

CWP Nos.25565, 25806, 25568, 25661 & 25557 of 2016 (O&M)

[1]

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

(1) CWP No.25565 of 2016 (O&M)
Date of decision:11.05.2017

Panipat Institute of Engineering and Technology and others ...Petitioners

Versus

The State of Haryana and others ...Respondents

(2) CWP No.25806 of 2016 (O&M)
Date of decision:11.05.2017

Irshal Ali and others ...Petitioners

Versus

The State of Haryana and others ...Respondents

(3) CWP No.25568 of 2016 (O&M)
Date of decision:11.05.2017

Association of Private Self Financing Institutions of Haryana ...Petitioner

Versus

State of Haryana and others ...Respondents

(4) CWP No.25661 of 2016 (O&M)
Date of decision:11.05.2017

Institute of Technology & Sciences ...Petitioner

Versus

State of Haryana and others ...Respondents

(5) CWP No.25557 of 2016 (O&M)
Date of decision:11.05.2017

Association of Private Self Financing Institutions of Haryana ...Petitioner

Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Arjun Pratap Atma Ram, Advocate, for the petitioners
in CWP Nos.25565 and 25806 of 2016.

Mr. S.K.Nara, Advocate,
for the petitioners in CWP Nos.25568, 25661 and 25557 of 2016.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana, and
Ms. Tanish Peshawaria, DAG, Haryana.

Mr. A.S.Virk, Advocate,
for respondent No.3- Kurukshetra University.

Mr. Pankaj Chugh, Advocate,
for respondent No.4-HSTES.

Mr. Amit Rao, Advocate, for
Mr. Anurag Goyal, Advocate, for the respondent-AICTE.

Rakesh Kumar Jain, J.

This order shall dispose of four petitions bearing CWP No.25565, 25806, 25568, 25661 and 25557 of 2016 as the issues involved in all these cases are the same. However, for the sake of convenience, the facts are being extracted from CWP No.25565 of 2016.

In brief, petitioner no.1 is the institute and petitioners no.2 to 37 are the students of B. Tech. 1st year, B. Tech. (LEET-Lateral Entry-3rd semester), MBA and Diploma in Engineering, who have prayed for the issuance of a writ in the nature of *mandamus*, seeking a direction to the Haryana State Technical Education Society (hereinafter referred to as the “respondent-society”) and the Kurukshetra University, Kurukshetra (hereinafter referred to as the “respondent-university”) to register the students and to permit them to appear in the examination and also to declare condition of online registration/up-dation of details of the admitted students on or before

15th of August, incorporated in the prospectus, as arbitrary. It is alleged that petitioner no.1 is a self-financed unaided engineering college, owned and established by the Vidyapeeth Education Trust. It is imparting technical education of various courses, governed by the provisions of the All India Council for Technical Education Act, 1987 (hereinafter referred to as the “Act”) as well as the various regulations framed thereunder and in particular the All India Council for Technical Education (Norms and Guidelines for Fee and Guidelines for Admissions in Professional Colleges Regulations, 1994 (hereinafter referred to as the “Regulations”).

It is not disputed by the petitioners that the Supreme Court in the case of **Parshavanath Charitable Trust & Ors. vs. AICTE & Ors.**, 2013(1) JT 557, while interpreting the Act and the Regulations, laid down a schedule which read as under:-

Event	Schedule
Conduct of Entrance Examination (AIEEE/State CET/Mgt. Quota exams etc.)	In the month of May
Declaration of Result of Qualifying Examination (12 th Exam or similar and Entrance Examination)	On or before 5 th June
1 st round of conselling/admission for allotment of seats	To be completed on or before 30 th June
2 nd round of counselling for allotment of seats	To be complete on or before 10 th July
Last round of counselling for allotment of seats	To be completed on or before 20 th July
Last date for admitting candidates in seats other than allotted above 30 th July.	However, any number of rounds for counselling could be conducted depending on local requirements, but all the rounds shall be completed before 30 th July.
Commencement of academic session	1 st August

Event	Schedule
Last date upto which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	15 th August
Last date of granting or refusing approval by AICTE	10 th April
Last date for granting or refusing approval by University/State Govt.	15 th May

