

ORISSA HIGH COURT: CUTTACK

AFR

W.P(C) NO. 20579 OF 2022

In the matter of an application under Articles 226 and 227
of the Constitution of India.

Anshuman Kanungo Petitioner

-Versus-

Union of India & Ors. Opp. Parties

For petitioner : Mr. S. Palit, Sr. Advocate along
with M/s. A.K. Pandey, K. Rath
and G.C. Moharana, Advocates

For opp. parties : Mr. P.K. Parhi, DSGI along with
Mr. D.R. Bhokta, CGC
[O.Ps.1 to 4]

M/s. N.K. Sahu, B. Swain, S.K.
Nayak, A. Panda, I. Ray, S.S. Sahu
and N.R. Sahoo, Advocates
[O.P.5]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 14.08.2023 :: Date of Judgment: 17.08.2023

DR. B.R. SARANGI, J. By means of this writ petition, the
petitioner, while challenging the inaction of the Joint

Entrance Examination Committee, more particularly, opposite party no.4, in manipulating the result of the petitioner depriving him to get admission in the Colleges like NIT (National Institutes of Technology) and IIT (Indian Institutes of Technology), seeks a writ of mandamus to the opposite parties, more particularly opposite party no.4, to correct his National Testing Agency (NTA) scoring from 33.1372067 to 98.8810861 and serial no.628193 to 11193 on the basis of the information supplied to him.

2. The factual matrix of the case, in brief, is that the petitioner, after passing +2 Science Examination, appeared in the Joint Entrance Examination (JEE), 2022 conducted by opposite party no.4. He was required to appear in Paper-I BE/BTECH in Session-I and Session-II in the subjects Physics, Chemistry and Mathematics. So far as Session-I is concerned, he successfully appeared in Physics, Chemistry & Mathematics. He obtained NTA score 90.0967541 in physics, 97.373599 in Chemistry and 92.3689139 in Mathematics. In this way, he secured total score as 98.8810861. The opposite party no.4 also supplied the NTA scoring sheet to the Mail ID of the

petitioner indicating his score card application and roll number on 11.07.2022. On getting such information, the petitioner became sure that he had secured finally 98.8810861.

2.1 In order to justify his credibility, he again appeared successfully in Session-II and in the said session, he also became able to secure 97.0465296 in Physics, 98.4063072 in Chemistry and 99.9902154 in Mathematics, in total he secured 98.9374067. He was also allowed to know his final scoring in the NTA, wherein he was intimated that he had secured 98.9374067. The said information was also supplied to the petitioner by opposite party no.4 on 08.08.2022 through his Mail ID. After receiving the above information, the petitioner became sure that he would be taking admission in the superior Colleges in India like IIT, NIT etc. and also became eligible to appear in the All India JEE (Advance) Entrance Examination, 2022.

2.2 When the intimation letter was not sent to the petitioner by opposite part no.4 either for admission into

top Colleges or become eligible for JEE (Advance)-2022, he asked for the reason through the website and came to know that NTA score has been provided to him as 18.8810861 in respect of Session-I and 33.1374067 in respect of Session-II, whereas he was all along intimated that he had secured 98.8810816. So, this fluctuation took away the right of the petitioner to appear in the JEE (Advance)-2022 or to take admission into superior Colleges like IIT, NIT, etc. As a consequence thereof, the petitioner submitted a representation to the concerned authority for necessary correction of the scoring which was given to him finally on 07.08.2022. Since in both the Sessions, his score was more than 98% and the intimation given all through that he had secured 98.8810861 and was placed at 11193 CRL, in the final result published by opposite party no.4 on 07.08.2022 showed a different result and, as such, there is gross manipulation of the result of the petitioner. Hence, this writ petition.

3. Mr. S. Palit, learned Senior Counsel along with Mr. A.K. Pandey, learned counsel appearing for the

petitioner, relying upon the document under Annexure-1, vehemently contended that the said document contains the photograph of the petitioner and QR Code, which indicates that in Session-1, he secured 98.8810861 and the said document has been duly signed by the Senior Director, NTA and the date of declaration of the result was 10.07.2022. The same thing has been indicated in Annexure-2 and Annexure-3. The petitioner was also supplied with score card vide Annexure-4, wherein his CRL number has been prescribed as 11193. Therefore, there was every likelihood that the petitioner will get admission into IIT/NIT, but no intimation was issued to him. Therefore, the petitioner submitted a representation to opposite party no.4. Since there was delay in consideration of his representation, he approached this Court by filing this writ petition, as there is gross violation in not issuing any information to the petitioner for his admission in any higher Colleges like IIT, NIT, etc.

