

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1266 of 2017

In

Civil Writ Jurisdiction Case No.9218 of 2016

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1. Exalt Educational 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 Polytechnic, Kanhaulii, P.S.- Mahuwa, District- Vaishali Hajipur through its chairman Deepak Kumar.

... .. Appellants

Versus

1. The State Of Bihar
2. The Principal Secretary, Science and Technology Department, Govt. of Bihar, Patna.
3. The Director, Science and Technology Department, Government of Bihar, Patna.
4. 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 Comple, Talpetra Lane, Budha Marg, P.S. Kotwali, District- Patna through its Chairman.

... .. Respondents

Appearance :

For the Appellant/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Awadhesh Kumar Pandit, Adv.
For Respondent Nos. 1 to 5: Mr. Pushkasr Narain Shahi – AAG- 6
Mr. Dharendra Kumar, A.C. to AAG-6

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 09-12-2019



Heard Mr. P.K. Shahi, learned senior advocate for the appellants and Mr. Pushkar Narain Shahi, learned Additional Advocate General No.6 for the respondent nos. 1 to 5.

2. This appeal under Clause 10 of the Letters Patent has been filed by the appellants challenging the judgment dated 25.08.2017 passed by the learned Single Judge in CWJC No. 9218 of 2016 by which the writ petition filed by the appellants has been dismissed with a direction to refund the entire fee received by the College from the respective students, with further award of cost of Rs.50,000/- to each of the students, within a period of three months by way of compensation.

3. Mr. P.K. Shahi, learned senior advocate appearing for the appellants submitted that while passing the judgment impugned, the learned Single Judge did not appreciate that the students had taken admission on the basis of counseling done in the camp organized by the Scheduled Castes and Scheduled Tribes Welfare Department, Government of Bihar (for short 'SC & ST Welfare Department'). He contended that as a matter of fact admissions were taken at the instance of the Government. He has further contended that the learned Single Judge also failed to appreciate that the appellants had given admission to 150 students based on counseling done by the Exalt College of Polytechnic,



Kanhauli, Vaishali at Hajipur (for short 'Institution') itself. According to him, the learned Single Judge instead of appreciating that the respondent no.4 was acting arbitrarily and illegally in not registering the students and issuing mandamus to the respondent no.4 to register the students, passed the impugned order, which is unsustainable in law. He contended that at the time of admission when the matter was initially taken up, the implementation of the order passed by the learned Single Judge was stayed by the Division Bench vide order dated 13.10.2017 and subsequently by order dated 15.12.2017, it was directed that the students of the College were entitled to participate in the process of examination conducted by the department in question, provisionally, subject to final decision of the case. Hence, even if the Court is not persuaded by the submissions on behalf of the appellants, it would be inequitable at this stage to sustain the order passed by the learned Single Judge. He submitted that on the facts and in the circumstances of the case equity demands that the students admitted in the Exalt College of Technology be allowed to complete their courses. In support of his submissions, he has placed reliance on the judgment of this Court in *Netaji Subhas Institute of Technology Vs. State of Bihar and Ors.*, since reported in *2018 (1) PLJR 469*.



4. Per contra, Mr. Pushkar Narain Shahi, learned Additional Advocate General No.6 appearing for the respondent State submitted that there is no error in the judgment passed by the learned Single Judge. The admissions made by the appellants in the college were not based on any entry test held either by the Bihar Private Technical and Professional Institutions Association or by the Government or its agency. He contended that the impugned judgment passed by the learned Single Judge is in accordance with the judgments passed by the Supreme Court in *Islamic Academy of Education and Anr. Vs. State of Karnataka & Ors.*, since reported in (2003) 6 SCC 697, *Modem Dental College & Research Centre & Ors. Vs. State of Madhya Pradesh & Ors.*, since reported in (2016) 7 SCC 535 and *P.A. Inamdar Vs. State of Maharashtra*, since reported in (2005) 6 SCC 537. He has submitted that in view of the non-transparent and arbitrary admissions taken by the appellants in the college, the learned Single Judge has rightly dismissed the writ petition and awarded compensation to the students illegally admitted in the College in question. He has submitted that the judgment of this Court in *Netaji Subhas Institute of Technology* (Supra) would be of no help to the appellants, as the same was passed in complete contravention to the ratio laid down by the Supreme Court in



Rishabh Choudhary and Anr. Vs. Union of India & Ors., since reported in ***(2017) 3 SCC 652*** wherein the Supreme Court clearly held that in such case rule of law must prevail and the students who did not appear in NEET examination and placed their trust only in the college took a gamble cannot be helped by allowing them to continue their studies in the college.

