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W.P.No.16762 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.09.2022	Delivered on 07.09.2022
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.16762 of 2017
and WMP Nos.18202 to 18204 of 2017

Minor V.Amrutha
Rep. through his father and natural Guardian
Mr.Vaidyanathan
No.11/4, Flat 17, Goutham Apartment 1st Avenue
Sasthri Nagar, Adyar, Chennai 600 020.

..Petitioner

Vs.

1. Council for Archietecture,
Rep. by its Registrar,
Having its address at:
India Habitat Centre, Core -6A,
1st Floor, Lohi Road, New Delhi 110 003.

2. The Tamil Nadu Engineering Admissions,
Rep. by its Secretary,
Anna University, Chennai 600 025.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, to call for the records



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of the second respondent in respect of Clause 6(a)(i) of the Notification of Information and Instructions for B.Arch Degree Course-2017 and quash the same insofar as the petitioner is concerned and direct the second respondent to follow the notification dated 15.06.2017 issued by the first respondent in respect of admission to B.Arch Degree Course 2017.

For Petitioner : Mr. M.Vijayamehanath
for AAV Partners

For Respondents : Mr.A.Sheik K. Peer, for R1

Mr.J.Ravindran
Addl. Advocate General
Asst. By Mr.D.Ravichander
Spl. Govt. Pleader and
Mrs. V.Yamunadevi
Spl. Govt. Pleader, for R2

Mr.Meenakshi Sundaram
Standing Counsel for Anna University

ORDER

The prayer in the Writ Petition reads as follows:

*“to issue a Writ of Certiorarified Mandamus,
to call for the records of the second respondent in
respect of Clause 6(a)(i) of the Notification of*



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Information and Instructions for B.Arch Degree Course-2017 and quash the same insofar as the petitioner is concerned and direct the second respondent to follow the notification dated 15.06.2017 issued by the first respondent in respect of admission to B.Arch Degree Course 2017.

2. The challenge in the Writ Petition is to the Clause 6(a)(i) of the prospectus issued by The Tamil Nadu Engineering Admissions, represented by its Secretary, Anna University. The said challenge has become infructuous in view of passage of time. However, I do not think that justice will be done, if I am to throw out the Writ Petition on the ground that the prayer has become infructuous by efflux of time, as I find that the second respondent had not only acted in utter disregard of the clarifications issued by the first respondent, but has also disobeyed positive directions of this Court.

3. The following facts will demonstrate how unsafe are the lives of our youngsters in the hands of unscrupulous Academicians and Executives, who preside over the very vital rights of the youngsters and

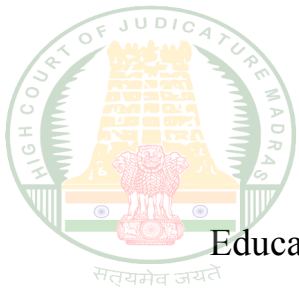


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decide on the policies of education. Education as is understood in the normal meaning of the term is not only to provide qualification for eking out to ones livelihood, but also to develop a fine human being and to shape the individual as a person acceptable to the society.

4. Unfortunately in the recent days, Education has not only become commercial but has also fallen into the hands of either unqualified persons or persons who because of their educational qualification that is appended to their names become intellectually arrogant and take decisions which in fact spoil the lives of young students. The case on hand comes under the second category stated above.

5. The petitioner who appeared for 12th standard examinations in the year 2017 completed her course under CBSE Syllabus and obtained 82% marks. She had also appeared for JEE II (Joint Entrance Examination) and had obtained high percentile of marks in JEE main examinations. She had obtained 226 out of 390 where the minimum pass mark was only 81. The Council for Architecture namely the first respondent which is in-charge of



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Education relating to Architecture in the country had been insisting that a candidate who wants to join Bachelor Degree Course in Architecture (B.Arch) should clear the National Aptitude Test in Architecture (NATA).

