

(1997) 05 PAT CK 0057

In the Patna High Court

Case No : C.W.J.C. No"s. 3016 and 3042 of 1996 (R)

Ram Kumar Prasad and Another

APPELLANT

Vs

Birla Institute of Technology and Others
 Praveen
Kumar Prakash and Others Vs University Grants Commission
and Others

RESPONDENT

Date of Decision : 22-05-1997

Acts Referred:

University Grants Commission Act, 1956 — Section 3

Citation : (1998) 3 BLJR 1991

Hon'ble Judges : S.K. Chattopadhyaya, J;Nagendra Rai, J

Bench : Division Bench

Judgement

Nagendra Rai, J.—These five writ applications are connected ones as in all of them, the petitioners have challenged the admissions in the different faculties in the Biria Institute of Technology, Mesra, Ranchi (hereinafter referred to as "the Institute) on different grounds, including the illegalities, favouritism and nepoihm and, accordingly, they have been heard together and are being disposed of by this common judgment.

2. In C.W.J.C. No. 3016 of 1996 (R), the petitioners, who are guardians of the two students, who have appeared at the Entrance Examination of 1996 Session in the Institute, have prayed (i) for a direction to the respondents to make admissions in the Bachelor of Engineering/Bachelor of Pharmaceutical Sciences/ Bachelor of Architecture/Master of Business Administration/Master of Computer Applications and other courses of 1996-97 session strictly according to the final merit lists for all the categories in accordance with the directions of the Hon"ble Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and the direction of this Court in C.W.J.C. No. 2826 of 1994 (R), disposed of on 19.5.1995, a copy of which has been annexed as Annexure-4 to this writ petition, (ii) for quashing the merit lists/results of the Entrance Examination of 1996 session published by the Respondents as the same have not been prepared according to merit, (iii) to produce merit list of finally

selected candidates under all categories of the Entrance Examination of said session and to make admission strictly according to the final merit list and to fill up all the seats for all the courses, (iv) not to keep any seat vacant for the so-called spring semester, which is completely foreign to the prospectus issued by the respondents and in violation of the direction of this Court as contained in Annexure 4, (v) not to admit the students beyond the seat limit as prescribed by the AH India Council of Technical Education and (vi) to produce the answer books of the candidates so that the bungling and manipulation in the admission can be revealed before the Court.

3. In C.W.J.C. Nos. 3502 of 1996 (R) and 3042 of 1996 (R), the petitioner have prayed for a direction upon the respondents to admit them as persons having secured lesser marks than them have been admitted in the Bachelor of Engineering Course by showing favour to them.

4. Similarly in C.W.J.C. No.3306 of 1996 (R), the sole petitioner has filed the present writ application alleging that he has secured 87 marks in the Entrance Examination of the Bachelor of Engineering Course, but the persons having secured lesser marks have been admitted.

5. In C.W.J.C. No. 3090 of 1996 (R), the sole petitioner has prayed for a direction upon the Respondents to admit him to M.C.A. Course as persons having secured lesser marks than him have been admitted in the said course.

6. Before proceeding to state the respective cases of the parties, I will firstly state the facts, which are not in dispute. Birla Institute of Technology is a deemed University and it has been notified u/s 3 of the University Grants Commission (hereinafter referred to as "the U.G.C). The Institute is getting financial aid from the Central and State Governments as well as from the U.G.C. The Institute imparts education in 4 years B.E. (Bachelor of Engineer), five years B. Arch. (Bachelor of Architecture), four years B. Pharm. (Bachelor of Pharmaceutical Sciences) at Under Graduate level, for one and half years M.E. (Master of Engineering, one and half years of M. Pharm (Master of Pharmaceutical Sciences), three years Full time M.C.A. (Master of Computer Applications), one year Full time D.C.A. (Diploma in Computer Applications), two years Full time M.B.A. (Master of Business Administration), two years M.Sc. (Information Science) and two years M.Sc. (Bio-Medical Instrumentation) at its Post-graduate level. Except in cases of Non-Resident Indians and foreign students, all Indian nationals residing in India seeking admission to the Institute are required to appear at the Entrance Examination. The Information Brochure of Entrance Examination-1996 shows that the selection of the students will be on all India basis. However, the Institute will ensure that no State or Union territory remains unrepresentative in the overall distribution pattern. 50% of the seats shall be allocated to the candidates from the Bihar State, 22.5% seats will be reserved for the S.C. and S.T. candidates, 23 seats for Government of India nominees for foreign students, 10 seats for the nominees of the Board of Governors of the Institute for B.E. course, five seats for the sons and daughters

