

(1975) 10 OHC CK 0002

In the Orissa High Court

Case No : Original Jur. Case No. 1817 of 1975

Bibekananda Mishra

APPELLANT

Vs

The Principal, University College of Engineering and Others

RESPONDENT

Date of Decision : 21-10-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1976 Ori 122

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : A.B. Misra, P.N. Mohapatra and S.K. Patnaik, for the Appellant; R.K. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—This is an application under Article 226 of the Constitution for a writ of mandamus to direct the Principal of the University College of Engineering at Burla to admit the petitioner as a student in the First Year Degree Course of the College.

2. Petitioner passed the Pre-University Science Examination from the University of Agriculture & Technology, Bhubaneswar, in June, 1974 and also passed the Pre-Professional Science Examination from the said University in June, 1975. He applied for being admitted into the first year class of the University College of Engineering, Burla, affiliated to the Sambalpur University during the 1975-76 session. The opposite party No. 1 had published a printed prospectus inviting applications for admission for the said course. Petitioner claims that he satisfied all the conditions indicated therein regarding eligibility. He was, however, not admitted. It is alleged that the Principal without any rhyme or reason and acting in a whimsical manner did not give full credit to the results of the examinations passed by the petitioner and scaled down the marks. Though admission is on the basis of merit, petitioner's merit having been undervalued, he was not allowed admission. Thus he has been unjustly treated.

3. In the counter affidavit given by the Principal himself, the justification for the basis adopted by him in evaluating the marks obtained by petitioner has been given and it is claimed that petitioner's grievance is without basis.

4. Annexure-3 is the consolidated trimester transcript issued to petitioner on 6-7-1974 indicating the results of the Pre-University Science Examination while Annexure-4 is a similar document in respect of the Pre-Professional Science Examination. Therein Petitioner's results were indicated in terms of grades. Reference to these documents would show that petitioner has been awarded various grades from A to D in different subjects as noted in these documents. Annexures 1 and 2 purport to be mark-sheets showing the equivalence of the results indicated in Annexures 3 and 4 respectively and these have been issued by the Director of the College of Basic Science and Humanities attached to the University of Agriculture & Technology At the foot of each of these documents (Annexures 1 and 2) the following note has been appended:--

"This is not the original transcript issued by the Orissa University of Agriculture and Technology, Bhubaneswar which contains the grades secured by student concerned in different courses in different trimesters."

The eligibility of petitioner for admission into the College of Engineering is not in dispute. According to the Principal, appropriate grade has been given to the results of petitioner in the selection for admission and he was not found entitled to selection on the basis of his result. The real dispute is as to what would be the equivalent marks petitioner can be said to have obtained in the two examinations. Markings in the other Universities within the State are according to the traditional system. A percentage basis is adopted while in the University of Agriculture and Technology grades are given. Regulation No. 19 of the General Regulations of the University makes the following provision:

"The cumulative marks obtained by a student during the Trimester in various tests and examinations as under Regulation 16 for different courses, shall be assessed on the basis of grade, point average and graded alphabetically as follows:

Marks range Grade Significance Point per credit hour.

80 or more A Excellent 4

70 to 79 marks B Good 3

60 to 69 marks C Fair 2

50 to 59 marks D Pass but not satisfactory 1

49 and below F Fail 0

Incompletion of a course I.

Mr. Misra for petitioner has placed before us a "Grade-Marks Reckoner" which is claimed to have been published by the Orissa University of Agriculture &

Technology. A formula of conversion has been provided in the first page of the said Book to the following effect:--

"The following formulae has been adopted by this University to determine the equivalence of each grade point average from 1 to 4, under Trimester system in terms of the percentage of marks awarded under the traditional system of examination.