6. This was the subject matter of litigation and the Hon'ble Supreme Court passed an interim order on 24.07.2008 observing that apart from NATA, there could be other qualifying examinations and it will be open to different State Governments or the Central Board of Secondary Education to conduct an aptitude test for the purposes of admission in Bachelor of Architecture Course. It was also observed that it will not be necessary for students to pass NATA, the notice issued by the Council for Architecture on 12.03.2008 making a pass in NATA mandatory for admission to Bachelor of Architecture was stayed with Hon'ble Supreme Court. Despite such stay having been granted several State Boards and including the second respondent continued to insist upon a pass in NATA as a qualification for admission to Bachelor of Architecture Course. This led to the first respondent namely the Council for Architecture, issuing a circular or a clarification on 15.06.2017 stating that a pass in NATA need not be



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insisted upon. Candidates who have qualified in any other specially designed aptitude test conducted by the Competent Authority of the Central or State Government (Including JEE Paper-II Aptitude Test in Architecture) would be eligible for admission to the course subject to the fulfilment of the other eligibility criteria.

7. The second respondent issued the information and instructions to candidates for admissions to B.Arch. during the academic year 2017-2018 on 25.06.2017. The last date for receipt of applications online was fixed as 06.07.2017. The petitioner who had qualified in JEE-II attempted to upload the details online, but she could not because the instructions issued particularly Clause 6(a)(i) required candidates should have qualified in NATA 2016/2017. It also specifically provided that the candidates who have not appeared and qualified in NATA 2016-2017 are not eligible for admission in B.Arch Degree Course. Contending that this Clause is against the clarification issued by the National Body namely the first respondent, the petitioner came to this Court with a prayer for quashing Clause 6(a)(i) of the guidelines and for a direction to follow the notification dated 15.06.2017

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issued by the first respondent.

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8. When the Writ Petition came up for admission before this Court, Hon'ble Mrs.Justice Pushpa Sathyanarayana, after hearing the counsel for the second respondent passed the following order on 30.06.2017.

'The challenge is with respect to the admission to the Tamil Nadu Engineering, 2017 B.Arch. As per the clarification given by the Council for Architecture regarding admission to the B.Arch. Course for 2017- 2018, the candidates who have qualified NATA or any specially designed aptitude test in Architecture conducted by the competent authority of the Central/State Government (including JEE Paper-II Aptitude Test in Architecture) is eligible for admission to the course, subject to the fulfilment of eligibility criteria prescribed by the Council.

2. While so, the Tamil Nadu Engineering Admissions, 2017, Information and Instructions to



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Candidates, Clause 6 (a) (i) specifically states that the candidates should have qualified in NATA 2016/2017 and should upload the score card along with the application and those who have not appeared and not qualified in the NATA 2016/2017 are not eligible for admission to B.Arch. Degree Course. This is contrary to the qualification given by the Council for Architecture.

3. It is stated by the learned Counsel for the petitioner, because of this discrepancy, the petitioner is unable to apply for the Course Online. Hence, the Writ Petition is filed.

4. Mr.L.P.Shanmugasundaram, learned Counsel takes notice for the Anna University/the 2nd respondent herein. It is stated that the last date for submission of the application forms is 06.07.2017.

5. The learned Counsel for the Anna University states that the petitioner may be permitted to make her Application Form to the University in-person.



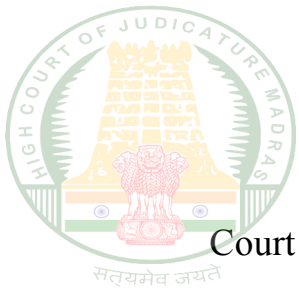
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6. In view of the above, the petitioner is permitted

WEB COPY *to make her Application Form to the University in-person before the last date prescribed. Notice to the 1st respondent returnable in two weeks. Private Notice is also permitted. Post after two weeks.'*

