

(2019) 12 PAT CK 0207

In the Patna High Court

Case No : Letters Patent Appeal No. 952 Of 2017 In Civil Writ Jurisdiction Case No. 3060 Of 2017

Exalt Educational Trust Through

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 32

Citation : (2019) 12 PAT CK 0207

Hon'ble Judges : Ashwani Kumar Singh, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : P.K. Shahi, Awadhesh Kumar Pandit, Pushkar Narain Shahi, Dharendra Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. P.K. Shahi, learned senior advocate appearing for the appellant and Mr. Pushkar Narain Shahi, learned Additional Advocate General No.6 appearing for the State.

2. This appeal under Clause 10 of the Letters Patent has been filed by the appellant challenging the judgment dated 19.06.2017 passed by the learned Single Judge in CWJC No. 3060 of 2017 whereby the writ petition filed by the appellant has been dismissed and the appellant has been directed to pay a sum of Rs.50,000/- to each of the students within a period of three months from the date of the order.

3. The appellant is a trust. It has filed the appeal through its Chairman Deepak Kumar. It has pleaded that one of the object of the trust is to establish and manage educational institutions including technical and professional institutions. Consistent with the object of the trust, it has established Exalt College of Polytechnic (for short 'College') at village Kanhauli within the district of Vaishali.

4. The College is recognized by All India Council for Technical Education, New

Delhi (for short 'AICTE') and is affiliated to the State Board of Technical Education, Bihar (for short 'SBTE'). The College was facing problem with respect to admission of students. It had a grievance against the decision of the SBTE as communicated by the Director, Science and Technology through memo no.781 dated 13.03.2014, which mandated that admission in the private engineering and polytechnic colleges shall be allowed on the basis of entrance test to be held by the Association of Private Technical Institution conducting same/similar professional course. Accordingly, the appellant challenged memo no. 781 dated 13.03.2014 by filing writ petition giving rise to CWJC No. 9068 of 2016 seeking the following reliefs :-

"(i) For issuance of writ in the nature of certiorari to quash the letter contained in letter no. 781, dated 13.03.2014 as it was issued without framing any rule in this regard.

(ii) For direction to the respondent authorities to declare the validity/recognition if any of Bihar Private Technical and Professional Institutions Association as bad in law for conducting Entrance Test.

(iii) For direction to respondent authorities not to accept the list of selected candidates as provided by the association for enrolment of Polytechnic students through State Board of Technical Education."

5. When the writ petition bearing CWJC No. 9068 of 2016 was taken up on 24.05.2016, the learned Single Judge while directing the respondents to file counter affidavit, passed an interim order directing the respondents to allow the petitioner to take admissions on the basis of result declared by the Bihar Combined Entrance Competitive Examination Board (for short 'BCECE').

6. The relevant portion of the order dated 24.05.2016 is being reproduced herein below :-

"Keeping in mind the law laid down by the Apex Court in the case of Islamic Academy of Education vs. State of Karnataka (2003) 6 S.C.C. 697, the petitioner, who is the Chairman of the Institution, recognized by All India Council for Technical Education as well as Science and Technology Department, Government of Bihar, is directed to take admission on the basis of results declared by BCECE Board, otherwise the recognition and permission will prove illusory keeping in view the conduct of respondent Nos. 4 and 5."

7. As there was delay in decision making by the respondents and no admission of students could be taken in the College before the closure of the last date fixed for counselling, the writ petition bearing CWJC No.9068 of 2016 was finally dismissed by the learned Single Judge vide order dated 16.09.2016.

8. From the aforesaid order dated 16.09.2016 passed in CWJC No. 9068 of 2016, it would be manifest that a plea was taken on behalf of the College that option should be given to such students, who had not taken admission on the basis of counselling based on the result prepared by the BCECEB and that the appellant

should be permitted to take admission on the basis of list of qualified students and a list be supplied to it for contacting the students, if they were still interested in taking admission in the college. The said plea was specifically rejected by the Court.

9. The relevant part of the aforesaid order dated 16.09.2016 passed in the writ petition bearing CWJC No. 9068 of 2016 is being reproduced herein below :-

"4. The directive has ended up with a result in favour of the petitioner. However, the delay in the decision making by the concerned respondents including the Department of Science and Technology, Government of Bihar, does not help the petitioner because he cannot still take admission of students who have qualified in the examination held by Bihar Combined Entrance Competitive Examination Board.

