
(2007) 10 OHC CK 0001
In the Orissa High Court

Knowledge Trust and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 3

Citation : AIR 2008 Ori 24 : (2007) CLT 332 Supp : (2007) 2 OLR 792 : (2007) OLR 332 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The controversy in all these Writ Petitions/ Misc. Cases is with regard to admission of students in professional courses like Engineering, Medical, MBA, MCA as well as some other similar courses.

2. Section 3 of the Orissa Professional Educational Institutions (Regulations of Admission and Fixation of Fees) Act, 2007 stipulates as follows:

(3) Subject to the provisions of this Act admission of students in all Private Professional Educational Institutions, Government Institutions and sponsored Institutions to all seats including lateral entry seats shall be made through JEE conducted by the Policy Planning Body followed by Centralized Counselling in order of merit in accordance with such procedure as recommended by the said Body and approved by the Government.

In consonance with the said provision, Joint Entrance Examination-2007 (Orissa) (for short JEE) was conducted. The Brochure published for the said Examination stipulated as follows:

Salient features of Private Engineering Colleges - The given features of different colleges are extracted from the affiliation data-based submission to BPUT. The number of colleges and seats in each college may change depending upon approval of AICTE/State Government.

(Emphasis supplied)

3. After completion of Examination results were published by JEE and 34,835 students qualified and became eligible to take admission in different professional colleges. It appears from the submissions made at the Bar that the total number of seats existing in different professional colleges which were approved by the All India Council for Technical Education (for short AICTE) in all disciplines was 15,337. Observing all paraphernalia Centralized Counselling was commenced by JEE for sponsoring names of the students out of the select list to different Institutions in order of merit and choice. It is pertinent to mention here that in consonance with the policy and guidelines framed as well as the decision of the Hon'ble Supreme Court, out of the total number of seats, 15% was meant to be filled up by the Management, but then out of the JEE list; 15% was to be filled up by students selected through All India Entrance Examination; and balance 70% was to be filled up by JEE, 2007 - Orissa through counselling. While counselling was in the process, AICTE granted approval to some of the existing colleges to enhance/increase the number of seats in different disciplines. AICTE also granted approval for establishment of new colleges with intake capacity of 240 students each (approximately) in different disciplines. For the sake of brevity and better appreciation, relevant portion of one of the letters of approval issued by AICTE is quoted herein below:

As per the Regulations notified by the Council, vide F. No. 37/3/Legal/2004 dated 14th September, 2006 and norms, standards, procedures and conditions prescribed by the Council from time to time and based on recommendation of the Expert Committee and E.C. Sub-Committee, I am directed to convey approval of the Council to Indus Educational and Charitable Trust, N3/33. IRC Village, Nayapally, Bhubaneswar-751015, Orissa for establishment of Indus College of Engineering at Barakuda, P.O.Panchgaon, via. Jatni, District-Khurda, Orissa-752050 for conduct of the following courses and intake.

xx xx xx xx Note - The approval is valid for two years from the date of issue of this letter for getting affiliation with respective Universities and fulfilling State Govt, requirements of admission.

(Emphasis supplied)

The said letter of approval was issued on 20th August, 2007.

4. Similar letters were also issued to some of the existing approved colleges, according approval for enhancement of seats. In consonance with the approval, the State Government allowed all the newly established colleges to admit students upto 30%, i.e. 15% management quota and 15% All India Entrance qualified students, but then did not take any steps for filling up the balance 70% seats. Similarly no action was also taken by the State Government to fill up the enhanced seats in the existing approved colleges. Aggrieved by such inaction of the concerned authorities a number of Writ Petitions were filed before this Court. Considering the gravity and urgency of the matter and specially as academic

career of the students is involved, with consent of the learned Counsel for the parties, this Court heard all the matters together.

5. In course of hearing, Mr. J.M.Mohanty, learned Govt. Advocate, on the basis of affidavits filed by the State as well as instructions received from it, submitted that Government would make all endeavour to fill up all the seats. Accordingly, this Court disposed of the Writ Petitions with observation that as Government had assured this Court that necessary steps would be taken for filling up all the seats, no further order was needed to be passed.

