
(1996) 09 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 366 of 1994

Madhubrata Mohapatra and Others

APPELLANT

Vs

Utkal University and Others

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Constitution of India, 1950 — Article 225, 227

Citation : (1996) 2 OLR 525

Hon'ble Judges : S.K. Chattrji, J; R.K. Patra, J

Bench : Division Bench

Advocate : M.M. Bose, G.B. Jena, S. Jena, D. Dey and S.S. Mohapatra, for the Appellant; R. Mohapatra and Sanjib Biswas in O.J.C. No. 366 of 1994 and R. Mohapatra, S. Swain, Rakhi Sikdar and S. Ghose, Original Criminal Misc. Case No. 54 of 1994, for the Respondent

Judgement

R.K. Patra, J.—This petition under Article 226 of the Constitution recounts a tale of misery and distress suffered by a group of hapless ladies at the hands of the University authorities.

2. The petitioners are twenty-eight in number who are all lady graduates. The Controller of Examinations of the Utkal University issued notification dated 17-10-1992 inviting applications in the prescribed form from the non-collegiate (private) candidates eligible for admission to different examinations of the Utkal University for the year 1993. The petitioners being desirous to appear at the M. A. (Sociology Part I) Examination applied to the concerned authority in due time. Although they were eligible to appear at the said examination being possessed of the requisite eligibility qualifications, the opp. parties 1 and 2 refused to accept their applications. Finding no other alternative, they approached this Court by filing a writ petition (OJC No. 3305 of 1993) praying for a direction to the opposite parties to accept their application forms and to permit them to appear at the examination as private candidates. The stand of the opposite parties in the case was that the system of accepting non-collegiate (private) candidates for

M. A. examination in Sociology had been abolished by the University and that the application forms of the petitioners were not otherwise complete in all respects. Upon hearing the counsel for the parties, this Court by the judgment dated 16-7-1993 allowed the writ petition. The Court rejected the stand of the University that the system of appearing of private candidates in M. A. examination in Sociology for the year 1993 was abolished. The Court also found that the application forms of the petitioners were summarily rejected without scrutinising them. The Court noticed that non-collegiate (private) candidates were to appear in all subjects except Home Science, Mathematics and Statistics and the petitioners are graduates of Utkal University, many of them being Honours graduates and secured more than 40% of marks in their graduation examination. The manner in which the petitioners were dealt with by the University authorities was seriously commented upon by the Court in paragraph-5 of the judgment. We may quote it:

"Before parting with the case we are constrained to observe that the callous, superficial attitude shown by the authorities of the University in this matter does not commend us. On perusal of the counter affidavit and on consideration of the submissions made it appear to us that the opposite parties have taken an attitude of casual unconcern in this matter. Important university functionaries who deal with career and future of young citizens of the country are expected to act in a just, fair and proper manner and to exercise powers vested in them with care and circumspection. In the present case, we observe and not without remorse that there was total lack of these considerations in the approach of the authorities concerned."

The Court accordingly directed the opposite parties to receive the application forms of the petitioners and permit the eligible persons to appear at M. A. examination in Sociology (Part-I) as non-collegiate (private) candidates. The Court took note of the fact that the examination was scheduled to commence from 26-7-1993 and because there was little time, it directed the petitioners to submit their forms with requisite certificates and testimonials before the Controller of Examinations within one week and the concerned authority was to complete the scrutiny of the applications within two days and was to allow the candidates to appear at the examination. In pursuance of the direction, the petitioners submitted their application forms to the concerned authority within the time allowed by the Court, but no action was taken in the matter by the university authority. The case of the petitioner is that although the examination was already over by 26-7-1993, the opposite parties "falsely informed the Court that it was scheduled to commence from 26-7-1993. In the circumstances, the petitioners again approached this Court by filing a writ petition bearing OJC No. 5345 of 1993 praying for a direction to the opposite parties to conduct a special examination for the petitioners during the year 1993. The Court on 3-1-1994 passed an order declining to entertain the writ petition because of the fact that the year "1993" had already elapsed. The petitioners say that they were expecting that the University authorities would give them a chance to appear at

the examination by issuing a fresh notification during the year 1994. But to their dismay although notification was issued on 6-11-1993 (Annexure-4) calling for applications from non-collegiate (private) candidates eligible for admission to M. A. examination for the year 1994, the subject "Sociology" was excluded. The petitioners being aggrieved by the said notification have filed the present writ petition for quashing the same and prayed to direct the opposite parties to accept their applications. This Court while admitting the writ petition on 21-2-1994 passed an interim order in Misc. Case No. 362 of 19.4 which reads as follows :

"The opposite parties are directed to accept the applications of the petitioner to appear in the examination in question if the forms properly filled in are submitted within seven days from the date they are supplied to the petitioners. For this purpose, opp. party No. 2 shall supply forms to the petitioners on or before 20-2-1994.

