
(2014) 08 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : LPAOW No. 33/2014, CMA No. 42/2014, LPAOW No. 34/2014 and
CMA No. 43/2014

Atul Khajuria and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2015) 1 JKJ 688

Hon'ble Judges : Virender Singh, J;Bansi Lal Bhat, J.

Bench : Division Bench

Advocate : Sunil Sethi, Sr. Avocate and Veenu Gupta, Advocate, for the
Appellant; S. Shekhar, A.A.G., for the Respondent

Final Decision : Disposed off

Judgement

Virender Singh, J.â?"The appellants herein are aggrieved of the judgment of learned Single Judge dated 24th of April, 2014 whereby two

connected petitions (OWP No. 310/2014 filed by Atul Khajuria and Ors. and OWP No. 311/2014 filed by MIET (Jammu) stand dismissed.

Since issue involved in both the appeals is virtually the same, therefore, we have also clubbed them together for adjudication.

2. Board of Professional Entrance Examinations (hereinafter to be referred to as ""BOPEE"") published a notification in the leading Dailies of the

State for conducting Common Entrance Test (CET) 2013 on 22nd and 23rd of June, 2013 for various courses including B.E. Courses for

admission to Government Engineering Colleges as well as Private Professional Engineering Colleges including Model Institute of Engineering and

Technology (for short 'MIET) Jammu.

3. Due to certain irregularities, the aforesaid examination was cancelled and

fresh CET was conducted on 27th and 28th of July, 2013.

4. It needs to be mentioned here that since BOPEE could not conduct the aforesaid examination adhering to the schedule for admission as

formulated in the judgment rendered by Hon'ble Supreme Court in the cases of Parshavnath Charitable Trust and Ors. v. All India Council for

Technical Education and Ors. and Chetan Pathara and Anr. v. All India Council for Technical Education and Ors. (Civil Appeal No. 9048 of

2012 and Civil Appeal No. 9047 of 2012, decided on 13.12.2012), BOPEE had filed an application before Hon'ble Supreme Court registered as

I.A. No. 6 in Civil Appeal No. 9048/2012, seeking exemption of the State of Jammu and Kashmir from the Schedule specified in the judgment

rendered in Parshavnath Charitable Trust's case (supra). The Hon'ble Supreme Court on August 6, 2013 while extending the time disposed of the

aforesaid application observing as under:

We have heard learned counsel for the parties.

We are not inclined to exempt the State of Jammu and Kashmir from the schedule specified in the judgment dated 13th December, 2012 passed

by this Court in Parshavnath Charitable Trust and Ors. v. All India Council for Technical Education and Ors. but we extend the time for admission

for the academic session 2013-14 till the 30th of September 2013 on an undertaking given on behalf of the J & K Board of Professional Entrance

Examination that the colleges if necessary will hold extra classes to fulfill the number of classes prescribed by the AICTE for the academic session

2013-14. Application stands allowed in the above terms.

5. It is thereafter vide notification No. 33-BOPEE of 2013 dated 06.08.2013, the short listed candidates were informed of their counseling as per

the schedule. For PCM (Engineering Discipline/Institution allotment), the students were to be counseled w.e.f. 26.08.2013 to 02.09.2013.

However, due to addition of Yogananda College of Engineering and Technology YCET), Jammu and in view of increase in approved intake

capacity in civil and engineering discipline of SSM College of Engineering and Technology, Parihaspora, Pattan, Kashmir, a fresh counseling

schedule was held from 26.08.2013 to 04.09.2013 for admission in private engineering colleges only. Thereafter, on 19.09.2013, vide notification

No. 46-BOPEE of 2013 dated 19.09.2013; BOPEE informed the students about

the short fall of engineering seats and in order to fill up the vacant seats in Engineering courses, the interested candidates were invited to attend the counseling w.e.f. 23.09.2013 to 26.09.2013. The final round of counseling, however, was fixed by BOPEE on 30th of September 2013.

6. For regulating grant of permission, grant of recognition or grant of affiliation to the professional colleges, Hon'ble Supreme Court in its judgment

rendered in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , has evolved a scheme as crystallized in

paras 206 onwards. Para 210(2) provides for selection for admission on the basis of merit secured in Common Entrance Examination. Rule of

merit has to be followed even in reserved categories. It is provided that number of seats available in the professional colleges to which the scheme

is made applicable shall be fixed by the appropriate authority and directions controlling the admission process are to be construed and applied in

'strict sense'. A direction was issued to all the State Governments to implement the scheme for regulating admission to such institutions, pursuant

thereto, Government of Jammu and Kashmir vide SRO 51 has notified on 30th of January 1997 the rules called as ""The Jammu and Kashmir

Private Technical Education Institutions (Selection and Admission) Rules, 1997"" (for short ""Rules of 1997"").

7. Since Rule 4 of Rules of 1997 deals with the conduct of Common Entrance Examination and selection for admission of candidates, it is

reproduced as it is:

4. Conduct of Common Entrance Examination and Selection for Admission -- (1) The Competent Authority, Entrance Examinations shall conduct

a Common Entrance Examination for selection against the available seats in Private Technical Education Institutions as well as Government

Colleges/Institutions/Polytechnics on the pattern and in the manner prescribed by the said Authority.

(2) The Competent Authority, Entrance Examinations shall prepare a common merit list on the basis of inter se merit of the candidates in the

Common Entrance Examination in the descending order.

(3) The selection of the candidates for admission to Technical/Professional Courses against Free seats in Private Technical Education Institutions

shall be made strictly on the basis of their merit in the Common Entrance

Examination. The selection of the candidates against payment seats shall be based on the merit in accordance with the choice preferred by the candidate.

4. The Course and College allocation shall be made as far as possible in accordance with the descending order of the preferences given by the candidate in his/her application form depending upon the availability of seats.

