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

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+ W.P. (C) 8303/2019 & CM APPL. 34388/2019, CM APPL.
35691-35692/2019

Date of Decision: 13.08.2019

SAUBHAGYA DUA

..... Petitioner

Through: Mr. Prashant Bhusan, Mr. Rahul
Gupta, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Jasmeet Singh, CGSC for R-1.
Mr. Arjun Mitra, Adv. for R-2 with
Prof. Siddharth Pandey, Chairman,
JEE (Advance), Delhi.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

1. Vide the present petition, the petitioner seeks directions to the respondents to conduct a further 'special' and/or 'spot' round for admission against the vacant seats in IITs for eligible meritorious candidates in accordance with the merit list for JEE (Advanced), 2019 examination with a further prayer to the effect that the directions be issued to the respondents to grant admission to the meritorious petitioner student in any of the vacant seats in the IITs on the basis of his rank in the merit list for JEE (Advanced), 2019 Examination.

2. The basic premise of the petitioner is to the effect that even after the schedule of events of JoSAA 2019, there are about 100 seats going abegging in the present IITs after the last date of registrations and in terms of the discussions in the Parliament as put forth through the unstarred question no.1380, which reads to the effect:

“(a) whether a number of seats remained vacant in HTs all over the country during the last three years and current year;

(b) if so, the details thereof, institute-wise and year-wise; and

(c) the action taken/proposed to be taken by Government to fill up the vacant seats?”,

it has been discussed to the effect:

ANSWER

**MINISTER OF STATE IN THE MINISTRY OF HUMAN
RESOURCE DEVELOPMENT**

(DR. MAHENDRANATH PANDEY)

(a) to (c): A total of 270 seats remained vacant in the IITs during the last three years and current year, which include 3 in the year 2014, 50 in 2015, 96 in 2016 and 12 in 2017. The IIT-wise details are annexed. In order to minimise the vacancies in IITs, NITs, and other Centrally Funded Technical Institutions (CFTIs), this Ministry constituted a Committee to recommend suitable measures. The Committee recommended that the CFTIs may review seats in each discipline based on employment opportunities, national requirements, available infrastructure and scope for future. Some disciplines may

be considered for closure or kept in abeyance for a few years, if needed. New Courses and Disciplines may be introduced only after carrying out market opportunity analysis. The Committee also recommended streamlining the counselling process by having multiple rounds as well as other pro-active measures such as helpline to facilitate students in choice filling etc.” ,

and that thus, there was a streamlining of the counseling process by having multiple rounds as well as other pro-active measures such as helpline to facilitate students in choice filling etc. which were contemplated with the Committee having recommended that the CFTIs may review seats in each discipline based on employment opportunities, national requirements, available infrastructure and scope for future and some disciplines may be considered for closure or kept in abeyance for a few years, if needed and that the new courses and disciplines may be introduced only after carrying out market opportunity analysis and that the same in the context of a total 270 seats remained vacant in the IITs during three years i.e. prior to the discussion on 27.07.2017 i.e. 3 seats in the year 2014, 50 in the year 2015, 96 in the year 2016 and 121 in the year 2017 as well as in the current year.

3. *Inter alia* reliance is sought to be placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Punjab & Haryana in ***Association of Education Colleges (Self Financing) of Haryana Vs. State of Haryana 2008 (7) SLR 411*** with specific reference to observations in para 14 thereof, which reads to the effect:-

“The next question then is whether this Court should permit admissions or let the available seats go waste, which out of the two options would serve the ends of justice is the only question that detained us. If one were to adopt a pedantic and hyper technical approach, one could say that admissions need not be made at this stage as the University's apprehension of dilution of academic standards and disturbance of academic calendar should not be disregarded. The wisdom behind that approach however, appears out-weighed by the compelling need to avoid the wastage of seats and denial of an opportunity to eligible students to get admitted against the same. It is true that academic standard needs to be maintained and academic decisions by expert bodies respected as far as possible, but it is equally true that when admissions are delayed, a certain amount of adjustment can and ought to be made by the Institutions as also the affiliating University. These adjustments do not, however, necessarily dilute the academic standard as is apprehended by the University in the instant case. The Institutions are ready and capable of making up the requisite number of working days by holding special classes for the students, who have joined late. The admission granted at this stage will not also require the University to compromise on the 40 days practice teaching or the percentage of lectures, which a student must have for being declared eligible for taking the examination. It is noteworthy that candidates admitted to a session has to perform by the same standard as is required of the other candidates in order to be declared successful in the examination. If a student, otherwise admitted late, is unable to come up to the standard of the University, he/she will be declared unsuccessful. Super-

