

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 1st August, 2014.**

+ **W.P.(C) 2275/2010**

DR. RAJEEV KUMAR **..... Petitioner**
Through: Mr. Prashant Bhushan with Mr.
Pranav Sachdeva, Advocates.

Versus

UNION OF INDIA & ORS **..... Respondents**
Through: Ms. Meera Bhatia, Adv. for UOI.
Mr. Dhananjay Bajjal and Mr. Nikhil
Nayyar, Adv. for R-4.
Mr. Anand Varma, Adv. for R-5.
Mr. Arjun Mitra, Adv. for R-6.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

CM No.8178/2014 (for directions)

1. The writ petition filed in public interest concerns alleged discrepancies, irregularities and arbitrariness in the Joint Entrance Examination (JEE) conducted by the Indian Institutes of Technology (IITs).
2. This application was filed for interim directions, pleading:
 - (i) that several hundreds of seats remain vacant in IITs each year;
 - (ii) that the seats lying vacant have a cascading effect, as the same

number of seats remain vacant in successive second, third and fourth years too;

(iii) that till the year 2004, some of such vacant seats were filled up with the wards of the employees and faculty members of IITs who were otherwise not eligible for admission;

(iv) that the High Court of Andhra Pradesh in order dated 30th April, 2011 in W.P.(C) No.17774/2010 titled *N. Ravali Vs. Union of India* observed that our society can ill afford to leave such large number of seats go abegging when students are willing to join them and expressed hope that remedial measures are put in place to prevent the same from the next academic year;

(v) that subsequent to the said order, the IITs introduced third round of counselling in JEE 2011, though the main issue of seats lying vacant remained unaddressed;

(vi) that seats remain vacant due to a candidate getting admission in a number of institutes/colleges by depositing the admission fee and thus blocking the seats in many institutes/colleges;

(vii) that the petitioner had suggested online counselling or common counselling to prevent seats lying vacant;

(viii) that the Ministry of Human Resource Development (MHRD) had vide Office Memorandum dated 27th June, 2013 constituted a Joint Seat Acceptance Committee (JSAC) but the same also could not remedy the said problem owing to IITs not co-operating in the same;

Accordingly, a direction is sought in the application to the respondent IITs to address the said issue.

3. The respondent No.5 IIT Kharagpur which is concerned with the admissions in this academic year has filed a reply, *inter alia* stating:

(a) that the issue of vacant seats has been constantly addressed by the IITs;

(b) that a number of seats fall vacant due to the lower popularity of some of the courses; the IITs, over a period of time evaluate and if constantly find a lower preference for a course, ultimately withdraw the said course; however some of the courses constituting the backbone of the education system, even though not high on demand amongst job seekers, cannot be done away with, even if they do not get filled up to the maximum capacity;

(c) that a large number of SC, ST and Persons with Disability seats remain vacant due to absence of eligible candidates; this issue has

however been addressed by developing a one-year preparatory programme for such categories;

(d) that a few seats get freed up due to a candidate having a seat in IIT opting out for joining any National Institute of Technology (NIT) (what were earlier called Regional Engineering College) or a Foreign University; these seats remain free in the first year; however in the second year, some of the seats are taken up by other candidates through change of stream mechanism;

(e) that the third and last round of counselling for admission to the academic year 2014-2015 was completed on 12th July, 2014 to ensure that the academic session commenced as scheduled on 17th July, 2014;

(f) that as of now, there are no vacant seats in any course / category, except three vacancies in the ST category, due to non-availability of eligible ST candidates;

(g) that the petitioner's suggestion of synchronisation of seat allocation between IITs and NITs is unworkable;

(h) that the common seat allocation procedure for IITs and NITs also poses various complexities;

(i) that the MHRD has vide order dated 13th March, 2014 constituted a Technical Committee to sort out the process flow differences between the IITs and NITs to arrive at a common counselling based on best practices and which Committee had its first meeting on 17th April, 2014 and is in the process of formulating a system for addressing the issue of vacant seats and which system will be considered for implementation in the year 2015, subject to availability of a viable scientifically correct scheme and well scheduled software code.

