

(1987) 04 BOM CK 0055

Bombay High Court

Case No: Writ Petition No. 27 of 1987

Subir Kumar Saha

APPELLANT

Vs

The Indian Institute of
Technology and Another

RESPONDENT

Date of Decision: April 27, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1987 Bom 358

Hon'ble Judges: S.M. Daud, J

Bench: Single Bench

Advocate: Anand Grover, for the Appellant; Narayan Shetye, Savita Tiwari and A.I. Talegaonkar, instructed by Bhaishankar Kanga and Girdharlal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The short point for determination in this petition under Art 226 of the Constitution is whether petition has been discriminated against in the matter of being allowed to continue to prosecute his studies in the framed Indian Institute his studies in the famed Indian Institute of Technology at Powai, Bombay.

2. For answering the point formulated above, the following is the backdrop :--

Petition belongs to a section recognised as a scheduled Caste. This section is granted, and rightly so, facilities in the matter of admission and appraisal of academic performance . Petitioner appeared for an entrance examination to join the I.I.T. and having succeeded in the said examination ,was enrolled in the year 1977. The pattern followed for impairing education and assessing the performance is the semester system. Petitioner continued up to 1979-80 having done six semesters. A consistently bad record compelled the respondent to call upon the petitioner to leave. This he did. But in 1980 or 1981, he again appeared at an entrance

examination and stood 16th in order of merit amongst the Scheduled Caste candidates. Petitioner got admission and somehow went through till the fourth semester. Thereafter, his grades started slipping. On 29-6-1984, the Institute addressed an admonitory letter to the petitioner a father an admonitory letter tot he petitioner father vide Ex. J informing him that his son and ward had not earned any credits at the end of the spring semester of 1983-84 as against te expected 28 prescribed for Scheduled Caste candidates under the rules. A request was made to the father to a warn his son to sow improvement. Petitioner did not register of for the spring semester of 1984 85 and had not give any intimation to the Academic council as to why he had not omitted to do so. Thereupon ,under Ex. N petitioner was called upon to give an explanation for the failure to register and or explain the reason for non-registration. In reply to this communication, petitioner gave out that the he a was suffering form neurosis .

3. The explanation was accepted and petitioner permitted to withdraw form the spring semester on medical grounds.. But the autumn semester performance of the petitioner showed no improvement ,and therefore, and on Jan. 3, 1986, under Ex. Q the Institute asked him to show cause why he should not be made to leave the Institute consequent to his failure to leave to pass at two consecutive semester. On 6-1-1986, petitioner gave an explanation and the following excerpt therefrom has some bearing on the merits of the case. He said, the reason was-

"I had sprained mu leg and also had stomach pain in regular in travels of time, as a result of which I could not concentrate on my studies. I was also under the treatment of my psychiatrist and the medicines which he used to give the they used to make me sleep. On account of these reasons I could not do well in the examination and could secure only 16 credits".

4. There was no improvement in the petitioners performance and n the ninth and tenth semesters, he could secure no more that than 16 credits. On 30th June 1986 a special committee met to consider the case of five students including the petitioner whose performance had been below par. The decision taken in regard to the petitioner need to be reproduced in full and it reads as under :-

"As regards Shri Subri Mukar Saha who is a SC Student it was seen that this his performance has been very much below the minimum prescribed under the rules. His performance during the fifth semester and thereafter is as shown below :-

Semester	Credits earned
V	12
VI	0
VII	0
VIII	Withdrawn
IX	16
X	16

Note: Prescribed minimum credits : 28

5. In view of the above it was decided that Shri Another student , who it is alleged by the petitioner, was more or less in the same position as his, was dealt with thus by the special committee:-

"As regards Shri S.S. Ghalasi it was seen that his academic performance is below the minimum prescribed under the rules, for the last four semesters. Moreover, he has a backlog of 27 course to be cleared .

It was pointed out that Shri Chalasi had not been keeping good health of the last few months and probably his poor health. It was was decided that the Dean (SA) may call te student and his father and may permit him to continue for one more semester subjects to the following conditions prescribed by the Convener UGAPEC :

He should get himself medically examined and get a letter from the Sr,. Medical Officer of this Insititute as to his fitness to resume his studies , at this Institute.

