

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17550 of 2018

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Manish Kumar Son of Dhupendra Chaubey, Resident of Village- Bilouti, P.S.-
Shahpur, District- Bhojpur. Petitioner/s

Versus

1. The Union of India
2. The Director, National Institute of Technology, Patna.
3. The Registrar, National Institute of Technology, Patna.
4. The Director, through Central Seat Allocation Board, NIT, Jaipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Harsh Singh, Adv.

For the Respondent nos.2 to 4 : Mr. Y.V. Giri, Adv.

Mr. S.K. Giri, Adv.

For respondent no.1 Mr. S.D Sanjay Addl. Soc. Gen.

Ms. Punam Kumari Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 16-08-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

2. This Court noticing hardship and the fact that seat
is still vacant granted interim relief.

3. Mr. Harsh Singh, learned counsel appearing on
behalf of the petitioner would submit that earlier stand was
taken by the NIT and other respondents that for allocation of
seat respondent no.4 is competent and as such respondent no.4
may be noticed.

4. Mr. Y.V. Giri, learned senior counsel appearing on
behalf of the respondents submits that he has instruction from
respondent no.4 also to assist in the present proceeding. In other
words, Mr. Giri, represents the interest of all respondents



including the respondent no.4.

5. While issuing notice to the respondent no.4, the Court in the peculiar facts, directed the NIT to allow the petitioner to attend the classes both in practical and theory.

6. Mr. Harsh Singh, learned counsel for the petitioner submits that petitioner took admission (2019-20) in NIT, Patna on allocation of seat by Central Seat Allocation Board. He deposited Rs. 36,500/- for participation in 2018. The petitioner took chance after taking admission in NIT Patna to explore possibility of better institution, he has deposited special fee for reservation of seat in NIT, Patna in terms of guideline of NIT, Patna. Later on, respondent allocated seat in next round of counselling in different institution.

7. The petitioner filed the present writ application for a direction to the respondent to allow the petitioner to take admission in NIT, Patna.

8. On behalf of the respondent no.4 a counter affidavit has been filed wherein respondent no.4 has taken the following stand:-

“That JoSAA is an association of JAB (Joint Admission Board, responsible for admission in IITs) and CSAB (Central Seat Allocation Board, responsible for admissions in



NITs. SPAs and other GFTIs jointly termed as NIT+System.

7. That the petitioner appeared for admission through JoSAA counselling having AIR of 16695. JoSAA conducted seven rounds of seat allotment for admission in IITs and NIT+ System Institute.

8. That in the JoSAA round-1, the petitioner was allotted HEST Shibpur in the Department of Electrical Engineering Programme as per AIR Rank and choices filled by the petitioner. This seat was a choice no.12 in his choice list.

9. That after allotment of seat in JoSAA round-1, the petitioner paid seat acceptance fees according to his category and reported at NIT Patna (nearest reporting centre) where he got his documents verified and chose 'FLOAT' option as his willingness which denotes that he accepts the allotted seat and is interested to be considered in further rounds of seat allotment.

10. That in next JoSAA round-2 of seat allotment, petitioner was allotted upgraded seat at NIT Patna in the Department of Science and Engineering, which was is 3rd choice in choice list. He further chose the FLOAT option as his willingness and entered in further rounds of seat allotment.

11. That in further rounds of seat



allotment i.e. from round-3 to round-7, the same seat i.e. at NIT Patna (CSE Programme) was retained.

That after completion of 7th round (last round) of JoSAA, petitioner finally reported at respective allotted Institute i.e. at NIT Patna on 22.7.2018 in the scheduled time period as prescribed in business rules of JoSAA (Rule 44 of XVII), which was necessary step to retain and confirm the allotted seat.

13. That after completion of JoSAA seat allotment rounds, CSAB-2018 conducted two Special Round only for NIT+ System Institute for those seats which remained vacanot after JoSAA rounds.

14. That as per CSAB Special Round rules, a candidate can participate in special Round while retaining his seat allotted by JoSAA.

15. That in expectation of getting upgraded choice as per his choice lit, the petitioner registered himself in Special Round of CSAB-2018 by depositing the participation fees according to his category as mentioned in Special Round rules of CSAB-2018.

16. That in the Special Round-1 counselling, petitioner was allotted HEST Shibpur in the Department of Information Technology Programme as per his rank and choice filled by him.



17. That it is pertinent to mention here that as per point 4 (a) of Step-3 of Special Round rules of CSAB, if a candidate, appears in Special Round of CSAB and consequently in such Special Round he is further allotted a seat then in that condition his previously allotted seat in JoSAA round will be forfeited.