5. From the counter affidavit filed on behalf of respondent nos.3 and 4, it is evident that after the declaration of the result for the year 2016, the counselling has already been started. The first phase of counselling is over and the second round of counselling is scheduled to begin from 19th of September, 2016. This has implications because if the prayer of the petitioner to be included as one of the institution which can be permitted to take admission at this belated stage is accepted, there will be complete chaos and confusion since none of the students have given option with regard to the institution of the petitioner, for obvious reason. The institution cannot be now included and options be demanded from the students at this belated stage when the second round of counselling is going to begin in a few days.

6. The practical problem and the futility of such a direction is well understood even by the petitioner as well as the respondents. However, learned senior counsel for the petitioner submits that an option should be given to those students who have not taken admission on the basis of the counselling and the institution should be permitted to take admission on the basis of those list of qualified students and a list be given to the petitioner for contacting the students, if they are interested in taking admission.

7. The Court is not willing to permit such a deviation for many a reasons including the fact that if a modality is required to be adopted in terms of a directive issued by the Hon'ble Supreme Court earlier and based on that modality, admissions are being granted to the students by such institutions, merely because the institution in question will go without any students in this academic year an innovation is not required to be made since it will be a bad precedent.

8. No relief, therefore, can be granted in the above factual position in favour of the petitioner for participation in the left over counselling for admission of students.

9. Writ is dismissed." (emphasis supplied)

10. It is the case of the appellant that the Director, Science and Technology, Government of Bihar made available data of qualified candidates on the basis of entrance examination conducted by the BCECE on or around 10.12.2016. Based on the data made available by the Director, Science and Technology, the appellant admitted 300 students in Session 2016-17 in the College. After taking admission, the appellant informed the Director, Science and Technology vide letter dated 09.01.2017 that since the merit list of BCECE was not received earlier, registration could not be done timely.

11. The appellant's contention is that it represented before the Secretary, SBTE on 17.01.2017 along with the list of 300 students for registration and form filling process so that the students may appear in the examination scheduled to be held on 23.01.2017.

12. In the aforesaid background of facts, the appellant filed a writ petition vide CWJC No. 3060 of 2017 seeking the following relief :-

"That this is an application for issuance of appropriate writ for direction to the respondents to ensure the registration of students of the polytechnic batch 2016-2017 (total 300 students) of petitioner's polytechnic college, namely Exalt College of Polytechnic, Kanhauli, Hajipur (Vaishali) and further for direction to hold the special examination of students of 2016-2017 batch."

13. The respondents contested the writ petition. Respondent nos. 4 to 6 filed their counter affidavit in which they pleaded that the main functions of the SBTE include prescribing the curriculum, monitoring the implementation of curriculum, conducting Diploma level examination of students, certification and affiliation to the Diploma level institutions after having the approval of AICTE.

14. They pleaded that all the Principals of Government Polytechnics/ Government Women Polytechnics/Private Polytechnics were duly informed vide letter no. 2471 dated 03.08.2016 of the Secretary, SBTE, Bihar, Patna that the last date of registration for the 1st semester is 31.09.2016 (without late fine) and 30.10.2016 (with late fine). Later, the last date of same registration was further extended vide letter no. 4325 dated 08.11.2016 in the larger interest of all eligible students upto 19.11.2016. Meanwhile, the process of examination form filling of the 1st semester did also come into effect in pursuance of the letter no. 4533 dated 09.12.2016 of the Controller of Examination, SBTE, Bihar addressed to all the Principals concerned. The last date for the examination form filling as mentioned in the said letter was 20.12.2016. The examination of the 1st semester did also commence on 16.01.2017 in strict adherence to the examination programme. The application for registration form by the chairman of the College vide letter dated 17.01.2017 was received by the SBTE on 18.01.2017 only. The students admitted in the end of 1st semester did not complete the regular course of study. Hence, the registration of those students were rejected vide letter no. 140 dated 23.01.2017.