$$y = 50 - 10x + 5x^2$$

("Y" represents the percentage of marks in the traditional system and "X" represents the grade point average). Illustration -- (Equivalent percentage of 2.00)

$$y = 50 - (10 \times 2) + (5 \times 2^2)$$

$$\text{or } y = 50 - 20 + 20$$

$$\text{or } y = 50$$

In the following pages of the Booklet, the grade point equivalence has been provided. The opposite parties dispute the basis of the reckoner and contend that it has no statutory force. It is also claimed that the method of conversion adopted in the Booklet does not bind other Universities. In the counter affidavit of the Principal, the position has been pointed out thus:--

"5. the petitioner had not complied with all the conditions necessary for submitting the application for admission as he did not submit an authorised mark sheet issued by the Orissa University of Agriculture and Technology as required by the prospectus. The averment to the effect that the petitioner had secured more than 48 per cent. of marks in Physics, Chemistry and Mathematics and was thus eminently qualified and eligible for admission into the first year degree course of the University of Engineering. Burla is absolutely incorrect. The deponent humbly submits that as per the University Regulation (Annexure-6) for two points, the equivalent marks are 60 to 69 per cent. but as per Annexure-1 which is supposed to be an equivalent mark sheet, grade point average of 2 in English and M. I. L. is treated as equivalent to 50 per cent. As per Regulations of the University, the grade point average for 50 per cent. marks should be 1 and not 2. Similarly in Annexure-2, which is equivalent mark sheet for the Pre-Professional Examination, grade point average of 1 in Botany carries 45% marks. As per the University Regulations (Annexure-6), 45 per cent. marks are failure marks and hence the candidate should have failed in Botany as per the Regulation of the University. It is clear from the above that the Director has not prepared the mark sheet as per the Regulation of the University. The deponent further submits that if the mark sheet prepared by the Director is supposed to be on the same basis as the mark sheets issued by the Utkal, Berhampur and Sambalpur Universities which are faithful records of actual marks obtained by the candidates from those Universities, then such an opinion is absolutely unauthorised, unwarranted and issued without any reference to any acceptance

on the part of the Utkal, Berhampur and Sambalpur Universities and as such is totally unacceptable.

In paragraph 6 of the counter-affidavit, it has been further stated:--

"The basis of working out these equivalent admission marks is indicated below: Upto 1972-73, the Orissa University of Agriculture and Technology was issuing mark sheets and there was no problem in evaluating Orissa University of Agriculture and Technology students. In 1973-74, students of Orissa University of Agriculture and Technology submitted Trimester transcripts. As this transcripts contained only point grades and as point grades are equivalent to a range of marks -- not exact marks -- the case of, Orissa University of Agriculture and Technology students was placed before the Sambalpur University for fixing the equivalents in 1973-74. The Sambalpur University decided that grade B which carried 3 points and which was considered to be "good" should be taken as equivalent to 55 per cent. of marks in the Sambalpur University examinations. Exact marks of examination being not available in the Trimester transcript, it was decided to work on the basis of over-all grade point average and hence a multiplying factor of 110 was decided on the basis of the above equivalence which was to be multiplied with the overall grade point average in order to obtain total marks out of 600.

On the above basis 11 students of the Orissa University of Agriculture & Technology were admitted during the year 1973-74. They were all first division students. Unfortunately their performances in the first semester examination was found to be extremely disappointing. Out of these eleven students, only three students passed in all subjects with very low marks and eight failed in one or more subjects. A student who had secured the ideal grade point 4 could not pass in mathematics. Failure rate was 28 per cent for other Universities and Boards and it was 73 per cent for Orissa University of Agriculture & Technology students. Hence there was a necessity to re-examine the equivalence.