of the old students, 5 seats for the children of staff of the Institute, one seat for the children of Defense personnel, one seat for handicapped candidate and one seat for sports person, who has participated at National level in games and sports. The approved sanctioned seats, according to the Brochure are 345 for Bachelor of Engineering, 40 seats for Bachelor of Architecture, 30 seats for Bachelor of Pharmaceutical Sciences, 30 seats for Master of Computer Applications. Certain seats are also reserved in other faculties. It is not relevant to state the same, as the admissions to the aforesaid faculties are not challenged in the writ applications.

7. The admissions of 1992-93 and 1993-94 sessions were challenged on the ground of malpractices adopted in the admission to the different courses in the Institute in C.W.J.C. No. 3588 of 1993 (R), which was disposed of on 20.5.1994. This Court did not interfere with the admissions and issued following directions-

Before parting with the case, however, we observe that the law relating to the admission to the professional courses have been conclusively laid down by the Apex Court in case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., Respondent Nos. 3 and 4 are bound by the observations and directions given by the Apex Court in the said case. Accordingly the respondents 3 and 4 are directed to formulate their admission policy and procedure for the ensuing session in terms of the said directions and observations of the Apex Court if not already done. It is directed that respondents 3 and 4 should strictly comply with the observations and directions for the Apex Court in the matter of admission to the professional courses in their Institute and there should not be any deviation therefrom at any cost. The admission to any of the professional course must be based on merit and there should be no admission at all after the stipulated date fixed by the competent authority as has been observed by the Apex Court in the case referred to above.

8. Again the admission of the session 1994-95 was challenged in C.W.J.C. No. 2826 of 1994 (R), which was finally disposed of on 19.5.1995 by me, a copy of which has been annexed as Annexure 4 in C.W.J.C. No. 3016/ 96 (R). Therein also, the admission was challenged on the ground that the merit list was not prepared according to rule and the admission was done on the basis of favoritism. This Court, however, having noticed the allegations, did not cancel the admission on the ground that the allegations were not supported by any document. However, this Court noticed that all was not well in the Institute and the procedure adopted by the Institute gave an impression that there were many loopholes in the procedure being followed by the Institute in conducting the examination, publishing the result and admitting the students in the different faculties of the Institute. There was enough scope for nepotism in the matter of admission. This Court found several infirmities and, accordingly, disposed of the writ application by issuing certain directions, which are as follows-

(i) All admissions in different courses be made on the basis of all India Entrance Examination. No candidate, who has not participated in the Entrance

Examination be admitted under any category.

(ii) Admission of candidates under general category be made on the basis of merit only. The admission of nominees of the Board and, or State Government be made in order of merit out of the left out candidates next below the candidates selected under the general category. The admission of candidates falling under other reserved category should be made on the basis of inter se merit of candidates falling under a particular reserved category.

(iii) The notice inviting application for admission should given the authorised intake in all the courses. The number of seats available under the general and different reserved categories should be mentioned in the notice. The aforesaid facts should be clearly mentioned in the admission policy and prospectus.

(iv) In the merit or result list, ranking of all the candidates on all India basis should be stated.

