

(1990) 09 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 6062 of 1989

Izaz Najmuddin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Bihar Private Engineering Colleges Taking Over Ordinance, 1986 — Section 10
Constitution of India, 1950 — Article 226

Citation : AIR 1991 Patna 8 : (1991) 1 BLJR 68 : (1991) 1 PLJR 466

Hon'ble Judges : S.B. Sanyal, J;Aftab Alam, J

Bench : Division Bench

Advocate : Rafat Alam, for the Appellant; P.N. Jha, for the Respondent

Judgement

S.B. Sanyal and Aftab Alam, JJ.—Heard learned Counsel for the petitioner as well as Mr. Rafat Alam, appearing on behalf of the University and Mr. P.N. Jha, appearing on behalf of the State.

2. The petitioner seeks quashing of Annexure-1 a notice of the Principal, Indian College of Engineering, Motihari dated 27.6.1989 laying down principles as envisaged u/s 10 of Bihar Private Engineering Colleges (Take-Over) Ordinance, 1986. The said notice stated that the students of Indian College of Engineering, Motihari who have been promoted to IInd year B.Sc. Engineering Class are informed "that those who have obtained Distinction, Ist Class, IInd Class and have opted Civil Engineering Branch have been allotted Civil Engineering Branch. Besides those having "carry" securing to total marks upto 686 have also been allotted Civil Engineering Branch. Those securing distinction, 1st Class, IInd class and have opted either for mechanical or electrical have been allotted branches of their choice. However, those having "carry" securing total marks ranging from 685 to 632 have been allotted mechanical engineering branch and those securing total marks ranging from 632 and below down to 490 have been allotted electrical branch.

3. This notice is sought to be quashed on the basis of the two judgments of this

Court (i) C.W.J.Cs. No. 4510, 4003 and 4365 of 1988 decided on 7th of November, 1988 by a single Judge, and (ii) a Division Bench judgment of this Court in C.W.J.C. No. 4402 of 1989 decided on 27.4.1989. We are afraid, none of these two judgments has any application to the facts of the present case. In the earlier Single Judge decision, there was no counter affidavit filed on behalf of the State to the effect that a Circular has already been issued laying down the criteria of allocation of discipline from 2nd year onwards which is in consonance with Section 10 of the Ordinance nor any criteria of merit for allotment of subject was brought to the notice of this Court. Therefore, the said case was decided on its own facts and circumstances.

4. So far as the Division Bench judgment is concerned it has relied on a Circular dated 30.12.1987. This Circular was not brought to the notice of the single Judge. Division Bench's attention, however, was not drawn to the provision of Section 10 of the Ordinance which envisages merit and choice to be criteria for allotment of different discipline.

5. We, therefore, do not find any good and valid reason for quashing Annexure-1 as prayed for in this writ petition. It is perfectly in accordance with Section 10 of the Ordinance and as desired by the Single Judge in the analogous cases that the boys of the taken-over institutions shall be admitted to the appropriate branch of the IInd year on the basis of merit, choice and availability of seats. The supreme consideration is merit and the choice has to follow the most meritorious amongst them. Merit and choice, however, will be subject to availability of seats in the institutions as well.

6. So far as the present case is concerned, we are informed at the Bar that the petitioner has gone to the final year in B.Sc. Civil Engineering Branch by virtue of an interim order rendered by this Court. Since it is a case of single individual who has studied upto the stage of final year B.Sc. Civil Engineering as per interim order passed by this Court we do not desire to interfere at this late stage which is bound to cause irreparable injury to the petitioner. We, therefore, allow the petitioner to complete his final year study in B.Sc. Civil Engineering and be permitted to appear in the said examination, as and when held. This case, however will not be a precedent for other students.

7. In the result, Annexure-1 is held to be legal and valid but in the special facts and circumstances of the case the petitioner is permitted to appear in the final year examination of B.Sc. Civil Engineering.

8. The writ petition is, accordingly, disposed of at the stage of admission.