

(1980) 12 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 133 of 1980

Tarsem Kumar

APPELLANT

Vs

H.P. Krishi Vishva Vidyalaya and Others

RESPONDENT

Date of Decision : 01-12-1980

Acts Referred:

Citation : (1983) 12 ILR HP 146

Hon'ble Judges : V.D. Misra, C.J.; H.S. Thakur, J

Bench : Division Bench

Advocate : S.S. Ahuja, for the Appellant; P.N. Nag, for the Respondent

Final Decision : Allowed

Judgement

V.D. Misra, C.J.—Tarsem Kumar, Petitioner, applied for admission to M.Sc. (Horticulture and Fruit Technology), one of the disciplines in M.Sc. (Agri.) programme (referred to as the discipline), of Himachal Pradesh Krishi Vishva Vidyalaya (referred to as the University). He was called for interview on 15th July, 1980. The University issued a notification dated 17th July, 1980, notifying the names of the candidates selected for admission and those on the waiting list (Annexure PA).

2. Seven candidates had been selected for the discipline. The Petitioner was not one of them. However, he was the first on the waiting list. In all four candidates were on the waiting list. This notification directed the candidates selected for admission to deposit their fees on or before 21st July, 1980, in the respective Colleges failing which their selection shall stand cancelled. Such vacancies were to be offered to the candidates on the waiting list. These candidates were "also required to present themselves at the respective Colleges on the same date at 4 P.M."

3. Though the selected candidates could have deposited the fees even before 21st July, 1980, it appears that all the selected Candidates of the discipline went to the College, which is situated at Solan, on 21st July, 1980. Among the

candidates on the waiting list, the Petitioner as well as Girish Kumar Sharma, who was at serial No. 3 of the waiting list (Respondent No. 3) also went there. Apparently both these candidates were anxious to take the chance in case any selected candidate failed to deposit the fees. Now what happened in the afternoon on that day is in dispute. The Petitioner alleges that he made enquiries from the officials and was informed that all the selected candidates for admission to the discipline "have got themselves registered and as such none from the waiting list was to be admitted." He waited there till 6 P.M. and thereafter left for his house at Kandaghat. On 25th July, 1980, he came to know that Respondent No. 3 had got the admission since one of the selected candidates, namely, Chandan Mehta, did not join the course. The Petitioner went to the Dean (Respondent No. 2) on 26th July, 1980, and not getting a satisfactory reply, made a representation to the Vice-Chancellor of the University. Having failed to get a response, the Petitioner rushed to the Court on 2nd August, 1980, since the course was starting on 4th August, 1980.

4. The University does not deny that the Petitioner had come to the College on 21st July, 1980. But it denies that any official told the Petitioner that there was no chance for waiting list candidates. It is stated that the Petitioner had left the College before 4 P.M. and, therefore, a vacant seat was offered to Respondent No. 3 who was waiting in the College. It is further averred that the Student Welfare Officer, Shri S.K. Mushtaq Dwesar, as well as the Dean (Respondent No. 2) and Professor Dr. G.S. Dogra remained in the College till 7 P.M. and the Petitioner never came to see them. The events of that day are described thus:

"After the selected candidates had secured admissions, which were completed around 5.00 P.M. it was found that Shri Chandan Mehta S/o Shri D.C. Mehta No. 1 candidate on the select list (Annexure PA) had not deposited his fees. This and similar other vacancies in other disciplines were publically announced verbally and the waiting list candidates were called by the Dean. Only one candidate, namely, the Respondent No. 3 reported for admission in the department of Horticulture and Fruit Technology. Before allowing the Respondent No. 3 to deposit his fees a second public announcement was made and when no other candidate out of the relevant waiting list presented himself for admission, the Respondent No. 3 was allowed to deposit his fees which he did vide receipt No. 6666, dated 21-7-1980 around 6.30 P.M. The contentions of the Petitioner about malafides of Respondent No. 2 and that the Respondent No. 2 had been on very good terms with Respondent No. 3 are baseless."

5. The University has filed the affidavits of Professor Dogra, Shri Dwesar as well as of the Dean in support of the return. Copies of the letter sent by the Dean to the Assistant and the Clerk working in the Department for legislation and receiving fees from the students on 21st July, 1980, as well as their replies have also been filed (Annexures, RA, RB and RC). After going through these documents, we directed the learned Counsel for the University to produce the relevant record. We also decided to examine the Assistant and the Clerk in order

to find out the truth since the documents revealed that only one announcement at 6.30 P.M. was made.

