

Indian Institute Of Technology ... vs Soutrik Sarangi on 28 September, 2021

Author: S. Ravindra Bhat

Bench: Bela. M. Trivedi, S. Ravindra Bhat, Uday Umesh Lalit

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2021
(ARISING OUT OF SLP(C) NO.13920 OF 2021)

INDIAN INSTITUTE OF TECHNOLOGY
KHARAGPUR & ORS.

...APPE

VERSUS

SOUTRIK SARANGI & ORS.

...RE

ORDER

S. RAVINDRA BHAT, J.

1. Leave granted. With consent, counsel for both parties were heard finally, for disposal of the appeal.

2. The petitioner, (hereafter variously “IIT” or “the Institute”) is aggrieved by a judgment of the single judge, of the Calcutta High Court¹, which allowed a writ petition, filed by the respondent herein (hereafter called by his name, “Soutrik”) holding that the rejection of his candidature for admission to the Joint Entrance WPA No. 11673/ 2020 decided on 25-08-2021 Examination (JEE) Advanced, was not justified, and further directing the IIT to decide the issue afresh, and till its decision was taken, permit him to register for the JEE and appear in the examination if no decision were taken.

3. Soutrik appeared in the Joint Entrance Examination (Main), 2020 and on the basis of the percentile obtained by him was qualified and eligible to appear in the JEE (Advanced), 2020. He scored rank 4015 which was not up to his expectation. He participated in the counselling process for

admission in the institute and secured admission in the Chemical Engineering Dual Course, at IIT Kharagpur. The common entrance examination system for the 23 IITs is based on the JEE (Main) examination, conducted by the National Testing Agency in four phases, which culminates in a merit list drawn up for students vying for admission in the 23 IITs and 87 National Institute of Technologies (NITs), Indian Institute of Information Technology (IIIT) and certain government funded institutes. The four phases of these JEE (Main) examinations are conducted on various dates. Amongst those who compete for the JEE (Main) exam, those falling in the top 2.5 lakhs of those students, based on merit are allowed to register for admission to the JEE (Advanced) examination.

4. Soutrik wished to appear in JEE, 2021 to secure admission to a course of his choice, but the eligibility criteria for appearing in JEE (Advanced), 2021 prevented him from doing so. The eligibility criteria, is so framed that a candidate can attempt JEE (Advanced) a maximum of two times in consecutive years irrespective of whether or not he passed the qualifying examination. It further stipulates that a candidate who had taken admission in any institute other than IITs in 2020 is eligible to appear in JEE (Advanced), 2021 provided she or he satisfies other eligibility criteria. In view of the aforesaid restriction Soutrik could not compete in JEE (Advanced), 2021 as he got himself admitted in IIT Kharagpur in the year 2020. In these circumstances, he approached the court, complaining arbitrariness and also challenging the concerned eligibility criteria.

5. The IIT which resisted the writ petition justified the impugned criterion, i.e. No.5, contending that it was neither illegal nor unconstitutional and was based on sound public policy considerations. It was argued that the JEE (Advanced) Information Brochure contained uniform criteria applicable to all candidates appearing for the competitive examination for admission to IITs. It was submitted that the withdrawal option was so designed as to achieve two primary objectives, firstly, avoidance of wastage or blockage of seats and consequently to enable students to improve their performance in the subsequent year and if eligible, to participate again. It was, therefore, argued that in the event the candidate did not exercise an option and did not reject the seat already accepted, her or his candidature would be precluded for the subsequent year for the reason that in the year that she did not opt to continue in the course, it would not have been possible to fill up the seat for the rest of the course.

6. It was further pointed out that conditions such as Criteria no.5 is in the public domain from 06.03.2020, on the one hand and that similar provisions were consistently followed and applied for over five years. Pointing out that the JEE (Advanced) was conducted on 27.09.2020 involving six rounds of counselling which finally concluded on 07.11.2020 for IITs in accordance with the rules, the IIT objected to the petitioner's conduct in waiting till the end of the entire process and then approaching the Court in third week of December 2020. Soutrik had argued that he could not withdraw from the seat allocation (i.e. the admission to IIT Kharagpur) after the fifth round due to inadvertence. This submission was contested and the IIT alleged that he was estopped from so contending.