5. We have appreciated the rival contentions of the parties and carefully perused the record.

6. The appellant no.1 is a trust. Appellant no.2 is its Chairman. The appellant no.1 through its Chairman Deepak Kumar is said to have established the Institution (appellant no.3). They filed a writ petition before this Court vide CWJC No. 9218 of 2016 seeking a direction to the respondent State Board of Technical Education, Department of Science and Technology, Government of Bihar, Patna (for short 'SBTE') to ensure registration of 300 students admitted in the institution on the basis of marks obtained in the qualifying examination i.e. 10th pass and further a direction to hold the first and the second semester examination of the aforesaid 300 students admitted for the academic sessions 2015-16.

7. The case of the appellants in the writ petition is that the Institution took admission of 150 candidates of scheduled



castes and scheduled tribes category in the Institution directly from an education fair organized by the SC & ST Welfare Department. The remaining 150 students were admitted directly by them in the Institution for the Sessions 2015-16 on the basis of marks obtained in the qualifying examination i.e. 10th pass.

8. On the basis of the aforesaid submissions, the appellants sought relief in the writ petition that all the 300 students should be registered by the SBTE for the academic session 2015-16 and appropriate direction be issued to the SBTE to conduct the first semester examination for those 300 students.

9. The appellants took a plea before the writ Court that since they had acted in response to a representation by the SC & ST Welfare Department and allowed admission of the students on the nomination so made by the Department, they cannot be blamed and an exception may be carved out of the general rule so that the career of those students be not adversely affected.

10. Considering the plea taken by the appellants, the writ Court, vide order dated 24.04.2017 had directed the Chief Secretary, Government of Bihar, to personally file counter affidavit dealing extensively with the situation emerging from the admission of the students on the basis of nomination made by the SC & ST Welfare Department.



11. The aforesaid order dated 24.04.2017 passed in the writ petition reads as under :-

“The petitioners have been given admission in various private engineering colleges in the State of Bihar on the nomination having been made by the Schedule Castes Schedule Tribes Welfare Department, Government of Bihar.

Admittedly, they did not participate in the entrance test held either by the Association of private colleges or Bihar Combined Competitive Entrance Examination Board, Patna. In a recent decision, following Supreme Court’s decisions, it has been held that these are the only two methods permissible for admission to technical and professional courses.

Mr. P. K. Shahi, learned Counsel appearing on behalf of the petitioners, has submitted that the Schedule Castes Schedule Tribes Welfare Department had organized camps for selecting candidates belonging to of the Schedule Castes and Schedule Tribes for their admission to various technical and professional courses and acting on the nomination so made by the Department, the petitioners took admission. He submits that since the petitioners acted in response to a representation by the State Department, they cannot be blamed and an exception may be carved out of the general rule that admissions to such technical and professional courses can be taken on



the basis of only two types of entrance test, as indicated above.

A counter affidavit has been filed on behalf of the Department of Science and Technology, Government of Bihar, asserting that the admission of these petitioners, on the basis of nomination made by the Schedule Castes Schedule Tribes Welfare Department, cannot be said to be justified. However, there is no stand taken on behalf of the State of Bihar as to the action of the Schedule Castes Schedule Tribes Welfare Department in making nomination for admissions of these petitioners in technical and professional courses in private colleges.

Since it appears that there may be a situation of inter-departmental difference, let a counter affidavit be filed by the Chief Secretary, Government of Bihar, himself, dealing extensively with the situation emerging from admission of these petitioners on the basis of nomination made by the Schedule Castes Schedule Tribes Welfare Department.

Such an affidavit must be filed by 01st May, 2017.

List this case, under the same heading, on 01st May, 2017.”

