

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 11673 of 2020

Soutrik Sarangi

Vs.

IIT Kharagpur & Ors.

For the writ petitioner	:-	Mr. Subir Sanyal, Adv. Ms. Smita Pal, Adv. Mr. Sagnik Roy Chowdhury, Adv.
For the respondent no. 8	:-	Mr. U. S. Menon, Adv. Mr. Abhirup Chakraborty, Adv.
For the respondent no. 7	:-	Mr. Subhas Ch. Sarkar, Adv.
For I.I.T. Kharagpur	:-	Mr. R. N. Majumder, Adv. Mr. A. Mitra, Adv. Mr. Supratim Bhattacharyya, Adv.
Hearing concluded on	:-	19.08.2021
Judgment on	:-	25.08.2021

Amrita Sinha, J.:-

The petitioner, a first year student of the Indian Institute of Technology, Kharagpur, aspires to re-join the same institute in a different stream and he seeks permission to appear in the entrance examination once again.

The petitioner appeared in the Joint Entrance Examination (Main), 2020 and on the basis of the percentile obtained by him he became qualified and eligible to appear in the JEE (Advanced), 2020. He scored rank 4015 which was not up to his expectation. He has given reasons for not getting a better rank. He however participated in the counselling process for admission in the institute and got himself admitted in the Chemical Engineering Dual Course.

The petitioner intends to appear in JEE, 2021 once again but the eligibility criteria for appearing in JEE (Advanced), 2021 stands in the way. It mentions that a candidate can attempt JEE (Advanced) a maximum of two times in consecutive years irrespective of whether or not he passed the qualifying examination. The candidate who had taken admission in any institute other than IITs in 2020 is eligible to appear in JEE (Advanced), 2021 provided the candidate satisfies other eligibility criteria.

In view of the aforesaid restriction the petitioner cannot compete in JEE (Advanced), 2021 as he got himself admitted in IIT Kharagpur in the year 2020.

The petitioner is aggrieved by the same.

According to him his performance would have been better had there not been disturbance and glitches at the time of the examination which was held online. The petitioner is convinced that he is better prepared and is capable of getting a better rank if he is afforded an opportunity to appear in this year's advanced examination which is due to begin soon. The petitioner, by way of an interim order passed in this case, participated in JEE (Main), 2021 and according to his percentile he is eligible to appear in the advanced examination.

The petitioner submits that though there is a provision for withdrawal of candidature till the fifth round of counselling but due to mistake he could not withdraw his candidature during the aforesaid rounds. The petitioner submits that till the year 2019 for the purpose of withdrawal of the candidature the candidate was required to physically appear in the institute, but in view of the pandemic the withdrawal process has been made online from the year 2020.

According to the petitioner even though he is eligible to participate in JEE (Advanced), 2021 but because of the restriction clause he loses the opportunity to compete the same. The petitioner has submitted that the aforesaid clause in the

eligibility criteria is irrational, unreasonable, arbitrary and illegal. The petitioner has prayed for a direction upon the respondent institute to allow him to appear in JEE (Advanced), 2021 and to consider his candidature on the basis of the rank secured by him in the said examination.

Submission has been advanced that the petitioner is an extremely meritorious candidate and has secured a very high percentile in JEE (Main), 2021 and he ought not to be debarred from appearing in the JEE (Advanced), 2021.

The learned advocate representing IIT Kharagpur vehemently opposes the prayer of the petitioner. It has been submitted that the petitioner prior to appearing in the examination was aware of the rules and regulations relating to the same. All the necessary details in respect of JEE (Main) and JEE (Advanced) are available in the website and any person interested to appear in the examination is expected to know the same.

It has been submitted that the Indian Institute of Technology is a very premier institute with a very high level of education. The candidates who appear and qualify in the entrance examination are all extremely meritorious.

