

(2017) 04 PAT CK 0028

In the Patna High Court

Case No : 605 of 2017

Bihar Private Technical and Professional Institutions
Association

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Constitution of India, Article 14, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts

Citation : (2017) 04 PAT CK 0028

Hon'ble Judges : Chakradhari Sharan Singh

Bench : SINGLE BENCH

Advocate : Abhay Shankar Singh, Amit Kumar Mishra, AJAY, Rajendra Pd. Singh, Mukesh Kumar Singh

Judgement

1. The Aryabhat Knowledge University, Patna (hereinafter referred to as the University), came out with a notification on 08.02.2017, in relation to examination of certain courses including B.Tech, first semester theory Examination, 2016. The said notice mentions that for the academic Session 2016-17, the University shall conduct examination of such students only who have been admitted on the basis of entrance examination held either by the Bihar Common Entrance Competitive Examination Board (B.C.E.C.E.B) or Bihar Private Technical & Professional Institutions Association (hereinafter referred to as the Association). The notice, to the extent it debars students, who have not been admitted on the basis of admission test held by B.C.E.C.E.B. or the Association for the said professional course(s) has been put to challenge, in the present batch of writ applications, filed under Article 226 of the Constitution of India.

2. In C.W.J.C. No. 605 of 2017, Bihar Private Technical and Professional Institutions Association is the petitioner, through its Secretary. The Chairman of

the Association is petitioner no. 2 in the said case. The Association is justifying the admission of students in the technical and professional courses on the basis of 10+2 marks. The petitioners of C.W.J.C. No. 2247 of 2017 have taken admission in diploma courses in Patna Sahib Polytechnic College, on the basis of marks obtained by them in matriculation (10th) examination. C.W.J.C. No. 2064 of 2017 has been filed by the Principal, Patna Sahib Technical Campus, P.S. Bhagwanpur, District- Vaishali at Hajipur. C.W.J.C. No. 2367 of 2017 has been filed by Netaji Subhas Institute of Technology, through its Member Secretary (N.S.I.T.), Amhara, Bihta at Patna and two students of the said Institute, who have been admitted to B.Tech. course in the said College for academic Session 2016-17, on the basis of marks obtained by them in the intermediate examination and not on the basis of any entrance test held by B.C.E.C.E.B. or Association. Same petitioner(N.S.I.T), in CWJC No. 3457 of 2017, has raised similar grievance in relation to the admission to diploma courses of various streams. The petitioner nos. 3 to 6 are the students of the said course in that institution, in this case.

3. The Institutions are admittedly private unaided Technical Institutions engaged in imparting B.Tech/Diploma in Engineering course, inter alia. These Institutions have allowed some of the students to be admitted to B.Tech./Diploma courses for the academic Session 2016-17 not, on the basis of entrance test held either by B.C.E.C.E.B. or by Association, rather on the basis of their qualification of having passed 10+2/Intermediate/ 10th examination and marks scored by them in the said examination The minimum qualification for admission to B.Tech and Diploma course in Engineering are 10+2/Intermediate "pass" and 10th "pass" respectively.

4. Answer to the question as to whether these technical institutions could have taken admission to B.Tech. course or Diploma courses, only on the basis of marks of the candidates secured by them at the qualifying 10+2/Intermediate level or 10th examination, will be the ultimate determination of the main issue, raised in the present proceedings. Said differently, was it permissible for these private unaided technical Institutions to allow admission in any other manner than on the basis of entrance test held either by the B.C.E.C.E.B. or the Association is the moot question, which needs to be answered in the present case.

5. The State Government of Bihar so far has not framed Rules laying down procedure for admission to these technical courses in privately managed unaided technical Institutions. The question posed above is, therefore, to be answered in the light of the Supreme Court's decisions, which lay down the law and prescribe guideline as to how such admissions to professional courses are to be taken. The Supreme Court's decisions which govern the field are oft cited and quoted and in the present proceedings the said judgments have been pressed into service by both sides to buttress their respective contentions, which are as under:- (1) T. M. A. Pai Foundation Vs. State of Karnataka, reported in (2002) 8 SCC 481.

(2) Modern School v. Union of India and Others, reported in (2004) 5 SCC 583

(3) P. A. Inamdar and others v. State of Maharashtra and Others, reported in (2005) 6 SCC 537

(4) Islamic Academy of Education and Another v. State of Karnataka and Others, reported in (2003) 6 SCC 697

(5) Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others, reported in (2016) 7 SCC 353.

6. In course of argument, learned counsel appearing on behalf of the parties have referred to various other decisions of the Supreme Court too, in support of their contentions in different context, which shall be referred to and dealt with at appropriate place, in the present judgment and order.

