

(2021) 06 OHC CK 0094

In the Orissa High Court

Case No : Writ Petition (Civil) No. 8537 Of 2021

Hritika Mitra

APPELLANT

Vs

Registrar, Ravenshaw University, Cuttack And Another

RESPONDENT

Date of Decision : 25-06-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Information Technology (Preservation and Retention of Information by Intermediaries providing Digital Locker facilities) Rules, 2016 — Rule 9A

Citation : (2021) 06 OHC CK 0094

Hon'ble Judges : Dr. S. Muralidhar, CJ

Bench : Single Bench

Advocate : Biswajit Das, Venugopal Mohapatra

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ.

1. Aggrieved by the Ravenshaw University (Opposite Parties) declining admission to the Petitioner in the B.Com Course for the academic session

2020-21, the Petitioner has approached this Court with the present writ petition.

Averments in the petition

2. In this petition, filed on 3rd March 2021, the averments of the Petitioner are that she applied in the online mode for admission to the above course

within the time stipulated i.e. 20th September, 2020. She claims that the certificates and mark-sheets of the 10 +2 examinations and the migration

certificate of the CBSC were sent to her through digital mode and after downloading and printing copies thereof she got them attested by the Principal

of her school on 19th September, 2020. She submitted them to the Opposite Parties-University along with the requisite admission fee.

3. The counseling was scheduled for 18th October, 2020. On that date the Petitioner was supposed to appear along with original documents which included the School Leaving Certificate (SLC), Conduct Certificate, Migration Certificate etc..

4. In paragraph 8 of the petition, it is averred that on 14th October, 2020 the Petitioner â??lostâ? all the original documents collected from her School along with some other documents like Aadhar Card, her father?s Bank Passbook. It is claimed that her father immediately lodged a police complaint, which was registered as a Station Diary Entry, with the Dargha Bazaar Police Station, Cuttack.

5. It is further claimed in paragraph 9 that on 17th October, 2020, one day prior to the date of counseling, the Petitioner?s father submitted an application to the University informing them of the loss of the original documents as well as the Station Diary entry made with the Dargha Bazaar Police Station. It is also claimed that Petitioner?s father requested the University to grant him some more time to submit the said original documents after obtaining them afresh from the school.

6. Although the Petitioner received no reply, she states that she presumed that the University had allowed her more time. At the same time she admits that no further date of counseling was intimated to her. The Petitioner further claims that there was a delay on her part in collecting the original documents/certificates from her school as her father was under serious stress due to lack of funds on account of the shutting down of his business in the wake of the Covid-19 induced lockdowns. She also claims that her grandmother fell seriously ill, had to be hospitalized for treatment and ultimately expired on 8th January, 2021. The Petitioner claims to have been â??mentally and emotionally drainedâ?? on account of the above unfortunate events.

7. Meanwhile, the Petitioner?s father is stated to have learnt from a â??reliable sourceâ? that there were vacancies in the B.com Course for the academic session 2020-21 in the University. Accordingly, he claims to have addressed a letter on 2nd February, 2021 to the University to grant him a further one week?s time to submit the original certificates and finalise the Petitioner?s admission to the B.Com course. On the same day, he claims to have submitted an application to the Minister of Higher Education, Government of Odisha requesting for 10 days time to submit the original

certificates. No reply was stated to have been received from the Ministry.

8. Without indicating any date in paragraph 13 it is simply stated that “in the meantime the father of the Petitioner received all the original

Certificates including her Aadhar Card and Bank Passbook” from an unknown person who found them and contacted him. It is then claimed that the

Petitioner, accompanied by her father, again approached the University requesting that those original certificates be accepted and she be permitted to

attend the online classes. It is claimed that there was no response from the University. A similar representation made to the Chancellor of the

University on 16th February, 2021 is also stated to have not got any response. It is in this background that the present petition was filed where apart

from the prayer referred to earlier, a direction was sought to the University to accept the documents/original certificates of the Petitioner and grant

her admission to the B.Com course for the academic session 2020-21.

9. This writ petition came up for hearing first before this Court on 8th March, 2021. In that order, while issuing notice to the Opposite Parties, the

Court noted the contention of the counsel for the Petitioner that the Petitioner figured at Sl.No.147 of the merit list prepared by the University.

