

Amiya Kumar Swaln Vs. Principal, Regional Engineering College, Rourkela and ors.

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Court : Orissa

Decided On : Nov-18-1981

Reported in : AIR1982Ori43; 53(1982)CLT173

Judge : P.K. Mohanti and ;J.K. Mohanty, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Original Jurn. Case No. 499 of 1977

Appellant : Amiya Kumar Swain

Respondent : Principal, Regional Engineering College, Rourkela and ors.

Advocate for Def. : Devananda Misra, ;Deepak Misra, ;A. Pasayat, ;N.C. Patnaik, ;L. Rath, ;B.S. Misra and ;A.K. Misra, Advs.

Advocate for Pet/Ap. : S.C. Das, Adv.

Disposition : Petition allowed

Judgement :

J.K. Mohanty, J.

1. The petitioner was admitted as a student of Regional Engineering College, Rourkela (hereinafter mentioned as 'R. E. College') in Aug., 1973. He passed the Preliminary Science (Engineering) Examination and I. Sc. (Engineering) Examination of Sambalpur University and joined the 1st Semester of the B. Sc. Engineering course. While he was studying in the 7th Semester in 1976-77, he received the order dated 18-8-1976 (Annexure 2) of the Principal, R. E. College wherein it was mentioned :

'The admission of Sri Amiya Kumar Swain (Present Roll No. 35-7th Semester) to this College with Roll No. 158 in the Academic Session 1973-74 is hereby cancelled as he has managed to take admission into the 1st Semester of the B. Sc. Course by producing false mark-sheet.

It may be mentioned that the Orissa University of Agriculture and Technology, Bhubaneswar vide their notification No. 13983/UAP dated 7th Aug., 1976 have also cancelled his pre-professional trimester results of 1972-73 examination as he had managed to get himself admitted in the Pre-professional course of 1972-73 by producing false mark-sheet.'

Annexure 3 to the petition is the notification No. 13893/OUAT dated 7-8-1976 of the Academic Council of the Orissa University of Agriculture and Technology (O. U. A. T.) which is as follows :--

'In pursuance of the Resolution No. 2084 dated 31-7-1976 of the Academic council the Pre-Professional Trimester results of 1972-73 in respect of Sri Amiya Kumar Swain, Adm. No. 2042 are cancelled as he had managed to get himself admitted in the Pre-Professional course of 1972-73 by producing a false mark-list.'

The petitioner has now come up with this writ petition with prayers to issue a writ of certiorari quashing the orders in Annexures 2 and 3 and to issue a writ of mandamus directing the O. P. No. 1 to allow the petitioner to continue as a student in the 7th Semester. According to the petitioner he passed the Pre-University Examination from Utkal University in 1971 and obtained the mark-sheet from S. V. M. College, Jagatsinghpur on the basis of which he was admitted to the Orissa University of Agriculture and Technology, Bhubaneswar. The mark-sheet is

Annexure 4 to this petition. This shows that the petitioner has secured 427 marks out of 700 marks with Mathematics as a subject. He got himself admitted into the Pre-Professional . Class of O. U. A. T. and passed the same in first division in June, 1973 which is evident from Annexure 5 (mark-sheet issued by the O. U. A. T.) to this petition. On the basis of the mark-sheet of Pre-Professional Examination, 1973, the petitioner got himself admitted to the R. E. College, Rourkela. The grievance of the petitioner is that the Registrar, O. U. A. T. and the Principal, R.E. College, Rourkela did not consider it necessary to follow the principle of natural justice by calling upon him to submit his explanation to the charges brought against him on the basis of which his admission to the R. E. College and P. P. results were cancelled. According to the petitioner, had that been done, he could have put up his defence. The petitioner further submitted that he was awarded a Scholarship of Rs. 75/- per month on the basis of his merit in the qualifying examination for admission plus the college first terminal examination. The petitioner passed the Pre-Professional Examination of O. U. A. T. in 1973 in first division and thereafter he passed the Preliminary Science (Engineering) Examination in 1974 also in first division. He passed the I. Sc. (Engineering) Examination in 1976 with credit. It is strange that O. Ps. 1 and 2 have cancelled his admission and result about after four years on the allegation that he had submitted a false mark-sheet. The petitioner further averred that he had requisite qualification for admission to the Pre-Professional Class of O. U. A. T. and also to the Preliminary Science (Engineeiiing) course of Sambalpur University. The petitioner being aggrieved by the orders contained in Annexure 2 and 3 has come up with this writ petition on the grounds that O. Ps. 1 and 2 have contravened the Sambalpur University Act and Statutes and the O. U. A. T. Act and Statutes; that they have acted without jurisdiction that they have violated the principles of natural jus-tke; that there being no definite material before them in support of their decisions, these are based on no evidence and there are errors apparent on the face of the record; and that Annexures 2 and 3 are otherwise wrong, illegal and contrary to law, justice and equity.