(v) After interview the list of finally selected candidates under all the categories should be published in the Newspapers at one time and not in piece meal. It should be also mentioned therein the minimum marks secured by the last selected candidate under each category. The second list for admission should be published only to fill up the seats fallen vacant due to drop out. The said list should be prepared strictly on the basis of merit as stated above.

9. The petitioners in C.W.J.C. No. 3016 of 1996 (R), as stated above, are guardians of two candidates, who have applied for admission. They have challenged the admission on the ground that none of the directions, as quoted above, has been followed and the admissions are being taken in arbitrary manner and adopting pick and choose policy and the candidates, having secured lesser marks than their wards, have been admitted. The list of successful candidates is not published in the newspaper after their final selection at one time and, on the other hand, the admissions are being taken in piece meal to accommodate the sons of the V.I.Ps. Including the officers of the U.G.C. In this connection, it is asserted on their behalf that according to the Brochure, the date of holding examination was 26.5.1996 and the examination in the different faculties was held on that date. The petitioners' wards did well in the examination. The first merit list (written test) of the students was published on 23.7.1996, a copy of which has been annexed as Annexure 2. Only 162 students in Bachelor of Engineering course were admitted out of total seats of 345 in violation of the directions given by this Court and 183 seats remained vacant. The second merit list of the candidates, having qualified at the written test in order of merit, was published on 5.9.1996 (Annexure-3), wherein names of 121 candidates in general category in Bachelor of Engineering Course and 92 in S.C. & S.T. reserved categories were mentioned. It was mentioned therein that the final selection would be made after the interview to be held on 14.9.1996. It was also stated that the seats remaining vacant after interview would be filled up in the spring semester commencing from January, 1997 and the vacancies in the

remaining reserved seats would be filled up and notified on the Institute Notice Board later on. A copy of the notification of resolution dated 5.9.1996 is Annexure-3. It is stated that the so-called merit list and the manner in which the Respondent-Institute is proceeding to take admission, are contrary to the directions of this Court; inasmuch as the result of finally selected candidates in all the categories has not been published in the newspapers at one time in terms of the order of this Court, indicating the selection of 50% of the seats to have been allocated to the candidates from the Bihar State. The list has not been published category-wise nor does it indicate the merit position of the ward-candidates, nominees Board of Governors/State Government, Government of India nominees and other reserved categories as mentioned in the Brochure. The list does not indicate the minimum marks secured by the last selected candidate as ordered by this Court. In spite of the direction of this Court, seats were kept vacant and the admissions are being made on the pick and choose basis in illegal manner.

10. The Respondent-Institute and its officers filed a counter-affidavit on 30.10.1996, wherein it was stated that the writ application in the form of P.I.L. is not maintainable. The admissions are being made strictly on merit in accordance with the direction issued by this Court and the students are not admitted beyond the limit as prescribed by All India Institute of Technical Education. The answer-books of the candidates of 1996 Entrance Examination are available and they are ready to produce the same to show that the admissions are made on merits. Regarding the procedure for admission, it has been stated that the merit lists of the candidates, who have qualified in the written test, are published and they are required to appear in an interview. The interview is not a mere formality. The candidates having qualified at the written test, have to face the interview and if their performance in the interview (and group discussion for M.B.A. students only) are found up to the mark by the experts, then only they are admitted. In case the seats remain vacant, the Institute publishes a second list of the candidates in accordance with the merit in the written Entrance test and they will be called for interview for admission. The admission procedure is strictly followed in order of merit. The merit list is not in violation of the direction of the High Court. The Institute has rightly mentioned in the result published second time in order of merit that the seats remaining vacant would be filled up in spring semester. In spring semester, the admissions of remaining Government of India nominees from different countries, the candidates, who received call-letter at belated stage and the candidates of first semester, who could not clear certain papers, are allowed to take their admissions. The admission of spring semester is not a strange but as a matter of fact since beginning admission of spring semester is made every year in January/February for the students of the aforesaid categories. In other words, the stand of counter-affidavit was that the admissions have been done on the basis of merit and no favouritism or nepotism has been done and the directions issued by this Court have been followed.