6. It is alleged by the learned counsel for the petitioners that in spite of the aforesaid assurance given by the State, its authorities are not taking steps for filling up the 70% seats lying vacant in the new colleges and also the enhanced seats in the existing colleges. According to the learned Counsel for the petitioners, AICTE has granted approval only for a period of two years and the said period has to be reckoned from the date of issue of the letter of approval. As such, if the colleges are not permitted to admit students during this academic session, they will lose one year and thus the approval would be confined to only one year, by which the benefit given will virtually be taken away without any justifiable reason, It was further submitted that allowing 30% seats to be filled in a newly established college, that too in different disciplines and not allowing to fill the rest 70% seats will cause immense prejudice and financial loss to the colleges, inasmuch they have appointed faculty members and other staff and incurred huge expenditure for teaching facility including practical and for providing various other academic pursuits. The existing colleges in which seats have been enhanced by AICTE also submit that as all facilities are available with them and the authorities have already taken steps for filling up the existing vacant seats, there is no rhyme or reason as to why the enhanced seats will not be allowed to be filled up.

7. It is submitted that all the petitioners are agreeable to adhere to the procedure adopted by the Government in consonance with Section 3 of the Act and that the students who have qualified in JEE and found eligible to take admission into different courses assigned to the colleges. To fortify such submission it is stated that in the past, more particularly in the last academic session 2006-2007 the authorities did permit Mahavir Institute of Engineering and Technology (for short MIET), Bhubaneswar N & M Institute of Engineering and Technology and NMIET, Bhubaneswar besides some other Institutions to admit students against increased capacity of seats approved by AICTE, even in the month of October, 2006 while courses had already started for First Semester. Several other instances have also been cited at para-17 of the Writ Petition in WP (C) No. 11493/07 to substantiate the aforesaid contention.

8. Relying on the proceedings of the Sixty Policy Planning Body Meeting held on 23.8.2007 (Annexure-1 to the aforesaid Writ Petition) it is submitted that the representatives of all Associations made a common plea before the Committee to the effect that the Institutions which have been granted recognition this year

have to close down permanently because of financial liability if the students are not admitted in subsequent round of counselling for each course. The said aspect was an agenda for discussion and the Committee resolved as follows:

We do not want to pass any comment with regard to present advertisement and also the Government Letter dated 11.7.2007 and as all the Associations want to make representations to Government. It is stated that all the Associations individually have filed representations and they want to file a collective representation by tomorrow on which Government may take a decision at the earliest in accordance with law keeping in view the provisions of the Act as well as the guidelines given by the Hon''ble Supreme Court where there is no provision of the Act available.

Thus, according to the petitioners, there is absolutely no bar for Government to take a decision to permit the newly established colleges approved by AICTE as well as the existing colleges to fill up the available vacant seats.

9. A counter-affidavit has been filed on behalf of the State mainly taking the stand that the State Level Centralized Counselling to fill up the seats meant for rank-holders in JEE-2007 has started with effect from 12th July, 2007. All the approved intake capacity, as communicated by the AICTE by the said date was considered while counselling for admission. In the case of the petitioners-Institutions, AICTE approval was received after the State Counselling meant for JEE rank-holders had started or had been over. As such, to avoid discrimination and to maintain fairness in admission process, Government decided to allow admission against 30% approved intake for the newly established colleges. It has further been averred that as counselling is at the fag end, filling up 70% of seats will go against the interest of meritorious students who have already taken admission.

10. Mr. J.M. Mohanty, learned Govt. Advocate, in course of his argument relied upon an advertisement stated to have been issued by AICTE on 24.9.2007 and submitted that the said advertisement specified that so far as new Institutions were concerned, if the letter of approval has been issued after 30th June, the same would not be valid for the current academic session, but shall be valid for the next two academic sessions. In short, according to Mr. Mohanty, as counselling is almost at the last phase and courses would commence shortly, fresh counselling for filling up 70% seats in the newly established colleges and for enhanced seats in the existing colleges in different disciplines will not be just and proper.

11. This Court, after patiently hearing the learned Counsel for the parties at length, meticulously perusing the documents annexed to the pleadings of the respective parties and considering pragmatically, finds that so far as the latter advertisement of AICTE indicating that the approval would be valid for the next two academic sessions in respect of newly established Institutions is only an intimation to future applicants. Law is well settled that admissions should be

guided by the terms of letter of approval and not by the subsequent advertisement. The advertisement further reveals that AICTE intended to intimate the interested, the vision and mission of the Council and invited applications for approval for future years and has stipulated the conditions. It has no direct nexus with admission in colleges already received approval which, as stated earlier, is within the absolute domain of the State Government vis-a-vis JEE. Further it is revealed that in the advertisement in question it was stipulated that the approvals issued after 31 st December would not be valid with regard to the existing Institutions where there was increase or variation of intake capacity. It is pertinent to note that the advertisement has not specified any year. Thus it is clear that the same was for subsequent years and was just an information for the intending applicants. That apart, the pleadings clearly reveal that in the past as well as in the last academic session 2006-2007 Government had permitted the Institutions to fill up the enhanced seats even after commencement of counselling and/or closure thereof.