However, she had not been allowed to prosecute her study through online basis “on the plea that she has not submitted documents, though she has

already submitted documents”.

10. On 7th May 2021, Mr. V. Mohapatra, learned counsel appearing for the University sought time to file a reply. The case was then adjourned to 8th

June, 2021.

Reply of the University

11. A counter affidavit was filed by the University on 21st May, 2021 where a preliminary objection was taken that the writ petition “is hopelessly

barred by delay and laches”. It was pointed out that the Petitioner was required to submit the original documents for verification on the date of the

counseling i.e. 18th October, 2020 and in any event not later than 21st October, 2020. The Petitioner not only failed to submit the original documents

but even did not appear for counseling. The entire admission procedure for the B.Com stream was completed on 1st December, 2020 and classes

commenced in January, 2021. It is only much later in March, 2021 that this writ petition was filed.

12. Secondly, it is submitted by the University that the submission of original documents is a mandatory pre-condition for admission under the UG

Admission Rules and Guidelines of the University. The relevant extracts of the said Guidelines read as under:

â??Disclaimer:

1. Applicants who fail to produce the original documents or suppress any information shall not be admitted and the decision of the Admission Committee in this

regard is final...â??

13. The U.G. Admission Guidelines 2020 for Applicants also mandate that an admission can only be confirmed only after successful document

verification. The relevant clause of the said Guidelines reads as under:

â??8. If a candidate is allotted subject of his/her first preference, he/she must take note of the following.

a...

b.....

c. Mere payment of the requisite admission fee does not entail automatic confirmation of one's admission in that subject, it must be validated by successful

document verification.â??

14. In the prospectus it is stated as under:

â??If a selected candidate fails to submit the documents and admission fees on the specified dates of counseling for admission, the claim of admission shall be forfeited.â??

15. Thirdly, it is contended by the University that the designated authority to take a decision in case an applicant fails to produce the original

documents, is the Admission Committee. It is pointed out that the Petitioner never made any grievance or representation before the said Committee.

The University denies that any representation was received by it from the Petitioner's father on 17th October, 2020. It is pointed out that there was

no occasion for the Petitioner to assume that her request had been accepted and that she would be informed about any subsequent date of counseling.

Rejoinder of the Petitioner

16. A rejoinder was filed by the Petitioner on 3rd June, 2021 where it is

contended inter alia that the documents issued under the DigiLocker system are deemed to be at par with the original physical documents in terms of Rule 9A of the Information Technology (Preservation and Retention of Information by Intermediaries providing Digital Locker facilities) Rules, 2016 (IT Rules?). It is now contended that the requirement for physical submission of original documents on the date of counseling has been inadvertently recorded in the Guidelines for BBA and B.com Counseling 2020 as inertia from old Guidelines.

17. As regards the letter dated 17th October, 2020, it is sought to be contended now that in a subsequent representation dated 2nd February, 2021 submitted by the Petitioner's father he had adverted to having submitted the earlier letter dated 17th October, 2020 and the letter dated 2nd February, 2021 was duly acknowledged by the University.

Petitioner's applications and additional affidavits

18. The Petitioner has also filed a series of Interim Applications in this petition. I.A. No. 5624 of 2021 filed on 5th April, 2021 is for a direction to the University to allow the Petitioner to attend online classes in the B.Com course in the academic session 2020-21 during the pendency of the writ petition. I.A. No. 8273 of 2021 filed on 18th June, 2021 is for a direction to the University to allow the Petitioner to attend the forthcoming online/physical examination to be held with effect from 21st June, 2021 in the B.Com course for the academic session 2020-21 and also to make special arrangements to take part in the examination if it is missed by the Petitioner during the pendency of the petition. I.A. No. 8275 of 2021 filed on 20th June, 2021 is for a direction to the University again to make arrangements to allow the Petitioner to attend the exams to be held for B.Com course with effect from 21st June, 2021.

19. Apart from the above applications, the Petitioner has filed two additional affidavits. In an additional affidavit dated 16th April, 2021, the Petitioner claimed that a copy of the Police complaint filed regarding the loss of document is now traced. A photo copy of an undated letter ---10-2020, without any acknowledgment of the University, was enclosed with the said additional affidavit along with documents showing the treatment for the ailments of the Petitioner's father. There is another additional affidavit filed by the Petitioner on 17th June, 2021 regarding the vacant seats in the

B.Com course and enclosing a copy of the representation dated 12th June, 2021.