While re-examining equivalence, it was observed that the distribution of marks of Orissa University of Agriculture and Technology in the Pre-University examination was such that it over emphasised science subject in comparison with the Sambalpur University Pre-University examination. The distribution of marks of Pre-University examination of the Orissa University of Agriculture and Technology can be taken as equivalent to the following:--

English 100

M. I. L. 60

Mathematics 100

Physics 100

Chemistry 100

The distribution of marks in the Pre-University examination of Sambalpur

University, on the contrary, is as follows:

English 200

M. I. L. 100

Physics 100

Chemistry 100

Mathematics 100

During the admission work in University College of Engineering, it is a general practice that whenever distribution of marks are different from the Sambalpur University Pre-University Examination, the marks are redistributed in such a fashion as to place equal emphasis on the science and humanities subjects as in the Pre-University examination of Sambalpur University and to work out equivalent admission marks for that University or Board. Grade C carrying 2 point is considered as the bare minimum pass marks for the Orissa University of Agriculture and Technology examination. In view of the over emphasis on the science subject as explained above, grade average of 2 would, therefore, be less than bare pass percentage of the Sambalpur University. It was, therefore, decided in 1973-74 that grade average of 2 would be treated as equal to a bare pass mark in all subjects and on that basis, a multiplying factor of 90 was worked out. It is seen from the Orissa University of Agriculture and Technology transcript that whenever deductions are made for assessing the extra credit in extra optional subject, the grade hours based on the minimum grade point of 2 is deducted just as in other Universities the minimum pass percentage is deducted. Therefore, treating grade average of 2 as equivalent to bare pass mark of 30 per cent. in each subject, appears to be rationally reasonable and it is on this basis that the multiplying factor of $6 \times 30 / 2 = 90$ is worked out. This is multiplied with the overall grade point average in order to obtain the total marks out of 600 and this mark is taken as equivalent admission mark for Orissa University of Agriculture and Technology students."

The conversion of the results of the petitioner to the traditional percentage basis has been done on the aforesaid footing.

5. Reliance has been placed on behalf of petitioner on an unreported decision of this Court in O. J. C. No. 720 of 1974 (Jayanta Kumar Parichha v. Principal, Regional Engineering College, Rourkela) disposed of on 14th August, 1974 (Orissa). The facts of that case show that a student from the Orissa University of Agriculture and Technology after passing the Pre-University Examination applied for admission into the Engineering College at Rourkela. The same difficulty as has arisen here arose. The Principal of the Engineering College refused to accept the mark-equivalence provided by the Director and, therefore, refused to admit the candidate. During hearing of the application, the Principal of the Engineering College appeared before the Court and stated that he was not aware of the grade-equivalence provided in the Regulation and accepted the position that on

the basis of such equivalence, petitioner would be qualified for admission. There was, therefore, no decision on merit. While disposing of the matter, this Court observed:--

"On the side of the opposite party, it is contended that marks awarded by the Orissa University of Agriculture and Technology are very much inflated. We would like to observe that the only way this problem can be solved in future is to hold Entrance Examination of candidates of different Universities who seek admission to the Regional Engineering College, Rourkela."

This decision, therefore, does not assist in disposing of the present writ application. The observation made regarding holding of an Entrance Examination was certainly an obiter. In the counter-affidavit, it has been indicated that holding of such an examination for entrants into the Engineering College at Burla was thought of but the idea was dropped when it was found out that it would be a costly process.

6. It is difficult for us to hold on the materials placed that the action of opposite party No. 1 is either whimsical or arbitrary. On the other hand, we are of the view that a rational solution has been found out by the educational authorities. As it appears, the matter was considered by the Sambalpur University itself and persons versed in the problem applied their mind and had adopted a working principle. The principle was put to working test and on the basis of experience gathered during one session, the decision was modified and the present basis has been adopted. It is difficult for the Court to hold that such a basis is unjust. The principles laid down by the Supreme Court in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and in the case of *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, and by this Court in the case of *Ananta Mishra v. Orissa University of Agriculture and Technology* 1974 (2) Cut WR 1191, essentially apply to the facts of such a case.

7. Mr. Mohapatra for opposite party No. 1 further contends that petitioner has no right of admission into the college and, therefore, an application for a writ of mandamus is not tenable. But for the view we have taken on the matter on merits, it is unnecessary to examine this submission advanced on behalf of opposite parties.

8. On the analysis indicated, petitioner's application has to fail. We accordingly direct that the application be dismissed. In the facts of the case, it is appropriate that parties bear their own costs of this proceeding,

Das, J.

I agree.