
(1984) 01 OHC CK 0027

In the Orissa High Court

Case No : Original Jurn. Case No. 2176 of 1983

Bibhuti Bhusan Biswal

APPELLANT

Vs

Orissa University of Agriculture and Technology and Another

RESPONDENT

Date of Decision : 27-01-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 Ori 129 : (1984) 1 OLR 356

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : B.B. Mohanty and S.C. Mohapatra, B.H. Mohanty, B. Das and S.C. Mohanty, for the Appellant; L. Rath, B.B. Misra, N.K. Behera and K.P. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The petitioner has sought a mandamus for admission to B. Sc. (Electrical Engineering faculty of the Orissa University of Agriculture and Technology-opposite party No. 1 for the session 1983-84.

2. The petitioner has alleged that he has a brilliant academic career having been placed in the first class both in the Matriculation and Intermediate Science examination conducted by the Utkal University. He applied for admission to the B. Sc. (Electrical Engineering) Faculty of the opposite party no. 1 for the session 1983-84. He took the entrance examination conducted by opposite party No. 1 and was intimated by Annexure-1 that he had secured 53rd position in order of merit and was to report to the Admission Board at 11 a. m. on 17-9-1983 in the University Office for admission according to the choice indicated by him having regard to the vacancies in the particular faculty available. He was cautioned that if he failed to report at the time prescribed, he would lose his position as per the merit list and his case would be considered on a subsequent date according to the availability of seat in a particular faculty. He was intimated that he could exercise his option in respect of any of the three faculties, namely. B. Sc. (Civil

Engineering). B. Sc. (Mechanical Engineering) and B. Sc. (Electrical Engineering).

3. The petitioner has alleged that following the directions, he reached the University campus around 10.30 a.m. on 17-9-1983 but was obstructed by a peon; and when he approached Shri J. N. Mohanty, the Chairman of the Board and Shri G. K. Das, another member, he was not entertained. So, he immediately approached the Registrar of the University, by then it was 12-15 p. m. and he presented his complaint in writing. The Registrar in turn endorsed the same to the Assistant Registrar. The Assistant Registrar conducted him to the Chairman of the Board who, directed the petitioner to wait till the admissions were over. He has alleged that though he waited there the whole day, nothing was done regarding his admission. He has made a grievance that some interested person resorted to manipulation with a view to keeping the petitioner out and getting another in whom he was interested admitted to the faculty. 18-9-83 was a Sunday. So, the petitioner again approached the various authorities on 19-9-1983. He besought the Registrar by Annexure-3 to admit him in the B. Sc. (Electrical Engineering) faculty as one seat was still available. His application was forwarded to the Admission Board. The Board, it has been complained, did not take any action. So he made representation to the pro-Chancellor on 20-9-1983 narrating the facts and circumstances. The stand which he has taken in this writ petition had been placed before the pro-Chancellor at the earliest opportunity as per Annexure-4. All his entreaties having availed him nothing, the petitioner approached this Court on 3-10-1983 in furtherance of his cause and by order dated 4-10-1983 this Court, while issuing rule directed opposite Party No. 1 to keep a seat in the B. Sc. (Electrical Engineering) faculty for the session 1983-84, vacant.

4. The opposite parties in their return while admitting that the petitioner secured 53rd position in the entrance examination have controverted the allegation that the petitioner had reached the university office at 10.30 a. m. on 17-9-1983 and was obstructed by a peon or had faced any difficulty in making his way through the crowd. They have however stated as follows :

"As a matter of fact the system for admission was completely different. A booth had been set up voluntarily by the "Rotaract boys" of the University at the entrance gate of the University to give assistance to all candidates who had come for admission. All those candidates who had reported at 11 a. m. and prior to it were conducted in a queue to the admission hall where intimations for admission sent to each candidate was received by the clerk-in-charge at the entrance door and only after each of the candidates present had so reported, that they were admitted inside the hall and thereafter the hall door was closed. Out of 200 candidates who had been asked for admission on 17-9-1983, 110 candidates appeared in time. The petitioner was not one of the candidates who had reported in time. After the attendance of each candidate present at 11.00 a. m. was taken thereafter the admission Board met in the hall and scrutinised each candidate's application and directed their admission in order of merit and according to their

application and availability of vacanciesAs against the petitioner whose serial number was 53 the endorsement was made to the effect that he- was absent and such endorsement was also signed by the Chairman of the Admission Board."