The entrance examination is planned and supervised by the Joint Admission Board which comprises of Directors of all IITs, all members of Joint Implementation Committee comprising of Chairmen/Vice-Chairmen of JEE (Advanced) all IITs, representatives of Ministry of Human Resources Development, Government of India and Central Board of Secondary Education. The IIT Council has approved the Joint Admission Board as the standing mechanism of IIT system which is authorised to frame the policies, rules and regulations of Joint Entrance Examination under guidance of IIT Council. JEE (Advanced) has an exclusive Joint Admission Board and Joint Implementation Committee. The policy decisions of the Joint Admission

Board are implemented by the Joint Implementation Committee. Admission is given to the successful candidates in accordance with their merit, rank and choice.

Subsequent to the JEE (Main) and JEE (Advanced) being conducted, all the seats of the various engineering institutes are offered through a common process which is conducted by Joint Seat Allocation Authority (JoSAA). Approximately 1,98,665 candidates participated in the Joint Seat Allocation Process in 2020 and the petitioner was one of them. The manner in which the seats are allocated along with all the process involved, documents required, rules of admission are provided for in a detailed document called the JoSAA Business Rules.

Section XXVII of the aforesaid Rules lays down the eligibility criteria to appear in JEE (Advanced) in subsequent years. Clause 70 of the aforesaid Section mentions that candidates who accept the allocated seat in any IIT by reporting online but later do not withdraw seat or accept the allocated seat by reporting at the admitting institute, irrespective of whether they attend classes or not, become ineligible for JEE (Advanced) in subsequent years. Clause 72 of the said Section mentions that the candidates who paid seat acceptance fee in 2020 but had their seat cancelled before the last round of seat allotment for IITs during the joint seat allocation in 2020 are eligible to appear in JEE (Advanced), 2021, provided the candidates fulfil all other eligibility criteria.

The aforesaid JoSAA Business Rules and the criteria set out in the JEE (Advanced) Information Brochure are in the same line and are applied uniformly in respect of all the candidates who appear for the examinations.

It has been argued that the petitioner had enough opportunity to withdraw till the fifth round of counselling which the petitioner failed. The schedule of events of JoSAA, 2020 reveals that the result of JEE (Advanced) was announced on 5th October, 2020. The candidate registration/choice filling for academic programmes

started on 6th October, 2020. Display of mock sheet allocation I based on the choices filled in by candidates as on 11th October, 2020 was made on 12th October, 2020. Display of mock sheet allocation II based on the choices filled in by the candidates as on 13th October, 2020 was made on 14th October, 2020. Registration and choice filling ended on 15th October, 2020. The first round of seat allocation was made on 17th October, 2020 and the last date to respond to query in respect of round I was 20th October, 2020. Seat allocation of round II started on 21st October, 2020 and the last date to respond to query in round II was 24th October, 2020. Time for withdrawal of seats/exit from seat allocation process in round II was from 22nd October, 2020 to 24th October, 2020. The third round of seat allocation started in 26th October, 2020 and ended on 29th October, 2020. Withdrawal of seats/exit from seat allocation process in the round III was from 27th October, 2020 to 29th October, 2020. Seat allocation in the fourth round started on 30th October, 2020 and ended on 2nd November, 2020 and the date for withdrawal of seat/exit from seat allocation process in the fourth round was from 31st October, 2020 to 2nd November, 2020. The fifth round of seat allocation started on 3rd November, 2020 and went up till 6th November, 2020. The last round for seat withdrawal/exit option in the round V was from 4th November, 2020 till 6th November, 2020. The counselling history of the petitioner reveals that he confirmed his seat in the first round of counselling and retained the same till the last round and he paid his fees on 19th October, 2020 i.e. the last date of payment of fee in round I. The petitioner reported in the Indian Institute of Kharagpur on 20th October, 2020.

According to the respondent institute, the petitioner had enough time to withdraw but he chose to retain his seat. As the petitioner got himself admitted in IIT in 2020 accordingly he is debarred from appearing in the JEE (Advanced), 2021.