9. In due deference to the order passed by this Court, the second respondent which consist of highly qualified Academicians and Executives received the application of the petitioner. It however chose to reject the said application on the ground that the petitioner has not qualified in NATA 2016-2017. This action was also sought to be justified when the matter was listed for further hearing before this Court on 30.10.2017. Hon'ble Mr.Justice N.Kirubakaran, while concluding that the rejection of the application of the petitioner is incorrect, required a clarification from the learned Additional Advocate General, who had appeared, as to whether the petitioner could be accommodated in the course. The learned Additional Advocate General took shelter under the directions of the Hon'ble Supreme Court which prohibit admissions after the cut of date and reported to the

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Court that she cannot be accommodated. Thereafter Hon'ble Mr.Justice

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Even though the Council of Architecture, by clarification dated 15.06.2017 has made it clear that not only NATA qualified candidates, but also candidates, who are qualified in JEE Paper-II Aptitude test in Architecture are eligible for admission to B.Arch course, but in the Tamil Nadu Engineering Admissions Prospectus, which has been published on 25.06.2017, it is stated that candidates who have qualified in NATA 2016/2017 alone would be eligible for admission. Since the petitioner's daughter had qualified in JEE Paper II, her application was not received in time and subsequently, based on this Court's order, her application was received by the 2nd respondent. Therefore, it is clear that contrary to the clarification issued by the Council of Architecture, the petitioner's daughter was denied admission to B.Arch Course in spite of her being qualified in JEE Paper II.



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2. *When a query is put to the learned Additional*

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Advocate General appearing for the 2nd respondent as to whether it is possible to admit the petitioner's daughter based on the clarification at this stage, it is submitted that the last date for admission to B.Arch course, as per the direction of the Honourable Supreme Court was 30th September, 2017. When the petitioner's daughter has been unjustifiably denied admission in spite of her being qualified in JEE Paper II, as per the clarification issued by the Council of Architecture dated 15.06.2017, either the petitioner's daughter should be given admission or else, should be awarded compensation if it is not possible to admit her at this stage. In this regard, the learned Additional Advocate General seeks time to get instructions.

3. *Post on 07.11.2017.*

10. It is at this stage, the matter was listed before me.

Mr.Vijaymehanath, learned counsel appearing for M/s.AAV Partners, for the



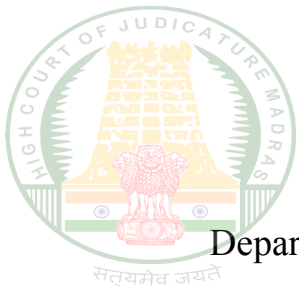
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petitioner would contend that the only question that remains to be decided

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in this Writ Petition is the quantum of compensation that is payable to the petitioner. The fact that the clarification to the effect that NATA was not mandatory was issued by the first respondent on 15.06.2017. The second respondent had issued the guidelines for admissions to B.Arch. Course on 25.06.2017 almost 10 days thereafter. Incorporation of a Clause namely Clause 6(a)(i) disabling candidates who had not qualified in NATA to apply was in breach of the clarification issued by the Indian Council for Architecture. It is not in dispute that the second respondent is bound to follow the directions of the first respondent in when it comes to education in Architecture. Even assuming that the first respondent had not issued a clarification, the Hon'ble Supreme Court had stayed the requirement of NATA even as early as on 03.12.2007. It is claimed that the members of the Coordination Committee of the second respondent were not apprised of this fact when they held a meeting on 03.03.2017.

11. Be that as it may, on 23.06.2017 the Government of Tamil Nadu had issued a Government Order in G.O.(D).No.242, Higher Education



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Department, wherein it is stated that a request has been made by the Association of Private Professional Colleges to conduct a separate Aptitude test for admission of students in B.Arch. stating that the number of seats available in the State is higher than the number of students eligible in NATA and JEE. It is therefore clear that the Authorities were alive to the fact that NATA was not mandatory. A Committee was constituted to conduct a separate aptitude test for the B.Arch. Degree Course for the year 2017-2018 on 18.07.2017 under the said Government Order. In fact the Committee that was formed to monitor admissions of students to professional courses by self-financing Professional Colleges had resolved to conduct an aptitude test through Anna University for admission of students to B.Arch. Course under the management quota and the Government lapsed seats. The said Government order also makes it clear that seats are to be filled up by selecting candidates who are qualified NATA 2017-2018 and JEE II and if any seat remaining vacant, those seats can be filled up by students who have passed the aptitude test conducted by the Anna University.

