

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

OWP No. 311/2014  
CMA No. 387/2014  
c/w  
OWP No. 310/2014  
CMA No. 386/2014.

Date of Decision:24-04-

**2014**

Model Institute of Engineering and Technology Vs. State of J&K and ors.  
Atul Khajuria & ors Vs. State of J&K & ors.

Coram:

**Hon’ble Mr. Justice Mohammad Yaqoob Mir, Judge.**

**Appearing Counsel:**

For the Petitioner(s) : Mr. S. S. Ahmed, Adv. in OWP No. 311/2014.  
Mr. Sunil Sethi, Sr. Adv. with Ms. Veenu Gupta, Adv.  
in OWP No. 310/2014

For the Respondent(s) : Mr. Anil Sethi, Adv.  
Mr. W.S. Nargal, Adv.

i)	Whether approved for reporting in Press/Media	: <b>OPTIONAL</b>
ii)	Whether to be reported in Digest/journal	: <b>YES</b>

1. Board of Professional Entrance Examinations (hereinafter for short ‘BOPEE’) conducted Common Entrance Test (CET) for admission in various courses including B.E to the Government Engineering Colleges as well as the Private Professional Engineering Colleges on 22<sup>nd</sup> and 23<sup>rd</sup> of June, 2013 but due to certain irregularities, the said examination was cancelled and the fresh CET was conducted on 27<sup>th</sup> and 28<sup>th</sup> of July, 2013.

2. Vide Notification No. 33-BOPEE of 2013 dated 06.08.2013, all the shortlisted candidates were informed that the allotment of discipline and institution for Medical and Engineering courses through counselling shall be held as per schedule. For PCM (Engineering Discipline/Institution Allotment), the students were to be counselled w.e.f., 26.08.2013 to 02.09.2013. Later on, due to the addition of Yogananda College of Engineering and Technology (YCET), Jammu and in view of increase in approved intake capacity in Civil Engineering Discipline of S.S.M., College of Engineering and Technology, Parihaspora, Pattan, Kashmir, a fresh counselling scheduled has been held from 26.08.2013 to 04.09.2013 for admission in Private Engineering Colleges only. Then on 19.09.2013, vide Notification No. 46-BOPEE of 2013 dated 19.09.2013, BOPEE informed the students about the shortfall of Engineering seats. In order to fill-up the vacant seats in Engineering courses, the interested candidates were invited to attend the counselling w.e.f., 23.09.2013 to 26.09.2013. Again, final round of counselling was fixed by BOPEE on 30<sup>th</sup> of September, 2013.

3. For regulating grant of permission, grant of recognition or grant of affiliation to the professional colleges, Hon'ble Apex Court in the judgment rendered in the case of **Unni Krishnan, J.P. & ors vs. State of Andhra Pradesh & ors, (1993) 1 Supreme Court Cases 645**, evolved a Scheme as crystallized in paras 206 onwards.

Para 210 (2) provides for selection for admission on the basis of merit secured in Common Entrance Examination. Rule of merit has to be followed even in reserved categories. In sub-para 3, it is also provided that number of seats available in the professional colleges to which this scheme is made applicable shall be fixed by the appropriate authority.

4. A direction has been issued to the State Governments to implement the Scheme for regulating admission to such institutions. It is in view of the said Scheme and the direction issued, the Government of Jammu and Kashmir vide SRO 51 has notified on 30<sup>th</sup> of January, 1997 the rules called as “The Jammu and Kashmir Private Technical Education Institutions (Selection and Admission) Rules, 1997”.

5. Rule 4 provides conduct of Common Entrance Examination and selection for admission against the available seats in Private Technical Education Institutions as well as Government Colleges/ Institutions/Polytechnics on the basis of the inter se merit of the candidates in the Common Entrance Examination in the descending order.

6. Rule 4(4) provides that the Course and College allocation shall be made as far as possible in accordance with the descending order of the preferences given by the candidate in his/her

application form depending upon the availability of seats.

