
(2015) 05 OHC CK 0048
In the Orissa High Court
Case No : O.J.C. No. 14267 of 2001

Rasmita Gamang

APPELLANT

Vs

Berhampur University and Others

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 120 CLT 1033 : (2015) 2 ILR Ori 158 : (2015) 2 OLR 344

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : C.A. Rao, Senior Advocate and A. Tripathy, for the Appellant; B.S. Mishra (2), M.R. Mishra, A.P. Dhir Samanta and A.R. Mishra, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Dr. B.R. Sarangi, J—The petitioner, who is a Scheduled Tribe woman candidate has filed this application assailing the communication vide Annexure-6 dated 27.09.2001, made by the Head of the Department of Business Administration, Berhampur University for not admitting her into MBA Course for the academic Session 2001-2002 & returning her original documents along with Bank Drafts though she was selected and placed in Sl. No. 1 on the merit list of the S.T. category and Sl. No. 57 out of 84 of merit list without assigning any reasons.

2. The short fact of the case in hand is that the petitioner passed B.Sc. with Second Class Honours with Distinction. Berhampur University issued an advertisement inviting application from eligible candidates for admission into MBA Course (MBA-CAT-2001) for the session 2001-2002. In response to the same, the petitioner having got requisite qualification applied for the said course and after due scrutiny she was allotted Index No. 439 by opposite party No. 3 on 14.07.2001. The Department of MBA, Berhampur University issued Admit Card vide letter No. 316 dated 31.07.2001 with Admission Test Roll No. 390 to be held at the P.G. Department, Berhampur University on 16.08.2001 at 10.30 A.M.

Pursuant to which the petitioner appeared in the said test and was selected for admission to MBA course for the session 2001-2002 having stood first amongst S.T. candidates. Accordingly, she was intimated vide letter No. 379 dated 10.09.2001 to send a Draft of Rs. 1286/- drawn on the S.B.I. towards admission fees and sessional charges and documents mentioned in Sl. No. 1 to 11 and declaration etc. so as to reach opposite party No. 3 on or before 25.09.2001. Accordingly, the petitioner sent all the documents as per the list and a Bank draft of Rs. 1,286/- issued by S.B.I., Gunupur dated 20.09.2001 by Registered Post which was received by the authority within the time fixed. Opposite party No. 3 again issued another Registered letter bearing No. 402/MBA/BU/2001 dated 22.09.2001 to the petitioner indicating that she has submitted only one Bank Draft of Rs. 1,286/- and she has to send two more Bank Drafts amounting to Rs. 6,000/- and Rs. 1,600/- in favour of H.O.D., MBA to be drawn at S.B.I. Bhanja Bihar (Code 2107) so as to reach on or before 25.09.2001 otherwise her candidature will be rejected which she received on 24.09.2001 at Gunupur. After receipt of the said letter, immediately she prepared two Bank Drafts amounting to Rs. 6,000/- and Rs. 1,600/- each from S.B.I. Gunupur and sent the same on the same day in favour of the H.O.D., MBA to be drawn at S.B.I. Bhanja Bihar (Code No. 2107) by Dolphin Courier Service from Gunupur so as to reach opposite party No. 3 by 25.09.2001. But, she was intimated by opposite party No. 3 that she has not been admitted to the said course for the academic session 2001-2002 and the original documents along with Bank drafts were returned on 27.09.2001 vide Annexure-6. On receipt of the said letter immediately the petitioner and her father met Vice Chancellor of Berhampur University and brought it to his notice that though she stood first in the merit list of S.T. category and fulfilled all the requirement as intimated to her, opposite party No. 3 returned her all original documents by Registered post with A.D. On consideration of her grievance, the Vice Chancellor assured her that he will look into the matter and directed her to come afterwards. Though the petitioner met Vice Chancellor and Head of the Department on 12.10.2001, she was intimated that seats have been filled up and as such they had no power to extend the seats. Consequentially, she has been denied to prosecute her study in MBA course during the session 2001-2002 even if she stood first in the merit list amongst the S.T. candidates. Hence this application.