6. During the course of examination of the Assistant (Shri H.C. Vaish) and of the Clerk (Shri Ramesh Kumar Sharma) new facts came to light. Both these persons had known the Petitioner, Respondent No. 3, and other selected candidates since they were all studying in this College. Shri Sharma's duty is to receive the fees from the students. He started his work at 10 A.M. when the first student came to deposit his fees. The system described by the witnesses is that Shri Vaish and Shri Sharma had copies of the lists showing the names of the selected candidates as well as those on the waiting list in each discipline. A student was to go first to Shri Vaish and collect four cards. These cards were of different colours though their subject matter was the same. Shri Vaish would sign the reverse of each card and put a tick mark against the name of a student in the copy of the list of candidates. He will also note down his name in the register. With the help of the Major Advisor the student was to select the subjects of the course for the trimester/semester. Then he was to go to the teachers concerned who would sign the cards. After the cards are duly filled in they were to be brought by the student to Shri Vaish. Shri Vaish would keep all the cards except one which he would hand back to the student. The candidate then would go to Shri Sharma and hand over the card to him. Shri Sharma would now accept the fees and issues the receipt.

7. Shri Vaish tells us that all the seven selected candidates for the discipline with which we are concerned, had come to him and had taken away the cards. Chandan Mehta had also taken away the cards. The Petitioner had contacted him at about 3 P.M. and had enquired as to what the position was. He says that he told the Petitioner that "all the selected candidates were there and the actual position may be known by 5 or 6 P.M." We will presently advert to it.

8. Shri Vaish goes on to say that it was about 6.15 P.M. or 6.20 P.M., when the rush was over, that he went to the Dean to inform him that one of the selected candidates, that is, Chandan Mehta, had not deposited the fees. On his way to the Dean's room he came across Chandan Mehta. He asked Shri Mehta as to why he had not deposited the fees. Shri Mehta told him that he was not interested in joining the course. When Shri Vaish informed the Dean about the non-deposit of fees by Chandan Mehta, the Dean asked Shri Vaish to find out if any waiting list candidate was present. Shri Vaish tells us that he went to various places to find out if any such candidate was waiting. He found none except Respondent No. 3. Shri Vaish is positive about the fact that in the whole premises, leaving aside the Officials, the only student present was Respondent No. 3. Respondent No. 3 was asked to contact the Dean and when he brought a chit from the Dean his fees were accepted at 6.30 P.M.

9. Before we proceed further we must point out that the Dean is not correct when he says that the admissions were completed around 5 P.M. that day. As noticed above, it was only at about 6.15 P.M. when the rush for depositing the

fees was over that Shri Vaish went to inform the Dean about the position we also find that affidavits of Professor Dogra as well as of Dwesar are not correct. They are wrong in saying that at about 5.30 P.M. the Dean had invited the waiting list candidates. This invitation, according to the affidavits, was made through the Assistant of the Academic Branch. We have now the statement of the Assistant (Shri Vaish) that this announcement was made by him at about 6.30 P.M. It may also be noticed that Respondent No. 3 in his affidavit does not talk of any announcement being made at about 5.30 P.M. He also refers to one announcement made at about 6.30 P.M. Why these responsible officers were at pains to bring back the time of announcement to 5.30 P.M. will remain shrouded in mystery because we had no time to examine them. This would have unnecessarily delayed the decision of the case which had already been delayed because of the adjournments sought by the learned Counsel for the Respondents. To say the least, all this leaves a bad taste.

10. We must also record that the University produced before us the receipt books regarding the fees and a file containing the writ petition served on the University and the Dean, a copy of the letters sent by the Dean to the Superintendent, the Assistant, and the Clerk as well as the replies given by the Assistant and the Clerk. A copy of the representation made by the Petitioner to the Vice-Chancellor on 28th July, 1980, and which had been forwarded to the Dean is also on the file. There is no other document on this file. We do not know what the report of the Dean was. We were informed that since the matter was sub judice, the Dean did not send any report to the Vice-Chancellor. We are not satisfied. If the Dean was so concerned then why did he write letters to the Superintendent, the Assistant and the Clerk on 6th August, 1980, as the writ petition had been filed on 2nd August, 1980, and on the same day its copy was given to the standing counsel of the University. It may also be noticed that Shri Vaish has frankly admitted that he was called by the Dean, questioned about the representation made by the Petitioner, and after finding out the facts told Shri Vaish to give those in writing. It was in these circumstances that Annexure RB came into existence.