11. It is to be stated here that the statements made in the counter-affidavit were

incorrect and false as even according to their assertion in the counter-affidavit, the directions issued by this Court were not followed. The final merit list after interview was never published at one time. The admissions were taken in piece meal according to the whims of the officers of the Institute.

12. A reply to the counter-affidavit was filed on 6.11.1996, wherein at paragraph No. 11, the petitioners gave a list of candidates, who were admitted in the sessions of 1995 and 1996. There were four candidates of the 1996 session, namely, (i) Chandra Deepak, son of Dr. C.P. Srivastava, Advisor, All India Institute of Technical Education, (ii) A. Kumar, son of Dr. Ashok Chandra, Deputy Educational Advisor, Ministry of H.R.D., Government of India, (iii) S.M. Mukherjee, son of Dr. S.M. Mukherjee, of U.G.C. and (iv) Prashant Dayal son of Dr. Prabhat Dayal, I.A.S. Officer, Jaipur. This Court, after taking into consideration the aforesaid submissions of the parties, on 6.11.1996 directed the Respondents to file merit list of the candidates in sealed cover as well as to file a supplementary counter-affidavit stating therein the marks obtained by the aforesaid four candidates and two other candidates, who are sons of the petitioners of C.W.J.C. No. 3016/96 (R). the Institute filed a petition for modification of the said order dated 6.11.1996 and prayed that they be permitted to file the marks of said six candidates I.e., of the aforesaid four candidates and two wards of the petitioners in a sealed cover and that they would feel difficulty in giving marks and ranks of the candidates in the supplementary counter-affidavit. This Court modified the earlier order by order dated 2.12.1996 and, accordingly, directed that it would not cause any prejudice if the merit list of the said four candidates and two sons of the petitioners was filed in a sealed cover supported by a separate affidavit that the merit list and marks obtained by the six candidates as contained in the sealed cover are true and at the time of hearing if occasion so arose, the sealed cover would be opened. After considering the assertions made in the writ application and the counter-affidavit, this Court directed the Institute to give the names of the students admitted, their code numbers, Entrance roll numbers, marks obtained and their ranks, the names of the candidates admitted under season semester with their ranks, marks obtained and their position in the merit list, the details of the students admitted without appearing in the Entrance Examination and whether the result was published in the newspaper after interview in terms of the directions of this Court passed in C.W.J.C. No. 2826 of 1994 (R). Thereafter, affidavits were filed on behalf of the Institute on 14.2.1997 in this writ application as well as in other three connected writ application, wherein it was stated that the names of the candidates, who are admitted, their entrance roll numbers, Institute roll numbers and their ranks are annexed with these affidavits in sealed cover. The students have been admitted in monsoon semester only. The details of the candidates admitted in monsoon semester have been given, according to which 175 candidates were admitted in general category, 16 candidates -as Government of India nominees, 24 candidates as N.R.Is., 9 candidates as last year admitted students and 56 students in reserved category.

It was further stated therein that the result of the successful candidates was published in newspapers and they were selected after viva-voce test. The seats remaining vacant due to non-admission of the selected candidates not opting for admission are filled in from the merit list and the second list is published according to merit in the national newspaper and as such it is not practicable nor possible to publish the list of finally selected candidates in all India newspapers. It was also stated that no candidate has been admitted in spring semester from the merit list. It was also stated in paragraph 14 of the said affidavit that as a normal standard practice, the Institute did not retain answer books for more than three months from the date of publication of the written result. It was also stated that some of the students have used unfair means and their copies were kept in separate bundles. Later on, it was found that the bundles which contained the copies of the candidates, who had adopted unfair means, were found missing, along with other copies also. The Institute apprehends that at the instance of the candidates, who had used unfair means, the copies relating to unfair means have been stolen and made untraceable and as such the respondents are not in a position to produce the copies of those candidates, who along with the petitioners of the writ applications were found to have used unfair means by the Committee of Examiners. The documents, which were filed in pursuance of a direction dated 22.1.1997 were not found in terms of the direction and the time was given to the Institute to file a detailed chart in terms of the earlier order, which was filed later on. This Court also directed the Institute to produce the copies of the said four students, whose names were mentioned in the rejoinder to the counter-affidavit dated 6.11.1996. However, copies were not produced by the Institute on the ground that the copies were not available though it was earlier stated that the copies were all available. "