5. The Course and College allocation once made by the Competent Authority shall be final. The Private Technical Education Institution shall be bound to admit the students so allocated by the Competent Authority, Entrance Examination.

6. The selection list so prepared shall be got published in at least two leading local dailies of Srinagar and Jammu and it shall also be displayed at the Office of Competent Authority, Entrance Examinations in Jammu and Srinagar.

7. Competent Authority, Entrance Examination shall also prepare and publish a waiting list of the candidates indicating the marks obtained by them

in Common Entrance Test. The said list shall be followed for filling up of casual/drop-out vacancies from the select list as reported to them by the

concerned Principal/Heads of the Institutions/Colleges. Such vacancies shall be filled in the descending order of their merit until such date as may

be prescribed by the Competent Authority, Entrance Examination. Any vacancy remaining unfilled after such date can be filled by the management

of the Institutions/Colleges under intimation to the Competent Authority, Entrance Examinations, provided that the management shall keep the inter

se merit of the candidates in view while filling up the remaining vacancies; provided further that all the selected candidates must possess the

minimum marks prescribed for entrance test".

8. MIET Jammu has sanctioned intake capacity of 360 seats for four Engineering Courses in the following break-up:

9. The Institute anticipating that it may not get the students to the extent of its intake capacity, on account of delayed schedule of counseling by

BOPEE, issued notice in two daily newspapers, namely "The Daily Excelsior" in its issue dated 28.09.2013 and the other daily "the Shadow" in its

issue dated 29.09.2013 under the caption B.E. Admissions under Open Merit.

10. An intimation was also sent to Secretary, BOPEE by MIET vide its letter No. MIET/2013/1049/51 dated 26th of September, 2013 in which

it was made clear that vide notification No. 49-BOPEE of 2013 dated 25.09.2013, BOPEE was engaged in counseling for admission to four year

degree course against shortfall seats in various institutions and with regard to vacant seats, the institution is under obligation to fill its vacant seats

under the provisions of SRO 51 of 1997 dated 30.01.1997 by resorting to sub rule (7) of Rule 4 of Rules 1997.

11. In response to the aforesaid letter dated 26.09.2013, BOPEE vide its letter No. BOPEE/Adm-02(II)/G/2013/456-60 dated 27.09.2013

conveyed to MIET that BOPEE had conducted 2nd round of counseling of the left over seats together with the short fall from 24-27th September

and final round of counseling was fixed for 30th of September 2013 for 16 and 53 left over seats of computer and IT respectively together with

other colleges of Engineering wherever seats were left vacant. MIET was also informed by BOPEE that the short fall of seats communicated to

BOPEE has been incorporated in the seat matrix for counseling of the students for admission to different streams of engineering and in case, the

notice has been published, the college has done it at its own risk and responsibility and that the admissions made thereof shall not be confirmed by

the BOPEE as the final round of counseling has been fixed.

12. Admitted position is that in the last round of counseling held on 30th of September 2013, candidates were given to MIET for counseling and

admissions also made. So the Institute had the shortfall of 64 seats.

13. MIET claims to have admitted 33 students out of the short fall of 64 students on 30th of September, 2013 which was the last date for

admission.

14. It is thereafter, MIET vide its letter No. MIET/2013/1422 dated 14.11.2013 addressed to Secretary Technical Education, (respondent

herein) highlighted that BOPEE conducted last round of counseling on 30th of September 2013 and at the end of closure of the counseling, there

was shortfall of 15 seats in the discipline of CSE and 44 in the discipline of IT. Therefore, the Institute in terms of Rule 4(7) of Rules 1997 had

initiated the process for filling up those seats in terms of the aforesaid intimation dated 26.09.2013, in response thereto, 70 candidates offered

themselves for registration for admission against the vacant seats (list was enclosed with the said communication). A request was, thus, made to

Secretary Technical Education for approving the action taken by MIET in filling up the vacant seats in terms of aforesaid SRO 5 of 1997 under

sub rule (7) of Rule 4 as per CET-2013 merit with an undertaking that the admissions shall be made strictly as per the merit secured by them in

CET 2013 and that the institute shall not deviate from the same.

15. In response to the aforesaid letter, Under Secretary to Government Technical Education/YSS Department vide its letter dated 20.12.2013

conveyed to MIET that the details of the admissions made under Rule 4(7) of Rules 1997 should be furnished to Secretary, BOPEE and also to

University of Jammu for purpose of registration which will be subject to the condition that in no case registration shall be granted to any candidate

possessing marks less than the marks prescribed for participation in the Entrance Examination.

16. It is thereafter, MIET in its letter No. MIET/2013/1450 dated 23.12.2013 addressed to Deputy Registrar (Registration) University of Jammu

submitted Registration Returns (RRs) OF 33 students of B.E. first Semester (2013 batch) along with Demand Draft of Rs. 26,780 (Rupees twenty

six thousand, seven hundred and eighty only) informing the University that the candidates have been admitted to the course in terms of Rule 4(7) of

SRO 51 of 1997. On the same date, MIET vide its letter No. MIET/CE-BE/2011/1451 dated 23.12.2013 sent the examination forms of those

33 students to University of Jammu along with Demand Draft of Rs. 40,260 (Rupees forty thousand, two hundred and sixty only).

17. It is thereafter, MIET in its letter No. MIET/BOPEE/2014/1530 dated 09.01.2014 addressed to Secretary BOPEE requested for

authentication of Registration Return of the these 33 students, in response thereto, BOPEE vide its letter No. BOPEE/COE/03/2010-11 dated

29.01.2014 conveyed to MIET that since the admissions had to be completed by 30th of September 2014 as per the directions of Hon'ble

Supreme Court, therefore, the proposal sent by it to BOPEE was not in accordance with SRO 51 of 1997, hence the request was not tenable.

