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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 9th May, 2019
Pronounced on: 13th May, 2019

+ W.P.(C) 3897/2019 & CM APPL. 17652/2019

KESHAV BANSAL Petitioner
Through: Mr. Vivek Sood, Sr. Adv. with
Mr. Ashim Shridhar and Ms. Niyati
Patwardhan, Advs.

versus

NATIONAL TESTING AGENCY AND ORS Respondents
Through: Ms. Seema Dolo Adv. for Mr.
Amit Bansal, Adv. for R-1
Mr. Vivek Goyal, CGSC with Mr. Pawan
Pathak, Adv. for UOI
Mr. Arjun Mitra, Adv. with Prof. Siddharth
Pandey for R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T**

1. In 2017, the petitioner cleared the All India Senior School Certificate (AISSC) Examination, conducted by the Central Board of Secondary Education (CBSE). The result was declared on 28th May, 2017. The petitioner scored 91.2%.

2. Consequent to his passing the All India Medical Entrance Examinations for admission to various medical colleges, the petitioner joined the Maulana Azad Medical College on 1st July, 2017. In May,

2018, he withdrew his admission from the said college, as he realised that his true calling was engineering, and not medicine.

3. As is the case with many aspiring engineers, the petitioner had set his eyes on joining one of the prestigious Indian Institutes of Technology (IITs).

4. Admission to the IITs is a two-step process. The aspirant is required to undertake, first, the Joint Engineering Examination (JEE) (Main). This examination, which is conducted by the Ministry of Human Resource Development (MHRD), covers admission not only to the IITs, but also to various other engineering institutions, such as the NITs and other Centrally Funded Technical Institutions.

5. The JEE (Main) examination, which was earlier being conducted by the Central Board of Secondary Education (CBSE), is now being conducted by the National Testing Agency (Respondent No. 1 herein and referred to, hereinafter, as “the NTA”) which also, accordingly, releases the Information Bulletin relating to the said examination. The Information Bulletin for the JEE (Main) Examination for the year 2019, as released by the NTA, contains the following clauses, which are of relevance in the present case:

“Introduction and Scheme of Examination

Admission criteria to Undergraduate Engineering Programs at NITs, IITs, other Centrally funded Technical Institutions (CFTI), Institutions funded by participating State Governments, and other Institutions shall include the performance in the class 12/equivalent qualifying Examination and in the Joint Entrance

Examination, JEE (Main). The Paper-1 (B.E./B. Tech.) of JEE (Main) will also be an eligibility test for the JEE (Advanced), which the candidate has to take if he/she is aspiring for admission to the undergraduate programme offered by the IITs.”

“JEE (Main) – 2019 ELIGIBILITY

Age Limit

For appearing in the JEE (Main) examination there is no age limit for the candidates. *The candidates who have passed XII examination in 2017, 2018 or appearing in 2019 irrespective of their age can appear in JEE (Main) examination-2019.* The candidates should also satisfy themselves about their fulfilling the age limit requirements of the Institutes in which they are desirous of taking admission.

Year of Appearance in Qualifying Examination (QE)

Only those candidates who have passed their class 12th Examination or any equivalent qualifying examination in 2017 or 2018; or those who are appearing in their Class 12th Examination or any equivalent qualifying examination in 2019 are eligible to appear in April, 2019 JEE(Main)-2019 Examination.

Candidates who passed Class 12th/Qualifying Examination in 2016 or before as well as those who will appear in such examination in 2020 or later are not eligible to appear in JEE(Main)-2019.”

“ELIGIBILITY CRITERIA FOR APPEARING IN JEE (Advanced) – 2019

(Please refer to JEE (Advanced) website for the latest information)

The minimum academic qualification for appearing in JEE (Advanced)-2019 is that the candidate must have passed in final examination of Class XIIth or the equivalent qualifying examination. Those appearing in these examinations 2019 can also appear in JEE (Advanced)-2019 provisionally.

All the candidates aspiring to take admission to the undergraduate programs at IITs for the year 2019 will have to appear in the Paper-1 (B.E./B Tech) of JEE (Main)-2019. *Based on the performance in Paper-1 (B.E./B Tech) of JEE (Main)-2019, number of top candidates as per the requirement of JEE (Advanced) (including all categories) will be eligible to appear in JEE (Advanced)-2019.*

Admissions to IITs will be based only on category -wise All India Rank (AIR) in JEE (Advanced), subject to conditions as defined in JEE (Advanced)-2019 website.

