

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23804 of 2018

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J. P. Institute Of Technology Son of Late Yugeshwar Prasad Resident of Main Road, Rana Pratap Nagar, Chas, District-Bokaro, Jharkhand.... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Science and Technology Department, Bihar, Patna
2. Secretary, State Board of Technical Education, Bihar, Patna.
3. Bihar Combined Entrance Competitive Examination Board, Patna through its Secretary.
4. Chairman, Bihar Combined Entrance Competitive Examination Board, Patna.
5. Controller of Examinations, Bihar Combined Entrance Competitive Examination Board, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 24360 of 2018

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1. Exalt Educational Trust, 311/A, Ashiyana Tower, Exhibition Road, Patna through its Chairman, Dipak Kumar.
2. Exalt College of Polytechnic Kanhauli, P.S.- Mahuwa, District- Vaishali (Hajipur) through its Chairman Dipak Kumar.
3. Dipak 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 as Well as Exalt College of Polytechnic.
4. Prabhu Kailash Polytechnic, Aurangabad through its Chairman, Santosh Kumar Srivastava

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Science of Technology Department, Government of Bihar, Patna.
3. The Director, Science and Technology Department, Government of Bihar, Patna.
4. The Secretary, State Board of Technical Education (SBTE), Science and Technology Department, Government of Bihar, Patna.
5. The Examination Controller, State Board of Technical Education (SBTE), Science and Technology Department, Government of Bihar, Patna.
6. The Controller of Examination, Bihar Combined Entrance Competitive Examination (BCECE) Board, Patna

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 23804 of 2018)

For the Petitioner/s : Mr.Abhinav Srivastava

For the Respondent/s : Mr.Ajay- Ga5

(In Civil Writ Jurisdiction Case No. 24360 of 2018)

For the Petitioner/s : Ms. Namarata Mishra

: Mr.Awadhesh Kumar Pandit

For the Respondent/s : Mr.Kumar Alok

For the BCECEB : Mr. Prasoon Sinha

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 13.08.2020

1. With the consent of the parties, both the aforesaid writ petitions have been taken up for hearing together since common questions of law are involved and are being disposed of by this common Judgment.

2. For the sake of convenience, the facts of the first case i.e. ***CWJC no. 23804 of 2018 (J. P. Institute Of Technology v. State of Bihar and others)*** are being referred to herein below.

FACTS OF FIRST CASE i.e CWJC NO. 23804 OF 2018 (J. P. Institute Of Technology v. State of Bihar and others)

3. The petitioner institute has approached this Court for directing the respondent authorities under the Science and Technology Department of the State Government as well as the State Board of Technical Education, Bihar, Patna (herein after referred to as the 'the Board') to take steps towards allowing registration of students admitted in the first semester and third semester in the diploma courses in different subjects during the Academic session 2018-19, who have been admitted on the



basis of their participation in the Diploma Certificate Entrance Competitive Examination, 2018 conducted by the concerned authorities under the Bihar Combined Entrance Competitive Examination Board, Patna (hereinafter referred to as the BCECEB). The petitioner institution has further prayed to direct the respondent-authorities to allow the students admitted in the diploma course during the academic session 2018-19 to participate in the semester examinations to be conducted by the respondent Board.

4. The brief facts of the first case are that the petitioner institution is a recognized institution, offering diploma courses in different branches of Engineering and possesses necessary permission granted by the concerned authorities under the Science and Technology Department of the State Government to impart teaching in such courses and the students admitted in the College have been allowed to participate in the semester examinations conducted by the respondents Board/ BCECEB. It is submitted that pursuant to the Diploma Certificate Entrance Competitive Examination, 2018, conducted by the concerned authorities under the Bihar Combined Entrance Competitive Examination Board, Patna and on the basis of different rounds of counselling held by the said



Board, names of students were recommended for admission in the petitioner college, however only 93 students out of a total of more than 500 names recommended for admission at the petitioner College, finally took admission in different diploma courses offered by the College during the Academic year 2018-19. Nonetheless, a large number of seats had remained vacant since the students whose names were recommended, did not finally take admissions at the College and as such the diploma courses offered in different subjects by the petitioner College became financially unviable, resulting in the Secretary of the College writing a letter dated 25.09.2018 to the concerned authorities under the Science and Technology department of the State Government to furnish a copy of the merit list so that the vacant seats for the Session 2018-19 could be filled up, inasmuch as the same procedure had been adopted in the earlier academic session 2017-18, however no action was taken by the State Government in this regard. The Principal of the petitioner College had then by a letter dated 11.10.2018, requested the respondent Board to allow submission of registration forms in favour of the students admitted at the College in the first and third semester diploma courses and along with the said letter, the prescribed fees was also furnished to the concerned



authorities. Thereafter, a letter dated 02.11.2018 was issued by the concerned authorities under the State Board of Technical Education, Bihar, Patna, by which the principal of the petitioner College was directed to furnish admit orders with respect to the students admitted in different diploma courses at the petitioner College during the Session 2018-19, failing which, it was indicated that the registration of such students would not be made by the said Board. It is submitted that in view of the fact that the students, whose description had been enclosed with the aforesaid letter dated 02.11.2018 in the charts appended with the said letter issued by the concerned authorities under the State Board of Technical Education, Bihar, Patna, had been admitted on the basis of their participation in the Diploma Certificate Entrance Competitive Examination, 2018 conducted by the concerned authorities under the Bihar Combined Entrance Competitive Examination Board, Patna, no formal admit orders had been issued by the concerned authorities under the Bihar Combined Entrance Competitive Examination Board, Patna thus the admit orders with respect to such students were not available. Nonetheless, it is submitted that during the earlier academic years also, under similar circumstances, permission for registration of such students had been granted by the



concerned authorities under the Science and Technology Department taking note of the fact that a large number of seats at the College had remained vacant on account of students not taking admission despite the names having been recommended by the Bihar Combined Entrance Competitive Examination Board.