12. It is therefore clear that the respondents were aware of the fact



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that NATA is not mandatory when the application of the petitioner was received by them pursuant to the order of this Court dated 30.06.2017.

Even otherwise a reading of the order of Hon'ble Mrs. Justice Pushpa Sathyanarayana, dated 30.06.2017 would show that the Hon'ble Judge had found that the petitioner had the prescribed qualification namely a pass in JEE Paper-II and a positive direction was issued by her requiring the respondents to receive the application of the petitioner in the physical form and consider the same.

13. Though Mr.J.Ravindran, learned Additional Advocate General appearing for the State would make a valiant attempt to justify the action of the second respondent in rejecting the application of the petitioner by attempting to interpret the order dated 30.06.2017 and project as if that there was no positive direction, I am unable to concur with this submissions. Even in para I of the order, the Hon'ble Judge has adverted to the clarification issued by the council for Architecture and has concluded that the candidates who have qualified NATA or any specially designed aptitude test in Architecture conducted by the Competent Authority of the



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Central/State Government **(Including JEE Paper-II Aptitude Test in**

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Architecture) is eligible for admission to the course. The Hon'ble Judge had also pointed out that Clause 6(a)(i) is contrary to the qualification prescribed by the Council for Architecture. After having observed so, conceding the request of the Council for Anna University namely the second respondent, a direction was issued to the second respondent to receive the application of the petitioner. The second respondent however rejected the application on the ground that the petitioner has not qualified for NATA.

14. A counter affidavit has been filed by the Secretary of the Tamil Nadu Engineering Admissions, Anna University, Chennai 25, on 10.10.2017 wherein the action was sought to be justified and the counter reads as follows:

“9. I humbly submit that the Hon'ble High Court of Judicature at Madras Court in WP No.16762 of 2017 in WMP No.18204 of 2017 by order dated 30.06.2017 directed that, “the petitioner is permitted to make her application form to the university in person before the last date



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prescribed”. Honouring the above directions, the application submitted by the candidate T.V.Amrutha has been received by the University. Since, the petitioner is not having the qualified NATA 2016/2017 score her application could not be considered for admission in the academic year 2017-18 and the petitioner has been informed accordingly while publishing the rank list.”

15. The language of G.O.(D).No.242, Higher Education Department, dated 23.06.2017 is intentionally designed to make it appear that the Government quota seats will continue to be filled up by Anna University on the basis of marks obtained in 12th standard examination and NATA 2016/2017. The said Government Order was issued based on the decisions of the Committee to regulate admissions in self-financing Colleges and the same cannot be invoked by the respondents to justify their action. Even otherwise once there is a positive direction of this Court to the effect that the petitioner should be considered for admission on the basis that she has the required qualification having passed JEE Paper-II, the



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second respondent ought not to have rejected the application of the petitioner.

16. In fact after this was pointed out by Hon'ble Mr.Justice N.Kirubakaran, an additional counter affidavit has been filed by the Secretary of the second respondent on 11.11.2017 wherein the Secretary had tendered an unconditional apology, if this Court comes to a conclusion that the earlier orders of this Court had been violated. It is in this counter affidavit the Secretary takes cover under the orders of the Hon'ble Supreme Court, wherein it was held that extension of time for admission cannot be allowed under any pretext. It is therefore clear that the second respondent had not only violated the orders of this Court but had insisted upon an unwanted qualification to reject the petitioner's application. Even in the order dated 30.10.2017, Hon'ble Mr.Justice N.Kirubakaran, had made it clear that the petitioner should be compensated for the wrong done by the second respondent.

