

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23545 of 2019

1. Adarsh Aryan S/o Sri Ajay Kumar Resident of Mohalla- Mithapur, P.S.- Jakkanpur, District- Patna.
2. Sharmila Sundram W/o Sri Ajay Kumar Resident of Mohalla- Mithapur, P.S.- Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

1. Union of India through the Secretary, Higher Education, Human resources ministry, Government of India, 1 to 7 C Shastri Bhawan New Delhi.
2. Secretary, Higher Education, Human resources ministry, Government of India, 1 to 7 C Shastri Bhawan New Delhi.
3. National Institute of Technology Ashok Rajpath, Patna, through its Director.
4. Director National Institute of Technology, Ashok Rajpath, Patna.
5. Dean (Academy) National Institute of Technology, Ashok Rajpath, Patna.
6. Registrar National Institute of Technology, Ashok Rajpath, Patna.
7. Assistant Registrar National Institute of Technology, Ashok Rajpath, Patna.

... .. Respondent/s

Appearance

For the Petitioner	:	Mr. Ashok Kumar Choudhary, Adv. Mr. Akshansh Ankit, Adv.
For the NIT, Patna	:	Mr. Y.V. Giri, Sr. Adv. Mr. Sanjay Kumar Giri, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

DATED : 07-07-2020

Heard Mr. Ashok Kumar Choudhary, learned counsel for the petitioners and Mr. Y.V. Giri, learned Senior counsel for the respondent nos. 3 to 7.

The petitioner no.1 is a student of National Institute of Technology, Patna (hereinafter referred to as 'the NIT, Patna') in the 5 years Integrated M.Sc. (Chemistry) course and the petitioner no.2 happens to be his mother.

The case of the petitioner no.1 is that the common



competitive examination namely, JEE (Main), 2018 examination was conducted for the purpose of admission in engineering colleges including IITs, NITs etc. The petitioner no.1 participated in the said competitive examination and as per his rank, was allotted a seat in the 5 years Int. M.Sc. (Chemistry) in NIT, Patna. Accordingly, he deposited the required registration amount and started his course. He secured CGPA 8.54 in overall in 1st and 2nd semesters and was promoted to the 3rd semester. Further case of the petitioner no.1 is that on 21.6.2019 (Annexure-A to the counter affidavit of respondent nos.3 to 7) the respondent authorities of NIT, Patna came out with a 'notice for change of branch' issued under the signature of the Dean (respondent No.5), the last date for receiving application form for the said change being 5.7.2019. The petitioner applied for change of his branch on 25.6.2019 from his 5 year Int. M.Sc. (Chemistry) course to 4 year B.Tech course as per the rules and submitted his form (Annexure-5) for change giving therein the five branches as per order of his preference. The respondent no.5 came out with the notice dated 18.7.2019 (Annexure-6) containing a list of 34 students who as per approval of the competent authority had been allotted new branch as shown in the said table. The name of petitioner no.1 not figuring therein,



it is the case of the petitioner that he along with his mother, the petitioner no.2 approached the higher authorities of NIT, Patna and filed various representations. The Director, NIT, Patna rejected the prayer of the petitioner no.1 for change of branch and communicated the same by letter dated 12.9.2019 (Annexure-11) written to the petitioner no.2, mother of the petitioner no.1. The prayer of change of branch of the petitioner no.1 was rejected in view of clause 6(c) of Appendix IV for change of branch.

It is for this reason that the petitioner no.1 along with his mother, the petitioner no.2 have filed the instant writ application for the reliefs, which is quoted herein below:

“I. To command and direct the respondents to quash/set aside the order of National Institute of Technology, Patna issued by Dean (Acad) by which claim of petitioner no.1 to change the subject from 5 years integrated M.Sc.(Chem) course to 4 years B-tech course is here by rejected on 12/09/2019 on the ground of Appendix IV @ Criteria 6 (c) of in the rules for change the branch which is not in existence since 2014 to till date though other student has got benefit of same because there is no existence of criteria 6 (c) but respondent N.I.T, Patna has discriminate the petitioner no.1 due to reason best known to them.

II. To further command and direct the respondents to change the branch of petitioner no.1 having Roll No. 1808010 from 5 years integrated M.Sc.(Chem) course to 4 years B.Tech course in the National Institute of Technology (NIT), Patna, accordance with the existence rule of change of the subject in the interest of justice and carrier of brilliant student



like petitioner no.1 because he is eligible person (Student) having all the required qualification and other criteria under which other 3 person were benefited though seat is vacant till date.