According to IIT, the withdraw option is provided to (i) avoid wastage/blockage of seats (ii) enable students to improve their performance in the subsequent years and if eligible, participate again.

It is the case of the respondents that the admission policy has been devised by the authorised experts in academic matters and the same are available in the official website which is publicly available. There is nothing illegal or unconstitutional in the policy. In educational matters of policy, the decisions of the experts ought not to be interfered with by the Court.

The respondents rely on the judgment delivered by the Hon'ble Supreme Court in the matter of ***University Grants Commission & Anr. -vs- Neha Anil Bobde (Gadekar)*** reported in ***(2013) 10 SCC 519*** wherein the Court held that in academic matters, unless there is a clear violation of statutory provisions, the regulation or the notification issued, the Court shall keep their hands off since those issues fall within domain of the experts. The Court reiterated the view taken in earlier decisions of the Court that the Court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the Courts to leave the decision of the academic experts who are more familiar with the problem they face, than the Court generally are.

Reliance has also been placed on a Division Bench judgment of the Delhi High Court in the matter of ***Prateek Singhal -vs- National Testing Agency & Anr.*** reported in ***2019 SCC Online Del 10873*** wherein the Court was of the opinion that the High Courts must ordinarily forbear from interfering in the eligibility criteria laid down by academic bodies as they are in the nature of policy decisions and any interference therein is ill-advised and unwarranted.

The further contention of the respondents is that as the petitioner has participated in the entrance examination he cannot at this stage turn around and

challenge the eligibility criteria laid down therein. To augment his submission, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Madan Lal & Ors. -vs- State of Jammu & Kashmir & Ors.*** reported in ***(1995) 3 SCC 486.***

The mode of examination for holding JEE (Advanced), 2020 has also been relied upon. According to the respondents the petitioner has come up with a lame excuse of not getting a better rank on account of technical glitches and others. The candidates were made aware that the examination was to be conducted only in the computer-based test mode. To attain familiarity with the aforesaid mode the candidates were advised to take mock test as available in the official website. Detailed instructions for the examination were made known to the candidates and they were advised to go through the instructions very carefully. In case of malfunctioning of computer/mouse any time during the test the candidate is immediately allotted another computer system and the time lost is adjusted in the server to give the candidate the full allotted time of three hours to answer the questions in each paper. Candidates have the option to change/modify answers already entered any time during the entire duration of the examination. Steps required for exercising the withdraw option is also made known to the candidates.

According to the respondents the petitioner has lost the chance to appear in JEE (Advanced), 2021 as he accepted the seat allotted to him and failed to withdraw his candidature within the five rounds of counselling.

As regards the judgment delivered by the Hon'ble Supreme Court in ***Siddhant Batra -vs- The Director, Indian Institute of Technology (IIT), Bombay*** being ***Civil Appeal No. 4029 of 2020*** it has been submitted that the said order was passed by the Hon'ble Supreme Court exercising jurisdiction under Article 142 of the Constitution of India and according to the direction of the Court the same may not be cited as a precedent to open other cases.

Prayer has been made for dismissal of the writ petition.

The learned advocate representing the National Testing Agency submits that all the queries of the petitioner as regards withdrawal and subsequent chance to appear in JEE (Advanced) is available in the official website of IIT and the candidates interested to join IIT ought to have gone through the same prior to appearing in the exam.

According to the National Testing Agency their role is limited to invitation of online applications, conduct of examination and declaration of results. The issues raised by the petitioner come under the purview of Joint Admission Board and IIT Kharagpur being the organising institute is answerable to the issues raised by the petitioner.

I have heard and considered the rival submissions made on behalf of all the parties.

The petitioner is an IITian admitted in 2020 in Chemistry. He intends to compete in JEE (Advanced), 2021 for getting admission in Computers. He has appeared in JEE (Mains), 2021 and has qualified to appear in JEE (Advanced) 2021. The rules of the examination are standing as obstacles on his way for taking the JEE (Advanced), 2021 for the second time.