This order shall abide by the result of the writ petition. The Misc. Case is disposed of accordingly."

3. Counter-affidavit has been filed on behalf of the opposite parties justifying exclusion of "Sociology" for the M. A. (Arts) examination, 1994. The opposite parties in their additional affidavit dated 1-9-1995 have stated that as per the interim order dated 21-2-1994 passed in this case, the petitioners were to purchase forms and submit them but none of them either purchased the forms or submitted the same to the Controller of Examinations or any other authority of the University. . .

Meanwhile the petitioners have filed Original Criminal Misc. Case. No. 54 of 1994 on 18-3-1994 alleging that the Controller of Examinations refused to accept the forms of the petitioners which they submitted pursuant to the aforesaid interim order of this Court and, as such, he (Controller of Examinations) has committed contempt of the Court. The Controller of Examinations has filed affidavit stating that neither the petitioners came to the University office to fill up the forms nor did they submit any forms within the stipulated date. An affidavit sworn to by Sanghamitra Mohanty. petitioner No. 21, has been filed in the said contempt case on 13-4-1994 stating inter alia that after obtaining the certified copy of the order dated 21-2-1994 she along with petitioners 4, 5, 9, 11, 20, 21, 23, 26 and 27 approached the Controller of Examinations on 23-2-1994 and produced before him the xerox copy of the order. The Controller of Examinations asked them to see him on the next day. On 24-2-1994 the petitioners again met the Controller of Examinations who assured them that he would talk to Sri Ray. Head of the Department of Sociology and instructed the petitioners to see him on 25-2-1994. The petitioners on the date fixed (25-2-1994) accordingly met the Controller of Examinations and submitted application forms. The Controller of Examinations again asked the petitioners to see him on the next day (26-2-1994). On 26-2-1994 when the petitioners met him, he kept himself engaged in discussion with Sri Ray and asked the petitioners to revisit him on 28-2-1994. On that day,

the petitioners met him but again he asked them to come on 1-3-1994. On that day when they met the Controller of Examinations he asked them to approach him on the next day. Accordingly, the petitioners met the Comptroller of Examinations on 2-3-1994 but he bluntly refused to accept the application forms from the petitioners.

4. We have bestowed our serious consideration to the submissions made by the parties. We have perused the writ petition, the counter-affidavit and other affidavits filed by the parties. On careful examination of the matter, we are not inclined to accept the plea taken by the Controller of Examinations that the petitioners did not approach him or any of the University authorities with application forms as per order dated 21-2-1994 of this Court. Petitioners having got an order in their favour on 21-2-1994, as prudent persons must have been anxious to reap the benefits of the said order and there is no reason as to why they would deprive themselves of the opportunity given to them to submit their application forms to appear at the examination. In the circumstances, we are inclined to hold that the petitioners in pursuance of the order dated 21-2-1994 approached the Controller of Examinations and by exhibiting his pride and prejudice allowed the matter to drag on. The result is that with the passage of time the petitioners were deprived of the chance to appear at the examination in the year 1993. We, therefore, express our displeasure at the conduct of the Controller of Examinations. Because of the fact that meanwhile time has taken its toll, we dispose of the contempt case (Original Crl. Misc. Case No. 54 of 1994) as such. Since wrong has been done to the petitioners, we direct the opposite parties, particularly, the Controller of Examinations (opp. party No. 2) to accept the application forms of the petitioners to appear at the M. A. Examination (Sociology Part I) within a fortnight hence. If any of the petitioners approaches the Controller of Examinations for application forms, he would make the same available on payment of the requisite fees to enable her to apply afresh. The Controller will examine the application forms of the petitioners in terms of the judgment and order of this Court rendered in OJC No. 3305 of 1993. The opposite parties will thereafter conduct special examination in M. A. (Sociology Part-I) for the petitioners in the last week of October, 1996. The said examination will be taken to be the examination of the year 1993.

5. In the result, OJC No. 366 of 1994 is accordingly allowed and Original Crl. Misc. Case No. 54 of 1994 is disposed of. Hearing fee is assessed at Rs. 500/-.

S. Chatterji, J.

I agree.