
(2008) 06 CAL CK 0046

In the Calcutta High Court

Case No : Writ Petition No. 11434 (W) of 2007

Shri Sanchit Bansal and Another

APPELLANT

Vs

The Joint Admission Board and Others

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Institutes of Technology Act, 1961 — Section 9
Right to Information Act, 2005 — Section 20

Citation : (2008) 06 CAL CK 0046

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Pulak Mondal, for the Appellant; Malay Kr. Basu , Mr. R.N. Mazumder and Mr. Arun Kr. Basu, for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—In the instant application under Article 226 of the Constitution of India the two writ petitioners, being the minor son and his father, have inter-alia prayed for the following reliefs:

"a) A writ of or in the nature of Mandamus do issue directing the respondents and/or each one of them and their servants, agents and subordinates to set aside and/or quash the purported selection and the merit (All India Rank) list of admissions to IITs/IT-BHU/ISM on the basis of the Joint Entrance Examination (JEE) held in April 2006 as the same was prepared and/or made on the basis of imposition of illogical and wrong cut-off marks in three different subjects without any rational basis and the said cut-off marks cannot be calculated by the procedure claimed (in writing) to have been adopted.

b) A writ of or in the nature of Mandamus do issue directing the respondents and/or each one of them and their servants, agents and subordinates to prepare and/or publish fresh Chemistry marks of candidates for admissions to IITs through the said examination held in April 2006 after making appropriate correction in

evaluation scheme by adjusting far wrong evaluation and out of syllabus questions in Chemistry and, more importantly, removing manual corrections made in the machine gradable scripts of Chemistry.

c) A writ of or in the nature of Mandamus do issue directing the respondents and/or each one of them and their servants, agents and subordinates to prepare and/or publish fresh merit list of candidates for admissions to IITs/IT-BHU/ISM through the said examination held in April 2006 on the basis of the corrected set of cut-off marks calculated by the procedure claimed (in writing) to have been adopted and based on the fresh aggregate marks obtained in the three subjects.

d) A writ of or in the nature of Mandamus do issue directing the respondents and/or each one of them and their servants, agents and subordinates to withhold and/or postpone the counseling which is scheduled to start from 18 June 2007 for admissions to all IITs/IT-BHU/ISM on the basis of the Joint Entrance Examination (JEE) held in April 2007 till the petitioner No.1 is admitted in his preferential IIT and in preferential branch in the second year on the basis of the Joint Entrance Examination (JEE) held in April 2006.

e) A writ of or in the nature of Mandamus do issue directing the respondents and/or each one of them and their servants, agents and subordinates to declare the petitioner No.1 as successful and qualified in the said JEE held in April 2006 on the basis of his performance.

f) A writ of or in the nature of Mandamus do issue directing the respondents and/or each one of them and their servants, agents and subordinates to allow the petitioner No.1 to take admission in his preferential branch of his study on the basis of his performance within the flexible credit-based academic program of the IITs so that there is no loss of academic year because the petitioner No.1 has been deprived of the admission for having no fault of his own.

g) A writ of or in the nature of Certiorari do issue directing the respondents and/or each one of them and their servants, agents and subordinates to transmit the entire records relating to this case to this Honorable Court so that conscionable justice can be done to the petitioner No.1 on perusing the same.

(h) A writ of or in the nature of Prohibition do issue prohibiting the respondents and/or each one of them and their servants, agents and subordinates from withholding the admission of the petitioner No.1 in his preferential IIT and in his preferential subject any further on the basis of the said JEE held in April 2006, and further prohibiting the respondents from preceding and/or taking any further steps on the basis of JEE 2007 held in the month of April 2007 as the petitioner No.1 is not admitted.

2. In brief, the facts of the instant case are as follows:

The writ petitioner No.1, in the year 2005, appeared amongst others in the Joint Entrance Examination (hereinafter referred to as JEE). The said JEE examination is routinely conducted by the Indian Institute of Technologies (hereinafter

referred to as IITs) for admissions to the various Institutes of Technology situated in India, Institute of Technology-Banaras Hindu University and Indian School of Mines.