12. Pursuant to the aforesaid order dated 24.04.2017, the Chief Secretary filed a counter affidavit stating therein that the



claim made by the writ petitioners that 150 candidates of scheduled castes and scheduled tribes category were admitted in the Institution on the basis of nomination made by the SC & ST Welfare Department, Government of Bihar is absolutely baseless and false. In support of the aforesaid submission, letter no. 25 dated 09.02.2016 written by the Secretary, SC & ST Welfare Department, Government of Bihar, Patna was also annexed wherein it was specifically mentioned that no instruction for admission in any institution/college has been issued by the Department. However, to safeguard the students from extortion of money in the name of admission in the technical institutions the Department had organized a fair in the month of August, 2015 to help the students in taking admission in technical institutions/colleges.

13. It was further pleaded in the counter affidavit filed by the Chief Secretary that the SC & ST Welfare Department, Government of Bihar had never recommended to allow admission of any student nor had it nominated any candidate of the scheduled castes and the scheduled tribes category for admission in the Institution and the entire claim made by the appellants is based on false statement and misleading facts.



14. Another counter affidavit was filed by the Secretary, SBTE wherein it was pleaded that the functions of the SBTE include conduct of diploma level examination, certification and affiliation to the diploma level institutions after having approval of All India Council for Technical Education (for short 'AICTE'). The Institution had been given approval by the AICTE vide letter dated 26.04.2013 wherein it was clearly mentioned that the approval was valid for two years from the date of issue of letter for getting affiliation from the University after fulfilling State Government's requirements for affiliation. It was further pleaded that in view of the judgment of the Supreme Court in ***Islamic Academy of Education*** (Supra), for admission to technical institution, each State Government was required to appoint a permanent Committee to ensure that the tests conducted by association of colleges were fair and transparent. The Committee was to be headed by a retired Judge of the High Court. As per the order of the Supreme Court, a Committee was constituted in Bihar vide notification nos. 336 dated 05.02.2014 and 1446 dated 07.06.2016 respectively headed by a retired Judge of the Patna High Court by the Department of Science and Technology, Government of Bihar. The Committee held its meeting on 25.03.2014 and decided that the admission in the AICTE approved



engineering/polytechnic institutes has to be taken through competitive examination conducted by the Bihar Combined Entrance Competitive Examination Board (for short 'BCECE'), Patna or through the examination conducted by the Association of Private Technical Education approved by the AICTE in the State of Bihar.

15. As per the norms and guidelines of the SBTE, it would be evident from the record that the admission of students in the State of Bihar in technical Institutions is required to be made strictly as per the rules laid down by the Government of Bihar.

16. In the counter affidavits filed by the respective respondents in the writ petition, it has been categorically pleaded that the admission of the students in the appellant Institution was neither allowed from the merit list of BCECE nor from the merit list of any test conducted by the Association of Private Technical and Professional Institutions.

17. Thus, the consistent case of the respondents is that the appellants did not follow the law laid down by the Supreme Court in the case of *Islamic Academy of Education* (Supra) and *P.A. Inamdar* (Supra).

18. Though a plea has been taken by the appellants in their rejoinder to the counter affidavit that the appellant Institution



took admission of 150 students from the scheduled castes and the scheduled tribes category on the basis of a camp organized in Miller High School, Patna by the SC & ST Welfare Department, no chit of paper has been brought on record to show that any of the candidate of the scheduled castes and the scheduled tribes category was admitted in the Institution on the basis of nomination of the SC & ST Welfare Department of the State of Bihar.

19. After having heard the parties, the learned single Judge vide impugned judgment dated 25.08.2017 dismissed the writ petition observing as under :-

“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 specific 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.”

20. The case of the appellants is that 150 students of the scheduled castes and the scheduled tribes category were admitted in the Institution for the academic session 2015-16 on the basis of nomination made by the SC & ST Welfare Department, Government of Bihar and the remaining 150 students were admitted for the said academic session on the basis of suo motu counselling made by the Institution itself.

21. In *Islamic Academy of Education* (Supra), the Supreme Court observed As under :-

“... We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that 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 these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the



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. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de hors merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

(emphasis supplied)



22. The Supreme Court further observed :-

“....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 other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice-Chancellors of the University in that State so that the total number of persons on the Committee do not exceed five. 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....” (emphasis supplied)

23. In *P.A. Inamdar* (Supra), a 7-Judge Bench of the Supreme Court said that technical and professional institutions cannot impart education unless the institution is recognized or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather, must, in national interest, step in.