2. In the counter-affidavit and additional counter-affidavit, O. P. No. 1, the Principal of R. E. College, Rourkela, has taken the stand that the petitioner has got admission into the college on the basis of the mark sheets which were

manipulated. Even the mark-list that the petitioner secured from the Utkal University in his P. U. (Sc.) Examination of the year 1970-71 has been manipulated and there had been deliberate suppression of certain material facts when the application was made before the Rourkela Engineering College. By the time of admission of the petitioner, O. P. No. 1 had no material before him to doubt the veracity of the petitioner's documents which were filed along with the application and it was found out later that the marks in both the application form and the original mark-list had been tampered with and manipulated to suit the needs of the moment of the petitioner for the sake of admission. In reply to the allegation that he did not follow the principle of natural justice, O. P. No. 1 averred that the petitioner was called upon by letter No. Aca/8868, D/- 6-8-76 (Annex-F) to produce Matriculation pass certificate, P. U. Sc. pass certificate and mark-sheet, and P. P. pass certificate and mark-sheet in original before the Deputy Registrar on 7-8-76 in order to conduct an enquiry and hear the petitioner's explanation to the charges made against him. In response to the above letter the petitioner produced the provisional certificates of P. P. and Matriculation Examinations and prayed for one week's time (vide Annexure-A) to produce the rest on the ground that those were at his home at a distance of 595 Kms. from Rourkela. Time was allowed to him till 14-8-76, but as he did not turn up, after due consideration of the merits of the case it was found out that he had obtained admission into the college illegally and fraudulently and as such his admission was cancelled. According to O. P. No. 1 though the admission has been cancelled almost four years after his admission into the college, this was not due to inefficiency or negligence of any of the officers connected with the rigors of admission of the college. By a confidential letter dated 14-7-76 (Annexure-B) from a person who had signed under the designation of an Intelligence Officer, when the petitioner was in the 7th Semester of Civil Engineering, the peculiar nature of the case was brought out. It was intimated that the petitioner had been admitted into the 1st year class on the basis of a mark-list produced by him which was a forged or tampered one. It was mentioned therein that the petitioner bearing roll No. 2733 in the Annual P. U. Sc. Examination, 1971 had passed in 3rd division with marks aggregating to 291 without Mathematics from the S. V. M. College, Jagat-singhpur and has passed the P. P. Sc. Examination from the O. U. A. T. Bhubane-swar with 'B'. grade

marks. The letter contained a request for verification of documents with proper reference to Mark Registers of the Utkal University. After receiving the letter information was called for from the Registrar, Utkal University by a letter dated 21-7-76 (Annexure-C) seeking to know the marks actually secured by the petitioner in his P. U. Sc, Examination with the proper check up from the original marks register in the University Office. The Assistant Controller of Examinations of Utkal University by a letter dated 20-8-76 (Annex-ure-D) informed the Registrar of the Rour-kela Engineering College that the petitioner had secured 291 marks out of a maximum of 700 and Mathematics was his fourth optional and not a subject of his regular study. From Ext. D it was evident that he had failed in Mathematics by securing only 16 marks. It was also ascertained from the Registrar, O. U. A. T., Bhubaneswar (vide Annexure-E) where the petitioner was admitted to the P. P. Class during the session 1972-73, that his P. P. results had been cancelled as he was admitted to the College by producing a false mark-sheet. O. P. No. 1 further averred that in view of the above documents the petitioner was not eligible for admission into the Engineering College. He further stated that there would be severe breach of discipline in the college curriculum if such things are allowed to escape unnoticed or negligently and overlooked. It is the duty of the authorities when such a case comes to their notice to deal with it in as strict and legal manner as the circumstances would justify. In this particular case the action taken against the petitioner was absolutely justified under the circumstances after giving due consideration to his case and it was inkeeping with the principle of natural justice, equity and fair play. The petitioner was given every opportunity to explain his point of view as would be evident from Annexure F, but he applied for time and failed to show cause or explain his conduct. So the authorities had no other alternative than to issue Annexure 2 cancelling the admission of the petitioner. It has been further submitted that there has been no contravention of the Act and Statute of Sambalpur University.