18. That after declaration of result of Special Round-1 counselling of CSAB, petitioner selected the option of 'SURRENDER' and PARTICIPATING in NEXT ROUND' which denotes that Candidate rejects the offered seat. Such candidate will be considered in next round of admission and his choices above the currently allotted seat will be processed for allotment in special Round-II. Whether the candidate is allotted/not allotted any seat in the next round, she/he will have no claim on the seat allotment in the previous round Special Round-1.

19. That in light of the above rule position, it can apparently be seen that the seat retained by petitioner till the JoSAA Round-7 at NIT Patna in the Department of Computer Science and Engineering was forfeited due to allotment of a new seat at HEST, Shibpur in Department of Information Technology in the Special Round-1, which was also got cancelled by selecting the option "Surrender and participating in Next Round". Thus, petitioner



had lost all the seats and no seat was remaining in his hand just before entering into the Special Round-2.

20. That as per the option selected by petitioner after Special Round -1 , he was considered in Special Round -2 in which no seat was allotted to him as per his merit.

21. That now with respect to the contention of petitioner stated in para 9 of writ petition that “by depositing the Special fees for reservation of his seat in NIT Patna, the petitioner is entitled for admission in NIT Patna as per their own guidelines are not acting in accordance with law and their action is quite arbitrary and unconstitutional” is a false statement, hence denied.

22. That it is pertinent to mention here that the counselling/allotment procedure has been done by JoSAA/CSAb in accordance to the Business Rules. Candidates have been allocated seat in NIT+ System strictly as per their ranks and choices filled and parity has been maintained in allocation of seats. Therefore, CSAB-2018 has not done any arbitrary and unconstitutional act in the process.

23. That the contention of petitioner is not tenable at all. As per CSAB-2018 rules during the counselling process all the seats remained vacant in a round (due to non-



allotment or non-acceptance by candidate or surrender of seat by candidate) are shifted to next round of seat allotment and are allotted to the candidates in accordance to their merit (rank) and choices filled by them.

24. That the petitioner himself surrendered the duly allotted seat in Special Round-1, and his surrendered seat was allotted to some other eligible candidate in next round of Special Round-2 as per his/her merit. So, the petitioner was considered in the next round Special Round-2 without any seat in hand. He could't be allotted a seat in Special Round-2 as per his merit, category and choice list.

25. That hence, as per CSAB-2018 records the petitioner doesn't possess any seat with him and there is no rule to allot or retain previous allotted seat to the candidate.

26. That as per CSAB-2018 records, vacancy position in the petitioner's category (Gen. Male, Home-State-BIHAR) on all three seats are as follows:

Sl No.	Seat allotted to petitioner	Petitioner's category in the allotted Institute	Current vacancy position
01	HEST Shibpur (Electrical Engg.)	Sent in Gen, Gender-Neutral, OTHER STATE*	ZERO
02.	NIT Patna (Computer Science & Engg.)	Seat in GEN, Gender-Neutral, OTHER STATE*	ZERO
03.	HEST Shibpur (Information Technology)	Seat in GEN, Gender-Neutral, OTHER STATE*	ZERO



27. That the Hon'ble Supreme Court in a judgment reported in 2013 (3) SCC 385 (Parshavanath Charitable Trust & Ors- Vs- All India Council for Technical Education & Others) has strictly fixed a date that no admission in the Engineering Courses is allowed to be taken by any College after 15th August every year under any circumstances and the same judgment has again been reiterated in writ petitioner (civil) no. 853 of 2014 (Varun Saini & Others-Vs-Guru Gobind Singh Indraprastha University) alongwith a batch of writ applications on 16.10.2014 by two judges of the Hon'ble Supreme Court namely Hon'ble Mr. Justice Deepak Mishra sitting with Hon'ble Mr. Justice U.U. Lalit in which the Hon'ble Supreme Court vide para no.29 (d) (c) has strictly reiterated that the time schedule originally fixed in Parshavanath Charity Trust (supra) shall remain in force and be religiously be followed in the subsequent years".

9. Mr. Y.V. Giri, learned senior counsel appearing for the respondent with reference to aforesaid statements in para quoted hereinabove, would submit that there is no seat available for consideration of the case of the petitioner for admission in NIT, Patna. His next contention in this is with reference to the time frame indicated by the Apex Court that in view of the



judgment of the Apex Court reported in **2013 (3) SCC 385 (Parshavanath Charitable Trust & Ors-Vs- All India Council for Technical Education & Others)**, judgment in **(civil) no. 853 of 2014 (Varun Saini & Others-Vs-Guru Gobind Singh Indraprastha University)**

10. Mr. Y.V. Giri, would submit that in view of the time frame indicated by the Apex Court the petitioner is not entitled to any relief.