4. We heard the counsels on 21st July, 2014. The counsel for respondent no.5 IIT Kharagpur informed that the admission process insofar as academic year 2014-2015 is concerned, stood completed and the academic session had commenced on 17th July, 2014. On the contrary, the counsel for the petitioner argued that more seats than three were likely to remain vacant in the academic year 2014-2015 as well because the admissions to the NITs were still on and students admitted to IITs, if get a better subject stream in the NITs would leave their seat in IITs and for filling up thereof, there is no mechanism. He suggested that since two sessions of counselling for admission in NITs had by then already taken place, the students who have

occupied seats in IITs and have subsequently taken admission in NITs should be asked to immediately make a choice of which seat they want to retain and the seats so falling vacant should be filled up.

5. We, vide order dated 21st July directed the counsels to:

- “(a) Place the rules of admission to IITs and NITs, particularly the rules disclosing the time within which the student is required to join and till what date a student is awaited.*
- (b) Inform whether the reserve seats, if not filled up, can be transferred to the general category and if not why.*
- (c) Inform whether the Supreme Court has prescribed any last date for admission into NITs and IITs and if not, as to why this Court cannot direct admissions to the vacant seats till say end of August by when the admissions into NITs are to be completed.”*

Being of the opinion that before issuing any direction, the Central Seat Allocation Board (CSAB) which is the body admitting students to the various NITs should also be heard, the counsels were also requested to ensure the presence of CSAB before this Court on the next date of hearing.

6. After further hearing counsels on 23rd July, 2014, orders were reserved. The counsel for the respondent IITs informed that except for the seats reserved for the physically disabled, which if remain unfilled are released to the General category, there is no provision for transfer of unfilled SC & ST category reserved seats to General category. It was further informed that no last date for admission into IITs has been

prescribed in any judgment of the Supreme Court. It was however contended that if admissions were directed to be made after the commencement of the academic session, the same would affect the merit. It was further informed that as per the Rules of IITs, the student is required to be physically present on the date of commencement of the academic session and mere payment of fees is not sufficient; however for compelling reasons extension of three working days can be given. It was also informed that if subsequent to registration at IIT, a student decides to take admission in any NIT or a Foreign University without prior information to the IIT, there is no procedure by which the particular IIT would be aware of the seat being vacant, till the completion of the mid semester examination in the third week of September—thus seat can be determined as vacant only once the mid semester examination has been completed. The counsel for the petitioner of course contended that the reporting/registration date in some of the IITs was 24th / 25th July and 3rd August, 2014. It was also argued that there is no sanctity to the date for admission/registration and the IITs can always fix the date for admissions, after the admission to the NIT is completed, so that the seats vacated by those who have taken admission to NITs are also filled up. It was also argued that the IITs ought to devise a

procedure for knowing of the vacancy before the completion of the mid semester examination and as soon as the same occurs. None appeared for CSAB.

7. We have bestowed our thoughtful consideration to the matter. Though undoubtedly the issue flagged by the petitioner is of vital importance and it is in national interest that no seats in such premium educational institutions of the country as IITs are wasted but at the same time, it cannot be forgotten that for the sake of filling up the seats, the academic calendar devised by the professional experts at IITs, owing to whose efforts the said institutions have today reached the exalted position which they occupy, leading to the vacant seats therein being called a national waste, cannot be disturbed. The IITs are perceived to be better than NITs, perhaps for commencing their academic session well before the NITs, as is evident from the academic session of the IITs having already begun, while the process of admission in NITs is stated to go on till August, 2014. Thus, the filling up of vacant seats cannot be at the cost of maintaining standards of education and merit in IITs.

8. A Division Bench of this Court in *M.I. Hussain Vs. N. Singh* 125 (2005) DLT 223 held that seats remaining vacant is no reason to fill them up

by admitting non-meritorious students. Another Division Bench in *Maharaja Agrasen Institute of Technology Vs. Guru Gobind Singh Indraprastha University* 116 (2005) DLT 290 held that once the dramatic performance starts, no one is allowed to enter - similarly counselling of seats must stop once the course of study commences. Again, in *Sunint Kaur Vs. GGSIP University* ILR (2005) Del 215, this Court held that even if seats are not filled, that cannot be a ground for making mid-session admissions.