added to the above is the fact that the number of students, who may even now seek admissions, may not be very large to require holding of any test to determine their inter-se merit for grant of admission. The argument advanced by Mr. Gupta that the Colleges may have to hold independent CET for granting admissions, which may delay the completion of admission process, is in our opinion, misplaced. Such a situation could arise only where the number of students applying is more than the number of seats available in the Institutions. That, however, is not the position in the instant case. Even so, the apprehension that lesser merited students may be admitted while ignoring meritorious students, can be allayed by directing that the Institutions shall grant admissions strictly in accordance with the merit in the qualifying examination, which is one of the recognized norms for granting such admissions”,

thus, submitting to the effect that there can be no apprehension that the lesser merited students may take admission in as much as the institutions grant admission strictly and in accordance with the merit in the qualifying examination, which is one of the recognized norms for granting admission.

4. It has been submitted on behalf of the petitioner that the last date of registration of the 2019 students for the B.Tech Course of the institute is detailed as under:-

S. No.	Name of Institute	Date of Registration of 2019 Entry Students	Last date of Registration of 2019 students.

1.	<i>Indian Institute of Technology Jammu</i>	21.07.2019 22.07.2019	12.08.2019
2.	<i>Indian Institute of Technology Ropar</i>	22.07.2019	22.07.2019
3.	<i>Indian Institute of Technology (Bhu) Varanasi</i>	25.07.2019	25.07.2019
4.	<i>Indian Institute of Technology (Dharwad)</i>	27.07.2019	27.07.2019
5.	<i>Indian Institute of Technology Palakkad</i>	31.07.2019	31.07.2019
6.	<i>Indian Institute of Technology Dhanbad</i>	24.07.2019	24.07.2019
7.	<i>Indian Institute of Technology Goa</i>	03.07.2019	05.08.2019
8.	<i>Indian Institute of Technology Roorkee</i>	20.07.2019	20.07.2019
9.	<i>Indian Institute of Technology Bhilai</i>	23.07.2019	23.07.2019
10.	<i>Indian Institute of Technology Tirupati</i>	31.07.2019	31.07.2019

11.	<i>Indian Institute of Technology, Mandi</i>	25.07.2019	25.07.2019
12.	<i>Indian Institute of Technology, Indore</i>	24.07.2019	24.07.2019
13.	<i>Indian Institute of Technology, Kharagpur</i>	22.07.2019	22.07.2019
14.	<i>Indian Institute of Technology, Bombay</i>	26.07.2019	02.08.2019
15.	<i>Indian Institute of Technology, Kanpur</i>	26.07.2019	05.08.2019
16.	<i>Indian Institute of Technology, Guwahati</i>	22.07.2019	30.07.2019
17.	<i>Indian Institute of Technology, Bhubhaneshwar</i>	23.07.2019	23.07.2019
18.	<i>Indian Institute of Technology, Jodhpur</i>	24.07.2019	24.07.2019
19.	<i>Indian Institute of Technology, Patna</i>	26.07.2019	26.07.2019
20	<i>Indian Institute of Technology, Hyderabad</i>	22.07.2019	22.07.2019

21.	<i>Indian Institute of Technology, Madras</i>		
22.	<i>Indian Institute of Technology, Delhi</i>		

thus, submitting to the effect that in as much as for the IIT at Jammu, IIT at Goa, IIT at Bombay, IIT at Kanpur, the last dates of registration for students was 12.08.2019, 05.08.2019, 02.08.2019 05.08.2019 respectively for the B.Tech Course and that thus, apparently, the academic session as sought to be contended on behalf of the respondent no.2 would not have started at least in relation to these institutes.

5. On behalf of the respondent no.1 it has been submitted that the respondent no.1 arrayed on record is a proforma party.

6. On behalf of the respondent no.2 the petition is vehemently opposed whilst placing reliance on the Business Rules for the Academic programme offered by the IITs, NIT, IIITs and other GFTIs for the academic year 2019-20 submitting to the effect that *inter alia* in as much as the brochure 2019 does not provide for any scope for any spot counselling for the B.Tech Course for the IITs, there can be no mandamus issued against the said brochure and reliance has been placed in relation thereto on behalf of the respondent no.2 on the verdict of the Hon'ble Division Bench of this Court in ***Pallavi Sharma Vs. College of Vocational Studies and Anr. 221 (2015) DLT 738***

(DB) with specific reference to observations in para 14 thereof, which reads to the effect:-

“At any rate, the law is well settled that the procedure prescribed in the Prospectus/Bulletin of Information issued by the institutions is binding and no mandamus can be issued directing the educational institutions to act contrary to their own procedure (vide Maharshi Dayanand University v. Surjit Kaur, V (2010) SLT 545=III (2010) CPJ 19 (SC).”

