

(2008) 12 CAL CK 0008

In the Calcutta High Court

Case No : MAT No. 938 of 2008, ASTA No. 154 of 2008, WP No. 29186 (W) of 2008

West Bengal University of Technology and Another

APPELLANT

Vs

Rishin Mitra and Others

RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 3
Constitution of India, 1950 — Article 14

Citation : AIR 2009 Cal 67

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Sanjib Banerjee, J

Bench : Division Bench

Advocate : Shakti Nath Mukherjee, Nabaneeta Roy Mukherjee, Kaushik Bhattacharyya, for the Appellant; Bikash Ranjan Bhattacharyya, Nandini Mitra, Sanjoy Saha, Subhasis Bhattacharyya, Anindita Dalui for the West Bengal University of Technology Malay Kumar Basu, Probal Mukherjee, Rajat Datta for the college authorities Abhijit Gangopadhyay for the All India Council for Technical Education Subrato Mukhopadhyay, Basabi Roychowdhury for the Central Selection Committee, for the Respondent

Judgement

The Judgment of the Court was as follows:

1. The principal question that arises in these eight appeals is whether an unaided private engineering college in this State can directly admit aspiring engineers in seats other than those reserved under the management quota. Notwithstanding the writ petitioners in each case being students who have been refused registration, the real dispute is between the West Bengal University of Technology and the unaided private engineering colleges in the State.
2. The university is in appeal in the first five matters from interim orders permitting the writ petitioner students to provisionally take their university examinations at the end of the first semester. In the three other matters, the students are in appeal against the refusal of a similar order as in the first five cases on the ground of delay on their part. Counsel for all parties had agreed at

the ad-interim stage of the appeals that since the matters were of some importance and of the moment, the writ petitions could be taken up by this appellate court and disposed of. Accordingly, affidavits were called for and this judgment and order will dispose of all eight appeals and the writ petitions in which the appeals arise.

3. The problem arises in this nascent stage of a procedure that has been put in place by the Supreme Court for admission to institutions awarding professional degrees. The eleven-judge Constitution Bench in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, considered eleven questions, one of them being as to whether in case of private educational institutions (unaided and aided) there could be government regulations, and, if so, to what extent. The majority view in respect of the relevant matter was that for admission into any professional institution merit must play an important role. The majority opinion was that judging of the merits of applicants for admission to specialised institutions to become competent professionals had to be rationalised so that meritorious candidates were not unfairly treated or put at a disadvantage by preferences shown to the less meritorious but more influential applicants. The majority judgment directed appropriate regulations in such regard being made and observed that merit is usually determined, for admission to professional and higher educational colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges by government agencies (paragraphs 58, 59 and 61 of the report).

4. The All India Council for Technical Education (AICTE) is a body corporate set up u/s 3 of the All India Council for Technical Education Act, 1987. The 1987 Act required AICTE to be established with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. The AICTE framed admission regulations in 1994 that have since been subsequently revised. These admission rules in the 1994 Regulations provide, inter alia, as follows:

8.0 Admission

1. No Professional College shall call for applications for admission separately or individually. All applications for admissions to all the seats available in such college shall be called for by the competent authority. The application forms for admissions shall be issued by the competent authority which shall contain a column wherein an applicant shall indicate whether he or she wishes to be admitted against a free seat or a payment seat, or both and the order of preference, up to three professional colleges.

2. The Competent Authority shall issue a brochure containing therein an application form for admission. The brochure shall contain full particulars of the courses and the number of seats available, the names of the colleges, their location, the fees chargeable by each professional college, the minimum eligibility conditions and such other particulars as may be deemed necessary by the Competent Authority.

3....

4. ...

5. Fifty per cent of the seats in every professional college, course or programme shall be earmarked as "free seats". The students to be nominated shall be selected on the basis of merit determined in accordance with sub-regulation (f) of regulation 8 (sic, should be sub-regulation (7) of Regulation 8, as the parties agree). The remaining fifty percent seats shall be payment seats and shall be filled by those candidates who are prepared to pay the fee fixed by the Standing Committee. The allotment of students against payment seats shall be done on the basis of inter-se merit determined on the same basis as in the case of free seats.

6. There shall be no management quota or any other quota whatsoever either free seats or payment seats, except as otherwise provided in sub-regulation (10) of Regulation 8.

7. A common merit list, in accordance with the provisions of sub-regulation 8(5) of Regulation 8 shall be prepared from amongst all the candidates provided that in States where no such entrance examination is presently being held, a common entrance examination shall be held for admissions to be made from the academic year, 1995.