7. This is not in dispute that these technical Institutions have recognition granted by All India Council For Technical Education (A.I.C.T.E.) and are affiliated to the privileges of the University.

8. Facts are not at all in dispute. I will be referring to facts from the pleadings of C.W.J.C. No. 2367 of 2017 (Netaji Subhas Institute of Technology and Others v. The State of Bihar and Others) first, which are apparently common in all the cases.

9. Before referring to those facts, it will be useful, at the very outset, to take note of Supreme Court's decision in case of P. A. Inamdar (supra), in which a specific question was framed in paragraph 27(2), which reads as under:- "27. (1) xx xx xx (2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether direction made in Islamic Academy for compulsorily holding entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in Pai Foundation"

(3) xx xx xx

(4) xx xx xx

10. The Supreme Court, in paragraph 136 of its decision, advertent to the said question, held that a Common Entrance Test (C.E.T.) for admission in professional courses will better ensure fulfillment of twin objective of transparency and merit. Referring to decision in T. M. A. Pai Foundation (supra), the Supreme Court observed in P. A. Inamdar (supra) that all Institutions, imparting same or similar professional courses could join together for holding the Common Entrance Test so that the exercise is fair, transparent and non-exploitative. The Supreme Court further held that if admission procedure adopted by the private Institutions or group of Institutions failed to satisfy the triple test of fairness, transparency and non exploitativeness, it can be taken over by the State, substituting its own procedure. In paragraph 138 of P. A. Inamdar (supra),

the Supreme Court held that having regard to larger interest and welfare of the student community; (i) to permit merit, (ii) to achieve excellence and (iii) to curb malpractices, it would be permissible to regulate admission by providing single window procedure, which can secure grant of merit-based admission on a transparent basis. This is also to be noticed at this stage that in case of Islamic Academy of Education (supra), the States were directed to set up a Committee headed by a retired High Court Judge to oversee, inter alia, admission procedure to technical Institutions. There is a Committee put in place in the State of Bihar, constituted for the said purpose. In P. A. Inamdar (supra), the Supreme Court said that until regulations were framed by the State Government, regulating procedure for admission, Admission Committees can oversee the admission so as to ensure that merit is not the casualty.

11. Considering all previous Supreme Court's decisions, the Supreme Court in recent decision in Modern Dental College and Research Centre (supra), expounded and reiterated the need of Common Entrance Test to be held by the agencies, which enjoy utmost credibility and expertise in the matter, to achieve fulfillment of transparency and merit. The Court emphasized the necessity of holding a Common Entrance Test, either by the State Agency or the Association of Private Institutions for admission to technical and professional courses.

12. It is the case of the petitioners themselves that pursuant to decision of Supreme Court and as a policy decision of the State Respondents, Association of Private Technical and Professional Institutions of the State of Bihar known as Bihar Private Technical and Professional Institution Association has been formed and it has been authorized by the State of Bihar to conduct Entrance Test for the purpose of admission in various Private Engineering and Polytechnic Institutions of the State of Bihar through Bihar Private Combined Entrance Test (B.P.C.E.T.). The Convener of the B.P.C.E.T had made a request to the Director of Science and Technology Department, Government of Bihar to finalize programme for Engineering and Polytechnic Entrance Test 2016-17 for all private and technical institutions in the State of Bihar. The said examination was apparently to be conducted for admission to all Private Technical Institutions conducting technical and professional courses. The date of examination was fixed as 21.06.2016, which was subsequently postponed to 15.07.2016, at the request of the Association. It is the case of the petitioners that on the basis of said Entrance Test and counseling, only 20% of total sanctioned seats could be filled up. Considering prevailing local needs, emergent situation and to ensure survival of private unaided Institutions as well, Chairman of the Association intimated the Director, Science and Technology Department, Government of Bihar, regarding the existence of vacancies against sanctioned seats of various courses in different technical and professional Institutions. It was highlighted in the said communication, dated 08.06.2016, that despite all efforts made, more than 3/4th of the total sanctioned seats had remained vacant in different Private Professional Institutions after admission on the basis of merit list prepared by B.P.C.E.T. He made a request to allow Private and Technical and Professional

Institutions of the State of Bihar to take admission against sanctioned vacant seats on the basis of open counseling after preparing merit list on the basis of marks obtained in the qualifying examination.