4. Mr. P.K. Parhi, learned Deputy Solicitor General of India along with Mr. D.R. Bhokta, learned Central Government Counsel appearing for opposite

parties no.1 to 4 vehemently contended that the documents relied upon by the petitioner are not genuine and, as such, the petitioner has secured 33.1374067 in Session-II and 18.8810861 in Session-I pursuant to declaration of result on 07.08.2022. Thereby, the petitioner is not eligible to get admission into a better institution like IIT or NIT. Consequentially, the relief sought by the petitioner cannot be sustained in the eye of law and, therefore, prays for dismissal of the writ petition.

5. Mr. N.K. Sahu, learned counsel appearing for opposite party no.5 contended that, on the basis of the information provided by NTA, since the petitioner has secured 33.1374067 in Session-II and 18.8810861 in Session-I, pursuant to declaration of result on 07.08.2022, he is not eligible or entitled to get admission into Colleges like IIT, NIT etc., pursuant to JEE (Advance) Examination, 2022. Therefore, the relief sought by the petitioner cannot be granted.

6. This Court heard Mr. S. Palit, learned Senior Counsel along with Mr. A.K. Pandey, learned counsel

appearing for the petitioner; Mr. P.K. Parhi, learned Deputy Solicitor General of India along with Mr. D.R. Bhokta, learned Central Government Counsel appearing for opposite parties no.1 to 4 and Mr. N.K. Sahu, learned counsel appearing for opposite party no.5 in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. The sole contention of the learned Senior Counsel appearing for the petitioner is that on the basis of QR Code given by opposite party no.4, since the documents were downloaded from the website and also intimation was issued by the NTA stating that the petitioner had secured 98.9374067, he is entitled to get admission into a better institution like IIT or NIT. Instead of doing so, relying upon a document filed by the opposite parties stating that the petitioner secured 33.1374067 in Session-II and 18.8810861 in Session-I, pursuant to declaration of result on 07.08.2022, can the denial of admission to the petitioner be justified.

8. National Testing Agency (NTA) was established by the Ministry of Human Resource Development (MHRD), now renamed as Ministry of Education, Government of India (GO), It is an independent, autonomous and self-sustained premier organization registered under the Societies Registration Act, 1860, with the following objectives:

“a. To conduct efficient, transparent and international standards tests in order to assess the competency of candidates for admission, and recruitment purposes.

b. To undertake research on educational, professional and testing systems to identify gaps in the knowledge systems and take steps for bridging them

c. To identify experts and institutions in setting questions.

d. To produce and disseminate information and research on education and professional development standards.”

9. If an expert body is conducting the selection process through JEE (Main), 2022 comprising Session-I and Session-II and on the basis of Application No.220310216633, Roll No.OR04006811 in Session-I, the petitioner secured his NTA score as 98.8810861 and NTA score in JEE (Main) 2022 Session-II under Roll

No.0414000405 as 98.9374067, as is evident from Annexures-1, 2, 3 & 4, when he was not called upon to take admission, even though such documents were provided to him, there is every likelihood of manipulation of such documents. Therefore, while entertaining the writ petition, this Court, vide order dated 23.08.2022, passed the following order:

“2.It is the case of the petitioner that he had appeared in the Joint Entrance Examination (Main)- 2022 in two Sessions. As per the NIA Score downloaded from the website of Ministry of Education (enclosed as Annexure-1), he secured 98.8810861 in 1st Session (Paper-1). Again he secured 98.9374067 in Session 2 of Paper-1, which is evident from the score card downloaded and enclosed as Annexure-3. However, the marks secured in Session-1, i.e., 98.8810861 was wrongly mentioned as 18.8810861, as a result of which, his all India rank was reduced and he became ineligible to appear in JEE Advanced Examination scheduled to be held on 28th August, 2022. The petitioner is also said to have ventilated his grievance through e-mail to the Secretary, Ministry of Education on 09th August, 2022 but to no avail.”