7. It has been submitted on behalf of the respondent no.2 that there would be a gross violation of merit if the prayer made by the petitioner is granted submitting *inter alia* to the effect vide submissions vide paras 21 & 22 of its counter affidavit to the effect:-

“21. More importantly, the admissions to the IITs are done Only on the basis of merit and choices filled in and therefore, allowing the present petition would amount to violation of this principle. This is for the reason that while the Petitioner’s rank was 13189, the last allotted candidate had the rank of 12,931 (in non-architecture courses).

22. It therefore emerges that there is a difference of nearly 258 candidates in the General category on one hand and the Petitioner on the other. It is therefore submitted that giving any relief to the Petitioner would cause serious merit violation. Even after participating in the seven rounds of counselling, the Petitioner was not offered any seat in the IITs, in view of his merit and the choices filled in by him. It is also submitted that the petitioner is seeking unfair relief towards something that he was not able to achieve on merit.”,

submitting to the effect that the admissions to the IITs are done only on the basis of merit and grant of the prayer of the petitioner would be in violation of this principle in as much as the rank of the petitioner was **13189 and the last allotted candidate had the rank of 12,931 (in non-architecture courses)** and as a consequence thereof, there are 258 candidates in the General category on the one hand and the petitioner on the other and grant of any relief to the petitioner would cause serious merit violation. It has also been submitted on behalf of the respondent no.2 that even after participation in seven rounds of counselling, the petitioner had not been offered any seat in the IITs in view of the merit and choices filled in by the petitioner.

8. Reliance has also been placed on behalf of the respondent no.2 on the verdict of the Hon'ble Supreme Court in ***University Grants Commission and Anr. Vs. Neha Anil Bobde (Gadekar) (2013) 10 SCC 519*** with specific reference to observations in para 31 thereof, which reads to the effect:-

“31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore vs. C.D. Govinda Rao, AIR 1965 SC 491, Tariq Islam vs. Aligarh Muslim University (2001) 8 SCC 546 and Rajbir Singh Dalal vs. Chaudhary Devi Lal University (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by

expert academic bodies and normally it is wise and safe for the Courts to leave the decision of the academic experts who are more familiar with the problem they face, than the Courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any “qualifying criteria”, which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. The candidates declared eligible for lectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.”,

thus submitting to the effect that in relation to the regulations and notifications issued in relation to the academic matters, the Courts may refrain from entering into the domain of the experts.

9. Reliance has also been placed on behalf of the respondent no.2 on the verdict of the Indore Bench of the Hon'ble High Court of Madhya Pradesh in ***Dev Verma Vs. Union of India thr. (Higher Education) Ministry of Human Resources and Development***, a verdict dated 21.12.2016 in WP 8241/2016 with specific reference to observations therein, which read to the effect:-

“It is not case of the petitioner that even after coming into merit, he was denied admission. It is also not averted that even if the petition is allowed, he would be entitled for admission on the merit. The petitioner secured 18370th rank in the JEE advanced exams. As mentioned in Nayan Bansal case total 10575 seats were available in all IIT's/ISM. Though, it is not clear that up to what rank, the students have been given admission in different IITs, but certainly it is not the case of the petitioner that any student having lower rank than him has been given admission in any IIT. In the case of Nayan Bansal (supra), the court found that there were 96 vacancies on account of non-joining of the candidates and no effort has been made to fill up the vacant seats on the ground that there are only 6 rounds of counselling was permissible as per hand book but as admitted by the petitioner himself that appeal (LPA 1903/2016 (O&M) UOI Vs. Nayan Bansal) against this judgement is pending before the court. Now, the academic session is almost over, therefore, the same criterion as in Nayan Bansal case cannot be applied to the present petitioner. It is settled proposition of law that merit would be the sole criterion for selection in any Government Institution. Any direction in favour of the petitioner would be against this basic principal and will also be against the mandate of the constitution of equality of opportunity. While issuing writ of mandamus, apprehension cannot be ruled out that lesser merited student may be admitted in any IIT/ISM ignoring meritorious students. This will create more dissension.”,

submitting to the effect that the same is virtually in similar circumstances.