3. Mr. C.A. Rao, learned Senior Counsel appearing for the petitioner fairly submits that the petitioner filed this writ petition seeking for issuance of a writ of mandamus or certiorari or any other writ to quash Annexure-6 dated 27.09.2001 and directing the opposite parties to admit her in MBA Course for the session 2001-2002 as per selection of the merit list, if necessary by extending a seat for her and/or "any other order/direction as may be deemed fit and proper". He further submits that during pendency of this writ petition since the academic session 2001-2002 for the aforesaid Course has already been over and though the writ petition has effectually infructuous which is being heard in the year 2015 after lapse of fifteen years in the meantime, the petitioner claims that "any other

order/direction" be extended to her and essentially she claims that for latches of the authority since the petitioner who is as a S.T. has lost her career by being deprived of her higher study, she should be granted relief within the meaning of "any other order/direction as deemed fit and proper" by this Court. In order to substantiate his case, Mr. C.A. Rao, learned Senior Counsel appearing for the petitioner has relied upon the case of Common Cause, A Registered Society Vs. Union of India and Others, AIR 1999 SC 2979 : (1999) 5 JT 237 : (2000) 1 SCALE 476 : (1999) 4 SCALE 354 : (1998) 4 SCALE 1 : (1999) 6 SCC 667 : (1999) 3 SCR 1279 : (1999) AIRSCW 2899 : (1999) 6 Supreme 425 claiming damages for the loss sustained by the petitioner due to arbitrary and oppressive action taken by the authority.

4. Mr. B.S. Mishra-2, learned counsel appearing for opposite party Nos. 1 to 3 submits that Berhampur University imparts education in two years course of MBA and admission to the said course is made by taking into consideration the marks secured by the candidates in the common admission test along with the career marks (i.e. the percentage of marks secured by the candidates from H.S.C. to Graduation). It is admitted that pursuant to applications invited from the eligible candidates, the petitioner applied for admission to MBA course and participated in the common examination test and taking into consideration her career marks as well as marks secured by her in the common admission test she was in 252nd position out of 521 candidates in the select list. However, she had secured first position in the merit list of the candidates belonging to Scheduled Tribe category. It is further admitted that the petitioner has been intimated by opposite party No. 3 on 10.09.2001 for submission of necessary documents along with Bank drafts by 25.09.1991 for taking admission to the MBA course. It is also admitted that though the petitioner submitted Bank draft of Rs. 1,286/- towards admission fee in favour of the Administrative Officer of the University, she had not submitted two other Bank drafts of Rs. 6,000/- and Rs. 1,600/- each in Business Administration Department of the University though such mention was made in the prospectus which shall be collected for development fees and Seminar charges of the University. Therefore, she was intimated vide letter dated 22.09.2001 to deposit the said two Bank drafts by 25.09.2001, failing which her candidature will be rejected which the petitioner received on 24.09.2015 and immediately she prepared two Bank drafts amounting to Rs. 6,000/- and Rs. 1,600/- each and sent the same to the University authorities which the University authorities received on 26.09.2001 which is one day after the last date i.e. 25.09.2001. Therefore, the petitioner having not satisfied the requirement within the time fixed and the classes had to begin on 27.09.2001, the authorities admitted Sri Siba Prasad Sabar, the next candidate belonging to the same category (S.T). Since the seats had already been filled up even if the Bank drafts of Rs. 6,000/- and Rs. 1,600/- each, reached one day late, the petitioner could not be admitted consequently she was deprived of prosecuting her studies. Therefore, no Illegality and irregularity has been committed by the opposite parties in admitting the second candidate in the list belonging to S.T. category on

25.09.2001 and allowing him to prosecute his study in MBA Course for the session 2001-2002. The number of seats for MBA Course is 30 as approved by the A.I.C.T.E. and the University cannot admit students beyond the approved strength.

