
(2000) 04 OHC CK 0027
In the Orissa High Court
Case No : Org. Jurs. Case No. 13350 of 1999

Anita Padhy

APPELLANT

Vs

Berhampur University and Others

RESPONDENT

Date of Decision : 04-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Ori 121 : (2000) 89 CLT 771

Hon'ble Judges : P.C. Naik, J;B.P. Das, J

Bench : Division Bench

Advocate : Y. Das, N.C. Mohanty, R. Sahu and A.K. Biswal, for the Appellant;
B.S. Misra, M.R. Misra, A.R. Misra and A.P. Dhir Samanta, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The challenge in this writ application is to Annexure-6, the order dated 24-8-1999 passed by the Vice-Chancellor, Berhampur University, withdrawing the employees quota in admission to the Post-Graduate Departments of the Berhampur University and directing that henceforth no seat for the children of the employees of the University will be reserved in any Post-Graduate or Diploma Course of the University.

2. The facts giving rise to this writ application may be briefly stated thus.

The petitioner is the daughter of an employee of the Berhampur University who at the relevant time was posted as the Administrative Officer. For the academic session 1999-2000, she had submitted her application for appearing at the entrance examination for admission to the Master in Computer Application Course and had appeared at the said examination. It is her case that in view of Clause-VIII(f) of the Prospectus, she being the daughter of an employee of the University, ought to have been admitted to the said course even though she did not qualify for the prescribed seats which were 30 (thirty) in number, as the reservation under the employees quota was over and above, the prescribed

strength. The further case of the petitioner is that there was reservation of seats in Post-Graduate and Diploma Courses for the children of the employees of Berhampur University from 1982 onwards and as such, the University authorities were not justified in withdrawing the quota though as per the Prospectus for the Sessions 1999-2000 there was provision for such reservation. It is averred that as she had secured the highest mark under the quota reserved for the children of the employees of the University, she did not appear for the counselling as she was sure that she would be selected against the reserved seat. Thus, she altered her position basing on the assurance given by the opposite parties in the Prospectus and as such, the opposite parties thereafter could not withdraw the quota as a right had accrued to her for admission. It is further submitted that as the quota for the children of the employees is over and above the sanctioned strength, its continuance could not cause any prejudice to any regular candidate and as such, the prayer is for quashing the order withdrawing the quota on the ground that it is illegal and arbitrary.

3. The University in its counter does not dispute that in the Prospectus for the sessions 1999-2000, it was mentioned that there would be a quota for the employees of the University. It is, however, submitted that the inclusion of that clause in the Prospectus was in contravention of the Chancellor's order which was to the effect that there should be no reservation of any seat for the children of the employees of the University in the Post-Graduate Courses. According to the University, when Professor J.K. Baral took charge of the office the Chairman of the P.G. Council on 1-6-1999, he noticed that there was already an order dated 29-10-1998 passed by the Chancellor for not reserving any seat in the Post-Graduate Courses for the children of the employees of the University. But, in spite of that, a clause relating to reservation was included in the Prospectus. Since applications had been received, the Chairman of the Post-Graduate Council had suggested to the Vice-Chancellor for moving the Chancellor to reconsider the matter on which the Vice-Chancellor passed an order on 19-7-1999 that unless the Chancellor permits any reservation, no candidate could be admitted, whereupon opposite party No. 2 passed an order that there would be no reservation of seats for the children of the employees of the University. It is further submitted by the University that as there was a persistent demand for continuance of the quota, a suggestion was made to place the matter before the Syndicate and also to move the Chancellor. Accordingly, the matter was ordered to be placed before the Syndicate but no candidate was to be admitted under the said quota till receipt of the final decision of the Chancellor. In spite of this, the then Chairman of the P.G. Council had passed an order on 29-7-1999 by mentioning that the Vice-Chancellor was pleased to restore the policy of reservation of seats for the children of the employees of the University. When the real position was brought to the notice of the Vice-Chancellor, he passed an order on 24-8-1999 that there would be no reservation of seats for the children of the employees of the University and as such, no student was admitted. The matter regarding reservation of seats for the children of the employees of the University

