
(1996) 09 OHC CK 0032

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3263 of 1996

Orissa Engineering College

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:

Citation : (1996) 2 OLR 397

Hon'ble Judges : S.C. Datta, J;P.K. Patra, J

Bench : Division Bench

Advocate : L. Pangari, P. Patnaik, B. Jena, S.N. Sukla and P. Panda, for the Appellant; Additional Government Advocate for opp. party 1, R.K. Mohapatra, R.K. Dash, D.R. Swain and D.P. Dash for opp. party 2 and S.P. Mishra and S.S. Das for opp. party 3, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The petitioner is the Orissa Engineering Cottage. Bhubansswar being represented by the President of its Governing Body. It is a private engineering college which was set up in the year 1986 by charitable trust called "Navjyoti Charitable Trust." The college has received approval from all India Council of Technical Education to conduct degree course in engineering and is affiliated to the Utkal University.

2. The controversy in this writ petition is with regard to the mode of filling up the vacant seats from the N. R. I. quota. The-Secretary to the Government of Orissa in the Industries Department in his order communicated in the letter dated 20-12-1995 at Annexure-6 has observed that "in the event NRI students are not available against the NRI quota, the vacant NRI seats may be filled up only from the Joint Entrance Examination panel after obtaining approval from the State Government". The petitioner being felt aggrieved by the said decision has filed this petition challenging it on the ground that it is contrary to the direction of the Supreme Court in the case of J. P. Unnikrishnan and other related cases.

Counter affidavit has been filed on behalf of the State of Orissa-opp. party No. 1 supporting the impugned decision. It has been stated in the counter-affidavit that the decision to fill up the unfilled seats out of the NRI quota on the basis of the Joint Entrance Examination panel is fair and the said decision has been taken with a view to impart technical education of high standard.

3. The mode of filling up of seats in private professional colleges has engaged the attention of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . In that case the Constitution Bench of the Court framed the scheme governing admission to professional colleges with view to ensure that merit prevails in the matter of admission both in respect of "free seats" as well as in respect of "payment seats". The judgment was delivered on 4-2-1993. Review petitions were filed by several institutions against the said judgment which were dismissed by the Constitution Bench on 14-5-1993 subject to one clarification, viz , it shall be open to the professional colleges to admit non-resident Indian students (NRI students) to the extent of 5 per cent of the total intake in a given year and those 5 per cent seats were to be out of 50 percent "payment seats". It was further indicated by their Lordships that the NRI students shall be admitted on the basis of merit but in view of different backgrounds they come from, it is for the management of the college concerned to judge the merit of those students having regard to the relevant factors. As already indicated, the dispute in the present case is very limited to the extent as to what should be the criterion for filling up the unfilled seats out of the NRI quota seats. On our direction, additional affidavit has been filed on behalf of the petitioner on 26-8-1996 stating that the petitioner college has been strictly adhering to the guidelines issued by the All India Council for Technical Education and Director of Technical Education and Training, Orissa and fills up the unfilled NRI seats by inter se merit of students securing minimum 60 per cent marks or above in qualifying examination in single sitting, in the said affidavit, it has been further claimed that till now there has not been any complaint from any quarter before any authority that the petitioner has in any manner violated the guidelines while filling up the unfilled seats of the NRI quota.

4. We here carefully considered the submissions made by the counsel on both sides and are of the considered opinion that filling up of vacant seats from out of the NRI quota seats is at the discretion of the management. This position seems to be clear from the order dated 13-5-1994 passed by the Supreme Court in the case of *T.M.A. Pai Foundation* which has been extracted in paragraph-7 of the judgment of the Supreme Court in *T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others*, . We may quote the relevant part which reads as follows :

"Order dated May 13,1994 deals with two aspects,..... We, however, make it clear that in case any seat in the NRI quota remains unfilled, the same can be filled by the Management at its discretion.

(Underlining supplied)

In the case at hand, as already noticed, the discretion of the management to fill up the unfilled seats cannot be said to be arbitrary or whimsical in view of the clear stand taken by the petitioner in the additional affidavit filed on 26-8-1996 wherein it has been stated that the unfilled NRI quota seats will be filled up by inter se merit of students securing minimum 60 per cent marks or above in the qualifying examination in single sitting.

5. For the reasons stated above, the State Government-opp. party No. 1 clearly erred in interfering with the discretion of the petitioner in the matter of filling up of the unfilled seats of the NRI quota by passing the impugned order. We accordingly quash the offending part of the impugned decision at Annexure-6.

6. It is stated by the learned counsel for the petitioner that the time for admission to the college has already expired and for late admission approval/permission of the Utkal University is necessary. In the peculiar facts and circumstances of the case, we direct that if the time for admission has already expired, the competent authority of the Utkal University on being approached by the petitioner by filing representation will condone the delay.

The writ application is accordingly allowed.

S.C. Datta, J.

I agree.