3. O. P. No. 2, the Registrar of the O. U. A. T., has filed his counter-affidavit and has taken the ground that the writ application is liable to be dismissed in the absence of the Utkal University as a party since the decision taken against the petitioner is based upon his forging the mark-sheet issued by the Utkal University as has been reported by them to this University. It is also mentioned in the counter

that there was an enquiry made by the Central Intelligence Bureau into the matter, as has already been stated in the counter of O. P. No. 1. After receipt of the confidential letter reference was made to the Utkal University (vide Annex. A/2). The Registrar of Utkal University, in reply to the above reference, stated (vide Annexure B/2) that the petitioner has submitted a false mark-sheet regarding his Pre-University Examination results. In the attested copy of the mark-sheet submitted to O. P. No. 2, the marks were highly inflated so as to show him to have passed in the first division though actually he had passed in the third division. A reference was also made to the Principal, S. V. M. College, Jagatsinghpur and his reply in Annexure C/2. From Annexures A/2, B/2 and C/2 it would be seen that the petitioner had deliberately made a false statement in the application for admission to the college. The copy of the application is Annexure D/2. The mark-sheet annexed by the petitioner to this writ petition is a forged mark-sheet and not the correct one. Since the petitioner had submitted a false mark-sheet of the P. U. Examination, his admission to the P. P. Class would not have been possible in accordance with the Pre-Professional Regulations framed by Regulation No. 77 of Chapter VII which is as follows :--

'Both Mathematics and Biology shall be allowed only to those who have passed those two subjects at the Pre-University Science stage.'

As the petitioner had made a false statement in the application for admission, his admission and results were liable to be cancelled and the petitioner is responsible for his misconduct and laches. On these averments he prayed that the writ petition should be dismissed.

4. O. P. No. 3, the Principal of S. V. M. College, Jagatsinghpur has filed counter-affidavit wherein it has been stated that the records indicate that the petitioner had secured 291 marks out of 700 in the P. U. Sc. Examination. Annexure 4 is not the true copy of the mark-sheet supplied to the petitioner and he has not secured the marks mentioned therein. It is a clear case of interpolation and fabrication of documents.

5. O. P. No. 4, the Registrar of Sambal-pur University, has not filed any counter.

6. The petitioner has filed rejoinders to the above counter-affidavit filed by O. P. Nos. 1, 2 and 3 refuting the contentions made therein.

7. The main grounds on which the petitioner wants to quash Annexures 2 and 3 are :

That the principle of natural justice has been violated and the petitioner has not been 'given. any opportunity to place his case before the Principal, R. E. College, Rourkela and the O. U. A. T. before the orders in Annexures 2 and 3 were passed cancelling the admission of the petitioner in the R. E. College and the results of P. P. Examination respectively; and that the opposite parties are estopped from doing so after a lapse of four years.

8. Dr. Das, learned counsel appearing for the petitioner, submitted that even assuming that the petitioner has secured 291 marks in the aggregate in the P. U. Sc, Examination, there was no bar for his admission to the P. P. class of O. U. A. T. This has not been disputed by the learned counsel for the O. U. A. T., but he submitted that having failed in Mathematics in P. U. Sc. the petitioner could not have been admitted to the P. P. Class with Mathematics as a subject. According to Dr. Das the petitioner after passing P. P. Examination sought admission into the Engineering College. Therefore, he had higher qualification than the required minimum qualification (which was P. U. Sc.) for admission to the Engineering College. So his admission to the R. E. College should not have been cancelled as has been done as per Annexure 2. He further submitted that Annexure 2 is based on the notification No. 13893/OUAT dated 7-8-1976 cancelling the P. P. Examination. It is evident that this notification (Annexure 3) has been issued in pursuance of the resolution dated 31-7-1976 of the Academic council cancelling the P. P. results of 1972-73 of the petitioner. It is on this basis that the petitioner managed to gethimself admitted to the P. P. Class by producing a false mark-sheet. But there is no mention therein as to which false mark-sheet was produced by the petitioner. The petitioner has not been given any chance to defend his case before the order in Annexure 3 was passed. Dr. Das relied on a decision reported in ILR (1971) Cut 433 (Deba Prasanna Misra v. Principal, S. C. B. Medical College, Cuttack) wherein it has been observed :--