24. The Supreme Court further observed :-

“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 fulfillment of twin objects of transparency and merit.”

25. In *Modern Dental College & Research Centre Vs. State of M.P.*, since reported in (2016) 7 SCC 353, a Constitution Bench of the Supreme Court was considering constitutional validity of “Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007”, Admissions Rules, 2008 and the Madhya Pradesh Private Medical and Dental Postgraduate Course Entrance Examination Rules, 2009, which was framed by the State Government in exercise of the power conferred upon it under the Act. The Act and the Rules



were framed to regulate primarily the admission of students in postgraduate courses in private professional educational institutions. Apart from other things, the Act prescribed compulsory common entrance examination administered by the Government, provision for fee fixation by the Government Committee based on certain detailed criteria and for reservation of seats. In the High Court, the petitioners' primary contention was that the Act and the Rules amounted to excessive interference in autonomy of private institutions and consequential violation of Article 19(1)(g) of the Constitution of India. The High Court rejected the petitioners' argument entirely and upheld the validity of the Act and the Rules relying upon the precedents in ***T.M.A. Pai Foundation Vs. State of Karnataka***, since reported in **(2002) 8 SCC 481**, which decided the extent to which the State Government can intervene in the matters of private unaided colleges.

26. The primary contention of the petitioners in case of ***Modern Dental College & Research Centre*** (Supra) was that by the Act and the Rules under challenge, the State sought to wipe out the choice available with the appellants institution to adopt common admission procedure and the provisions of Section 6 read with Section 3(d) of the Act insisting that the admission be carried out only on the basis of SBTE or by the agency appointed by the



Committee was illegal. In Addition, Section 9 of the Act provided for the Committee defined under Section 3(c) of the Act to determine and fix the fees to be charged by the appellants and thereby completely trampled the rights of the appellants to determine and charge the fee.

27. The appellants arguments were rejected by the Supreme Court, which upheld the judgment of the High Court and the constitutional validity of the Act and the Rules observing as under :-

“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 *Adhiyaman* [*State of T.N. v. Adhiyaman Educational & Research Institute*, (1995) 4 SCC 104 : 1 SCEC 682] 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* [*Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 : 1 SCEC 742] and the decision of the larger Bench in *S.V. Bratheep* [*State of T.N. v. S.V. Bratheep*, (2004) 4 SCC 513 : 2 SCEC 547] which explains the



observations in *Adhiyaman* [*State of T.N. v. Adhiyaman Educational & Research Institute*, (1995) 4 SCC 104 : 1 SCEC 682] 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* [*State of T.N. v. Adhiyaman Educational & Research Institute*, (1995) 4 SCC 104 : 1 SCEC 682] 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 AICTE is not outside the legislative competence of the State.”

28. In the case of *Modern Dental College & Research Centre* (Supra), the Supreme Court held that the purpose of common entrance test is in the larger interest and welfare of the students community to promote merit and excellence and curb malpractice.

29. The direction of the Supreme Court with regard to holding a combined competitive examination in the aforesaid cases is being followed in the State of Bihar.

30. So long as the State is following the guidelines of the Supreme Court in the matter of allowing admission in technical education on the basis of combined competitive examination, the appellants cannot admit any student in the institution de hors merit and without following the prescribed mode by which only admission could have been taken.

31. The appellants have not disputed the fact that in view of the law laid down by the Supreme Court in *Islamic Academy of Education* (Supra), in the State of Bihar an admission supervisory committee headed by a retired Judge of Patna High Court for admission in technical institutions was constituted vide



notification no. 336 dated 05.02.2014. They have also not disputed the fact that for taking admission of students in private unaided approved technical institution examination is conducted either by the Association of Private Technical Education or by the State Government agency i.e. BCECE.

32. It is not the case of the appellants that they admitted students in the Institution on the basis of examination conducted either by the Association of Private Technical Education or by the State Government agency BCECE.

33. The plea of appellants that the admissions have been made on the basis of nomination by the SC & ST Welfare Department or the counselling done by the Institution itself, is completely devoid of any merit.

34. Moreover, the SC & ST Welfare Department has taken a definite stand and an affidavit in this regard has been filed by the Chief Secretary of the State of Bihar stating categorically that the plea that the students were allowed admission on the basis of nomination made by the Department is absolutely false and baseless.