III. It is further direction is required to the respondent NIT Patna, to allow the petitioner no.1 to make up the academic session of changed branch of subject in the course about 4 months and subsequently allow the petitioner no.1 to appear in the examination which is going to be held in near future to prevent the carrier of the petitioner no.1.

IV. To command in direct the respondent to pay the heavy compensation to the victim (Petitioner no.1) for mental and physical harassment and loss of available time of career of growing and ambitious student as well as direction may given to booked in criminal cases to the authorities of NIT Patna who is responsible for the same.

V. For grant any other relief or reliefs for which petitioner is entitled for.”

Three counter affidavits were filed on behalf of the respondent nos.3 to 7 and two affidavits by way of reply was filed on behalf of the petitioner.

The case of the NIT, Patna (respondent nos. 3 to 7) was that the petitioner appeared in the 2018 JEE (Main) Examination and as per his All India Rank and choice filled by the petitioner during counseling he was allotted the 5 years Int. M.Sc.(Chem) Programme at NIT, Patna. As per allotment, the petitioner took admission at NIT, Patna in Academic Session 2018-19 and after completing his 1st year consisting of two semesters applied for change of branch on 25.6.2019 from his present course of 5 years Int. M.Sc. (Chemistry) to B. Tech



course of 4 years. It is further stated that the notice dated 21.6.2019 (Annexure-A) displayed on the website of NIT, Patna for change of branch, stated that the change of branch of students will be done in accordance with the revised B. Tech curricula of 2016 (Appendix IV) effective from 2016-17 onwards. It was on the basis of the aforesaid rules that the petitioners application for change of branch was not allowed by the Institute. By Annexure-11, impugned in the writ application, the petitioner no.2 was apprised that as per Clause 6(c) Appendix IV of curricula of 2016 which says that for change of branch, the number of students should not fall below 80% of the actual intake in that programme, the same was not allowed. Further case of the respondents is that the number of students who took admission in the Int. M.Sc. Programme for academic Session 2018-19 were 14. Thus 20% of 14 was 2.8 which is equal to 3 students. On the basis of marks obtained the petitioner no.1 stood at 4th position and hence his change of branch could not be allowed. It was further stated that the petitioner who took admission in academic Session 2018-19 was governed by UG Regulation of 2016-17 which was approved by the Senate of NIT, Patna in its 18th Meeting dated 25.6.2016 through Resolution no. SNT 18.5. The U.G. Regulation 2016-17



is available on the Institute's official website of NIT, Patna and also annexed as Annexures - C and D to the counter affidavit.

It is submitted by learned counsel for the petitioners that pursuant to the notice dated 21.6.2019 (Annexure-A) of the NIT, Patna inviting application for change of Branch from the students, the petitioner no.1 applied within the time prescribed on 25.6.2019. Although he fulfilled all the required criteria for change of Branch, he was surprised not to find his name amongst the 34 students in the notice dated 18.7.2019 (Annexure-6) which contains the list of students who had been allotted new branch. As such he filed representations but was finally communicated with the letter from the Director, NIT, Patna dated 12.9.2019 (Annexure-11) stating that he could not get the changed branch in view of the clause 6(c) of Appendix IV for change of branch. Referring to the institute profile of NIT, Patna on the website and as contained in Annexure-1 to the instant application, it is submitted by learned counsel for the petitioner that the same contained rules for branch change. The only two requirements for students to be eligible for consideration for a change of branch was that firstly, he should have completed all the credits prescribed in the first semesters of their studies, in their first attempt without having had to pass



any course requirement in the special examination and/or summer quarter and secondly, he should have obtained a CGPA, at the end of the Second (Spring) Semester, not lower than 8.25 for a change to another Engineering discipline. It was submitted by learned counsel for the petitioner that the petitioner fulfilled both the requirements which is admitted by the respondent authorities as well. It is further submitted that so far as clause 6(c) of the Appendix IV is concerned, which has been stated to be the reason for not granting change of branch to the petitioner, the same does not find mention anywhere and is conspicuously absent from the institute profile. It is further submitted that from perusal of notice for change of branch (Annexure-A to the counter affidavit of respondent nos. 3 to 7) dated 21.6.2019 pursuant to which the petitioner applied, once again there is no mention whatsoever nor any reference to clause 6(c). Referring to the said notice it was submitted by learned counsel for the petitioner that the notice categorically stated that only those students were eligible for consideration for a change of branch who fulfilled the two conditions therein, the conditions mentioned being identical to the conditions mentioned in institute profile as contained in Annexure-1 and referred to hereinabove. It was further submitted that from perusal of the



Minutes of the 17th Senate meeting held on 11.9.2015 would also show that there was no mention of clause 6(c) or contents thereof in the rules for Branch change.