13. It has to be kept in mind and which is not in dispute that under the orders of the Supreme Court, all admissions to the Technical and professional courses are to be essentially completed by 15th of August of every academic Session. In that background, coming to the statement made in the writ application, I notice that initially 21.06.2016 was the date fixed for conducting Entrance Test by Association. The Association made a request for postponing the said B.P.C.E.T., from 21.06.2016 to 15.07.2016. From the letter, dated 14.06.2016, which has been brought on record by way of Annexure-3 to the writ application and which is a request made by the Controller of Examination B.P.C.E.T., 2016, it is evident that the entrance test was to be postponed because the students were not inclined to take admission in such Institutions. It also appears from the pleadings that date of evaluation and declaration of merit list was fixed between 17.6.2016 to 24.06.2016 and date of counseling and admission from 25.06.2016 to 27.07.2016. I fail to understand and appreciate the plea taken in paragraph 7 of the writ application, which refers to a request made by the Chairman of the Association on 08.07.2016 for allowing the students to take admission on the basis of open counseling after preparing a merit list of marks obtained in qualifying examination. It is the case of the petitioners that since only 20% of total sanctioned seats could be filled up, the Institutions should have been allowed to admit the students on the basis of open counseling, based on their marks obtained in qualifying examination (10th/12th). Where was the occasion for the Chairman of the Association to mention in his letter, dated 08.07.2016 that the seats could not be filled up as the date of B.P.C.E.T. Examination was postponed to a subsequent date i.e. 15.07.2016 and therefore, there would have been no question for such Institutions to have filled up any seat.

14. It is the case of the petitioners that since time was running out and 80% seats were still vacant, out of total 5580, the Association sent a letter to the Director, Science and Technology Department, requesting him to make available merit list prepared by B.C.E.C.E.B., on the basis of which admission could be taken in the Private Institutions. The Association is said to have cited precedent of the previous years when on request and intervention of the Department, merit list by the B.C.E.C.E.B. was made available to the Association for admission in private technical institutions.

15. It is the further case of the petitioners that finding no way out, the Association took a decision to conduct another Entrance Test on 11.08.2016 for admission against large number of vacant seats in all Institutions. The Association published notice for holding the said examination on 11.08.2016 in leading Newspapers of the State of Bihar. The said notice was published on 01.08.2016. By communication, dated 09.08.2016, Science and Technology Department, Government of Bihar, restrained the Association from holding

second phase of examination and directed for cancellation of the said examination under the orders of the Committee constituted for overseeing admissions. Once the said examination was cancelled, the Association decided to take admission against vacant seats in respective Institutions on the basis of merit (Marks of qualifying examination, i.e., Class 10/12), before the cut-off date of admission fixed by the Supreme Court i.e. 15.08.2016. The said decision was communicated to the Director, Science and Technology Department, Govt. of Bihar on 09.08.2016, which is said to have been received in the office of the Director on 10.08.2016. It is the case of the petitioners that it being a matter of survival of the Institutions and as time was running out, they admitted students in B. Tech. and Diploma courses before the cut-off date, i.e., 15.08.2016. It is their further case that the Director, Science and Technology Department through its communication dated 17.08.2016, informed the Chairman of the Association that in view of the Supreme Court's decision, no admission on the basis of marks secured in qualifying examination could be taken and thereby, rejected request of the Association for permitting the Institutions to take admission on that basis. By the time, the letter dated 17.08.2016, was issued by the Department, the Institutions had already taken admission of students on the basis of marks in qualifying examination (10+2 or Intermediate), before 15.08.2016. It is their case that if the Department was not to allow such Private Technical Institutions to take admission in the light of the request made by the Chairman of the Institutions through letter, dated 09.08.2016, the Department ought to have responded promptly, well before the cut off date of admission, i.e. 15.08.2016.

16. It is also the case of the petitioners that 60% of the seats are still vacant in private institutions in the State of Bihar, despite admissions having been taken on the basis of 10th and 12th marks. The Association has raised the issue before the Government, as the situation is posing a threat to very existence of the Private Institutions, the petitioners contend.

17. Students admitted not on the basis of Combined Entrance Test pursued their course of first Semester. The University notified the schedule for filling up registration and examination forms and announced the date of commencement of first Semester and other Semester examinations. On perusal of the said notice, dated 10.01.2017, it is evident that it was made clear by the Examination Controller of the University that along with registration forms, it would be imperative to enclose a declaration to the effect that concerned students had been admitted on the basis of Entrance Test held by B.C.E.C.E.B./ Association. Despite the fact that the students were not admitted on the basis of Entrance Test held by B.C.E.C.E.B./ Association, registration forms were filled up. The University subsequently, came out with examination notice dated 08.02.2017, whereby, last dates for submission of examination forms for various professional courses including B.Tech. has been notified. As has been noted at the very outset, the said notice made it clear that the University shall hold examination of only such students who had been admitted on the basis of Entrance Test held by B.C.E.C.E.B/ Association. That part of the notice is under challenge in the present

proceedings. The decision not to allow such students admitted in Diploma/Degree courses in Engineering in private unaided technical institutes, who have not been admitted on the basis of entrance test is under challenge in the present batch of cases.