A candidate can attempt JEE (Advanced) a maximum of 2 times in consecutive years irrespective of whether or not he/she passed the Qualifying Examination. The candidates, who have attempted JEE (Main)/JEE (Advanced) in 2017 or earlier are NOT ELIGIBLE to appear in JEE (Advanced)-2019.

The candidate who had taken admission in any Institute other than IITs in 2018 is eligible to appear in JEE (Advanced)-2019 provided that the candidate satisfies other eligibility criteria.”

(Emphasis supplied)

6. A reading of the above-extracted stipulations, contained in the Information Bulletin, governing the JEE (Main) - 2019 Examination, indicates that candidates who had cleared their XII Class examination in 2017, 2018 or 2019, were eligible to appear therein. By this token, the petitioner was eligible to appear in the JEE (Main) - 2019

Examination, having appeared in his XII Class examination in 2017. However, for this purpose, the petitioner was required to have pursued mathematics as one of the subjects in his Class XII.

7. Bye-law 43 of the Bye-laws of the CBSE permits candidates, who had obtained at least Grade D in 5 subjects under Scholastic Area A, and had passed the Senior School Certificate Examination of the CBSE, to offer an additional subject as a private candidate, within 6 years of passing the AISSC examination of the CBSE. Taking advantage of the said provision, the petitioner applied for, and undertook, the XII Class AISSC examination in Mathematics, as an additional subject, on 18th March, 2019. The result, avers the writ petition, is awaited.

8. The petitioner, having passed his XII Class examination, to the extent it rendered him eligible for appearing for the JEE (Main) – 2019 Examination in all appears, except Mathematics, in 2017, and having appeared in his Mathematics examination in 2019, regarded himself as eligible to appear in the JEE (Main) - 2019 Examination. He, therefore, applied for, and appeared, in the JEE (Main) – January 2019 Examination, in which, as per the results, which were announced on 19th January, 2019, the petitioner secured 99 percentile in his very first attempt.

9. The clauses, in the Information Bulletin released by the NTA, for appearance in the JEE (Main) Examination, extracted hereinabove, indicate that Paper-1, in the said examination, operates as an eligibility

test, for candidates to appear in the JEE (Advanced) Examination. The JEE (Advanced) Examination is, however, a specialized examination, conducted only for admission to the various IITs. The examination itself is conducted, not by the Department of Higher Education, Ministry of Human Resource Development, but by the IITs. Every year, one of the IITs is designated as the agency which would organise and conduct the JEE (Advanced) Examination. In 2019, the IIT, Roorkee, was assigned this task; consequently, the said Institute has been impleaded as Respondent No. 3 in the writ petition.

10. A separate Information Brochure, governing the JEE (Advanced) Examination, is, issued by IITs. The Information Bulletin, for the JEE (Advanced) 2019 Examination was, therefore, released by the IIT, Roorkee.

11. Having clarified, on the very first page thereof, that “admission into various undergraduate programs across IITs is through the Joint Entrance Examination (Advanced)”, the Information Brochure relating to the JEE (Advanced)-2019 Examination declares that “all Indian Nationals who satisfy the eligibility criteria ... can appear in JEE (Advanced)”. Clause 10 reiterates this position by noting that “Indian Nationals (including PIO/OCI) who wish to appear in JEE (Advanced) 2019 must write Paper-1 of JEE (Main) 2019”.

12. Clause 11 of the Information Brochure, issued by the IIT, Roorkee (Respondent No. 3) which sets out the “eligibility criteria for

Indian Nationals (including PIO/OCI) for appearing in JEE (Advanced) 2019, reads thus:

“All the candidates must fulfil **each and every one of the following five criteria** to appear in JEE (Advanced) 2019.

Criterion 1 – Performance in JEE (Main) 2019: Candidates should be among the top 2,45,000*(including all categories) in Paper-1 of JEE (Main) 2019.