7. The learned Single Judge, by the impugned judgment, faulted the impugned criteria for discriminating against a successful candidate who secures a seat in one of the IITs and preventing

her or him from competing in the subsequent examination whereas permitting candidates who secure admissions in non-IIT institutions, to do so. It was reasoned that in either case, an available asset in the form of a seat in an engineering institution gets wasted – a logic which applies to both IITs and non-IIT institutions. The learned Single Judge also referred to those who withdrew their candidature voluntarily. In 2020, there were 847 such candidates who did so because the seat was not according to their liking or the subject combination was not in accordance with their wishes. Such candidates were permitted to appear in the subsequent examination process. There was no prejudice or injustice caused to them. However, in cases, where the candidates did not opt to withdraw their candidature after securing a seat, there is prejudice in the sense that they are not allowed to appear in a subsequent examination to test their merit and secure admission in better ranking institute or in different sub-streams on the basis of rank based purely on their meritorious performance. On the basis of this reasoning it was held that Soutrik was debarred from appearing in the JEE for the second time only on the basis of being an IITian who was admitted in Chemistry in IIT Kharagpur but was desirous of studying in computer science.

Submissions of parties

8. Mr. Sonal Jain, Advocate, appearing on behalf of the IIT urged that the High Court fell into error in holding that the impugned stipulation unfairly kept out candidates for admission to IITs. He emphasised that such a criterion has been in place for over five years and the High Court, by interfering with it has disturbed a carefully designed admission program. It was highlighted that the admission program criteria are evolved after careful deliberation to provide access to the participating institutions through admissions in an equitable and reasonable manner. Permitting successful candidates to challenge and overreach the system with the speculative hope of improving the performance despite securing admission and proceeding to abandon the seats offered to them after foregoing the option to withdraw, would spell disaster and undermine the entire examination process; besides it would be contrary to public interest. It was highlighted further that permitting the respondent to appear in the JEE (Advanced) for the subsequent examination would be inequitable given that the same pattern is uniformly accepted and applied across over 100 institutions and accepted by over 2 lakh candidates, who had appeared in the examination process.

9. It was urged that the High Court erred in law in equating IIT seats with non- IIT seats without appreciating that the statutory rules were not under challenge. Furthermore, the impugned criteria operates for the forthcoming year as well and not confined to 2021. As a consequence, a large number of candidates had already fixed their position by following the rules. Interfering with the process would irrevocably prejudice such candidates who had accepted its mandate. It was argued that Soutrik, the respondent misled the High Court by suppressing material facts that he had never opted for computer science, contrary to his averments in the JEE (Mains) examination 2020 and furthermore by deceit and withholding information that he had been admitted to a course in IIT Kharagpur and proceeding to accept the seat in IIT Bombay (in BS Mathematics) based on his performance in the International Olympiad.

10. Mr. S.K. Bhattacharya, learned counsel for the respondent, Soutrik argued at the outset that the appeal should not be maintained for the reason that IIT has directly approached this Court without

availing itself of the normal remedy of an appeal before the LPA Bench. It was emphasized that if the matter were to be proceeded with, the respondent Soutrik would be placed at a disadvantage because he would have in the event of a decision by this court, no recourse to further appeal. Mr. Bhattacharya underlined that even otherwise, this Court has, as a matter of practice, desisted from entertaining the appeals from the learned Single Judge's decisions, if appeals are available in the form of Letters Patents or writ appeals in the concerned High Courts.

11. Mr. S.K. Bhattacharya, learned counsel urged that Criterion 5 is plainly discriminatory because it differentiates between candidates who are successful in securing admission to IITs and those who secured admission to non-IIT institutions. Highlighting that both categories of candidates appear in the same examination, it was emphasized that the so-called sub-categorisation is irrational. Echoing the reasoning of the High Court, Mr. Bhattacharya urged that the IIT's grounds for framing such a discriminatory policy are faulty because whether it is the IIT or a non-IIT technical institution the consequence of a candidate opting out of a particular course and seeking admission in a different institution would lead to the same consequence, i.e. loss of one seat. In the circumstances, it cannot be said that there is a distinction between the two kinds of institutions.

12. It was submitted that Soutrik opted for the seat in IIT Kharagpur but could not pull out of the admission process before expiry of the last date for doing so due to inadvertence. In these circumstances, he ought to be given the choice of appearing in the current JEE (Advanced) examination since his career is at stake and he has an equal right to better his opportunity as candidate who succeeds in securing admission in non-IIT institutions but do not opt to continue.

