

(2009) 01 JH CK 0058
In the Jharkhand High Court

Abdul Wadood and Another, Bhagwan Singh and The
Principal, Government Polytechnic

APPELLANT

Vs

The State of Jharkhand and Others and Sri Bhagwan Singh
and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2011) 2 JCR 284

Hon'ble Judges : Narendra Nath Tiwari, J;Ajit Kumar Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The said three appeals arise out of a common order dated 5.5.04 passed by learned Single Judge in W.P.(C) Nos. 840/2004 and 6161/2003. The appellants Abdul Wadood and Rajat Kumar Sanjay were the students of four years Part Time Diploma Engineering Course In Government Polytechnic, Ranchi and the appellants Bhagwan Singh and Harendra Sharma were the students of the said Course in Government Polytechnic, Dhanbad. They had preferred the said writ petitions challenging the notification being Memo No. 1533 dated 24.11.03 issued by the Secretary to the Government, Science and Technology Department, Government of Jharkhand cancelling their admissions in the Four Years Part-Time Diploma Engineering Course of the said Institutions for the Session 2001-04 and 2002-05.

2. According to the appellants, the Government Polytechnic, Ranchi has been running Part Time Diploma Engineering Course since 1962 whereas the Government Polytechnic, Dhanbad is running the said course since the year 1995.

3. The part time courses have their own eligibility criteria. The admissions to those courses were confined within the territorial limits of the polytechnic and the same were meant for only in-service students who are admitted only in particular discipline in which they are working.

4. On 5.5.1994 the All India Council for Technical Education (for short A.I.C.T.E) introduced new courses for Government Polytechnic, Dhanbad. It made certain changes in the system of admission. In the changed system, admission was to be taken on the basis of the result of the separate joint entrance examination without any territorial limits. The Government of Bihar also issued guidelines documents vide its letter dated 27.6.1994 (Annexure-25) known as C.T.E Programme for part time courses. According to the said documents, a C.T.E Management Committee was to be created for the arrangement and management of the courses. The guideline was silent regarding holding the separate joint entrance test.

5. The A.I.C.T.E Issued a letter dated 26.8.1994 to the Government of Bihar with reference to the eligibility criteria fixed by earlier letter dated 5.5.94 whereby the territorial limitation was modified and it was provided that the candidate seeking admission must be working within the radius of 50 K.M from the institution where admission is sought. The Government of Bihar Issued a circular dated 5.9.1994 with reference to the said letter of the A.I.C.T.E dated 26.3.1994 whereby all Government Polytechnics were asked to follow the guidelines regarding admission in the Diploma Courses. The said guidelines contained three annexures. Annexure-1 was the letter dated 26.8.1994, Annexure-2 was the form of advertisement and Annexure-3 was regarding constitution of a Management Committee.

6. The Government of Bihar issued another guideline dated 1.10.1994 (Annexure-28) providing that the Managing Committee constituted earlier for the course would also constitute an Admission Committee for selecting the candidates for admission at the college level and it would not be necessary to hold a joint entrance examination for selecting students for admission in the said course.

7. In the year 1995 a legislation, namely, the Bihar Combined Competitive Entrance Examination Act was passed making provisions for holding combined entrance examination. By the said Act the earlier centralized body constituted for entrance examination was superseded. A new body in the name of Bihar Combined Competitive Entrance Examination Board (for short B.C.C.E.E.B) was constituted. The said Act, however, provided that the B.C.C.E.E.B would hold examination for Degree level courses. There was no provision in the said Act for holding Diploma level entrance examination.

8. The Principal, Government Polytechnic, Ranchi faced with the said situation sought clarification and direction from the concerned authority regarding the process to be adopted for taking admission in Four Years Part Time Diploma Courses. It was pointed out that in absence of clear guidelines, the admission process is kept In abeyance which is prejudicial to the interest of the students seeking admission in the course and is also against public interest.

9. In response to that letter it was Informed by letter dated 17.6.1996

(Annexure-30) that an Admission Committee was constituted by the Government and that committee would select the candidates for taking admission. By subsequent letter dated 15.2.97 an enquiry was made from the Government Polytechnic, Ranchi as to whether the instruction Issued vide order dated 17.6.1996 regarding reservation was being followed. It has been stated that the Government Polytechnic, Ranchi has been following the instructions issued by the Government from time to time. On 8.11.1996 and 12.12.1997 the State Bureau of Technical Institution, which was constituted as a Nodal Agency for part time Diploma Programme, directed to constitute an Admission Committee and sent the same for approval. The same letter was also issued to the Government, Polytechnic, Dhanbad.

