A

THAPAR INSTITUTE OF ENGINEERING AND TECHNOLOGY, PATIALA (DEEMED UNIVERSITY)

v.

ABHINAV TANEJA AND ORS.

APRIL 6, 1990

B

[K. JAGANNATHA SHETTY, LALIT MOHAN SHARMA AND P.B. SAWANT, JJ.]

Constitution of India, 1950: Article 226—High Court exercising extraordinary jurisdiction—Not to exercise peremptorily, without giving reasons.

C

Admission to professional institutions: B.E. Course—admissions —Writ Petitions by some candidates—High Court directing admission of—Petitioners less meritorious than others waiting—Whether justified.

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For admission to B.E. Course (1989-90 Session) in the appellant-Institute and 3 other institutes, there was a Combined Entrance Test held by the Punjab University. The results were declared, and students allotted to the respective institutes of their choice. The appellant-Institute drew up merit list of candidates allotted to it and gave admissions in that order.

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To fill up the vacant seats as a result of some students leaving the Institute, the appellant-Institute held interviews on 14.8.1989, which incidentally was the last date for admission to B.E. Course. However, the last date was extended up to 25.5.1989. When admission was closed on that day, the last student admitted was at S. No. 1127 in the merit list

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prepared by the University.

Respondents 1 to 4 filed a writ petition before the High Court on 30.8.1989, alleging that six seats were vacant and the appellant-Institute be directed to admit them. The High Court on 21.9.1989 allowed the writ pettion on the assumption that six seats were vacant,

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whereas only 2 seats were available, according to the appellant-Institute.

Respondents 5 to 8B also approached the High Court by way of writ petitions and the High Court directed the appellant-Institute to admit the six Respondents also in the B.E. Course. Further, three other

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similar writ petitions were pending before the High Court.

Against the above-said orders of the High Court, the appellant-Institute has preferred these appeals contending that the last candidate admitted was at S. No. 1127 in the merit list and admittedly all the Respondents except Respondent No. 6 were less meritorious, while candidates with higher merits were still waiting for admission. It was contended that while there were only 2 vacant seats, the High Court has directed the appellant-Institute to admit as many as ten candidates, that too long after the course started and the First Terminal Exams were over.

Dismissing the appeals, this Court,

HELD: 1.1 The High Court not only ignored the fact which was specifically pointed out in the appellant-Institute's affidavit that there were no seats available in the appellant-Institute whose capacity was only 180 seats, but also the fact that there were more meritorious students than the Respondents as per the Combined Entrance Test, who could not secure admission and who were waiting to be admitted to the appellant-Institute. The Respondent-students could get admission to the appellant-Institute only if their comparative merits ordained it and not otherwise. They could claim no merit over other meritorius students merely because they had approached the Court for securing admission. In fact, in their writ petitions before the High Court, the respondent-students had claimed no further relief than that they should be directed to be admitted according to their merit. [399B-E]

1.2 There was nothing wrong in the appellant-Institute admitting 10 more students in B.E. Course. The Institute has a capacity of only 180 students. To meet the contingency of the students leaving it soon after admission the appellant-Institute had admitted 10 more students as has been done every year. As it turned out, 12 of the students left leaving 178 students on the roll, with only 2 vacancies. The High Court could have directed only two students to be admitted and that too on merit. Admittedly, there were more meritorious students than the respondents, waiting in queue. The High Court thus travelled beyond its jurisdiction and not only directed more students than the Institute could absorb but also students who were less meritorious to be admitted. No reasons whatsoever have been given by the High Court for exercising its extraordinary writ jurisdiction so peremptorily which has resulted in injustice both to the appellant-Institute as well as to the students who stood higher in merit than almost all the respondent-students except Respondent No. 6. [399E-H]

A **2. Since, however, the respondent-students stand already admitted, and the more meritorious students cannot now avail of the seats given to the respondents due to lapse of time, their pursuit of the course is not interfered with. [400A]**

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. B 4885-91 of 1989.

From the Judgment and Order dated 21.9.1989 & 6.10.1989 of the Punjab & Haryana High Court in C.W.P. No. 11218/89 and 12519, 12520, 12521, 12593, 12868 & 12463 of 1989.