Petitioner's representation

20. In the meanwhile, on 18th June, 2021 this Court directed the University to take a decision on the Petitioner's representation dated 12th June, 2021 by 19th June, 2021.

21. In compliance with the said direction, the University on 19th June, 2021 passed a detailed order rejecting the representation. Inter alia, a reference

was made by the University to the fact that the University was governed by the Odisha Universities Act, 1989 as well as the Orissa Universities First

Statutes, 1990. Chapter X of the statutes specified as under:

218. Register of Students: The Controller of Examinations shall maintain on behalf of the Syndicate a register in which shall be noted the names of all students of the University.

219. Registration Compulsory for all students: Any student reading for a degree or diploma or any examination of the University shall have his name entered in

the Register of Students and no candidate for an examination of the University shall be eligible to appear at any such examination without having first his name

so entered in conformity with the conditions hereinafter specified. For the purpose of such registration the students of other Universities shall be required to

submit a migration certificate from the University from which they have passed the last qualifying examination.

Provided that if the migration certificate is not produced at the time the candidate registers for the examination, he may be allowed to appear at the examination

but his result shall not be published until he produces the migration certificate.

22. Therefore, only bonafide students of the University whose names are recorded in the Register of Students are eligible to take part in the

examination. It is pointed out that the Petitioner is still not a student of the University as she did not complete her admission formalities as per the

Admission Guidelines and Prospectus of the University. The entire admission process for B.Com was completed on 1st December, 2020. Her name

not being in the Register of Students maintained by the University, she was not eligible to appear the examination of the University.

23. This Court heard the submissions of Mr. Biswajit Das, counsel for the

Petitioner and Mr. V. Mohapatra, counsel for the University. At this juncture it must be noted that another learned Single Judge of this Court who was hearing this petition on 22nd June 2021 passed an order on that date noting the unbecoming behaviour of Mr. B. Das, counsel for the Petitioner during the hearing. The learned Judge, therefore, asked the petition to be listed before some other Bench. While not in any manner condoning the above behaviour of the counsel for the Petitioner, I heard this petition finally on the very next date, 23rd June 2021 since the nature of the matter was such and since no litigant should be disadvantaged on account of the behaviour of the lawyer.

Submissions of counsel for the Petitioner

24. According to Mr. Das, counsel for the Petitioner, this is a hard case where a brilliant student is being denied admission only because of the intransigent attitude of the University in refusing to permit the Petitioner to produce the original documents for verification. She was unable to do so initially on account of circumstances beyond her control. Mr. Das repeatedly stressed that the Petitioner had complied with all requirements for securing the admission. He further submitted that although the case of the Petitioner initially was that she had lost the original documents and, therefore, could not produce them on the date of counseling, her changed stand was that the original documents did not have to in fact be produced since the digital documents uploaded through DigiLocker App served the same purpose in terms of Rule 9A of the IT Rules.

25. Relying on the decision in *Asha v. B.D. Sharma University of Health* (2012) 7 SCC 389, Mr. Das submitted that it was the duty of the University to grant admission to meritorious Petitioner which cannot be compromised on any plea much less the technical/procedural complications. Relying on the decision in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.*, (2013) 2 SCC 617, it is submitted that the guidelines, which are procedural in nature, meant for the students' benefit and the purpose of the time schedule is only to ensure that the authorities acted within the stipulated time. According to Mr. Das all these obligations under the Guidelines were only to ensure that the authorities act in a timely and proper manner.

26. Relying on the decision dated 13th August, 2012 of Delhi High Court in *Isha*

Karwasra v. Army Hospital, Mr. Das submitted that since the Petitioner fulfilled all eligibility criteria she could not have been denied admission on the plea of procedural lapse. According to Mr. Das, even if the Petitioner is given admission at this stage, it would not cause prejudice to anyone. He relied on the decision in *S. Krishna Sradha v. State of Andhra Pradesh*, 2019 SCCOnline SC1609.