'The substantial question that arises for consideration is whether in awarding disciplinary punishments, principles of natural justice were relevant and, if so, to what extent has there been a non-fulfilment of these requirements.

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Though there was sufficient justification for the College authorities to feel the necessity for prompt action, there was no justification to assume that there could be any antithesis between the interest of the institution in the matter of maintenance of discipline and the interest of the boys sought to be charged with criminal misconduct in the context of their having a proper chance to defend themselves.'

In the above case the order taking disciplinary action against the petitioners was quashed. Dr, Das also cited a decision reported in (1980) 49 Cut LT 134 (Badrinarayan Ray v. Principal, Narsingh Choudhury College, Jaipur). In that case the petitioners were debarred from appearing in the Annual Examination of the college. After considering the report of the Invigilator, the explanation received from the petitioners and the statement of the members of the staff who were engaged in conducting the examination, the Principal and the Chairman came to the conclusion that the petitioners no more deserved to be the students of the institution. It was held by the Court that the information gathered against the petitioners had not been brought to the notice of the petitioners; that the petitioners never had a chance to defend themselves; and that there was failure of observance of natural justice. Dr. Das also cited another decision reported in AIR 1970 SC 1039, (The Board of High School and Intermediate Education, U. P. v. Kumari Chittra Srivastava) wherein it has been held (at p. 1040) :--

'Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.

Where the Board of High School and Intermediate examination had cancelled the examination of a candidate who had been allowed to appear at the examination

and had actually answered all the question papers, on the ground that he had been admitted to the examination in spite of shortage of attendance at lectures, without giving any show cause notice to the candidate, the action of Board is vitiated by violation of rules of natural justice. The Board in cancelling the examination was exercising quasi-judicial functions and it was incumbent upon it to issue a show cause notice to the candidate before inflicting the penalty of cancellation.'

9. In reply the main contention of the learned counsel appearing for O. P. No. 1 is that the petitioner was served with a notice (Annexure E) dated 6-8-1976 to furnish the original certificates and mark-sheets from Matriculation till P. P. Examinations but the petitioner by an application dated 7-8-1976 prayed for seven days' time. As no communication was received till 18-8-1976 and the petitioner did not avail of the opportunity afforded to him, the order in Annexure 2 was passed. Learned counsel submitted that as the Utkal University has not been made a party, this writ petition should be dismissed. He further argued that the petitioner cannot take advantage of his own fraud. It has been clearly established from the enquiry made from the Utkal University that the mark-sheets of the P. U. Sc. submitted by the petitioner while taking admission in the P. P. Class of O. U. A. T. and also in the R. E. College were forged and fabricated. On behalf of the O. U. A. T. learned counsel made a similar contention and submitted that at the time of admission the petitioner had given an undertaking that the information furnished in the application form was correct to the best of his knowledge and he would abide by the rules and regulations of the University and the College and would withdraw from the University and the College at any time should the Vice-Chancellor so desire in the interest of the institution. But this undertaking is of no avail because when the P. P. results were cancelled as per Annexure 3, the petitioner had already left the college since more than three years. Learned counsel further submitted that the petitioner could not have taken admission into the P. P. Class with Mathematics as a subject as he had failed in that subject in P. U. Examination.