9. The Supreme Court also in *Arvind Kumar Kankane Vs. State of U.P.* (2001) 8 SCC 355 held that if counselling goes on continuously for a long time, it will upset the course of study. Similarly, in *Neelu Arora Vs. Union of India* (2003) 3 SCC 366 it was held that when a detailed scheme has been framed and the manner in which it has to be worked out is indicated therein, merely because a certain number of seats are not filled up, is not a reason enough for adopting one more round of counselling, if there is no scope therefor under the scheme. It was held to be not advisable to go on altering the scheme as and when seats are found vacant.

10. Applying the aforesaid principles, we are not inclined to issue any directions for the current academic year, which in IITs has already begun.

11. It is otherwise rather intriguing to know that the IITs and the NITs which are providing consultancy to others on technical matters, are unable to themselves find a solution for synchronising the admissions to eliminate or atleast minimize the issue of vacant seats. The said institutions themselves and their students are best equipped to, in today's time of technology, when software programmes developed by IITians are serving nearly every human need, to find a solution to the malady which admittedly exists and cure whereof has eluded all. Certainly they do not need years together to develop a programme for such synchronisation of admissions. They cannot afford any red-tapism in this regard and which if becomes known to the world at large, may make them a laughing stock in the eyes of their clients. We have wondered whether it is a proverbial situation of it being darkest beneath the lamp.

12. Having cited the judgments aforesaid of the Supreme Court, we must also refer to *Charles K. Skaria Vs. Dr. C. Mathew* (1980) 2 SCC 752 laying down that the Courts must see that no costly seat for advance studies, in which the community as a whole has stake, is wasted; the Court should not give up the search for alternatives. Similarly, the Court in *Archit Vashisht v. GGSIP University* MANU/DE/8569/2007 observed that public interest

element of ensuring that seats should not be wasted or allowed to lapse, is to be balanced with another important public interest in maintaining certain academic standards.

13. We therefore dispose of this application with the following directions:

(i) The MHRD to ensure that the Technical Committee constituted vide order dated 13th March, 2014 aforesaid holds regular sittings/consultations, as frequently as required, and sorts out the process for common counselling for admissions to NITs and IITs and the said process is implemented for admissions from the academic year 2015-2016. To ensure the same, the MHRD to call for regular reports from the Committee and fix a date for the Committee to submit the report and ensure that the suggestions in the said report are incorporated in the admission procedure published by the IITs and the NITs in the academic year 2015-2016;

(ii) The petitioner is given liberty to, if so desires, make his suggestions to the MHRD within two weeks and which suggestions, if made, shall be forwarded by the MHRD to the Technical Committee for consideration;

(iii) Liberty is given to the parties to approach this Court for further

directions, if any need for ensuring the same;

(iv) The MHRD as well as the IITs to also consider, whether the reserved category seats in the IITs, if remaining unfilled, can be transferred to the General category and take a decision on the said aspect on or before 30th November, 2014 and place the same before this Court;

(v) During the hearing, we enquired whether there exists any provision for lateral entry into the IITs in the second year, as exists in some Universities/Colleges. We were informed, there is none. The MHRD as well as the IITs to also on or before 30th November, 2014 consider, whether a provision for such lateral entry into IITs in second year from the students of NITs and other engineering colleges can be made and to place a report on that aspect also before this Court.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

AUGUST 01, 2014.

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2275/2010

DR. RAJEEV KUMAR Petitioner

Through: Mr. Prashant Bhushan and Mr. Pranav Sachdeva, Advs.

Versus

THE UNION OF INDIA and ORS Respondents

Through: Mr. Sanjay Jain, ASG with Ms. Meera Bhatia and Ms. Noor Anand, Advs. for UOI.

Mr. Dhananjay Baijal and Mr. Nikhil Nayyar, Advs. for R-4.

Mr. Anand Varma, Adv. for R-5.