If found medically fit, he should register and clear about 30 credits at the Autumn Semester .

He will not be allowed to drop any more semesters hereafter.

If the above condition are acceptable to him, he may be allowed to continue for one more semester viz. Autumn semester 1986-87".

6. Ghalasai, though given the facility, could not come up to the expected level and eventually either left or was compelled to leave. Respondent alleges that the decision taken above was communicated to he petitioner at his Calcutta address under a communication dated 24-7-1986. The communication sent to him by registered postal was returned unserved with the postal endorsement "not known". Be that has it may, a number of representations were made by the petitioner his father and a local duration of the petitioner pleading that petitioner poor performance in the past be overlooked and that he be give a fresh opportunity to make good. There was no reply to these representations and ion 22-12-1986 he came to the Court with the instant petition.

7. Petitioner contends that at the time he was admitted to the Institute ,the 1981-1982 Rules were in force . The third clause to of the relevant Rule was worded -

"A student falling not under the provisions of (I) and (ii) above will be allowed to continue in the Institute. He will normally not be required to leave the Institute provided he satisfies the requirement of the B. Tech degree in 6years,and provided he does not show continued poor performance .All such cases will be brought to the attention of the Senate whose decision the matter will be final".

8. Later on, in 1985-86, there was an amendment and the amended Rule read as follows:

"A students who fails to earn 36 credits (28 for SC students) in my two consecutive semesters beyond the third semester may be asked to leave the institute,. In my case, a student should fulfil the requirement for the B.Tech. degree a maximum of six year including failing which is case will be referred to the Senate for a decision regarding dismissal "

9. Petitioners submits that the 1985-86 Rules were not applicable to him, and incase they did, not applicable the 1981-82 Rules could not be utilised to evict him. It any case, no show cause notice calling upon him to explain they why he should not be removed or dismissed form the Institute had been issued prior to the issue of the alleged removed order passed on 30th June 1986. In the past, such an opportunity had been given to amongst others. R.L. Tondon and Ghalsasi whose cases were considered along with his on June 30, 1986. Three was no explanation for the discrimination and it had resulted in depriving him of a valuable right secured by him .Having regard to his deteriorating mental condition, he had been compelled to take treatment and had even once sought withdrawn form a semester. The treatment undertaken a had begun to show result when the respondent suddenly decided to remove him form the Institute. The many representations made by him, his father and his local guardian had not elicited any reply. The communication sent in to him at his Respondent could not have chosen the Calcutta address to send the removal order to him for they knew well that he a was residing in the I.I.T. hostel a Bombay . The removal had therefore to be quashed and a direction issued to the respondent to allow him to scheme submitted by him along with his letters dated 23-7-1986 at Ex. T.

10. The respondent in its reply takes various preliminary objections tot he tenability of the petition . It is contended that petitioner h ad suppressed his 1977-79 record, though this was of great relevance when the he was claiming a discretionary relief. Next, the portion gave rise to several disputed question of fact such as te nature, duration and effect of petitioners illness. Thirdly, petitioner had been tendered a copy he refused to accept. In the face of this refusal, the filing of the petition n Dec. 1986. Could not be condoned. On merits, it was not correct to say that any discrimination had been practiced against the petitioner His performance a had been consistently poor. The so-called mental affliction was made known for the first time in Feb 1985. Even them the affliction specified was neurosis and that in the background of his seeking withdrawal from the spring semester 1984-85. The scheme at Ex. T. was impracticable inasmuch as petitioner had backlog of 32 courses and this backlog was uncover able .The decision taken for his removal dismissal had been reached on proper appraisal of petitioner performance by the UGAPEC, the special committee and the Senate. The I.I.T was an institution of a repute and the aforementioned decision having been reached by its decision making authority Court acting under Art. 226, could not interfere with its decision.