It was further contended by learned counsel for the petitioner that at the time of taking admission itself, the rules of branch change were clearly mentioned on the website of NIT, Patna and thus the petitioner having fulfilled both the criteria as required under the rules for Branch change, a legitimate expectation had been created in the mind of the petitioner no.1 which in turn constituted legal right of the petitioner for his branch change. It was thus submitted that clause 6(c) which was not mentioned either in the institute profile or in the notice for Branch change whereby applications were invited, the same could not be made a ground for rejection of the petitioner's application for his branch change. It was further submitted that clause 6(c) was introduced on 15.10.2009, however, in the 14th Senate meeting held on 28.7.2014 it was given a complete go by and the provision had been dispensed with. Clause 6(c) was never introduced thereafter and was not in existence and for this reason also it could not be made a ground for rejection of petitioner's application for Branch change.

It was further submitted by learned counsel for the



petitioner that the word 'curricula' is the plural of the word 'curriculum' which means a set of courses, coursework and their content offered at school or university. The same cannot contain the rule as being projected by the respondent, NIT. Further, once Clause 6(c) was missing from the institute profile of NIT, Patna fairplay required that the institute should stick to the two requirements and not supplement them with additional conditions which were not in existence. It was contended that the last clause of the rules for branch change as contained in Annexure-4 provided that Senate may under very special circumstances permit the transfer of students from one branch to another in deviation of the above mentioned rule.

The last contention on behalf of the learned counsel for the petitioner what that even if the clause 6(c) is said to be in existence, the action of the respondent authorities would show that the same was not being adhered to. It was submitted that out of the total 14 students in 5 years Int. M.Sc. (Chemistry) course, while rejecting the petitioner's application for branch change, the respondent authorities had permitted three persons to change their branch. The net result being that from 14 students the number of students remaining come down to 11, and 11 out of 14 being 78.57% was below 80%. Thus it was



submitted that the action of the respondent authorities of NIT, Patna clearly shows that clause 6(c) was not being followed in sum and substance but the same was being followed in a discriminatory manner at the whims and fancy of the authorities concerned.

It was thus submitted by learned counsel for the petitioner that the order impugned be set aside and the respondent NIT, Patna be directed to allow the branch change of the petitioner and also to grant other reliefs as prayed for in the writ application.

Mr. Y.V. Giri, learned Senior counsel appearing on behalf of the NIT, Patna and its authorities submitted that so far as Annexure-1 to the writ application on which learned counsel for the petitioners is laying great stress, the same is a document not on the website of NIT, Patna. From perusal of the contents of the writ application itself it would be evident that the same is on the website 'www.josaa.nic.in' which is an examining body which conducts examination for admission in the NIT. The National Institute of Technology, is an autonomous body. It was further submitted that from the provisional seat allotment letter of the petitioner as contained in Annexure-3, it would be evident that his rank was 108177 and admissions to engineering courses



including those in NIT were given only to students up to the rank of around 22000. Further replying to the contention of legitimate expectation, it was submitted that the petitioner in making an application cannot be said to have altered his position pursuant to the said application and thus the contention with respect to the legitimate expectation of the petitioner was misplaced. It was submitted that the petitioner applied for branch change on 25.6.2019 pursuant to the notice dated 21.6.2019 which clearly stated that the same would be done in accordance with the revised B.Tech Curricula 2016 (Appendix IV) effective from 2016-17 and onwards. It was in accordance with the provision of Appendix IV of B.Tech Curricula 2016 that the petitioner's application was rejected. So far as permitting the third student out of the total 14 students in 5 years Int. M.Sc.(Chemistry) course is concerned, it was submitted that 20% of 14 students came to 2.8 which was equal to 3 students. Thus on the basis of marks obtained three students were permitted to change their branch and the petitioner no.1 could not be allowed as he stood at fourth position.

It was submitted by learned Senior counsel for NIT, Patna that this was not a case which can be said to be one of 'a very special circumstance', where the Senate may permit a student to



change branch in deviation of the rules. It was submitted that even if the third person is said to have wrongly been given the option to change branch, still the same would not confer any legal right to the petitioner. It was thus submitted that there being no merit in the application, the same be dismissed.