They have pleaded that there was no reason why the petitioner should have been kept out if he had reported at the prescribed time. They have further admitted that when the petitioner was brought by the Assistant Registrar before the Chairman of the Board, he was advised to take his turn after the cases of the 110 candidates who had reported in time were considered. They have further alleged that the petitioner left the place as soon as it was declared that all the seats in the three faculties were filled up and admission was declared as closed. They have admitted that on 19-9-1983 a seat in the faculty of Electrical Engineering had fallen vacant as one Sri P. C. Dikshit did not get himself admitted: but one Sri G. C. Pati who had ranked 163 in the entrance examination and was one of the 110 candidates who were present on 17-9-1983 and had been admitted to the faculty of B. Sc. (Agricultural Engineering) applied at the fag end of the day to be admitted to the Electrical Engineering faculty. So, Sri Pati had a preferential claim over the petitioner. The opposite parties have further pleaded that the First Semester of the Electrical Engineering Faculty commenced on 26-9-1983 and the same was to end on 9-2-1984. The delay disentitled the petitioner to any relief. They have further pleaded that there were others who were interested in admission to the faculty. So, the petitioner having failed to turn up at this proper time, was not entitled to a seat to the exclusion of those others. 5. We feel that the case as pleaded by the petitioner has a ring of probability. His running from one authority to another on 17-9-1983, making a representation to the pro-Chancellor on 20-9-1983 alleging the very facts which he has now presented before us persuade us to believe that something happened at the University campus for which he could not be present before the Admission Board at 11 a. m. on 17-9-1983 as directed by Annexure-1. But when he did turn up at 12-15 p. m., his case could have been considered at the close of the day after the cases of all those who were present at the appropriate time had been considered and if a seat was still available. His case need not have been deferred to a subsequent date despite the condition to that effect in Annexure-1. The petitioner had a brilliant academic career. He had secured the 53rd position and in these days when a seat in the engineering faculties is so precious, it would be difficult to believe that he failed to turn UP at the right time because the admitted position is that he appeared before the authorities at 12-15 p. m. The series of circumstances and the conduct of the petitioner lend assurance to his version that he could not appear at 11 a. m. due to circumstances beyond his control. On 19-9-1983 a seat in the electrical engineering faculty was available. Sri Pati had secured 163 position whereas the petitioner had secured the 53rd position. In between the two, the petitioner had a preferential claim. Shri Pati had already been admitted to the Agricultural Engineering Faculty. So, on 19-9-1983 the petitioner should have been admitted to the Electrical Engineering

Faculty. It is not the case of the opposite parties that Shri Pali's case was considered on the 17th because it could not have been so considered. Assuming that the petitioner had left the University Campus sometime in the afternoon, he would rank over Shri Pati on merit. No special consideration was available to be shown to Shri Pali on the ground that he had appeared at 11 a. m. on 17-9-1983. We are, therefore, of the view that the petitioner was unjustifiably refused admission on 19-9-1983.

6. A seat is now available in the faculty as a consequence of order passed by this Court on 4-10-1983. The opposite parties however plead that the delay in disposal of this case by this Court disentitles the petitioner to any relief.

7. We have given our anxious consideration to the matter. The future of the petitioner, a boy of 19 years of age is poised between gloom and sunshine. The question is: Should the technical objections and the inconvenience pleaded by the opposite parties have their day by trampling on the future of the petitioner ? Can't a way be found to do justice in the facts and circumstances of the case ? Law and regulations are made for men and not vice versa. The learned counsel for the opposite parties presented to us the difficulties that the University would face. But the said difficulties are not insurmountable. If the opposite parties had approached the case of the petitioner with compassion objectively, the situation would not have arisen. We hopefully draw attention to the following observations of the Chief Justice of India speaking for the Bench in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, :

".....Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But, the problem which the courts are faced with in those cases is, that it is not until a period of six months or a year elapses after the admissions are made that the intervention of the court comes into play. The time consumed in disposal of such cases by the High Court and Supreme Court creates difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded.....

Those who infringe the rules must pay for their lapses and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. The authorities who made admissions by ignoring the rules of admission cannot be allowed to contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students or that in regard to Medical Colleges the Indian Medical Council will not sanction additional seats."

8. Where a student is unjustifiably kept out and is not granted a seat, he nourishes a sense of resentment and frustration and very often turns a social

rebel. In such circumstances, it is appropriate to put oneself into the shoes of the aggrieved student and seek one's way to a solution. It has been urged that the semester has much advanced and the petitioner would not be able to secure the attendance.

9. Placing the future of the boy in the balance, we hope and trust that no technical obstacle be placed in his way of achieving his objective, his desired goal. If it is necessary, the University should relax the rules and admit the petitioner and conduct extra classes for him. It depends on how one approaches the matter and we hope and trust, the opposite party No. 1 and other authorities would take all necessary steps in furtherance of the cause of justice. The Supreme Court in *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, , while directing admission at the fag-end of the year directed relax of the rigour of the rules. This Court in the case of *Nilamadhaba Nanda and Others Vs. Orissa University of Agriculture and Technology and Another*, directed the University in view of the exceptional circumstances to extend the time for holding the examination. Let not the future of a young boy be blighted by callous, hard and cold approach.

10. So, we allow the writ application, direct the opposite parties to admit the petitioner to the B. Sc. (Electrical Engineering) Faculty for the session 1983-84 and hope and trust that all such steps will be taken by the University and other authorities so that the petitioner does not lose one year of his career or a part of it. There would be no order as to costs.

B. K. Behera, J. :- I agree. As observed by the Supreme Court in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, , equal opportunity for all across the nation to attain excellence is to be the primary imperative. The philosophy and pragmatism of universal excellence through universal equal opportunity is part of our culture and constitutional creed. In the instant case, the petitioner, having a just cause, has been denied admission. In order that justice is done, the only course is the one which we have adopted. To decide otherwise would be perpetrating injustice.