8. The criteria of eligibility and other conditions shall be the same in respect of both free seats and payment seats except the higher fee to be paid for payment seats. The management of a professional college shall not be entitled to impose any other eligibility criteria or conditions for admission either to free seats or to payment seats.

9. The Competent Authority shall prepare a detailed schedule every year relating to inviting of applications, conducting of examination, if any, drawing up of merit order, publication of results, allotment of students to various courses and institutions, both for free seats and payment seats, in accordance with these regulations and shall act in accordance with such schedule.

10. A last date for allotment of seats shall be fixed by the Competent Authority, while inviting applications for admission, and no allotment shall be made after the last date so fixed. After making the allotments of seats, the waiting list shall be followed for filling up any casual vacancies or drop-out vacancies arising after the allotments are finalized. The vacancies shall be filled until such date as may be fixed by the Competent Authority. It shall be open to the competent authority

to offer any professional college or seat to the candidate other than his options and as per his merit. Once the last date of allotment of seats is over, the vacancies still remaining may be filled by the management out of the candidates included in the list under sub-regulation (7) of Regulation 8.

11. ...

12. ...

13. ...

5. There is also the interim policy regulations notified by the AICTE on March 7, 2003 pursuant to the Constitution Bench judgment in the T.M.A. Pai Foundation case. Such interim policy regulations are applicable to all technical institutions and technical courses and programmes that are governed by the existing regulations of AICTE. The interim regulations, in the material part, lay down the following:

(1) Admission:

...

Pursuant to the said judgment, the Management of private unaided institutions would require to devise a mechanism of transparent admission process for admitting meritorious students under the management seats which can best be done by adopting the mechanism as may be prescribed by the concerned State Government in order to reduce the multiplicity of admission test in the interest of students and the society as a whole. It has accordingly been decided that in order to facilitate admissions into various private unaided institutions in the country, whether minority or non minority, the AICTE approved institutions must necessarily join the Central or the State's Common Admission Test ensuring a transparent admission process.

...

(2) Management Seats:

Pursuant to the judgment of the Hon''ble Supreme Court the State Governments are required to prescribe a certain percentage of seats, which can be reserved for admission by the management of technical institutions. The prescription of percentage has to be made by the State Govt. in accordance with the local needs and different percentage can be fixed for minority and non-minority technical institutions. Accordingly the State Govt. shall judiciously decide such percentage of management seats. The maximum limit of percentage of management seats shall, however, not exceed 15% of sanctioned intake, in case of non-minority technical institutions. In the event of the 15% management seats not being filled up the vacant seats may be reverted back to general seats to be filled up through State Counselling along with other candidates.

...

6. It is not in dispute that there is enough room left in the AICTE regulations for State Governments to introduce guidelines or rules to supplement the procedural norms set down by the all-India body. The issue is whether in West Bengal the AICTE regulations read with the applicable guidelines laid down by the state government or rules prescribed by the university, permit unaided private engineering colleges to take in students directly after the admission through the university-guided process is over. For admission to all engineering colleges, just as in the medical stream, there is process of counselling that is adopted in this State. A body called the Central Selection Committee (CSC) conducts counselling in engineering and technology streams. The guidelines for counselling issued by such Committee include the following:

1. Appearance of a rank in counselling schedule does not guarantee a seat in a college. Counselling will be stopped as soon as the last vacant seat is filled up and no further queries will be entertained.

9. A candidate called for counselling must report at the venue of counselling on the date and time as notified by the Central Selection Committee (Engineering & Technology) through website. Failure to report at the scheduled date and time will make the candidate ineligible for counselling.

10. Normally, a candidate must appear in person at the counselling venue for allotment of a seat. However, parents/ guardians can also appear on his or her behalf under exceptional circumstances with the authorization letter from the candidate to the effect that he or she would not claim for any seat other than the one allotted to his or her representative through authorization.

12. The claim of a candidate to exercise option shall be limited to the vacancies prevalent at the instant when his/her turn comes for appearance before the counselling officials.