10. Reliance has also been placed on behalf of the respondent no.2 on the verdict of the Hon'ble Division Bench of this Court in the case

of ***Dr. Rajeev Kumar Vs. Union of India & Ors.*** in WP (C) 2275/2010, a verdict dated 01.08.2014 wherein the prayers that had been made for interim directions were declined, which prayers were to the effect:-

“2. This application was filed for interim directions, pleading:

(i) that several hundreds of seats remain vacant in IITs each year;

(ii) that the seats lying vacant have a cascading effect, as the same number of seats remain vacant in successive second, third and fourth years too;

(iii) that till the year 2004, some of such vacant seats were filled up with the wards of the employees and faculty members of IITs who were otherwise not eligible for admission;

(iv) that the High Court of Andhra Pradesh in order dated 30th April, 2011 in W.P.(C) No.17774/2010 titled N. Ravali Vs. Union of India observed that our society can ill afford to leave such large number of seats go abegging when students are willing to join them and expressed hope that remedial measures are put in place to prevent the same from the next academic year;

(v) that subsequent to the said order, the IITs introduced third round of counselling in JEE 2011, though the main issue of seats lying vacant remained unaddressed;

(vi) that seats remain vacant due to a candidate getting admission in a number of institutes/colleges by depositing the admission fee and thus blocking the seats in many institutes/colleges;

(vii) that the petitioner had suggested online counselling or common counselling to prevent seats lying vacant;

(viii) that the Ministry of Human Resource Development (MHRD) had vide Office Memorandum dated 27th June, 2013 constituted a Joint Seat Acceptance Committee (JSAC) but the same also could not remedy the said problem owing to IITs not co-operating in the same;

Accordingly, a direction is sought in the application to the respondent IITs to address the said issue.”

thus, submitting to the effect that virtually the same contentions are now sought to be raised in the present petition that several hundreds of seats remain vacant in IITs each year and that the seats lying vacant have a cascading effect, as the same number of seats remain vacant in successive second, third and fourth years too and that the same ought to be prevented and there ought to be maximum realization of the education resources.

11. Reliance has thus been placed on behalf of the respondent no.2 on the observations in paras 7 to 10 of the said verdict in facts virtually *para materia* to the instant case, which read to the effect:-

“7. We have bestowed our thoughtful consideration to the matter. Though undoubtedly the issue flagged by the petitioner is of vital importance and it is in national interest that no seats in such premium educational institutions of the country as IITs are wasted but at the same time, it cannot be forgotten that for the sake of filling up the seats, the academic calendar devised by the professional experts at IITs, owing to whose efforts the said institutions have today reached the exalted position

which they occupy, leading to the vacant seats therein being called a national waste, cannot be disturbed. The IITs are perceived to be better than NITs, perhaps for commencing their academic session well before the NITs, as is evident from the academic session of the IITs having already begun, while the process of admission in NITs is stated to go on till August, 2014. Thus, the filling up of vacant seats cannot be at the cost of maintaining standards of education and merit in IITs.

8. A Division Bench of this Court in **M.I. Hussain Vs. N. Singh 125 (2005) DLT 223** held that seats remaining vacant is no reason to fill them up by admitting non-meritorious students. Another Division Bench in **Maharaja Agrasen Institute of Technology Vs. Guru Gobind Singh Indraprastha University 116 (2005) DLT 290** held that once the dramatic performance starts, no one is allowed to enter - similarly counselling of seats must stop once the course of study commences. Again, in **Sunint Kaur Vs. GGSIP University ILR (2005) Del 215**, this Court held that even if seats are not filled, that cannot be a ground for making midsession admissions.

9. The Supreme Court also in **Arvind Kumar Kankane Vs. State of U.P. (2001) 8 SCC 355** held that if counselling goes on continuously for a long time, it will upset the course of study. Similarly, in **Neelu Arora Vs. Union of India (2003) 3 SCC 366** it was held that when a detailed scheme has been framed and the manner in which it has to be worked out is indicated therein, merely because a certain number of seats are not filled up, is not a reason enough for adopting one more round of counselling, if there is no scope therefor under the scheme. It was held to

be not advisable to go on altering the scheme as and when seats are found vacant.

10. Applying the aforesaid principles, we are not inclined to issue any directions for the current academic year, which in IITs has already begun.”

