

(2009) 08 SC CK 0080

In the Supreme Court Of India

Case No : Writ Petition (C) No's. 535 of 2008, 10 of 2009 and I.A. No. 4 of 2009 and Contempt Petition (C) No. 145 of 2009 in Writ Petition (C) No. 535 of 2008

Avinash Singh Bagri and Others

APPELLANT

Vs

Registrar IIT Delhi and Another

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Constitution of India, 1950 — Article 32, 46

Citation : (2009) 15 JT 139 : (2009) 8 MLJ 432 : (2009) 11 SCALE 535 : (2009) 8 SCC 220 : (2009) 13 SCR 258 : (2009) 6 SLR 372

Hon'ble Judges : K. G. Balakrishnan, C.J.; P. Sathasivam, J.; B. S. Chauhan, J

Bench : Full Bench

Advocate : Dinesh Kumar Garg, V.K. Biju, Bheem Pratap Singh, Ritu Puri and Vijay Pratap Singh, for the Appellant; P.P. Rao Abhinav Mukerji, Puroshottam and Utsav Sidhu, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Avinash Singh Bagri and five others have filed Writ Petition (C) No. 535 of 2008 in this Court under Article 32 of the Constitution of India airing their grievance that most of the Scheduled Caste and Scheduled Tribe students who have been given admission in IIT-Delhi are being denied the right to pursue their studies by the respondent-Institution on the ground of poor performance and such students are being expelled and their admissions are being cancelled after one year or two years.

2. Ravindra Kumar Ravi and two others who have been similarly placed and expelled by IIT-Delhi by similar orders dated 21.05.2008 and 02.06.2008 filed a separate writ petition, i.e., Writ Petition (C) No. 10 of 2009 highlighting their similar grievance before this Court.

3. The above-said petitioners belong to reserved categories (SC/ST/OBC). They were the students of IIT-Delhi and pursuing the B.Tech. Course. They got

admission in IIT Delhi through All India Joint Entrance Test in the year 2004-2005. These petitioners have been expelled from the B.Tech Course as they could not make the required average credits in their second year.

4. It is the case of the petitioners that in spite of providing reservation in higher education like Medical and Engineering streams, no coaching or any other facilities are provided to SC/ST/OBC candidates to enable them to compete with other general category students, as a result of which, more than 90% SC/ST/OBC students are dropped out from these higher courses in first year or second year. As a result of which the reserved seats in higher courses are lying vacant and unfilled. In the year 2008, about 85% reserved seats remained unfilled in IITs. For the last ten years, in the Courses at IITs, about 90% SC/ST/OBC students are either dropped out or were declared fail in the first year or in the second year. The reservation made by the Central Government/State Governments becomes redundant as no infrastructure is provided to SC/ST/OBC candidates to enable them to acquire bench marks. The duration of B.Tech Course is 4-5 years which is divided into 8/10 semesters depending upon the stream. The said durations are extendable for a further period of two more years to enable the students to pass out the course.

5. The academic performance of a student is monitored at the end of each semester by the Standing Review Committee (SRC) of the Senate. At the end of each semester, if a student fails to satisfy the minimum academic criteria laid down for continuation as a student, the SRC would recommend the termination of registration of the student. According to the criteria, a student in general category must secure at least 20 credits and a student in SC/ST/OBC category must secure at least 16 credits at the end of the 2nd semester failing which his/her registration would be terminated. In the second year, a student in general category must secure at least 50 credits while SC/ST/OBC category student must secure 46 credits at the end of 4th semester failing which his/her registration would be terminated. A student's registration may be terminated at the end of the 3rd year, 4th year or 5th year if he/she fails to earn at least 84, 120 or 156 credits respectively.

6. Unlike in Delhi, in the other IITs like Kharagpur, Bombay, Chennai, Guwahati and Roorkee, if a student fails to achieve the required average credits in the first year or second year, he/she is not expelled from the institute. For such students, there is a programme known as "Slow Track Programme". If a student clears a subject, he is awarded with full credits, assigned to the subject. Besides, the student is also awarded with marks for each subject according to the method mentioned in the guidelines issued by the concerned IITs. Each student is also awarded with a grading. Apart from this, every student is also awarded with Semester Grade Point Average (SGPA) and at the end of the 4/5 years course before granting the degree of B.Tech, Cumulative Grade Point Average (CGPA) is awarded to every student. The determination of passing marks is left to the discretion of the concerned Professor. In IIT-Delhi, there is no such "Slow Track

Programme" for the students who failed to achieve the required credits in the first and second year. Such students in other IITs are properly advised by the Standing Review Committee (SRC) duly constituted by the concerned IIT institute. Though, such SRC is in existence at IIT-Delhi, the said SRC is biased and does not extend any help to the reserved category students.