The percentages of various categories of candidates to be shortlisted are: 4% for GEN-EWS, 27% for OBC-NCL, 15% for SC, 7.5% for ST and the remaining 46.5% is OPEN for all. Within each of these four categories, 5% horizontal reservation is available for PwD candidates.

The following table show the order to be followed while choosing top 2,45,000* candidates in various categories based on the performance in Paper-1 of JEE (Main) 2019

Category-wise distribution of top 2,45,000* candidates (Criterion 1)

Order	Category	Number of “Top” Candidates	
1	OPEN	108229	113925
2	OPEN-PwD	5696	
3	GEN-EWS	9310	9800
4	GEN-EWS-PwD	490	
5	OBC-NCL	62843	66150
6	OBC-NCL-PwD	3307	
7	SC	34913	36750
8	SC-PwD	1837	
9	ST	17456	18375

10	ST-PwD	919	
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*The total number of candidates can be slightly greater than 2,45,000 in the presence of “tied” ranks/scores in any category.

Criterion 2 – Age limit: Candidates should have been born on or after October 1, 1994. Five years relaxation is given to SC, ST and PwD candidates, i.e., these candidates should have been born on or after October 1, 1989.

Criterion 3 – Number of attempts: A candidate can attempt JEE (Advanced) maximum of two times in two consecutive years.

Criterion 4 – Appearance in Class XII or equivalent examination: A candidate should have appeared for the Class XII (or equivalent) examination for the first time in either 2018 or 2019.

However, if the examination Board of Class XII (or equivalent) declares the results for the academic year 2016-17 after June 2017, then the candidates of that board who appeared for their class XII exam in 2017-are also eligible to appear in JEE (Advanced) 2019, provided they meet the other eligibility criteria. In case, the examination Board of Class XII (or equivalent) declared the results for the academic year 2016-17 before June 2017 but the result of a particular candidate was withheld, then the candidate will not be eligible to appear in JEE (Advanced) 2019.

Criterion 5 – Earlier admission at IITs: A candidate should **NOT** have been admitted in an IIT irrespective of whether or not he/she continued in the program **OR** accepted an IIT seat by reporting at a reporting centre in the past. Candidates whose admission at IITs was cancelled after joining any IIT are also **NOT** eligible to appear in JEE (Advanced) 2019.

Candidates who have been admitted to a preparatory course in any of the IITs for the first time in 2018 can appear in JEE (Advanced) 2019.

The candidates who paid seat acceptance fee in 2018 but (i) did not report at any reporting centre OR, (ii) withdrew before the last round of seat allotment, OR, (iii) had their seat cancelled (for whatever reason) before the last round of seat allotment for IITs, during the joint seat allocation in 2018, are eligible to appear in JEE (Advanced) 2019.

However, in any of the above cases, the candidate is required to fulfil the conditions mentioned from Criterion 1 to Criterion 4.”

(Emphasis supplied)

13. The petitioner is aggrieved by Criterion 4 in Clause 11 (extracted hereinabove), in the Information Brochure for the JEE (Advanced) 2019 Examination, as released by the IIT, Roorkee as, in his submission, the said clause disentitles him (as a candidate who had appeared in his XII Class examination for the first time in 2017) from undertaking the JEE (Advanced) Examination, though he was eligible to undertake the JEE (Main) Examination, and cleared the same with flying colors.

14. It is in these circumstances that, aggrieved by the above extracted Criterion 4 in Clause 11 of the Information Bulletin for the JEE (Advanced) - 2019 Examination, the petitioner has approached this Court, invoking its extraordinary jurisdiction under Article 226 of the Constitution of India, praying that the said Criterion 4 be quashed.

15. The gravamen of the case, as set out by the petitioner in the writ petition, is that Criterion 4 in Clause 11 of the Information Bulletin, relating to the JEE (Advanced) - 2019 Examination is directly contrary to the various clauses in the JEE (Main) - 2019 Examination, as extracted in para 5 *supra*. It is emphasized that a candidate, such as the petitioner, who by virtue of fact that he had cleared his Class XII examination in 2017, was eligible to appear in the JEE (Main) - 2019 Examination, was rendered, by operation of the impugned Criterion 4 in Clause 11 of the Information Bulletin relating to the JEE (Advanced) - 2019 Examination, ineligible to appear therein, as he had not appeared in the Class XII examination *for the first time* in 2018 or 2019. In other words, what is being sought to be contended is that, once Paper-1, in the JEE (Main) Examination was made the eligibility test, to determine eligibility to appear in the JEE (Advanced) Examination, it was not open to Respondent No. 3 to introduce, in the eligibility criteria stipulated in the Information Bulletin for the JEE (Advanced) Examination, a condition which would disable a candidate, who succeeded in the JEE (Main) Examination, from being able to attempt the JEE (Advanced) Examination.

