,000/- to all the individual students so admitted, which I consider befitting in the facts and circumstances of the case. All such payments shall have to be made within a period of three months from today."

14. I do not find any reason why similar order should not be passed in the present case also, since similar grounds are available in present case also.

15. Accordingly, I direct the petitioner to pay a further sum of Rs. 50,000/- to each of the individual students within a period of three months from today.

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

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	19.06.2017
Transmission Date	N.A.