JEE (Advanced) Information Brochure clearly lays down that a candidate who has taken admission in any institute other than IITs in 2020 is eligible to appear in JEE (Advanced), 2021, that is, a candidate who has taken admission in IIT in 2020 becomes ineligible to appear in the JEE (Advanced), 2021.

The petitioner who appeared in the said examination last year is aware of the restriction. Being fully aware of the restriction the petitioner ought to have exercised his option in a prudent manner so as to preserve his right to appear in the examination for the subsequent year. The petitioner accepted his seat in the very

first round of counselling and also paid the fees for admission within the due date. The said action on the part of the petitioner implies that he had the intention to take up the course in IIT and consciously refrained from withdrawal. The same wasn't a mistake as claimed.

An issue has been raised with regard to the rationality involved in debarring a meritorious candidate from appearing in the entrance examination for the second time. It has been submitted that the institute cannot stand in the way of a student to drop out from the course in the midst of the term which may lead to wastage of the seat. It has also been submitted that had the petitioner withdrawn himself in proper time then candidates with lesser marks would have been eligible for admission. The petitioner strenuously contends he does not want any favour or reservation and he intends to compete the examination on the basis of his merit.

IITs are institutes of repute with excellent infrastructure and quality teaching and internationally acclaimed research. The faculty and alumni of IIT occupy key positions in academics and industry both in the country and beyond.

The eligibility criteria published in the information bulletin, Joint Entrance Examination (Advanced) 2021, mentions that a candidate can attempt JEE Advanced a maximum of two times in consecutive years. A candidate who had taken admission in any institute other than IITs in 2020 is eligible to appear in JEE Advanced 2021 provided the candidate satisfies other eligibility criteria.

The rules of the Joint Seat Allocation Authority (JoSAA) with regard to the eligibility to appear in JEE Advanced mention that candidates who reject their seats during the first five rounds or withdraw from allocated seats by completing all formalities can appear for JEE Advanced 2021 provided they meet all other eligibility requirements. Candidates who accept the allocated seat become ineligible for JEE Advanced in subsequent years. Candidates who paid seat acceptance fee in

2020 but had their seat cancelled, for whatever reason, before the last round of seat allotment for IITs are eligible to appear in JEE Advanced 2021, provided other eligibility criteria are fulfilled.

The same implies that a candidate for two consecutive chances can appear in JEE Advanced, provided the candidate does not get himself admitted in any of the IITs after he becomes successful in the first attempt. The same further implies that a candidate has to forego his seat for getting admitted in IIT even after he becomes successful in the first attempt to reserve his right to appear in the next year's exam.

According to IIT, the withdraw option has been provided to achieve two primary objectives: 1. Avoid wastage/blockage of seats, 2. enable students to improve their performance in the subsequent year and if eligible, participate again. If an unwilling candidate does not withdraw his seat, another willing and deserving candidate will not get the opportunity to get admitted in the said seat, ultimately leading to wastage. The provision acts as a disincentive to not waste seats by giving up unwanted seats so that the candidate may try again next year.

For better understanding, let me examine as to how seat is allocated. Candidates are allocated seat on the basis of their rank. Candidates with better rank get opportunity to exercise option first. If the candidates in the better position retain the seat, then the candidates lower in merit, lose the opportunity to exercise their option. It is only when a more meritorious candidate abandons the seat, that the less meritorious candidate gets an opportunity to exercise an option.

A candidate withdraws from a seat only if the seat is not according to his choice. The stream/subject combination/course may not be as per his desire or the institute where the seat is allocated to him is not according to his wish. In either of the situations a successful candidate may unwillingly take admission or voluntarily withdraw himself.

In the instant case, the petitioner was allocated a seat in the stream-Chemistry. He got himself admitted in the first round. According to him, he is better prepared this year and is interested to join a separate stream. But as he got himself admitted in IIT in 2020 he is debarred from appearing in JEE Advanced 2021.