15. Respondent nos. 2 and 3 filed their separate counter affidavit in the writ

petition wherein they have pleaded that in the light of the judgment passed by the Supreme Court on 14.08.2006 in Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors., since reported in (2003) 6 SCC 697, an Admission Supervisory Committee was constituted under the Chairmanship of a retired Judge of the Patna High Court vide notification no. 336 dated 05.02.2014 to ensure fair and transparent conduct of competitive examination by the Association of Private Technical Institution. The Committee was reconstituted vide notification no. 1466 dated 07.02.2016. A public notice was issued and published in the daily newspaper in February, 2014 for private unaided recognized technical institution whereby option was asked from them whether they want to take admission through BCECE or through Association of Private Institution. After receipt of the options from the institutions, a letter under the signature of the Director, Science and Technology, Government of Bihar was sent to all private unaided approved institutions communicating the decision of the Admission Supervisory Committee that in the light of the judgment passed by the Supreme Court in Islamic Academy of Education (Supra), admission should be made in private technical approved institution from the merit list of the competitive examination conducted by the Association of Private Institution.

16. It was further pleaded in the counter affidavit filed on behalf of respondent nos. 2 and 3 that the aforesaid letter no. 781 dated 13.03.2014 was challenged by the appellant in CWJC No. 9068 of 2016 in which an interim order was passed on 24.05.2016. However, the said CWJC No. 9068 of 2016 was finally dismissed on 16.09.2016.

17. After appreciating the rival contentions of the parties in CWJC No. 3060 of 2017, the learned Single Judge dismissed the writ petition vide judgment dated 19.06.2017.

18. Being aggrieved by the aforesaid judgment dated 19.06.2017 passed in CWJC No. 3060 of 2017, the appellant has preferred the present appeal.

19. The contention of Mr. P.K. Shahi, learned senior advocate for the appellant is that since the College is duly approved by the AICTE and duly affiliated and recognized by the SBTE, Bihar and it had taken admission of the students pursuant to the interim order of this Court dated 24.05.2016 passed in CWJC No. 9068 of 2016, the learned Single Judge ought to have allowed the writ petition. His further contention is that there is no fault on the part of the appellant in taking admission of students who had appeared in the common entrance test conducted by the BECEC. According to him, the learned single Judge failed to appreciate that the delay, if any, was caused by the respondents in registration of the students for which the appellant was not to be blamed. Hence, a direction ought to have been issued to the respondents to ensure registration of students of the academic session 2016-17 of the College and to hold a special examination for them.

20. Mr. Shahi, learned senior advocate appearing for the appellant submitted that

after the writ petition was dismissed, in the present appeal, while issuing notice, the Division Bench has stayed the operation of the judgment passed in CWJC No. 3060 of 2017 vide order dated 05.07.2017 and the students were permitted to pursue the course in the College provisionally subject to the final disposal of the appeal. He submitted that in view of the said interim order, in case the students would not be allowed to pursue their course in the College, their career would be doomed.

21. He has contended that in a more or less an identical situation, a Division Bench of this Court in Netaji Subhas Institute of Technology Vs. The State of Bihar & Ors., since reported in 2018(1) PLJR 469, modified the decision of the writ Court to the extent that the respondent Secretary has been asked to consider sympathetically the case of students and regularize their admission as one time measure.

22. Mr. Pushkar Narain Shahi, learned Additional Advocate General No.6, appearing for the State submitted that the appellant had filed one more writ petition bearing CWJC No. 9068 of 2016 in which vide interim order dated 24.05.2016, the writ Court had directed the respondents to take admission in the College on the basis of result declared by the BCECE. In the light of interim order, a communication was made to the BCECE. The merit list received from the BCECE was sent to the College, but in the meantime, the writ petition was dismissed on 16.09.2016. Thus, the interim order dated 24.05.2016 became ineffective. Therefore, the College was not authorised to take admission.

23. He submitted that the admission taken by the College in session 2016-17 is illegal and in violation of the final order passed in CWJC No. 9068 of 2016.

24. Having heard the parties and perused the materials on record, we find that it is not in dispute that the last date of registration for the 1st semester examination of the session 2016-17 was 31.09.2016 (without late fine) and 30.10.2016 (with late fine). It is also not in dispute that later the last date of the registration for the 1st semester examination was extended upto 19.11.2016. It is also not in dispute that the process of examination form-filling of the 1st semester examination for the academic session 2016-17 came into effect in pursuance of the letter no. 4533 dated 09.12.2016 of the Controller of Examination, SBTE, Bihar, Patna, which was addressed to all the Principals concerned. The last date for the examination form-filling as mentioned in the said letter was 20.12.2016.