It is also admitted by the petitioners that the last date for admitting a student to the technical stream, in any circumstance, was fixed as 15th August of every year. There is also no dispute that in order to make an institution eligible for giving admission in the courses of technical education, yearly extension of approval is required from the All India Council for Technical Education (hereinafter referred to as the “AICTE”). Petitioner no.1-institute is affiliated with the respondent-university for the degree courses, namely, B.Tech., M. Tech, MBA and MCA and for the diploma courses, it is affiliated to the respondent-society, which is governed by the Haryana State Board of Technical Education Act, 2008 (hereinafter referred to as the “Act of 2008”). It is alleged that every action of the respondent-society regarding diploma courses is required to be carried out as per the regulations framed under the Act of 2008 and the degree courses are to be governed within the defined scope of the academic calendar of various universities which are in turn governed by the University Grants Commission Act, 1956.

It is alleged by the petitioners that the respondent-society issued the prospectus for the academic session 2016-17, providing the key dates for admission in the diploma course of engineering in Appendix I, in which the final cut off date for online updation of all institute level admissions on the

web portal of the respondent-society is provided as 16.08.2016. The relevant Clause (C) of Chapter-7 contained in the prospectus, dealing with the Post Counseling Instructions for the Institutes, reads as under:-

- “* All admissions by institutes including Institute level admissions are to be updated/reported online as and when they report/admit the candidates. No permission of any kind would be provided for admitting students, if not reported online as per Key Dates/Schedule given in Appendix-I. The online reported candidates for centralized as well as Institute level admissions would only be forwarded online to HSBTE.
- * The institute shall submit the final list of admitted students' alongwith documents/certificates proving eligibility to HSBTE for registration purposes and same shall be verified with the list of admissions as updated by respective institute on www.Intrahstes.gov.in till final cut off date of all admissions.
- * Any admission made after the last cut off date of admission shall be treated as wrong and illegal and will not be permitted/ updated at www.Intrahstes.gov.in. No excuse from institutes regarding non-updation of admissions would be entertained in any case.”

It is alleged that similar provisions have been made for admissions in degree programmes viz. B.E./B.Tech./B.Arch. by the University Departments/ Govt./ Govt. Aided/ Private Institutions located in the State of Haryana and also for the MBA programme. A similar condition is contained in all the prospectuses that the admissions were to be made by 15th August to all the diploma and degree engineering programmes and details of all the students who have been admitted at the institute level were to be uploaded on the web portal of the respondent-society upto 15.08.2016 or lastly by mid night of 16.08.2016. It is alleged that the admissions were to be carried out by the

petitioner no.1-institute at their own level and then the details were to be uploaded online and returns of the admissions were to be sent to the respondent-society or the University. Accordingly, petitioner no.1-institute allegedly carried out the admission of petitioners no.2 to 37 before the cut off date, i.e. 15.08.2016, but admittedly their names were not there in the list uploaded by the petitioner no.1-institute on or before 16.08.2016 on the web portal of the respondent-society. It is, however, alleged that the petitioner no.1-institute has the fee receipts of petitioners no.2 to 37, allegedly issued on 15.08.2016. It is further alleged that in the earlier academic years, the online registration was simple but in the present academic year, all the students are required to upload digital photographs and digital signatures etc. and since it was a cumbersome process and details of large number of admitted students were to be uploaded, therefore, the details of petitioners no.2 to 37 could not be uploaded due to confusion, though the said petitioners were admitted before the cut off date. It is further alleged that for the courses being run by the University, the online registration is permitted to be uploaded within 40 days in terms of the instructions issued by the University. It is further alleged that petitioner no.1-institute had sent copies of the returns of admissions to the respondent-society through messenger but the same were returned on the ground that it cannot accept hard copies and only online proforma was acceptable. The petitioners have also submitted that various representations were made through the Association of Private Self-Financing Institutions of Haryana and it is alleged that prior to the admissions, a meeting was held between the respondents and the petitioner no.1-institute as well as the Association of Private Self-Financing Institutions of Haryana on 01.04.2016 in

which it was agreed that 30 days time will be given to the colleges, who are part of the Association of the Private Self-Financing Institutions of Haryana to upload their details but it was not given effect to.