16. Counselling in terms of schedule shall continue till the availability of seats in any discipline.

7. In accordance with the prevalent practice, the results of the common entrance examinations - the two relevant in the present case being the West Bengal Joint Entrance Examination (WBJEE) and the All India Engineering Entrance Examination (AIEEE) - are declared by June 15 each year so that counselling can commence immediately thereafter and the courses begin by August in engineering colleges in this State. The process of counselling involves successful candidates being invited in batches according to merit for offering them a choice of both engineering colleges and engineering streams. The schedule for counselling for this year, which forms part of the appeal papers, shows that the reserved categories are first completed and the general category students are then taken up for counselling. There are only limited seats available in different engineering colleges and limited berths offered in different streams. The vacancies in the individual streams in each engineering college are filled up in order of merit. There comes a time, in course of counselling, where a candidate

may not have either the engineering college of his choice or the desired subject and an instantaneous decision has to be taken at the counselling to obtain what the candidate perceives to be his or her best option in the circumstances.

8. The process of counselling offers the window of options at a glance to each student standing in queue according to merit. Thus, the best-placed candidate has the right to pick the engineering college of his choice and the engineering stream that he cherishes. The most wanted courses in the most sought-after engineering colleges run out in quick time. With increasing ranks (i.e. decreasing merit) the options get limited and the later the call for counselling (which is strictly in accordance with merit) the lesser the option for the better colleges and the prized streams in the better colleges. The later candidates have an option to either take what they get, or opt out of counselling and thereby, possibly, lose the year. That is what the system ideally ought to be.

9. There is a quota fixed for successful AIEEE candidates and successful WBJEE candidates. There is no dispute that at present the cut-off figure for qualification for admission is rank No. 2,50,000 for the AIEEE students and rank No. 45,000 for the WBJEE students. This benchmark is the bare minimum and operates as one of the fundamental eligibility criteria in the matter of admission to engineering colleges in the State. In other words, no person beyond rank No. 2,50,000 in AIEEE and no person beyond rank No. 45,000 in WBJEE is eligible to be considered for admission to the general category seats in any engineering college in the State. But there are not enough seats in engineering colleges in this State to accommodate all eligible 45,000 WBJEE students, leave alone the theoretically possible 2,50,000 AIEEE students.

10. There are at least three types of quotas that operate in tandem in the matter of admission to engineering colleges. There is a basic quota of only 10 per cent seats in unaided private engineering courses in the State being reserved for the qualified AIEEE examinees, the rest being reserved for the eligible WBJEE examinees. There is then the quota for the physically challenged and for candidates belonging to the scheduled castes and scheduled tribes. There is also a quota of 10 per cent in the State reserved by way of management seats in unaided private engineering colleges which also needs to be filled up in order of merit from amongst the applicants for admission under this class.

11. It appears that candidates who opt for engineering seats in course of each phase of counselling have a cut-off date within which they should complete the process of admission. Since admissions to engineering colleges all over the country are by and large around the same time and the counselling conducted by the Central Selection Committee is restricted to engineering colleges within the State, a number of candidates who may have exercised their option in course of the counselling, and thus blocked a seat in a particular stream at any engineering college in the state, may choose not to take up the seat assigned in course of counselling whether on account of admission outside the State or for any other reason. Thus seats already earmarked at the end of one phase of

counselling open up all over again for the next phase of counselling and engineering colleges are advised by the university to periodically give the lists of vacancies in each stream offered in such colleges.

12. The counselling for admission to engineering seats in the State in the current academic year was completed in the first phase by July 15, 2008. The second round of counselling was over by August 9, 2008. The matters relevant for the entire batch of writ petitions and the disputes raised therein relate to the period after the conclusion of the second phase of counselling. The writ petitioners are all aspiring engineers who were not allotted, in course of counseling, the berths that they claim to protect by way of these proceedings. Some of the writ petitioners got direct admission into the unaided private colleges after the second phase of counselling was over, some got admission even later. The stand taken by the writ petitioners and by their respective colleges is identical. They assert that they were aware of a second phase of counselling but were not informed of the likelihood of any further phase of counselling after the second phase was over. The writ petitioners and their unaided private colleges insist that upon the process of counselling being concluded, there is no law or guideline stopping the unaided colleges from directly recruiting engineering students to fill up the vacant berths available. Counsel for the writ petitioners emphasises that even after these writ petitioners obtaining admission to the unaided private engineering colleges, a further 200 seats remain vacant in the State in divers engineering streams.

13. To complete the writ petitioners' common narrative, after they obtained direct admission into the respective unaided private engineering colleges such colleges sent up to the university the lists of admitted candidates which included the names of the writ petitioners. It is imperative for all colleges to send up the names of the admitted students for the university to register each of them. The university refused to register those students who had been taken in directly to the unaided private engineering colleges de hors the counselling process; which implied that the writ petitioners were deemed not to be bona fide students and thus not entitled to take their semester papers. Hence the writ petitions came to be lodged.