35. Apparently, thus, the appellants did not approach this Court with clean hands. They tried to put blame upon the SC & ST Welfare Department for the illegal admission of 150 out of 300



students admitted in the Institution. Their claim has been found to be patently false, as they failed to bring any reliable evidence in this regard. They have also failed to justify in any manner the admission of the remaining 150 students, which was made on the basis of counselling done at the college itself.

36. The action of the appellants in allowing admission of 300 students is in complete breach of the ratio laid down by the Supreme Court in the abovestated decisions as also in breach of the guidelines issued by the State. The learned Single Judge rightly held in the writ petition that the Institution had allowed admission of the students illegally.

37. The plea taken by the appellant that pursuant to the interim protection granted by this Court, the students have participated in the process of examination conducted earlier and hence they may be allowed to complete their course cannot be allowed for the following reasons :-

- (i) because the very order by which the students were allowed to participate in the examination, it was clearly held that the students would be entitled to participate in the process of examination provisionally subject to the final decision of the case and their result shall also be provisional;



- (ii) because the admission of the students was contrary to the guidelines for admission in terms of combined competitive entrance test;
- (iii) because the appellants could not have finalized the admission according to their own standard; and
- (iv) because the doctrine of of legitimate expectation would have no application, as the action of the institute in allowing admission is contrary to the guidelines issued by the State and the ratio laid down by the Supreme Court.

38. The appellants have placed reliance on a Division Bench judgment of this Court in *Netaji Subhas Institute of Technology* (Supra) for the purpose of seeking equitable relief for the students who are pursuing their studies. In the said case, the judgment of the writ court in batch of writ petitions arising out of *Bihar Private Technical and Professional Institutions Association (BPTPIA) and Ors. Vs. State of Bihar and Ors.*, since reported in **2017 (2) PLJR 700** was under challenge. In those writ petitions, it was noticed by the writ court that admission of students on the basis of marks of 10th or 10+2 examination result or marks obtained in qualifying examination of various technical institutes was contrary to the guideline for admission in terms of combined competitive entrance test. The writ court also



noticed that for admission in private technical and professional institution no rules were framed by the State Government laying down procedure for admission to technical courses (B. Tech./Diploma Courses) in privately managed unaided technical institutions. The writ court having noticed the Supreme Court decisions in *T.M.A Pai Foundation Vs. State of Karnataka*, since reported in *(2002) 8 SCC 481*; *P.A. Inamdar and Ors.* (Supra) and *Modern Dental College and Research Center and Ors.* (Supra), which lay down the law and prescribe guideline as to how such admissions to professional courses are to be taken emphasized the necessity of holding a common entrance test either by the State agency or the association of private institutions.

39. It found that the institutions had allowed some of the students to be admitted to the courses for academic session 2016-17 not on the basis of entrance test held by the association rather on their qualification of having passed 10+2 examination on the ground that by entrance test and counselling only 20% of the total sanctioned seats could be filled up and for their survival, they had taken admission on the remaining seats on the basis of qualification of the candidates having passed 10+2 examination. The writ Court held that admission allowed by these institutions on the basis of 10+2 marks could not be justified, as the same could



not be done by entrance test only and by no other means. The Court further held that illegal admissions taken without resorting to a combined entrance examination test cannot be legitimized by a judicial order.

40. Having said so, the Court directed the Institution to refund all fees and charges so far received by them from the students and further to pay Rs.50,000/- to all the students so admitted by way of compensation.

41. The judgment passed by the writ court in ***BPTPIA*** (supra) was challenged vide two Letters Patent Appeals bearing LPA Nos.729 and 765 of 2017. LPA No. 729 of 2017 was filed by Netaji Subash Institute of Technology and Ors. whereas LPA No.765 of 2017 was filed by Khushi Sanskriti and Ors., the four students claiming themselves to be the worst sufferers of the order and judgment of the writ court. Those two LPAs were disposed of by the Division Bench vide a common judgment dated 13.09.2017 and has been reported as ***Netaji Subhas Institute of Technology*** (Supra).