Besides this, counsel for the petitioners has also alleged that the entire admission process is governed by the Regulations framed under the Act and if there is a conflict between the Act and the rules of the State, then the Act being Union Legislation automatically over-rule the same and in this regard, reference has been made to List I, Schedule 7, Entry 66 of the Constitution to allege that the fixation of Regulations for educational institute is a part of the Union List and hence, the doctrine of occupied field is squarely applicable. It is further alleged that the condition prescribed in the prospectus of uploading the details of admitted students by 16.08.2016, the date provided in Appendix I, does not find mention in the Regulations, therefore, it cannot be imposed by the State as the prospectus has to be in conformity with the provisions of the Act and the Regulations. It is also submitted that the respondents itself had extended the time by giving public notice dated 11.11.2016 for the purpose of updation of the details of the admission and that has been followed by the petitioner no.1-institute. In this regard, the public notice dated 11.11.2016 is also reproduced here-as-under:-

“HARYANA STATE TECHNICAL EDUCATION SOCIETY
(HSTES)

“Takniki Shiksha Sadan” Bays No.7-12, Sector-4, Panchkula,
Haryana

(Under Department of Technical Education, Govt. of Haryana)
Website:-www.hstes.org.in
Toll Free No.18004202026

PUBLIC NOTICE

Subject: Submission of list of students for
editing/correction/updation of record of students

admitted upto 15.08.2016 for the session 2016-17.

All the concerned universities/institutions of the State are hereby informed that State Govt. has allowed editing/correction/updation of record of students who had been admitted in UG/PG/Diploma courses upto 15.08.2016 with the following stipulations:

1. The concerned University/Institute shall submit an Affidavit to the effect that:

- i. All the admissions have been made by the institute upto last cut-off date of admissions i.e. 15.08.2016.
- ii. The University/Institute has complied the orders of Hon'ble Supreme Court passed in Civil Appeal No.9048 of 2012 (Parshavanath Charitable Trust & Ors. Vs AICTE & Ors.) and the University/Institute shall be responsible for the legal consequences and claim of candidate whatsoever in this regard.
- iii. The University/Institute has verified the authenticity of all the required certificates of the candidates for the purpose of admission in the University/Institute and accordingly the responsibility of authenticity of all the details being submitted to HSTES lies with the University/Institute.

2. The concerned University/Institute shall submit the list of students duly signed by Head of the Institution for editing/correction/updation of records with all the details required for updation (Name, F/M Name, DOB, Percentage of Qualifying Examination, Category etc. along with copy of Fee Receipt and soft copy of photograph & signature of the students admitted upto 15.08.2016) through e-mail only at jdhs@hry.nic.in to HSTES upto 21.11.2016 keeping in view that total number of admissions shall not exceed the number of actual admissions already updated on the Portal.

3. It is clarified that the Universities/Institutes shall, under no circumstances, be allowed to substitute fresh name/candidate in the place of names/candidates already admitted and updated on the web portal of HSTES prior to the last cut off date of updation i.e. 16.08.2016.

4. The University/Institute shall not be allowed to submit the list in piece-meals rather the same can be submitted only once and strictly upto 05:00 PM on 21.11.2016. It is further clarified that the University(ies)/Institute(s) who have earlier made requests to the HSTES regarding correction in the record of admitted students, shall also submit a fresh and complete list.

5. Only those institutions will be considered who have submitted affidavit as mentioned at S. No.1. Only the data/list for editing/correction/updation of records which is received by HSTES through e-mail by the stipulated date line will be considered.

DGTE-cum-Vice Chairman, HSTES”

Counsel for the petitioners has submitted that not a word can be added or subtracted from the Legislation and, thus, the action of the respondents in not registering the petitioners no.2 to 37 and not permitting them to appear in the examination is patently illegal and erroneous.

In reply, counsel for the University has submitted that the period of 40 days was given for the submission of registration return and not for the purpose of uploading the details of the already admitted students which was to be uploaded on or before the cut off date i.e. 16.08.2016.

