

(1992) 08 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

BIREN KUMAR JAGDEV

APPELLANT

Vs

CONTROLLER OF EXAMINATION, UTKAL UNIVERSITY

RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : 1992 2 CPJ 903

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Complaint allowed

Judgement

1. IN the complaint grievance is made in relation to inaction and negligence of the Controller of Examination and Principal, Banki College, in publication of result of the complainant by Utkal University.

2. COMPLAINANT is a regular student in Banki College in +3 Arts for the period of 1985 to 1988. In 1986, he appeared at Part I examination. He was appeared in Part II in 1987 and final part III examination in 1989. He was permitted to appear in foundation course Core I, Core II, Core III applied/Ancillary subjects in 1989 Part III examination and he appeared in the papers permitted. When results were published, complainant found that his result had been withheld. He came to learn that his written papers in those subjects not having been found, he has been marked absent in the tabulation sheet. He, therefore, made an application to Principal, Banki College, to give him a copy of despatch advice since he has been marked absent in University records in the back papers in which he appeared in 1989. Principal endorsed on that application that complainant has appeared at the examination on those subjects. COMPLAINANT thereafter ran from University to Principal to and fro. Yet his result was not published. On account of this, complainant could not have his higher studies nor could be apply for appointment to any post. He filed the complaint on 30.5.1991 claiming compensation of Rs. 1,10,750/-. On receipt of copy of complaint, Controller of Examinations of Utkal University has stated his case asserting that result of complainant was withheld for non-availability of marks in Paper II Core I English, Paper II History in Core II and Paper VI Economics Honours in Core III.

Non-availability of marks is mainly for two reasons, i.e. (i) candidate not appearing; or (ii) papers being misdirected. When results are published, Principal of the concerned college is to reconcile the results. No such information was received. Immediately after receipt of application dated 8.1.1991 of the complainant through Principal, steps were taken to trace out the marks and result of complainant was published on 15.7.1991. Explaining cause of delay it was asserted that when regular candidates appeared in very many back papers, entire matter required computation and had to be traced out. There is no difficulty in respect of candidates not appearing in back papers. In respect of those candidates who repeat, some more time is necessary. There being many such candidates, examination and publication of result of different years are dealt with by separate Section year wise. It was stated that it was not deliberate and was on account of the fact that college did not take prompt steps to help in locating the papers and matters.

Principal of Banki College stated his case by asserting that he sent the answer scripts as per advice slip of the University. He has filed a document indicating that examination in which complainant appeared was between 3.4.1989 and 10.5.1989 on different dates. Answer scripts were sent by registered parcel to Assistant Controller of Examinations on next day of the examination of each paper. Only on 6.7.1991 Controller addressed a letter to Principal after receipt of this complainant to know details and on 10.7.1991 despatched a typist to the Principal to get the details. All details were given by Principal to the typist of the University who was deputed.

3. FROM the aforesaid narration of facts, it is clear that result of a candidate who appeared in the examination in April, 1989 was published on 15.7.1991 only after receipt of copy of the complaint from this Commission. For considering the grievance of complainant observations of this Commission in two passages in the decision reported in 1991 (1) CPR 395 (Miss Madhu brata Mohanty v. Sri R.K. Panda, Controller of Examination, Utkal University) are to be extracted. They read as follows : "University and other examination in the State have become source of concern to all including the Chancellor. Administration of Universities in Orissa and other statutory examining bodies have created dissatisfaction among the public. This is a well known fact which required no material in support. It is wellknown that results are published late for which admission in colleges are also delayed. Before or at the commencement of imparting instructions in course of studies, elections to College Union interfere. Such elections create unhealthy atmosphere inside the institution at times resulting any action either punishable under criminal law or having tendency towards the same. Shortly, elections are over, vacation starts and thereafter, students becomes busy for their Union day observation finally. Colleges are made examination centres and classes are suspended on account of holding examinations. Thus, education is not imparted in colleges for the full time. It is high time for educational authorities to prescribe minimum number of periods for which a college will impart instruction on a subject. Unless this is done, there is bound to be deficiency in service of

education in the colleges. 5. University administration is still worse. Although in the statutes dates for commencement of examination are fixed, such provision is followed more in its breach. When persons who are academicians were fairly taking care of the education, Courts and adjudicating bodies were becoming slow to interfere with their action. It has now become rampant that the academicians take resort to Trade Union activities for fulfilling their demands made to the employers. They do not take adequate care for the future generation and even cease work. Whether they are right or wrong is a question not to be considered by this Commission. If proper complaint is made, the same shall be examined in more detail. However, this Commission strongly feels that education is not properly imparted and examinations are not properly held. At times, answer papers are lost and a "P-O" formula has been evolved to award marks to candidates which is not authorised under the statute or regulations".

4. IN the decision reported in II (1991) CPJ. 373 (Smt. Monisa Samal v. Sambalpur University) irregularity in conduct of examination was considered. In 74 (1992) CON.LT. (OSC) 1 (Mousumi Nayak v. Council of Higher Secondary Education, Orissa through its Chairman and Another) a controversy whether publication of result of examination is service has been resolved. While so resolving it has been observed : "...Normal presumption is that an examining body perform its duties properly and therefore, Courts and Tribunals become slow to interfere with its activities in view of sensitive nature of the duty performed by it. However, by experience it is found that people have lost confidence in those bodies..."