5. Considering the above facts pleaded by the parties and after going through the records, it is seen that admittedly the petitioner stood first amongst the ST candidates and therefore she has got legitimate expectation to prosecute her study in MBA Course for the session 2001-2002 by getting herself admitted to the said course. As per the intimation letter dated 10.09.2001 the petitioner complied with all the conditions stipulated therein by providing original documents and also required Bank draft amounting to Rs. 1,286/- drawn In favour of the Administrative Officer of the University and supplied the, documents mentioned therein. The University communicated on 22.09.2001 by Registered Post with A.D. to send two other bank drafts of Rs. 6,000/- and Rs. 1,600/- which the petitioner received on 24.09.2001. In compliance with the same, without causing any delay she immediately on the very same day i.e. on 24.09.2001 prepared two Bank drafts from S.B.I., Gunupur and sent the same through Courier with a belief that it will reach by 25.09.2001 which was the last date of submission of documents for admission to the said course. But, unfortunately the same was received on 26.09.2001 after the cutoff date for which the petitioner could not get admission to the said course whereas the second candidate, namely, Siba Prasad Sabar was admitted to the said course on 25.09.2001 and allowed to attend the classes with effect from 27.09.2001. When the petitioner caused an inquiry about her admission, she was informed that the seat has already been filled up. Therefore, she made a representation to the authority and since no action was taken she approached this Court. This Court by order dated 20.11.2001 issued notice by Special Messenger directing to keep one seat vacant if there is still any vacancy in the M.B.A. course until further orders. On receipt of the same on 24.11.2001 vide Annexure-E/2, opposite party No. 3 allowed the petitioner to attend the class till disposal of the writ petition. But, on 01.12.2001 vide Annexure-F/3 she was denied by the authority to attend the classes taking the plea that this Court had not passed any specific order allowing her to attend the classes in the Department As it appears, there were 32 seats in the MBA Course of the University for the session 2001-2002 vide Annexure-C/3 and only 30 candidates were admitted to the said course and two seats were lying vacant, therefore, the petitioner could have been allowed to prosecute her study. The petitioner was residing at Gunupur which is far away from Berhampur University. In any ease, if there was any requirement of other Bank drafts, then the authority could have called upon the petitioner to appear in person on the date fixed. Instead of doing so, she was intimated to send the Bank drafts so as to reach by 25.09.2001. The petitioner responded well to the letter communicated to her on 22.09.2001 and prepared two Bank drafts immediately on receipt of the said letter on 24.09.2001 and tried her level best to reach the said two Bank drafts well within the time by sending it through Courier, but

unfortunately the same was received one day after the last date. Therefore, she was deprived of getting admission to MBA Course even though she stood first in the merit list of ST category. If the documents including the other two Bank drafts of the petitioner did not reach on the date of admission, how the second candidate was admitted immediately i.e. on 25.09.2001 and the authority allowed him to continue his classes from 27.09.2001 on the very next date which creates suspicion reason being if the seat admissible to the petitioner could not be filled up, then second candidate had to be intimated by the University to get admission to the said course. But, the opposite parties have neither stated the said fact in the counter affidavit nor in the subsequent additional affidavit filed in compliance with the order dated 10.02.2015 which is just repetition of the counter affidavit filed by opposite party No. 3. Therefore, if any seat was lying vacant because of non-admission of the first candidate how the second candidate could be admitted without prior intimation and allowed to prosecute his study on 27.09.2001 on the very next date that casts doubt on the conduct of the authorities. Admittedly, the petitioner deposited admission fees drawn in favour of the Administrative Officer amounting Rs. 1,286/-. If she would have been admitted on that basis It would not have caused any prejudice to anybody. The further amount which the petitioner was called upon to deposit by way of two drafts of Rs. 6000/- and Rs. 1,600/- each drawn in favour of the Head of the Department, MBA was only meant for development fees and Seminar charges. The same could have been deposited after the admission was over. Therefore, the action of opposite party No. 3 creates suspicion in the mind of this Court that in order to extend the benefit of getting admission to Siba Prasad Sabar who was not eligible to get admission, according to his position in the merit list, the petitioner was debarred to take admission. So, the petitioner was deprived of her legitimate right to prosecute her higher study. This action of the authorities is arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

6. The petitioner being an woman candidate belonging to ST category having passed B.Sc. degree with second Class Honours with Distinction and qualified in the selection test has got legitimate expectation to go for higher studies i.e. MBA for the session 2001-2002, but by the arbitrary and unreasonable action of the authorities she was deprived of prosecuting her higher study. Therefore, "loss" caused to her life by not allowing her to go for higher study for no fault of her own cannot be compensated in any manner. The dream of the petitioner was vanished due to such arbitrary and unreasonable action of the authorities. Even though this Court directed vide order dated 20.11.2001 that if there Is still any vacancy in the MBA course, one seat be kept vacant until further orders pursuant to which the petitioner was allowed to prosecute her study and subsequently, vide letter dated 01.12.2001 she was denied to attend the classes when two seats were lying vacant that itself amounts denial of prosecuting higher studies by the University.