25. The admitted case of the appellant is that it had received the data of qualified candidates on the basis of examination conducted by the BCECE on 30.12.2016. Thus, there is no dispute to the fact that till the last date of registration of students for the 1st semester examination of the academic session 2016-17 as also till the last date of form-filling for the said examination, the appellant had not taken admission of any student in the College.

26. The appellant was fully aware of the fact that the writ petition filed by it vide

CWJC No. 9068 of 2016 wherein a prayer was made to quash the letter no. 781 dated 13.03.2014 whereby private institutions set up in the State of Bihar to provide technical education were asked to constitute an Association for conduct of examination on the basis of which admission could be facilitated as also option be given to those students who have not taken admission on the basis of counselling and institution should be permitted to take admission on the basis of those list of students and a list be given to the appellant for contacting the students if they are interested in taking admission was dismissed by this Court vide order dated 16.09.2016.

27. In spite of having full knowledge of dismissal of CWJC No. 9068 of 2016 and in spite of the lapse of the last date for registration of students and for filling up of forms for the 1st semester examination of the academic session 2016-17, the appellant took admission of the students in the College. The said act of the appellant was not only illegal but also in complete disregard to the final order passed by this Court in CWJC No. 9068 of 2016 on 16.09.2016.

28. Furthermore, it would be of salience to note that the examination of the 1st semester had commenced on 16.01.2017 whereas the application for registration form by the appellant was sent to the BCECE vide letter dated 17.01.2017, which was received by it on 18.01.2017. Thus, when the examination of the students had commenced, the College had not even registered the students. Hence, the registration of those students were rightly cancelled.

29. Apparently, the students were not only illegally admitted they also did not attend classes and had not completed their regular course of study. The appellant did not adhere to the law. It is the College and the appellant who alone are to be blamed for the present state of affairs.

30. As far as the interim order passed by this Court is concerned, on 05.07.2017, the Division Bench (Coram : Hon'ble the Chief Justice and Hon'ble Justice Anil Kumar Upadhyay) had passed the following order :-

"Issue notice both on the memo of appeal as also I.A. No. 4532 of 2017.

Learned counsel for the respondents takes notice. He should seek instructions and file reply.

In the meanwhile, operation of the judgment rendered on 19.06.2017 in C.W.J.C. No. 3060 of 2017 shall remain stayed and the students, 300 in number, prosecuting the course in the petitioner Institute, shall be permitted to appear in the examination to be conducted provisionally, subject to final decision of this appeal.

The records be retained. List after four weeks."

Thereafter, on 29.11.2017, the same Bench passed the following order :-

"Having heard learned counsel for the parties and considering the prayer made in I.A. No. 8524 of 2017, we direct that the students, 300 in number, who are

prosecuting the course in pursuance to the interim order passed by us on 5.7.2017 and appeared in the examination, their results be declared and they be permitted to prosecute further course, subject to the final decision in these appeals.

Parties to complete the pleadings where after the matters be listed in the month of January, 2018 for further orders."

31. The plea of the appellant that pursuant to the interim orders passed by this Court, the students have appeared in the examination cannot be accepted. The interim orders were provisional in nature. They were passed subject to the final outcome of the appeal.

32. We are of the opinion that the learned Single Judge has rightly held that the conduct of the appellant in allowing admission of 300 students in polytechnic college for the academic session 2016-17 was highly reprehensible and deplorable. We are also of the view that the learned Single Judge has rightly taken into consideration the plight of the students, who have been admitted in the college and have pursued their study, which was legally impermissible, and while dismissing the writ petition directed the appellant to pay a sum of Rs. 50,000/- to each of the individual students within a period of three months.

33. We are of the view that the appellant cannot claim any benefit either in equity or in law. An illegality committed by the appellant in admitting students in the College in complete disregard to the mandate of law would not clothe the students with any legal right.

34. The reliance of the appellant on the judgment in Netaji Subhash Institute of Technology (Supra) to consider the case of the students sympathetically has to be seen in the totality of the facts and circumstances of the case as well as the ratio laid down by the Supreme Court in various cases relating to admission of candidates in academic matters.