5. The learned counsel for the petitioner has submitted that since no action has been taken till date with respect to allowing registration of such students of the petitioner College, the future prospects of the students admitted at the petitioner College in different diploma courses during the academic year 2018-19, on the basis of their participation in the competitive examination conducted by the concerned authorities under the Bihar Combined Entrance Competitive Examination Board, Patna are at great risk, hence the petitioner college has been compelled to approach this Court for necessary directions and relief.

6. The learned counsel for the petitioner has submitted that out of more than 500 names recommended by the concerned authorities under the Bihar Combined Entrance Competitive Examination Board, Patna, only 93 students have taken admission at the petitioner College and if admission of 50



more students was not taken by the college in different diploma courses during the academic year 2018-19, the functioning of the petitioner college would have become financially unviable, without any fault on the part of the petitioner college.

FACTS OF SECOND CASE i.e CWJC NO. 24360 OF 2018 (Exalt Educational Trust & ors v. State of Bihar and others)

7. As far as the second writ petition, i.e. ***CWJC no. 24360 of 2018 (Exalt Educational Trust & ors. v. The State of Bihar & ors.)***, is concerned, the same has been filed for directing the respondents to ensure registration/ enrolment of students of Polytechnic for the year 2018-19 of the petitioner College who have taken admission on the basis of the competitive examination of the year 2018, conducted by the respondent-BCECEB and to further direct the respondents to permit the said students to appear in the examination going to be held from 17.12.2018 or to conduct special examination of the students of the aforesaid session. The said institution i.e. Exalt Educational Trust is stated to have established two separate colleges i.e. Exalt College of Engineering & Technology and Exalt College of Polytechnic, both of which are situated at Kanjauli, Vaishali. The said two institutions of the petitioner herein are stated to be duly approved by the All India Council for Technical Education, New Delhi. The dispute in the present



case pertains to the Polytechnic institute regarding registration and conduct of examination of its students for the Session 2018-19. It is submitted that the Polytechnic college in question has been approved by the All India Council for Technical Education, New Delhi in the year 2014 with annual intake capacity of 300 seats, the same has been continued in the subsequent years and vide letter dated 04.04.2018, the AICTE has also granted approval for the Session 2018-19. The said Polytechnic college is also stated to be affiliated by the respondent Board. It is submitted that after the entrance test for admission in the Engineering and Polytechnic colleges was conducted by the BCECEB, various students were allotted colleges according to their ranking and as far as the petitioner-Exalt College of Polytechnic is concerned, 75 students had taken admission, based on their participation in the competitive examination conducted by the BCECEB. It is submitted that near about 50 students have been admitted to the said College pursuant to the counselling held in the campus of the respondent-BCECEB whereas the remaining 25 students had approached the Director of the Exalt College of Polytechnic, whereupon their admission have been taken by the College in question, however they have also passed the competitive



examination held by the BCECEB. It is stated that despite request, the respondent-Board is not enrolling all the students, who have taken admission for the Session 2018-19, hence the petitioner has been compelled to approach this Court. It is submitted by the learned counsel for the petitioner that in the past also such candidates, who have taken admission directly, after having passed the competitive examination held by the BCECEB, have been allowed to sit in the examination conducted by the respondent-Board, hence this year also, the respondent-Board should not have any objection in permitting such students of the petitioner's Polytechnic college to sit in the exam.

8. *Per contra*, the learned counsel appearing for the respondent no. 2 i.e. the Secretary, State Board of Technical Education, Bihar, Patna has submitted that the issue in question is no longer *res integra*, inasmuch as the issue raised in the present batch of writ petitions has already been decided by a judgment rendered in the case of ***Bihar Private Technical and Professional Institutions Association and another Vs. The State of Bihar and Anr. and other analogous cases***, by this Hon'ble Court, reported in ***2017 (2) PLJR 700***, paragraphs no. 4, 37, 38, 39, 41, 42, 46, 48 and 59 whereof, are reproduced



herein below :-

“ 4. Answer to the question as to whether these technical institutions could have taken admission to B.Tech. course or Diploma courses, only on the basis of marks of the candidates secured by them at the qualifying 10+2/Intermediate level or 10th examination, will be the ultimate determination of the main issue, raised in the present proceedings. Said differently, was it permissible for these private unaided technical Institutions to allow admission in any other manner than on the basis of entrance test held either by the B.C.E.C.E.B. or the Association is the moot question, which needs to be answered in the present case.

37. I am unable to accept submissions made on behalf of the petitioners, invoking doctrine of legitimate expectations to make out a case that like previous years, the institutions legitimately expected that this year also, more than one entrance examination would be allowed to be held by the Association, since majority of sanctioned seats were not filled up.



38. *The said doctrine, in my opinion, has no application at all in the facts and circumstances of the present cases. Further, in any event, expectation that the State will allow more than one test, whether genuine or ingenuine; legitimate or otherwise stood dashed with the State negating the request for holding more than one test in August, 2016, itself. The Association or any person aggrieved did not question the decision of the State Government immediately thereafter.*

39. *The legitimate expectation is not a legal right; rather, expectation of benefits, relief/remedy that accrues from a promise or a past practice adopted by the State or a party. For this doctrine to be invoked, the party claiming will be required to show that his expectation is legitimate, first. A sporadic, casual or random acts or which are unreasonable, illegal or invalid cannot constitute legitimate expectation. Invoking this doctrine in the present case, the only point which has been taken on behalf of the petitioners is that based on past practice, where the State had allowed the association to hold more than one*



combined entrance tests, they developed legitimate expectation that for the academic year in question also, same would be followed by the State. This doctrine has no application at all, in the present case which will be evident from the conduct of these institutions.

41. Further, I am of the view that there is no rationale behind holding of more than one CET by the Association for admission to one academic session of a particular technical/professional course. I need not comment on the decision of the State Government or the Association permitting more than one such tests during the previous years. I am of the considered view that like other combined entrance tests which are held for admission to various technical courses" for admission to a particular course, in private technical and professional institutions also there should be one entrance test only for one academic session. Question of holding another test for same course and session may arise only if the test already held suffers from some illegality or irregularity, and therefore, cannot be sustained.