11. We may now straightaway come to the question as to what transpired between the Petitioner and Shri Vaish and whether the Petitioner remained in the College till 6 P.M. Though Shri Vaish is at pains to tell us that the only information given to the Petitioner was about the presence of all the candidates and also a direction to find out the exact position at 5 or 6 P.M., the Petitioner insists that he had been told that all the selected candidates "have got themselves registered and as such none from the waiting list was to be admitted." We cannot lose sight of the fact that the Petitioner was at serial No. 1 of the waiting list. He had the right to get the admission in case any selected candidate failed to deposit the fees. We are told that on such days the last time (5 P.M.) for deposit of fees is not strictly adhered to in order to enable all the candidates present to deposit the fees. We find nothing wrong with this. Indeed this should always be done and the students should not be refused admission on hyper-technical grounds. As already noticed, Chandan Mehta had obtained his

cards from Shri Vaish. So when the Petitioner approached Shri Vaish, the latter was likely to tell him that all the selected candidates were present. Not only this, he must have told the Petitioner the fact that every candidate had taken away the cards from him which snowed that they were anxious to deposit the fees. In these circumstances if he gave an impression to the Petitioner that there was no chance for the waiting list candidates, there was nothing wrong with it. The Petitioner being still anxious for admission was likely to hang around. He had come from a distance-Kandaghat is about half an hour's bus ride to Solan. If the Petitioner did not again contact Shri Vaish, the Petitioner could not be said to be at fault. Shri Vaish realised only at about 6.15 or 6.20 P.M. that one seat remained unfilled if the Petitioner left by 6. P.M. he cannot be blamed. Admittedly Chandan Mehta was still hanging around.

12. The statement of the Petitioner is also corroborated by the fact that when he approached Shri Vaish on 26th July, 1980, he admittedly complained to Shri Vaish that the latter had given him a wrong information of all the selected candidates having deposited the fees. Shri Vaish while admitting that the Petitioner did complain to him, goes on to say that he had contradicted the Petitioner there and then about having not stated all that. Shri Vaish also tells us that in another discipline one seat remained unfilled that day since one of the selected candidates failed to deposit the fees. Since no one from the waiting list of that discipline was present, the vacancy was not filled. It was on the following day that the waiting list candidate of that discipline came to deposit the fees. This candidate complained to the Dean that on the previous day he had been told by an official that all the seats of the selected candidates had been filled and, therefore, he had left for his house. In other words, such a complaint was being made not only by the Petitioner but also by another candidate of another discipline.

13. We must highlight the fact that the conduct of Shri Chandan Mehta was indeed veryintriguing. He was not interested in getting his admission to the course though he was at No. 1 in the list of selected candidates. He still took the trouble to come to the College. He took the cards from Shri Vaish without telling Shri Vaish that he had no intention of depositing the fees. He thus created an impression that he was interested in getting the admission. He continued to be in the College till everyone except Girish Kumar, Respondent No. 3, had left the place. Why was he doing this? We are told by Shri Vaish that he did not issue any cards to Shri Girish Kumar (Respondent No. 3) but such cards were noticed in his hands. From where did he get the cards? Was Chandan Mehta to ensure that his seat should go only to Respondent No. 3, who was at serial No. 3 of the list of waiting list candidates? We need not go into this question. It does not need a decision. We have highlighted this to show the highly suspicious conduct of Chandan Mehta misleading everyone concerned.

14. Mr. Nag, learned Counsel for the Respondents, vehemently contends that the Petitioner had left the premises at about 3.30 P.M. though he was required to be

present at 4 P.M. and thereafter. And so he has lost his right of admission. In this connection he refers to the fact that in the return of the University it is specifically stated in para 7(b) that the Petitioner had left the College by 3.30 P.M. bus of the University, and that this fact was disclosed to Respondent No. 2 when the Petitioner met him on 26-7-1980. We do not believe it. It may be noticed that Clause (b) of para 7 is an answer to the ground taken by the Petitioner. This fact should have found a mention, if it was a fact, in para No. 4 where the facts known to Respondent No. 2 were detailed. Moreover, though the return is supported by affidavits of the Registrar as well as Respondent No. 2, we find that the contents of para 7(b) are verified to be "true to the information derived from the counsel and believed to be true, and correct" by Respondent No. 2.