14. By a notification dated June 17, 2008, which was immediately after the WBJEE results were declared and preparatory to the process of counselling, the government issued a document entitled, "Guideline for allotment of seats through Central Counseling in connection with admission to Engineering & Technology Colleges during 2008-2009." This letter set down the ground rules that were to be in play for the admission process for the academic year. Some of the clauses of the notification need to be seen:

2. As notified by the West Bengal Joint Entrance Examination Board, general candidates merit listed in JEM, have to secure at least 50% marks in Physics, Chemistry and Mathematics (in aggregate) as well as pass marks in each individual subjects and Pass marks (30%) in English in the qualifying

examination (10+2 level). The candidates have to be within the age group of 17-24 years. In this regard, certificates/mark-sheets and other relevant documents for all the candidates individually have to be verified by the Central Selection Committee during counselling before actual allotment of seats.

3. An exhaustive counseling programme (in one phase) for the aforesaid merit-listed candidates (1,45,000) for JEM and a similar programme for AIEEE up to 2,50,000 All India rank have to be drawn well in advance and published for information of all concerned. However, counseling after a certain stage shall depend on availability of seats.

...

8. In connection with admission, allotment of students for different category of institutions shall be made in the following manner:

Govt. Colleges

100% through WBJEE

University/University Deptts.

100% (except the University specific reservation other than SC/ST)

Private self financing Colleges

WBJEE - 80%

AIEEE - 10%

NRI/Management Quota - 10% - to be filled up with the merit listed students either in JEM or in AIEEE in accordance with the Supreme Court Judgment in this regard."

15. The writ petitioners and their colleges refer to similar letters issued to all affiliated engineering colleges of the university on July 18, 2008, the material contents whereof are as follows:

The first phase of counselling by the West Bengal Joint Entrance Examinations Board for admission to Engineering colleges is over and I would be glad if you kindly send us the list of drop out candidates (stream wise and category-wise) of your college by July 30, 2008. It may please be noted that no further representation for drop out cases shall be entertained after 30th July, 2008.

16. The writ petitioners and their unaided private engineering colleges submit that there was no indication by the university that there would be any counselling after the second phase and while they would accept that the process of counselling would have primacy in the matter of admission it would not be indispensable. The writ petitioners attempt to show that as the colleges were not aware of the third phase of counselling, immediately after the conclusion of the second phase and the resultant admission process, these colleges invited

applications from other interested aspirants. The writ petitioners say that they answered the invitation, sat in classes upon being given admission and were not aware of there being anything amiss upon the university accepting the registration fees in respect of all candidates admitted to the unaided private engineering colleges. By way of illustration the writ petitioners refer to a letter dated September 22, 2008 (appearing at page 105 of the stay petition relating to MAT No. 939 of 2008) which shows an apparent endorsement of a university official at the foot of the list of students submitted by the B.P. Poddar Institute of Management and Technology bearing the word "Permitted." They also refer to the university rubber stamp on the deposit slip relating to the submission of registration fees by the same unaided private engineering college appearing at the following page of the same stay petition.

17. A letter of July 29, 2008 is next placed by the writ petitioners to show that not only was there no communication from the university to the appearing unaided private engineering colleges that there would be a third phase of counselling, but the impression given was that the process of counselling was over after the second phase and admissions had to be closed by the extended cut-off date. The decisions taken by the State Government on July 11, 2008 are reflected in the letter dated July 29, 2008 issued by the university to all affiliated colleges:

a) All the admission under Management Quota in the affiliated colleges under WBUT have to be completed by 15th August, 2008. The list of the students admitted under Management Quota from respective colleges should reach WBUT by 31st August, 2008.

b) Admission of students for the AICTE courses have to be completed by 15th September, 2008 and the list of such students should be sent to WBUT by 22nd September, 2008.

c) WBUT would look into free ship related issues in consultation with the college management. The list of students granted such free ship should reach WBUT by August 30, 2008.

18. The writ petitioners say that the decision that a third phase of counselling would be undertaken came as a bolt from the blue. The appearing colleges corroborate such assertion and point to the inconspicuous announcement released in some newspapers on September 21, 2008 that the third phase of the counselling was to be conducted on September 27-28, 2008. The writ petitioners refer to the impugned ad-interim order of November 28, 2008 which records that the West Bengal Joint Entrance Examination Board and the Central Selection Committee had accepted that there was a communication gap in notifying the fact of holding the third phase of counselling. The writ petitioners and the appearing colleges labour to demonstrate that the concerned unaided private engineering colleges did not attempt to circumvent the counselling process but resorted to filling up vacant seats on the perception that counselling was over

after the second phase; or, only upon counselling being actually over after the third phase.