13. On 3.3.1997, the Institute filed an affidavit along with a list of the candidates with their rank in Entrance Examination, category, number of copies, code numbers and marks obtained in terms of the earlier order as Annexure X/I. The petitioners filed a reply to the same and annexed a document as Annexure-8 showing merit list of the candidates selected in Bachelor of Engineering Course to demonstrate that the list given by the Institute has been prepared only to screen their own misdeeds as many of the students having secured higher marks have been shown to have secured lesser marks and that such candidates having secured lesser marks were thrown to have secured higher marks showing favour to them, which is evident from the merit list prepared by the Institute and annexed as Annexure-8. The Institute did not deny the existence of Annexure-8 but stated that it is not final merit list and that after preparation of the aforesaid list, the final list was prepared and the corrected marks obtained by the candidates have been given in Annexure X/I. It is to be mentioned here that no contemporaneous document has been filed by the Institute in spite of several directions to show as to how the merit list was prepared after the written test and interview. The respondents said that the interview is not a mere formality but nowhere in any document, it has been stated as to how much marks were

allotted in interview and how much marks were given to the candidates in the interview.

14. After close of the hearing, an affidavit has been filed on behalf of the Institute through its Vice-Chancellor on 20.3.1997, wherein he has stated that the admission in different courses are made on the basis of All India Entrance Examination. Except the Government of India nominees (foreign students of neighboring countries and N.R.Is. category), the admissions are taken on merit. Directions given by this Court in the aforesaid C.W.J.C. No. 2826 of 1996 (R) were not correctly understood by th" Institute and there had not been strict compliance of the said directions, for which the Vice-Chancellor expressed deep regret. It was also stated that hereinafter the result of the candidates taking Entrance Examination shall be displayed on the Institute Notice Board up to four times the number of the authorised intake in each category and all such candidates shall also be informed by Registered Letter. The final merit list after interview shall be published in All India Newspapers as well as it shall be placed on the Notice Board of the Institute showing Roll Nos. and in bracket position of the candidates in the merit list i.e., their ranks on the basis of final selection. The Institute would announce and follow the last dates of taking admissions in each discipline and there would not be any further admission after the last date and the Institute shall follow the directions and in future the result shall be published giving last dates for taking admissions in different courses and shall also inform that no admission shall be taken thereafter. There shall be only one admission session, namely, Mansoon Session and admissions in Spring session shall not hereinafter be taken. It was also stated that necessary amendments would be in the brochure of the year 1997.

15. In C.W.J.C. No. 3502 of 1996 (R), the four petitioners had appeared for their admissions in the Bachelor of Engineering course, which was held on 26.5.1996. They asserted that they did well, but the result-sheets, which were published on 3.7.1996 and 5.9.1996, did contain their names. They have given their marks as contained in Annexure-6. They further said that the persons having secured lesser marks, whose names are given in Annexure-7, have been selected ignoring their rightful claim.

16. Similarly, in C.W.J.C. No. 3042 of 1996 (R), the two petitioners have asserted that they had appeared for their admissions in the Bachelor of Engineering Course, which was held on 26.5.1996 and they did well and their positions in the merit list were 54 and 164, respectively, but they were not admitted as favouritism and nepotism were done in the matter of admission.

17. In C.W.J.C. No. 3306 of 1996 (R), the sole petitioner asserts that he did well in the said examination and secured 87 marks, but he has not been admitted, whereas, one Santanu Singh, who secured only 85 marks, has been admitted ignoring his rightful claim.