Counsel for the State has submitted that petitioner no.1-institute has admitted that the details with regard to admission of petitioners no.2 to 37 were not uploaded on the web portal of the respondent-society on or before the mid night of 16.08.2016, whereas Clause 7(C), referred here-in-above, specifically provides for updation of the institute level admissions on or before 16.08.2016. It is further submitted that the aforesaid condition provided in Clause (C) of Chapter-7 of the prospectus has been made in terms of the provisions of the Regulations and in this regard he has referred to Regulation 8(2) of the Regulations, which may also be reproduced here-as-under for a quick glance:-

“8. Procedure for allotment of seats.

(1) xxx xxx xxx xxx

(2) The competent authority shall issue a brochure containing therein an application form for admission. The brochure shall contain full particulars of the courses and the number of seats available, the names of the colleges, their location, the fees chargeable by each professional college, the minimum eligibility conditions **and such other particulars as may be deemed necessary by the competent authority.”**

It is further submitted that petitioner no.1-institute is unnecessarily blaming the procedure being cumbersome for not uploading the names of petitioners no.2 to 37 before the cut off date, otherwise petitioner no.1-institute had uploaded the details of more than 700 admitted students before the cut off date. In this regard, the following averments have been made in para no.6 of the reply, which requires a reference and is reproduced as under:-

“6. That the petitioner No.1 institute had uploaded upto 16.08.2016, the admissions of 24 number of students of 1st year diploma (Annexure R1/7), 10 number students of 2nd year diploma through Lateral Entry (Annexure R1/8), 524 number of students of 1st year B.E./B.Tech (Annexure R1/9), 63 number of students of 2nd year B.E./B.Tech. Through lateral entry (Annexure R1/10) and 148 number of students of MBA (Annexure R1/11).

In response to above said public notice dated 11.11.2016, petitioner no.1 institute submitted a list of corrections including 29 number of 1st year students of Diploma Engg. and 11 number of 2nd year students of Diploma (Lateral Entry), out of which fresh names of 05 number of 1st year students and 01 number of 2nd year students (Lateral Entry) were included (Annexure R1/12).

The list further included 560 number of 1st year students of B.E./B.Tech. and 66 number of 2nd year students of B.E./B.Tech. (Lateral Entry), out of which fresh names of 19 number of 1st year students and 03 number of 2nd year students (Lateral Entry) were included (Annexure R1/13).

The list also included 161 number of 1st year students of MBA, out of which fresh names of 11 numbers of students were included (Annexure R1/14).

Thus, despite the clear-cut instructions as above said, in total the names of as many as 39 fresh admissions whose names/data was not mentioned in the lists of admission updated upto the cut off date i.e. 16.08.2016, were submitted by the petitioner no.1 institute vide the list sent through email on 21.11.2016.

Therefore, keeping in view the directions of Hon'ble Apex Court and guidelines of AICTE, these fresh names including the petitioners no.2 to 37 as mentioned in the list submitted by the petitioner no.1 institute through e-mail dated 21.11.2016 were not accepted by respondent no.4 because these admissions were made after the cut off date i.e. 15.08.2016.”

It is further submitted that no such decision was taken in the meeting held on 01.04.2016, as alleged by the petitioner no.1-institute, and that vide the public notice dated 11.11.2016, referred here-in-above, opportunity was given only for making corrections in name, father's name, date of birth, percentage of qualifying examination and category etc. and it was rather categorically mentioned therein that “*Universities/Institutes shall, under no circumstances, be allowed to substitute fresh name/candidate in the place of names/candidates already admitted and updated on the web portal of HSTES prior to the last cut off date of up-dation i.e. 16.08.2016*”.

It is also submitted that in order to curtail the malpractice of violating the schedule laid down by the Supreme Court in **Parshavanath Charitable Trust's case (supra)** by the private institutes, who are permitted to give admission at their own level without the intervention and interference of the State or the University, this procedure of uploading the details of the institute level admissions on the web portal of the respondent-society on or

before the cut off date was devised in terms of Regulation 8(2) of the Regulations, in which it is provided that the competent authority may issue such other particulars/conditions as may be deemed necessary by it. It is, thus, submitted that the petitioner no.1-institute is squarely at fault in admitting petitioners no.2 to 37 after the cut off date i.e. 15.08.2016 and has, thus, not uploaded their names on the web portal of the respondent-society upto the mid night of 16.08.2016.