18. The aforesaid communication dated 29.01.2014 rejecting the request of MIET for authentication of Registration Returns of 33 students

admitted in B.E. course (Sessions 2013-14) in terms of SRO 51 of 1997 was questioned by MEET through the medium of OWP No. 311/2014

seeking quashment of the said communication with a prayer that BOPEE should be commanded to authenticate the Registration Returns of 33

students admitted on 30th of September 2013 by MIET in various disciplines of B.E. Course and transmit its decision to the University of Jammu

for further necessary action. Further prayer was to command the University of Jammu to issue admit cards in favour of those 33 students of B.E.

course.

19. The students (33 in number) who were admitted in MIET also filed a separate writ (OWP No. 310/2014) seeking the same relief. Hence,

both the writ petitions were clubbed together.

20. The learned Writ Court formulated the following two questions for determination:

1. Whether the petitioner-Institute was competent to issue notice for admission of the candidates on the basis of merit in JK CET-2013 subject to

shortfall in seats, if any, by invoking Rule 4(7) of the Jammu and Kashmir Private Technical Education Institutions (Selection and Admission) Rules

1997 hereinafter referred to as Rules).

2. Whether the admission of 33 candidates was completed on 30th of September itself. If the admission of 33 students was completed on 30th

September, why Registration Returns of these 33 candidates were submitted to the University on 23.12.2013, that too, on the basis of the letter

addressed to the petitioner-institute by the Under Secretary to Government, Technical Education/YSS Department on 20.12.2013".

21. With regard to Rule 4(7) of Rules of 1997, the finding returned by the learned Writ Court is that due to disturbed schedule, candidates to the

extent of sanctioned intake capacity were not provided to all the private colleges including MIET and no other institute has ventured to invite

applications for admission of its own and that the admissions are regulated in accordance with rules which owe its origin to the scheme evolved by

the Hon'ble Supreme Court and in view of the disturbed, schedule, last date for admission was extended by Hon'ble Supreme Court as

30.09.2013, on which date, the counseling was done, therefore, there was no scope for taking resort to Rule 4(7) of Rules of 1997. It was further

observed that BOPEE has an important task to ensure that the merit is not allowed to be ignored and it is only in the same background, even in

terms of Rule 4(7), confirmation by BOPEE was imperative which has been declined in this case. So primarily question No. 1 has been answered

against MIET by the learned Writ Court, observing that there was no scope for taking resort to Rule 4(7) of Rules 1997.

22. While answering question No. 2, a categorical finding has been returned by the learned Writ Court that the admission of 33 students was not

made on 30.09.2013, rather letter dated 14.11.2013 addressed by MIET to Secretary Technical Education suggests that 33 students were not

admitted even up to 14.11.2013. While arriving at the said conclusion, the learned writ Court has referred to other communications between

MIET and University of Jammu as well. In nutshell, it is observed that the process of admission initiated by MIET was in contravention to the

directions of Hon'ble Supreme Court which had provided last date for completing the process as 30.09.2013 and that the admissions have been

made by the said institute much after the said fixed date.

23. Being aggrieved of the judgment rendered by learned Writ Court, MIET and 28 students out of 33 students are before us through the present

two Letters Patent Appeals.

24. Heard learned counsel for both the sides and gone through the record.

25. Mr. Raina, learned Sr. Advocate appearing for MIET took the lead and submitted that the Management of the Private Educational Institutions

which are governed by SRO 51 of 1997 have a right on the strength of said SRO to supply/fill any other vacancy which remains unfilled after

BOPEE issues its list of the candidates selected for its counseling. He submitted that the select list issued by BOPEE includes the wait list as well

and with regard to all those vacancies which may be available with a private Institute and remained unfilled because of any reason including the

reason of Competent Authority (BOPEE) not making use of entire intake capacity of a college in offering those seats to the candidates, who figure

in the merit list and also the new vacancies which may be there because of non participation or non operation of the waiting list, the private

Education Institutions have a right to supply those vacancies as per Rule 4(7) of Rules of 1997.

26. Mr. Raina would contend that till the operation, of the waiting list, all the vacancies have to be supplied/filled up by BOPE alone, but the

expression used in the Rule in its ending ""any vacancy remaining unfilled after such date can be filled by management of the Institute/College under

intimation to the competent authority, Entrance Examination"" has its significance. According to learned counsel, any vacancy remaining unfilled after

such date as is occurring in the last portion of sub rule 7, the management of the private institute/college is shown as the authority competent to fill

up the said vacancy after intimating Competent Authority, Entrance Examination.

27. Learned senior counsel contended that in fact a confusion has been created by BOPEE by pleading that it is the Competent Authority who

alone can fill the vacancies i.e. any vacancy remaining unfilled, whereas sub rule 7 never intended such a situation for the reason that if competent,

authority alone had the power to fill up any vacancy remaining unfilled as is referred to in sub rule 7, the question of management of the

institute/college sending any intimation to the competent authority, entrance examination would not arise and that reading of 2 provisos to sub Rule

7 makes it more clear as proviso 1 directs the management to keep inter se merit of the candidates while filling remaining vacancies and proviso 2

makes it mandatory on the management to ensure that selection is made only by those candidates who possess the minimum marks prescribed for

entrance test.