18. The examination was to commence from 28.02.2017. C.W.J.C. No. 2064 of 2017 has been filed on 08.02.2017 and CWJC No. 2367 of 2017 on 13.02.2017. Keeping in view the urgency of the matter in mind, the cases were taken up by this Court on 15.02.2017 and 23.02.2017.

19. Mr. M. L. Verma, learned Senior Counsel, appearing on behalf of the petitioners in CWJC No. 2064 of 2017 and Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the petitioners in CWJC No. 2367 of 2017 had submitted on the first day their arguments before me, that till the cases were finally decided, the students might be allowed, by way of interim measure to appear for B. Tech. first Semester examination, commencing from 28.02.2017. Learned Senior Counsel had undertaken that on the basis that the students had been allowed to take the said examination, the petitioners would not raise any claim of equity in their favour.

20. In view of the undertaking given by learned senior counsel representing the petitioners, the students of the two Colleges were directed to be allowed to appear for B. Tech. first semester examination, commencing from 28.02.2017 with clear stipulation that result of such candidates shall not be published till further orders of this Court.

21. By the said order, dated 23.02.2017, the petitioners were directed to produce respective prospectuses of the two Institutions. Copies of the two prospectuses have been accordingly brought on record by way of supplementary counter affidavits filed on behalf of the University. In the prospectus of Patna Sahib group of Colleges for admission to B. Tech. courses, admission procedure has been described as "through competitive Entrance Examination Test". In case of Netaji Subhas Institution of Technology, admission procedure for degree and diploma courses has been described as "based on merit secured by candidates in Entrance Test conducted by the Association on private professional Institutes". It is evident thus, that the Institutions, in conformity with the Supreme Court's decisions had decided to admit students in degree and diploma courses on the basis of a common Entrance Test and not on the basis of marks scored by candidates in their qualifying examination, which they specifically disclosed in their prospectus also.

22. Keeping in mind these facts as noted and discussed above, I shall now consider the submissions advanced on behalf of the parties in these cases.

23. Mr. M. L. Verma, learned Senior Counsel, leading his argument on behalf of the petitioners, has submitted that the institutions were left with no other option, but to admit students to B. Tech. and Diploma courses on the basis of their respective marks secured in qualifying examination, there being a deadline fixed

by the Supreme Court by which date admissions to technical institutions are required to be completed. He has submitted that whereas, on the one hand, the private technical institutions were not getting students on the basis of competitive test for admission, putting a question mark on the very survival of such institutions; the State of Bihar, on the other, was not responding to their request to allow holding of second phase entrance test, the manner in which it was held in the previous years. He has argued that admission to these institutions and courses may not be equated with admission to courses like M.B.B.S. or post-graduate medical courses where the seats are less and aspirants are many. According to him, there would be no question of discrimination in taking admission to such courses by the institutions on the basis of respective scores of the students in their qualifying marks inasmuch as no one can say that he was denied admission, though he had applied. He has contended that transparency in the admission procedure cannot be questioned in B. Tech./Diploma courses in these institutions where there is no dearth of seats and there is absolutely no competition. He has further argued that admission of students to technical and professional courses based on their marks in qualifying examination cannot be said to be failing the triple test of fairness, transparency and non-exploitativeness. According to him, number of seats being much more than number of aspirants, there would have been no question of discrimination in the matter of offering admissions. Admissions have been taken on the basis of merit list prepared based on score of respective candidates, in their qualifying examination. He has also contended that there is clear distinction between the case of these institutions and other institutions offering courses in medical or other courses where competition among large number of aspirants is keen and tough, for limited few seats.

24. He has also submitted that based on past practice, whereby the State had allowed the Association to hold second phase and third phase competitive examination, these institutions had developed a legitimate expectation that for the present session also, similar concession will be given by the State so that more number of sanctioned seats in the technical institutions are filled up. In that background, the Association had approached the Government to allow them to hold second phase entrance examination, which was illegally denied and request to admit students on the basis of marks obtained in the qualifying examination, though made much in advance, was turned down arbitrarily after the admissions had already been taken by the institutions, he contends.

25. In support of this plea, he has relied on Supreme Court's decision, in the case of MRF Ltd., Kottayam v. Assistant Commissioner (Assessment) Sales Tax and Others, reported in (2006) 8 SCC 702, and has argued that the principle underlying legitimate expectation is based on Article 14 of the Constitution of India and rule of fairness, which has been repeatedly propounded by the Supreme Court in other cases also.