7. In the judgment rendered by the Hon'ble Apex Court in the cases of **Parshavnath Charitable Trust & ors vs. All India Council for Technical Education & ors** and **Chetan Pathara & anr vs. All India Council for Technical Education & ors, Civil Appeal No. 9048 of 2012 and Civil Appeal No. 9047 of 2012**, the appropriate Schedule for admission to be observed and adhered to, as formulated, is as under:

Event	Schedule
Conduct of Entrance Examination (AIEEE/State CET/Mgt. quota exams etc.)	In the month of May
Declaration of Result of Qualifying Examination (12 <sup>th</sup> Exam or similar) and Entrance Examination.	On or before 5 <sup>th</sup> June.
1 <sup>st</sup> round of counseling/admission for allotment of seats	To be completed on or before 30 <sup>th</sup> June.
2 <sup>nd</sup> round of counselling for allotment of seats	To be completed on or before 10 <sup>th</sup> July.
Last round of counseling for allotment of seats	To be completed on or before 20 <sup>th</sup> July.
Last date for admitting candidates in seats other than allotted above.	30 <sup>th</sup> July. However, any number of rounds for counseling could be conducted depending on local requirements, but all the rounds shall be completed before 30 <sup>th</sup> July.
Commencement of academic session	1 <sup>st</sup> August
Last date upto which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	15 <sup>th</sup> August
Last date of granting or refusing approval by AICTE	10 <sup>th</sup> April
Last date of granting or refusing approval by University/State govt.	15 <sup>th</sup> May

8. As noticed above, BOPEE has not conducted examination in accordance with the Schedule as

quoted above but keeping in view the last date of admitting the candidates, in any eventuality as 30<sup>th</sup> of July, 2013, BOPEE has filed an application before the Hon'ble Apex Court, registered as IA No. 6 in Civil Appeal No. 9048/2012, seeking exemption of the State of Jammu and Kashmir from the Schedule specified in the judgment dated 13<sup>th</sup> of December, 2012 passed in **Parshavnath Charitable Trust & ors vs. All India Council for Technical Education & ors.** The Hon'ble Apex Court passed the order on August 6, 2013, which is quoted hereunder:

**"We have heard learned counsel for the parties.**

**We are not inclined to exempt the State of Jammu and Kashmir from the schedule specified in the judgment dated 13<sup>th</sup> December, 2012 passed by this Court in Parshavnath Charitable Trust & ors vs. All India Council for Technical Education & ors but we extend the time for admission for the academic session 2013-14 till the 30<sup>th</sup> September, 2013 on an undertaking given on behalf of the J&K Board of Professional Entrance Examination that the colleges if necessary will hold extra classes to fulfill the number of classes prescribed by the AICTE for the academic session 2013-14. Application stands allowed in the above terms."**

In view of this order, the admission for the academic session 2013-14 has been extended till 30<sup>th</sup> of September, 2013. It is in pursuance to the said permission granted, BOPEE has held the counseling for admission upto 30<sup>th</sup> of September, 2013 but while doing so, students to the intake capacity of the college were not provided.

9. Model Institute of Engineering and Technology (MIET) has sanctioned intake capacity of 360 seats for four Engineering Courses in the following proportions:

	Branch	Seats
i)	Computer Science and Engineering (CSE)	120
ii)	Electronics and Communication Engineering (ECE)	120
iii)	Electrical Engineering (EE)	60
iv)	Information Technology (IT)	60
Total		360

The said College anticipating the delayed schedule of counseling and the last date of counseling being 30<sup>th</sup> of September, 2013 that the students to the extent of intake capacity may not fructify, issued notice, which has been published in two daily newspapers, namely, “the Daily Excelsior” in its issue dated 28.09.2013 and the daily “the Shadow” in its issue dated 29.09.2013 under the caption B.E Admissions-2013 under Open Merit. The said notice reads as under:-

**“Model Institute of Engineering and Technology.  
B.E Admissions-2013  
Under Open Merit**

**It is anticipated that some seats in B.E shall remain vacant after last round of counseling by BOPEE on the 27<sup>th</sup> of September, MIET invites applications from all the eligible candidates, who appeared in JKCET 2013 for registration against the vacant seats.**

- . **Admissions shall be made strictly on the basis of merit in JKCET-2013 and subject to shortfall in seats (if any).**
- . **Candidates desirous of seeking admissions under open merit seats should visit MIER. B.C. Road on 28<sup>th</sup> and 29<sup>th</sup> September from 10 am to 5 pm and on 30<sup>th</sup> September from 10 am to 12 pm for registration.**
- . **The vacant seats will be allotted on 30<sup>th</sup> September after 1 pm.**

- . **Selected candidates in order of merit shall be required to complete the admission formalities immediately thereafter.”**

Copy of the notice has been sent to the BOPEE vide letter dated 26.09.2013, in response whereof, BOPEE vide letter dated 27.09.2013 has conveyed to the petitioner-Institute that the final round of counseling is fixed on 30<sup>th</sup> September for 16 and 53 left over seats of Computer and IT respectively together with other colleges of Engineering wherever seats are left vacant. The shortfall of the seats communicated by the MIET has been incorporated in the seat matrix for counseling. In case the notice has been issued, the College has done it at its own risk and responsibility and the admissions made thereof shall not be confirmed by the BOPEE as the final round of counseling has been fixed.