C P.H. Parekh, Manoj Swarup and J.P. Pathak for the Appellant.

Krishan Kumar and Mehta Dave & Co. for the Respondents.

The Judgment of the Court was delivered by

D **SAWANT, J.** These appeals are directed against two Orders of the Punjab & Haryana High Court by which the High Court has directed the appellant-Institute to admit respondent-students 1 to 8B to its B.E. course irrespective of their merits.

2. The relevant admitted facts are that on May 24 and 25, 1989, E respondent No. 9—Punjab University held a Combined Entrance Test (C.E.T.) for admission to B.E. course (Session 1989-90) conducted by 4 different institutes including the appellant-Institute. On June 26, 1989, the University declared the merit list of students who appeared in C.E.T. June 30, 1989 was the last date fixed for submitting applications by students to individual institutes. The students were given F choice of the institutions and they were required to state their choice in order of preference. The representatives from the 4 institutes met together at Chandigarh from 24th to 27th July 1989 to finalise the admissions to the 4 institutes. The meeting of the representatives of the 4 institutes was necessary to ensure that the students were given the institutes of their choice in the order of merit, subject, of course, to the G students applying to the particular institutes and that the student did not get admission at more than one institute at a time. The Committee of representatives interviewed the students and awarded them the institutes of their choice in the order of their respective merits. Accordingly, the appellant-Institute drew up its merit list of candidates. Interviews were held in the respective institutes including the H appellant-Institute for filling up the reserved seats other than those

reserved for Scheduled Castes and Scheduled Tribes and also for filling up seats in general category which fell vacant subsequently as a result of the students leaving the appellant-Institute. On August 14, 1989, a second round of interviews was held in all the institutes including the appellant-Institute for filling seats which fell vacant as a result of the students leaving the appellant-Institute subsequently. Incidentally, this was also the last date of admission to B.E. course as was notified in the prospectus of the appellant-Institute. However, the last date was extended to 25th August, 1989 by an advertisement in the newspaper, namely, Tribune published on August 19, 1989 wherein it was clearly mentioned that the admission to the course will be closed on August 25, 1989. The advertisement was repeated in another newspaper, namely, the Times of India on August 20, 1989. The appellant-Institute closed the admissions at 5.00 p.m. on August 25, 1989. On this day, the position of the appellant-Institute was that the last student who was admitted to the B.E. Course was at serial number 1127 in the merit list prepared by the University as per the results of the C.E.T.

3. On August 30, 1989, respondents 1 to 4 filed a Writ Petition No. 11218/89 before the Punjab & Haryana High Court for a direction to the appellant-Institute to extend its last date of admission and to admit them to the B.E. course in the appellant-Institute alleging that six seats were lying vacant in the Institute.

4. In the meanwhile, as usual, the first test of the B.E. course was held by the appellant-Institute after six weeks of the commencement of the course. On September 19, 1989, the appellant-Institute filed its written statement to the writ petition objecting to the maintainability of the petition against the appellant-Institute as it was not a State within the meaning of Article 12 of the Constitution of India. It was also pointed out in the written statement that since the past experience showed that some students left the Institute as soon as they got admission in the other institutes, the appellant-Institute had admitted 10 additional students to the B.E. course. The total seats available in the B.E. course in the appellant-Institute were 180 and students at numbers 181-190 were admitted to meet this contingency. It was also pointed out in the written statement that the last date of admission to the course was fixed by the appellant-Institute taking into account the said past experience as well as to put a seal of finality on the process of admission which would otherwise continue indefinitely. On September 20, 1989, the appellant-Institute also filed a short affidavit in the writ petition stating therein that the admissions to the B.E. course had closed on 25th August, 1989 and no student had been

admitted thereafter. It was also pointed out that regular classes had begun, and the first terminal examination had been held from 4th September, 1989 to 9th September, 1989 which carried weightage of about 30% marks. Hence, the students admitted at the belated stage would not be able to cover up lecture-attendance and no seat in excess of the total seats could be filled up.