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

There is no dispute about the force of law attached to the schedule prescribed by the Supreme Court in **Parshavanath Charitable Trust's case (supra)**. It is also not in dispute that the petitioner no.1-institute has led no evidence to the effect that the details with regard to admission of petitioners no.2 to 37 were brought to the notice of the respondents by uploading it on their web portal on or before the cut off date i.e. 16.08.2016, as provided in Appendix I of the prospectus. There is also no dispute that there is a specific provision contained in Clause (C) of Chapter-7 of the prospectus, by which the petitioner no.1-institute was informed about its responsibilities. There is also no dispute that petitioner no.1-institute had uploaded the details of admissions before the cut off date, which had already been mentioned in the earlier part of this order by way of reproduction of para no.6 of the reply filed by respondents no.1, 2 and 4. There is also no dispute that the public notice dated 11.11.2016 was given for the purpose of correction and modification in the already uploaded data of the students and there is also no dispute that the petitioner no.1-institute had used the said facility provided through the said public notice

dated 11.11.2016 by seeking correction in the admission details of certain students.

The only dispute that has been raised is that the condition enumerated in Clause (C) of Chapter-7 contained in the prospectus has no support of any provision of the Regulations, which would govern the procedure and process of admission. In this regard, the respondents have referred to Regulation 8(2) of the Regulations, in which it is specifically provided that the competent authority may ask for such other particulars as it may deem necessary. With the backing of this provision contained in the Regulations and in order to curtail the malpractice of admitting students beyond the cut off date by the private institutes, who have been allowed to give admissions at their own level without the intervention and interference of the State or the Universities, the procedure has been evolved of asking the institutes to upload the details of institute level admissions on or before the cut off date, i.e. by the mid night of 16.08.2016, on the web portal of the respondent-society. Once this information is uploaded on the web portal, it cannot be substituted by way of addition of particulars of admissions, purported to have been given after the cut off date and similarly in respect of the admissions which though were allegedly given before the cut off date. Any fault in this regard by the institute is attributable to it and cannot be shifted upon the respondents especially when the institute had uploaded the details of admissions of large number of students admitted before the cut off date. The only presumption, which can be easily drawn by this Court, is that the admissions of petitioners no.2 to 37 were made by the petitioner no.1-institute after the cut off date i.e. 15.08.2016 and, thus, their details were not uploaded

by the cut off date.

Insofar as the notice dated 11.11.2016 is concerned, on the basis of which petitioner no.1-institute is claiming that it had sent the details on 18.11.2016 i.e. before 21.11.2016, the said notice was only meant for enabling the institutes to make necessary corrections in the already uploaded data of the students admitted before the cut off date so that it may match with the registration return which is sent separately and may not cause any kind of harm to the students who have been rightly admitted before the cut off date. Clause 3 of the said notice, referred here-in-above, specifically provides that under no circumstance, a fresh name can be added or substituted in place of the names already uploaded on the web portal prior to the cut off date i.e. 16.08.2016.

Insofar as the University is concerned, it has specifically stated in the reply that the 40 days time was provided for submission of the registration return of the admitted students but it does not mean that the said period has extended the period of admission, which has to be strictly followed in view of the decision rendered by the Supreme Court in **Parshavanath Charitable Trust's case (supra)**.

Thus, looking from any angle, there is hardly any merit in all these petitions as the petitioner no.1-institute itself has committed default in not uploading the details of the institute level admissions of petitioners no.2 to 37 on the web portal of the respondent-society before the cut off date. Had petitioners no.2 to 37 been admitted on or before 15.08.2016, their admission details would have definitely been uploaded by the petitioner no.1-institute before the cut off date along with the other students, on the web portal of the respondent-institute but petitioners no.2 to 37 were admitted by the petitioner

no.1-institute, after the cut off date, for its own benefit of filling up the vacant seats.

In view of the aforesaid, I do not find any merit in all these writ petitions for the purpose of interference by this Court and hence, the same are hereby dismissed. However, the students, illegally admitted by their respective institutes, after the cut off date, shall be at liberty to pursue their legal remedies for refund of fee and compensatory costs by launching appropriate proceedings, both civil and criminal, against their respective institutes, if so advised.

May 11, 2017
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(Rakesh Kumar Jain)
Judge

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