42. In the Letters Patent Appeal, the Division Bench said that in none of the writ petitions, the writ petitioners have challenged the guideline for taking admission in terms of combined competitive entrance test or have approached the writ



Court for a direction to the respondents to conduct either second entrance test or to consider the desirability of permitting admission on the basis of marks obtained in 10+2, which is one of the permissible mode but that permissible mode has to be decided only by the State Government by framing rule or in absence thereof by the Supervisory Committee constituted in terms of the Apex Court direction in the case of *Islamic Academy of Education Case* (supra).

43. The Division Bench said that if there is infirmity in the decision of the Supervisory Committee of the State Government touching the illegality and/or in the realm of void decision, yet the institute was required to challenge such decision and cannot be allowed to adjudge and finalize the admission process according to their own standard.

44. The Bench, in *Netaji Subhas Institute of Technology* (Supra), rejected the submission of the appellants of justification of the Institute in taking admission.

45. It said that surprisingly enough, even after admission they have not approached this Court for seeking a direction to the respondent authorities to consider their case sympathetically and condone the defects in the admission.



46. After saying so, the Division Bench in *Netaji Subhas Institute of Technology* (Supra) said that the institute acted as if it is above law and it is competent to decide the manner of preparation of merit list for taking admission as substitute for the Supervisory Committee constituted by the State of Bihar in the light of judgment of the Apex Court in *Islamic Academy of Education case* (supra).

47. After holding that the action of the institute in taking admission in breach of the guideline was impermissible, the Division Bench took notice of the undertaking of the counsel appearing for the appellants in those cases that they will not claim any equity, if the students would be allowed to appear as interim measure in B. Tech. 1st Semester examination. It also took into consideration the fact that if the State and its instrumentality would have taken action of cancelling admission immediately after the students were admitted, the students, who took admission, prosecuted their studies in B. Tech. course would not have been left in lurch.

48. Considering the plight of the students, in *Netaji Subhas Institute of Technology* (Supra), the Division Bench taking a sympathetic view modified the decision of the writ court to the extent that it directed the respondent-Principal Secretary,



Department of Science and Technology, Government of Bihar to consider the case of regularizing/condoning the defect in the admission of the students in B. Tech. course in the institute in question as one time measure sympathetically as remedial measure. However, liberty was given to the Principal Secretary to take appropriate action against the institute for allowing admission in frontal disregard to the guideline of the Supervisory Committee in accordance with law.

49. At this stage, it need to be mentioned that an identical issue has arisen in *Rishabh Choudhary* (Supra). The question for consideration before the Supreme Court was the validity of admission granted to the petitioner by Respondent C.M. Medical College & Hospital to the MBBS course. A plea was advanced that since the petitioner was already granted admission by the College after the examination CGMAT-2016 was conducted by the College and supervised and monitored by the State Government and in which there was no allegation of impropriety, his admission should not be disturbed. It was also pleaded that the petitioner was certainly not at fault and he should not be rendered victim of an apparent wrong committed by the College as also by the State Government. In the said case, examination was conducted by the college contrary to the Gazette notification issued by the Medical



Council of India amending the regulations on Graduate Medical Education, 1997 to the effect, interalia, that admissions to MBBS course shall be based solely on marks obtained in National Eligibility-cum-Entrance Test. After considering the submissions advanced on behalf of the petitioner and the college supporting him, the Supreme Court dismissed the writ petition filed under Article 32 of the Constitution of India observing as under :-

“The question before this Court is not who is to be blamed for the present state of affairs - whether it is the students or the College or the State of Chhattisgarh. The question is really whether the rule of law should prevail or not. In our opinion, the answer is unambiguously in the affirmative. The College and the State of Chhattisgarh have not adhered to the law with the result that the petitioner became a victim of circumstances giving him a cause of action to proceed against the College and the State of Chhattisgarh being a victim of their maladministration. The plight of the petitioner is unfortunate but it cannot be helped.”

(emphasis supplied)

50. Rejecting the contention of the petitioner, the Supreme Court said that the question is not of any impropriety in the conduct of the examination but the question is really one of adhering to a particular discipline laid down by the Medical



Counsel of India and approved by this Court. The Supreme court said that the plight of petitioner is unfortunate but it cannot be helped.

51. Dealing with the submission made on behalf of the petitioner in ***Rishabh Choudhary*** (supra) that some similarly placed students participated in NEET and qualified in the examination, the Supreme Court said that those students like the petitioner who did not participate in NEET and placed their trust only in the college and the State of Chhattisgarh took a gamble and that gamble has unfortunately not succeeded. ‘While our sympathies may be with the petitioner and similarly placed students, we cannot go contrary to the orders passed by this Court from time to time only for their benefit’, the Supreme Court remarked.