7. Mr. B.S. Mishra-2, learned counsel appearing for opposite party No. 3 submits that since the academic session 2001-2002 has already been over long since, the

writ petition has become infructuous and the petitioner is not entitled to get any relief. Mr. C.A. Rao, learned Senior Counsel appearing for the petitioner submits that due to arbitrary and unreasonable action of the University authorities, the petitioner was deprived of prosecuting her higher study, therefore, she may be granted any other relief by passing "any other order/direction as may be deemed fit and proper".

8. Considering such contentions raised by the parties, even if admission to MBA Course for the session 2001-2002 has been over long since, but since due to arbitrary and unreasonable action of the authorities, the legitimate expectation of the petitioner to prosecute her study has been jeopardized, this Court thinks it proper to consider if "any other order/direction as may be deemed fit and proper" In the circumstances of the case In hand can be granted.

9. The apex Court In the case of State of Rajasthan Vs. Hindustan Sugar Mills Ltd. and Others, AIR 1988 SC 1621 : (1988) 3 JT 57 : (1988) 2 SCALE 20 : (1988) 3 SCC 449 : (1988) 1 SCR 461 Supp : (1988) 2 UJ 362 held that the High Court was exercising high prerogative jurisdiction under Article 226 could have moulded the relief in a just and fair manner as required by the demands of the situation. In exercise of such power under Article 226 of the Constitution of India even though no specific prayer has been made in the writ petition taking into consideration the facts and circumstances of the case, this Court is inclined to mould the relief and pass order/direction as deemed fit and proper as prayed for by the learned Senior Counsel for the petitioner In the present writ petition.

10. The petitioner having been selected and stood first in the merit list amongst the ST category candidate she had every legitimate expectation to prosecute her studies and as such she has complied all the conditions stipulated in the letter communicated to her but depriving her to prosecute her studies because of non-receipt of two other drafts amounting Rs. 6,000/- and Rs. 1,600/- in time was illegal.

11. The doctrine of legitimate expectation was evolved in England, but has been followed in English Speaking countries including India by application of which the Court insists a duty to her upon an administrative authority in cases where otherwise, the affected Individual had no right to be heard. While the common law rule of natural justice applied only to (a) the exercise of statutory power, and (b) to the prejudice of existing legal rights or interests, the doctrine of legitimate expectation extends this protection of natural justice to (a) the exercise of non-statutory administrative power as well, (b) where the interest affected is only a privilege or benefit and it is not existing but prospective. (See (1984) 2 All E.R. 935 (C.C.S.U. v. Min.). This doctrine of legitimate expectation can be considered to be an off-shoot of the general doctrine that every public authority must act fairly. In England, it has been held that the plea of legitimate expectation provides a sufficient interest to a person to enable him to have judicial review in a case where he cannot point to the existence of a substantive right. (See (1983) 3 All E.R. 801 (Findlay v. Secy. of State). Of course, a mere hope of a person

that he would obtain or enjoy the benefits would not suffice the doctrine. In order to constitute a legitimate expectation, the same must have a reasonable basis. In the case of Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601 : (1992) 6 JT 259 : (1992) 3 SCALE 85 : (1993) 1 SCC 71 : (1992) 2 SCR 322 Supp , the Supreme Court held that mere reasonable or legitimate expectation of a citizen, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. In the case of Union of India and others Vs. Hindustan Development Corpn. and others, AIR 1994 SC 988 : (1993) 3 JT 15 : (1993) 2 SCALE 506 : (1993) 1 SCALE 56 : (1993) 3 SCC 499 , the Supreme Court elaborately dealt with the doctrine of legitimate expectation. The Supreme Court held that the concept of legitimate expectation in administrative law has now undoubtedly gained sufficient importance. "Legitimate expectation" is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action and this creation takes its place besides such principle as the rules of natural justice, unreasonableness, the fiduciary duty of legal authorities and in future perhaps, the principles of proportionality". While dealing with the doctrine, the Supreme Court also held that the legitimate expectation may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fact expansion of the governmental activities. Thus observing, the Supreme Court also concluded that after a denial of legitimate expectation in a given case whether it amounts to denial of rights guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violations of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 of the Constitution, but a claim based on a mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference and it depends very much on the facts and the recognized general principle of administrative law applicable to such facts and the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates, which shuts the Court out of review on the merits.