27. According to Mr. Das, there has to be administrative flexibility to accommodate the Petitioner. In this regard reliance has been placed on the decision of the Delhi High Court dated 23rd March, 2021 in *Adil Sajeer Ansari v. University of Delhi*. He also urged that the Court may direct a supernumerary seat to be created for the Petitioner. In support of this plea he relied on a decision of this Court dated 14th September, 2009 in *Sudeep Panigrahi v. Chairman, JEE* and a decision dated 12th January, 2012 of the Delhi High Court in *Ruchika Duggal v. AIIMS*.

Submissions of counsel for the University

28. Appearing for the University, Mr. Mohapatra, reiterated the submissions in the counter affidavit and pointed out that the entire admission process was completed on 1st December, 2020 and classes commenced in January, 2021. There was no question of permitting the Petitioner at this stage to sit for the 1st semester exam. He pointed out that no valid and reasonable explanation has been offered by the Petitioner for not turning up for counseling on 16th October, 2020. Referring to the clauses of the Admission Guidelines, he pointed out that the Petitioner has forfeited her claim of admission.

The relevant clause reads as under:

Forfeiture of Claim of Admission:

If a selected candidate fails to submit the documents and admission fees on the specified dates of counseling for admission, the claim of admission shall be forfeited.

29. Mr. Mohapatra referred to the decision of this Court in *Dillip Kumar Mohanty v. State of Orissa*, 2016(II) ILR-CUT 94 4 to urge that the clauses of the prospectus were mandatory and if any such condition is not fulfilled, no relief can be granted contrary thereto. Reference is also made to the decisions in *G. Sumathi v. Director of Medical Education, Madras* AIR 1993 Mad 328; *Romini Susan Kurian v. State of Andhra*

Pradesh AIR 1992 AP 380; Gunjan Kapoor v. State of Himachal Pradesh 1999 (I) Shimla Law Cases 24. 6Mr. Mohapatra contended that the

petition contains vague and unsubstantiated averments regarding the Petitioner's father having made a representation on 17th October, 2020 and there

was no proof in support thereof. Further, the Petitioner had been changing her stand by first contending that she had the original documents to submit

and later stating that the documents submitted in the DigiLocker App were sufficient and satisfied the requirement.

30. Mr. Mohapatra pointed out that through the DigiLocker App only a few documents could be submitted and not all of them as per the check list as

per the UG Admission Guidelines 2020. One such key document is the School/ College Leaving Certificate, which had to be verified in original and

physically in order to check fraud and to prevent an attempt by prospective candidates seeking to enrol in multiple educational institutions at the same

time. Such a requirement had been upheld by this Court in Dillip Kumar Mohanty (supra) and in Susant Moharana v. Convenor, P.G. (Medical)

Selection CommitteeÂ 2006 (Supp.I) OLR 362.

Analysis and reasons

31. In the matter of admission to educational courses in academic institutions and Universities that are governed by statutes, the procedural

requirements have invariably been considered by the Courts to be mandatory. Further, Courts have been insisting that there has to be a strict

adherence to the cutoff date for admission to courses.

32. The decision of this Court in Dillip Kumar Mohanty (supra), makes it clear that when the prospectus stipulates the condition for admission, that

has to be fulfilled. In coming to that conclusion this Court reiterated its earlier decision in Susant Moharana (supra) and Dr. Sunanda Priyadarshini

Mohanty v. State of Orissa (decision dated 7th August, 2014 in W.P.(C) No. 12476 of 2014). Other High Courts have also consistently held likewise.

For e.g., G. Sumathi (supra); Romini Susan Kurian (supra); and Gunjan Kapoor (supra).

33. In the present case, the guidelines which have already been extracted made it clear that if a selected candidate failed to submit the documents and

admission fees on the specified date of counseling, the claim of admission shall be forfeited. Further Clause-8 of the UG Admission Guidelines, 2020

made it clear that mere payment of the Admission Fee would not entail automatic confirmation of one's admission and that it must be validated by successful document verification.

34. The timeline as indicated by the Petitioner herself in the petition makes it clear that at the crucial point in time when the Petitioner was expected to present herself for counseling i.e. on 18th October, 2020 in the University, she failed to do so. There is no explanation offered for her not remaining physically present at the counseling. Further, the letter purportedly submitted by her father to the University on 17th October, 2020 does not bear any date. It simply reads: "10-2020". It also bears no stamp of receipt of such letter by the University. If it was sent by Post, then there is no postal receipt enclosed in proof thereof. When one compares this to the subsequent representation dated 2nd February, 2021 made to the University by the Petitioner's father, the subsequent letter bears the stamp of the University acknowledging its receipt. Despite numerous opportunities, the Petitioner has been unable to satisfy the Court that her father did submit such a representation to the university on 17th October, 2020.