3. Subsequently, in the year 2006, the writ petitioner No.1 again appeared amongst others in the JEE. Writ petitioner No.1 was declared "not-qualified" in JEE 2006. Sometime in the month of August, 2006, writ petitioner No.1 received his performance card of the said JEE 2006, wherein his Chemistry marks were found to be below the cut-off marks.

4. Out of a total 552 marks, writ petitioner No.1 got a total of 231 marks in the three subjects and was not given any rank in the "General" category of candidates and he was not qualified for counselling for offering admission.

5. Upon going through the performance card of the writ petitioner No.1, his father, being the writ petitioner No.2, who also happens to be a professor in the Indian Institute of Technology, Kharagpur, wrote a letter on 5th September, 2006 to all the Chairman of Board of Governors and Directors of all IITs a throughout India, stating anomalies in selection of the candidates and the inherent contradiction of the selection process in the said JEE 2006. The writ petitioner No.2 also informed them about the illegal and mala fide fixation of cut-off marks in the three subjects for selecting candidates for admissions in IITs throughout India.

6. According to the writ petitioners, all the three subjects namely, Mathematics, Chemistry and Physics were given equal importance in the said JEE 2006 by assigning equal maximum marks, identical question patterns and marking scheme, and equal time was given to solve question papers from each of the three subjects.

7. Referring to item No.11.1 included on page No.9 of the Information Brochure of the said JEE 2006, the writ petitioners have stated that a common merit list will be prepared based on the cut-off marks in the individual subjects as well as aggregate marks in the said examination without any relaxed criteria. They further stated that there did not exist anywhere any other information publicly available for the candidates to know the procedure to decide the cut-off marks for each of the individual subjects in the said JEE 2006. Referring to the JEE 2007 Examination, the writ petitioners have stated that the procedure for setting the cut-off marks for the said examination is publicly available but the procedure and technique to decide on the subject cut-off marks was not spelt anywhere for JEE 2006.

8. The writ petitioners state that following the principle of giving equal importance to all the three subjects, either the cut-off marks should be the same or the number of students above the cut-off marks in each subject should be the same and setting of very high cut-off marks for Chemistry is illegal, irrational and illogical for engineering education. According to the writ petitioners, for engineering education the cut-off marks should be highest for Mathematics and

lowest for Chemistry.

9. The writ petitioners were unable to assess the correctness of the marks scored by the writ petitioner No.1 in Chemistry, in the absence of question papers, model answers and evaluation scheme. Additionally, the writ petitioners feared tampering of the answer-marks and/or evaluation score in Chemistry due to manual corrections, made in the machine-graded Chemistry scripts.

10. The writ petitioner No.2 on behalf of the writ petitioner No.1, by the said letter dated 05th September, 2006 requested all the Chairmen, Board of Governors, Directors of all IITs for corrective actions, speedy justice and admission of the petitioner No.1 in that semester itself. Another letter dated 15th September, 2006 was written by the writ petitioner No.2 to the aforementioned authorities, due to non-receipt of any reply from them in respect of the earlier letter dated 05th September, 2006.

11. Subsequently, another letter was written by the writ petitioner No.2 to the President of India, who is the Visitor of all IITs throughout India as per section 9 of the Institutes of Technology Act, 1961, apprising the President with regard to the matter of the petitioner No.1 not being selected for the admission to IITs inspite of obtaining high marks in all the three subjects and for imposing arbitrary and irrational cut-off marks in all the three subjects having no nexus with the objects sought to be achieved.

12. On 26th September, 2006 the Chairman, Joint Entrance Examination (JEE), Undergraduate Admission Committee, IIT Kharagpur (a representative of the respondent No.1) replied to the writ petitioners' letter dated 15th September 2006 and informed that the ranking procedures in JEE 2006 was a confidential matter of JEE and every year the Joint Implementation Committee (hereinafter referred to as, JIC) took into account the overall performance of all the candidates in different subjects as well as in aggregate and formulated a procedure for ranking of the candidates in that year. It was also informed through the said letter that the JEE result of the petitioner No.1 (JEE Registration No.4072099) had been carefully examined and it was found that there was no ambiguity in case of awarding marks in different subjects as well as in aggregate which was given in the performance card of the petitioner No.1. By the said letter it was also informed that the writ petitioner No.1 had not satisfied the marks eligibility criterion laid down for individual subjects as well as the aggregate marks in JEE 2006, and hence, he could not be qualified for the admission in JEE 2006.

