

A THE STATE OF ODISHA & ORS

v.

ORISSA PRIVATE ENGINEERING COLLEGE ASSOCIATION
(OPECA) & ANR

B (Civil Appeal No 2274 of 2021)

JUNE 29, 2021

**[DR. DHANANJAYA Y CHANDRACHUD,
R. SUBHASH REDDY AND S. RAVINDRA BHAT, JJ.]**

C *Education/Educational Institutions:*

Odisha Professional Educational Institutions (Regulation of Admission and Fixation of Fees) Act, 2007: ss. 3(1) and 3(2) – Method of admission in professional educational institutions – On facts, amid covid outbreak, issuance of circular by All India Council for Technical Education (AICTE), by which the eligibility criteria for students taking admission to vacant seats for the PGDM/MBA courses relaxed – Admission based on marks scored by aspirants in the qualifying examination instead of the statutory requirement that all admissions have to be based on centralized entrance test – Subsequently, clarification letter by AICTE that circular issued by it only pertained to PGDM/MBA courses and not B. Tech courses – In a writ petition, the High Court allowed institutions to grant of admission to students for B.Tech (Engineering) Degree Course on the basis of the marks obtained in the qualifying examination – High Court while holding that there was an error apparent in the letter issued by AICTE, issued mandamus that the same benefit should be given to students of the Engineering degree stream as was granted to students for PGDM/MBA courses – On appeal, held: Direction by the High Court to the State Government to admit students to the B. Tech Degree Courses on the basis of the marks obtained in the qualifying examination contrary to the terms of s. 3(1) – AICTE clearly indicated that B. Tech courses cannot be placed at par with PGDM/MBA courses and left it to the decision of the State Government – State Government was duty bound to comply with provision s of s.3(1) – Thus, the High Court not justified in issuing mandamus – Order passed by the High Court set aside – However,

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students granted admission under the direct entry and under the lateral entry to the B.Tech Degree Courses not to be disturbed – Constitution of India – Art. 142.

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Disposing of the appeal, the Court

HELD: 1.1 The direction by the High Court to the State Government which operates as a mandamus to admit students to the B.Tech Degree courses on the basis of the marks obtained in the qualifying examination is expressly contrary to the terms of Section 3(1) of the Odisha Professional Educational Institutions (Regulation of Admission and Fixation of Fees) Act, 2007. It was in this context that the earlier order of the High Court dated 24 December 2020 left it to the AICTE and the State Government to take an appropriate decision in regard to extending the same benefit which was extended to PGDM/MBA students to the students aspiring for admission to the B.Tech Degree courses. AICTE, in the course of its letter, had clearly indicated that the B.Tech degree courses cannot be placed at par with the PGDM/MBA courses and, hence, it was left to the State Government to take an appropriate decision. It is rightly submitted that the actual decision which was taken by the State Government on 7 January 2021 proceeded on an erroneous interpretation of the letter which was addressed by the AICTE, that AICTE had not approved of the course of action. However, that does not obviate the position that the State Government is duty bound to comply with the provisions of Section 3(1) which hold the field in the State of Odisha. In this backdrop, the High Court was not justified in issuing a mandamus to the State Government in the teeth of the provisions of the statute, more particularly Section 3(1). The judgment of the High Court proceeded on a misconception of law and is set aside. [Para 11, 12][392-G-H; 393-A-D]

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1.2 The 592 students have taken admission under direct entry and 243 students have taken admission under lateral entry in the B.Tech degree courses in pursuance of the direction of the High Court. The Court cannot be unmindful of the impact of the Covid-19 pandemic. The number of students who actually could appear for the entrance examination is a small proportion

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A of the total number of seats available in the State. To displace such a body of students who have already been admitted would not be in the interests of justice. Hence, in exercise of the jurisdiction under Article 142 of the Constitution, for the current year, the admission which has been granted by the institutions to 592 students under direct entry and 243 students under lateral entry to the B.Tech degree courses should not be disturbed. This direction is passed having regard to the overwhelming hardship faced during the course of the Covid-19 pandemic. It is directed that the admission of the said students would not be disturbed [Para 13, 14][393-E-H; 394-A]

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2274 of 2021.

From the Judgment and Order dated 21.01.2021 of the High Court of Orissa at Cuttack in W. P. (C) No. 1973 of 2021.

D Tushar Mehta, SG, Sibho Sankar Mishra, Niranjan Sahu, Advs. for the Appellants.

Siddhartha Dave, Sr. Adv., Shubhanshu Padhi, Ashish Yadav, Rakshit Jain, Vishal Banshal, Kush Chaturvedi, Advs. for the Respondents.

E The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

F 2. This appeal arises from an order of a Division Bench of the High Court of Orissa dated 21 January 2021. The High Court has allowed a writ petition filed by the first respondent allowing institutions imparting education to grant admission to the students for the B.Tech (Engineering) degree course for academic session 2020-21 on the basis of the marks obtained in the qualifying examinations. This is purportedly in relaxation of a statutory requirement that all admissions have to be based on a centralized entrance test.