Analysis and reasoning

13. At the outset, this Court holds as insubstantial the objection on behalf of the respondent, Soutrik that the IIT should have approached the Division Bench in Letter Patent jurisdiction of the Calcutta High Court. The ordinary rule of necessity that litigants should approach and avail of appellate remedies exhausting them before approaching this Court is a rule of convenience and not an immutable practice. It has been held to be so by this Court (Ref State of UP v Harish Chandra & Ors²). Moreover, the discretion under Article 136 of the Constitution is flexible and 1996 (9) SCC 309 sufficiently wide, to correct glaring errors and injustices. Furthermore, this Court had issued notice on 09.09.2021 and granted an interim order suspending the directions of the High Court. On the two subsequent dates of hearing, i.e. 17.09.2021 and 24.09.2021, there was no objection on the part of the respondent with respect to the maintainability of the present petition. Having regard to all these facts, the objection is hereby overruled.

14. Criterion no. 5, which is impugned in the present case, is part of the Information Brochure for the JEE (Advanced), 2020 information brochure; it is reproduced below:

“Criterion 5 – Earlier admission at IITs: A candidate should NOT have been admitted in an IIT irrespective of whether or not he/she continued in the program OR accepted an IIT seat by reporting at a reporting centre in the past. Candidates whose admission at IITs was cancelled after joining any IIT are also NOT eligible to appear

in JEE (Advanced) 2020.

Candidates who have been admitted to a preparatory course in any of the IITs for the first time in 2019 can appear in JEE (Advanced) 2020.

The candidates who paid seat acceptance fee in 2019 but (i) did not report at any reporting centre OR, (ii) withdrew before the last round of seat allotment, OR, (iii) had their seat cancelled (for whatever reason) before the last round of seat allotment for IITs, during the joint seat allocation in 2019, are eligible to appear in JEE (Advanced) 2020.

However, in all of the above cases, the candidate is also required to fulfil the conditions mentioned from Criterion 1 to Criterion 4.”

15. IITs are constituted under the Institutes of Technology Act, 1961 (hereafter “the Act”) and are declared to be technical institutions of education, declared by Parliament, to be of national importance (under Entry 64) of the Union List (List I) of the Seventh Schedule to the Constitution of India³, set-up to foster excellence in education. The appellant contends that IITs have created a world class academic platform dynamically sustained through quality teaching and internationally acclaimed research with excellent infrastructure and the best minds available. Admission to the IITs is governed by the JEE (Advanced) Information Brochure which sets out the detailed rules of eligibility. That an examination is conducted exclusively by the IITs and the National Testing Agency (NTA) has no role in this. The NTA’s role is confined only to the JEE (Mains). The top 2.5 lakh successful candidates in the JEE (Mains) examination category wise – are allowed to appear in the JEE (Advanced) examination provided they fulfill other eligibility criteria. The admissions standards for the IITs are prescribed by virtue of exercise of power under Section 33(2)(b) of the Act. The planning of the JEE (Advanced) and the admissions process to various IITs is conceived and supervised by the Joint Administrative Board consisting of Directors of IITs, Members of the Joint Implementation Committee, representatives of the Union Government, CBSE etc. The IIT has in its appeal referred to the Joint Seat Allocation Authority Business Rules. These rules, - applicable for the year 2020-21 to the extent they are relevant are extracted below:

”64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.” “XXVII ELIGIBILITY TO APPEAR IN JEE (ADVANCED) IN SUBSEQUENT YEARS

69. Candidates who reject their seat during the first five (5) rounds or withdraw from allocated seat, by completing all formalities specified herein, can appear for JEE (Advanced) 2021 provided they meet all other eligibility requirements.

70. Candidates who accept the allocated seat in any IIT by reporting online but later do not withdraw seat or accept the allocated seat by reporting at the admitting institute (in case seat is allocated in the last round), irrespective of whether they

attend classes or not, become ineligible for JEE (Advanced) in subsequent years.”

16. In the present case, the undoubted facts are that Soutrik was successful in the JEE 2020 (Mains) examination and on the basis of his performance, was offered a set in the IIT Kharagpur. The merit list of the JEE (Advanced) Exam 2020 was announced on 05.10.2020. During the period between 06.10.2020 to 15.10.2020, candidates had to register and fill the choice of interest and course strictly in their preferred hierarchy. The three-day period between 12.10.2020 and 14.10.2020 was set apart for mock seat allocation stage based on filled choices by the candidates for seat allocation. The seat allocation Round one was completed on 17.10.2020 during which Soutrik was allotted his choice no.14 on 19.10.2020; he deposited the seat acceptance fee to the Joint Seat Allocation authority. The second round of seat allocation was taken up on 21.10.2020 and the subsequent rounds followed, culminating in the final round. Rounds 3 to 5 were completed on 26.10.2020, 30.10.2020 and 03.11.2020 where the seat withdrawal and exit was allowed to all candidates on previous allotment rounds, i.e. four different occasions. The final round of seat allocation was conducted on 07.11.2020. Soutrik had, in the meanwhile been offered B.S. (Mathematics) course in the IIT Bombay through a separate admission process based on his performance in the Mathematics Olympiad. This was disclosed by him in the writ petition filed before the High Court. He seems to have accepted that offer of admission. He however, did not withdraw the admission granted earlier as of the last date provided for it. It appears that he wrote to the IIT on 08.11.2020 alleging that he got an offer letter from the IIT Bombay for lateral entry to BS (Mathematics) after the online date for withdrawal had lapsed, demanding refund of his seat acceptance fee. He proceeded to accept the admission granted to him in IIT Bombay on 09.11.2020.

