

(2016) 12 JH CK 0030
In the Jharkhand High Court
Case No : W.P. (C) No. 2647 of 2016

Tayyaba Khanam

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 3
Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRJharR 272 : (2017) 1 JBCJ 274

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Rajiv Ranjan, Sr. Advocate, Mr. Shresth Gautam, Mr. Arvind Kr. Choudhary, Mr. Shambhu Nath Tiwari, Advocate, for the Petitioners; Mr. Fahad Allam, J.C. to GA.III, for the State; Mr. P.A.S. Pati, Advocate, for the AICTE; Mr. Mrinal Kanti Roy, Advocate,

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard counsel for the parties.

2. Writ petitioner in W.P.(C) No. 2690 of 2016 is the Institute while petitioners in W.P.(C) No.2647 of 2016 are the two students of the session 2015-16 of Electrical Engineering Branch for three years Diploma course who were denied registration in the examination scheduled for the first year course starting from 30th April, 2016 by the respondent-State Board of Technical Education Jharkhand.

3. The Institute is approved by the All India Council for Technical Education (A.I.C.T.E) with intake capacity of 315 students in various streams for three years Diploma courses such as Civil, Electrical, Mechanical and Mining Engineering. The Institute could get only 38 students through the Jharkhand Combined Entrance Examination Board for the session 2015-16 in all the courses. As per the procedure followed by the Department of Higher and Technical Education, the Institute was allowed to undertake admission through open counselling in the presence of departmental representative. It is not in

dispute that 272 candidates were short-listed in open counselling in the presence of departmental representative, list of which has also been enclosed by the respondent Nos. 1 and 2 i.e. the Department of Higher and Technical Education and State Board of Technical Education, Jharkhand through their affidavits filed after the order dated 26th October, 2016.

4. The controversy in question, however, relates to admission of 27 candidates in Diploma courses of Engineering streams who were admitted by the Institute. About 51 candidates out of 272 recommended/short-listed failed to join in the said session. It is the case of the petitioner-Institute that after the first counselling undertaken on 31st August, 2015 in the presence of departmental representative pursuant to the direction contained in letter no. 2 dated 25th August, 2015, 272 candidates were shortlisted. Since 51 candidates failed to join, the Institute issued an advertisement and also requested the Department to nominate its departmental representative through several letters, such as letter dated 30th September, 2015 (Annexure-7), 12th October, 2015 (Annexure-8) and also reminder thereafter in January, 2016. However, these 27 candidates admitted in the subsequent exercise through open advertisement in a fair and transparent manner were denied registration in the ensuing examination by the respondent-Board at the fag end of the session in an arbitrary and illegal manner. Out of those 27 candidates, 24 have, however, left the Institute and out of 3 left, 2 are the writ petitioners in the connected matter. The action of the respondent-Board has been assailed being arbitrary and illegal.

5. Counsel for the petitioner in W.P.(C) No. 2647 of 2016 has also adopted the arguments of the learned Senior Counsel for the petitioner in first writ petition. He submits that the present petitioners have been duly admitted in the Diploma Courses for the session 2015-16 after open counselling by the Institute. Their names also did figure in the list of students supplied under Right to Information Act from the office of Sub Divisional Officer, Giridih containing the names of other students who have also been allowed to face examination. This document is at page 51 of the writ petition. The action of the respondent in denying registration at the fag end of the session is, therefore, arbitrary and fit for interference. The respondents have played fraud with the career of the students.

6. Taking note of the plea of the petitioners in W.P. (C) No. 2647 of 2016, as aforesaid, this Court on 26th October, 2016 had specifically directed the respondent-Board to file an affidavit enclosing the list of candidates recommended after open counselling made in the presence of departmental representative and also to clarify whether the names of rest 27 candidates including the two petitioners in W.P.(C) No. 2647 of 2016 were ever part of it or not. By the supplementary counter affidavit filed on 11th November, 2016 by the respondent no. 2 and also by the respondent no. 1 on 25th November, 2016, the list of 272 candidates short-listed through open counselling held in the presence of official representative have been furnished. They have categorically, stated that the names of 27 candidates including the two petitioners of the instant writ

application do not figure in the list of 272 candidates who were recommended for admission in the institute.

7. Learned Counsels for the respondents-State and the Board submit that admission through open counselling to such Institute is permissible only in the manner prescribed as per instructions of the A.I.C.T.E. and the Department of Higher and Technical Education where the presence of departmental representative is mandatory. The Institute has admittedly chosen to admit 27 candidates who were not short-listed in the open counselling amongst 272 candidates. No permission was allowed by the Board to the Institute to undertake second and subsequent counselling and that too in the absence of a departmental representative to admit such students. Therefore, permission to register/enroll has been denied to these students. Petitioners cannot improve their case beyond this. It is submitted that the admission to such courses in the Institute recognised by the A.I.C.T.E is to be completed as per deadline prescribed which is 31st August of the particular year. In the instant case the open counselling was admittedly held on 31st August, 2015, any counselling thereafter undertaken by the Institute, can not have sanctity in the eye of law. Therefore, the action of the respondent do not suffer from any legal or factual infirmity.

8. Considered the submission of the learned counsel for the parties and the relevant facts pleaded.

9. It is apparent from the material facts noticed herein above that admission of these 27 candidates by the Institute was not as per the manner and procedure prescribed. 272 candidates were short-listed in open counselling held on 31st August, 2015 in the presence of departmental representative. However, on failure of the recommended candidates to join in the said session 2015-16, the Institute was not entitled to admit the candidates beyond the list recommended or approved by the respondent-Board. Admissions to such Institute are regulated by guidelines prescribed by the A.I.C.T.E and the State Board and deadlines have to be maintained.

10. In such circumstances, the petitioner-Institute or the petitioners in the W.P. (C) No. 2647/2016 cannot claim as a matter of right to be allowed to face exam for the session 2015-16 when the admissions of these students do not have legal sanctity. Therefore, the matter does not deserve any interference. Accordingly, these writ applications are dismissed. I.A. No.5862 of 2016 also stands disposed of.