42. *Curiously enough, they made representation on 08.07.2016 for taking admission on the basis of 10+2 results on the ground that sanctioned seats in the concerned course could not be filled up; whereas, by that time, even the last date of submission of admission form had not crossed. Where was the legitimate expectation for them in such circumstance, for second phase examination to be allowed on the basis of the past practice? In no circumstance, thus, their unilateral and independent decision to allow admission on the basis of 10+2 marks could be said to be justified. The Supreme Court decisions permit admission only on the basis of entrance test held either by the State Agency(ies) or by the Association of technical institutions, conducting same/similar course and by no other means.*

46. *I am unable to accept this plea that since seats were vacant and number of sanctioned seats was more than willing students having basic minimum qualification, all of them could have been admitted. As I have already noticed, the Supreme Court decision, as*



noted above, do not give any scope for any other method to be adopted for admission to technical and professional courses than through Combined Competitive Entrance Test. Secondly, unless a student qualifies in the entrance test, he will not be allowed admission.

48. It is in the public interest that only such persons take up technical and professional courses, who do not have only basic qualification, but also have the merit, ability and aptitude to take up courses designed for a particular purpose. This can be done only through appropriately designed screening test. It will not be in the public interest to promote mediocrity by allowing admission of such persons who could have otherwise done well in the different walks of life, but could not be said to be fit to take up B. Tech. or similar technical courses. It is not known how these admissions were taken, based on marks obtained in 10+2/10th examination. Whether it was confined to those who had applied pursuant to notice issued by the Association for Combined Entrance Test and had shown



willingness to take up the technical courses or they subsequently approached the institutions for their admission, after admission on the basis of entrance tests were over. The manner in which the institutions have taken admission based on 10+2 marks/results cannot have approval of this Court.

59. The illegal admissions taken without resorting to combined entrance examination cannot be legitimized, in my considered view. The illegality cannot be validated by a judicial order.”

9. The learned counsel for the respondent- Board has further submitted that the Admission Supervision Committee was constituted in the State of Bihar vide notification dated 05.02.2014 and 07.06.2016 respectively, headed by a retired Hon'ble Judge of the Hon'ble Patna High Court by the respondent-Department of Science and Technology, pursuant to the judgment of the Hon'ble Apex Court, rendered in the case of ***Islamic Academy of Education and Others v. The State of Karnataka & Others***, reported in ***(2003) 6 SCC 697*** as also the judgment rendered by the Hon'ble Apex Court in the case of ***P.A. Imandar & Others v. The State of Maharashtra***, reported



in **(2005) 6 SCC 537**. Thereafter, a Press Notice was published by the Department of Science and Technology, Government of Bihar asking options from the private unaided approved Technical Institutions as to whether they want to take admission on the basis of competitive examination conducted by the BCECEB or by the Association. After consultation with the said Institutions and their Directors, a letter dated 05.03.2014 was issued wherein it was clearly mentioned that admission shall be taken by the said Polytechnic Institutions from the General Entrance Competitive Examination to be conducted by the authorized Institution under supervision of the committee, constituted by the Department. Nonetheless, it is stated that in the meeting of the Admission Supervisory Committee held on 09.03.2017, it was resolved that those Private Technical Institutions (B. Tech/ Diploma), which exercise their option to admit students in their institutions as per the result of the Common Entrance Test to be conducted by the Bihar Combined Entrance Competitive Examination Board, shall be permitted to do so but such option should be exercised before the Department of Science and Technology, Bihar, Patna latest by 15.05.2017. It further submitted that the aforesaid petitioners had exercised their option and had requested to allow them to



take admission in their respective institutions through counselling conducted by the Bihar Combined Entrance Competitive Examination Board, on the basis of merit list.

10. As far as the petitioner of the first case is concerned, it was allowed to participate in all the three rounds of counselling conducted by the BCECEB and 41 students in Civil Branch, 25 students in Electrical and 32 students in Mechanical Branch were allotted to the said institution for the session 2017-18, after counselling on the basis of merit-cum-choice of the students. The BCECEB had sent application forms of altogether 98 students to the petitioner of the first case along with the allotment letters and all such students, who have taken admission in the petitioner college, have been registered with the respondent Board and have also been permitted to appear in the Semester examination. Nonetheless, the petitioner of the first case admitted several students directly in an illegal manner as also against the mandate of Regulation 8 of the All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admission in Professional Colleges) Regulations, 1994 which is reproduced herein below :-

“8. Procedure for allotment of seats :-

(1) No Professional college shall call



for applications for admission separately or individually. All applications for admissions to all the seats available in such college shall be called for by the competent authority. The application forms for admission shall be issued by the competent authority which shall contain a column wherein an applicant shall indicate whether he or she wishes to be admitted against a free seat or a payment seat, or both and the order of preference, upto three professional colleges.

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

(3) The Council of Architecture constituted under Section 3 of the Architects Act, 1972 (20 of 1972), shall formulate a comprehensive entrance test including aptitude test on an all India



basis.

(4) The admissions to management courses shall be on the basis of an entrance test including aptitude test or interview to be conducted by a professional college or for a group of professional colleges as the professional college or the group of professional colleges may determine.

(5) Fifty percent of the seats in every professional college, course or programme shall be earmarked as 'free seats'. The students to be nominated shall be selected on the basis of merit determined in accordance with sub-regulation (7) of regulation 8. The remaining fifty percent seats shall be payments seats and shall be filled by those candidates who are prepared to pay the fee fixed by the Standing Committee. The allotment of students against payment seat shall be done on the basis of inter-se merit determined on the same basis as in the case of free seats.

(6) There shall be no management quota or any other quota whatsoever either free seats or payment seats, except as otherwise provided in regulations (10).



(7) A common merit list, in accordance with the provisions of sub-regulation (5) shall be prepared from amongst all the candidates provided that in States where no such entrance examination is presently being held, a common entrance examination shall be held for admissions to be made from the academic year, 1995.