was also placed before the Syndicate which, after due deliberation and, considering the letter dated 29-10-1998 of the Chancellor annulling the employees quota for admission into Post-Graduate/ Diploma Courses, resolved that it was approved. Accordingly, there could be no reservation of seats for the children of the employees of the University and as such, the question of admitting the petitioner against a non-existing reserved seat, could not arise. It is the further case of the University that no doubt the petitioner appeared at the entrance examination but could not come out successful and as such, she could not be admitted to the course which started in September, 1999. It is also averred that since the clause relating to reservation of seats for the children of the employees of Berhampur University was included in the Prospectus in contravention of the order of the Chancellor, no right could accrue to the petitioner thereunder and it cannot be said that the petitioner, who had not secured the qualifying marks on merits, had altered her position by not appearing in the counselling, for had she appeared, it would not have changed the position because she did not come within the first thirty the total number of seats available for the Course. It is also pointed out that the father of the petitioner is the Administrative Officer of the University and he is the Overall Branch Officer of P. G. Council which deals with all matters relating to admission,

4. Before proceeding further, we may make a reference to the decision of the Apex Court in *Thapar Institute of Engineering and Technology v. State of Punjab (Batch)*, AIR 1997 SC 793, wherein it has been held that reservation for wards of employees by drawing a separate merit list though over and above the sanctioned strength, not being an admission on merit basis, was impermissible and the direction of the High Court not to indicate in the brochure-cum-admission form any proposed reservation forwards of employees was held to be proper and valid. It appears that despite the law laid down by the Apex Court, the Syndicate of the Utkal University had at a meeting held on 5-8-1998 permitted the provision of employees' quota for their children in the matter of admission to M.A./M. Phil Course. However, when the matter came up before the Chancellor, he passed an order on October 29, 1998 which may be usefully reproduced :--

"On careful consideration of the issues Involved, the decision of the Syndicate (Utkal University) passed in the meeting held on 5-9-98 permitting the provision of Employees Quota for their children in the matter of admission into M.A./M.Phil course is hereby annulled as such preferential provision is deemed to be violative of Right to Equality enshrined under Article 14 of the Constitution of India.

Further, if such discriminatory provision is in operation in any other University in the State, the Vice-Chancellors are directed to stop operation of such Quota system for that employees."

In view of the order of the Chancellor, the Post-Graduate Central Office of the Berhampur University Issued an order on 24-7-1999 to the effect that in conformity with the order of the Chancellor, the University authorities had

decided to discontinue the reservation of seats In P.G./Diploma Courses for the children of the employees of Berhampur University with immediate effect.

5. The order of the Chancellor dated 29-10-1998 was placed before the meeting of the P.G. Council on 16-4-1999 wherein a decision was taken that the matter be placed before the Chancellor for reconsideration for continuation of the practice keeping in view the general Interest of the University and the fact that the employees' children's quota is over and above the sanctioned strength and the general merit of candidates is not affected by employees' children quota. This note, which was submitted to the Administrative Officer/Chairman of the committee clearly Indicates that "the Employees children quota has been inserted in the P.G. Prospectus for the session 1999-2000." This file clearly indicates that this matter was to be placed before the Vice-Chancellor for being ultimately forwarded to the Chancellor for reconsideration. Subsequent to the above note, there is another note of the Chairman, P.G. Council, to the Vice-Chancellor that the the Chancellor may be moved to reconsider his decision regarding reservation for the children of the employees of the University. The note further indicates that the employees children quota had been inserted in the Prospectus for the session 1999-2000. Thereafter, there appears to be a note of the Vice-Chancellor which reads thus :--

"Unless we are allowed we cannot admit. We may however, move the Hon''ble Chancellor to permit us."