26. He has next submitted that despite repeated orders passed by the Supreme

Court to the effect that the State Government should come out with well thought of legislation regulating such admissions, no rules so far have been framed and in the absence of such rules, the action of the institutions admitting students on the basis of marks obtained in qualifying examination cannot be said to be unfair, violating law laid down by the Supreme Court, in any manner.

27. He has next placed his reliance on Supreme Court's decisions, in the cases of *Monika Ranka and Others v. Medical Council of India and Others*, reported in (2010) 10 SCC 233 and *National Board of Examinations v. AMI Rajesh Shah and Others*, reported in (2012) 13 SCC 528, and has submitted that since the students have already completed six months of studies, they should not be allowed to suffer for the fault of the State Authorities.

28. He has also drawn my attention to the fact that the question whether the students could be admitted on the basis of 10+2 results or not was placed before the Committee, constituted to oversee such admissions, but the Chairman of the Committee informed that the Committee did not have any jurisdiction to take any decision in this regard.

29. At this stage itself, I must say that I have perused Annexure-18 of the writ application, from which it appears that a meeting of the Committee was held on 08.06.2016. In the proceedings of the meeting, it has been mentioned that Association, through its communication, dated 30.06.2014, had made request to allow engineering and polytechnic colleges to fill up vacant seats on the basis of 10+2/10th (Matriculation) results. The said meeting was held on 08.06.2016. The last date of submission of application form for admission in 2016-17 sessions, as has been noted above, was fixed as 18.06.2016. The Committee's opinion was recorded much before the date fixed for submission of application forms for admission to these technical and professional courses. Was it there in the mind of the managements of the private institutions from the beginning that they will take admissions on the basis of marks in qualifying examination to fill up their seats and they were just doing their ground work to lay a foundation" In my view, the Committee rightly concluded that the Committee did not have any authority to take decision in this regard, in view of the Supreme Court decisions, which required such admissions to be taken on the basis of combined entrance test only.

30. Mr. Verma has also submitted that by an order, dated 23.09.2005, in *I. A. Nos. 90 and 96, in Writ Petition (Civil) No. 350 of 1993 (Islamic Academy of Education and Others v. State of Karnataka)*, the Supreme Court had permitted remaining vacancies to be filled on the basis of merit marks obtained in 10+2 Examination conducted by the Central Board of Secondary Education or other Boards. Referring to the said order, Mr. Verma contends, that had it been illegal to allow admission on the basis of 10+2 results, the Supreme Court would not have permitted admission of students on that basis against vacant seats. He has further contended that the States of Jharkhand, Rajasthan and Punjab and Haryana have framed rules, pursuant to the direction of the Supreme Court,

regulating admission to technical institutes, which prescribe, inter alia, that students can be admitted on the basis of 10+2 results in privately managed technical institutions. He relies on paragraph 21 of Islamic Academy of Education (supra) cases to submit that since to meet the urgent situation, the institutions have taken admission on the basis of 10+2 marks, such admissions may not be disturbed, as was done in the case of Islamic Academy of Education (supra).

31. Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the petitioners, has submitted, while broadly adopting the arguments advanced by Mr. M. L. Verma, that admissions of students have been taken on the basis of their respective merits, evaluated on the basis of their performance in qualifying examination. He has, accordingly, contended that strict criteria of merit has not been compromised in taking such admissions.

32. Mr. Pushkar Narayan Shahi, learned Additional Advocate General, appearing on behalf of the respondent-State of Bihar, has placed great reliance on the Supreme Court's decision, in the case of Modern Dental College and Research Centre (supra) and has submitted that all previous decisions of the Supreme Court dealing with admission to technical and professional institutions have been considered in the said decision. He has also relied on a Division Bench decision of this Court, in the case of Mirza Ghalib T. T. College v. State of Bihar, reported in 2017 (1) PLJR 256, to contend that even in the absence of rules framed by State of Bihar, no admission to technical and professional colleges, privately managed, can be allowed except through an entrance test conducted either by the association of privately managed institutions itself or by the State Government or its agency.

33. Referring to paragraph 72 of the Division Bench decision, in the case of Mirza Ghalib T. T. College (supra), Mr. Shahi submits that in that case, admissions had been found to be taken in violation of law declared by Constitution Bench, in the case of Modern Dental College and Research Centre (supra), and for that reason, this Court held such admissions to have been made contrary to law. He has next submitted that in the case of T. M. A. Pai Foundation (supra), the Supreme Court laid great emphasis on merit of a student seeking admission. According to him, it is desirable that to achieve excellence in professional education, substantial emphasis is laid on the merit of a student seeking admission.