G 3. In the State of Orissa, there is a legislation called the Odisha Professional Educational Institutions (Regulation of Admission and

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Fixation of Fees) Act 2007¹. Section 3 of the 2007 Act contains the following provision: A

“3. (1) Subject to the provisions of this Act, admission of students in all private professional educational institutions, Govt. institutions and sponsored institutions to all seats including lateral entry seats, shall be made through Entrance Test(s) approved by the Government followed by centralized counselling in order of merit, in accordance with such procedure as recommended by the Policy Planning Body and approved by the Government. B

(2) After vacancy round of Odisha Joint Entrance Examination (OJEE)/ Diploma Entrance Test (DET) Counselling, i.e. after minimum of two rounds of Centralized Counselling, the modalities shall be decided by the Government from time to time for filling up of the vacant seats taking candidates from the Entrance Test(s) approved by the Government on merit basis of all the Technical and Professional Institutes under the supervision of the OJEE/DET Committee. The seats to which candidates could not be sponsored due to dearth of choice and the seats remained vacant due to non-reporting cases 2nd round of Centralized Counselling shall be considered as vacant seats against which the College can admit students following the modalities fixed by the Government. In any case, the reported cases shall not be given further opportunity to participate in the admission process meant for filling up of vacancies at Institution level”. D E F

4. As a result of the outbreak of the Covid-19 pandemic, the All India Council for Technical Education² issued a circular dated 19 August 2020 by which relaxed eligibility criteria for students taking admission to vacant seats available for the PGDM/MBA courses were prescribed on the basis of marks scored by the aspirants in the qualifying examination. The first respondent, placing reliance upon the circular, filed a petition under Article 226 of the Constitution before the High Court seeking a direction to the State Government to implement this circular for B.Tech G

¹ “2007 Act”

² “AICTE”

A Degree courses. The High Court, by its order dated 24 December 2020, left it to the discretion of AICTE and the State Government to determine whether a similar benefit as granted to students pursuing the PGDM/ MBA courses should be extended in making admissions for the B. Tech (Engineering) degree course. Pursuant to the direction of the High Court, the AICTE issued a letter dated 6 January 2021. AICTE clarified the

B position in the following terms:

C “This office has examined the matter in details and found that the Circular dated 19.08.2020 had been issued in respect of the PGDM course keeping in view the (s)ituation prevailing at the relevant time as indicated in the said circular, which included that in many states the several All India Entrance Tests could not be conducted or delayed due to the COVID-19 pandemic. However, the same was not the case so far as the B.Tech Engineering stream is concerned. So issuing any general circular for admission into engineering courses at par with the Circular dated 19.08.2020 was not felt necessary. This also for the further reason being it was provided in para 7.2 of Chapter vii of the Approval Process Handbook 2020-21 that, “The concerned State Government/ UT Admission Authority shall decide modalities for the admission.” It is also seen that the Odisha State has made provisions in the Odisha (P)rofessional (E)ducational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 to fix the modalities of admission into vacant seats.

D In such view of the matter, there is no need of issuing any general circular extending benefits, at par with the circular dated 19.08.2020 in respect of B. Tech Engineering Stream. Considering the extraordinary situation prevailing all over the country due to COVID-19 Pandemic and varying field situation in different states, the (S)tate Govt. may take suitable decision with regard to modalities of admissions into engineering courses including prescribing for any extend time limit for such admission for the academic session 2020-21.

G This is issued with the approval of the Competent Authority.”

H 5. Following the above letter, the first appellant informed the first respondent on 7 January 2021 that the circular issued by the AICTE relates only to the PGDM/MBA courses and not to the B.Tech Degree

courses. The communication of the first appellant was challenged by the first respondent before the High Court, while seeking directions to allow students to take admission to the B.Tech courses on the basis of marks obtained in the qualifying examination. The High Court, by its order dated 21 January 2021, came to the conclusion that there was an error apparent on the face of the letter dated 7 January 2021 by not permitting engineering institutions to allow students to take admission to B.Tech (Engineering) Courses on the basis of the marks obtained in the qualifying examination. The High Court held that the same benefit which was granted to aspiring students for the PGDM/MBA courses should be given to students of the Engineering Degree stream on the basis of the AICTE circular.

6. The submission which has been urged on behalf of the appellants by Mr Tushar Mehta, learned Solicitor General appearing with Mr Sibbo Sankar Mishra, learned Standing Counsel, is that the direction of the High Court is contrary to the provisions contained in Section 3 of the 2007 Act. It has been urged that Section 3(1) stipulates that admission of students in all private professional educational institutions, government institutions and sponsored institutions to all seats including lateral entry seats shall be made through an entrance test approved by the government followed by centralized counselling in order of merit. Hence, it has been submitted that the direction of the High Court to the State Government to allow for admissions to the B.Tech Degree courses on the basis of marks obtained in the qualifying examination is contrary to Section 3(1). Apart from this submission, it has been urged that, as a matter of fact, the AICTE, in its communication which has been referred to earlier had clearly opined that the B.Tech Degree courses could not be placed at par with PGDM/MBA courses. Hence, an appropriate decision was left to the government to take in view of the provisions of the state legislation.