28. Adverting to the facts of the present case, Mr. Raina would contend that with respect to the extended reach of rule 4(7) of SRO 51 for the

purposes of appreciating the stand of MIET, the same is set at rest by Hon'ble Supreme Court in Parshavnath Charitable Trust's case (supra), by

fixing the appropriate schedule for admission to be observed and adhered to in which Hon'ble Supreme Court has referred to seats remaining

vacant after 1st of August of the relevant year, have to be duly notified and advertised and have to be filled by 15th of August. The said schedule

framed by the Hon'ble Supreme Court has been declared to be law. While referring to column 6 and 8 of the said schedule, learned counsel

contended that it would leave no one in doubt that apart from three rounds of counseling which alone is the right of Competent Authority as per the

said schedule, right of 4th round of counseling has not been given as the expression used in column 6 of the said schedule ""last date of admitting

candidates in seats other than allotted above"" makes it clear that management

of the private institute has every right to supply vacancies remaining unfilled after the last date as is occurring in sub rule 7. From this, learned senior counsel wanted to develop the proposition that by following sub rule 7, the private institute has a right of 25 days to supply vacancies from the last round of counseling by Competent Authority and even after commencement of the academic session.

29. Learned counsel submitted that BOPEE itself has not adhered to the appropriate schedule for admission as formulated in Parshavnath Charitable Trust's case (supra), even after getting the time extended by orders of Hon'ble Supreme Court, whereas, in all fairness, it should have closed its last round of counseling at least 25 days before 30th of September, the last date fixed by Hon'ble Supreme Court and in the present case, it continued up to the last date of counseling i.e. 30.09.2013, thereby virtually snatching the right of the private institutes to resort to Rule 4(7) of Rules of 1997.

30. Learned counsel submitted that the Institute has intake capacity of 360 sets and if BOPEE would have supplied all the sanctioned seats to MIET question of resorting to Rule 4(7) of Rules 1997 would not arise. Therefore, MIET was within its legal right to resort to Rule 4(7) in anticipation apprehending that BOPEE would not be in a position to supply all the seats to it as per its intake capacity, as such, issued notices to the desirous candidates well in advance so that they could get themselves registered with the institute for the purposes of their admission after the last round of counseling by BOPPE on 30th of September, the date fixed by Hon'ble Supreme Court. Learned counsel submitted that this was the reason that it was made clear in the two notices issued by MIET that the admissions shall be made after 1 pm i.e. 2nd half of the last date of counseling.

31. On the strength of aforesaid submissions, Mr. Raina submitted that the finding returned by the learned writ court that there was no scope left with MIET for having resort to rule 4(7) of rules 1997 is not correct, if tested on law and the individual facts of the present case. He however fairly conceded that if the Court comes to the conclusion that right to resort to Rule 4(7) of Rules of 1997 was not available to MIET in anticipation of availability of vacant seats remaining unfilled, perhaps recording of finding on the

second aspect as to whether the admissions of 33 candidates were made by MIET on 30.09.2014 or thereafter is not required as it would be an exercise in futility, whereas his specific case is that all the 33 candidates were admitted on 30.09.2013 itself.

32. Mr. Raina, then contended that the 2nd question which has been answered by learned writ Court against MIET relates to, whether the admissions made by the institute were made on 30th of September or not is based on facts and this question would arise if an assertion made in the pleadings is denied by the opposite party, whereas that is the fact situation in the case on hand. He submitted that had the opposite side during the course of arguments joined issue on this factual aspect, the MIET could reply, therefore, institute is taken by surprise and for this reason only, with the memo of appeal, MIET has placed on record the documentary evidence in the shape of receipts relating to the admission of 33 candidates on 30th of September itself.

33. Learned senior counsel submitted that MIET has pleaded in its writ petition that it had initiated the counseling after BOPEE had finished its counseling, registration of which it had closed at 10.30 in the morning, which alone was the reason for the candidates who were called for counseling on 30.09.2013 were constrained to approach MIET instead of coming through BOPEE and ultimately 33 candidates were admitted on 30.09.2013. Learned counsel submitted that had it been a case of any one from the respondents' pleading that they were objecting to the admission of 33 candidates having been made after 30.09.2013, it should have been pleaded before the writ Court as one of the main objections, may be preliminary one or objection on merits but it is not so pleaded. Therefore, the necessity of formulating the question by the learned Writ Court, according to learned counsel, had not arisen at all.

34. Learned senior counsel submitted that the basis for recording finding on this aspect against MIET by the learned writ Court revolves around letter dated 14.11.2013 addressed by MIET, wherein after extraction of rule 4(7) of Rules of 1997, the institute had clearly indicated, ""you are requested to kindly approve the action taken by the institution in filling the vacant seats in terms of SRO 51 of 1997 under sub-section 7 as per the CET-2013 merit"" and this clearly indicates beyond any doubt that the institute

was seeking approval for its action already taken i.e. the admission of 33, whereas the learned Writ Court has laid much stress in reading the last para of the letter where expression used is ""admission shall be made.

35. Learned senior counsel would contend that the finding returned by the learned writ court that the institute made admission after 30.09.2013

and was continuing to do so up to 14.11.2013 is absolutely contrary to the facts, therefore, on this aspect, it can be said that it is the judgment with

respect to which there is no pleading or any proof.

36. Learned senior counsel then submitted that the learned writ Court has also considered another communication dated 23.12.2013 against

MIET as on this date, the institute had submitted registration returns of 33 students observing that why the registration returns were not submitted

by the institute preferably in the month of October 2013 and that MIET tried to justify its action when BOPEE in categorical terms had informed the

institute that in case the notice of admission has been issued the college has done so at its own risk and responsibility and that the admissions made

shall not be accepted by the BOPEE. Learned counsel submitted that in fact the institute had supplied the RRs on three different dates i.e. 26th

November-285 students, 29th November-15 students and 23rd December-33 students, the first exercise for sending RRs in bulk of students was

done on 26th of November which was accepted by the University itself and that 33 students admitted by the institute by referring to rule 4(7) of

SRO 51 could not be made part of RRs of 26th of November as the institute had started its exercise for getting authentication of admission made

on 30-09-2013 vide letter dated 14.11.2013, but the Government up to 20th of December slept over the matter and did not reply to the said

communication. Learned senior counsel contended that it is after getting the response from the Government who is the author of SRO 51 which

was sent to the institute on 20.12.2013, RRs of 33 students were sent and this aspect has not been considered by the learned Writ Court in right

perspective resulting into an adverse finding against MIET by giving an impression, as if the institute kept the admissions open for the candidates

even after 30.09.2013, the last date of counseling fixed by Hon'ble Supreme Court. Learned counsel, thus submitted that the finding returned by

the learned Writ Court on factual aspect of the matter vis-a-vis the second question formulated for its determination is also not correct.