7. In all the IITs except Delhi, the students are allowed to take up summer courses/examinations for making up any shortfall in their average credits. However, in IIT-Delhi, students of second year who fail to make up the required average credits, are not allowed to take up summer courses/examinations and they are expelled. As per the guidelines of IIT-Delhi, minimum 75% attendance is required for each subject and if a student fails to make 75% attendance in a subject, he is not allowed to take up examination in that subject.

8. Apart from the above, the petitioners highlighted their individual grievance, the method of treatment and the discrimination being followed by IIT-Delhi in respect of SC/ST/OBC students. By proceedings dated 21.05.2008 and 02.06.2008 of the Deputy Registrar, IIT-Delhi, these petitioners were expelled and their names were struck off from the roll of the institution.

9. In these circumstances, the petitioners in both the petitions approached this Court for quashing of the proceedings of the first respondent-Institution dated 21.05.2008 and 02.06.2008. They also prayed for appropriate directions to the IIT-Delhi-first respondent to allow the petitioners to pursue their studies pursuant to the admissions granted to them on the basis of their respective merits.

10. Pursuant to the notice issued by this Court, on behalf of the IIT Delhi, Deputy Registrar (Legal), has filed a counter affidavit highlighting their stand wherein it is stated that the Indian Institutes of Technology are institutions of national importance established through an Act of Parliament, i.e., The Institutes of Technology Act, 1961. IIT-Delhi is one of the seven Institutes of Technology created as centres of excellence for higher training, research and development in science, engineering and technology in India.

11. Petitioners in Writ Petition (C) No. 535 of 2008 had joined the respondent-Institution in the academic year 2006-07 and 2007-08 (Petitioner Nos. 1-4 in the year 2006-07 and Petitioner Nos. 5-6 in the year 2007-08) after clearing the All India Joint Entrance Examination for all the IITs in the years 2006 and 2007. It is stated that in IIT-Delhi for evaluating the performance of a student, a "credit system" of evaluation is followed. Each candidate undertaking these highly professional courses are required to secure the minimum prescribed credits in each year and a particular prescribed total number of credits towards the end of the courses. If any candidate fails to secure the minimum number of credits at the end of each academic year, it would not be possible for any such candidate to secure the minimum prescribed total number of credits towards the end of the course. In these circumstances, the admission of the candidate is terminated as

per the norms laid down by the Institute. Clause 2.3 of the prospectus for the academic year 2006-07 which was issued to the petitioners upon admission into IIT-Delhi specifies the "credit system" followed at the respondent Institute. The academic performance of a student is monitored at the end of each Semester by the Standing Review Committee (SRC) of the Senate. At the end of each Semester, the SRC identifies students who do not meet the required criteria i.e., if a student's cumulative earned credits fall below 16 times the number of regular Semesters spent by the student at IIT Delhi or his/her CGPA falls to 4.75 or less.

12. For a SC/ST/OBC student, the average credits required in order to complete the course is lower than a general category student. A student of reserved category has to secure only 46 credits as against a general category student who has to secure at least 50 credits in order to avoid termination at the end of 2nd semester of the 2nd year. The "Prospectus" and "Courses of Study" booklets carry the rules and regulations by which student of that particular year will be governed/assessed. Each student of the institute is attached to a Course Advisor, a faculty member of the department to which the student is admitted. The course adviser helps the student to plan his curriculum besides looking after his general welfare. The academic performance of each student is monitored by the "Standing Review Committee" (SRC) and the "Departmental Monitoring Committee" (DMC) constituted by the Senate of the Institute.

13. In addition to the general guidelines, procedure, rules and regulations, the deponent of the affidavit has also highlighted the performance of each petitioner and the steps taken by IIT. He has also reiterated the orders passed by various High Courts and by this Court in maintaining standard and discipline in these institutions. A similar counter affidavit has been filed in Writ Petition (C) No. 10 of 2009. We feel that the same is not required to be reproduced.