16. In its counter-affidavit, the IIT has, with respect to the eligibility conditions, stipulated for appearance in the JEE (Advanced) - 2019 Examination in the Information Bulletin issued by the IIT, Roorkee, averred thus:

“RE: The Eligibility conditions

11. That in accordance with the above, the rules for the JEE (Advanced) 2019 are contained in its Information Brochure.

12. That on past occasions, *provisions have been made for the number of times which such a candidate may attempt the entrance examination, i.e. two attempts are permitted, provided that the first one is the year of passing class XII and the second one is in the following year.*

13. That the JEE (Advanced) was set in place from the year 2013 onwards. *On each occasion since then, the same provision has continued, without exception. Similar provisions have been incorporated in the Information Brochure 2019 and continuity in the eligibility criteria has been maintained.* This is demonstrated from the following provision, extracted from the Information Brochure for JEE (Advanced) 2013, which was the first edition of the examination in its present form: -

“3.2 Number of JEE Attempts

*A candidate can attempt JEE (Advanced) maximum two times in consecutive years. Candidates who had attempted IIT JEE 2012 for the first time (having passed QE in 2012) can appear in JEE (Advanced) - 2013, by qualifying in Paper-I of JEE (Main) - 2013. Those who attempted IIT-JEE in 2011 or earlier are **NOT ELIGIBLE** to appear in JEE (Advanced)-2013.”*

14. That in addition to the above, the copy of the eligibility criteria prescribed for every JEE (Advanced) from 2013 till 2019 is enclosed herewith and marked as **ANNEXURE R3/3 (Colly)**, in order to demonstrate that *the same provision has been in place uniformly and consistently.*

15. That it is respectfully submitted that *there is a sound and valid justification for such a provision, which has a nexus with the objectives sought to be achieved.* The JEE (Advanced) system is both a testing as well as

an admission giving system through which the admission to various courses are made to all IITs only. The permissible number of attempts have been approved JAB by taking into consideration the needs of all the IITs.

16. *Moreover, JAB in its meeting held on 17.09.2005 took a policy decision and resolved to limit the number of attempts and the age bar for the entrance examination. The copy of the minutes of the JAB meeting held on 17.09.2005 are enclosed herewith and marked as ANNEXURE R3/4.*

17. That the above demonstrates that there is no arbitrariness or whim in having such provisions, which is the result of a conscious policy decision. It may also kindly be appreciated that the age limit and *the limited number of attempts, i.e. in the year of passing Class XII and the year following, ensures that equals are competing against each other.*

18. That it is also pertinent to point out that an exception cannot be made in the case of the Petitioner on the ground that he had passed his Mathematics examination as an additional subject in 2019. *The rules on the issue are clear that the candidate is permitted to appear in JEE (Advanced) the year in which he passed his class XII examination and there in the year following, provided that he has not already accepted a seat. In the present case, the Petitioner having passed his class XII examination in 2017 is not eligible to appear for the JEE (Advanced) 2019.”*

(Emphasis supplied)

17. Apropos the “Eligibility Criteria”, the minutes of the meeting of the JAB, held on 17th September, 2005, on which Respondent No. 3 places reliance in its counter-affidavit, ordains thus:

“With effect from JEE-2006, candidates will be permitted to appear in JEE only *in the year in which*

*he/she passes **the qualifying examination** and/or in the following year.”*

(Emphasis Supplied)

18. The counter-affidavit goes on to explain why it would not be appropriate to compare JEE (Advanced) with the JEE (Main) examination, and seeks to discountenance the entire challenge, thrown up by the petitioner, as being based on such an erroneous comparison. For reasons which would become apparent hereinafter, it is not necessary to enter into the said debate.

