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**(1995) 05 PAT CK 0001**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 9879 of 1994**

Sunil Kumar

APPELLANT

Vs

The Rajendra Agriculture University and Others

RESPONDENT

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**Date of Decision :** 15-05-1995

**Acts Referred:**

**Citation :** (1995) 05 PAT CK 0001

**Final Decision :** Dismissed

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### **Judgement**

N. Pandey, J.—This writ application has been filed for a direction to the Respondents to get the Petitioner admitted in Ph. D. Course of Horticulture (Pomology) of Rajendra Agriculture University.

2. I have heard learned Advocates, appearing on behalf of both the parties, therefore, this application is being disposed of at the stage of admission itself.

3. The Respondent-authorities invited applications for admission in different courses of Post Graduate and Ph. D. Degree for the Session 1993-94. The Petitioner, pursuant to such advertisement, applied for his admission in Ph. D. Degree. Since there was only one seat for general category, two names were recommended as per merit of the candidates. At serial No. 1 the name of Ratnakar Kumar (Respondents No. 5) whereas at serial No. 2 the name of the Petitioner was recommended. Respondent No. 5, although got himself admitted on 18.7.1994 but failed to submit his registration card, as required under Regulation 16(b) of the Rajendra Agriculture University Regulations.

4. The Petitioner filed a representation before the authorities that he should be given a chance for admission in place of Ratnakar Kumar since he failed to get himself registered as required under Regulation 16(b). At the same time, on 23.8.1994 the Chairman, Fruit and Technology, also wrote a letter to the Registrar of the University, intimating that Ratnakar Kumar has failed to get himself registered in the course programme and he has not turned up in the department since he was admitted in Ph. D. Course.

5. It is alleged in spite of intimation submitted by the Chairman, Fruit and Technology, as also the representation of the Petitioner the Respondents failed to cancel the admission of Respondent No. 5 so as to make the seat available to the Petitioner.

6. Learned Counsel appearing for the Petitioner submitted that if a candidate either fails to report for admission within the prescribed time or submit registration card within such time, it is incumbent upon the Respondent-authorities to cancel such admission so that the next candidate waiting on the panel, may get a chance without any loss of time. It would not be proper for the authorities to keep the seat vacant or allow a candidate to occupy such seat without any valid registration as required under the Regulation.

7. A counter affidavit has been filed on behalf of Respondent Nos. 1 to 3. There is no denial that the Petitioner was placed at serial No. 2 of the panel nor there is a denial that Ratnakar Kumar failed to get himself registered, as required under Regulation 16(b). But, according to them, no order for cancellation of admission can be issued until the stage of 1st Semester. In other words, upto this stage a candidate can be allowed to submit registration for the particular subject. It has further been stated that even if the admission of Respondent No. 5 is cancelled, the Petitioner can not be admitted at this stage, when virtually two semesters are complete. As per Regulation 18 out of total number of lectures and practicals, students admitted to the courses, are required to attend a minimum number of 75 percent lectures otherwise they will not be eligible to appear at the examination. Such provisions have been incorporated in the Regulation to maintain the minimum standard of education in the University. Their stand is that late admission after 15 days from the date of last admission has been strictly prohibited, because even if a student is admitted at later stage, he will not be in a position to complete 75 percent attendance, as required under Regulation 18. Therefore, he will have no chance to appear at the examinations.

8. Admittedly, the 1st Semester is over and 2nd Semester is almost complete, therefore, one can very well imagine even if the Petitioner gets admission at this stage, how can he complete classes within such a short time.

9. True it is such occasion has arisen due to lethargic and negligent attitude of the Respondent-authorities. The Respondent-University being instrumentality of the State and, therefore, State within the meaning of expression as used in Article 12 of the Constitution. Right to receive education, as held by this Court in the case of Samir Kumar Das and Vs. State of Bihar and Others, is a part of the fundamental right under Article 19(i)(g) of the Constitution. Article 41 of the Constitution commands: "... the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education ... " It is, thus, obvious that it is the duty of State to make effective provision for securing the right to education, therefore, includes duty of admitting students to the available seats in the colleges. The authorities can not arbitrarily refuse to fill up the seats in such institutions. If there is a denial for

such admission to students, it would be violative of fundamental right, guaranteed under the provision of Article of the Constitution.

10. But the question arises whether, such right can be exercised at a stage when virtually two semesters of the session are complete. Learned Counsel, appearing for the Petitioner, produced a copy of the order dated 5.9.1994 in C.W.J.C. No. 6783 of 1994, wherein, a Bench of this Court, of which I was also a member, had directed the Respondent-Vice Chancellor to fill up the vacant seats in the manner, indicated in the order. In that case, admittedly, five seats were lying vacant. It was not necessary for the Respondents to cancel admission of any other student, so as to make a room for the Petitioners of that case. That apart, this was not the case of Respondents at that stage that two semesters of the concerned session were over. Therefore, even if a direction was issued in that case to consider the claim of those candidates, it can not be a ground to issue a similar order in this case. That apart admittedly facts of the present case are quite different.

11. It would be relevant to notice that the Supreme Court in the case of Dr. Subodh Nautiyal v. State of U.P. and Ors. 1993 Supl. (1) SCC 593 rejected the claim of Mr. Nautiyal for admission to a technical course because there was a delay of four months.

12. Similar views were taken by the Supreme Court in the case of State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., It was held that in order to maintain excellence, the courses have to be commenced on schedule and to be completed within the schedule. Admission in the midstream would naturally disturb the courses. Therefore, direction by the High Court to admit the candidates into the vacant seats at a belated stage, can not sustain. It would be appropriate to notice the relevant passage of the report hereunder:

Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and be completed within the schedule, so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the midstream would disturb the courses and also work as a handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats can not be sustained.

13. In view of the specific mandate of the Supreme Court, as noticed above, it would not be possible for me to direct the Respondents to admit the Petitioner at this stage.

14. But before parting with this order, I would like to observe that the Respondent-authorities are required to be vigilant and careful in filling up the vacant seats, so that constitutional right, as guaranteed under Article 14 of the Constitution to the eligible candidates, be not frustrated.

15. Although I appreciate the hardship of the Petitioner but because of unusual delay, it is not proper for me to direct the Respondents to admit him in the midstream of the session.

16. In the result, subject to the observations, made above, this writ application is, thus, dismissed. However, in the circumstances of the case, there shall be no order as to costs.