Unless nature of University administration is kept in mind, working of it cannot be properly appreciated. Under the University Grants Commission Act, a University is to be established under statute. Main function of the University is to impart instructions and examine candidates as per the regulations to be made by it. This function of the University is carried on by authorities and officers. These authorities and officers are normally of academic background. Object of it is that they can appreciate the requirement in the education and the development of such education. There is academic council which prescribes the courses of studies and the eligibility of a candidate to be successful in the examination. Syndicate is in charge of proper execution of the regulation including conduct of examination and publication of results. Officers like Controller of Examinations assist the Syndicate in matters of examination. For conducting written tests examiners like question paper setters and valuers of such papers are appointed by the Syndicate. Their valuation is considered by a conducting board for each subject. On recommendation of the conducting board Syndicate publishes the results. The manner and method of conduct of examination is so systematic that in case the individuals who constitute the bodies or independently Act, have failed to discharge their duties properly there is no scope for any irregularity in examination. This failure may be on account of laxity, right steps not being taken in right time, workload beyond capacity or lack of aptitude and similar reasons. Ultimately, however, a candidate who with high hopes entered into the academic

pursuit suffers which has the effect of completely changing the course of career of a candidate costing it heavily on account of non-fulfilment of his cherished desire and costing nothing to those who are reasonable for it. They forget that they deal with a sensible situation which has got far reaching effect of building of the nation which is more sensible than sophisticated computer of modern days. Frustration of young man on account of their inaction has far reaching present and future effect on the society. Psychologists and administrators should bring home to the knowledge of those individuals by time and again reminding their obligation in discharge of their duty. This appears to be absent in the modern University administration in the State.

5. IF an example is to be sought, the fate of the present complainant is one. While his batch-mates have marched ahead by two years he lagged behind in the academic pursuit on which his career depends. It is difficult to imagine what would, have been his position had he got his result alongwith others who appeared at the examination with him. On account of his lesser position he might have not gained anything. We cannot, however, assume the same since education by itself contributes to the progress of the candidate as well as the society to which he belongs having ultimate effect of progress of the nation. IF this unfortunate situation could not have been avoided, the society and the candidate have to bear it. IF, however, the same is the effect of negligence at any stage, there should be no excuse to such person or persons concerned.

6. FROM the statement of case by the Principal, it is seen that no sooner examination in a written paper is over, the answer papers are sent to the University within a short time. Out-station answer papers are sent by registered parcels. The Principal has discharged his part of the duty by despatching the answer papers to the University which was received by one Assistant Controller. Controller has not come forward within the statement as to what happened thereafter. In this situation, we can safely assume that the Assistant Controller has not discharged his duties properly. As the Controller states the answer papers are dealt with by various examination sections of the University depending upon the year of the back paper. If at all the Assistant Controller has seen the answer papers to the sections, these sections and the persons in charge of them are clearly responsible to mark the candidate absent. Controller is in overall charge of the examinations. Unfortunately in the type of administration carried on he has no control for enforcing discipline among the staff for proper administration of the sections. Since Registrar appears to be the appointing authority, enforcement of control and discipline is in his hands. Controller is only a reporting authority. With the nature of movement of files, the delay in a matter reaching the Registrar is such that by the time the Registrar intends to enforce the discipline it becomes meaningless. Syndicate which has the steering of administration is to look into the matters not being busy in matters which are less important than building of the career of the students who are the future of the Nation. With the coming into force of the Consumers Protection Act, the feeling of immunity from accountability is to be eradicated from the mind of each

individual connected with goods and services. Accountability of any person for his acts and omissions is a common feature in the society. A sense that he may be called upon to explain his conduct creates restraints and brings in alertness. When that is lost, the society faces danger of erosion in values. Though essentially suffering in the hands of unscrupulous traders was the basis for the enactment, the language has been intentionally used by the legislature to make it broad for bringing within its sweep services rendered. It has not only included the persons who hired the services but also beneficiaries from the use of such service with approval of the persons who have hired the services. In that view of the matter, as has already been explained in the decision of this Commission in case of Mousumi Nayak (supra), deficiency in publication of result of the examination is within the purview of consideration of redressal agency under the Act.

Delay of a few days might have been excusable. Delay by two years requires no reason to come to the conclusion that the same is on account of laches. In the minimum, mental anxiety is caused to a candidate. Columns of newspaper have been filled with informations of some candidates even committing suicide being frustrated on account of wrong publication of results. By the time the mistake is corrected, the candidate is no more in this mortal world to enjoy the benefits. Similarly, it becomes difficult for a candidate, who is successful and his results are published, to prosecute higher studies since his failure or lower position as published, does not give him scope for selection with the limited scope of higher education.

7. THESE may by themselves may not call for any compensation unless the actual or anticipated suffering is explain. Imaginary suffering would not be a ground for awarding compensation. In the present case, some materials ought to have been brought to our notice which would have given us scope to draw a clear inference from those facts as regards the actual or apprehended suffering. From the aforesaid discussion, we are clear that there was deficiency in service rendered to the complainant by the University through the opposite party No. 1 - Controller of Examinations. However, in absence of materials, we do not award any compensation. If any complaint is received by us in future where clear actual or apprehended suffering is made out including the frustration of the actual plan for future life, we will not hesitate to award the compensation for rehabilitation of such candidates in the society within the pecuniary limits we have.

8. IN result, the complaint is allowed. Complaint allowed.