

ORISSA HIGH COURT, CUTTACK

Writ Appeal Nos. 274, 281 and 302

No. 2816(3)  
W.A. 281/2010

FROM :

SUPERINTENDENT OF THE HIGH COURT OF ORISSA

To  
Chairman, Orissa Joint Entrance  
Examination-2010 (In W.A. Nos.  
274 & 281 of 2010)

1. The Director, Sri K.B. Mohapatra,  
Ajay Binay Institute of Technology-Piloo Mody  
College of Architecture, having its registered Office-  
At/P.O. Badambadi, P.S. Madhupatna,  
Town/Dist. Cuttack.
2. The Registrar, Council of Architecture,  
Incorporated under the Architects Act, 1972,  
Indian Habitat Centre, Core 6A, First Floor,  
Lodhi Road, New Delhi - 110 003.
3. The Secretary, Industries Department,  
Bhubaneswar, Dist. Khurda.

Appellant(s)

Dated, Cuttack, the 28.2 2012

SIR,

For appellant: *M/s. Dr. A.K. Ray, Subir Palit,  
A. Mishra, A. Kejariwal and*

In continuation to Court's Memo No.9736(3), dated 02.11.2010, I am directed to  
end herewith a copy of Judgment, dated 31.01.2012 passed in W.A. Nos.274, 281 & 302 of  
2010, arising out of W.P.(C) No.5503/10 for your information and necessary action.

For respondents: *M/s. S. Ray (Sr. Advocate)  
C. Choudhury, B. Mohanty,  
D. Chhocray, S. Mohanty,  
D.R. Das and B. Maharana*

Yours faithfully,

*M/s. Mahadev P.  
S.B. Mohanty and B. Mishra  
For responde  
Mr. R.K. Mohapatra  
Gopinath  
represent no. 3/  
M/s. Mahadev P. Routray, Sr. Advocate  
M/s. S.K. Mohapatra, K.  
M/s. S. Das, S. Das, S.K.*  
SUPERINTENDENT

ORISSA HIGH COURT: CUTTACK

Writ Appeal Nos. 274, 281 and 302 of 2010

From an order dated 16.9.2010 passed by the learned Single Judge of this Court in Misc. Case Nos. 15172 and 15173 of 2010 arising out of W.P.(C) No. 5503 of 2010 and order of the same day passed in W.P.(C) No. 5503 of 2010.

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PRESENT:  
Chairman, Orissa Joint Entrance Examination-2010 (In W.A. Nos. 274 & 281 of 2010)

State of Orissa represented  
Through the Secretary, Industries  
Department and another (In W.A.  
No. 302 of 2010)

Appellant(s).

Versus

Ajay Binay Institute of  
Technology-Piloo Mody  
College of Architecture  
and others (In all).

Respondents.

For appellant:

M/s. Dr. A.K. Rath, Subir Palit,  
A. Mishra, A. Kejariwal and  
D.N. Patnaik (In W.A.  
Nos. 274 & 281/2010).  
Government Advocate in W.A.  
No. 302/2010)

For respondents:

M/s. B. Ray (Sr. Advocate)  
C. Choudhury, B. Mohanty,  
D. Chhotray, S. Mohanty,  
D.R. Das and B. Maharana  
For respondent no. 1,  
M/s. Mahadev Mishra, M. Mishra,  
S.B. Mohanty and B.K. Mishra  
For respondent no. 2 and  
Mr. R.K. Mohapatra,  
Government Advocate, for  
respondent no. 3.  
Mr. Budhadev Routray, Sr. Advocate  
and M/s. D.K. Mohapatra, K.  
Mohanty, S. Das, S. Jena, S.K.

Samal and S.P.Natha for  
Respondent No.1 in W.A.  
No.302/2010.