What is to be examined is whether this restriction has been validly imposed.

One of the objectives of the withdraw option is to avoid wastage/blockage of seats. Assuming a case where a candidate after taking admission in IIT drops out mid-term, for any reason, can IIT stand in the way? Possibly not. The candidate may get a better chance elsewhere or may drop out if he cannot cope with the standard of education in IIT or for any other reason. IIT can never prevent a candidate from leaving the institution after joining, neither can IIT force a candidate to continue education in the said institution against his choice. Dropout will certainly lead to wastage of seat but, at times, the same is practically beyond the control of IIT.

As regards blockage of seats, it is always a better candidate who gets opportunity to exercise option first. It is only when the better candidate withdraws, does a less meritorious candidate get a chance. Plainly said, less meritorious candidates get a chance only if the better ones withdraw, that is, the institution is left with less meritorious candidates if the seats are not blocked by the better ones. Had the petitioner withdrawn himself then a candidate less meritorious than him would have been accommodated. An institution will always prefer to retain the best candidates. So the question of blockage of seats is misplaced.

The second reason to permit the option of withdrawal is to enable students to improve their performance in the subsequent years. The 'student' in this case ought to include each and every student who may choose and is eligible to appear in JEE Advanced. The same ought not to be restricted in respect of non IITians only. If the intention is to give one more chance to a candidate to get admission after improving

his standard, then there is no reason as to why the same opportunity not be extended to an IITian who intends either to change his course or institute. It may be that a candidate can better his standard and get chance in an IIT with better ranking or may get a chance in a separate stream. IIT is in a win-win situation in both the cases. IIT can retain the best candidate.

The condition of permitting only a non IITian to appear in the JEE Advanced for the second time does not appear to be a rational one. When a non IITian, previously pursuing a course in a separate institution, becomes successful in JEE Advanced in the second attempt, the candidate wastes the seat of the institution where he was studying. Seats of all institutions are equally important and ought not to be wasted. There cannot be any discrimination in respect of the value of seats of IITs and non-IITs. The moment a non-IIT candidate secures a seat in IIT in the second attempt, an equally invaluable seat gets wasted in a non-IIT institution. It is perfectly justified for IIT to select the best candidates from ones who compete against each other in a highly competitive entrance examination. It is only when the examination is made open to all candidates, irrespective of whether they belong to IIT or not, will the institution get a chance to pick up the best ones.

The submission of IIT that the rules are uniformly applied to all candidates and are carried forward in the subsequent years relying on which 847 candidates exercised withdraw option and any interference in the same would cause injustice to these candidates, cannot be accepted. The candidates exercised option to withdraw voluntarily either because the seat was not according to their liking or the subject combination was not as per their wish. Each of the candidates will get another chance to appear in the examination to prove his merit. There is no question of prejudice or injustice being caused to these candidates. On the contrary, the IITian, if permitted and is successful in the second attempt, will lose a valuable year if he takes admission afresh. Not all IITians would like to lose a year, so the

apprehension of opening floodgates, causing prejudice or wasting seats is not well founded at all.

Candidates like the petitioner who got themselves admitted but later on intends to better their mark, being debarred from taking the examination for the second time, stand in an inconvenienced position. It is candidates like the petitioner who are actually prejudiced for not getting an opportunity to improve their performance. As students are given second opportunity to appear in the examination, the same ought to be applied uniformly, irrespective of the fact whether they are IITians or not.

IIT ought not to stand in the way of the candidates to appear in the examination to test their merit and get themselves admitted in better ranking institutes or in a different stream on the basis of the rank they secure in the open examination. It is always better to have a candidate who has passion towards the course that he is pursuing than to force him to continue a course which is not of his liking. Merit being the prime consideration for admission, candidates should always be given the opportunity to explore and improve their quality.