17. In fact the question relating to payment of compensation is

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also no longer *res integra*. The Hon'ble Supreme Court in ***Chandigarh***

Administration and another v.Jasmine Kaur and others, reported in

(2014) 10 SCC 521, has held that in the event of improper denial of admission, the Court has the power to compensate the student who has been wronged by the actions of the Authorities. The Hon'ble Supreme Court had made it clear that while there cannot be an extension of time for admission, the Authorities would be liable to compensate the student who has been wrongly denied admission. In ***Ms.A.E.Durga v. The Directorate of Medical Education, reported in 2014 SCC Online Mad 10695***, Hon'ble Mr.Justice V.Ramasubramanian, had awarded a compensation of Rs.5,00,000/- to the petitioner who was denied a seat because of the fault of the selection committee.

18. After referring to the judgment of the Hon'ble Supreme Court in ***Chandigarh Administration and another v.Jasmine Kaur and others***, referred to supra, it was held that since the petitioner has been denied a seat for no fault of his, the administration should be made liable to pay compensation. In ***S.Krishna Sradha v. The State of Andhra Pradesh and***



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others, reported in **2019 SCC Online SC 1609**, a Three Judge Bench of Hon'ble Supreme Court had answered the reference made noticing the conflict between judgment in **Chandigarh Administration and another v.Jasmine Kaur and others**, and **Asha v. Pt.B.D.Sharma University of Health Sciences**, reported in **(2012) 7 SCC 389**, had observed as follows:

“33.1. The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.

33.2 Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.



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33.3 *If a candidate is not selected during a particular academic year due to the fault of the institutions/authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.*

33.4. *When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the courts cannot grant any relief to the candidate in the form of securing an admission.*

33.5. *If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.*

33.6. *If it is found that the candidate acquiesces or waives his/her right to claim relief before the court promptly, then in such cases, the legal maxim vigilantibus et non dormientibus jura subveniunt, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.*



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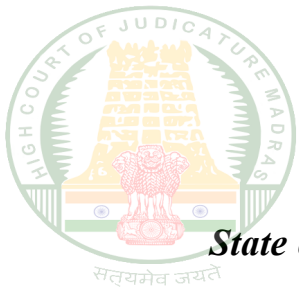
33.7. *No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.*

33.8. *There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply in the next academic year.*

33.9. *There cannot be at any point of time a direction given either by the court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.*

33.10. *Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical.”*

The same view has been expressed by this Court in ***G.Arun Kumar v. The***



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State of Tamil Nadu, in WP (MD) No.18059 of 2019 dated 06.01.2021 and

in *WP No.11963 of 2020 etc. batch dated 25.02.2022*.

19. In the light of the above judicial pronouncement and in the light of the fact that the second respondent is solely responsible for the petitioner being denied a seat in Bachelor of Architecture Course for the academic year 2017-2018, I am of the considered opinion that the second respondent should be made to compensate the petitioner. Such compensation cannot be decided with mathematical precision, but if the Court reaches the conclusion that the Authorities had not only acted in ignorance but had acted in wilful violation of the orders of this Court, the compensation should definitely be more, as the petitioner has been denied of an opportunity, despite the fact that she had approached this Court and was favoured with a resoned interim order.

20. In view of the above, while condemning the second respondent for its outrageous and inexplicable conduct, I direct the second respondent to pay a compensation of Rs.10,00,000/- to the petitioner. The



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said compensation shall be paid within a period of four weeks from today, failing which the compensation amount will carry interest at 9% per annum from the date of the order of Hon'ble Mrs.Justice Pushpa Sathyanarayana, i.e., 30.06.2017 till date of payment.

21. The Writ Petition will stand **allowed** as directed above. Apart from the damages the second respondent will also pay a cost of Rs.1,00,000/- to the petitioner. Consequently, the connected miscellaneous petitions are closed.

07.09.2022

jv

Index :Yes

Internet :Yes

Speaking order

To:-

1. The Registrar,
Council for Architecture,
Having its address at:
India Habitat Centre, Core -6A,
1st Floor, Lohi Road, New Delhi 110 003.

2. The Secretary,
Tamil Nadu Engineering Admissions,
Anna University, Chennai 600 025.

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R.SUBRAMANIAN, J.

jv

Pre-delivery order in
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and WMP Nos.18202 to 18204 of 2017

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