17. The IIT (appellant here) alleges that at the time of his admission, to the BS course in IIT Bombay, Soutrik did not disclose that he had accepted the admission in IIT Kharagpur in Chemical Engineering. Thereafter, he pursued the BS (Mathematics) course. Strangely, on 20.11.2020, Soutrik paid the admission fee for IIT Kharagpur, got his documents verified, studiously maintaining silence about the fact that from 09.11.2020, he was a student pursuing a BS (Mathematics) class from IIT Bombay.

18. The IIT's pleading before this Court revealed that on 09.11.2020, this Court had opposed the interim order in a Civil Appeal.⁴ IIT alleges that inspired by the interim order granted by this Court, Soutrik approached the Calcutta High Court on 23.12.2020 and filed his writ petition without making appropriate disclosures about his securing admission in IIT Bombay and that at the time of securing such admission, suppressing information that he had secured admission in IIT Kharagpur.

19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts' scrutiny in judicial review has to be careful and circumspect. Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or *Sidhant Batra v. Director IIT Bombay CA*

4029/2020 university⁵. It was held by this court in *All India Council for Technical Education v. Surinder Kumar Dhawan*⁶ "16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education."

20. Given this general reluctance of courts to substitute the views of academic and expert bodies, the approach of the High Court in proceeding straightaway to characterize the rationale given by the IIT in fashioning the Criteria No. 5 cannot be supported.

21. This court is of opinion that the impugned judgement is in error in holding that the exclusion of a candidate who secures admission but does not opt out of it and virtually abandons it as in the case of Soutrik from participating in the subsequent JEE (Advanced) examination is arbitrary. As recounted earlier, criteria, including Criteria no.5 were devised after extensive consultations between all the See *Basavaiah (Dr.) v. Dr. H.L. Ramesh & Ors* (2010) 8 SCC 372 where it was observed that it is "...settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts..."

(2009) 11 SCC 726 IITs and other officials of the Union Government as well as the CBSE. The High Court proceeded to facially compare IITs and non-IIT institutions and hold that candidates who are admitted to non-IIT institutions and who do not proceed in the institution and who are allowed to participate in the subsequent JEE (Advanced) amounts to hostile discrimination and those who secure admission but do not proceed with the course in any given year.

22. In this Court's opinion, given that the Criteria no.5 is a part of the information Brochure, settled as a condition of admission in terms of of JoSAA Rules of 2020 meant that all IITs had adopted a uniform criteria of not permitting candidates who were successful in a previous year but did not pursue their course and did not opt out of taking another chance in the subsequent year. This was a binding norm applicable to all IIT institutions. If one considers the fact that JEE (Advanced) is governed by rules framed under the Act, and regulations, the further detail that it permitted non-IIT candidates who were admitted in a previous year (but did not pursue their course nor withdrew the option in a previous year) is logical. Such non-IIT institutions are not governed by the Act and regulations framed under it or even for that matter JoSAA Business Rules. Furthermore, in the opinion of this Court, securing a seat in any one of the 23 IITs stands on a different footing than securing a seat in non-IIT institution. This is not to in any manner undermine the worth or

academic curricula or ranking of such non-IIT institutions. The classification of IITs, on the one hand and non-IIT institutions on the other hand is warranted. This Court does not wish to emphasise this aspect further except to say that the classification is justified both statutorily and in terms of Parliamentary declaration that the Act was conceived as one meant to set-up institutions of excellence having national status. This Court hold Criterion 5 to be valid, aimed at conserving a valuable public resource, i.e. seats in IITs.

23. For the above reasons, the impugned judgment and directions of the High Court are hereby set aside; the writ petition of the respondent, is consequently dismissed. In the circumstances, there shall be no order on costs.

.....J. [UDAY UMESH LALIT]J. [S. RAVINDRA BHAT]J. [BELA. M. TRIVEDI] NEW DELHI;

SEPTEMBER 28, 2021.