37. Mr. Raina, on the strength of aforesaid submissions, prays that LPAOW No. 34/2014 filed by MIET may be allowed by setting aside the

impugned judgment of learned Writ Court and that the appellant-institute may be granted all the reliefs as prayed for by allowing OWP No.

311/2014.

38. Mr. Sethi learned Sr. Advocate while toeing the arguments advanced by Mr. Raina, added that although LPAOW No. 33/2014 has been filed

by 28 students, but the career of 33 students is at stake who responded to the notice of the MIET and got admission on 30.09.2013 only. He

submitted that on the strength of interim order dated 22nd of May 2014 passed by this Court, the appellants-candidates have been allowed to sit

in the classes of the first semester and thereafter they did not take the final examination of the first semester and that the examination of the second

semester is likely to be conducted very shortly may be somewhere in the end of August 2014 or in the start of the September 2014, therefore, in

the event of their appeal being allowed, the present case on its peculiar facts keeping in view the career of the students who are not at all at fault,

calls for special-directions so as to save their one academic year.

39. Mr. Anil Sethi appearing for BOPEE submitted that BOPEE conducted Common Entrance Test 2013 on 27-28th of July 2013). As BOPEE

was not in a position to complete the entire exercise within the stipulated period as per the schedule fixed by the Hon'ble Supreme Court, it moved

miscellaneous application before Supreme Court for extension of time to conclude the admission process which was extended up to 30th of

September 2013. Learned counsel submitted that immediately after the result was notified of the short listed candidates vide notification No. 32-

BOPEE dated 06.08.2013, BOPEE vide notification No. 33/BOPEE on 06.08.2013 itself fixed the counseling schedule and that 1298 candidates

were called for counseling/allotment from 26.08.2013 to 02.09.2013 against 1546 seats. The counseling was however extended for two more

days i.e. 3rd and 4th of September by partial modification of the earlier notification No. 33 dated 06.08.2013 and the candidates up to the rank of

1680 were called for allotment of seats and thereafter the counseling was again

extended for another three days i.e. 5th, 6th and 7th of September

2013 and the candidates from the rank of 1681 to 2500 were called for counseling, thus, after this round of counseling, only 948 seats remained

unfilled in all the Engineering colleges of the State.

40. Learned counsel submitted that BOPEE started second round of counseling w.e.f. 23.09.2013 to 26.09.2013 for upgradation and allotment

against unfilled 948 seats and that the candidates from the rank 1 to 4200 were called for upgradation/allotment against the available vacancies of

948 seats and that BOPEE could fill up only 158 of the seats during this period of counseling, as such, counseling was extended up to 27th of

September 2013 and the candidates from the rank of 4201 to 5700 were called for allotment/upgradation and 400 seats were accordingly filled

up. BOPEE, as such, fixed 30th of September 2013 as the third and final round of counseling in which 1800 candidates were called for

upgradation/allotment and 153 candidates were allotted to various private institutions out of which 30 candidates preferred MIET. Three

candidates were also recommended against TFTW seats in the said institute. He submitted that 78 candidates and 2 TFT candidates were

recommended to YECT College (another private institute), thus, 237 seats remained unfilled in various existing engineering colleges in the State.

41. Mr. Sethi submitted that along with the counseling for engineering courses, BOPEE was engaged in counseling for admission in 2013 for

MBBS, BDS, BAMS, BUMS, PHYSIOTHERAPY AND Polytechnic so as to ensure that the counseling for all the streams concludes on

30.09.2013, the cut off date fixed by Hon'ble Supreme Court and all the streams get requisite representation/enrolment/allotment.

42. Mr. Sethi submitted that BOPEE had been conducting the counseling against all the vacant seats to all the engineering colleges till 6 pm on 30th

of September 2013, it being the last date and in order to fill up all the vacant seats, BOPEE had invited 1800 students that means approximately 8

candidates were called for 1 vacant seat, and this simply indicates that BOPEE did not leave any stone unturned to fill up all the seats of the

Engineering colleges of the state including MIET, but still few seats (237) remained unfilled.

43. Mr. Sethi vehemently submitted that since BOPEE was conducting counseling

till 6 pm on the last date of admission i.e. 30.09.2013, there was no reason for preparing any waiting list and that waiting list also operates within the prescribed last date and not beyond that and in the case on hand. BOPEE itself had allotted candidates to MIET even on the last date and MIET admitted them also, therefore, the question of framing waiting list does not arise.

44. According to Mr. Anil Sethi, MIET has indulged into very clever mode of picking up the candidates by bye-passing the merit through parallel admission of those candidates who are ineligible as per the norms of BOPEE, whereas none of other private engineering colleges who has not been able to fill up their intake capacity has indulged into this practice as none of them had admitted any candidate after the cut off date or thought of even conducting parallel counseling. Learned counsel submitted that this all exercise undertaken by MIET smacks of only one fact that for certain extraneous reasons, this institute has resorted to Rule 4(7) of Rules of 1997 on its own, that too in anticipation, whereas the said Rule is not at all attracted in the case on hand and in this regard, the institute was informed well in advance by BOPEE pursuant to its letter dated 26.09.2013 that the exercise of issuing notice done by it is at its own risk and responsibility and that the admissions made thereof shall not be confirmed by it as the final round of counseling was fixed by BOPEE only.

