

(1998) 11 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No's. 3751 and 2046 of 1998

Vivek Kamdar

APPELLANT

Vs

The Principal, Christ College and Others
 Principal,
Christ College Vs State of Orissa and Others

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 OLR 30

Hon'ble Judges : S.N. Phukan, C.J;A. Pasayat, J

Bench : Division Bench

Advocate : A. Routray, In OJC No. 3751/98, B.B. Ratho, B.N. Rath, B. Senapati, S.B. Mohanty 1, J.N. Rath, S.K. Jethy, M.K. Panda and P.S. Samantara In OJC No. 2046/98, for the Appellant; B.B. Ratho, S.K. Jethy, Biswanath Rath, B. Senapati, J.N. Rath, S.K. Panda, P.S. Samantara, S.N. Mohapatra and S.B. Mohanty (for opp. party No. 1 in OJC No. 3751/98), S.D. Das, A. Mohanty, L. Samantaray, H.S. Satpathy, B. Patnaik, B.K. Sinha and D. Dhar for C.H.S.E., Rajat Kumar Rath, J. Mohanty, Suraj Mohanty, Anand Chandra, M.R. Tripathy, Agasti Kanungo, B. Ray and S.K. Mishra (for intervenor) A.G.A. (for opp. party Nos. 3 and 4), for the Respondent

Judgement

A. Pasayat, J.—Both the writ applications have many things in common in essence raise quite a number of similar disputes and are therefore disposed of by this common judgment. The writ application (O.IC No. 3751 of 1998) has been filed by a student of Christ College, who was denied permission to appear at +2 Science Examination of 1998 conducted by the Council of Higher Secondary Education, Orissa (hereinafter referred to as the "Council"). The prayer was denied on the ground that his admission was irregular and the College admitted him and other students beyond the sanctioned number of seats. The other writ application (OJC No. 2046 of 1998) has been filed by the College, challenging action of the authorities in refusing to accept the prayer to increase number of seats.

2. A brief reference to the almost undisputed factual position would suffice. Number of sanctioned seats was 256 in +2 Science. Prayer was made sometime in 1994 by the College to increase seats from 256 to 384. There were other prayers also like permission to open Computer Science with 48 seats, increase of seats in +2 Arts from 256 to 384, and opening of Sociology subject with 48 seats in +2 Arts. The High Power Committee functioning under the Orissa Education Act, 1969 (in short, the "Act") refused the prayers on the ground that the students have been unauthorisedly admitted beyond the sanctioned strength and there were serious allegations regarding irregularities in admission and management.; An appeal was preferred u/s 5(8) of the Act before the appellate authority. The Minister, P and C and Higher Education, Orissa, the appellate authority, rejected the appeal inter alia holding that there was no need for increase of seats either in +2 Arts or Science. Reference was made to sanctioned number of seats and candidates offered in both +2 Arts and +2 Science streams during the years 1990 to 1997. So far as 1997 is concerned, it was indicated that there were 13 unauthorised admissions. The Principal of the College by notice dated 10.3.1998 notified that in case of 58 students, admit cards have not been issued by the Council which had refused to accept their application forms to sit in +2 Science Council of Higher Secondary Examination of 1998. Similarly in respect of 42 students of +2 Arts it was notified that they had opted for Sociology in their Examination application forms and as such will not be allowed to appear in the said subject.

3. During pendency of the writ application of OJC No. 3751 of 1998, apart from petitioner, who was denied permission to appear, several others prayed to be impleaded as parties inter alia on the ground that they were similarly situated, and had similar grievance. Their prayer for intervention was allowed. During pendency of the writ application, suggestion was given by the petitioner and the intervenors that the appellate authority may take sympathetic view in their cases, and considering the special features existing may consider the matter. Similar prayer was also made by the College. It was highlighted that the then Chief Minister had directed the authorities to accept the prayers made by the college. Reference in this context is made to an alleged endorsement made by the then Chief Minister dated 3.4.1994 on a memorandum addressed to him. It is stated that subsequently the then Minister of Higher Secondary Education had also passed orders to similar effect.