11. Mr. Harsh Singh, learned counsel appearing on behalf of the petitioner has referred to statements made in para 9 and 11 to the supplementary affidavit wherein he has specifically mentioned details for ready reference para 9 and 11 of the supplementary affidavit is quoted below:-

“9.That in reply to the statement in the counter affidavit filed on behalf of the respondent No.4 that the vacancy position in Computer Science Engineering in NIT Patna is zero, is an incorrect statement. It is stated that several candidates who had taken admission in NIT Patna, in the computer engineering stream, left the course mid way and the strength of the batch is much below the sanctioned strength. The petitioner is aware of at least two such students viz., Ankit Kumar (1806133) and Rahul Kumar (1806120), who



left the course mid way and as such there would be no difficulty in accommodating the petitioner, who has already attended theory and practical classes of the first year.

11. That since the petitioner is attending classes of the 2nd year but has not been able to take a single examination of the first year, the petitioner is even ready to repeat the first year of computer engineering in the Respondent institute.”

12. On the basis of aforesaid averment, Mr. Harsh Singh would submit that two seats are lying vacant where the petitioner could have been accommodated. Referring to the interim order passed by this Court he submits that the petitioner is regularly attending the classes both practical and theory. He also submits that that petitioner has taken admission within the time frame indicated by the Apex Court and as such there is no question of admission beyond the time frame indicated by the Apex Court.

13. From the materials available on the record, it is manifest that petitioner took admission in NIT, Patna. However, he took chance to explore admission in better institution and better subject. He was selected in different institution but he revert back to NIT, Patna. He submits that NIT, Patna has accepted the requisite fee and allowed reservation of seat for



admission. He submits that there is no decision much less in relation to the cancellation of the admission of the petitioner in NIT, Patna.

14. Mr. Giri, with reference to the Rule would submit that once the petitioner has opted for next round of counselling and was selected, his seat stand automatically forfeited in terms of Rule. There is no dispute that this petitioner has not taken admission in any institution, his seat was reserved in NIT, Patna. He was selected for other institution but he never took admission.

15. Mr. Y.V. Giri, learned senior counsel submits that petitioner is responsible for his own position. He is hanging imbalance because of his irrational approach.

16. Considering the fact that the petitioner was selected and deposited requisite fee as part of the fee for taking admission and he was required to deposit remaining fee. There is no dispute that the petitioner has deposited further amount for participating in on his counselling for admission against better institution.

17. Considering the averment of Mr. Singh that there exists still two vacancies in NIT, Patna in the subject concerned, the Court is of the view that the petitioner cannot be



made to suffer in a situation where there exists clear vacancy, if the contention of the petitioner is correct as the Court cannot shut its eyes to the fact that the infrastructure of the institution like NIT, Patna cannot go waste as it would be wastage of the infrastructure available in NIT, Patna. The infrastructure of the NIT, Patna is for full strength and admitting less students would amount to lack of optimum utilization of the infrastructure and teaching facilities. At the same time, the Court also considered the fact that this petitioner in terms of order dated 11.9.2018 has attended the classes both practical and theory but was not allowed to appear at the examination. The Court in the facts of the case is of the considered view that ends of justice requires that the NIT, Patna as well as respondent no.4 may verify its record to ascertain whether there exists any vacancy in the NIT, Patna in the subject Computer Science and if there exists vacancy for which petitioner participated in the counselling and deposited substantial amount for taking admission then the respondent shall allow the petitioner to compete the formality for taking admission but the petitioner shall not be allowed to appear in the examination in academic session for which he was initially offered seat in NIT, Patna. He has to take examination in the subsequent academic year i.e.



next academic year.

18. Necessary decision after verification of the record may be taken by the respondents including respondent no.4 within a maximum period of 30 days from the date of receipt/production of a copy of this order and thereafter they will take final decision with regard to admission and examination of the petitioner. This order has been passed having regard to the hardship of petitioner and considering the competing interest of the NIT as well as interest of this petitioner who was initially selected for admission in NIT, Patna in subject Computer Science.

19. It is made clear that the petitioner shall not be allowed to appear in 2018-19 examination and he has to loose one year. He shall be allowed to appear in the 2019-20 examination after payment of examination fee in Computer Science.

20. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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