Analysis

19. Having heard learned counsel and perused the material on record, I am of the view that, in fact, no occasion arises, at all, for this Court to enter into the issue of the validity, or otherwise, of the impugned Criterion 4 in Clause 11 of the Information Bulletin governing the JEE (Advanced) - 2019 Examination, as, in my opinion, the said Criterion, properly read, would not, in any manner, disentitle the petitioner from appearing in the JEE (Advanced) - 2019 Examination. It is not necessary, therefore, to examine whether the said Criterion is, or is not, legally sustainable.

20. Criterion 1, in Clause 11 of the Information Bulletin for the JEE (Advanced) - 2019 Examination, clearly states that, in order to be eligible to appear in the JEE (Advanced) Examination, the candidate “should be among the top 2,45,000 (including all categories) in Paper-

1 of JEE (Main) 2019”. This Criterion itself indicates that the JEE (Advanced) Examination, though conducted by the IITs, and applicable only for admission to IITs, forms, for the purposes of such admission, only one part of an integrated scheme, of which the JEE (Main) is the other, inalienable, part. Once Paper-1 of the JEE (Main) Examination has been consciously adopted, by the IIT, as the eligibility test, whereby the eligibility of a candidate, to appear in the JEE (Advanced) Examination, is to be reckoned, ordinarily, a candidate who is eligible to appear in the JEE (Main) Examination, attempts the same, and is within the top 2,45,000 candidates who have attempted the said Paper-1, cannot be barred from appearing in the JEE (Advanced) Examination. In view of Criterion 1 in Clause 11 of the Information Brochure for the JEE (Advanced) - 2019 Examination, a candidate who has attempted Paper 1 of the JEE (Main) - 2019 Examination, and who was, admittedly, eligible to do so, would become ineligible to appear in the JEE (Advanced) - 2019 Examination *only if he does not figure among the top 2,45,000 candidates who have attempted the said Paper 1*. If he does figure among the top 2,45,000 candidates, Criterion 1 in Clause 11 of the Information Brochure for the JEE (Advanced) - 2019 Examination, would entitle him to appear in, and undertake, the said examination.

21. It is admitted, even by Respondent No. 3, that the petitioner was eligible to appear in the JEE (Main) - 2019 Examination, and that he did figure among the top 2,45,000 candidates who attempted Paper-1 thereof.

22. Applying Criterion 1 in Clause 11 of the Information Brochure governing the JEE (Advanced) - 2019 Examination, therefore, the petitioner would be eligible to appear in the said examination.

23. The grievance of the petitioner is, however, that, despite being so eligible to appear in the JEE (Advanced) - 2019 Examination, his right, to do so, was defeated by the impugned Criterion 4, as he had not appeared in his XII Class examination *for the first time* in 2019. The petitioner would seek to contend that, as it rendered, ineligible, a candidate who was eligible to appear in the JEE (Advanced) - 2019 Examination, applying the provisions of the Information Bulletin of the JEE (Main) - 2019 Examination, as well as Criterion 1 in Clause 11 of the Information Brochure of the JEE (Advanced) - 2019 Examination, the impugned Criterion 4 deserves to be struck down.

24. Does, however, Criterion 4 in Clause 11 of the Information Brochure applicable to the JEE (Advanced) - 2019 Examination, in fact, render the petitioner ineligible to undertake the said examination? Having carefully read the said provision, I am of the opinion that the answer necessarily has to be in the negative.

25. The situation in which the petitioner is placed is, unquestionably, peculiar. The petitioner has not attempted, in 2018, or in 2019, any paper, of his XII Class examination, *which was earlier attempted by him*. It is not as though the petitioner had failed in one of the papers in 2017 and had re-attempted the paper in 2019. The

petitioner had performed, with distinction, in the papers undertaken by him in his XII Class Examination in 2017, and appeared in the Mathematics examination, *for the first time*, in 2019. It was by appearing in the said examination that the petitioner rendered himself eligible to attempt even the JEE (Main) - 2019 Examination. The papers attempted by the petitioner, while appearing in his XII Class Examination in 2017, did not confer, on him, eligibility to attempt the JEE Examination, whether Main or Advanced.

