
(1976) 01 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 2181 of 1975

Jagteswar Singh Banga

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 22-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 29(2)

Citation : AIR 1977 Ori 30

Hon'ble Judges : S.N. Shankar, C.J;P.K. Mohanti, J

Bench : Division Bench

Advocate : A. Das, S.N. Satpathy and M.S. Panda, for the Appellant; R.K. Patra, for the Respondent

Final Decision : Dismissed

Judgement

Shankar, C.J.—The petitioner applied for admission to any one of the Medical Colleges mentioned by the State of Orissa for the session 1975-76, but his application was rejected. By this "writ petition he prays that the opposite parties State of Orissa and Convener of M.B.B.S. Selection Board be directed to admit him in any of the aforesaid colleges as his application for admission was rejected without any valid ground.

The petition is opposed. Two main grounds urged in support of the rejection are firstly that in terms of the Home Department Resolution No. 38-Reforms dated January 18, 1949, the petitioner was not able to speak Oriya and even though a literate person was also not able to read and write this language, and secondly that in terms of the same notification no adequate proof was produced by him to satisfy the authorities that he was a permanent resident of the province of Orissa, namely, that one of his parents had lived in the Province of Orissa for a minimum period of 12 years.

2. As for the first ground the learned Standing Counsel appearing for the opposite parties faced with the provision of Clause (2) of Article 29 of the

Constitution conceded that the rejection of the petitioner's application on the ground of language, i.e., he was unable to speak or read and write Oriya was not sustainable, but as for the second ground he urged that no exception could be taken to the decision of the appropriate authorities.

3. We have seen the original application. The printed application form requires two declarations to be furnished, both as indicated in the form. The first declaration is the undertaking by the father/legal guardian of the applicant that he would see that his son/ward abides by the rules of the college and hostel attached to it and pays all fees, deposits, etc. in the college as per rules. The second declaration is in the following terms:--

"And, whereas, I am required to make a declaration under the resolution of the Government of Orissa in the Home Department No. 38 Reforms, dated the 18th January, 1949 to the effect that I am a permanent resident of the Province of Orissa.

Now, therefore, in pursuance of the said Resolution, I do hereby declare that I..... son of..... of..... in the district of am a permanent resident of the Province of Orissa as defined therein."

Under the second declaration there is a Note, Clause (i) of the note which alone is relevant for purposes of this petition reads as under:--

"(i) A permanent resident of the Province of Orissa means anybody who or one of whose parents have lived in the Province of Orissa for a minimum period of twelve years and who-

X X X X ".

It would be seen from the second declaration that the printed form of declaration does not contain any affirmation on the part of the declarant that he had been residing in the Province of Orissa for a minimum period of 12 years. The purpose of the note was to draw pointed attention of the declarant to this requirement to furnish particulars in support of the statement that he had lived in the State of Orissa for a minimum period of twelve years. The declarant and the petitioner in this case fully understood this position and to meet this requirement along with the application produced a certificate reading as under:

"Certified that Sardar Kartar Singh, s/o late S. Hira Singh is a displaced person from West Pakistan (vide his Refugee Identity Card). His brother-in-law Sardar Harvinder Singh who is also a displaced person, was first rehabilitated at Dehra Dun and at present residing at Sector 5 Market, Rourkela of this district in the State of Orissa with Sri Kartar Singh as his dependant since 1958.

Sd. Collector, Sundargarh."

It however did not bear the signature of the Collector, Sundargarh, who purported to issue it. It also bore no date. It had an endorsement purporting to be by the Additional Tahsildar, Sector 4. Panposh, Rourkela with the endorsement

"Attested". This document in support of the declaration was thus not the original certificate of the Collector, Sundargarh, but an attested copy of an alleged certificate issued by the Collector bearing no date. Such a certificate obviously could not be accepted. We see no case under Article 226 of the Constitution in these circumstances to issue the writ of mandamus as prayed for.

4. This writ petition is, therefore, dismissed but without any order as to costs.

5. We have no doubt that if the petitioner duly and properly applies for admission next year, his application will not be rejected on the ground of his not being able to speak or read and write Oriya.

Mohanti, J.

6. I agree.