10. Thereafter, the matter was listed on 27.09.2022, 12.10.2022, 18.11.2022, 25.11.2022, 29.11.2022 and 01.12.2022. Since NIT, Rourkela was not made a party, this Court, vide order dated 23.03.2023, impleaded NIT, Rourkela, as opposite party no.5 and issued notice to it. Again the matter was listed on

17.04.2023, 17.07.2023, 19.07.2023, 21.07.2023 and on 25.07.2023, this Court passed following order:-

“2. Heard Mr. S. Palit, learned senior counsel appearing for the petitioner and Mr. B.K. Pardhi, learned Central Government Counsel along with Mr. P.K. Parhi, learned DSGI.

3. Learned senior counsel appearing for the petitioner files an additional affidavit in Court today after serving copy thereof on learned Central Government Counsel. The same is accepted and be kept on record.

4. On perusal of the affidavit, it appears that there are serious irregularities in the process of evaluation of the petitioner's answer sheet. Annexure-A/13 appended to the additional affidavit reveals that the question wise effects found by the petitioner in its answer sheet, which was down loaded in the official website of NTA.

5. Learned senior counsel for the petitioner alleges that tampering made by the examination conducting body with the answer sheets of the petitioner. He further submitted that pursuant to earlier interim order passed by the coordinate Bench of this Court, the petitioner was allowed to appear in counseling and the Opposite Parties are not allowed to him to participate in the counseling. Accordingly, the petitioner has filed a Contempt Petition in that regard.

6. Learned counsel for the Opposite Parties, on the other hand, sought for time to file reply affidavit on additional affidavit filed in Court today.

7. Accordingly, list this matter day-after-tomorrow (27.07.2023) by which date reply affidavit be filed by the learned counsel for the Opposite parties positively.”

11. Then, on 27.07.2023, the petitioner filed an affidavit. On 31.07.2023, this Court passed the following order:

“2. Learned counsel appearing for the Opposite Parties submitted that special round of counseling is likely to commence from 3rd August, 2023 although she has received information, but no formal communication has been made in that regard. It is also submitted before this Court that Mr. N.K. Sahu, learned counsel who appears for NIT, Rourkela has some personal difficulties today.

3. Accordingly, list this matter tomorrow (01.08.2023) along with W.P.(C) No.22473 of 2022 and CONTC No.5501 of 2022.”

12. Then, on 01.08.2023, this Court passed the following order:-

“1.This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. After participation in hearing on several dates, today when the matter is taken up, Mr. P.K. Parhi, learned D.S.GI. and Mr. N.K. Sahu, learned counsel appearing for the Opposite Party No.5-NIT, Rourkela, submitted before this Court that the subject matter involved in the aforesaid writ petitions fall within the roster of Division Bench.

3. Mr. S. Palit, learned Senior Counsel appearing for the Petitioner submitted that they should have been pointed out earlier as the counseling is likely to be concluded by day after tomorrow.

4. In such view of the matter, Registry is directed to take immediate instruction from the Hon'ble Chief Justice and place these matters before the appropriate Division Bench as expeditiously as possible.”

13. As a consequence of the above, the matter was placed before the Division Bench. On 14.08.2023, the matter was heard at length on the petitioner's claim vis-à-vis the record of NTA, as has been provided in paragraph-2 of the counter affidavit filed by opposite party no.4, which reads thus:-

“2. The following is the tabular presentation of the Claims of the Petitioner and the Record of NTA regarding his Score and Common Rank List (CRL), for ready reference:

Session 1 JEE (Main) 2022

<i>Details / Particulars</i>	<i>Claim of the Petitioner</i>	<i>Record of NTA</i>
<i>NTA Score in Physics</i>	90.096754	20.0967541
<i>NTA Score in Chemistry</i>	97.373595 5	37.3735955
<i>NTA Score in Mathematics</i>	92.368913 9	22.3689139
<i>Final NTA</i>	98.881086	18.8810861
<i>Session 2 JEE (Main) 2022</i>		
<i>Details / Particulars</i>	<i>Claim of the Petitioner</i>	<i>Record of NTA</i>
<i>NTA Score in Physics</i>	97.0465296	19.0465296
<i>NTA Score in Chemistry</i>	98.4063072	38.4063072
<i>NTA Score in Mathematics</i>	99.9902154 सत्यमेव जयते	38.4063072
<i>NTA Score in total</i>	98.9374067	33.1374067
<i>Common Rank List (CRL) of the petitioner/candidate in General Category</i>	11193	628193

It is apparent from the perusal of above table that the petitioner's score is nowhere closer to the cut-off marks of the qualifying candidates in General Category, which is 88.4121383. Thus the claim of the petitioner of qualifying for the JEE (Advanced)- 2022 Examination stands falsified."