35. In Netaji Subhas Institute of Technology (Supra), the judgment of the writ Court in a batch of writ petitions arising out of Bihar Private Technical and Professional Institutions Association (BPTPIA) and Ors. Vs. State of Bihar and Ors., since reported in 2017 (2) PLJR 700 was under challenge. In those writ petitions, it was noticed by the writ court that admission of students on the basis of marks of 10th or 10+2 examination result or marks obtained in qualifying examination of various technical institutes was contrary to the guideline for taking admission in terms of combined competitive entrance test. The writ court also noticed that for admission in private technical and professional institution no rules were framed by the State Government laying down procedure for admission to technical courses (B. Tech./Diploma Courses) in privately managed unaided technical institutions. The writ court having noticed the Supreme Court decisions in T.M.A Pai Foundation Vs. State of Karnataka, since reported in (2002) 8 SCC 481; P.A. Inamdar and Ors. (Supra) and Modern Dental College and Research Center and Ors. (Supra), which lay down the law and prescribed guideline as to

how such admissions to professional courses are to be taken emphasized the necessity of holding a common entrance test either by the State agency or the association of private institutions.

36. The writ Court found that the institutions had allowed some of the students to be admitted to the courses for academic session 2016-17 not on the basis of entrance test held by the association rather on their qualification of having passed 10+2 examination on the ground that by entrance test and counselling only 20% of the total sanctioned seats could be filled up and for their survival, they had taken admission on the remaining seats on the basis of qualification of the candidates having passed 10+2 examination. The writ Court held that admission taken by these institutions on the basis of 10+2 marks could not be justified, as the admission had to be taken by entrance test only and by no other means. The Court further held that illegal admission taken without resorting to a combined entrance examination test cannot be legitimized by a judicial order.

37. Having said so, the Court directed the Institution to refund all fees and charges so far received by them from the students and further to pay Rs.50,000/- to all the students so admitted by way of compensation.

38. The judgment passed by the writ court in BPTPIA (supra) was challenged vide two Letters Patent Appeals bearing LPA Nos.729 and 765 of 2017. LPA No. 729 of 2017 was filed by Netaji Subash Institute of Technology and Ors. whereas LPA No.765 of 2017 was filed by Khushi Sanskriti and Ors., the four students claiming themselves to be the worst sufferer of the order and judgment of the writ court. Those two LPAs were disposed of by the Division Bench vide a common judgment dated 13.09.2017 and has been reported as Netaji Subhas Institute of Technology (Supra).

39. In appeal, the Division Bench said that in none of the writ petitions, the writ petitioners have challenged the guideline for taking admission in terms of combined competitive entrance test or have approached the writ Court for a direction to the respondents to conduct either second entrance test or to consider the desirability of permitting admission on the basis of marks obtained in 10+2, which is one of the permissible mode but that permissible mode has to be decided only by the State Government by framing rule or in absence thereof by the Supervisory Committee constituted in terms of the Apex Court direction in the case of Islamic Academy of Education Case (supra).

40. The Division Bench said that if there is infirmity in the decision of the Supervisory Committee of the State Government touching the illegality and/or in the realm of void decision, yet the institute was required to challenge such decision and cannot be allowed to adjudge and finalize the admission process according to their own standard.

41. The Division Bench, in Netaji Subhas Institute of Technology (Supra), rejected the submission of the appellants of justification of the Institute in taking admission.

42. The Division Bench said that surprisingly enough, even after admission they have not approached this Court for seeking a direction to the respondent authorities to consider their case sympathetically and condone the defects in the admission.

43. After observing so so, the Division Bench said that the institute acted as if it is above law and it is competent to decide the manner of preparation of merit list for taking admission as substitute for the Supervisory Committee constituted by the State of Bihar in the light of judgment of the Apex Court in Islamic Academy of Education case (supra).

44. After holding that the action of the institute in taking admission in breach of the guideline was impermissible, the Division Bench took notice of the undertaking of the counsel appearing for the appellants in those cases that they will not claim any equity, if the students would be allowed to appear as interim measure in B. Tech. 1st Semester examination. The Bench also took into consideration the fact that if the State and its instrumentality would have taken action of cancelling admission immediately after the students were admitted, the students, who took admission, prosecuted their studies in B. Tech. course would not have been left in lurch.