14. We have heard Mr. D.K. Garg, learned Counsel appearing for the petitioners and Mr. P.P. Rao, learned senior counsel for the first respondent - IIT-Delhi in both the writ petitions.

15. Mr. P.P. Rao, learned senior counsel, appearing for the IIT-Delhi, by taking us through factual details mentioned in I.A. No. 4 of 2009, submitted that all the six petitioners in Writ Petition (C) No. 535 of 2008 were unable to secure the minimum credits in spite of providing additional opportunities. He pointed out that petitioner No. 1 in W.P.(C) No. 535/2008 was admitted in the Institute in the academic year 2006-07 through the All India Joint Entrance Examination conducted jointly by all IITs. At the end of the 1st Semester of the 1st year, the performance of petitioner No. 1 was not up to the mark as he earned only 12 credits. His performance was considered by the SRC in its meeting held in December 2006. Based on the decision, a letter dated 23.01.2007 was sent to his parents requesting them to advise their son to meet the Course Advisor for further help. In the 2nd semester of the 1st year, after Minor-1 examinations, the performance of the petitioner was again monitored by the SRC. As his performance was found to be below average, by a letter dated 28.02.2007, he

was asked to meet DMC on 07.03.2007. Though petitioner No. 1 was registered for the summer semester in 2007 in 3 subjects wherein he could earn 12 credits, due to the poor academic performance the petitioner was able to earn only 4 credits and he was again advised to meet DMC. In the 4th Semester (2nd Semester of 2nd year) because of his poor performance, he was able to earn only 5 credits and was again advised to meet DMC on 26.02.2008. This time, he met DMC and after discussing at length the difficulties experienced by the students, the DMC advised him to devote more time to studies, attend classes regularly and meet the course coordinator of the concerned courses for getting assistance on difficulties experienced in the specific course. He was also advised to meet the SC/ST adviser. At the end of the 4th Semester (2nd year, 2nd semester) the SRC in its meeting held on 20.05.2008 monitored the performance of petitioner No. 1 with other students and decided that as per the Institute regulations "the students who had earned credits less than the minimum stipulated requirement for continuation of registration be terminated from the Institute." The SRC also noted that for a termination at the end of 1st or 2nd year, an appeal is not allowed as per the Regulations. At the end of the 2nd year, 2nd semester, petitioner No. 1 earned only 32 credits as against the stipulated minimum requirement for continuation of 46 credits for students belonging to SC/ST category. In the same way, Mr. P.P. Rao pointed out the performance appraisal of other petitioners.

16. It is true that the petitioners were not able to secure the required credits as against the stipulated minimum requirement for continuation of their studies. It is relevant to mention that admittedly all these petitioners had joined the Institute in the academic years 2006-07 and 2007-08 after clearing All India Joint Entrance Examination conducted jointly for all the IITs in the years 2006 and 2007. It shows that they were successful in securing the minimum cut-off marks earmarked for the SC/ST categories. In such circumstances, it cannot be claimed that all these students are not fit to be admitted in IIT. Mr. D.K. Garg, learned Counsel appearing for the petitioners strenuously submitted that there is no use in providing reservation in higher education/higher courses in IIT, Medical and Engineering streams when no extra facilities are provided to SC/ST/OBC candidates to enable them to compete with other general category students. He also contended that no extra coaching or facilities are provided to them in these higher courses as a result of which more than 90% of SC/ST/OBC students are dropped out from these higher courses in the 1st year or 2nd year and as a result, the reserved seats in higher courses are lying vacant and unfilled. He further contended that even in the current year, about 85% reserved seats remained unfilled in IITs. Though Mr. Rao, by placing the materials pointed out that these students and other similarly placed students were given proper advise, warning, intimation to the parents permitting them to interact with the professors etc., the fact remains that no special or extra coaching or any other facilities were provided to these candidates in these higher courses. It is pointed out that though the duration of B.Tech Course is 4/5 years which is divided in