26. Criterion 4 in Clause 11 of the Information Brochure governing the JEE (Advanced) Examination requires a candidate to have “appeared for the Class XII (or equivalent) examination *for the first time* in either 2018 or 2019.” As a matter of fact, the petitioner *had* appeared, in the Mathematics paper of Class XII, for the first time, in 2019. It was the attempting, by him, of the said Mathematics paper, that rendered him eligible to appear in the JEE (Main), or, consequently, in the JEE (Advanced), Examination in 2019. Can, in such circumstances, it be said that Criterion 4 in Clause 11 of the Information Brochure for the JEE (Advanced)-2019 Examination, foreclosed the petitioner’s right to appear therein?

27. I am of the opinion that the answer to this poser has also necessarily to be in the negative.

28. If the paper/papers, which render the candidate eligible to appear in the JEE (Main) - 2019 Examination, have been attempted, by him, for the first time in 2018/2019, I am of the opinion that

Criterion 4 would not debar him from appearing in the JEE (Advanced) - 2019 Examination.

29. The counter-affidavit, filed by Respondent No. 3, the relevant paras of which stand extracted in para 16 *supra*, supports my interpretation. A reading of the said para discloses that the *raison d'être*, for the impugned Criterion 4, is the need to ensure that a candidate appears in the JEE (Advanced) Examination only twice, in consecutive years. *Ex facie*, the intent is laudable. Apparently in order to ensure that the candidates, attempting the JEE (Advanced)-2019 Examination, do not infract this requirement, Criterion 4 stipulates that the candidate ought to have appeared, for the first time, in her, or his, XII Class Examination, in 2018 or 2019. By so stipulating, the said criterion ensures that the candidate has not appeared in the JEE (Advanced) Examination prior to 2018 – as clearing the XII Class Examination is the *sine qua non* for the candidate to be eligible to appear even in the JEE (Main) Examination – and that, therefore, she/he is attempting the JEE (Advanced) - 2019 Examination, either for the first, or for the second, time in 2019.

30. Criterion 4, in Clause 11 of the Information Brochure for the JEE (Advanced)-2019 Examination, has to be interpreted keeping this purpose in mind. In this context, one may refer, with advantage, to the following passage, from the judgment of the Supreme Court in ***Richa Mishra v. State of Chhatisgarh*, (2016) 4 SCC 179**, as authored by A. K. Sikri, J.:

“In order to gather the intention of the lawmaker, the principle of “purposive interpretation” is now widely applied. This has been explained in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, (2016) 3 SCC 619: (SCC pp. 641-42, paras 31-33)

“31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/purpose of such a provision is achieved thereby. The principle of “*purposive interpretation*” or “*purposive construction*” is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the “purpose” behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:

‘Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.’ [Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005).]

32. Of the aforesaid three components, namely, language, purpose and discretion “*of the Court*”, insofar as purposive component is concerned, this is the *ratio juris*, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.

33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the “*golden rule*”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well.”

31. The petitioner appeared in the Mathematics paper of his XII Class Examination, for the first time, in 2019. It was this paper that rendered him eligible to undertake the JEE Examination. He has undertaken the said examination, for the first time, in 2019 which is, therefore, his very first attempt at the said examination. Given the purpose sought to be achieved by incorporating Criterion 4 in Clause 11 of the Information Brochure for the JEE (Advanced) Examination, as explained in the above-extracted passages from the counter-affidavit of Respondent No. 3, the petitioner has to be treated as a candidate who has appeared, for the XII Class Examination for the

first time in 2019, as it was the Mathematics paper, which has been attempted by him for the first time in 2019, which rendered him eligible, at all, to appear even in the JEE (Main) Examination.