4. First we shall deal with writ application of students. In the counter affidavit filed by the Deputy Controller of Examination of the Council, it has been indicated that though several writ applications were filed by the College including OJC Nos. 1707 and 3962 of 1997, they did not yield any result. The College authorities have also not acted bona fide as would be evident from the fact that it submitted returns of Matriculates in respect of 314 students on 30.4.1997 out of which 50 students were shown to have taken transfer certificates. As the college had permission to admit only 256 students, and 50 were shown to have taken transfer certificate, as per the Rules of the Council, those students were

issued with registration numbers. Such registration numbers are issued to the college in which a student takes initial admission, irrespective of the fact of his having taken transfer certificate. The Council only issued registration numbers in respect of 306 students and registration certificate in respect of 8 students were withheld by the Council as their admission was beyond the permitted strength. While submitting forms and fees for the annual 1998 Examination, the college authorities submitted forms for 256 students. Out of them there were 210 students about whom return of Matriculates was submitted through petitioner-college, and 46 students who were shown to have been admitted to the said college after taking transfer certificates from other colleges. Thus, the Council accepted 256 forms for which the college had been permitted admission. It is not in a position to know as to why the other students who were shown in the return of Matriculates were not presented to appear in the Annual 1998 Examination.

The college in its counter has stated that on the basis of assurance held out it had admitted students. There was pressure and/or request from various persons by telephone, personal contacts and by letters. Several influential and important persons including the present Minister of Higher Education had requested to admit their recommended students, backed with the assurance that the required permission shall be granted with retrospective effect. Acting on such assurances the students were admitted. Some of the letters purported to have been written by dignitaries have been annexed.

5. The whole thing appears to have been done in irregular background. The college authorities were not competent to admit any student beyond the sanctioned number. The apex Court by order dated 13.2.1998 passed in SLP (Civil) No. 18853 of 1997 observed that ineligible students should not be permitted to take Board and/or University Examinations by orders of Courts. It was further observed that those orders have become routine. Notwithstanding the observations, the Courts are passing orders insisting on such aberrations, and it should not be permitted to continue in future. Exercise of such casual discretions by the Courts, is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong, and was not worth repeating as a precedent, but unfortunately repeated time and again. Unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, because it puts the Rule of Law to a mockery, and promotes rather Rule of Man.

6. In *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.*, the apex Court considered it necessary to strike a note of caution in respect of passing of interim orders by Courts directing the students of unrecognised institutions to appear at the examinations concerned. In view of series of judgments by the apex Court, Courts should not issue fiat to allow the students of unrecognised institutions to appear at different examinations pending disposal of writ applications. Such interim orders effect the career of several students and cause unnecessary embarrassment and

harassment to the authorities, who have to comply with such directions of the Court. It is a matter of common knowledge that as a part of strategy, such writ applications are filed for directions to recognise the institutions in question, and in the meantime to allow the students to appear at the examinations when the dates of examinations are notified. Many of such institutions are not only "masked phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests, on the basis of considerations which have no nexus with merit. There is no occasion for the Courts to be liberal or generous, while passing interim orders, when the main writ applications have been filed only when the dates of examinations have been announced.

7. Keeping in view the aforesaid observations of the Apex Court, it is to be seen as to the acceptability of petitioners' stand.

8. Mr. R. K. Rath, learned counsel appearing for some intervenors submitted that the students who have been left out are not ineligible. He pointed out that the students who had secured less marks have been permitted to take examination. He stated that it so happened because on a single day many students were required to take admission. Intimations for admission were issued to different students to take admission on a particular day. Students securing less marks could take admission earlier during the day fixed for admission and students securing higher marks took admission later. This plea needs careful consideration. When the cut-off number is fixed at 256, as has been rightly indicated by the learned counsel for the Council, many students who had secured less marks came to be included in the list of eligible candidates, merely because of the fortituous circumstances that they had taken admission at an earlier point of time. The admissions were not given according to marks secured serially. This position has not been disputed by the college authorities. The circumstances therefore are very piquant. Students who have secured more marks are kept out of the zone of consideration because of a situation over which they have no control. Because of erroneous procedure adopted by the college authorities they have become victims. In the peculiar circumstances, we feel that cases of such students need a special treatment. The entire fiasco has been on account of unauthorised and illegal acts of the college authorities. We accordingly direct the College authorities to submit its records relating to admission before the Council along with the details of marks of the students who were admitted. The Council shall verify the records and prepare a list of 256 students who could have taken admission on the basis of marks secured by them. If it finds that some of the students whose names could not have been included in the list of 256 eligible students have taken admission, and have taken the examination their admissions shall not be affected. Only those students whose names could have been indicated in the list of 256 eligible candidates, and have not been permitted shall be permitted to appear in the next annual examination. We make it clear that we are passing this order in the peculiar circumstances of the case highlighted above taking into consideration the special features which existed. The process of verification shall be undertaken as directed within six weeks from today. The