8/10 semesters depending upon the stream, the said durations are extendable for a further period of two years to enable the students to pass out B.Tech course. We have already pointed out that in IIT-Delhi, the required average credits for general category students in the first year are 20 credits and for reserved category students are 16 for their promotion in the second year. If a student does not succeed in getting required average credits, he is expelled from the Institute. Similarly, in the second year, general category students require an average of 50 credits, while reserved category students require an average of 46 credits. If a student fails in achieving the required credits in IIT-Delhi, such student is expelled from the Institute. By placing relevant materials, Mr. Garg pointed out that unlike Delhi in other IIT Institutes like Kharagpur, Bombay, Chennai, Guwahati and Roorkee, if a student fails to achieve required average credits in the first year or second year, he is not expelled from the Institute. For such students, there is a programme known as "Slow Track Programme" (STP). The relevant provision of STP, as provided under B.Tech/Dual Degree/M.Sc. rules of IIT, Bombay reads thus:

8.4 Slow Track Option.

For students with up to four backlogs (FR/XX) at the end of first and second years, a separate slow-track programme should be worked out by the faculty adviser and got approved by UGAPEC, to enable him/her to complete the degree requirements over a longer-than-normal duration (considering the maximum duration indicated in 8.5). The performance of such students should be monitored on a semesterly basis and requisite corrections in the programme as warranted should be made from time to time.

Students having FR/XX grades (in up to four courses) are advised to opt for slow track option in their own interest, in consultation with their faculty advisers. Otherwise, they will be at risk of early termination if more backlogs are accumulated as per Rule 8.7.

8.5 Maximum period for Completion of Programme

In any case, a student should fulfill the requirements for his/her respective degree within the maximum period specified for each degree as given below, including withdrawal in exceptional circumstances, failing which his/her case will be referred to the Senate for dismissal:

B. Tech. programme:

Six years

M.Sc. 2 Yr Programme:

Three years

M.Sc. 5 Yr. Programme:

Seven years

Dual Degree Programme:

Seven years

It is pointed out that if a student clears a subject/course, he is awarded with full credits, assigned to the subject/course. Besides, the student is also awarded with marks for each subject/course according to the method mentioned in guidelines, issued by the concerned IITs. Each student is also awarded with a grading. Apart from this, every student is also awarded with Semester Grade Point Average (SGPA) and at the end of 4 years/5 years course, before granting degree of B.Tech, Cumulative Grade Point Average (CGPA), is awarded to every student.

17. Another grievance of the petitioners is that the awarding of passing marks is left to the discretion of the concerned professor. For example, it is for the concerned professor to determine the passing marks from 30% to 50% according to his discretion. If a student gets passing marks decided by the concerned professor, such student is awarded with full credits as has been assigned to the concerned course/courses.

18. It is also highlighted that the said programme which is in existence in other IIT Institutes except Delhi has been introduced for the purpose of making students to cover up their deficiencies or to make up their required credits. There is no dispute that in IIT-Delhi, there is no such Slow Track Programme for the students who failed to achieve the required credits in the first year and second year. Such students in other IITs are being properly advised by the Standing Review Committee (SRC) constituted by the concerned IITs.

19. Another difficulty pointed out by the petitioners is that though there is some concession in getting credits in the first and second year for reserved category students admittedly for third year, both general and reserved category students have to secure 84 credits in order to get promotion. It is also brought to our notice that in IIT-Delhi if a student after third year could not make the required average credits, there is a provision of making an appeal to the Dean of Under Graduate Students (UGS). It is the discretion of the Dean to allow such students to take up the fourth year course or not. It is also highlighted that most of the students are being allowed to take up the fourth year course and ultimately students can complete their B.Tech course within a maximum period of 6/7 years (now the same is increased to 8 years).

20. Mr. Garg next pointed out that in all IIT's except Delhi, the students are allowed to take up summer course/examinations for making up for shortfall in their average credits. In IIT-Delhi, students of the second year who fail to make up the required average credits are not allowed to take up summer course/examinations and they are being expelled. It is the grievance of the petitioners that though by our order dated 05.01.2009, we directed the first respondent-Registrar, IIT-Delhi to allow the petitioners to attend classes for the session 2008-09 subject to further orders of this Court and payment of fees, if any. It is pointed out that, these petitioners were not allowed to take up the summer

course. It is not in dispute that first of all, these petitioners were not permitted to attend the summer course and secondly, by attending the summer course, each student gets 12 grades. Though IIT-Delhi has permitted these petitioners to attend their classes for the session 2008-09, they were not allowed to avail the summer course which deprived them in getting 12 grades. Had these petitioners been allowed to participate in the summer course, it could be possible for them to secure reasonable grades which ultimately could push their performance above the cut-off marks. There is no plausible explanation for not permitting them to avail the summer course.