11. Let me first deal with petitioner contention that the decision to remove him from the Institute was not communicated to him. Now it is true that letter sent to his Calcutta address bearing the date 24-7-1986, was returned unserved with the postal endorsement not known". Respondent contends that petitioner was aware of this decision and that this could be gathered from the many facts averred in his decision and that this could be gathered from the many facts averred in his petition and the representation made by him. Forget the averments in the petition and let us confine ourselves to the representation a made by him and his father as from July 1986 onwards. On 16-7-1986, petitioner addressed Ex. S to the Dean of Academic Programme Amongst the recitals appearing in Ex. S there appear the following :-

"In the light of the above I request to you kindly reconsider my case and allow me to continue my studies in this Institute. I may further and that my case be given a reconsideration because of the following;

The decision in my case was taken without giving me a chance to explain for my poor performance.

I was not ware of the fact that the new rule of failing to clear the minimum academic requirements for two consecutive semesters meant expulsion form the Institute..."

12. In the face of Ex. S it cannot surely be maintained with any semblance of plausibility, that petitioner was unaware of the decision taken in regard to him in the meeting of June 30, 1986. Merely saying that a formal communication had not been received by him does not change the position But forget this and let us look at Ex. T dated 23-7-1986. In the very first para of this letter, there is a recital of the petitioner coming to know from the Dean (students Affairs) that his name was included in the list of students on who had been asked to leave the Institute on academic performance. In the reply given by the respondent , the affiant Assistant Registrar says that a copy of the decision addressed to the emptier when sought to be served upon him, as refused by him .Counsel representing the petitioner says that no such refuse was made. Now it is in the petitioner interest to go on maintain the myth of being kept in the dark about the decision taken on the last day of the june 1986. He had to give an explanation for the delay in coming to court and there could be nothing better than feigning ignorance. But there is internal evidence in the shape of Exs. S and belying the stand taken by the petitioner Delay by approaches a writ Court specially when the person approaching is a student who wants to continue the prosecution of studies in a highly priced technical course. Greater consideration has to be shown to that student when the comes form the deprived sections of the community. Therefore delay by itself will be of much consequence.

13. The same goes for the alleged suppression of relevant facts . It is the that the petitioner makes no reference to petitioners stay in the I.I.T. from 1977 to 1979. But that is of no relevance for the poor performance in those six semesters was excluded by the I.I.T itself when it choose to permit the petitioner to appear for the

1980-81 examinations in ranking him No. 16 and granting him admission afresh to the Institute. If the Rules did not permit the past record to be taken into consideration for a fresh enrolment. I do not see why the past record should be used to deprive petitioner of a right to question the alleged unfairness in removing him from the Institute.

14. The last of the preliminary objections is that his petition gives rise to a number of question of fact. It is true that quite a number of these question arise and that normally a writ Court shuts out petitioner requiring the determination of factual matters. But the case before me is one of a student. If he is compelled to prosecute the remedy of a suit, the latter will never end, in the meantime, petitioner will have lost all touch with academic pursuits and habits. Therefore, however, difficult the task and however complicated the factual position be, it will not be proper to relegate petitioner to the remedy of a suit.

15. Petitioner contends that in taking a decision to remove him, he was entitled to a notice to show cause. The failure to give him such a notice deprived him of the opportunity to explain his reasons for not coming up to the expected standard. This is making fetish of the principle of natural justice. As long back as Jan. 3, 1986, petitioner was warned of having failed in two consecutive semester and this entailing the penalty of removal from the Institute. He gave a reply and because of that was permitted to appear in the June opportunity to explain and improve, I do not see what further obligation lay one upon the respondent. After all, natural justice does not require that every step to be taken by an authority or person be made known to the person against whom action is to be taken and ascertain the letters response at every a such stage. The reference to a different standard having been applied in the cases of Tandon and Ghalasi is not of any consequence. It is not petitioners case that he was discrimination because of any malice harboured by UGAPEC, the special committee of the Senate of the I.I.T. In some cases it may have been felt necessary to provide an opportunity for a further explanation. So far as the petitioner is concerned, his record was very poor, and his explanation had already been obtained. In this background to call upon him repeatedly to explain this or that feature was considered unnecessary. In the absence of an allegation of mala fides against the authorities it cannot be held that want of a strict adherence to technical rules of an opportunity and hearing vitiates the decision taken.