(8) The criteria of eligibility and other conditions shall be the same in respect of both free seats and payment seats except the higher fee to be paid for payment seats. The management of a professional college shall not be entitled to impose any other eligibility criteria or conditions for admission either to free seats or to payment seats.

(9) The competent authority shall prepare a detailed schedule every year relating to inviting of applications, conducting of examination, if any, drawing up of merit order, publication of results, allotment of students to various courses and institutions, both for free seats and payment seats, in accordance with these regulations and shall act in accordance with such schedule.



(10) A last date for allotment of seats shall be fixed by the competent authority, while inviting applications for admission, and no allotment shall be made after the last date so fixed. After making the allotments of seats the waiting list shall be followed for filling up for any casual vacancies or drip out vacancies arising after the allotments are finalised. The vacancies shall be filled until such date as may be fixed by the competent authority. It shall be open to the competent authority to offer any professional college or seat to the candidate other than his options and as per his merit. Once the last date of allotment of seats is over, the vacancies still remaining may be filled by the management out of the candidates included in the list under sub-regulation (7).

(11) In case of technical institutions which are affiliated to an out-of-State affiliating body, the seats in such institutions shall be included in the seats available in the State in which the institutions is actually located, and admissions shall be made by the competent authority of that State in accordance with the procedure



specialized under this regulation.

(12) Each professional college shall set aside one free seat and one payment seat over and above the fixed intake capacity for each course or programme and shall fill up such seats with the nominees of the beneficiary States to whom the seats may be allotted by the Central Government. The beneficiary States shall nominate students strictly on merit basis from the merit list prepared by them for this purpose.

(13) Every year in the Month of December, the Council shall communicate to the competent authority for each state the name of approved professional colleges, the names of the courses or programmes and number of seats for each course or programme fixed by the Council for making admissions for every academic year. Thereupon the competent authority shall proceed with inviting of applications for such professional colleges and number of seats for the courses or programmes only and for making admissions thereto. ”

11. It is submitted by the learned counsel for the



respondent Board that the aforesaid Regulation 8 clearly specifies that no institution can call for an application for admission, separately or individually and all applications for admissions to all the seats available in such colleges shall be called for by the competent authority.

12. As regards the second case, the learned counsel for the respondent-Board has pointed out that as far as Exalt College of Polytechnic, Kanhauli is concerned, it had participated in all three rounds of counselling conducted by the BCECEB and 21 students in Electrical Branch, 10 students in Mechanical Branch as also 12 students in Automobile Branch were allotted to the said institution by the BCECEB. Subsequently, the respondent-Board had sent application forms for altogether 55 students to the petitioner-institution along with the allotment letters and such students who had taken admission in the said institution, have already been registered and have been permitted to give the semester examinations. It is submitted that the petitioner of the second case has directly taken admissions which is not permissible.

13. A counter affidavit has also been filed on behalf of the BCECEB, wherein it has been stated that it had organized counselling of the candidates as per the direction of the State



Government and thereafter has published a list pertaining to allotment of seats of the selected candidates on the basis of merit-cum-choice of the candidates and has also forwarded copies of the allotment letters to the concerned authorities for taking admission of the successful candidates in the respective institutions. The BCECEB has also filed a supplementary affidavit, wherein the relevant merit list and marks obtained by the selected candidates have been brought on record.

14. I have heard the learned counsel for the parties and perused the materials on record and I find that admittedly, the Hon'ble Apex Court, in the case of ***Islamic Academy of Education and Others (supra)*** has prescribed the methodology to be adopted for the purposes of admission of students to the Private Professional Colleges, paragraph no. 16 whereof is reproduced herein below :-

"16. That brings us to the question as to how the management of both minority and non minority professional colleges can admit students in the quota allotted to them. Undoubtedly the majority Judgment has kept in mind the sad reality that there are a large number of professional colleges which indulge in profiteering and/or charging capitation fees. It is for this reason that the majority Judgment provides that in professional colleges admission must be on the basis of merit.



As has been rightly submitted it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also as has been rightly pointed out if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs. 500 to Rs. 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further as has been rightly pointed out, students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each College. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests 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 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 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."

15. I further find that **Regulation 8** of the **All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admission in Professional Colleges) Regulations, 1994** prescribes that no professional college shall call for application for admission separately or individually. This Court further finds that the institutions in question, in the present batch of writ petitions, have voluntarily agreed to admit students from the Common Entrance Examination conducted by the BCECEB and only then the BCECEB has conducted the Common Entrance Examination, held the counselling, prepared the merit list and accordingly has issued the admit orders to the successful candidates, even in respect of the petitioners institutions.

16. The only question which remains to be decided in the present batch of writ petitions is as to whether the students admitted by the institutions in question directly, by holding in-house counselling in the campus of the institutions, who have not been allotted by the respondent- BCECEB to the institutions in question, can be permitted to appear in the semester



examination, after being registered by the respondents. This Court is of the view that considering the scheme framed by the Hon'ble Apex Court in the case of *Islamic Academy of Education and Others (supra)* as also considering *Regulation 8* of the *All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994* and the agreement of the institutions in question to adhere to the due process to be adopted by the BCECEB, the institutions in question cannot admit students by taking recourse to a procedure, not approved by law and *de hors* the scheme, as described hereinabove in the preceding paragraphs. **Thus, this Court holds that the admissions taken by the institutions in question, directly, by holding in-house counselling, is *de hors* the process of law, as such are held to be illegal.** Consequently, in view of the well-settled law to the effect that an illegality cannot be validated by a judicial order, the afore-said illegal admissions cannot be legitimized. These finding of this Court finds support from the judgment rendered by a co-ordinate Bench of this Court dated 17.04.2017 passed in CWJC no. 605 of 2017 and other analogous cases, as referred to hereinabove in the preceding paragraphs as also the judgment rendered by a co-ordinate



Bench of this Court dated 08.08.2017 passed in ***CWJC no. 7072 of 2017 (Netaji Subhas Institute Of Technology v. The State of Bihar & others)***, which has also been upheld by the learned Division Bench of this Court in ***L.P.A. no. 1116 of 2017***, by a judgment ***dated 11.08.2017***, reported in ***2018 (1) PLJR, 795***, paragraphs no. 2, 5, 9, 15, 17, 18, 19, 20 and 21 whereof, are reproduced herein below :-

“2. Pivotal issues involved in the present Letters Patent Appeal are:

(i) Whether the writ Court should issue direction to the respondents to depart from the modality of selection and admission in the Private Technical Institute contrary to notification no. 678 dated 05.03.2014, particularly, when the same is in tune of the judgment of Apex Court in Islamic Academy of Education and Another Vs. The State of Karnataka & Ors., reported in (2003) 6 SCC 697?