32. This interpretation is clearly in keeping with the decision of the JAB in its meeting held on 17th September, 2005, which is annexed to the counter-affidavit of Respondent No. 3, and on which Respondent No. 3 places reliance. As has already been noticed hereinabove, the decision, with respect to such cases, as taken at the said meeting, was that “with effect from JEE-2006, candidates will be permitted to appear in JEE only in the year in which he/she passes *the qualifying examination* and/or in the following year.” The papers undertaken by the petitioner, in his XII Class Examination in 2017, did not qualify him to appear even in the JEE (Main) Examination in 2019. It was the Mathematics paper, which was undertaken by him for the first time in 2019, which so qualified him for appearing in, and attempting, the JEE (Main) - 2019 Examination. The qualifying examination, for the purposes of reckoning the eligibility of the petitioner to appear in the JEE Examination in 2019 was, therefore, the Mathematics paper, undertaken by him for the first time in 2019. Applying a purposive interpretation, therefore, and in view of the decision taken at the meeting of the JAB held on 17th September, 2005, the petitioner would be eligible to be regarded as having appeared, in his qualifying examination, for the first time, in 2019. Given the purpose of incorporation of Criterion 4 in Clause 11 of the Information Brochure for the JEE (Advanced) - 2019 Examination, therefore, the words “Class XII (or equivalent) examination”, as employed therein, have

necessarily to be interpreted as “*qualifying* Class XII (or equivalent) examination”, in order for the said Criterion to harmonise with the decision of the JAB in its meeting dated 17th September, 2005 which, as per the counter-affidavit of Respondent No. 3, continues to apply even as on date.

33. The second para of Criterion 4 in Clause 11 of the Information Brochure for the JEE (Advanced) - 2019 Examination, also supports this interpretation. It is clarified, in the said para – almost as a relaxation from the rigour of the first para – that “if the examination Board of Class XII (or equivalent) declares the results for the academic year 2016-2017 after June 2017, *then the candidates of that board who appeared for the class XII exam in 2017 are also eligible to appear in JEE (Advanced) 2019*, provided they meet the other eligibility criteria.” Clearly, therefore, it is not the intent, of the framers of the Information Brochure for the JEE (Advanced) - 2019 Examination, to exclude, altogether, students who attempted their XII Class Examination in 2016-2017. Candidates, who attempted their XII Class Examination in 2017, too, have been treated as eligible to appear in the JEE (Advanced) Examination in 2019, *provided the results of their XII Class Examination were declared after June 2017*. The intent, of this “proviso”, as it were, to the main part of Criterion 4, is unmistakable and obvious. If the results of the XII Class Examination, undertaken in 2017, were announced after June 2017, the candidate could not have appeared in the JEE (Advanced) Examination in 2017, as the process for registration, to appear in the JEE (Advanced) Examination, in 2017, commenced on 28th April, 2017, and closed on

4th May, 2017. His attempt at the JEE (Advanced) Examination, in 2019 would, therefore, necessarily be his first, or his second, attempt. In fact, the Information Brochures for the JEE (Advanced) - 2019 Examination, for each year, starting 2013, discloses the incorporation of a similar provision. The ultimate aim, of incorporating such a provision is, therefore, obviously to ensure that the JEE (Advanced) Examination was being attempted, by the candidate, in each year, either for the first, or for the second, time.

34. That it is the said consideration, which has guided the inclusion, in the Information Brochure for the JEE (Advanced) Examination, of the impugned Criterion 4, is also accepted, in the passages from the counter-affidavit of Respondent No. 3, extracted in para 16 *supra*.

35. Keeping in view the guiding philosophy behind Criterion 4, in Clause 11 of the Information Brochure governing the JEE (Advanced) - 2019 Examination, I am, therefore, of the view that, as (i) the petitioner appeared in the Mathematics paper of his XII Class Examination, for the first time, in 2019, (ii) it was the undertaking of the said paper, by the petitioner, which rendered him eligible to appear in the JEE Examination and (iii) the petitioner is attempting the said Examination, for the first time, in 2019, the impugned Criterion 4, in Clause 11 of the Information Brochure, applicable to the JEE (Advanced) - 2019 Examination, would not disentitle the petitioner from attempting the same.

36. It becomes unnecessary, therefore, to examine the validity of the impugned Criterion 4.

Conclusion

37. This writ petition is, therefore, allowed in terms of Prayer B therein, by holding that the petitioner is eligible to appear in the JEE (Advanced) - 2019 Examination, and that Criterion 4, in Clause 11 of the Information Brochure, issued by Respondent No. 3 for the said Examination, would not operate as a fetter thereto.

38. The challenge, to the validity of the said Criterion (as contained in Prayer A in the writ petition) is, therefore, left open, and this Court expresses no opinion thereon.

39. There shall be no order as to costs.

MAY 13, 2019

dsn

C.HARI SHANKAR, J