10. Records would reveal that after the final round of counseling on 30<sup>th</sup> September, 278, candidates as were allotted to MIET were given admissions, so, the college had the shortfall in seats i.e. 64. On the same date i.e., on 30<sup>th</sup> September, which was the last date for admissions, the petitioner-Institute has, on the basis of the notice issued by it, as quoted above, claimed to have admitted 33 students out of the shortfall of 64.

11. The petitioner-Institute vide its letter dated 14.11.2013 addressed to respondent No.1 (Secretary, Technical Education Department) has highlighted that the J&K BOPEE conducted last

round of counseling on 30<sup>th</sup> September 2013 and at the end of closure of their counseling in the MIET, there was shortfall of 15 seats in the discipline of CSE and 44 in the discipline of IT. The petitioner-Institute in tune with Rule 4(7) of the Jammu and Kashmir Private Technical Education Institutions (Selection and Admission) Rules, 1997 (hereinafter to be referred to as Rules of 1997) had initiated the process in terms of the notice dated 26.9.2013, in response whereof, 70 candidates from list of CET-2013 offered themselves for registration for admission. The 33 candidates were in order of merit admitted.

12. The action taken by the Institute may be approved. Institution undertakes that admission shall be made strictly as per merit scored by the candidates in CET-2013 and shall not deviate from the same.

13. If the admissions of 33 students out of 70 have been made on 30<sup>th</sup> of September, 2013, then how come in the letter dated 14.11.2013 it has been mentioned that admission shall be made strictly as per merit scored by the candidates in CET-2013 and shall not deviate from the same. This letter appears to have been manufactured later in point of time so as to cover up the action so initiated.

14. In response to the said letter, Under Secretary to Government, Technical Education/YSS Department vide letter dated



20.12.2013, has conveyed to the petitioner-institute that the details of the admissions made under Rule 4, Sub-rule 7 of the Rules shall be furnished to Secretary, BOPEE and also to University of Jammu, for the purpose of registration, which will be subject to the condition that in no case registration shall be granted to any candidate possessing marks less than the marks prescribed for participation in the Entrance Examination.

15. On 23.12.2013, petitioner-Institute in its letter addressed to Deputy Registrar (Registration), University of Jammu, has submitted Registration Return of 33 students of B.E. Ist Semester (2013 batch) along with Registration Fee and on the same date, one more letter has been addressed by the petitioner-Institute to The Registrar, University of Jammu whereunder 33 examination forms of B.E. 1<sup>st</sup> Semester (Regular) 2013 Admission Batch along with Examination Fee has been submitted.

16. On 09.01.2014, the petitioner-Institute in its letter addressed to the Secretary, BOPEE has requested for authentication of Registration Return of 33 students, in response thereto, the respondent-BOPEE has conveyed to the petitioner-Institute that since the admissions had to be completed by 30<sup>th</sup> of Sept. 2013 as per the Hon'ble Supreme Court directions, the proposal is not in accordance with SRO 51 of 1997. Request

is not tenable. The Rule quoted does not exist in the relevant SRO.

17. On 17.2.2014, respondent No. 1 through Under Secretary to Government, Technical Education/YSS Department has conveyed to the Secretary, BOPEE that the SRO 51 of 1997, which regulates the admissions to the Technical/ Professional courses, has not undergone any change. Thereafter, Sub-rule 7 of Rule 4 has been quoted.

18. Respondent-University had to accept the Registration Returns only after the same would be authenticated by the BOPEE. When the BOPEE has not authenticated the same, the respondent-University could not accept the Registration Returns and even the examination forms.

19. The questions, which arise for determination, are as under:-

1. Whether the petitioner-Institute was competent to issue notice for admission of the candidates on the basis of merit in JK CET-2013 subject to shortfall in seats, if any, by invoking Rule 4(7) of the Jammu and Kashmir Private Technical Education Institutions (Selection and Admission) Rules, 1997(hereinafter referred to as Rules).
2. Whether the admission of 33 candidates was completed on 30<sup>th</sup> September itself. If the admission of 33 students was completed on 30<sup>th</sup> September, why Registration Returns of these 33 candidates were submitted to the University on 23.12.2013, that too, on the basis of the letter addressed to the petitioner-institute by the Under-Secretary to

Government, Technical  
Education/YSS Department on  
20.12.2013.