18. In C.W.J.C. No. 3090 of 1996 (R), the sole petitioner asserted that he

appeared for admission in M.C.A. and he did well, but the persons having secured lesser marks than him have been admitted ignoring his rightful claim.

19. Counter-affidavits have been filed in all the said four cases. The counter-affidavits filed in C.W.J.C. No. 3502/96 (R) and 3042/96 (R) are the same. It is not denied that the persons having secured lesser marks than these petitioners, have not been admitted. However, it is stated that the petitioners had appeared from different centres and they were found to have used unfair means in the examination. The Examiners and Co-ordinators reported the matter and, thereafter, the Vice-Chancellor of the Institute constituted a Committee of three persons and the Committee after studying the reports, found that the petitioners were found to have used unfair means and as such their examinations were cancelled. In C.W.J.C. No. 3306 of 1996 (R), the stand of the Institute is that according to own saying of this petitioner, he secured 87 marks only but the persons having secured 98 marks, have been admitted and as such no illegality has been done in regard to him. In C.W.J.C. No. 3090 of 1996 (R), the stand of the Institute is that according to the Information Brochure, disclosure of identity in any form i.e., writing roll number or name inside the answer-books, making some distinguishable marks etc., use of unfair means by a candidate at the entrance examination whether; detected at the time of examination, evaluation or at any other stage, will lead to cancellation of his examination. It is also stated that the petitioner made distinguishable marks and, therefore, he was disqualified for admission in the Institute. It is also asserted that the admission has been done on merit and the case of this petitioner has been rejected on the aforesaid ground

20. The Institute is a deemed University and it receives aids from the Government and the U.G.C. and as such it is an instrumentality of the State, Its action should be transparent and fair. Favouritism, nepotism and corruptions should be alien to its deeds. Nothing should be done by the Institute to create an impression that the merit is the casualty in taking admissions. This Court, on two occasions, has issued directions to the Institute to admit students on merit. Law is well-settled and it requires no reference to the judgment of the Apex Court that the admissions in Technical Institutions, whether run by the Government or even by the private agency, recognised or affiliated by the Government and the University, should be made strictly on the basis of merit. Admissions to the general category and reserved category should be based on merit inter se in the sense that the candidates in general category should be admitted purely on the basis of inter se merit. The candidates belonging to reserved category i.e., S.C. & ST. etc. should be admitted on the basis of merit amongst themselves, who have not been selected in the general category. Admission of the students under different reserved categories, as indicated in the earlier order, should also be made on the basis of merit, which have appeared for the Entrance Examination. No admission, except in the case of N.R.Is, and foreign students, should be made outside the merit list prepared on the basis of Entrance Examination and interview.