4. On September 21, 1989, the High Court allowed the writ petition by proceeding on the assumption that more than half a dozen seats were lying vacant with the appellant-Institute. The High Court held that belated admissions were something that the students seeking such admissions would worry about rather than the appellant-Institute. The appellant-Institute was also directed to grant admissions to respondents 1 to 4 in the B.E. course forthwith. As pointed out by the appellant-Institute, on that day the factual position with regard to seats in the course was that out of 190 students who were granted admission, 12 students had left leaving a total strength of 178 students. Since the last date for admission was August 25, 1989, 178 students had continued in the course with regular instructions and tests one of which was already held as stated earlier between 4th and 9th September, 1989, six weeks after the commencement of the course.

5. A further batch of Writ Petitions, namely, Writ Petitions Nos. 12519, 12520, 12521, 12593, 12868, 12463 all of 1989 filed by respondents 5 to 8B respectively were allowed by the High Court on October 6, 1989 directing the appellant-Institute to admit the respective respondents to the said course. It also further appears that three other similar writ petitions filed by other students seeking admission to the course in the appellant-Institute are pending before the High Court for preliminary hearing. The appellant-Institute further points out that the second test of the said course was scheduled to be held from 23rd to 28th October, 1989.

6. It is not disputed before us that whereas the last student admitted on merit in the appellant-Institute was at serial number 1127 in the merit list prepared by the University as per the Combined Entrance Test, the respondent-students were at the serial numbers in the said merit list, as follows: respondent No. 1 (1145), No. 2 (1147), No. 3 (1161), No. 4 (1277), No. 5 (1259), No. 6 (1112), No. 7 (1266), No. 8 (1218), No. 8A (1189) and No. 8B (1245). Thus it will be seen that except for respondent No. 6 who had not earlier applied for being admitted to the appellant-Institute and had opted for some other Institute, all the respondents had secured lower numbers in the merit list.

What is further, the students who were at a higher serial number of merit list were still waiting for admission to the appellant-Institute, when the High Court directed the appellant-Institute to admit the respondent-students. What is more, even in their writ petitions before the High Court the respondent-students had claimed no further relief than that they should be directed to be admitted to the appellant-Institute according to their merit. The relief claimed in Writ Petition No. 11218/89 may be reproduced here by way of illustration:

> "this Hon'ble Court may please to issue a Writ of Mandamus directing the respondents to extend the date of admission and to admit the petitioners in the B.E. course *as per their merits*;". (emphasis supplied)

The High Court further not only ignored the fact which was specifically pointed out in the appellant-Institute's affidavit in reply before it, that there were no seats available in the appellant-Institute whose capacity was only 180 seats but also the fact that there were more meritorious students than the respondents as per the C.E.T. who could not secure admission and who were waiting to be admitted to the appellant-Institute. The respondent-students could get admission to the appellant-Institute only if their comparative merits ordained it and not otherwise. They could claim no merit over other meritorious students merely because they had approached the Court for securing admission.

7. There was further nothing wrong in the appellant-Institute admitting 10 more students in the circumstances pointed out above. The Institute has a capacity of only 180 students. To meet the contingency of the students leaving it soon after admission they had admitted, as they do every year, 10 more students. As it turned out, 12 of the students left leaving 178 students on the roll, with only 2 vacancies. The High Court could have directed only two students to be admitted and that too on merit. Admittedly, there were more meritorious students than the respondents, waiting in queue. The High Court thus travelled beyond its jurisdiction and not only directed more students than the Institute could absorb but also students who were less meritorious, to be admitted. No reasons whatsoever have been given by the High Court for exercising its extraordinary writ jurisdiction so peremptorily which has resulted in injustice both to the appellant-Institute as well as to the students who stood higher in merit than almost all the respondent-students except respondent No. 6. We refrain from making any further comments on the impugned order.

A 8. Since the respondent-students stand already admitted, and the more meritorious students cannot now avail of the seats given to the respondents due to lapse of time, we do not propose to interfere with their pursuit of the course. It is for this reason that we are dismissing the appeals.

B In the circumstances, the appeals stand dismissed, but with no order as to costs.

G.N. Appeals dismissed.