13. The writ petitioners thereafter contended that the information contained in the said letter was factually incorrect and wrong, and the writ petitioner No.2, through separate letters dated 27th September, 2006, addressed to the Director, IIT Kharagpur and Chairman, JAB 2006 and Director, IIT Bombay and current Chairman, JAB requested for correction of anomalies and mistakes in the selection list and for speedy justice so that the candidate could be admitted in

the semester itself. By another letter dated 28th September, 2006, the writ petitioner No.2 informed the Chairman, JEE, that he had strong reasons to believe that the reasons given in the letter dated 26th September, 2006 were erroneous and factually incorrect. The writ petitioner No.2 requested the Chairman, JEE to communicate the cut-off marks in individual subjects as well as the aggregate cut-off marks in respect of JEE 2006.

14. In the meanwhile, the writ petitioner No.2 by a letter dated 11th September, 2006 requested the Public Information Officer, IIT Kharagpur, under the Right To Information Act, 2005, to provide the cut-off marks of each subject, namely, Mathematics, Physics and Chemistry and lists of the candidates who had scored ranks higher than 2000 and other information. The writ petitioners further requested to provide them the basis of fixation of cut-off marks and the decision thereto and/or validity of the cut-off marks.

15. Having not received information as sought for, the writ petitioner No.2, as per rules, submitted his first appeal on 31st October, 2006 to the Appellate Authority and Director, IIT Kharagpur against deemed refusal of the information sought for.

16. Having not received information as sought for time to time from the Appellate Authority, the writ petitioner No.2, as per rules, preferred three second appeals against such non-receipt of information before the Central Information Commission, New Delhi on 4th December, 2006. The Information Commissioner of the Central Information Commission, New Delhi, by an order dated 3rd May, 2007 disposed of the said appeals by inter-alia issuing three show-cause notices u/s 20 of the Right To Information Act against the said Public Information Officer, IIT Kharagpur as to why penalty should not be imposed upon him for not providing required information and further directed the said Public Information Officer to supply all the information latest by 15th May, 2007, as required by the petitioner No.2.

17. On 14th May, 2007 the Public Information Officer, IIT Kharagpur provided information as sought for under the Right To Information Act. Upon going through the same, the writ petitioner No.2 submitted a list of objections on the same day detailing all contradictions, wrongs, faulty information and information not provided to him. The writ petitioner No.2 also in the same letter requested for arranging visual inspection of the original data and opening of all relevant files. According to the writ petitioners, the information provided by the Public Information Officer IIT Kharagpur were wrong, misleading and incomplete.

18. On the basis of the letter of the Public Information Officer providing information to the writ petitioners, it has been specifically contended by them in the instant writ petition that after carrying out some data analysis, the soundness of the cut-off decisions was suspect.

19. In the writ petition the writ petitioners have elaborately sought to explain as to how the individual subject cut-off marks, as provided by the organizing

Chairman, JEE, 2006, could not be so, if one followed the procedure as disclosed by the Public Information Officer IIT Kharagpur, in response to the order of the Central Information Commissioner.

20. Based on the calculation provided by the writ petitioners, it has been contended in the instant writ petition that the cut-off marks in the three subjects were illegally, arbitrarily and irrationally imposed by the respondents and the refusal on the part of the respondents to place the petitioner No.1 in the merit list (All India Ranks) according to the aggregate marks in three subjects inspite of having good, decent and above cut-off marks, by the procedure claimed to be adopted by the respondents in each of the three subjects, and not permitting the petitioner No.1 to take admission in his preferred IIT and the course of his chosen study, the instant writ petition was filed and moved before this Court.