21. The first question to be considered is as to whether the admissions have been done on the basis of merit or favoritism, nepotism or corruption has played some part in admission? The Institute has not carried out the earlier direction and even according to its own saying, it has not published the result of the successful candidates in all the newspapers as directed by this Court, What it has done is that it has published the result of the successful candidates in the written test on two occasions in piece meal and, thereafter, after interview has selected the candidates and allowed a large number of seats to remain vacant which it is intending to fill up in spring semester without preparing any merit list on the pick and choose basis. It is to be stated that it has been stated times without number in several counter-affidavits filed on behalf of the Institute that the interview is not a mere formality and the candidates in different faculties are selected after interview or group discussions. More surprising feature is that neither in the brochure nor in any of the counter-affidavits, it has been stated as to what is the marks allotted to the candidates in the interview. It appears that the marks allotted to the candidates in the interview is arbitrary and dependent upon the whims of the Institute as it is for them to allot such marks in the interview so as to get one selected even though he has not done well in the interview. This type of procedure adopted in interview is unheard of in the Institutions running with the aid of the Government. This apart, the directions of this Court have not been carried out and the results have been published in piece meal. When examination is held at one time, I fail to understand any logic in publishing results of the written test in piece meal. The final result has not been published after interview in the newspaper. The so-called merit list has been produced, which on perusal, shows that the code numbers of the copies and marks have been given. The petitioners filed Annexure-8 to show that many of the candidates, who are shown to have secured higher marks in the list field as Annexure-X/1 prepared by the Institute for the purposes of these cases giving roll number, marks and names of the candidates, have, as a matter of fact, secured lesser marks vide Annexure-8. The Institute has not denied the existence of Annexure-8, but stated that the final merit list was prepared for making correction in Annexure-8. Contemporaneous documents including the final merit list prepared after correction have not been produced by the Institute. They asserted that they have got the Answer-Sheets and when this Court directed to produce the copies of the said four candidates, whose names were given in the reply to the counter-affidavit, the Institute showed its inability by stating that the copies of the students, who have used unfair means and other copies are also missing. The vacillating stand and non-production of the contemporaneous documents leads to an inference that the admissions have not been done in a proper manner and some of the students having secured lesser marks have also been admitted in the Institute. However, the only way to verify the said fact was the answer-sheets as there is divergent stand between the parties with regard to the marks obtained by some candidates and as the answer-sheets are not available, this Court is not in a position to come to a definite conclusion that some of the candidates have been admitted with lesser marks. But this Court is of the view

that there is strong reason to believe that some of the candidates having secured lesser marks, have been admitted. But in absence of a definite material, this Court is of the view that it is not proper to cancel the entire admissions, specially when the students have been admitted and are attending their classes for so many months.

22. So far as the admission in spring semester is concerned, as stated above, the very preparation of the merit list by the Institute is doubtful and as such no future admission should be allowed for the session 1996 in spring semester as the same will run contrary to the direction given by this Court in C.W.J.C. No. 2826 of 1996 (R), wherein it was stated that the admission should be made at one time and the subsequent admission should be made only to fill up the seats fallen vacant due to drop-outs. The Vice-Chancellor also in the counter-affidavit dated 20.3.1997, has stated that no further admissions would be taken in 1996-97 session.

23. For all these reasons, I direct that no further admission would be taken from the merit list of 1996 session. Regarding the students of 1996 session, who have already been admitted and are prosecuting their classes for last few months. I am not inclined to quash their admissions due to the reason that there is no clinching material to come to a definite conclusion that some of the admitted candidates have secured lesser marks than the petitioners.

24. So far as the cases of petitioners of C.W.J.C. Nos. 3502 of 1996 (R) and 3042 of 1996 (R) are concerned, they have asserted that they secured higher marks than the students, who have been admitted. This assertion on their behalf has not been denied in the counter-affidavit. The only stand of the Institute is that they have used unfairmeans as is evident from the report of the examiners and the Co-ordinators and the Committee constituted by the Vice-Chancellor found them to have used unfairmeans. It is the admitted position that these petitioners, who are numbering six, had appeared from different Centres. It is not a case that unfairmeans have been used in a large scale at one centre. In such a case, it is not necessary at all to follow the principal of natural justice. However, the law is well-settled that if the use of unfairmeans has been alleged against a particular student and not against the whole centre, in that case, the authority cannot cancel his admission without observing the principle of natural justice. In these cases, the petitioners were not given an opportunity of hearing before condemning them of having used unfairmeans. Accordingly, I am of the view that the respondent-authorities were wholly unjustified in cancelling their examinations without observing the principle of natural justice, meaning thereby, an opportunity should have been given to the petitioners to these writ petitions to meet the allegations of unfairmeans against them. The story that the answer-sheets of the candidates are missing appears to be unbelievable as this matter was not reported to the police and in the Court on affidavit, it was asserted earlier that copies of all the candidates are available. Even if copies are not available, other documents such as reports etc. are available and on the basis of

the same, the cases of the petitioners, who are alleged to have used unfair means, should be considered. Accordingly, I am of the view that the petitioners of these writ applications have made out a case for interference and, accordingly, the Institute is directed to reconsider their cases after giving an opportunity to them to meet the allegations of unfair means against them, and if it is found that they have not used unfair means, then they should be admitted as special case for the reason that they should not suffer when they have secured higher marks than some of the admitted students, who have secured lesser marks. However, if the authorities find that they have used unfair means then their results would be cancelled.