(ii) Whether writ Court can issue direction to follow the draft Rule dated 11.07.2017 in the absence of any clear indication or administrative decision to follow the said draft Rule, particularly, when there are objection of the General and Administrative Department of State of Bihar on framing of such rule?



5.The writ application was heard by the learned Single Judge of this Court and from the order-sheet it appears that the writ Court in order to decide the issue raised in the writ application expeditiously and out of turn, issued various orders to the respondents to file their return and the writ application was finally heard by the learned Single Judge and vide judgment dated 08.08.2017, the writ Court dismissed the writ application relying upon various judgments of the Apex Court and the decision in the Bihar Private Technical and Professional Institutions Association and Ors. Vs. State of Bihar and Others, reported in (2017) 2 PLJR 701.

9. Adverting to the pleading of parties in this case, it is seen that the Principal Secretary, Science & Technology Department filed counter affidavit and supplementary counter affidavit whereby the Principal Secretary has submitted before the writ Court the stand of the Department with regard to the modality to be followed in the matter of selection and admission and the stand of the department on draft Rule. Referring to the various judgments of the Apex Court in various paragraphs of



the counter affidavit, the Principal Secretary has stated in para 16 that the matter requires concurrence of General Administrative Department and Law Department and in the light of queries made by the General Administrative Department the issue as to the draft rule will have to be placed before Council of Ministers after taking concurrence of Finance Department. In the Supplementary counter affidavit filed in compliance of the direction of the writ court dated 30.06.2017, the Principal Secretary, Science & Technology Department in para 7 has mentioned that as a matter of fact the respondent Department is not confident that at this stage when AICTE is in process of framing regulation, whether it would be proper or not to frame a rule on State level. Thus from the counter affidavit and supplementary counter affidavit of the Principal Secretary, Science & Technology Department one cannot decipher that there was clear intention of the State of Bihar to act upon the Draft Rule when the framing of Draft Rule itself is under doubt.

15. The Apex Court has repeatedly held that admission in the professional



courses should be only on the basis of a common entrance test conducted by the Government agencies or association of the Educational institution. The relevant part of the judgment of the Apex Court in Islamic Academy of Education (Supra) is reproduced:

“.....we thus hold that the management could select students of their quota, either on the basis of Common Entrance Test conducted by the State or on the basis of Common Entrance Test to be conducted by an Association of all colleges of a particular type in the 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 those tests must be exercised before issuing of prospectus and after intimation to the concerned authority and 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.”

17. We are afraid whether in exercise of jurisdiction under Article 226 of the Constitution, this Court can issue such a direction when the State Government in the Department of General and Administrative has not decided to allow admission on the basis of marks obtained in the qualifying level examination (10+2) examination. To the contrary, we find that the writ Court relying upon the judgment of Mirza Ghalib T.T. College Vs. The State of Bihar & Others, reported in 2017 (1) PLJR 256 and the decision in case of Bihar Private Technical & Professional Institutions Association and Ors. Vs. State of Bihar & Others , reported in 2017 (2) PLJR 701 and considering the stand of the State that the General Administrative Department has returned the Rule with objection, we hold that the writ Court has rightly rejected the prayer of the writ petitioner for any direction in the matter of admission against the sanctioned and vacant seats in the institute in question.

18. We are of the considered view that the vacant seat in the technical



institution cannot be a ground to make a departure from the norms and standard prescribed for admission in the Technical institution in the State of Bihar, which was drawn in the light of the judgment of the Apex Court in case of T.M.A. Pai Foundation (Supra) and in case of Islamic Academy of Education and Another Vs. State of Karnataka and others , reported in (2003) 6 SCC 697. The admission in the technical institution is required to be taken on the basis of Combined Entrance Test either conducted by the State Government or the Private Technical Institution Organization and since the State of Bihar is following the modality on the line of judgment of the Apex Court, by following the procedure of selection on the basis of Combined Entrance Test and the said admission procedure is still holding the field in the matter of selection and admission in Technical Institute and we see no reason to make exception and direct the State Government to follow different procedure on the ground that the willing candidates are not available to fill up the sanctioned vacant post in the Private Engineering Colleges. In fact



even in institution like IIT several seats are lying vacant on account of lack of seat of choice, in the IIT concerned, the vacant seat cannot be a ground to dilute the standard and depart from the professed norms and modality and allow the institution to take admission on the basis of marks obtained at the time of qualifying level examination (10+2 examination)

19. The Apex Court has in fact addressed the situation when large number of engineering seats remained unfilled in a particular year in the case of State of T. N. vs. S.V. Bratheep, reported in (2004) 4 SCC 513 and Visveswaraiah Technological University v. Krishnendu Halder & Ors., reported in (2011) 4 SCC 606 and noted in para 144 of Modern Dental College (Supra) that vacant seat is no ground to depart from and the professed norm, as such we cannot take discordant view in this case.