12. It has been sought to be submitted on behalf of the petitioner that whereas in the said verdict in **Dr. Rajeev Kumar (supra)** it was categorically observed to the effect that academic sessions have commenced in those cases in the IITs, as has already been submitted earlier and whilst referring to the last date of registration of some of the institutes of the IITs i.e. IITs at Jammu, IITs at Goa, IITs at Bombay and IITs at Kanpur, it is sought to be submitted that in any event the academic session would not have commenced yet.

13. Reliance has also been sought to be placed on behalf of the petitioner on the observations in para 12 of the verdict in **Dr. Rajeev Kumar (supra)** wherein it was observed to the effect:-

*“12. Having cited the judgments aforesaid of the Supreme Court, we must also refer to **Charles K. Skaria Vs. Dr. C. Mathew (1980) 2 SCC 752** laying down that the Courts must see that no costly seat for advance studies, in which the community as a whole has stake, is wasted; the Court should not give up the search for alternatives. Similarly, the Court in **Archit Vashisht v. GGSIP University MANU/DE/8569/2007** observed that public interest element of ensuring that seats should not be wasted or allowed to lapse, is to be balanced with another important public interest in maintaining certain academic standards.”*

submitting to the effect that the Court ought to look into the aspect that no seat for advance studies in which the community as a whole has a stake is wasted and that the Court should not give up the search of alternatives.

14. On behalf of the respondent no.2 *inter alia* reliance was sought to be placed on the Institute of Technology Act 1961 submitting to the effect that the aspect of duration of courses, degrees and other academic distinctions, admission standards and other academic matters in terms of Section 33(1)(a) thereof are governed by IITs Council as prescribed in Chapter-3 vide Section 31, which in terms of Section 31(1)(2) comprises of the following members:-

“(a) the Minister in charge of technical education in the Central Government, ex officio, as Chairman;

(b) the Chairman of each Institute, ex officio;

(c) the Director of each Institute, ex officio;

(d) the Chairman, University Grants Commission, ex officio;

(e) the Director-General, Council of Scientific and Industrial Research, ex officio;

(f) the Chairman of the Council of the Indian Institute of Science, Bangalore, ex officio;

(g) the Director of the Indian Institute of Science, Bangalore, ex officio;

(h) three persons to be nominated by the Central Government, one to represent the Ministry concerned with technical education, another to represent the Ministry of Finance and the third to represent any other Ministry;

(i) one person to be nominated by the All-India Council for Technical Education;

(j) not less than three, but not more than five, persons to be nominated by the Visitor, who shall be persons having special knowledge or practical experience in respect of education, industry, science or technology;

(k) three Members of Parliament, of whom two shall be elected by the House of the people from among its members and one by the Council of States from among its members.”

15. It has been submitted on behalf of the respondent no.2 that the IIT council has approved the JAB as the standing mechanism authorized to frame the policies, rules and regulations of Joint Entrance Examination (JEE) under the guidance of the IIT Council and rectifies all actions that have taken place and is responsible for conducting of the various admissions also.

16. As regards the contention that is sought to be raised on behalf of the petitioner to the effect that in the M.Tech course of the IITs, there is a scope for spot counselling available, it has been submitted on behalf of the respondent no.2 on instructions that the admissions to the M.Tech in the IITs is based pursuant to the GATE score and also on interviews and that the process of admission for the M.Tech course is only from the IITs, as a consequence of which, the spot counselling

would not detract from the merit of the admissions made, which is variant from the B.Tech course.

17. On a consideration of the submissions that have been made on behalf of either side, though undoubtedly, the factum that seats lying vacant in professional institutes of great expertise is a genuine concern, the said aspect is under consideration before the Parliament as has been brought forth on behalf of the petitioner.

18. Nevertheless, taking into account the verdict of the Hon'ble Division Bench of this Court in ***Dr. Rajeev Kumar Vs. Union of India & Ors*** (supra) which is in facts virtually *pari materia* to the facts of the instant case, as well as the verdict relied upon on behalf of the respondent no.2 in ***Pallavi Sharma Vs. College of Vocational Studies and Anr.*** (supra) and the verdict in ***University Grants Commission and Anr. Vs. Neha Anil Bobde (Gadekar)***, it is not considered appropriate by this Court to enter into the domain of the policy decision of the respondent no.2 qua the aspect of conducting of spot counselling or otherwise for the IITs for the B.Tech course.

19. In view thereof, it is not considered appropriate to consider the prayer made by the petitioner seeking grant of any interim relief.

20. The petition and the accompanying application are declined.

ANU MALHOTRA, J

AUGUST 13, 2019/vm