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Court : Patna

Decided On : May-20-1994

Judge : Chy. S.N. Mishra and Mukundakam Sharma, JJ.

Appeal No. : C.W.J.C. No. 3588 of 1993 (R)

Appellant : Arijit Dutta and ors.

Respondent : Union of India (Uoi) and ors.

Disposition : Petition Dismissed

Judgement :

Chy. S.N. Mishra and Mukundakam Sharma, JJ.

1. In this writ application the petitioners challenge the process of admission of students in the Bachelor of Engineering/Bachelor of Architecture courses for the sessions 1992-93 and 1993-94 and contend that the same is vitiated by illegalities, irregularities and bunglings.

2. The case of the petitioners is that in response to the admission notice dated 10-1-93 issued by and on behalf of the Birla Institute of Technology, Mesra (shortly 'B. I. T. Mesra') (a deemed University) inviting applications for admission in the Bachelor of Engineering course for the Sessions 1993-94, the petitioners submitted their applications. Entrance examination for such admission was held en

29-5-1993 and 30-5-1993. The petitioners appeared and to their expectation they should have obtained not less than 75% marks in the said entrance examination. Further case of the petitioners is that in the prospectus it was clearly mentioned that the admission would be made on merit basis and the result of the entrance examination. It was also mentioned in the prospectus that the list of the candidates eligible for interview on the basis of the result of the entrance examination shall be published in the newspaper mentioned therein. According to the petitioners, respondent No. 3 published the merit list dated 19-8-1993 in the newspapers in which the names of the petitioners were not included. Subsequently a second merit list was published by the respondents 3 and 4 in the newspaper and in that also the names of the petitioner did not figure. The petitioners allege in the writ petition that only the first list issued/published on 19-8-1993 was on the basis of merits whereas in the second list issued on 21-9-1993 many such candidates had been included who actually did not compete on merit but were included solely on the basis of other extraneous considerations. Further case of the petitioners is that the respondents, without open advertisement in the newspaper or otherwise, admitted some students in the Bachelor of Architecture course in 1993-94 Sessions inviting students only of their choice in the so-called examination held on 29-5-93 at B. I. T. Mesra. Incidentally the said students admitted in Bachelor of Architecture course, had applied for Bachelor of Engineering course for the Sessions 1993-94 but were not selected for admission and, as such, the said admission is also vitiated by irregularities. The petitioners also challenge admission to the Bachelor of Engineering course for the Session 1992-93 on the ground that although admission to the said course was closed in October, 1992, on the basis of the merit list published by respondent No. 3, respondent No. 5 to 11 and about 50 other students have been admitted in April/May, 1993 who never competed on merit for the Sessions 1992-93 nor their names appeared in the merit list published by respondents 3 and 4.

Respondent Nos. 3 and 4 have filed their counter affidavit wherein they have stated that the petitioners were the candidates for the admission to the Sessions 1993-94 whereas those private respondents, namely, respondent Nos. 5 to 13 were the candidates for the Sessions 1992-93 with which the petitioners had no concern at all. The said respondents categorically denied that the petitioners had

done extremely well in the entrance examination. It is also denied that the said petitioners had obtained more than 75% marks in the entrance examination which would be evident from the fact that the petitioners could not get place in the first as well as second merit list published in the National and Local newspaper. It has also been denied by the said respondents that in the second merit list many candidates who did not compete, have been included on the basis of other consideration. They further stated that all the lists published/notified by the Institute for admission are on the basis of merit and marks obtained in the entrance examination only. With regard to the admission into Bacheor of Architecure course for the Sessions 1993-94 it is stated that the respondents/Institute had already mentioned in its information leaflet that the Architecture course would be introduced in future and that the All India council for Technical Education accorded approval on 6-9-93 to start the course from the said academic sessions with 20 students and accordingly, the said Branch was also put to the students of first and second merit list. Only a few students from the second list opted and those who qualified in the apptitude test, were admitted and as their number was very small, therefore, the Institute called from the same merit list more students and their names were notified on the notice Board and after their apptitude test they were admitted. In short, the respondents have denied all the allegations made in the writ application and stated that the admission test for the Sessions 1993-94 was held in accordance with the admission policy of the Institute and admission to the said sessions was entirely on the basis of merit and not on any other extraneous consideration.

3. On consideration of the aforesaid pleadings of the respective parties, it is apparent that in this writ application, apart from challenging the admission process for the sessions 1993-94 to which the petitioners were also aspirants, they have also challenged the process of admission for the Sessions 1992-93. Respondent Nos. 5 to 11 are all students who have taken admission in the said Institute in the branch of Bachelor of Engineering for the Sessions 1992-93 as against which the petitioners had never applied. In that view of matter the challenge of the petitioners to the process of selection for the Sessions 1992-93 is, more or less, by way of public Interest Litigation with which the petitioners have no concern at all. The said respondent Nos. 5 to 11 were admitted to the Bachelor of Engineering course in

the Institute in the year 1992 and by now they have completed more than one year. In view of aforesaid fact, we do not entertain the allegations of the petitioners in respect of the process of admission to the said Sessions 1992-93 relying on the decision of the Apex court in the case of Dr. Nandjee Singh v. P.G. Medical Students Association and Ors. reported in : AIR 1993 SC2264 laying down that an individual dispute could not be converted into a public Interest Litigation.