16. Next is the contention that the special committee was not made cognizant of the mental illness afflicting the petitioner. Support for this contention is placed upon the words used by the special committee in regard to the decisions taken in the cases of petitioner and Ghalasi. Now merely because there is no detailed discussion in regard to what led the committee to not condone petitioner performance it cannot be said that all the relevant factors were not taken into consideration. After all, the committee consisted of laymen in the sense of their being not proficient in law.

They were giving Ghalsasi the benefit of doubt, and therefore, referred to his poor health. Petitioner had only spoken of his suffering from neurosis. That also came forth at a late stage. Emphasis was placed upon his mental deficiencies after June 1986. Prior thereto it was referred to as an incidental reason to explain his poor performance. This is evident from the letter sent by the petitioner on Jan. 6, 1986. If the authorities were not given sufficient data, they can hardly be blamed of petitioner depressive tendencies. Unfortunate as that was and, embarrassing in it may have been to disclose this, authorities cannot be blamed if petitioner did not give them a correct appraisal of what may have accounted for his poor academic record. In fact, petitioner local guardian Dr. Saha in his letter dated 16-8-1986 tried to explain petitioner poor performance as being the result of his paying undue attention to extra curricular activities. Petitioner has flourished a number of certificates testifying to the belief of psychiatrists in so opining were carried away by sentiment. Even if that be incorrect, away by sentiment. Even if that be incorrect, this material was made available to the Institute, after the fatal decision had been taken. Once a decision had been taken, there was nothing to permit a reopening the issue. That petitioner continued to reside in the I.I.T. and that he continued to make representations whether by himself or along with his father and Bombay guardian did not mean that the decision taken for his removal had been rezoned. Neurosis and drowsiness were implied in the letter dated 6th Jan. 1986 sent by the petitioner. Therefore they could not have been totally excluded from the decision taken on 30th June 1986.

17. Another argument advanced on behalf of the petitioner is that the reason given for petitioner removal was not one permitted under the 1985-86 Rules. In the communication addressed to the petitioner which he did not receive at the Calcutta address and did not accept when tendered to him in person at Bombay the reason given was -

"your performance has been found to be unsatisfactory for further continuance of your studies at this at the Institute".

18. The 1985-86 Rules, it is argued, specified only one cause one for removal viz, failure in any two consecutive semester beyond the third semester. It is not possible to read these words literally and thus come to the conclusion that an overall academic performance became extraneous to the removal as from the time the 1985-86 Rules came into force. After, all, judicial notice can be taken of the fact that I.I.T. is a prestigious institution, that students getting admission thereto constitute the pick of the nation and that the people of India pay a heavy price to continue the education of the selected students the object being to get the best in the matter of scientific knowledge and skills. Being educated at the national expense requires a continued excellence in academic performance. Anyone who fails to come up to the standard laid down, cannot as of right, seek condonation of his lapses. A decision whether a student has fallen from the high standard set has to be taken by the

authorities concerned .Courts unless, there be some flagrant violation of law or principle of fairness, are the least equipped to deal with problems of this nature,. The test can never be technical compliance with this or that rule or principle. An overall view has to be taken. Here, whatever may be the unfortunate position of the petitioner a fair opportunity was given to him. He just could not cope up with the expectations. This is no reflection upon his intellectual ability. Perhaps, he will perform better in order spheres .In the meantime, one seat cannot be continued to be kept vacant or occupied by the wrong person when there is a long queue of waiting aspirants.

19. The result of the foregoing discussion is that the petitioner fails.. Rule discharged with parties being left to bear their own costs. The interim protection given to the petitioner for retention of his accommodation in the I.I.T. of course ,on the payment of requisite charges shall continue for the period of 10 weeks as from today so as to enable the petitioner to test this verdict in appeal.

20. Petition dismissed.