19. The writ petitioners refer to Regulation 8(10) of the Admission Regulations 1994 to say that the last limb thereof would permit seats leave vacant after the conclusion of the counselling process to be filled up by the unaided private engineering colleges. They refer to the notification of October 29, 2008 issued by the Government of Andhra Pradesh, the Gujarat guidelines relating to admissions dated May 12, 2008, the Government of Maharashtra admission policy for the academic year 2007-2008 and the Haryana Government admission brochure for 2008-2009 to suggest that it is the uniform understanding elsewhere in the country that upon the counselling process being completed, vacant seats could be filled up by the unaided private engineering colleges on their own accord. The writ petitioners refer to a sentence in a Supreme Court order of August 9, 1996 on a bunch of interim applications in the T.M.A. Pai Foundation matter reported at T.M.A. Pai Foundation and others Vs. State of Karnataka and others, . In the context of vacancies in unaided private engineering colleges the Supreme Court had observed at paragraph 4(vi) of the report that,

... Any seats remaining unfilled thereafter can be filled by the management of the private engineering colleges on their own and in their discretion. ...

20. The writ petitioners, supported by their respective colleges, submit that a writ of mandamus should issue commanding the university to register the writ petitioners as bona fide students for the following reasons.

(i) There was no indication that there would be any counselling after the second phase, thus leaving the unaided private engineering colleges free to fill up the vacant seats in accordance with the spirit of the AICTE Admission Regulations of 1994.

(ii) The second phase of counselling ended on August 9, 2008 and the university by its letter of July 29, 2008 informed all affiliated colleges that the process of admission had to be completed by September 15, 2008 and the list of students transmitted to the university by September 22, 2008.

(iii) In any event, the letter of July 28, 2008 was the only one inviting a list of drop-out candidates from affiliated colleges and there was no further list of drop-out candidates sought, thus giving an impression that the second phase was to be the conclusive phase of counselling.

(iv) That the existing regulations and guidelines do not mandate that no admission can be given by unaided private engineering colleges to eligible students after the process of counselling is over; the process of counselling being only to facilitate choice and indicate availability of seats to those attending the same.

(v) The writ petitioners could not be said to have been ineligible as the impugned letters (like the one dated October 31, 2008 appearing at page 109 of the stay

petition relating to MAT No. 939 of 2008) suggested.

(vi) In any view of the matter, these writ petitioners had taken admission and even if there was some irregularity, there was no element of illegality about the process and they should be permitted to pursue their dreams since they have not eaten into seats that others can jump into.

21. The university says that the underlying premise of the appearing unaided private engineering colleges and their writ petitioner students is flawed. It has handed over a list which summarises the respective merits of the writ petitioners in the first five matters - WP No. 29186(W) of 2008, WP No. 29338(W) of 2008, WP No. 29149(W) of 2008, WP No. 29339(W) of 2008 and WP No. 29340(W) of 2008. Of the 79 students covered by these five writ petitions, 12 students did not secure the qualifying rank at the WBJEE; 45 students did not report for counselling 11 students were allotted seats in different colleges after the first round of counselling but chose to join the Institute of Engineering and Management at Salt Lake; six other students were allotted seats in other colleges but switched to one of the appearing unaided private engineering colleges; and, five students are MCA candidates.

22. The university says that such facts cannot be glossed over in the legal argument that unaided private engineering colleges would be entitled to fill up seats left vacant at the conclusion of the counselling process. The twelve writ petitioners who did not obtain the qualifying rank could not have been given admission, according to the university, and the motive is obvious. The university exhorts that if it had given in to the illegal demands of the appearing colleges to grant registration in favour of the writ petitioners it would have amounted to subverting the process and undermining quality. The university refers to the Interim Regulations of March 7, 2003 to say that nothing therein or in the admission regulations of 1994 would authorise unaided private engineering colleges in the State to accept direct admissions unless the State government expressly permitted them. The university says that there were about 22,200 seats in all engineering colleges in the State this year that were open to be filled; and there were more than 40,000 aspirants there for. The university cautions against the dilution of the strict admission procedure that may lead to ill-equipped professionals at a future date.