20. We are of the considered view that the direction of the Apex Court with regard to holding of combined competitive examination is being followed in the State of Bihar and the



notification no. 678 dated 05.03.2014 was issued on the line of Apex Court judgment in the case of Islamic Academy of Education and Another Vs. State of Karnataka and others (Supra) and so long the State of Bihar is following the guide lines of the Apex Court in the matter of allowing admission in technical institution on the basis of combined competitive examination, we do not find any fault in the action of the respondents and as such we are not inclined to issue direction to the respondents to depart from the admission mechanism as notified vide notification dated 05.03.2014 only because large number of seats approved by the AICTE are still vacant.

21. On consideration of the entire facts and circumstances, we are of the considered view that the writ Court has committed no illegality warranting any interference in this intra Court appeal. We are also of the view that the matter involved in this case is primarily Policy decision and as such Executive/Administrative decision at the level of the Government is necessary having regard to the standard to be



followed in the matter of selection procedure in the admission in Engineering and Technical Institution, we are not competent to determine the modality of selection process and as such. We are not persuaded to make any indulgence in the matter of selection and admission in the Technical Institute and issue direction to the State of Bihar to depart from the selection process based on the notification dated 05.03.2014 which was followed by the State of Bihar on the line of the guideline of the Apex Court in Islamic Academy of Education case (Supra)

17. At this juncture, it would be worthwhile to refer to the various writ petitions filed earlier by the petitioners of the second case i.e. Exault Educational Trust & Ors., and the final orders passed thereupon, herein below :-

I) CWJC no. 9068 of 2016 Dipak Kumar (Chairman, Exalt Educational Trust) Vs. The State of Bihar & Ors.:-

The aforesaid writ petition was filed seeking quashing of the letter no. 781 dated 13.03.2014, whereby the private institutions, which have been set up in the State of Bihar to provide technical education, were asked to constitute an organisation for conduct of examination on the basis of



which, admissions could be facilitated since the name of the petitioner institution did not figure in the said communication dated 13.03.2014 and the said writ petition was filed alleging therein that the private colleges have formed an organization and they have deliberately ganged up against the petitioner's institution by not permitting its participation by enrolling it as a member of the said organization.

The learned co-ordinate Bench of this Court had heard the aforesaid writ petition and by a judgement ***dated 16.09.2016***, the said writ petition was dismissed, relevant paragraphs whereof, i.e. paragraphs no. 5, 6, 7 and 8 are reproduced herein below :-

“ 5. From the counter affidavit filed on behalf of respondent nos.3 and 4, it is evident that after the declaration of the result for the year 2016, the counselling has already been started. The first phase of counselling is over and the second round of counselling is scheduled to begin from 19th of September, 2016. This has implications because if the prayer of the petitioner to be included as one of the institution which can be permitted to take admission at this belated stage is



accepted, there will be complete chaos and confusion since none of the students have given option with regard to the institution of the petitioner, for obvious reason. The institution cannot be now included and options be demanded from the students at this belated stage when the second round of counselling is going to begin in a few days.

6. The practical problem and the futility of such a direction is well understood even by the petitioner as well as the respondents. However, learned senior counsel for the petitioner submits that an option should be given to those students who have not taken admission on the basis of the counselling and the institution should be permitted to take admission on the basis of those list of qualified students and a list be given to the petitioner for contacting the students, if they are interested in taking admission.

7. The Court is not willing to permit such a deviation for many a reasons including the fact that if a modality is required to be adopted in terms of a directive issued by the Hon'ble Supreme Court earlier and based on that



modality, admissions are being granted to the students by such institutions, merely because the institution in question will go without any students in this academic year an innovation is not required to be made since it will be a bad precedent.

8. No relief, therefore, can be granted in the above factual position in favour of the petitioner for participation in the left over counselling for admission of students.”

II) CWJC no. 9218 of 2016 (Exalt Education Trust & Ors. Vs. The State of Bihar & Ors.:-

The said writ petition was filed seeking a direction upon the State Board of Technical Education, Department of Science and Technology, Government of Bihar, Patna and Controller of Examination, State Board of Technical Education, Department of Science and Technology, Bihar, Patna to ensure registration of 300 students admitted in the said Polytechnic institution for the Academic Session, 2015-16 for the purposes of examination. The said writ petition was heard by the learned Single Judge of this Court and by a judgment dated 25.08.2017, the aforesaid writ petition has been dismissed. It would be relevant to reproduce



paragraphs no. 3, 5, 6, 9 and 13 herein below :-

“ 3. This is not in dispute that the said Institution has taken admission of these 300 students without any entrance test conducted either by the State/University or their agencies or, viz, the “Bihar Private Technical and Professional Institutions Association” (BPTPIA) of privately managed institutions conducting such courses (Respondent No.6). It is the stand of the petitioner that Bihar Private Technical and Professional Institutions Association unnecessarily conducts selection tests 4-5 times in a year and it is unthinkable that the entrance examination for technical institution is conducted 4-5 times in a year. It is the further case of the petitioner that said Association has become a private body functioning on the whims and fancy of its office bearers. According to him, it is not known as to how Chairman and Secretary and other office bearers of the Association have been selected or elected. The petitioner in that background, asserts that he had to approach this Court by filing CWJC No. 9068 of 2016, seeking a direction to disassociate his institution from



respondent No.6 and permit them to admit students on the basis of merit list of entrance examination conducted by the BCECEB. By an interim order, dated 24.05.2016, this Court had allowed the said institution to take admission on the basis of merit list prepared by the BCECEB for purpose of admission to Diploma Courses in Engineering College. Subsequently, however, by an order, dated 16.09.2016, this Court dismissed the writ application in following terms:-

“6. The practical problem and the futility of such a direction is well understood even by the petitioner as well as the respondents. However, learned Senior counsel for the petitioner submits that an option should be given to those students who have not taken admission on the basis of the counselling and the institutions should be permitted to take admission on the basis of those list of qualified students and a list be given to the petitioner for contacting the students, if they are interested in taking.