When an IITian intends to participate in the JEE (Advanced) for the second time, it has to be taken that he is not comfortable with the seat that he is holding for some reason and he intends to compete once again. It may be, that he is unsuccessful to improve his ranking in the second attempt and chooses to retain his earlier seat, which means that the seat doesn't get wasted. If he succeeds to improve his score and gets a better ranking, he may get admitted afresh and IIT gets a chance to retain a better candidate.

Submission has been made that the decision to restrict IITians from appearing in the JEE Advanced for the second time is a policy decision and the Courts ought not to interfere with the same. Reliance has been placed on the judgments delivered

in the matter of Neha Anil Bobde (supra) and Prateek Singhal (supra) wherein the Court held that in academic matters, unless there is clear violation of statutory provisions, regulations or notifications, Courts should not interfere, since it falls within the domain of the experts. While deciding the said matter, Court relied upon earlier decisions where view was taken that Courts shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the Courts to leave the decision to the academic experts who are more familiar with the problems they face than the Courts generally are.

In the instant case, the petitioner has been debarred from taking the JEE Advanced examination for the second time only because he is an IITian. The petitioner got himself admitted in Chemistry but is desirous of studying Computers. It is not that the petitioner seeks any favour in getting an admission in the said course. He is ready to face the fierce competition that lies ahead him. He also risks losing a year. Not that he is ineligible to participate, but he cannot do so because of the bar. He has appeared in the JEE (Main) under order of Court and has secured a fairly high percentile. If he is not permitted to take the JEE (Advanced) exam, IIT will lose a brilliant candidate and the seat which he is presently holding will get wasted in the event he chooses to drop out.

The distinction that has been made between an IITian and a non-IITian in taking the exam for the second time is certainly arbitrary, and discriminatory. The same is in violation of the provision of Article 14 of the Constitution of India.

Madan Lal (supra) may not be applicable in the facts and circumstances of the instant case. The petitioner is neither an unsuccessful candidate nor is he challenging the process of selection. He merely wants a further opportunity to compete in the open entrance exams.

It is to be kept in mind that the petitioner neither prays nor is entitled to any extra advantage for appearing in the exams. He simply wants to face the competition once again to assess whether he has improved his standard. In case he improves and gets a better rank he gets opportunity to exercise fresh option or else he remains where he is.

It is true that the huge number of vacancies in the engineering institutes is a matter of concern for all, but at the same time an institute cannot exercise control over a candidate to such an extent that the candidate feels suffocated to pursue the course. Students of engineering institutes have to be taken as matured individuals with a freedom to choose an institution or a course according to his choice and continue the same if he is eligible to do so. It is perfectly justified for the institute to set up eligibility criteria to regulate admission, syllabus, combination of subjects and whatever is necessary for the advancement of learning. The object is to improve the quality of education in the country and prevent brain drain. It is for the leading institutions like IIT to evolve mechanisms to prevent drop outs from higher education courses. At times a relook becomes inevitable to keep pace with the changing demands and situations. Even a slight ray of sunlight can enlighten a blocked mind set; a gentle breeze may be enough to blow away the archaic ideas to give birth to a more inclusive competitiveness to search out a potential talent to take the country to greater heights.

I am of the considered opinion that the discrimination by way of restriction imposed upon IITians in taking the JEE (Advanced) for the second time is liable to be done away with. Equal opportunity ought to be afforded to both IITians and non-IITians to compete JEE (Advanced) in the second attempt.

In view of the above, the respondent nos. 1 to 6 are directed to revisit the issue in the light of the discussions made herein above and take a decision with regard to the petitioner's prayer for permitting him to appear in JEE (Advanced),

2021, at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order and to communicate the reasoned decision to the petitioner immediately thereafter.

In the event the respondents opine to reject the prayer of the petitioner, then the respondents shall not give effect to their decision for a fortnight from the date of communication of the same to the petitioner.

As the registration for JEE (Advanced) is scheduled in end August, the petitioner shall be permitted to register for the same and appear in the examination if no decision is taken in the meantime.

WP 11673 of 2020 is disposed of.

No costs.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)