college authorities are responsible for the plight of the students, and are liable to compensate them. Those students who shall be found eligible for appearing in the next examination as directed by us shall be paid Rs. 5,000/- each. Those students who had been admitted, but are not found so eligible to appear shall be paid Rs. 10,000/- each. This direction for payment of compensation is being made as a measure of exemplary action because of the loss suffered by the students due to set back in career which is solely due to irresponsible and illegal actions of the college authorities. Sooner the message goes that the unrecognised institutions are not to admit students indiscriminately, illegally putting their future and career in peril the better it would be for the educational stream.

9. The note of caution administered by the apex Court in *Unni Krishnan J.P. and Ors. etc. etc. v. State of Andhra Pradesh and etc. etc.* : AIR 1993 SC 2179 is relevant. Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. Imparting of education has never been treated as a trade or business in this country since times immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as trade or business. Unfortunately mushroom growth of unrecognised institutions conveys the message that opening an educational institution has become a profitable business. Students knowingly or unknowingly take admission into such institutions. Ultimately in either case they suffer. Such institutions cannot award their own degrees or certificates. Even if they award certificates or testimonials they have no practical value inasmuch as they are not good for obtaining any employment under the State or for admission into higher courses of study. Unless an institution is recognised and/or affiliated, its certificates will be of no use. "Human history is becoming more and more a race between education and catastrophe", said H.G.Wells. This observation indicates what our people without education are heading to. Writ application (OJC No. 3751 of 1998) is disposed of with aforesaid directions and observations.

10. It is unfortunate that in the writ application (OJC No. 2046 of 1998) there is no mention that similar petitions filed by the college were earlier rejected. This also shows that the college authorities have not come to this Court with clean hands. Mention has been made in the writ application that the matter was never before this Court which is clearly a false statement. Some documents which were earlier relied upon to seek relief from this Court in OJC No. 3707 of 1997 have been annexed. Most of the documents now annexed were in existence by the time OJC No. 3707 of 1997 was filed. The said writ application was dismissed with observation that this Court is not to execute the order of the Minister, who has no jurisdiction to increase seats in the college. Annexure-1 to OJC No. 3707 of 1997 was the pivotal document relying on which relief was claimed. The said document is Annexure-2 to the present writ application (OJC No. 2046 of 1998). This shows that non-mention about earlier petition is with ill-motive. The petitioner having not come to this Court with clean hands is not entitled to relief.

The writ application (IO/CA to. 2046 of 1998) is dismissed with exemplary cost of Rs. 5,000/- (five thousand).

11. Before we part with the cases, we think it necessary to deal with the stand taken by the college that there was a lot of pressure for admission of the students and therefore, the sanctioned limit was exceeded. Certain documents have been annexed to show that the present Minister of Higher Education, the ex-Advocate General, the ex-Collector of the District, the functionaries of Cuttack Collectorate like Tahasildar, Sadar, Cuttack have requested for admission of candidates of their choice. It is not known whether those candidates were actually admitted. If they were admitted even if ineligible because of some requests/pressure which had come from "dignitaries" as asserted, that itself is an unfair and illegal act. For admission merit and not pressure should be the criteria. It is equally important that the so-called dignitaries should realise that admissions into educational institutions should not be done on anything else than merit. Otherwise the educational system will collapse. The students deficient in merit should not be permitted to make up their deficiency by pressure and influence. Otherwise as has been observed by the Apex Court in one of the cases referred to above, such illegal admissions would be "Rule of Man" and not "Rule of Law".

The applications are disposed of as aforesaid.

S.N. Phukan, C.J.

12. I. agree.