7. *The Court is not willing to permit such a deviation for many a reasons including the fact that if a modality is reacquired to be adopted in terms of a directive issued by the Hon'ble Supreme Court earlier and based on that modality, admissions are being granted to the students by such institutions, merely because the institution in question will go without any students in this academic year an innovation is not required to be made since it will be a bad precedent.*

8. *No relief, therefore, can be granted in the above factual position in favour of the petitioner for participation in the left over counselling for admission of students.*

9. *Writ is dismissed."*

5. *Apparently, it is the case of the petitioner that it gave admission to 150 students based on counselling done by the institution itself and 150 students belonging SC/ST category on the basis of a Camp organized by the SC/ST, Welfare Department, Government of*



Bihar, which had undertaken the counselling of the applicants.

*6. It is apparent thus that admissions were not based on any entrance test held either by the Association (Respondent No.6) or by the State Government or its agency. This Court in case of **Bihar Private Technical and Professional Institutions Vs. State of Bihar and ors**, reported in 2017 (2) **PLJR 701** had the occasion to deal with this question, wherein this Court specifically held that in paragraphs 44,45 and 48 as follows:-*

“44. Could it be said that in such circumstance any person who possessed the minimum eligibility criteria should be allowed admission to such technical or professional course on the reasoning that the seats are vacant? The answer, in my opinion, is big No! The entrance test to professional and technical courses are so organized and structured as to select those who are best suited to take up those courses. The tests are conducted to evaluate their ability to cope with



the courses, which may be offered to them on their admission.

45. Apart from fairness, transparency and non exploitativeness, merit and ability of a candidate to take up a particular professional course in order to maintain the desired standard of that profession is equally important, which cannot be ignored. In my view, this will be against public interest and public policy to allow such candidates, who do not have the aptitude and ability to study a technical course, admission to such courses.

48. It is in the public interest that only such persons take up technical and professional courses, who do not have any basic qualification, but also have the merit, ability and aptitude to take up courses designed for a particular purpose. This can be done only through appropriately designed screening test. It will not be in the public interest to promote mediocrity by allowing admission of such persons who could have



otherwise done well in the different walks of life, but could not be said to be fit to take up B.Tech. Or similar technical courses. It is now known how these admissions were taken, based on marks obtained in 10+2/10th examination. Whether it was confined to those who had applied pursuant to notice issued by the Association for Combined Entrance Test and had shown willingness to take up the technical courses or they subsequently approached the institutions for their admission, after admission on the basis of entrance tests were over. The manner in which the institutions have taken admission based on 10+2 marks/results cannot have approval of this Court.”

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/-.

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)."*

III) CWJC no. 3060 of 2017 (The Exalt Educational Trust, through its Chairman, namely Dipak Kumar Vs. The State of Bihar & Ors.) :-

The present writ petition was filed by the Exalt Educational Trust through its Chairman for directing the respondents to ensure registration of students of the Polytechnic Batch 2016-17 (total 300 students) of the petitioner's Polytechnic college namely Exalt College of Polytechnic and to further direct the respondents to hold special examinations of students of 2016-17 Batch.

The learned Coordinate Bench of this Court by a judgement dated 19.06.2017, has dismissed the afore-said writ petition, paragraphs no. 9, 10, 11, 12, 13, 14 and 15 whereof, are reproduced herein below :-

9. From the facts, which has been stated in the writ application, it is amply clear



that the petitioner took the admission of 300 students in Polytechnic College not in the light of any order passed by this Court, interim or final, in CWJC No. 9068 of 2016; rather, despite order of dismissal of the writ application by the judgment and order, dated 16.09.2016, wherein the Court had refused to permit the petitioner to take admission on any basis other than what was decided by the Committee, as contained in Memo No. 781, dated 13.03.2014.

10. Disturbing it is that despite clear judgment of the Supreme Court and judgment of this Court in the case of the petitioner in CWJC No. 9068 of 2016, the petitioner took admission of 300 students in Polytechnic College on 30.12.2016 for the academic sessions 2016-17. The petitioner, as a matter of fact, acted contrary to the decision rendered in his case by this Court in CWJC No. 9068 of 2016. This Court had rejected the petitioner's plea to take admission on the basis of result prepared by BCECEB and the petitioner is claiming that it took admission on the basis of such result, three months after the claim was specifically rejected by



this Court.

11. The conduct of the petitioner allowing admission of 300 students in Polytechnic College for the academic sessions 2016-17 is highly reprehensible and deplorable. No relief, as claimed in the present writ application, can be granted.

12. This application is accordingly dismissed with a direction to the petitioner to return all the fees and charges received from the said 300 students of Polytechnic College of the Trust, admitted for the academic sessions 2016-17, within a period of one month from today.

*13. In a recent judgment and order, dated 17.04.2017, in the case of **Bihar Private Technical and Professional Institutions Association and Another v. The State of Bihar and Others (CWJC No. 605 of 2017)** and analogous cases), having found the institutions to have taken admissions in technical and professional courses illegally, this Court had directed the management to pay a sum of Rs. 50,000/- to each of the students so admitted by way of penalty. Paragraph nos. 61 and 62 of the said*



judgment and order is relevant and is being reproduced herein below:-

"61. After having held such admissions to be illegal, I cannot lose sight of the fact that these institutions made the students to take admission, which was legally impermissible. For that reason, in my view, such institutions need to be penalized in a manner which is deterrent and compensatory at the same time. Penalty needs to be imposed to compensate those students who have been given admission in a manner, not approved by law, which has adversely affected career of young men and women, putting them to substantial financial loss, additionally. It should be deterrent too, so that other institutions do not indulge in such activities in future and they run their institutions strictly in accordance with law.

62. I accordingly direct the private managements of respective institutions, namely, (1) Netaji Subhas Institute of Polytechnic, (2)



Netaji Subhas Institute of Technology, and (3) Patna Sahib Technical Campus, to refund all fees and charges so far received by them from the students who have been illegally admitted on the basis of their marks in 10th/12th examination, excluding only hostel and mess charges, in their favour. In addition, the managements shall be required to pay a sum of Rs. 50,000/- to all the individual students so admitted, which I consider befitting in the facts and circumstances of the case. All such payments shall have to be made within a period of three months from today."