Fact remains, the opposite party-authorities in consonance with the letter of approval issued by AICTE have permitted 30% of the seats of the newly established colleges to be filled up. If the advertisement issued later by AICTE did not stand in the way of the opposite parties to allow admission against 30% of seats, this Court fails to understand as to why there should be an embargo in filling up rest of the seats in the garb of the advertisement.

This Court also fails to understand as to what prevented the authorities not to allow the existing colleges to fill up 70% after allowing 30% of the enhanced seats to be filled up. Thus, discrimination reads large in the action of the opposite parties and this Court feels that the hindrance was caused more due to lack of coordination amongst the opposite parties.

12. The Policy Planning Body, as would be evident from the Resolution quoted supra has left it to Government to take a decision with regard to filling up seats so far as newly established colleges are concerned which otherwise indicates that the said Body has no objection. Fact remains, Centralised Counselling has not been over till now and is still going on. The figures made available to this Court by the Bar, as has been stated earlier, clearly reveal that JEE had selected 34,835 students to be eligible to take admission. The existing seats in different colleges then were 15,337. The AICTE in the meanwhile has granted approval for enhancement of 720 seats in the existing Institutions. The total seats of the newly established approved colleges come to 1005. Thus, the total seats as on date in all the Institutions, including existing and newly created, comes to 17,062. Against the said available seats, the students qualified in JEE and eligible to take admission are 34,835. Thus enough students found fit and eligible to take admission are still waiting and there is no dearth of talents. The students who laboured hard burning mid-night oil, appeared in JEE and qualified themselves to take admission in different courses cannot be denuded of their right to enjoy the fruits of their labour on some technical reason or that further exercise has to be

done by the authorities.

13. The State Government in the past and even during the last academic session having allowed students to take admission against enhanced seats after commencement of counselling and even after closure is estopped from taking a different or discriminatory stand this year. It is apt to keep in mind that most of the approvals granted by AICTE were in the month of August, 2007. Centralized Counselling was in progress then. Even on this day, the same is going on. Thus there will be no embargo for the State Government, if it so desires, to take into consideration all the seats available due to subsequent approvals granted by AICTE and fill up the same, specially in view of the fact that enough students who have qualified in JEE are available.

It appears from the Brochure published by JEE that the authorities were all along prepared to accommodate such number of students as would be available after enhancement of seats and/or establishment of new colleges and that was the reason why it was mentioned in the Brochure that the number of colleges and number of seats in each college may change depending upon approval of AICTE/ State Government. Thus it cannot be said that the opposite parties were not aware of it and/or not prepared to meet such eventuality. Preparation of a list of 34,835 students by JEE as eligible to take admission also reveals that the same was done with an aim to accommodate further intake in future on AICTE granting approval.

14. The only other question that has to be considered by this Court is as to whether any prejudice may be caused to the students who have already taken admission in different colleges due to nonavailability of seats in their first preferred colleges. But then the said problem can be sorted out if the students are given a chance to exercise their option through e-mail or other mode(s) and if permission is granted to them to change the college or discipline if otherwise possible in consonance with the Rules and guidelines.

15. In view of the foregoing discussions, this Court feels that ends of justice and equity will be better served and interest of the students at large can be protected if the opposite party-authorities are directed to fill up all the seats approved by AICTE before Centralized Counselling is over, but then from out of the JEE select list in consonance with the guidelines, and directs accordingly. To avoid further wastage of time, this Court observes that JEE shall declare the total number of seats available in different colleges within three days hence and the students who have already taken admission would be granted opportunity to exercise their option through Internet or other mode to be fixed by JEE within three days thereafter. After considering the same, fresh Centralized Counselling shall be held to fill up rest of the seats. The entire exercise shall be completed within two weeks hence.

16. All the Writ Petitions/Misc. Cases are accordingly disposed of.