34. He has submitted that conduct of the petitioners disentitle them from any relief under equitable writ jurisdiction of this Court in exercise of power under Article 226 of the Constitution of India. According to the case of the petitioners themselves, the Association had approached the State Government seeking permission to hold second phase examination and allow the institutions to take admission on the basis of marks obtained in qualifying examination. Their requests were turned down by the State Government in August, 2016. They did not choose to challenge the State Government's decision nor did they raise any objection against the decision of the State Government whereby their request to admit students on the basis of 10+2 results were turned down. Further, on

10.01.2017 itself, the University had made it clear that along with the registration, it would be imperative to enclose a declaration to the effect that the students had been admitted to B. Tech. course on the basis of examination conducted by B.C.E.C.E.B./ Association. The institutions did not approach this Court immediately thereafter. Only after the examination dates were announced, they approached this Court by filing writ applications on 08.02.2017 and 13.02.2017 with the sole purpose of generating the Court's sympathy with the students for their misfortune and allow them to complete their courses though they were admitted illegally, in breach of Supreme Court's decisions.

35. Mr. Ajay, learned Government Advocate No. 5, has also made his submissions on behalf of the State Government and has relied on Supreme Court's decision, in the case of *Rishabh Choudhary v. Union of India and Others*, reported in (2017) 1 SCALE 632, to submit that the admissions being completely illegal, the students cannot be allowed to continue their courses in the said institutions.

36. Mr. Ramchandra Sahani, learned Counsel appearing on behalf of the University, has submitted that the institutions have taken admission in complete breach of the procedure declared by them in their own respective prospectuses.

37. I am unable to accept submissions made on behalf of the petitioners, invoking doctrine of legitimate expectations to make out a case that like previous years, the institutions legitimately expected that this year also, more than one entrance examination would be allowed to be held by the Association, since majority of sanctioned seats were not filled up.

38. The said doctrine, in my opinion, has no application at all in the facts and circumstances of the present cases. Further, in any event, expectation that the State will allow more than one test, whether genuine or ingenuine; legitimate or otherwise stood dashed with the State negating the request for holding more than one test in August, 2016, itself. The Association or any person aggrieved did not question the decision of the State Government immediately thereafter.

39. The legitimate expectation is not a legal right; rather, expectation of benefits, relief/remedy that accrues from a promise or a past practice adopted by the State or a party. For this doctrine to be invoked, the party claiming will be required to show that his expectation is legitimate, first. A sporadic, casual or random acts or which are unreasonable, illegal or invalid cannot constitute legitimate expectation. Invoking this doctrine in the present case, the only point which has been taken on behalf of the petitioners is that based on past practice, where the State had allowed the association to hold more than one combined entrance tests, they developed legitimate expectation that for the academic year in question also, same would be followed by the State. This doctrine has no application at all, in the present case which will be evident from the conduct of these institutions.

40. As has been noted above, the institutions had announced in their prospectuses that admissions will be taken on the basis of entrance test to be

held by Association of private technical professions institutes imparting same course in the State of Bihar. They were aware that 15th August would be the last date of completing the admission procedure. Initially, the Association had fixed the date of examination on 21.06.2016. It was the decision of the Association to extend said date from 21.06.2016 to 15.07.2016. The reason for the date of entrance examination to be postponed to 15.07.2016 is evident from the letter written by the Chairman of the Association to the effect that students were not inclined to take admission. Once they decided to postpone the date of entrance examination from 21.06.2016 to 15.07.2016, there would have been no question of holding second phase examination thereafter as there would have been hardly 15 days time left from the date of admission as per their own plan, (27.07.2016, as disclosed by the Association itself) to complete the whole process of second phase of examination, if it were, at all, allowed.

41. Further, I am of the view that there is no rationale behind holding of more than one CET by the Association for admission to one academic session of a particular technical/professional course. I need not comment on the decision of the State Government or the Association permitting more than one such tests during the previous years. I am of the considered view that like other combined entrance tests which are held for admission to various technical courses" for admission to a particular course, in private technical and professional institutions also there should be one entrance test only for one academic session. Question of holding another test for same course and session may arise only if the test already held suffers from some illegality or irregularity, and therefore, cannot be sustained.

42. Curiously enough, they made representation on 08.07.2016 for taking admission on the basis of 10+2 results on the ground that sanctioned seats in the concerned course could not be filled up; whereas, by that time, even the last date of submission of admission form had not crossed. Where was the legitimate expectation for them in such circumstance, for second phase examination to be allowed on the basis of the past practice" In no circumstance, thus, their unilateral and independent decision to allow admission on the basis of 10+2 marks could be said to be justified. The Supreme Court decisions permit admission only on the basis of entrance test held either by the State Agency(ies) or by the Association of technical institutions, conducting same/similar course and by no other means.