45. Mr. Sethi lastly submitted that from the documents placed on record, it is otherwise very clear that MIET has admitted the students much after 30.09.2013, the last date fixed by Hon'ble Supreme Court which aspect has been discussed in detail by the learned Writ Court, therefore also, the admission of 33 students could not be authenticated by BOPEE, as such, request was declined which aspect has been elaborately dealt with by the learned writ Court in the impugned judgment. He thus submitted that the appellant Institute (MIET) and for that matter, even 33 students who have been admitted by MIET have no case at all, therefore, both the appeals on hand deserve dismissal.

46. Mr. Nargal appearing for University submitted that as per the statute 13 of Chapter V of the University Calendar Vol-I, the Principal of a college or recognized institute has to submit the RRs within sixty days after the last date of admission, if the number of students exceeds 200 and in

other cases within forty days and this exercise has to be done on the prescribed proforma together with the Registration fee and Sports fee

required. He has drawn our attention to Statute 13 of Chapter (V) of the University Calendar Vol-I.

47. Mr. Nargal submitted that as per the statutory provision, it was incumbent on the part of MIET to have submitted RRs of all the 33 candidates

along with the candidates who were supplied to it by the BOPEE within the stipulated time after the last date of admission i.e. 30.09.2013.

However, in this case, on the contrary, the institute submitted RRs in piecemeal by submitting first RRs of 285 candidates on 27.11.2013 who

were admitted by BOPEE and pursuant thereto, RRs of 15 more candidates belonging to the management quota on 29.11.2013 and thereafter the

institute submitted RRs of these 33 candidates on 29.11.2013 after the expiry of the statutory period to the University. According to learned

counsel, this appears to be the basis for returning a finding against the institute by the learned writ Court observing that had it made admissions well

within the time before the cut off date, what prevented it to submit RRs of these 33 candidates within the statutory period provided under the

University Statutes as it was done in case of other candidates admitted by BOPEE. Mr. Nargal submitted that the University was right in declining

to accept RRs of 33 candidates submitted by MIET beyond the statutory period prescribed in the University Statutes on the ground that

admissions of these 33 candidates were not authenticated by, BOPEE and made by the Institute on its own.

48. Learned counsel lastly submitted that the present case is squarely covered by the judgment of this Court rendered in case Divya College of

Education v. University of Jammu and Ors., reported in SLJ 2013 Vol-I page 233 : 2013 (2) JKJ 403[HC] in which view of the learned writ

Court was upheld by Hon'ble Division Bench of this Court in Divya College of Education Vs. State and Ors--> and lastly upheld by Hon'ble

Supreme Court also. In the said case, the College had made admissions on its own of 292 candidates by bye-passing the procedure provided

under the statutes, accordingly, this Court declined to regularize those admissions and imposed costs to the tune of Rs. 50,000/- per student

against the college. He further submitted that otherwise also, law is well settled by Hon'ble Supreme Court in A.P. Christians Medical Educational

Society Vs. Government of Andhra Pradesh and Another, that the Court by its flat' cannot direct the University to disobey the statutes to which it owes its existence and the regulations made by it itself, just to protect the interest of the students.

49. Mr. Nargal, thus, while praying for the dismissal of the both the appeals, laid stress on imposing costs upon MIET.

50. Mrs. Shekhar learned AAG submitted that MIET has adopted a novel way of resorting to Rule 4(7) of Rules of 1997 and started the process

of registering the candidates three days in advance i.e. 28th, 29th and 30th of September, 2013 and cleverly enough fixed the time for registration

of the candidates as 10 am to 12 pm on 30th of September 2013, making it further clear that the seats will be allotted after 1 pm. According to

Mrs. Shekhar, registration in advance of the candidates desirous of seeking admission is not known to procedure prescribed in terms of SRO 51

of 1997.

51. Mrs. Shekhar further submitted that if one looks at the letter addressed by MIET on 14.11.2013 to Secretary Technical Education of the

State, it indicates that 70 candidates had offered themselves for registration for admission against the vacant seats, approval of which action was

sought for in terms of Rule 4(7) of SRO 51 of 1997 (wrongly mentioned under sub-section (7) by the Chairman of the institute but the list annexed

with the said letter indicates the names of 71 candidates, the last one written in hand, whereas the names of other 70 candidates are typed. How

the name of the candidate figuring at S. No. 71 was incorporated is a surprising aspect which is contrary to the aforesaid letter. She submitted that

if, out of the slot of these candidates who got themselves registered, only 33 candidates were admitted by the institute on 30.09.2013 which factual

aspect is otherwise disputed by BOPEE vehemently, approval of 77 candidates could not be sought from the State with regard to 71 candidates

while referring to Rule 4(7) of SRO 51 OF 1997. She submitted that even otherwise if one looks at the list of 33 candidates sent by MIET to

BOPEE for authentication of RRs, inter-se merit vis-a-vis 71 candidates has been compromised by ignoring more meritorious candidates falling in

the list of 71 candidates.

52. Mrs. Shekhar submitted that what is more surprising and disturbing too is

that in the list supplied by MIET, of 33 candidates, the first 12

candidates are those candidates who were called by BOPEE for last round of counselling, still they are shown to be admitted by MIET only on

30.09.2013 on the strength of Rule 4(7) of Rules of 1997, whereas they could be admitted to any institute on the basis of their merit cum

preference, had they been counseled through BOPEE.

53. Mrs. Shekhar lastly submitted that no doubt in the correspondence between MIET and Secretary Technical Education, it is said that SRO 51

has not undergone any change till date and that MIET also made an attempt to derive some benefit from the latest communication No.