12. Taking into consideration the above facts, this Court in Rajashree Samal Vs. State of Orissa and Others, (2008) 2 OLR 976 , in a similar circumstance where the petitioner in that case was deprived of taking admission into the MDS course for the session 2008-2009 and a person below her rank was allowed to prosecute his studies, set aside the illegal admission. The judgment of the single Judge was

challenged in a writ appeal. The Division Bench of this Court also rejected the said appeal against which order the State as well as the person aggrieved approached the apex Court and the same appeal was also dismissed by the apex Court and justice was delivered to the person who had been selected by following due procedure of selection.

13. As the session 2001-2002 has already been over, now the question of allowing the petitioner to prosecute her study following the principle decided in Rajashree Samal as discussed above at this point of time may not arise. But, the relief can be granted at this stage is the most disturbing issue to be decided at this point of time. Certainly, the candidate having been selected and stood first in the merit list of S.T has got legitimate expectation with high ambition to earn livelihood by prosecuting higher study create better avenue by joining in service in future. By depriving of such lucrative position, she is deprived of getting higher studies and also maintaining better life style and as such, "loss" caused to her for no fault of her own but due to arbitrary and unreasonable action of the authorities should be compensated.

14. Let me now come to the question of "loss" which has been caused to the petitioner due to non-granting of the admission by opposite party No. 3. In Consumer Unity and Trust Society, Jaipur Vs. Chairman and Managing Director, Bank of Baroda, Calcutta and Another, (1995) 83 CompCas 187 : (1995) 1 CTC 202 : (1995) 2 JT 151 : (1995) 1 SCALE 387 : (1995) 2 SCC 150 : (1995) 1 SCR 707 : (1995) 1 UJ 471 it is held that "loss" is a generic term. It signifies some detriment or deprivation or damage, injury too means any damages or wrong. It means "invasion of any legally protected Interest of another".

15. The pain and suffering sustained by the petitioner throughout her life and mental distress and agony caused due to the act of the authority depriving the petitioner to prosecute her higher studies cannot be compensated in any manner. The 6th Edition of Black law Dictionary at page 389 defines "damage" to mean as follows:

"A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another. Money compensation sought or awarded as a remedy for a breach of contract or for tortuous acts. In other words, the word "damage" is simply a sum of money given as compensation for loss or harm of any kind. Further simplify the same "damage" means the harm or loss suffered or presumed to be suffered by a person as a result of some wrongful act and a sum of money given to compensate the damage is called "damages".

The apex Court considering the facts of the respective cases decided and granted compensation to the person aggrieved for loss and wrong done by the authority. In Registered Society mentioned (supra) the apex Court held that the Court can

award "damages" against the public authorities to compensate loss or injury caused to the petitioner provided the case involves violation of fundamental rights by the authorities or their action is wholly arbitrary or oppressive in violation of Article-14 or breach of statutory duty and is not a purely private matter directed against the private individual.

16. Applying the said principle to the present context, it appears that due to arbitrary exercise of power by the authorities, the petitioner has been deprived of prosecuting her higher study it violates the fundamental right of the petitioner as enshrined in the Constitution. Therefore, taking into consideration the status, mental loss, agony and deprivation of a better future prospects and to caution the opposite parties not to act such a manner in future, this Court considers it appropriate to award damages of Rs. 2,00,000/- which shall be paid to the petitioner by the University which will be deducted the same from the salary of erring officers at the helm of affairs responsible for causing such loss to the petitioner.

17. With the above observation and direction, the writ petition is allowed in part.