21. According to the learned Advocate appearing on behalf of the petitioners there is a serious flaw in the calculation of cut-off marks by the respondents. He submits that if the procedure adopted by the respondents are to be followed the cut-off marks for Chemistry would be, at the most, 22. He further submits that the respondents have arbitrarily fixed the cut-off marks for Chemistry for JEE 2006 at 55. He thus submits that the writ petitioner No.1 ought to have qualified in the Chemistry subject following procedure of cut-off marks adopted by the respondents, as stated in their affidavit-in-opposition.

22. He further submits that in the affidavit-in-opposition the respondents did not specifically deny that the cut-off marks for Chemistry could be at the most 22. He further submits that the respondents had not explained as to how they arrived at 55 as the Chemistry cut-off marks. He also submits that the respondents in their stand before this Court have given more than two versions of the procedure adopted by the respondents for arriving at the cut-off decision. According to him, even if the cut-off marks of Chemistry was recalculated on the basis of second version of the procedure, the same could not be more than 26. He, thus, submits that this is a fit case where an appropriate writ or writs can be issued by this Court on the basis of the prayers of the writ petitioners.

23. On the other hand, the learned Senior Advocate appearing on behalf of the respondents No. 1, 3, 4 and 5 submits that the procedure for calculating the cut-off marks adopted by the concerned authorities for JEE 2006 was on the basis of over all performance of candidates who appeared in all the three subjects (Mathematics, Physics and Chemistry), mean marks of each of three subjects along with standard deviation was determined. According to him, the cut-off marks in each subject was decided as mean marks minus one standard deviation. Further, depending on the number of candidates required to be qualified on an All India basis, the aggregate marks cut-off was obtained. He further submits that this would be further clear from annexure R2 of the affidavit-in-opposition filed on behalf of the respondents No. 1, 3, 4 and 5.

24. He further submits that before filling up of the application form for the Joint

Entrance Examination (JEE), 2006, the petitioner No.1 after going through the application declared that he understood the clause wherein it has been stated that the decision of the Joint Admission Board regarding admission to IITs/IT-BHU/ISM, Dhanbad was final and he was to abide by the said decision. According to the learned Senior Advocate, in view of the declaration, the petitioner No.1 is estopped from raising any dispute about the decision of the Joint Admission Board for the Joint Entrance Examination(JEE), 2006. He also submits that apart from the petitioner No.1, the petitioner No.2 also counter-signed the said declaration in terms of the paragraph No.17.30 of the Information Brochure of JEE, 2006 supplied to the candidates along with the application form.

25. Learned senior advocate appearing on behalf of the respondents Nos.1, 3, 4 and 5 further submits that the petitioner No.1 could not qualify himself in the Joint Entrance Examination (JEE), 2006 as he failed to reach the cut-off marks determined for Chemistry (55), as per procedure laid down for JEE, 2006. He further submits that the Joint Implementation Committee formed by the Joint Admission Board was responsible for overall conduct of the examination, including evaluation procedure and declaration of result of JEE, 2006. The committee consisted of fifteen professors, chairmen and vice-chairmen of different IITs, including the organizing IIT, Kharagpur. While relying on the procedure for conducting and/or holding the Joint Entrance Examination (JEE), 2006, as stated in the affidavit-in-opposition, the learned Senior Advocate for the respondents submits that according to the norms laid down by the Joint Implementation Committee (JIC) of JEE, 2006, the performance of the petitioner No.1 was considered, but according to the norms decided by JIC of JEE, 2006 the Chemistry marks of the petitioner No.1 was below the Chemistry cut-off marks (55). According to the learned Senior Advocate appearing on behalf of the respondents, the example tried to be brought forth by the writ petitioners is not applicable to IIT examinations as these examinations are guided by the Joint Entrance Examinations and it has no link with other admission forums, such as IISER. With regard to the contention of the writ petitioners that the petitioner No.1 having obtained qualifying marks on the basis of aggregate was entitled to qualify for admission, he submits that the same is without any basis, inasmuch as in order to qualify, a candidate should obtain the cut-off marks (as decided by the Joint Implementation Committee of JEE, 2006) in each of the subjects namely, Mathematics, Physics and Chemistry as well as in the aggregate. He further submits that the petitioner No.1 failed to reach the cut-off marks of the Chemistry subject, though he reached the cut-off marks in respect of other subjects. Learned Senior Advocate further submits that the subject cut-off marks was decided on the basis of overall performance of the candidates vis-a-vis the total number of seats available for admission in all the participating institutes. According to him, the Joint Admission Board decided that 30 percent more than the total number of seats be the number of candidates to be called for counselling in JEE, 2006.