Mr. Arjun Mitra, Adv. for R-6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

18.03.2015

1. The counsel for Indian Institute of Technology (IIT) Bombay informs, (i) that IIT Bombay will be conducting Joint Entrance Examination (JEE) for the year 2015; (ii) that NIC has till date not devised the software for conducting common counselling for admission to IITs and National Institutes of Technology (NITs); (iii) that after NIC hands over the said software, a time of three to six months would be required to test the same to ensure that it is fool proof; and, (iv) that thus conducting of common counselling for admission to IITs and NITs would not be possible for the year 2015.
2. We, vide our order dated 1st August, 2014, directed the Ministry of Human Resource Development (MHRD), Govt. of India to ensure that the Technical Committee so constituted vide order dated 13th March, 2014 to hold regular sittings / consultations, as frequently as required, to sort out the process for common counselling for admission to IITs and NITs and the said process is implemented for admissions from the academic year 2015-2016. We had further directed the MHRD to call for regular reports from the Committee and fix a date for the Committee to submit the report and ensure that the suggestions in the said report are incorporated in the admission procedure established by IITs and NITs in the academic year 2015-2016. It is obvious that the said direction has remained un-complied. We have as such asked the learned ASG for explanation. He seeks time to obtain instructions.
3. The counsel for the petitioner states that NIC is in fact merely an implementation agency and it is the Centre for Development of Advance Computing (C-DAC) which

can develop the said software. He has further contended that the IITs use the vacant seats which are a corollary to separate counselling held for admission to IITs and NITs to admit children of their faculty members and to oblige others and it is for this reason that the issue is not being addressed.

4. The counsel for IIT Bombay protests and contends that there is not a single instance of any such misuse. He further states that it is proposed to hold synchronised counselling for admissions to IITs and NITs, on the same dates, to minimise the malaise of vacant seats and for redressal whereof common counselling is deemed necessary.
5. We are pained that inspite of our detailed order dated 1st August, 2014 and sufficient time being available, nothing has been done in the matter. The MHRD is clearly in violation of the directions contained in our order dated 1st August, 2014. The learned ASG to, on the next date of hearing, give a detailed explanation in this regard including by way of an affidavit, if deemed necessary.
6. We had in our order dated 1st August, 2014 also expressed surprise that IITs and NITs which are providing consultancy to others on technical matters are unable to themselves develop a software for holding common counselling. We are afraid that our observations in para 11 of the order dated 1st August, 2014 have had no effect and have gone unheeded. In fact, we have today also enquired from the counsel for IIT Bombay, as to why if the present faculty of IITs is not able to devise the software for common counselling, help of Ex-IITians who are reported to be occupying top positions in the best Technology Companies of the world, cannot be garnered. It is a pity that in the last nearly seven months, the needful has not been achieved. It is felt that the IITs also have a lot to explain and for which we give them also an opportunity.
7. The counsel for the petitioner states that there are a few other issues pending in the petition. It is inter alia stated that though IITs have now started releasing the answer key of the JEE but the same is released just three days before the counselling; it is contended that the same ought to be released within 24 hours of the JEE being conducted. It is further stated that IITs are not allowing the students to take carbon copies of the answer sheet, to be able to compare their answers with the answer key.
8. The aforesaid and the other remaining issues shall also be considered on the next date of hearing.
9. List on 25th March, 2015.

Copy of this order be given dasti under signatures of Court Master.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

MARCH 18, 2015

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2275/2010

DR. RAJEEV KUMAR Petitioner

Through: Mr.Pranav Sachdeva, Adv.

versus

THE UNION OF INDIA & ORS Respondent

Through: Mr.Sanjay Jain, ASG with Ms.Meera
Bhatia and Ms.Noor Anand, Advs.
for UOI.

Mr.Arjun Mitra, Adv. for R-6 & 7.

Mr.Anand Varma, Adv. for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

25.03.2015

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It is represented by Mr.Sanjay Jain, the learned ASG that in compliance of the directions of this Court dated 18.03.2015, it has been decided to have common counselling/joint seat allocation of IITs, NITs and some other GFTIs (Government Funded Technical Institutions) with effect from ensuing Academic Year 2015-16.

Therefore, it appears to us that no further adjudication on merits is necessary and the writ petition need not be kept pending any longer. However, to enable the learned counsel for the petitioner to make his further submissions, if any, re-notify on 08.04.2015.

Copy of order be given *dasti* under the signature of the Court Master.

CHIEF JUSTICE

MARCH 25, 2015/pmc

RAJIV SAHAI ENDLAW, J