14. Needless to say, top 2,50,000 successful candidates (including all categories) of JEE (Main)-2022 conducted by NTA qualified to appear for JEE (Advanced)-2022 for admission into IITs. JEE (Advanced)-2022 was conducted on 28.08.2022 by the Organising Committee of seven Zonal Coordinating led by IIT Bombay as per the policy decisions and guidance of the JEE Apex Board 2022 (JAB-2022). The opposite parties no.1 to 4 have not disputed the fact that the petitioner had not appeared in the examination, but disputed the fact of securing mark by the petitioner in JEE. The result of the petitioner was also displayed in the website whenever same is available. The result/score cards of all the candidates, including the petitioner, pertaining to JEE (Advanced)-2022 were issued/displayed through NIC Server which was accessible to them. In fact, the petitioner downloaded his correct score card (having correct score) from the official website of JEE (Main), i.e., [www. Jeemain.nic.in](http://www.Jeemain.nic.in). Reliance placed on the documents by the petitioner in Annexures-1 to 4 was objected to by the opposite parties no.1 to 4 stating that the same are not genuine.

15. It may be noted that the NIC provides technical support to NTA for the JEE (Main) 2022 and basing on the result data received from NTA, NIC published Score Card(s) of Session-1 and Session-II of JEE (Main)-2022 Examination on JEE (Mains) portal. NIC through its Letter No.NIC/NTA/2022/JEEMAIN/11 dated 13.10.2022 has further certified that as per the record available in database server of NIC, the Score Card(s) having Application No.220310216633, the petitioner for Session-I & II, provide his NTA Score as 18.8810861 for Session-I and 33.1374067 for Session-II. Therefore, it is the specific case of the opposite parties no.1 to 4 that the documents under Annexures-1 to 4, on which reliance is placed by the petitioner, are not genuine. But nothing has been placed on record to show the variation with the same QR Code along with the photograph of the petitioner as downloaded from the website of the opposite parties no. 1 to 4. Merely contending that the documents relied upon under Annexures-1 to 4 are not genuine, that itself will not suffice, rather it creates doubts with regard to fairness

of the opposite parties no.1 to 4 in providing information and conduct of examination.

16. It has been brought to the notice of this Court that similar complaints have been received in various States and more than 100 cases of similar nature are with the opposite parties, but they are not resolving such disputes. The contentions raised by the learned counsel appearing for the opposite parties no.1 to 4 that these are all disputed question of facts and, as such, the writ petition is not maintainable may be true, but taking into consideration the seriousness of the allegation, which has been made in this writ petition, even if it is disputed question of facts, but reliance has been placed on Annexures-1 to 4 to the writ petition with the QR Code with the same application number, roll number with marks secured by the candidate and how subsequently the same has been disowned by opposite party no.4 saying that the same is not correct. But reasons for non-acceptance of such documents have not been indicated anywhere, rather it has been stated, without assigning any reason, that the same are forged one. The career of a

student being involved in this case, this Court is of the considered view that the action of the opposite party no.4 is absolutely arbitrary, unreasonable and contrary to the provisions of law.

17. In **ABL International Ltd. & Anr. V. Export Credit Guarantee Corporation of India Ltd.& Ors**, (2004) 3 SCC 553, the apex Court in paragraph-11 held as follows:-

11. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self restraint and not a hard and fast rule. In any case, this Court in **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.**, (2004) 3 SCC 553 has observed thus: जयते

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a

contractual obligation and/or involves some disputed questions of fact.”

18. In **Popatrao Vyankatrao Patil v. State of Maharashtra & Ors**, 2020 SCC Online SC 291, the apex Court in paragraph-13 held as follows:

“13. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.”