10. The said institutions, accordingly, constituted an Admission Committee and sent the same for approval. Approvals were also granted to Government Polytechnics, Patna and Barauni. In accordance with the said direction of the Bureau of Technical Institutions, Government Polytechnic, Dhanbad also constituted an Admission Committee and sent It for approval vide letter dated 14.1.1998. The Government Polytechnic, Dhanbad did not receive the approval of the Admission Committee and as such no admission was made In the said Institute since then.

11. In Government Polytechnic, Ranchi the admission was taken by the Admission Committee constituted and approved by the Government. The admissions were also taken by the other polytechnics such as Government Polytechnics, Patna and Barauni on getting approval of the Government.

12. In the meanwhile, the Principal, Government Polytechnics, Ranchi and Dhanbad wrote several letters to the Government regarding the guidelines for admission in the said institutions, as in absence thereof the admission process was getting delayed, but no reply or direction was communicated to the said institutions.

13. On 1.11.02 an Admission Committee was constituted for the Government Polytechnic, Dhanbad by the State Government.

14. The A.I.C.T.E had given extension to the Government Polytechnics, Ranchi and Dhanbad by its letter dated 17.7.03, but in the said letter also no guideline with regard to central counselling for admission was made.

15. A letter was written through the State Level Committee which was a nodal agency for regulating the management of the courses including the admission processes in Diploma Courses, regular as well as part time. But no provision for central counselling was made for selection and admission of the students in the said courses.

16. The Government Polytechnics, Ranchi and Dhanbad strictly followed the guidelines issued by the State Government for admission and there was no deviation from the same. The appellants of L.P.A Nos. 535/2004 and 556/2004,

who were eligible in all respects, were selected for admission in the said course in the written test conducted by the Government agency/committee constituted for that purpose. The said selection was made on the basis of the advertisement published in the newspaper and in accordance with the guidelines issued by the State Government.

17. It has been contended that till date the said procedure is being followed and the admissions were made strictly according to the guidelines and the procedures prescribed by the State Government. Information regarding the admission was given to the Government from time to time by the Managing Committee and the Principal of the said Institutions and no objection was ever raised by the Government regarding the admission procedures.

18. Suddenly by the impugned notification contained in Memo No. 1533 dated 24.11.03 issued by the Secretary to the Government, Science and Technology Department, Government of Jharkhand, the admission of the aforesaid writ petitioners in the Government Polytechnics, Ranchi and Dhanbad for Part Time Diploma Engineering Course for the session 2001-04 and 2002-05 has been cancelled.

19. Aggrieved by the said order of cancellation, the appellants Abdul Wadood and Rajat Kumar Sanjay preferred writ petition being W.P(C) No. 840/2004 and the appellants Bhagwan Singh and Harendra Sharma preferred writ petition being W.P(C) No. 6161/2003.

20. According to the writ petitioners, they were duly selected in the written test and interview held on the basis of the advertisement Inviting application for admissions and on their being successful in the said test, a selection list was prepared and on that basis, they took admission for the course. The entire process was duly communicated to the Government and there was no objection. Both the Government Polytechnics of Ranchi and Dhanbad are approved by the All India Council for Technical Institution for running the said course. All norms and rules are being followed by the said Institutes for admission in the Diploma Courses. There was no valid reason for cancellation of admission of the petitioners and that too, in the midst of the session and after allowing them to attend the courses after their admission and without giving them any notice and opportunity of representation.

21. The respondents, on the other hand, supported the impugned order. It was contended that the All India Council of Technical Education, which is the Apex Body for technical education, by its letter dated 5.5.1994 has clearly provided that the admission in Part Time Diploma Course to all Government Polytechnics should be made on the basis of a joint entrance examination. The writ petitioners were admitted to the said Institutions without following the said norms and without holding a joint combined competitive examination. The Government of Bihar had constituted a committee for the purpose of managing the programme and not for holding the examination for the purpose of taking admission. There

was clear violation of the norms and guidelines in the admissions of the writ petitioners to the said Institutions. Learned Single Judge considering the said submissions and the letters by which the approval for extension of the said Institutions was given on the condition that admission should be taken on the basis of a separate joint entrance examination through central counselling by the Government of Jharkhand refused to grant relief to the petitioners and dismissed the said writ petitions, as the admissions were taken without following the prescribed norm.

22. Assailing the said order of learned Single Judge, the appellants as well as the Principal of Government Polytechnic, Dhanbad (appellant in L.P.A. No. 590/2004) urged that the Memo No. 1533 dated 24.11.03, whereby the admission in the Government Polytechnics, Ranchi and Dhanbad for Part Time Diploma Engineering Course for the session 2001-04 and 2002-05 has been cancelled, is wholly discriminatory, arbitrary and without legal justification. It has been submitted that the applications were invited for admission by advertisement in the newspaper. Written test and interviews were held. A selection list was prepared and the same was sent to the Government. But no objection was raised by the respondents. The said procedure was adopted in accordance with the earlier letters and circulars of the Government of Bihar whereby the Managing Committee constituted for the courses had to constitute an Admission Committee at the college level and admissions were taken by the Admission Committee.