35. From the University's point of view if the Petitioner failed to turn up for counseling on 18th October, 2020 and even by 21st October 2021, failed to produce the original documents and certificates as required for verification, they can hardly be blamed for proceeding to finalize the admission on 1st December, 2020. Although her name may have figured in the merit list, the Petitioner could not make the final cut because she failed comply with the mandatory requirement of producing the original documents for verification.

36. There is merit in the contention of the University that the petition is barred by laches. The Petitioner who is keen to take admission in the B. Com course of the University could not have slept over the matter. Whatever may be the mental stress she may have undergone, the Petitioner was expected to appear for counseling on 18th October 2020 and produce the necessary documents in original for verification on that date as per the mandatory requirement of the University's admission guidelines. It is not usual for a student who is keen on admission, even one who has lost the original documents, not to appear for the counseling and explaining at that stage to the University why she cannot produce the originals.

37. Further, there can be no excuse for not following up on the admission

process, particularly after supposedly giving a letter on 17th October 2020.

She appears to have woken up only on 2nd February 2021 when her further wrote to the University. Surprisingly, the Petitioner did not even approach

this Court till 3rd March, 2021. She cannot claim that she was ignorant that the admission process for the B.Com course had concluded and that the

classes had begun by then. As any student would know, once the admission process is finalized, classes commence. The Petitioner cannot reasonably

expect to walk into this Court on 3rd March 2021 and demand that she should be admitted to a course the admission for which was completed on 1st

December, 2020 and classes began in January 2021.

38. The occasion for this Court to exercise its extraordinary jurisdiction in favour of the Petitioner in the background of the above facts does not arise.

The Court is unable to agree with the submission of Mr. Das on a reading of the decision in *Maa Vaishno Devi Mahila Mahavidyalaya (supra)*,

that the guidelines were not supposed to be adhered to by the applicants/students, but was only to ensure that the University met its obligations

thereunder. The timeline for submission of original documents for verification had to be indeed strictly adhered to. In fact all courses have to follow a

strict timeline, even as per the statutes governing the functioning of the University.

39. As explained by the Supreme Court in *S. Krishna Sradha (supra)*, the cutoff date for admission to courses is sacrosanct. Even if the observations

were made in the context of admission to the MBBS course, it would equally apply to all courses. It is useful to reproduce the relevant observations of

the Supreme Court in the said case, which read thus:

â??9. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in

medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right

expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related

principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule

prescribed " 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the

same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e.,

within one month from 30th September, i.e., cutoff date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October.

However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may

also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to

a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an

opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of

the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be

meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be

granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered

appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious

candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award

the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission

in the same academic year.â?? (emphasis supplied)

40. I have laid emphasis on the highlighted portions of the above passage only to demonstrate that those parameters do not stand fulfilled in the present

case. I am, therefore, not persuaded that the University has acted arbitrarily in declining the Petitioner's representation to be admitted to the B.Com

course at a belated stage and to be allowed to take the examination for the first semester with the Petitioner not attending a single class and not

satisfying the mandatory requirements.

41. As regards the argument regarding documents produced through DigiLocker, the University is right in its contention that even if the submission

that a digitally certified document is as good as the original were to be accepted, it would hold good for one set of documents like the mark sheets but

would not apply to other mandatory documents like the School Leaving Certificate, which are not digital documents and would have to be produced in

original before the University for verification. This is indeed the mandatory requirement as made clear in the Admission Guidelines and Prospectus of

the University, which is binding on the Petitioner, and which in any event she has not questioned in the present petition. With the Petitioner not meeting

any of the mandatory requirements, she cannot expect a mandamus to be issued to the University to grant her admission to the B.Com course for the

academic session 2020-21 or to permit her to sit for the 1st semester examination.

42. There is no merit in this writ petition and it is accordingly dismissed, but in

the circumstances with no order as to costs. The pending applications are dismissed as well.

43. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order

available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

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