10. On behalf of the opposite parties a decision reported in ILR (1977) 1 Cut 33 : (AIR 1977 Orissa 107). (Prasant Pattajoshi v. Principal, Lingaraj Law College) has

been cited. In that case in para. 8 of the judgment it has been held :--

'Denial of natural justice has not prejudiced the petitioner in any manner because the facts which led the Principal to reach his decision are not disputed. The insistence on grant of a hearing is on the footing that given an opportunity before the order was made, the petitioner could have shown to the Principal that the facts were untrue or even if the allegations were true, an order of expulsion was not warranted. Now that the factual basis is found to be true and goes almost undisputed, the question is whether there has been substantial prejudice to the petitioner by denying him an opportunity of showing causa against the expulsion. We think, even if an opportunity had been granted, the position would not have improved and, as we have already said, the antecedents are such that any Principal interested in maintaining appropriate discipline and order within his College would legitimately feel tempted to keep out a student with petitioner's antecedents from his institution. It is not the petitioner's case that the Principal acted mala fide or with bias and/or prejudice against him. In the greater interests of the institution, we are satisfied that it is a fit case where we should not intervene by exercise of our extraordinary jurisdiction.'

Another decision reported in (1981) 51 Cut LT 455 : (AIR 1981 Orissa 91) (Krupasindhu Mallik v. Orissa Board of Secondary Education) has also been cited wherein it has been held (at p. 92) :--

'Fraud vitiates all actions and no Court can uphold a right based on fraud. Even for considering a claim of estoppel, the law is not different and one's own fraud can be allowed to support the claim of a right. The Board did not make any mistake. The fraud out of which petitioner claims benefit should be assumed to have been on the basis of some association of the petitioner with the racket that was operating. Otherwise, there could be no occasion, for wrong information to be communicated to the Headmaster in regard to the petitioner. Admittedly, all the communications have not turned out to be wrong. Petitioner's counsel was anxious that petitioner must be protected by giving him compensation for the period he has lost by prosecuting higher studies by spending a huge sum of money. In the background indicated, no equity arises for consideration.'

11. Keeping the principles enunciated in the decisions cited above in view, it is to be examined whether the petitioner is entitled to the reliefs claimed by him.

12. In this case, as would be evident from Annexure 2 dated 18-8-1976, the admission of the petitioner to the R. E. College, Rour-kela was cancelled as the petitioner had managed to take admission into the 1st Semester of B. Sc. (Engineering) Class by producing a false mark-sheet. The further ground was that the O. U. A. T. (O. P. No. 2) in their notification dated 7-6-1975 have also cancelled his Pre-Professional results of 1972-73 as he had got himself admitted to the P. P. Class by producing a false mark-sheet. Annexure 3, the notification of the O. U. A. T. dated 7-8-1976 shows that the P. P. result of 1972-73 of the petitioner was cancelled as he had managed to get himself admitted into the P. P. Class by producing a false mark-list. The actions in Annexures 2 and 3 have been taken after the petitioner studied in the R. E. College for about three years, after passing the P. P. Examination. It is not disputed that before cancelling the admission as per Annexure 2 and the result of P. P. Examination as per Annexure 3, the petitioner was not given any opportunity to show cause against the action proposed to be taken against him. He had not been given any opportunity to defend his case. The contention of O. P. No. 1 that notice in Annexure F was issued to the petitioner and he did not avail of the opportunity is of no avail. In Annexure F the petitioner was only asked to produce the certificates and mark-lists of Matriculation, P. U. Sc. and P. P. Examinations. Even if the petitioner failed to produce the same, it cannot be said that this amounts to a notice to show cause before cancelling his admission and against the allegation of production of a false mark-sheet. The notification in Annexure 3 has been issued without affording any opportunity to the petitioner and he had no chance to defend his case and this has been done after a lapse of three years. From the above facts it is quite evident that the principles of natural justice had been violated and the petitioner had never been given a chance to defend himself. Even assuming that the mark-sheet in Annexure 4 submitted by the petitioner is not the true mark-sheet and has been fabricated, before cancelling his admission to the R. E. College and also his results of the P. P. Examination, the principle of natural justice should have been followed and the petitioner should have been given opportunity to defend himself. In our view, the decision reported in AIR 1970 SC 1039 (supra) has full application

to this case. In view of the above finding, the other questions raised by the parties need not be gone into.

13. In the result, therefore, the writ petition is allowed. The petitioner is entitled to the reliefs prayed for. Annexures 2 and 3 are hereby quashed. We direct the O. P. No. 1 to admit the petitioner as a student of the 7th Semester of this year of R. E. College, Rourkela, if possible, and if not, in the next year. We, however, express no opinion as to the correctness of Annexure 4.

14. No costs.

P. K. MOHANTI, J.

15. I agree.

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