Subsequently, on 27-9-1999, P.G. Council had put up another note before the Vice-Chancellor which, amongst other matters, indicated that the letter of the Chancellor annulling employee quota may be placed before the Syndicate and if it is found necessary, a special Syndicate may be convened for the purpose as early as possible. The note further mentions that the Chancellor may be moved to reconsider his decision. Thereafter, there is a note of the Vice-Chancellor which reads thus :--

"I agree with the suggestion of the P.G.C.C. Hon''ble Chancellor be moved to permit the University to continue this practice because we are giving beyond the sanctioned strength. We should wait till we hear the final decision of the Hon''ble Chancellor and till then the present position to continue."

Ultimately, the matter was referred to the Chancellor. It also appears that the General Secretary of the All Orissa University Employees' Federation also submitted a representation to the Chancellor for reconsideration of the employees quota for admission in the P.G. Department. The Chancellor after examining the matter, re-affirmed his earlier decision that there should be no quota for the children of the employees for admission in the P.G. Department. Accordingly, the petitioner was not admitted.

6. From the above narration of facts, it is clear that though in 1998 the quota for the children of the employees of the University was done away with in view of the judgment of the Apex Court, persistent effort was made by the employees

and also by the Employees Federation to retain the quota so that their wards would continue to get themselves admitted in the P.G. Department. Not only this, despite the specific order of the Chancellor in the year 1998 doing away with the quota, Clause-VIII (f) was inserted in the Prospectus of the session 1999-2000 that there would be reservation in the P.G./ Diploma Courses for the children of the employees of the Berhampur University. This, in our view, was wholly improper as it was the duty of the P.G. Council to have acted in accordance with the direction of the Chancellor and not in breach thereof. It is this, if we may say so, illegal act of person/persons that has given rise to the present writ application. In our opinion, it is a fit case in which the Chancellor should order an enquiry to be held and appropriate action should be taken against the person/persons responsible for inclusion of the aforesaid clause (Clause VIII(f)) in the Prospectus for the session 1999-2000 in breach of the Chancellor's order, so that such a situation is not brought about in the coming years.

7. Since the inclusion of Clause-VIII(f) was in utter contravention of the order of the Chancellor doing away with the employees quota, the petitioner cannot claim any right thereunder. To do so, would amount to giving a ward of an employee of the University a premium for wrongful acts of the employee/employees of the University. The contention of the learned counsel for the petitioner that having included Clause VIII(f) in the Prospectus, the authorities are estopped from withdrawing the same, again on the facts and in the circumstances of the case cannot be accepted. The petitioner, who could not qualify in the entrance test, cannot be said to have altered her position by not appearing at the counselling, for, as has been observed by us above, even if she had appeared, she could not have been selected for admission, her position being not within the first thirty candidates which is the total strength for the said Course. That at any rate, said Clause-VIII (f) had been illegally included in the Prospectus, and the University was justified in deleting the same.

8. Reliance placed by the learned counsel on the decision of the apex Court in *Collector of Central Excise v. New Tobacco Co.*, (1998) 8 SCC 250, is misplaced. We may observe, may be, the petitioner was not aware of the order of the Chancellor doing away with the quota for the employees children, but the employees were very much aware of it and the same is clear from the fact that the All Orissa University Employees Federation had submitted a representation to the Chancellor for reconsideration of employees quota for admission in P.G. Department. That apart, the father of the petitioner was the Administrative Officer and the Branch Officer of the P.G. Council, which was dealing with the matters of admission to P.G. Courses. Therefore, it is difficult for this Court to accept the submission of the learned counsel for the petitioner that neither the petitioner nor her father was aware of the actual position that in October, 1998 the Chancellor had issued an order that there should be no quota for the wards of the employees of the University. Had the petitioner been admitted by the University, it would have been in contravention of the order of the Chancellor and more so the law laid down by the Apex Court in *Thapar Institute's* case (supra).

9. For the reasons aforesaid, we are of the view that no case for quashing the Impugned order (Annexure-6) is made out. The writ application, therefore, fails and is accordingly dismissed. But, considering the fact that the petitioner is a student, we make no order as to costs.

B.P. Das, J.

10. I agree.