52. After observing so, the Supreme Court dismissed the writ petition finding no reason to entertain the petition under Article 32 of the Constitution of India.

53. We find that the judgment in ***Rishabh Choudhary*** (Supra) squarely covers the case of the appellants. Unfortunately, the said judgment was not brought to the notice of the Division Bench hearing the matter in ***Netaji Subhas Institute of Technology*** (supra).



54. In *Guru Nanak Dev University Vs. Parminder Kumar Bansal and Ors.*, since reported in (1993) 4 SCC 401 relating to admission in disregard to the eligibility of the candidates in academic matters, the Supreme Court said as follows:-

“... We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice uhexpousing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such order cannot be allowed to stand. The courts should not embarrass



academic authorities by themselves taking over their functions.” (emphasis supplied)

55. In *Sunil Oraon (Minor) through Guardian and Ors. v. CBSE and Ors.*, since reported in (2006) 13 SCC 673, the Supreme Court observed:-

“Now, we would refer to the law settled by this Court in various judgments to the effect that interim orders of the nature passed in the present case are detrimental to education and its efficient management. As a matter of course, such interim orders should not be passed, as they are aberrations and it is subversive of academic discipline.”

56. In *Regional Officer, CBSE Vs. Ku. Sheena Peethambaran and Ors.*, since reported in (2003) 7 SCC 719, the Supreme Court had held that this Court had on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare



straight into the face of the plea of sympathy and concessions, against the legal provision.

57. In *CBSE and Another Vs. P. Sunil Kumar and Ors.*, since reported in (1998) 5 SCC 377, the institution whose students were permitted to undertake the examination of the CBSE were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim order granted by the High Court. In that context, the Supreme Court observed as under :-

“... But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students.”

58. Coming back to the case in hand, there is no dispute to the fact that the students were illegally admitted in the Institution without resorting to any test conducted either by the Association of Private Technical Education or by the State Government agency BCECE. The SC & ST Welfare Department of the State Government was neither competent to sponsor any



candidate for admission nor any nomination was made by it for admitting the students of the Scheduled Castes and the Scheduled Tribes category. The Department was not involved in any manner in the exercise of counselling for admission in the Institution. The Institution itself admits that 150 students were admitted in the academic session 2015-16 on the basis of its own counselling. The blatant illegality committed by the Institution in admitting the students cannot be validated by a judicial order either on sympathy or on the ground of equity in view of the ratio laid down in the aforestated cases by the Supreme Court.

59. As far as the plight of the students is concerned, it is the appellants who are to be blamed for the present state of affairs. They have not adhered to law. They have taken admission of students violating all norms and procedure.

60. It is true that the students, who took admission in the college are victims of the illegal act of the appellants. The learned Single Judge has not lost sight of it and for that reason awarded compensation of Rs.50,000/- to each of the students, who had become the victim of foul play of the appellants while dismissing the writ petition.



61. As far as the interim order passed by this Court is concerned, it was with the condition that the same is provisional and shall be subject to the final outcome of the appeal.

62. Thus, the appellants cannot claim any benefit either in equity or in law. An illegality committed by the appellant Institution in admitting the students in complete disregard to the mandate of law would not clothe the student with any legal right. The appellants cannot claim any relief either on the ground of equity or in law.

63. In view of the ratio laid down by the Supreme Court in ***Rishabh Choudhary*** (Supra) and other decisions of the Supreme Court discussed hereinabove, with due respect to the judgment passed by the Division Bench of this Court in ***Netaji Subhas Institute of Technology*** (Supra), we are not persuaded to hold the same view as in the matter of ***Netaji Subhas Institute of Technology*** (Supra).

64. Misplaced sympathies cannot be the foundation and cannot substitute legal reasoning. Judgments of the courts of law cannot be founded on misplaced sympathies, contrary to the ratio laid down by the Supreme Court in the cases discussed hereinabove.



65. In view of the discussions made hereinabove, we see
no merit in the appeal. It is dismissed, accordingly.
66. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

Pradeep/-

AFR/NAFR	AFR
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