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P R E S E N T :  
THE HONOURABLE CHIEF JUSTICE SHRI V. GOPALA GOWDA  
AND  
THE HONOURABLE MR. JUSTICE B.N.MOHAPATRA

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Date of Judgment- 31.1.2012

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**V.GOPALA GOWDA, C.J.** Writ Appeal Nos.274 and 281 of 2010 have been filed by the Chairman, OJEE whereas W.A.No.302 of 2010 has been filed by the State and another. While the order dated 16.9.2010 passed by the learned Single Judge in Misc.Case Nos.15172 & 15173 of 2010 arising out of W.P.(C) No.5503 of 2010 has been questioned in W.A.Nos.281 and 302 of 2010, the order dated 6.5.2010 passed by the learned Single Judge in W.P.(C) No.5503 of 2010 has been questioned in W.A.No.274 of 2010 urging various legal grounds. While by order dated 6.5.2010, the learned Single Judge directed that in the event the result of joint entrance examination is declared, the JEE shall not conduct counseling in respect of candidates who appeared in the said examination for being admitted to B.Arch course until further orders, by order dated 16.9.2010, the learned Single Judge refused to grant the prayer made by College of Engineering and Technology, Bhubaneswar (appellant no.2 in W.A.No.302 of 2010) in Misc.Case Nos.15172 and 15173 of 2010, one for impleading them as party and the other for issuance of direction to fill up the seats in the said college in Architecture discipline and observed that it is open for the College of Engineering and Technology to admit students from the merit list of candidates prepared in the NATA who are eligible to be admitted, if they fulfilled the other eligibility criteria as per Annexure-B to the

counter with a further direction to complete the process of admission by 1<sup>st</sup> of October, 2010.

2. Strong reliance is placed upon the provisions of the Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 which was enacted with a view to provide regulation of admission, fixation of fees, prohibition of capitation fees, for the larger interest and welfare of the student community, curb mal practices and to ensure equality and excellence in private educational institutions. This Court has struck down the said Act but the Supreme Court by its order dated 1.6.2007 has kept the said act alive with some modifications to sections 4(1), 4(2), 4(4), 6(1), 6(2) and 6(3) regulating the constitution of Policy Planning Body and the Fee Structure Committee. Bachelor of Architecture Course, a professional technical course comes under the purview of the aforesaid Act. Therefore, admission into the said course are to be made through centralized counseling, i.e. JEE and not through college level counseling. Hence, the learned Single Judge erred in holding that the admission given by the respondent no.1 institution is valid and legal is liable to be set aside. Further, the Information Brochure for OJEE-2010 under Clause 4.1.3 lays down the eligibility criteria for admission to B.Arch Course wherein it is clearly mentioned that 'NATA' shall be a pre-requisite for admission to B.Arch Course. As such, the guidelines/regulations laid down by the Council of Architecture have been followed/included. Learned Single Judge failed to appreciate the fact that admission into B.Arch course through JEE-2010 is being conducted as per the guidelines/regulations laid down by the Council of Architecture. Therefore, the impugned orders passed in the writ petition as well as in the misc. cases are liable to be set aside. Annexure-7 advertisement issued by the Chairman, JEE-2010 laying down the guidelines/eligibility criteria for admission to B.Arch Course is under the direction/supervision of the Policy Planning Body which is the statutory body under the Act of 2007. The learned Single Judge

has failed to take note of the said fact. Strong reliance is also placed upon the decision of the Supreme Court in the case of A.P.Christian Medical Educational Society v. Government of Andhra Pradesh, (1986) 2 SCC 667 wherein it is held that we cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. Therefore, the impugned orders directing the OJEE not to conduct the examination in respect of B.Arch course is bad in law and is liable to be set aside. Reliance placed upon the notification of the Government of Orissa, Industries Department bearing No.1296 dated 20.1.2010 directing the educational institutions that in consonance with the guidelines/regulations of the Council of Architecture, from the academic session 2010-11, the NATA conducted by the Council of Architecture shall be a pre-requisite for admission into 5 years B.Arch but the admission shall be done as per the ranking of the candidates in the Merit List of the OJEE. The same has not been properly interpreted while passing the impugned order. Therefore, the same is liable to be set aside. Learned Single Judge has failed to appreciate the fact that the Government notification dated 29.1.2010 superceding the earlier notification dated 8.7.2008 is still in force. Therefore, the impugned judgment and orders are bad in law and liable to be set aside. Strong reliance is also placed upon the judgment of Inamdar's case (AIR 2005 SC 3226) in support of the case of the appellant contending that the Act of 2007 has been enacted pursuant to the observation/direction given to the State Legislature to enact the law governing the admission to the professional courses, referred to supra. Therefore, the orders impugned in these appeals are liable to be set aside as the same are contrary to the aforesaid decisions and the provisions of the Act for the reason that the Act is enacted to provide for a centralized Single Window admission procedure which is fair, transparent and non-exploitative. Learned senior counsel