15. We have been at pains to find out what the waiting list candidates were supposed to do after they came at 4 P.M. to the College as required by the notification Annexure PA. It has been suggested to us by Mr. Nag that the candidates were supposed to meet the Dean since he was the head of the institution. We are afraid we cannot accept it. Moreover, admittedly neither Girish Kumar, Respondent No. 3, nor the other waiting list candidate of the other discipline, who was admitted on the following day, met the Dean. During the course of arguments we were told that no notice had been displayed at any place in the University directing the waiting list candidates to meet the Dean or to wait indefinitely till they were told to go home. We may at this stage record that when we recorded the statements of Shri Vaish and Shri Sharma, the Dean was present and we had generally asked him questions as to why specific directions were not given to the students on the waiting list. The impression given to us was that the waiting list students must continue to wait till everything is over. We were told that at one time the admissions continued till mid-night. We, however, cannot approve of it. To us the notification Annexure PA gives the impression that the waiting list students would be in a position to know about the vacancy, if any, by 4 P.M. and so they should be ready to deposit the fees in Such an eventuality. The Petitioner and Respondent No. 3 must have got the same impression and so they had come very much earlier than 4 P.M. Admittedly by 3.30 P.M., Hardev Singh, the last of the selected candidates in the discipline with which we are concerned, had deposited the fees. By that time it was clear that one seat of Chandan Mehta had not been filled. But, as already stated, Chandan Mehta was hanging around after obtaining the cards. The University, for reasons best known to it, had refused to inform the waiting list candidates about the time upto which they should wait, and whether they should see any officer in particular at any time from 4 P.M. onwards. In these circumstances how can we blame a student who does not contact the Dean.

16. It has also been contended by Mr. Nag that the Petitioner must suffer for his negligence. But where is the negligence? He was anxious for admission, had come to the College much before he was required to reach, had contacted Shri Vaish to find out about the situation, and had remained there till 6 P.M. He has

stated this fact in his representation to the Vice-Chancellor on 28th July, 1980, much before he got the legal advice and filed the present petition.

17. Mr. Nag further contends that mere deposit of fees is not enough to continue studies and it is necessary for a student to have registration. He refers to Academic Regulations No. 20 onwards and insists that a statutory duty is cast on the student to meet the Dean. After going through these regulations we find that they are of no help to Mr. Nag. Regulation No. 20(a), which is the basis of the contention, relates to "Freshly admitted as well as continuing students". It is thus plain that the regulations are attracted only after a student has succeeded in getting the admission. The mode of registration is given by Regulation No. 22. It consists of meeting the Advisor, enrolment of the students in various courses with individual Instructors, payment of the University fees and other dues, and depositing with the Dean concerned the prescribed registration cards/forms duly filled in and signed by the Advisor and Instructors. All this will happen only when a student gets a green signal for admission. However, we find that Regulation No. 23 lays down specifically that where a student fails to get himself registered as prescribed by Regulation No. 22 his selection shall be cancelled notwithstanding that the dues have been paid. It further says: "The seats so fallen vacant shall be offered to the candidates on the waiting list in order of merit" (emphasis supplied). This regulation unambiguously requites the University to make the offer first to the first candidate on the waiting list. Admittedly this has not been done for no fault of the Petitioner.

18. We may look at the case from another angle. Annexure PA had given a right to the Petitioner to claim the first vacancy which remained unfilled from select list candidates. This right could not be taken away so lightly. The University was obliged to perform its duties as laid down by Regulation No. 23. It had to offer the first vacant seat to the first candidate on the waiting list. Except giving a vague information to the candidates in the waiting list that they should be present in the College at 4. P.M. on 21st July, 1980, the University failed to tell them, as already stated, as to what they were required to do and how long they should have waited.

19. Mr. Nag also contends that since disputed questions of facts are involved in this case, we should stay our hands and direct the Petitioner to seek his remedy in a civil court through a suit. He does not deny that it is in the discretion of the Court whether to proceed with the case or to refer the parties to a civil court. We may straightaway record that because of contradictions which we found between the return and the documents filed by the University, we decided to find out the facts by examining the record maintained by the University and Shri Vaish and Shri Sharma. The dispute on the facts was not such which could not be resolved. Indeed we were able to resolve it very quickly. We cannot forget that the case required a quick decision since the course had started on 4th August, 1980. In such circumstances to drive the Petitioner to seek his remedy from a civil court is indeed to ensure that the Petitioner does not get any effective remedy. Cases

which brook no delay, in our opinion, should be decided with all due despatch in order to do justice.

20. Another contention raised by Mr Nag was that we should not make out a case which was not set up by the Petitioner. We asked the learned Counsel as to what was the case which we were setting up. He referred to the question of the conduct of Chandan Mehta on that day. This fact we had come to know after examining two officials of the University . It, therefore, does not lie in the mouth of the University to say that we are trying to set up a new case. Needless to say that the Petitioner could not possibly have known what was going on and what had transpired between Shri Vaish and Chandan Mehta before he could lay his case on that score.

21. The up-shot of the above discussion is that we allow the petition and direct the University (Respondent No. 1) to admit the Petitioner forthwith for the discipline for which he had been put on the waiting list. The Petitioner is entitled to his costs from the University. Lawyer's fee is assessed at Rs. 250/-.