4. So far the allegations with regard to the process of admission to the Sessions 1993-94 is concerned, the petitioners have made only respondent Nos. 12 and 13 as party-respondents in the present writ application in order to show that there have been irregularities and illegalities in the process of admission/selection so far they are concerned. Respondent No. 12 appears to have been admitted to the Bachelor of Architecture course for the Sessions 1993-94 and he has been made a party in the representation capacity on behalf of ten similar students of the same institute. Similarly, respondent No. 13 admitted to Bachelor of Engineering course for the Sessions 1993-94 has been made a party in representation capacity on behalf of other non-resident Indians admitted in Bachelor of Engineering course for the Sessions 1993-94. The petitioners, therefore, have not been able to give any specific instance with regard to admission to Bachelor of Engineering course for the Sessions 1993-94 wherein they were candidates. The writ application, therefore, lacks material particulars for any effective inquiry with regard to the alleged irregularities and illegalities in the process of admission so far Bachelor of Engineering is concerned.

5. On the other hand, so far the admission to the Bachelor of Architecture course for the Sessions 1993-94 is concerned, it has been stated in the counter affidavit filed on behalf of respondent Nos. 3 and 4 that the said admissions were made on the basis of merit list based on the entrance test. There is no materials on record basing on which we can come to a definite conclusion that the said admission to the Bachelor of Architecture course for the Sessions 1993-94 is vitiated by irregularities and illegalities.

5-A. However, without entering into any inquiry and/or investigation to the allegations made specifically in the writ petition with regard to the admission to

Bachelor of Engineering and Bachelor of Architecture courses for the Sessions 1993-94, the present writ petition can be disposed of on a narrow and short question.

6. The entrance test for the admission to the Bachelor of Engineering course/Bachelor of Architecture courses for the Sessions 1993-94 was held in the month of May and the results were published in the month of August and September, 1993 and admissions were also over. The present writ application was filed in the month of November, 1993 and this Court by an order dated 2-12-1993 issued notice to the respondents 2 to 13 and also passed an interim order that in the meantime, respondent No. 3 should see that no candidate is admitted in the college whose name is not included in the final merit list published in the college. It has not been stated before us that there has been any non-compliance and/or violation of the aforesaid interim order passed by this Court on 2-12-1993. The writ petition was subsequently admitted and directed to be put up for hearing.

7. The Sessions of 1993-94 for which the present writ application is directed, is also going to be over within a period of one month's time. The apex court, in the case of State of Uttar Pradesh and Ors. v. Dr. Anupam Gupta etc. : [1992]1SCR643 , has held that a direction given by a court for admission after midstream of the Session is illegal inasmuch as to maintain excellence in the academic courses, the delay defeats the claim for admission, though posts are vacant. As both the Bachelor of Engineering course and the Bachelor of Architecture course are technical courses, it would not be proper and appropriate to give a direction to admit students many months after commencement of the Sessions. Similar observations have also been made by the the Apex court in the case of Dr. Suboth Nautial v. State of U.P. reported in AIR 1993 Supp (1) Supreme Court Cases 593. The students who have been admitted both to the Bachelor of Engineering and to the Bachelor of Architecture courses for the Sessions 1993-94, were innocent parties and had obtained admission in bona fide belief that their admission had been made properly and legally. They have been studying since the date of admission and in another one month's time their academic year will come to close. So far the said students are concerned, they have done nothing contrary to law. The petitioners have also failed to provide

specific instances of irregularities and illegalities committed by respondent Nos. 3 and 4.

8. In the aforesaid facts and circumstances of the case, the present writ application, in our opinion, has almost become futile and on useful purpose will be served by making a detailed investigation in the instant writ application to find out about the truth and veracity of the allegations made by the petitioners by calling for the answer books as also making indepth investigation into the allegations of the petitioners.

9. On the basis of the aforesaid proposition of law and on consideration of the entire facts and circumstances of the case, we do not feel it to be just and proper to interfere with the process of selection for admission, into Bachelor of Engineering/Bachelor of Architecture courses for the Sessions 1993-94 which is going to be over within a short span of time and, accordingly, we dismiss this writ petition but without costs.

10. Before parting with the case, however, we observe that the law relating to the admission to the professional courses have been conclusively laid down by the Apex court in the case of Unni Krishnan J. P. and Ors. v. State of Andhra Pradesh and Ors. : [1993]1SCR594 . Respondent Nos. 3 and 4 are bound by the observations and directions given by the Apex court in the said case. Accordingly, the respondents 3 and 4 are directed to formulate their admission policy and procedure for the ensuing session in terms of the said directions and observations of the Apex Court if not already done. It is directed that respondents 3 and 4 should strictly comply with the observations and directions of the Apex Court in the matter of admission to the professional courses in their Institute and there should not be any deviation therefrom at any cost. The admission to any of the professional courses must be based on merit and there should be no admission at all after the stipulated date fixed by the competent authority as has been observed by the Apex Court in the case referred to above.