Edu/Tech/Poly/18-2014 dated 23.06.2014 addressed by Under Secretary Technical Education to Chairman MIET, Jammu (taken on record

while allowing CMA No. 52/2014 moved by MIET, appellant herein) which aspect is being taken seriously by the State as to how Under

Secretary to Government responded to the letter seeking clarification with regard to SRO 51 of 1997 in the month of June 2014 after the dismissal

of the writ petition filed by MIET, still MIET cannot be put to any advantageous position for the reason that University will grant registration of the

candidates only when the admissions made by any institute is approved by BOPEE as it is the BOPEE only which regulates the admissions of the

candidates through counseling as per the fixed schedule.

54. Mrs. Shekhar also prays for dismissal of both the appeals.

55. Learned counsel for the parties have argued the matter at length and to be fair to them, we have also reproduced their arguments in extenso,

but finding on most of their arguments is not required because, in our considered view, fate of the appeals on hand is dependent upon one vital

issue, whether MIET could at all initiate the process of admitting the candidates on 27.09.2013 on its own terming it as resorting to Rule 4(7) of

Rules 1997 in anticipation of availability of vacancies. To answer the question, we have to understand the situation within the ambit of Rule 4(7) of

Rules 1997 formulated in terms of SRO 51 of 1997 and the directions passed by Hon'ble Supreme Court on an application moved by BOPEE for

extension of time.

56. Going by the directions of Hon'ble Supreme Court, the last date of admission was 30.09.2013. There is no necessity to remind the parties that

the date prescribed by Hon'ble Supreme Court cannot be altered by anyone excepting the Hon'ble Supreme Court itself. Parties are not before

Hon'ble Supreme Court but before High Court and we cannot imagine to rewrite the order by its modification. Thus, there cannot be two opinions

that the last date for admission was 30.09.2013.

57. So another ancillary question also crops up, as to which is the date, a private institute would step in for admission. To answer this question,

reference to Rule 4(7) of Rules 1997 once again becomes necessary. It reads:

Rule 4(7) provides that the Competent Authority, Entrance Examination shall also prepare and publish a waiting list of the candidates indicating

the marks obtained by them in Common Entrance Test. The said list shall be followed for filling up of casual/drop-out vacancies from the select list

as reported to them by the concerned Principal/Heads of the Institutions/Colleges. Such vacancies shall be filled in the descending order of their

merit until such date as may be prescribed by the Competent Authority, Entrance Examination. Any vacancy remaining unfilled after such date can

be filled by the management of the Institutions/Colleges under intimation to the Competent Authority, Entrance Examinations, provided that the

management shall keep the inter se merit of the candidates in view while filling up the remaining vacancies; provided further that all the selected

candidates must possess the minimum marks prescribed for entrance test"".

58. The main thrust of the arguments advanced by Mr. Raina learned Sr. Advocate appearing for MIET is that Rule 4(7) of Rules 1997 should be

interpreted with an extended reach to the said rule and in tune with the schedule fixed by the Hon'ble Supreme Court in Parshavnath Charitable

Trust's case (supra), for the purposes of appreciating the stand of MIET. Therefore, MIET was well within its right to start the process of

admission on 27.09.2013 in anticipation of availability of vacancies for admission in its Institution by resorting to Rule 4(7) of Rules 1997 after

intimating BOPEE, as such, exercise of admitting 33 candidates by MIET on 30.09.2013 cannot be said to be against the aforesaid rule.

59. Arguments advanced by Mr. Raina learned Sr. Advocate, though attractive but deserve to be rejected, if appreciated on the touch stone of rule position.

60. Is any power available to the private Institute to initiate process for

admission in anticipation of vacancies. We get an inbuilt answer in Rule 4(7) of Rules 1997 itself, which is unambiguous that admissions can be made by the private institute only after the prescribed date fixed by the Competent Authority, Entrance Examination and not before that. In our considered view, Rule 4(7) of Rules of 1997 does not conceive any other situation at all.

61. There is no dispute that the last date of counseling fixed by the BOPEE was 30.09.2013 and this was the prescribed date. It is as simple as anything that no exercise could be undertaken by MIET on 30.09.2013 on its own, as contended or projected in the notice published in two Dailies. Therefore, unhesitatingly, we can hold that the process initiated by MIET in anticipation for admitting the students lacks sanction of rules, as such, without competence. To make it more clear, the right to make admission would accrue to MIET after 30.09.2013 and not even a second before and in this case, as per the directions of Hon'ble Supreme Court, no exercise for admitting the candidates either by BOPEE or for that matter, any institute could be carried out.

62. We, therefore, are not inclined to give any other interpretation to rule 4(7) of Rules of 1997 with an extended reach as asked for by Mr. Raina so as to give altogether a new complexion to the said Rule.

63. The moot question as well as ancillary question are answered accordingly.

64. Although, we have returned a finding against MIET with regard to the main issue vis-a-vis resorting to Rule 4(7) of Rules 1997 in anticipation yet we have felt the necessity of highlighting the clever move made by MIL I for the purposes of supplying certain seats to itself. In this context, it would be apt to reproduce the notice published by MIET in two Dailies, which reads:

Model Institute of Engineering and Technology. B.E. Admissions-2013 under Open Merit

It is anticipated that some seats in B.E. shall remain vacant after last round of counseling by BOPEE on the 27th of September, MIET invite applications from all the eligible candidates, who appeared in JKCET 2013 for registration against the vacant seats.

Admissions shall be made strictly on the basis of merit in JKCET-2013 and subject to short fall in seats (if any).

Candidates desirous of seeking admissions under open merit seats should visit MIET B.C. Road on 28th and 29th of September from 10 am to

5:00 pm and on 30th of September from 10 am to 12 pm for registration.

The vacant seats will be allotted on 30th of September after 1 pm.

Selection candidates in order of merit shall be required to complete the admission formalities immediately thereafter.