Having heard learned counsel for the parties and on having gone to the records of the case it transpires that the petitioner had taken admission in 5 years Int. M.Sc. (Chemistry) course in the year 2018 pursuant to his being successful in JEE (Main), 2018 Examination. He applied for change of branch on 25.6.2019 (Annexure-5) from 5 years Int. M.Sc. (Chemistry) course to 4 years B.Tech course pursuant to the notice for change of branch dated 21.6.2019 (Annexure-A). The first paragraph of the notice is being reproduced herein below for ready reference:-

“Application for change of Branch is invited from eligible 1st year students of B.Tech and Integrated M.Sc. Programme to the promoted in 3rd semester July-December 2019 (Session 2019-20) and to continue onwards. The change in Branch will be in accordance to the revised B. Tech Curricula -2016 (Appendix (iv)) effective from 2016-17 and onwards.”

(Emphasis supplied)

Thus the petitioner no.1 even on the date of making his application pursuant to the said notice for change of Branch was



conscious of the fact that the change in Branch will be in accordance with the revised B.Tech Curricula 2016 (Appendix IV).

The petitioner has brought on record the minutes of the Meeting of 18th Senate held on 25.6.2016 (part of Annexure-7 series at page 35). Resolution SNT 18.5 thereof mentions that the revised curricula was discussed and approved (in the 18th Senate Meeting) for implementation for academic Sessions 2016-17 onwards. The said revised curricula, along with updated amendments up to the 18th Senate, has been brought on record by the petitioner at page 37 to the writ application. Appendix IV thereof deals with rules for change of Branch. The said Appendix IV clearly contains clause 6(c) which is being quoted herein below for ready reference:-

“6(c) Also such change from any branch is to be made keeping in view that the total strength of the branch does not fall below 80% of the sanctioned yearly intake for that branch.”

Thus from the facts stated hereinabove, it is clearly evident that the notice pursuant to which the petitioner no.1 made his application for change of his Branch clearly stipulated that the same was to be done in accordance with the Curricula 2016, of which clause 6(c) was a part. Thus the contention on behalf of the petitioner that clause 6(c) was not in existence



cannot be sustained for the reason that the same was a part of the Curricula for the Integrated M.Sc. Programme of which the petitioner no.1 was a part and the said curricula had been approved by the Senate in its 18th Senate Meeting held on 25.6.2016.

The other contention of learned counsel for the petitioners is that the implementation of clause 6(c) was done in a discriminatory manner by the authorities of NIT, Patna for the reason that on permitting 3 students out of a total of 14 to change their branch, the same was in violation of clause 6(c) as the percent of students remaining in Int. M.Sc. (Chemistry) programme came down to 78.5% which was below 80%. Thus it was submitted that clause 6(c) was not being enforced. To this the reply on behalf of the NIT, Patna is that 20% of 14 was 2.8 which on rounding off was equal to 3. Thus, they had permitted three students to change their branch. The petitioner being at 4th position, could not be permitted the change. In this connection, it may be stated that the wording of clause 6(c) of Appendix IV, quoted hereinabove is very clear. It states that the change of branch is to be made keeping in view that the total strength of the branch does not fall below 80% of the sanctioned yearly intake. The sanctioned strength of the branch being 14, the



methodology adopted by the NIT, Patna of calculating the number of students who would be permitted to change their branch, in the opinion of this Court, is not correct. What has to be calculated is the total strength of the branch from which the transfer has been permitted and the same should not fall below 80%.

In the present case on three persons being allowed to change their branch, the total strength of the branch comes to 11 and the percent of 11/14 comes to 78.57%. Thus on three students out of a total of 14 being permitted to change their branch, the total strength of the branch falls below 80% which could not be done in view of clause 6(c). However, in view of the fact that neither the petitioner has prayed for any relief in this context nor has the petitioner impleaded as a party/respondent the student who may be affected, the Court does not proceed any further on this point.

In view of the discussion above, the other points raised on behalf the petitioner with respect to the institute profile not containing clause 6(c), the petitioner having legitimate expectation etc., has in the opinion of this Court been effectively answered by learned Senior counsel appearing for the NIT, Patna. It may be added here that no judgments were cited by



either of the parties.

Thus in view of the facts and circumstances stated hereinabove, I do not find any merit in the writ application and as such the same is dismissed.

(Partha Sarthy, J)

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