43. To the contention made by Mr. Verma, that such admissions do not, in any manner, failed the test of fairness, transparency and non-exploitativeness, in my view, purpose of holding entrance test for admission to technical and professional courses is to adjudge suitability of a candidate to pursue a particular technical or professional course. As has been contended on behalf of the petitioners, which is not in dispute, that seats in such technical and professional colleges are more and the takers are less. The Association, in one of its communications, says that the students have no inclination to take the course.

44. Could it be said that in such circumstance any person who possessed the minimum eligibility criteria should be allowed admission to such technical or professional course on the reasoning that the seats are vacant" The answer, in my opinion, is big NO! The entrance test to professional and technical courses are so organized and structured as to select those who are best suited to take up those courses. The tests are conducted to evaluate their ability to cope with the courses, which may be offered to them on their admission.

45. Apart from fairness, transparency and nonexploitativeness, merit and ability of a candidate to take up a particular professional course in order to maintain the desired standard of that profession is equally important, which cannot be ignored. In my view, this will be against public interest and public policy to allow such candidates, who do not have the aptitude and ability to study a technical course, admission to such courses.

46. I am unable to accept this plea that since seats were vacant and number of sanctioned seats was more than willing students having basic minimum qualification, all of them could have been admitted. As I have already noticed, the Supreme Court decision, as noted above, do not give any scope for any other method to be adopted for admission to technical and professional courses than through Combined Competitive Entrance Test. Secondly, unless a student qualifies in the entrance test, he will not be allowed admission.

47. Mr. Abhay Shankar Singh, learned Counsel appearing on behalf of one of the petitioners, has gone to the extent of making his submission that the Court should invoke the doctrine of *Salus Populi Suprema Lex Esto*, which literally means "the health of the people should be the supreme law" and is read as "welfare of the people shall be the supreme law". According to him, it is in the interest of everyone that these institutions survive and grow and more number of students take up technical and professional courses for their well being. It may be the individual perception of the petitioner that survival of these institutions is so good for everyone that their survival must be achieved at any cost. The position in my view is entirely different. Welfare of the Society is not in having so many technical and professional institutions rather it is in selection of right persons for right education and training, depending upon their ability and aptitude.

48. It is in the public interest that only such persons take up technical and professional courses, who do not have only basic qualification, but also have the merit, ability and aptitude to take up courses designed for a particular purpose. This can be done only through appropriately designed screening test. It will not be in the public interest to promote mediocrity by allowing admission of such persons who could have otherwise done well in the different walks of life, but could not be said to be fit to take up B. Tech. or similar technical courses. It is not known how these admissions were taken, based on marks obtained in 10+2/10th examination. Whether it was confined to those who had applied pursuant to notice issued by the Association for Combined Entrance Test and had

shown willingness to take up the technical courses or they subsequently approached the institutions for their admission, after admission on the basis of entrance tests were over. The manner in which the institutions have taken admission based on 10+2 marks/results cannot have approval of this Court.

49. Coming to the interim order passed by the Supreme Court, in the case of Islamic Academy of Education (supra), dated 23.09.2005, whereby the institutions had been allowed to take admission on the basis of 10+2 results, I am of the view that the said order does not lay down a law to be followed as precedent on the question of procedure adopted for admission to technical and professional courses. The matter of admission to technical and professional courses has been exhaustively dealt by the Supreme Court, in the case of Modern Dental College and Research Centre (supra), which has been followed by the Division Bench of this Court, in the case of Mirza Ghalib T. T. College (supra). The said decisions, in clear and unequivocal terms, lay down that admission to private unaided technical and professional institutes can be made through entrance test held either by the State Agency(ies) or by Association of technical and professional institutes imparting similar course.

50. I must refer to the decision in the case of Islamic Academy of Education (supra), in which the Supreme Court held, in paragraph 16, that the management could select students of their quota either on the basis of Common Entrance Test by the State or on the basis of Common Entrance Test to be conducted by a association of all Colleges of a particular type in the State. It further held that Common Entrance Test, held by the Association, must be for admission to all colleges of that type in the State. Consequently, the Supreme Court, in most clear terms, held that option of choosing between either of these tests must be exercised by institutions before issuance of prospectus with intimation to the concerned authority and the Committee set up in terms of the order. If any professional college chooses not to admit from Common Entrance Test, conducted by the Association, then that college must necessarily admit from Common Entrance Test, conducted by the State. The Court further held, in Islamic Academy of Education (supra), that selection of students must then be strictly on the basis of merit as per that merit list. Giving opportunity to the minority colleges to fill up their quota with their own students on the basis of inter se merit among those students, the Supreme Court pointed out if it was found that any student was admitted de hors merit, a penalty can be imposed on that institute and in appropriate cases, recognition/affiliation may also be withheld.