25. So far as C.W.J.C. No. 3306 of 1996 (R) is concerned, even according to his own saying, he has secured only 87 marks and according to the respondents, no persons having secured less than 98 marks have been admitted in the Institute. He has given example of one Santanu Singh, who having secured 85 marks lesser than this petitioner, has been admitted. In my view, only on the basis of the assertion, which has been denied, no direction can be issued to the respondents to admit this petitioner in the Institute.

26. So far as the case of the petitioner of C.W.J.C. No. 3090 of 1996 is concerned, he had applied for admission to M.C.A. course and the stand of the Institute is that he had used an identification mark in his answer-sheet, as a result of which, his result was cancelled. The brochure specially provided that no identification mark should be put in the answer-sheets and this petitioner was found to have used identification mark in the answer-sheet. I also perused the answer sheet and I am of the view that his result was rightly cancelled. In the case of Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, , the instruction was to write roll number only in space provided therefore on the first page and not at any other place. The candidate wrote his roll number in the answer book at a different place. The answer book was not evaluated. The said action was challenged on the ground that the same was done without affording any opportunity of hearing to the candidate. The Apex Court held that in such a situation, opportunity of hearing need not be given. As stated above, I had perused the answer-sheet of this petitioner and some identification mark was found to have been given in the answer-sheet and as such he was not selected. Then, he cannot complain that the said action of the Institute was taken without affording him an opportunity of hearing. Accordingly, there is no merit in his case.

27. Before parting with these cases, I am of the view that the directions issued by this Court in C.W.J.C. No. 2826 of 1996 (R), as already quoted above, have not been followed. I was inclined to proceed against the authorities under the Contempt of Court Act but in view of the undertaking given by the Vice-Chancellor on 20.3.1997 that he would follow all the aforesaid directions in future, I am not taking any action against them. I am of the view that apart from those directions as contained in paragraph 8 of the judgment, some more

directions are required for a transparency and fairness in the admission to the Institute. The aforesaid directions are as follows-

(i) It is stated in the counter-affidavit that the admissions are taken on the basis of written test and interview, but no marks have been fixed for the interview. I hereby direct the respondents-authorities to fix reasonable marks for interview, which in no case should exceed 15% of the written marks. It is made clear that marks for interview should be fixed only when performance at interview is to be taken into consideration for admission. If the respondents decide that the admission be taken on the basis of the written test only and interview will be held for the purpose of only verifying the certificates then in that case, no marks be allotted for the interview.

(ii) The coding and decoding after answer-sheets are received should be done by a Committee constituted by the Vice-Chancellor and the Officer-on-Special Duty or Co-coordinator of the Entrance Examination should not be the members so that a secrecy is maintained

(iii) As the Entrance Examination is held only once, the candidate should be finally selected under all the categories at one time and a final date should be fixed for their admission. In case of N.R.Is and foreign students also, a last date should be fixed for their admission and thereafter, no admission should be made. In cases of drop outs or casual vacancies, the candidates under any of the categories should be admitted only on the merit in the manner as indicate in the earlier order of this Court.

(iv) No admission for 1996 session should hereinafter be made as, in my view, no correct merit list prepared by the Institute is in existence. 28. With the aforesaid directions, C.W.J.C. No. 3016 of 1996 (R) is disposed of. C.W.J.C. Nos. 3090 of 1996 (R) and 3306 of 1996 (R) are dismissed. C.W.J.C. Nos. 3042 of 1996 (R) and 3502 of 1996 (R) are allowed to the extent mentioned above.

S.K. Chattopadaya, J.

28. I agree