Mr. Routray and Mr. Milan Kanungo on behalf of the contesting respondent-institution have sought to justify the impugned orders in these appeals. Learned counsel for the Architecture Council has also sought to justify the impugned order. The learned senior counsel and another counsel on behalf of the institution in these writ appeals placed strong reliance upon the provisions of the Architects Act, 1972 which governs the field of admission to the B.Arch 5 years course. The Council of Architecture has also framed regulations, revised guidelines for admission to 1<sup>st</sup> year of 5-year Degree Course in Architecture in exercise of its power under the provisions of section 21 of the Architects Act, 1972 prescribing the minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India, the Council has from time to time prescribed the various minimum standards of architectural education. Therefore, all institutions imparting architectural education to the students in the country for awarding recognized architectural qualifications to the successful candidates under the Architects Act, 1972, shall be required to adhere to the minimum standards of architectural education. The regulation provides for the admission of students to the architecture course, period of studies, eligibility for admission, national aptitude test in architecture. Therefore, the revised guidelines framed by the Council of Architecture under the provisions of the Architects Act governs the field of admission of students to the 5 year B.Arch Course. Therefore, the said Act is on par with the AICTE Act which is a Central enactment and shall prevail over the State legislature. Therefore, the guidelines/ instructions given by the Policy Planning Body or JEE cannot be applied for admission to the B.Arch course as the regulations for admission to the said course is governed by the Architects Act and the regulations framed by the Council of Architecture. Accordingly, the learned Senior counsel and counsel for the Council of Architecture sought to justify the impugned orders passed by the learned Single Judge and contended that the

same do not warrant interference by this Court in exercise of extraordinary jurisdiction and also placed strong reliance upon the unreported decision of this Court rendered in W.P.(C) No.15780 of 2007 disposed of on 20.2.2008 in the case of Ajay Binay Institute of Technology-Piloo Mody College of Architecture v. Biju Patnaik University of Technology, wherein this Court examined similar legal contentions as have been urged in these appeals urged in the said case and rejected the same and held that the Architects Act and the regulations framed thereunder by the Council of Architecture hold the field for the purpose of admission of students to B.Arch course. It was further contended in the said case that regarding interpretation of statute as to whether the special provision would prevail upon the general provision, reliance was placed upon the decisions of the Supreme Court in J.K.Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh, AIR 1961 S.C. 1170 and L.I.C. v. D.J.Bahadur, 1981 (1) SCC 315 to find out as to whether the statute is a special or general one. In the said decision the learned Single Judge has held that the Council of Architecture constituted under the Architects Act, 1972 is the apex Body under Act 20 of 1972 by the Parliament which is akin to Medical Council of India for doctors and the Bar Council of India for advocates and that the Architects Act extends to whole of India and controls and regulates admission of students into the discipline of architecture. It controls the registration of architects and all other matters connected therewith. Therefore, it is held that the Architects Act, 1972 governs the field and the Council of Architecture constituted under the said statute is the sole authority vested with the power to prescribe the minimum standard of architectural education to maintain uniformity throughout the country. Therefore, he submits that the impugned orders do not warrant interference as the same is covered by the decision of this Court, referred to supra.

3. With reference to the aforesaid rival legal contentions, it is to be examined as to whether the impugned orders in the writ petition

and the misc. cases involve any substantial question of law for our interference in these appeals? What order?