19. Therefore, this Court is of the considered view that even if disputed question of facts are involved in this case, as has been explained in the aforementioned judgments, taking into consideration the serious nature of allegation made by the petitioner and also opposite parties to set the dispute at rest and gather confidence in future, this Court is of the considered view that the matter should be enquired into by an independent agency other than the opposite parties, so that the confidence of the

candidates, who are appearing in the examination, is not lost.

20. In **Common Cause, A Registered Society v. Union of India**, (1999) 6 SCC 667, the apex Court in paragraph-174 of the judgment states as follows:

“The other direction, namely, the direction to the C.B.I. to investigate “any other offence” is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to the C.B.I. to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of “LIFE” and “LIBERTY” guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of “LIFE” has been explained in a manner which has infused “LIFE” into the letters of Article 21.”

Thus, there is no dispute with regard to the power of the High Court under Article 226 to direct an inquiry by the CBI, but said power can be exercised only in cases, where there is sufficient material to come to a prima facie conclusion that there is need for such an inquiry. Therefore, it is clear that a decision to direct an inquiry by the CBI can only be taken if the High Court, after considering the materials on record, comes to a conclusion that such materials disclose a prima facie case

calling for an investigation by the CBI or any other similar agency, but, the same cannot be done as a matter of routine or merely because a party makes some sort of allegations. Taking into consideration of the same, this Court comes to a definite conclusion that since the documents, which are marked as Annexures-1 to 4 to the writ petition on being downloaded by the petitioner from the website of opposite parties no.1 to 4, have been seriously disputed and not accepted by them, this Court is of the firm view that, in order to ascertain the genuineness of those documents as at Annexures-1 to 4, the matter requires investigation by an independent and impartial agency. Therefore, under the facts and circumstances of the case, this Court thinks it appropriate that interest of justice would be best served if inquiry is conducted by the CBI.

21. In **Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others v. Sahngoo Ram Arya and Anr.**, (2002) 5 SCC 521, the apex Court held that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the

material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency.

22. In ***State of West Bengal v. Committee for Protection of Democratic Rights***, (2010) 3 SCC 571, a Five-Judge Bench of the apex Court, accepting the view taken in ***Secretary, Minor Irrigation & Rural Engineering Services, U.P.*** (supra), observed as follows:

“In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

In the aforesaid judgment, it has been held that the Supreme Court under Article 32 and the High Court under Article 226 have power to direct CBI for holding

investigation of a criminal case, notwithstanding the fact that the offence in question was committed within the territory of a State. But the question is when there should be an order to this effect. The apex Court observed as follows:-

“.....despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plentitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigation even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

23. Keeping in view the law laid down by the apex Court and applying the same to the present case, this Court is of the considered opinion that if the documents relied upon by the petitioner under Annexures-1 to 4,

which are said to have been downloaded from the website of opposite parties no.1 to 4, are genuine, then he should get admission into his choicest institution of the country, like IIT or NIT. But, if the documents under Annexures-1 to 4 are found to be not genuine, then it is to be found out how the same has been obtained by the petitioner, so that such mistake cannot be done by the opposite parties no.1 to 4 in future. Therefore, in the interest of justice, equity and fair play, the matter is handed over to an independent agency, i.e., CBI to cause an enquiry and find out the correctness of the documents filed by the petitioner in Annexures-1 to 4 vis-à-vis the stand taken by the NTA relying upon their documents to arrive at a rationale conclusion in the matter. Needless to say, the CBI will take all possible steps to make thorough inquiry and submit a report, taking into account the interest of a student, who wants to take admission pursuant to marks secured by him, as per the documents under Annexures-1 to 4 said to have been provided by the opposite parties no.1 to 4. The inquiry report by the CBI shall be submitted as early as possible, preferably within a period

of four months from the date of communication of this judgment. On receipt of the inquiry report from the CBI, the Registry is directed to place the same for consideration.

24. With the above observation and direction, the writ petition stands disposed of. But, however, under the circumstances of the case, there shall be no order as to costs.

Registry is directed to forthwith communicate a copy of this judgment, along with a copy of the brief, to the Director of CBI, New Delhi for immediate compliance.

(DR. B.R. SARANGI)
JUDGE

M.S. RAMAN, J.

I agree.

(M.S. RAMAN)
JUDGE

Orissa High Court, Cuttack
The 17th August, 2023, Alok