20. The permission as was granted by the Hon'ble Apex Court carried a condition to the effect that extra classes be held by the colleges so as to fulfill the number of classes prescribed by the AICTE for academic sessions 2013-14. It being so, after 30<sup>th</sup> of September, 2013, no admissions were permissible as such, after 14.11.2013, if the institute has ventured to grant admission, same is totally unwarranted.

21. Due to disturbed schedule, candidates to the extent of sanctioned intake capacity were not provided to all the private colleges including the petitioner institute. No other institute has ventured to invite applications for admission of its own. All institutes have been treated alike. Admissions are regulated in accordance with rules which owe its origin to the scheme evolved by the Hon'ble Apex Court in the above referred judgment. In view of disturbed schedule, last date for admission was extended by Apex Court as 30.09.2013, last counseling has been done on 30.09.2013. Therefore, there was no scope for having resort to Rule 4(7) of the Rules.

22. Regulation of admission by BOPEE has an object of ensuring protection. Even if there would have been scope for invoking Rule 4(7) of the Rules, still object of regulating admission on merit is not open to be defeated by such process. The

BOPEE has an important task to ensure that the merit is not allowed to be ignored, it is only in the same background, even in terms of Rule 4(7), confirmation by BOPEE is imperative which has been declined.

23. Now coming to determination of question No.2.

In case petitioner-Institute would have completed the admission process of 33 candidates on 30<sup>th</sup> of September, 2013, then why said position has not been made mention of in the letter dated 14.11.2013, addressed by the petitioner-Institute to the Secretary, Technical Education. The contents of the letter make it more clear as it is mentioned therein that in pursuance to the notice dated 26.09.2013, 70(seventy) candidates offered themselves for registration for admission. Then it is recorded as under:-

**“The institution undertakes that admission shall be made strictly as per merit scored by the candidates in CET-2013 and shall not deviate from the same.”**

This would suggest that these 33 candidates were not admitted up to 14.11.2013. Otherwise, the petitioner-institute should have clearly indicated in the letter that 33 candidates out of 70 have been admitted on 30<sup>th</sup> of September, 2013. There appears to be some nexus in the process in order to hoodwink the matter. It appears that when the process for filling-up examination forms had commenced, only then petitioner-Institute on 23.12.2013 has submitted the registration returns

of the said 33 students. Why they have not submitted Registration Returns immediately after admission, preferably in the month of October, 2013. It appears that the petitioner-Institute tried to justify its action when the BOPEE had in categorical terms informed the college that in case the notice for admission has been issued, the College has done it at its own risk and responsibility and the admissions made thereof shall not be confirmed by the BOPEE.

24. Rule 4(7) of the Rules may be available but why the petitioner-Institute has not submitted the Registration Returns of these 33 students in the month of October, 2013. It appears that the admission process had not been complete on 30<sup>th</sup> September, i.e., why in the letter dated 14.11.2013 addressed to the Secretary, Technical Education, the petitioner-Institute has conveyed that it will undertake that the admissions shall be made strictly as per merit scored by them in CET-2013, which, in other words, would show that till 14.11.2013, admission process was not complete. For claiming the support of said Rule, schedule for admission by no stretch of imagination could be extended beyond 30<sup>th</sup> of September, 2013.

25. The position of admission to 33 students out of 70, who had responded to the notice of the petitioner-Institute dated 26<sup>th</sup> of September, 2013 appear to have been completed subsequently and even appear not to have been completed till 14.11.2013, which fact is further strengthened as

the petitioner-Institute cleverly vide two separate communications dated 23.12.2013 has submitted the Registration Return forms to the University and the examination forms of B.E. 1<sup>st</sup> Semester have also been submitted. Why registration returns of these 33 students were not submitted earlier as per the stand of the petitioner, is not made clear.

26. The 33 candidates, who have been admitted, also cannot claim any benefit when the process of admission initiated by the petitioner-Institute vis-à-vis them, is in contravention to the direction of the Hon'ble Supreme Court, which would provide last date for completing the process on 30th of September, 2013. The said 33 candidates shall be at liberty to claim compensation from the petitioner-institute.

27. Both the petitions are found without merit and accordingly dismissed along with connected CMAs.

(Mohammad Yaqoob Mir)  
Judge

**Jammu:**  
Naresh

Pronounced today on 24 .04.2014 in  
terms of Rule 138 (3) of the Jammu and Kashmir  
High Court Rules, 1999.

(Tashi Rabstan)

Judge

Jammu  
24.04.2014