7. On the other hand, Mr Siddhartha Dave, learned Senior Counsel appearing on behalf of the first respondent, on caveat, has submitted that, as a matter of fact, benefit has been granted of the direction issued by the High Court to about 592 students who have taken admission to B.Tech Degree courses under direct entry and 243 students who have taken admission under lateral entry in the State of Odisha. In this context, the following chart has been placed on the record in the synopsis to the appeal:

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A	“1	TOTAL NUMBER SEATS IN B.TECH 4YEAR COURSE	33,653
	2	TOTAL APPLICATION RECEIVED UNDER B.TECH DURING OJEE 2020	14,422
	3	TOTAL NUMBER OF STUDENTS APPEARED AT OJEE2020 UNDER B.TECH	6,605
B	4	TOTAL NUMBER OF STUDENTS REGISTERED FOR OJEE2020 COUNSELLING FOR ADMISSION TO B.TECH 4 YEAR COURSE	FROM JEE MAIN MERIT LIST – 11,682
			FROM OJEE MERIT LIST – 2,285
C	5	NUMBER OF STUDENTS JOINED FOR B.TECH COURSE FROM OJEE 2020 EXAM	1,227 DURING OJEE COUNSELLING
			1,933 DURING COLLEGE/INSTITUTION LEVEL ADMISSION (AFTER OJEE COUNSELLING)”

8. The above chart indicates that while there are over 33,000 seats for the B.Tech four Year course, as a matter of fact, the number of students who have joined on the basis of the entrance examination is a meagre fraction of the total number of seats. It has been submitted that for the present year, having regard to the onset of the Covid-19 pandemic, the direction of the High Court need not be interfered with.

9. Mr Gaurav Agrawal, learned counsel, has appeared on behalf of some of the students who have obtained admission.

10. In view of the submission which has been urged on behalf of the institutions by Mr Siddhartha Dave, as noted above, we had requested the Solicitor General to seek a factual clarification from the competent authority of the State Government in regard to the actual number of students who have secured admission in pursuance of the order of the High Court. The Solicitor General has stated that factually, about 592 students have secured admission to B.Tech degree courses under direct entry and 243 students have secured admission under lateral entry pursuant to the order of the High Court, as stated on behalf of the first respondent by the learned counsel.

11. The direction by the High Court to the State Government which operates as a mandamus to admit students to the B.Tech Degree courses on the basis of the marks obtained in the qualifying examination is expressly contrary to the terms of Section 3(1) of the 2007 Act. It was in this context that the earlier order of the High Court dated 24 December

2020 left it to the AICTE and the State Government to take an appropriate decision in regard to extending the same benefit which was extended to PGDM/MBA students to the students aspiring for admission to the B.Tech Degree courses. AICTE, in the course of its letter, had clearly indicated that the B.Tech degree courses cannot be placed at par with the PGDM/MBA courses and, hence, it was left to the State Government to take an appropriate decision. Mr Siddhartha Dave is correct in urging that the actual decision which was taken by the State Government on 7 January 2021 proceeded on an erroneous interpretation of the letter which was addressed by the AICTE, that AICTE had not approved of the course of action. However, that does not obviate the position that the State Government is duty bound to comply with the provisions of Section 3(1) which hold the field in the State of Odisha. In this backdrop, the High Court was not justified in issuing a mandamus to the State Government in the teeth of the provisions of the statute, more particularly Section 3(1).

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12. We accordingly are of the view that the judgment of the High Court proceeds on a misconception of law and would have to be set aside. We order accordingly.

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13. Having observed thus, we are still left with the problem which now concerns the Court-of 592 students who have taken admission under direct entry and 243 students who have taken admission under lateral entry in the B.Tech degree courses in pursuance of the direction of the High Court. The Court cannot be unmindful of the impact of the Covid-19 pandemic. The number of students who actually could appear for the entrance examination is a small proportion of the total number of seats available in the State. To displace such a body of students who have already been admitted would not be in the interests of justice. Hence, in exercise of our jurisdiction under Article 142 of the Constitution, we are of the view that for the current year, the admission which has been granted by the institutions to 592 students under direct entry and 243 students under lateral entry to the B.Tech degree courses should not be disturbed. We are passing this direction having regard to the overwhelming hardship which has been faced during the course of the Covid-19 pandemic. The Solicitor General has fairly left an appropriate direction in regard to the above 592 students who have already secured admission under direct entry and 243 students who have secured admission under the lateral entry to the discretion of this Court.

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- A 14. We direct that the admission of the above students shall not be disturbed, while setting the legal position to rest.
15. The appeal is accordingly disposed of.
16. Pending application, if any, stands disposed of.

Nidhi Jain

Appeal disposed of.