4. Our answer to the question is in the negative for the following reasons. Admission to B.Arch course is governed by the provisions of the Architects Act, 1972 which is enacted by Parliament. The said Act provides for constitution of the Council of Architecture under section 3 of the Act by the Central Government by issuing notification comprising of five architects possessing recognized qualifications elected by the Indian Institute of Architects from among its members, two persons nominated by the All India Council of Technical Education by the Ministry of Education of Union of India, five persons elected from among themselves by heads of architectural institutions in India who are imparting full time instructions to the students for recognized qualifications and the Chief Architects in the Ministries of the Central Government to which the Government business relating to defence and railways has been allocated and the head of the Architectural Organization in the Central Public Works Department, ex officio, one person nominated by the Central Government, an architect from each State nominated by the Government of that State, two persons nominated by the Institution of Engineers (India) from among its members and one person nominated by the Institution of Surveyors of India from among its members. The Council of Architecture to be constituted under Section 3 of the Act is a broad based one. The Council of Architecture is empowered under Section 21 of the Architects Act, 1972 to prescribe the Minimum Standards of Architectural Education required for granting recognized qualifications by colleges or institutions in India. Therefore, admission to the B. Arch course is governed by the statutory provisions of the Act and the regulations referred to supra. When the field is already occupied by the law enacted by the Parliament in exercise of legislative power, Orissa Act 2 of 2007 cannot be applied to regulate admission to B. Arch Course. This question has been properly examined by the



learned Single Judge in the unreported decision referred to supra upon which reliance has been rightly placed by the learned Senior Counsel and other counsel for the institutions and the Council of Architecture. Learned Single Judge in the writ petition referred to supra placing reliance on Maxwell on Interpretation of Statute and the decisions of the Supreme Court referred to supra has examined the question as to whether the Architects Act is a special legislation with regard to architectural education and would prevail upon the general rules framed and held that the Architects Act will hold the field for admission to B.Arch course and prescribe the minimum standards for admission of students to the said course on the basis of the regulations framed by the Council of Architecture which is a statutory body constituted by the Central Government and the constitution of Council of Architecture under Section 3(2) of the Act is a broad based body nominating members from different sources and disciplines dealing with the Architecture and representation is given to the States to include their nominees as members of the Council. Therefore, the prescribed standards for B. Arch Course by the Council of Architecture cannot be over taken by the Policy Planning Body or JEE by issuing the brochure under the Act of 2007. The admission to the B.Arch course is already regulated by the Act 20 of 1972 and the regulations which prescribe the standards for admission of students to the Course by the broad based Council of Architecture. That must hold the field but not the brochure that is issued by the JEE. Therefore, the learned Single Judge while considering the rival legal contentions rightly adverted to the relevant aspects of the case in the backdrop of the notification issued by the State of Orissa represented by the Industries Department and the admissions of the students have been made to the course. Therefore, the learned Single Judge has rightly passed the order allowing the writ petition and rejecting the prayer made by the JEE. In our considered view, the unreported decision of this Court referred to supra has rightly referred to the provisions of the Architects

Act, 1972 and examined the rival legal contentions in the said case and answered the contentious issue stating that the Architects Act holds the field relating to admission to the B.Arch course.

5. The learned Single Judge after proper interpretation of the provisions of the said Act and the regulations has rightly held that the admission to the said course is governed by the Architects Act and the regulations made thereunder. The reliance placed on the judgment of Inamdar's case or A.P. Christian Society case by the learned counsel for the appellants have no application to the fact situation. On the other hand, Inamdar's case supports the case of the educational institutions and the Council of Architecture. In this view of the matter, the impugned orders do not call for our interference.

The appeals are devoid of merit and liable to be dismissed and are accordingly dismissed.

*Sd/- Gopal K. Goudy  
(C.J.)*

B.N.Mohapatra, J.

I agree.

*Sd/- B.N.-Mohapatra, J.*

Orissa High Court, Cuttack  
January 31, 2012/SCDash.

*True Copy  
15-2-2012*