23. The existing guidelines and regulations afford unaided private engineering colleges in the State a leeway limited to 10 per cent of the seats by way of management quota. For a first, recognising a right of the unaided private engineering colleges in the State to take direct admissions in addition to the management quota would tantamount to conceding a larger management quota. For a second, it may have been permissible if the university or State Government guidelines authorised the filling up of the vacant seats by the unaided private engineering colleges directly after admission through the counseling process was over. The interim policy regulations of the AICTE leave it open to the state governments to device a mechanism for a transparent process in the admission

of meritorious students to unaided private engineering colleges. It is such window that has been left to the state governments that appears to have been filled up by the government notifications in Andhra Pradesh, Gujarat, Maharashtra and Haryana. In each of these four States, the applicable rules whereof have been placed by the writ petitioners, there is express provision permitting unaided private engineering colleges in such States to fill up the vacancies after the process of counselling is over.

24. There is no corresponding provision in West Bengal in the limited guidelines issued by the State government or the university. On the contrary, the Central Selection Committee guidelines that have been appended to some of the writ petitions suggest in its first, ninth and sixteenth clauses that admission to engineering colleges in the State would only be through counselling. The last clause makes it clear that counselling would continue as long as seats were available in any discipline. The first sentence of the opening clause relating to admission under the AICTE Admission Regulations of 1994 makes it clear that no professional college "shall call for applications or admission separately or individually." The next sentence in the clause leaves no room for doubt as it emphasises that all applications for admissions to all the seats available in professional colleges shall be called by the competent authority. The expression "competent authority" is defined in the said Regulations to mean a government or a university or any other authority as may be designated by the government or the authority or by law to allot students for admissions to various professional colleges in the State. The Central Selection Committee appears in this State to be the competent authority within the meaning of the said Regulations.

25. Despite the writ petitioners, obviously prompted by their respective colleges, claiming that the lists of vacancies after the second phase of counselling had not been sought, there is no reason to accept that the letter of August 13, 2008 (a copy whereof appears at page 56 of the university's affidavit-in opposition in WP No. 29338 (W) of 2008) issued by the Central Selection Committee seeking such information was not circulated to the appearing unaided private engineering colleges. It is not possible to accept that the appearing unaided private engineering colleges were so naive as to imagine that despite substantial vacancies in these colleges and despite there being demand for more engineering seats than available, there would be no further counselling after the second phase. It would similarly be wholly unwarranted on facts to accept the underlying suggestion of promissory estoppel upon some university official scribbling the word "permitted" in similar letters issued by one or more of the appearing colleges or to attach any importance to the university's rubber stamp being affixed by a cashier or a receiving clerk at the university's cash counters.

26. Unless students apply directly for seats forming part of the management quota, all aspiring engineering students in this State are required to obtain admission only through the process of counselling under the existing framework of regulations and guidelines. The writ petitioners ought to have been aware of

what lay in store for them upon their falling pray to the inglorious invitation of the appearing unaided private engineering colleges. The fact that they were permitted to write their first semester examinations that began earlier this month under interim orders of court or the fact that their irregular admissions would ultimately be tested by their performance in the degree course are no consideration to continue this blatant illegality and send a confused message to a large number of hapless aspirants who have fallen by the wayside in the competition but have still not resorted to any form of subterfuge.

27. It would be misplaced sympathy to condone the admissions of the writ petitioners or issue a writ of mandamus to legalise that which was clearly impermissible and put a premium on lack of merit. The judgments reported at C.B.S.E. and Another Vs. P. Sunil Kumar and Others, 2000(1) CHN 668 (University of Calcutta & Ors. v. Amit Jalan) and Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, frown upon sympathy shown by court in the matter of regularising the admission of ineligible candidates and the perceived equity created by interim orders passed by courts. A more recent judgment reported at Vishal Properties Pvt. Ltd. Vs. State of U.P. and Others, warns against Article 14 of the Constitution being used to perpetuate an illegality and enunciates that the spirit of Article 14 provides for positive equality and not negative equality.

28. To make an order in favour of these writ petitioners would amount to discrimination against those similarly placed, less meritorious or unmeritorious aspiring engineers who have had to sit out a year in the hope of a better rank for the next academic session. The writ petitions fail. All interim orders are vacated forthwith. Since these writ petitioners are students they are not required to pay costs for what is obviously the appearing colleges' misadventure.

29. Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities. A prayer for stay is made which is declined

Surinder Singh Nijjar, C.J.

30. I agree.