21. If we analyze the credits secured by these petitioners with a requirement of minimum credits in the first two years by permitting them to avail summer course and by conducting extra/additional coaching or training including English subject, it would be possible for them to cross the minimum required credits to attend third year and so on. Though the first respondent has specifically denied that there is no discrimination on the basis of caste or any complaint was made to the appropriate authority, the fact remains that additional/extra efforts were not fully afforded to these students in order to compete with the general category students and also secure the minimum required credits in first and second year.

22. The information furnished by the Government of India, Ministry of Human Resource Development, Department of Higher Technical Education, Section-I, Shastri Bhawan, New Delhi in their letter dated 16.12.2008 (01.01.2009) addressed to one of the petitioners shows that the following information for the year 2008 is relevant:

IIT Delhi

ITI Kharagpur

IIT Guwahati

IIT Kanpur

No. of expelled students involved

20

02

01

01

Action taken by the Ministry of HRD

Being examined

Request/Appeal could not be agreed to. Students have been informed accordingly.

Director, II Guwahati has been requested to reconsider the expulsion of the

student.

IIT Kanpur has been requested to give their comments.

The above particulars are not a valid ground to accept the claim of the petitioners, however, the fact remains that only at IIT-Delhi, 20 students were expelled in the year 2008, though similar syllabus are being followed in other IITs, the expulsion is minimal.

23. Learned Counsel appearing for the petitioners has brought to our notice that even while considering the appeal by these expelled students, the authority concerned, particularly for the year 2008 has not followed a uniform standard. While strengthening the above contention, Mr. Garg has pointed out the case of the following two candidates:

S. No.

Name

Entry No.

Cat.

Earned

EC

Remarks

19

Shyamded Ranjan

2004ME10525

sc

49.0

180

Appeal Allowed

20

Alok Singh Mahor

2005CS50207

sc

51.0

218

Appeal Allowed

Though these two students earned credits less than the required, their appeals were allowed by the competent authority. This shows that they are not consistent with these procedures and in certain circumstances these conditions are being varied and the students who secured less than the minimum required credits are allowed to continue their studies.

24. It is pointed out that though one of the petitioners produced medical certificate for his illness, according to the counsel for the petitioners, the same was not properly appreciated and considered.

25. We have mentioned certain instances to show that these petitioners were not fully responsible for their expulsion but at the same time we are conscious of the fact that IIT-Delhi in order to maintain and continue their high standards of education, implemented certain aspects which were helpful to the petitioners. But the fact remains that in spite of such efforts, unfortunately, these petitioners were not able to secure the minimum grades.

26. It is not in dispute that SC and ST are separate class by themselves and the creamy layer principle is not applicable to them. Article 46 of the Constitution of India enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation. These socially and economically backward categories are to be taken care of at every stage even in the specialized institutions like IITs. They must take all endeavour by providing additional coaching and bring them up at par with general category students. All these principles have been reiterated by the Constitution Bench of this Court in *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, .

27. Considering the various aspects including the fact that (a) appeal provision is available from third year and no such facility for the first and second year; (b) duration of study is now extended by spreading over up to eight years; (c) absence of slow paced course; (d) failure to accommodate these petitioners in the summer course in spite of order of this Court; (e) even candidates who secured lesser grade than the minimum were allowed to go to next academic session by allowing their appeals (authorities are not consistent in considering similarly placed candidates); (f) out of nine students as on date three were not interested and six persons alone want to continue their course, we are of the view that ends of justice would be fully met by giving one more opportunity to them. Accordingly, we direct the first respondent to consider their case afresh in the light of the various aspects mentioned above and in view of the peculiar facts, re-appraise their performance taking note of special features available/applicable to these reserved categories and take a decision one way or the other within a period of four weeks from the date of receipt of copy of this judgment. We make it clear that the first respondent IIT-Delhi is free to pass appropriate orders by considering all the aspects mentioned above including the policy of the Government of India in providing reservation to bring them in the mainstream along with others.

28. With the above direction, both the writ petitions are disposed of. In view of the disposal of the writ petitions, no orders are required in LA. No. 4 of 2009 and Contempt Petition (C) No. 145 of 2009. No costs.