65. As per the aforesaid notice, MIET started virtually parallel admission process of the candidates by registering their names and accepting the

relation fee taking it very well that the last date of counseling fixed by BOPEE was 30.09.2013. In fact, the students/candidates were misled by

MIET. Even accepting of registration fee is also unknown to any procedure. A private institute is required to accept the entire fee fixed by the

University for the year in one go and not any amount as registration fee How this practice was adopted by MIET is not understandable. Mr.

Nargal appearing for university of jammu stated that there is no provision for accepting any registration fee from any student to be admitted in

private institute.

66. Not only that, another aspect which is also worth noticing is that it is mentioned by MIET in the aforesaid notice that the vacant seats on

30.09.2013 after 1 pm. How could MIET fix the time for; allotment of seats on its own when BOPEE had fixed the last round of counseling on

30.09.2013.

67. It is also worthwhile to notice that BOPEE while responding to letter No. MIET/2013/1049-51 dated 26.09.2013 sent by MIET, reference

thereto made hereinabove also, made it clear in its response vide letter No. BOPEE/Adm-02/II/G/2013/456-60 dated 27.09.2013 (available on

record) that the short fall of seats communicated by MIET was incorporated in the seat matrix for counseling of candidates for admission to

different streams of Engineering in MIET and the admission made by MIET of its own shall not be confirmed. It reads:

Dear Sir

Kindly refer your letter No. MIET/2013/1049-51 dated 26.09.2013 regarding the subject cited above. The Board has conducted second round

of counseling of the left over seats together with the short fall from 24th 27th September and final round of counseling is fixed on 30.09.2013 for

16 and 53 left over seats of computer and IT respectively together with other colleges of engineering where ever seats are left vacant.

Nevertheless taking note of the contents of the communication, it is clarified that the short fall of the seats communicated by the college vide above

letter was incorporated in the seat matrix for counseling of the students for admission to different streams of engineering in your college and during

counseling held form 24-27th of September, 2013, if the notice enclosed with the letter has been published, the college has done it at its own risk

and responsibility and the admissions made thereof shall not be confirmed by the BOPEE as the final round of counseling has been fixed as stated

above"".

68. What appears to us is that MIET evolved a mechanism of its own for the purposes of filling its intake capacity, may be under the impression

that BOPEE will not be in a position to supply all the vacancies to it up to 30.09.2013 which exercise has not been carried out by any other private

institute as stated by Mr. Anil Sethi appealing for BOPEE and not controverted also.

69. MIET has played very smart while admitting 33 candidates, may be under the mistaken belief that BOPEE will ultimately give authentication to

this irregular admission.

70. As regards the arguments of Mr. Raina learned Sr. Advocate that BOPEE has denied the opportunity of admitting the students to MIET and

for that matter, any other private institute, we certainly agree with him. Prima facie, there appears to be a lapse on the part of the BOPEE. In all

fairness, BOPEE should have prescribed last date of its counseling much before the last date fixed by Hon'ble Supreme Court i.e. 30.09.2013,

thereby leaving scope for the private institutes to fill up unfilled seats, if any in terms of Rule 4(7) of Rules of 1997, which opportunity is not given

as BOPEE continued with its counseling even up to the last date i.e. 30.09.2013 as fixed by Hon'ble Supreme Court.

71. We are also conscious of the fact that even after supplying certain candidates to MIET by BOPEE on 30.09.2013 and despite the fact that 33

candidates also admitted by MIET by resorting to Rule 4(7) in anticipation of availability of seats, still 31 seats of MIET remained unfilled, but that

aspect does not give any leverage to a private institute to make admission

against the rules in vogue. Something which is contrary to the rules is contrary to the rules. We, however, leave MIET free to work out its appropriate remedy, if available to it against BOPEE. In fact, the real sufferers are the candidates who were admitted by MIET.

72. Having said so, it would now be immaterial even if we hold that the admissions were made by MIET on 30.09.2013 itself, although the finding returned by the learned Writ Court on this factual aspect on the basis of certain communications addressed by MIET to BOPEE and University is against MIET for a simple reason that grant of admission to 33 candidates is dependent upon the initiation of very process of admission which we have held contrary to the rules.

73. Mr. Raina learned Sr. Advocate also fairly conceded during; the course of arguments that if the right of resorting to Rule 4(7) of Rules, of 1997 in anticipation of the availability of the vacancies remaining unfilled by BOPEE is not made available to MIET, the finding on the factual aspect of the matter, as to whether the admissions were made by MIET on 30.09.2013 or there after would be an exercise in futility. We, therefore, do not detain ourselves any further for recording any finding on this factual aspect of the matter.

74. As a sequel to the aforesaid discussion the net, result now surfaces is that both the Letters Patent Appeals on hand, the one bearing LPAOW No. 33/2014 filed by 33 candidates and the other bearing LPAOW No. 34/2014 filed by MIET merit dismissal. Ordered accordingly.

75. What is more painful to us is that 33 students have been made to suffer by a process which MIET could not initiate at all being contrary to rules The process of admitting these students has generated a baseless hope for them and have wasted their time and money, which aspect no doubt has been considered by the learned Writ Court by giving them liberty to claim compensation from MIET, but, in our considered view, this needs to be addressed forthwith. Those 33 candidates/students deserve to be compensated by imposing costs upon MIET. We, therefore, impose costs upon MIET to the tune of Rs. 50,000/- (Rupees fifty thousand) per student which shall be paid to the students directly by MIET or by depositing the same with Registrar Judicial of this Court within two weeks from today, in default thereof, it would call for an appropriate direction

in accordance with law. Needless to say that MIET will have to return the registration fee, admission fee and any other fee deposited by each student out of the slot of 33 candidates at the time of their admission or at any subsequent stage within the aforesaid period only. Both the appeals on hand, thus, stand disposed of along with connected CMAs.