26. The learned senior advocate also submits that the Joint Entrance

Examination system is continuing for more than four decades and it is time tested and the writ petitioners' reliance on the procedure for setting cut-off marks for the JEE, 2007, as per the examination system published in 2007, has no relevance in the examination held prior to that year, inasmuch as the Joint Admission Board evolved that procedure which is binding upon the Joint Implementation Committee (JIC) of JEE, 2007 and is not applicable for JEE 2006. He submits that from the available records it could be seen that 2,99,288 number of candidates were applicants for JEE, 2006, wherein the writ petitioner No.1. was the only single candidate who felt aggrieved relating to the determination of cut-off marks of different subjects.

27. With regard to the allegation of the writ petitioners about tampering of marks of the Chemistry subject, he submits that such allegation is not only baseless but also concocted. He submits that the answer scripts are evaluated by the computer and not manually and curiously enough that the writ petitioners never raised the issue of tampering of marks in respect of the other subjects namely, Physics and Mathematics as well as aggregate in which the candidate had reached the set criteria.

28. Learned senior advocate appearing on behalf of the respondents, thus, submits that the writ petition is baseless, misconceived and is liable to be dismissed by this Court.

29. After considering the submissions made by the learned advocates for the respective parties and after perusing the writ petition and the affidavits used by the parties, it appears to me that the procedure for cut-off determination in JEE, 2006 cannot be questioned by the writ petitioners. This is because both the writ petitioners, that is to say, the candidate and his father, had given a signed declaration, by virtue of which they are bound by the decision of Joint Admission Board. From a copy of the application form, annexed to the affidavit-in-opposition, it appears that the following declaration was provided:

"30. Declaration by the Candidate

I hereby declare that all the particulars stated in this application are true to the best of my knowledge and belief. I have read the Information Brochure and I shall abide by the terms and conditions therein. In the event of suppression or distortion of any fact like category, educational qualifications, nationality etc. made in my application form, I understand that I will be denied the opportunity to appear in the JEE and if already admitted, my admission/degree acquired is liable for cancellation. I also understand that the decision of the Joint Admission Board regarding my admission to IITs/IIT-BHU/ISNI, Dhanbad is final and I shall abide by the decision. Further, if admitted, I promise to abide by the rules and norms of discipline of the Institute I join.

Place:

.....

Signature of the Candidate

Date:

Name of Parent/Guardian.....

.....

Countersigned by Parent/Guardian"

30. On the basis of this unequivocal declaration, it is not open to the writ petitioners to question the decision of the Joint Admission Board regarding the writ petitioner No.1's admission to IIT/IT-BHU/ISM, Dhanbad. Since such decision is final and binding upon them, the writ petitioners have no option but to abide by the decision of the Joint Admission Board, by virtue of signing the said declaration. As the application form is filled up and signed by a candidate and counter signed by his/her parent/guardian out of their own volition and choice, there is no scope of contesting the decision of the Joint Admission Board for admission to the various institutes stated in the declaration, after putting their signatures on the said declaration.

31. In the facts of the instant case, the writ petitioners have not been able to demonstrate, by producing even a scrap of paper that they had lodged their protest with regard to the declaration given by them before the Joint Admission Board. Apart from that, the respondents have justified in their affidavit-in-opposition as to how they arrived at the cut-off marks for Chemistry subject for JEE, 2006. The writ Court cannot venture to supplant the reasons given by the respondents by which they arrived at the figure 55, since the same is purely within the domain of the Joint Admission Board and cannot be by any stretch of imagination be said to be flawed or arbitrary.

In the facts and circumstances of the case, the instant writ petition is liable to be dismissed and the same is hereby dismissed with, however, no order as to costs.