23. The said institutes are run by the Government and the Government circulars/directions are binding on them. Though the A.I.C.T.E is the central body for regulating the technical institutes, it is a recommendatory body and on the basis of its recommendations and guidelines the State Government has to issue specific circular for the institutions falling within its territories. But no circular modifying the earlier procedures of admission was issued by the Government till date. The Government of Jharkhand did not hold any combined entrance examination nor made any arrangement or provision for central counselling for admission. Thus, the appellants' admissions were taken in accordance with the procedures prescribed by the State Government according to the Government's rules and circulars under which admissions for the course were taken by holding written and oral tests and on the basis of the selection list. The students who had taken admission in accordance with the said procedure cannot be faulted. They are not a party of any fraudulent scheme. They cannot be punished and condemned unheard for the default of the authorities.

24. Learned Counsel appearing for the State-respondents although tried to defend the impugned notification whereby the admissions of the said students have been cancelled, they fairly admitted that no combined entrance examination for admission in Part Time Diploma Engineering Course was ever held by the Government nor any selection was made through the central counselling so far and the same procedures for admission by which the said candidates were selected has been in vogue. There was no change in the process

of selection in spite of the aforesaid guidelines of the A.I.C.T.E providing admission through the central counselling by the Government.

25. From the facts emerging on record, we do not find any deliberate fault on the part of the candidates who took admission after being selected in the selection procedure which is in practice in this State since the time of inception of the said course, in the said Institutions.

26. Now the main issue in question is as to whether the selection of the candidates as per the prevalent norms in the State was justified without following the procedures and guidelines issued by the A.I.C.T.E and as to whether the same deserves to be scrapped and rendered nugatory.

27. It is true that the norms and guidelines issued by the A.I.C.T.E, though recommendatory, are meant to be followed in order to maintain uniformity in the standard of technical education. But when the Government itself failed to act upon it and follow the guidelines and chose not to hold the combined entrance examination and by not making selection through the central counseling, they themselves are to be blamed and faulted. Should the students who bonafidely appeared and passed the prescribed test for admission, got selected and took admission, be thrown out in the midst of session by the respondents who failed to follow the said guidelines for holding combined entrance examination. The respondents cannot be allowed to blow hot and cold at the same time. The students cannot be made to suffer and penalised for the failure and default on the part of the respondents in Implementing the guidelines of the A.I.C.T.E and making arrangements for holding Combined Entrance Examination for the course.

28. By order dated 13.12.05, a Bench of this Court while admitting the said appeals had allowed the appellants to continue their studies in the said Institutions until further order.

29. It has been informed that by virtue of the said order, the students have completed their studies.

30. In view of the preceding discussions, we hold that the respondents who have not been able, so far, to frame any rule for holding the combined entrance examination for admission to the said course or for making selection through the central counselling, are not entitled to condemn the procedures of selection of the petitioners who have been admitted after due selection in accordance with the so far prevalent procedure and the impugned notification issued by Memo No. 1533 dated 24.11.03 is not legally Justified.

31. Learned Single Judge has held that since the condition of the All India Council for Technical Education has not been followed in the said selection process, the petitioners' admission cannot be approved, but he has not considered the other aspect that there was no other entrance examination for selection of the candidates for admission in the said course and that the students who had got their admissions after due selection in the entrance test, written and

oral, are not at fault and they cannot be made to suffer for non-implementation of the guidelines of the A.I.C.T.E by the respondents. There is no Justification for cancelling the admissions of those candidates in the midst of the session The order of cancellation of their admissions is wholly unreasonable, inequitable, discriminatory and unsustainable and the same is, hereby, quashed. The impugned order of learned Single Judge, refusing to interfere with the said order, is set aside. These appeals are allowed.

32. Before we part, it Is made clear that this order should not be interpreted as giving any concession to the technical institutes for admitting the students without following the norms and guidelines of the A.I.C.T.E. It is high time that the State-respondents should come with the uniform rule for holding the entrance examination according to the terms of the guidelines of the A.I.C.T.E for future admissions in the institutions for the said course. This order should also not be taken as a precedence, as this order is intended to protect the interest of the petitioners-appellants, who have continued and completed the course on the basis of the order dated 13.12.0b, passed by this Court. In any case the petitioners cannot be made to suffer for the default of the authorities.