51. The said dictum of the Supreme Court, in the case of Islamic Academy of Education (supra), has been consistently followed and has not been watered down, in any manner in Constitution Bench decision of the Supreme Court, in the case of P.A. Inamdar (supra). Relevant portion of paragraph 16, in the case of Islamic Academy of Education (supra), is reproduced hereunder: "16.We thus hold that the management could select students, of their

quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter-se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may truncate. If it is found that any student has been admitted de-hors merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn."

52. In the case of Modern Dental College and Research Centre (supra), the Supreme Court held the purpose of Common Entrance Test, to be in the larger interest and welfare of the students community to promote merit and excellence and curb malpractice. The plea of invoking the doctrine of *Salus Populi Suprema Lex Esto* in the facts of the present case finds answer in paragraph 68 of the Supreme Court decision, in the case of Modern Dental College and Research Centre (supra).

53. In my opinion, in view of the Supreme Court decisions, it is impermissible to admit students in B. Tech./Diploma course on the basis of marks secured by them in their qualifying examinations.

54. Mr. Rajendra Prasad Singh, learned Senior Counsel, has submitted that in case, this Court is not persuaded by the submissions advanced on behalf of the petitioners that admission of students on the basis of 10+2/Intermediate examination or 10th examination is valid, this Court should, applying the principle of equity, allow the students who have been admitted to complete their courses, particularly, when they have taken first semester examination under interim order passed by this Court.

55. I am unable to accept this plea. The manner in which these institutes have proceeded to take admission on the basis of marks obtained in qualifying

examination, which is apparent from the narration above, cannot be approved at all; rather, deserves to be deprecated.

56. Mr. Shahi, learned Additional Advocate General, has rightly pointed out that if these institutions had any grievance against the decision of the State Government, turning down their request to admit students on the basis of 10+2/10th results, they were free to approach this Court immediately thereafter as they were denied such permission in the month of July/August, 2016.

57. In response to a query made by this Court in this regard, Mr. Verma, learned Senior Counsel, submitted that since Courts are already overburdened, the institutes decided not to approach this Court till they were forced to do so after issuance of examination notice.

58. In my view, Mr. Verma's reply to the Court's query is because he had no plausible reply at all to make.

59. The illegal admissions taken without resorting to combined entrance examination cannot be legitimized, in my considered view. The illegality cannot be validated by a judicial order.

60. Mr. Ajay, learned Government Advocate No. 5, has rightly placed reliance on Supreme Court decision, in the case of Rishabh Choudhary (supra). In that case, validity of admission granted to the petitioner of that case in C. M. Medical College and Hospital to M.B.B.S. course was being considered. The petitioner of that case was found not to have participated in NIIT and on the basis of admission offered by the College in question, he was admitted. Admission was found to be contrary to the orders passed by the Supreme Court. The Court held the admission of the petitioner granted by the College to be unjustified and set aside his admission. In the present case also, the admission taken by these institutions based only on marks scored by them in 10+2 examination, in my view, is contrary to the law laid down by the Supreme Court.

61. After having held such admissions to be illegal, I cannot lose sight of the fact that these institutions made the students to take admission, which was legally impermissible. For that reason, in my view, such institutions need to be penalized in a manner which is deterrent and compensatory at the same time. Penalty needs to be imposed to compensate those students who have been given admission in a manner, not approved by law, which has adversely affected career of young men and women, putting them to substantial financial loss, additionally. It should be deterrent too, so that other institutions do not indulge in such activities in future and they run their institutions strictly in accordance with law.

62. I accordingly direct the private managements of respective institutions, namely, (1) Netaji Subhas Institute of Polytechnic, (2) Netaji Subhas Institute of Technology, and (3) Patna Sahib Technical Campus, to refund all fees and charges so far received by them from the students who have been illegally admitted on the basis of their marks in 10th/12th examination, excluding only

hostel and mess charges, in their favour. In addition, the managements shall be required to pay a sum of Rs. 50,000/- to all the individual students so admitted, which I consider befitting in the facts and circumstances of the case. All such payments shall have to be made within a period of three months from today.

63. These applications have no merit and are accordingly dismissed with the directions, as above.

64. Interim order(s) stand vacated.