45. Considering the plight of the students, in Netaji Subhas Institute of Technology (Supra), the Division Bench took a sympathetic view and modified the decision of the writ court to the extent that it directed the respondent-Principal Secretary, Department of Science and Technology, Government of Bihar to consider the case of regularizing/condoning the defect in the admission of the students in B. Tech. course in the institute in question as one time measure sympathetically as remedial measure. However, liberty was given to the Principal Secretary to take appropriate action against the institute for taking admission in frontal disregard to the guideline of the Supervisory Committee in accordance with law.

46. At this stage, it need to be mentioned that an identical issue has arisen in Rishabh Choudhary Vs. Union of India, since reported in (2017) 3 SCC 652. The question for consideration before the Supreme Court was the validity of admission granted to the petitioner by Respondent C.M. Medical College & Hospital to the MBBS course. A plea was advanced that since the petitioner was already granted admission by the College after the examination CGMAT-2016 was conducted by the College and supervised and monitored by the State Government and in which there was no allegation of impropriety, his admission should not be disturbed. It was also pleaded that the petitioner was certainly not at fault and he should not be the victim of an apparent wrong committed by the College as also by the State Government. In the said case, examination was conducted by the college contrary to the Gazette notification issued by the Medical Council of India amending the regulations on Graduate Medical Education, 1997 to the effect, interalia, that admissions to MBBS course shall be based solely on marks obtained in National Eligibility-cum- Entrance Test. After

considering the submissions advanced on behalf of the petitioner and the college supporting him, the Supreme Court dismissed the writ petition filed under Article 32 of the Constitution of India observing as under :-

"The question before this Court is not who is to be blamed for the present state of affairs - whether it is the students or the College or the State of Chhattisgarh. The question is really whether the rule of law should prevail or not. In our opinion, the answer is unambiguously in the affirmative. The College and the State of Chhattisgarh have not adhered to the law with the result that the petitioner became a victim of circumstances giving him a cause of action to proceed against the College and the State of Chhattisgarh being a victim of their maladministration. The plight of the petitioner is unfortunate but it cannot be helped."

(emphasis supplied)

47. Rejecting the contention of the petitioner, the Supreme Court said that the question is not of any impropriety in the conduct of the examination but the question is really one of adhering to a particular discipline laid down by the Medical Council of India and approved by this Court. The Supreme court said that the plight of petitioner is unfortunate but it cannot be helped.

48. Dealing with the submission made on behalf of the petitioner in Rishabh Choudhary (supra) that some similarly placed students participated in NEET and qualified in the examination, the Supreme Court said that those students like the petitioner who did not participate in NEET and placed their trust only in the college and the State of Chhattisgarh took a gamble and that gamble has unfortunately not succeeded. 'While our sympathies may be with the petitioner and similarly placed students, we cannot go contrary to the orders passed by this Court from time to time only for their benefit', the Supreme Court observed.

49. After observing so, the Supreme Court dismissed the writ petition finding no reason to entertain the petition under Article 32 of the Constitution of India.

50. We find that the judgment in Rishabh Choudhary (Supra) squarely covers the case of the appellants. Unfortunately, the said judgment was not brought to the notice of the Division Bench hearing the matter in Netaji Subhas Institute of Technology (supra).

51. In Guru Nanak Dev University Vs. Parminder Kumar Bansal and Ors., since reported in (1993) 4 SCC 401 relating to admission in disregard to the eligibility of the candidates in academic matters, the Supreme Court said as follows:-

" ... We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill- conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it,

leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such order cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions." (emphasis supplied)

52. In *Regional Officer, CBSE Vs. Ku. Sheena Peethambaran and Ors.*, since reported in (2003) 7 SCC 719, the Supreme Court had held that this Court had on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provision.

53. In *CBSE and Another Vs. P. Sunil Kumar and Ors.*, since reported in (1998) 5 SCC 377, the institution whose students were permitted to undertake the examination of the CBSE were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim order granted by the High Court. In that context, the Supreme Court observed as under :-

"... But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

54. In view of the ratio laid down by the Supreme Court in *Rishabh Choudhary* (Supra) and other decisions of the Supreme Court discussed hereinabove, with due respect to the judgment passed by the Division Bench of this Court in *Netaji Subhas Institute of Technology* (Supra), we are not persuaded to hold the same view as the judgments of the courts of law cannot be founded on misplaced sympathies, contrary to the ratio laid down by the Supreme Court in the cases discussed hereinabove.

55. In view of the discussions made hereinabove, we see no merit in the appeal. It is dismissed, accordingly.

56. There shall be no order as to costs.