14. I do not find any reason why similar order should not be passed in the present case also, since similar grounds are available in present case also.

15. Accordingly, I direct the petitioner to pay a further sum of Rs. 50,000/- to each of the individual students within a period of three months from today."

18. Thus, it is apparent that all the writ petitions, as aforesaid, preferred by the petitioner of the second case has



resulted into a naught, inasmuch as all the writ petitions have stood dismissed. This court further finds that two of the aforesaid Judgments dated 25.08.2017, passed in CWJC no. 9218 of 2016 and the one dated 19.06.2017, passed in CWJC no. 3060 of 2017 have been upheld by the learned Division Bench vide Judgments dated 09.12.2019 passed in L.P.A. no. 1266 of 2017 and the one dated 09.12.2019 passed in L.P.A. no. 952 of 2017 and the appeals filed by the petitioner of the second case have been dismissed. At this juncture, it would be relevant to delve upon the Law laid down by the Hon'ble Division Bench of this court in the afore-said appeals by reproducing the relevant paragraphs thereof herein below:-

- (i) **Letters Patent Appeal No. 1266 of 2017 (arising out of C.W.J.C No. 9218 of 2016), Exalt Educational Trust & Ors. Vs. The State Of Bihar & Ors. Relevant paragraphs i.e 30, 31, 32, 36, 49 to 54, and 58 to 65 are reproduced herein below:-**

"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.*

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 above stated 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.*

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, inter alia, 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)

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 afore stated 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."

- (ii) **Letters Patent Appeal No. 952 of 2017 (arising out of C.W.J.C No. 3060 of 2017), Exalt Educational Trust Vs. The State Of Bihar & Ors. Relevant paragraphs i.e 24, 26, 27, 32 to 38, 41 to 43, 50, 51, and 54 to 56 are reproduced**



herein below:-

"24. Having heard the parties and perused the materials on record, we find that it is not in dispute that the last date of registration for the 1st semester examination of the session 2016-17 was 31.09.2016 (without late fine) and 30.10.2016 (with late fine). It is also not in dispute that later the last date of the registration for the 1st semester examination was extended upto 19.11.2016. It is also not in dispute that the process of examination form-filling of the 1st semester examination for the academic session 2016-17 came into effect in pursuance of the letter no. 4533 dated 09.12.2016 of the Controller of Examination, SBTE, Bihar, Patna, which was addressed to all the Principals concerned. The last date for the examination form-filling as mentioned in the said letter was 20.12.2016.

26. The appellant was fully aware of the fact that the writ petition filed by it vide CWJC No. 9068 of 2016 wherein a prayer was made to quash the letter no. 781 dated 13.03.2014 whereby private institutions set up in the State of Bihar to provide technical education were asked to constitute an Association for conduct of examination on the basis of which admission could be facilitated as also option be given to those students who have not taken admission on the basis of counselling and institution should be permitted to take admission



on the basis of those list of students and a list be given to the appellant for contacting the students if they are interested in taking admission was dismissed by this Court vide order dated 16.09.2016.

27. In spite of having full knowledge of dismissal of CWJC No. 9068 of 2016 and in spite of the lapse of the last date for registration of students and for filling up of forms for the 1st semester examination of the academic session 2016-17, the appellant took admission of the students in the College. The said act of the appellant was not only illegal but also in complete disregard to the final order passed by this Court in CWJC No. 9068 of 2016 on 16.09.2016.

32. We are of the opinion that the learned Single Judge has rightly held that the conduct of the appellant in allowing admission of 300 students in polytechnic college for the academic session 2016-17 was highly reprehensible and deplorable. We are also of the view that the learned Single Judge has rightly taken into consideration the plight of the students, who have been admitted in the college and have pursued their study, which was legally impermissible, and while dismissing the writ petition directed the appellant to pay a sum of Rs. 50,000/- to each of the individual students within a period of three months.

33. We are of the view that the appellant cannot



claim any benefit either in equity or in law. An illegality committed by the appellant in admitting students in the College in complete disregard to the mandate of law would not clothe the students with any legal right.

34. The reliance of the appellant on the judgment in Netaji Subhash Institute of Technology (Supra) to consider the case of the students sympathetically has to be seen in the totality of the facts and circumstances of the case as well as the ratio laid down by the Supreme Court in various cases relating to admission of candidates in academic matters.

35. In Netaji Subhas Institute of Technology (Supra), the judgment of the writ Court in a 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 taking 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 prescribed 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.

36. The writ Court 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 taken by these institutions on the basis of 10+2 marks could not be justified, as the admission had to be taken by entrance test only and by no other means. The Court further held that illegal admission taken without resorting to a combined entrance examination test cannot be



legitimized by a judicial order.

37. 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.

38. 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 sufferer 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).

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

42. The Division Bench 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.

43. After observing so, the Division Bench 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).

50. 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).

51. 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, illconceived sympathy masquerades as interlocutory justice exposing 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)

54. *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 the 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.*

55. *In view of the discussions made hereinabove, we see no merit in the appeal. It is dismissed, accordingly.*

56. *There shall be no order as to costs.”*



19. Having regard to the facts and circumstances of the case, considering the Law laid down by the Hon'ble Apex Court, in the case of *Islamic Academy of Education and Others (supra)* as also the Law laid down by the Ld. Division Bench of this Court in the case of *Netaji Subhas Institute Of Technology v. The State of Bihar & others* , in Letters Patent Appeal No. 1266 of 2017 (arising out of C.W.J.C No. 9218 of 2016), Exalt Educational Trust & Ors. and in Letters Patent Appeal No. 952 of 2017 (arising out of C.W.J.C No. 3060 of 2017), Exalt Educational Trust as also taking into account Regulation 8 of the All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994 and for the reasons stated hereinabove in the preceding paragraphs, I do not find any merit in the present batch of writ petitions, hence the same are dismissed.

(Mohit Kumar Shah, J)

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