

(2017) 04 OHC CK 0015

In the Orissa High Court

Case No : 8325 of 2016

Rabindra Kumar Baral

APPELLANT

Vs

Indira Gandhi National Open University, & Anr.

RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

Citation : (2017) 04 OHC CK 0015

Hon'ble Judges : B.R. Sarangi

Bench : SINGLE BENCH

Advocate : Sudarsan Behera, A.M. Das, G.P. Pattnaik, R.K. Bose, S.K. Nayak

Judgement

1. The petitioner, being denied admission to "Bachelor of Education (B.Ed.) Programme-January, 2016", has invoked jurisdiction of this Court by means of this writ petition and sought for direction to the opposite parties to ignore the criteria for supply of copy of mark sheet and certificate of National Council for Teachers Education (NCTE) recognized teacher education programme, as mentioned in the letter of offer dated 21.04.2016 (Annexure-5), and allow him to prosecute the said course under Indira Gandhi National Open University, Regional Centre, Bhubaneswar.

2. The factual matrix of the case, as pleaded before this Court, is that the petitioner, being M.A. and DI.Ed. in (Special Education), was selected as "Sikshya Sahayak" and engaged in Swapneswar Dev Nodal U.P. School, Khanda Sahi, P.O. Astaranga, Dist- Puri, where he joined on 20.11.2012 and continued as such. On 31.07.2015, Regional Director, Indira Gandhi National Open University (IGNOU) issued an advertisement (Annexure-2) inviting applications for admission to B.Ed Programme starting from January, 2016 through entrance test to be held on Sunday, the 20th September, 2015 all over the country. The petitioner, having satisfied the eligibility criteria for admission as mentioned in the advertisement itself, filed his application along with necessary documents. He appeared at the entrance test conducted on 20.09.2015, having enrolment number 662021766, at IGNOU Study Centre (2119) SCS (Autonomous) College, Puri and got selected

securing 72 marks in rank 35. Consequently, a letter of offer was issued on 21.04.2016 (Annexure-5), wherein 13.05.2016 was fixed as the date of admission and the petitioner was called upon to submit, besides other documents, a copy of the mark sheet and certificate of NCTE recognized teacher education programme through face to face mode. In compliance thereof, the petitioner submitted the required documents for scrutiny and verification, but as learnt by him, though the other applicants, whom the letters offer were issued, have been given admission, the petitioner has been discriminated, hence this application.

3. Mr. S. Behera, learned counsel for the petitioner states that as per letter of offer dated 21.04.2016, since the petitioner does not possess the mark sheet and certificate of NCTE recognized teacher education programme completed through face to face mode, he has been denied admission. But, as a matter of, the said condition is not required to be fulfilled in view of Clause 1(b)(ii) of the eligibility for admission contained in the advertisement dated 31.07.2015 issued under Annexure-2. 3. Mr. R.K. Bose, learned counsel appearing for opposite parties argued with vehemence stating that the letter of offer having been issued in consonance with the conditions stipulated for eligibility for admission pursuant to advertisement issued on 31.07.2015, the authority has not committed any illegality or irregularity so as to warrant interference of this Court in the present writ petition. It is contended that under Clause 1(b)(i), trained in-service teachers in elementary education means who have completed NCTE recognized teacher education programme through face to face mode and all in-service teachers means who are employed as teachers in elementary schools or elementary stage of education. Therefore, non-consideration of the application of the petitioner due to non-production of the mark sheet and certificate of NCTE recognized teacher education programme completed through face to face mode having been in consonance with the advertisement dated 31.07.2015 in Annexure-2, the authorities are justified in not selecting the petitioner for admission into B.Ed. programme January, 2016.

4. This Court heard Mr. S. Behera, learned counsel for the petitioner, and Mr. R.K. Bose, learned counsel for opposite party no.2. Pleadings have been exchanged between the parties. When this Court made a query with regard to filing of rejoinder affidavit by the petitioner, Mr. S. Behera, learned counsel for the petitioner specifically denied that the petitioner does not want to file any rejoinder affidavit and he wants to argue the matter without any rejoinder to the statement made in the counter affidavit. Accordingly, this Court considered the arguments, perused the records and disposed of the writ petition at the state of admission with the consent of parties.

5. The IGNOU, which is created by an Act of Parliament (Act no.50 of 1985), is unlike any other conventional university. It imparts higher education for large segments of the population and in particular the disadvantaged groups such as those living in remote and rural areas including working people, housewives and

other adults, who wish to upgrade or acquire knowledge through studies in various fields. In an Open University students support services are built on the concept of local centres. The university is guided by its own rules and regulations.

6. The IGNOU is an Open University. In an Open University there is no campus-based instruction. The students are scattered over a wide area including the interior and remote rural villages. University disseminates knowledge through diverse means including the contemporary communication media, i.e., printed material, home experiment kits, television and radio broadcasting and audio-visual aids. There is no direct link of students and teachers as is found in a classroom in a general/conventional university. Therefore, in an Open University there is hardly any chance of identifying a student as a candidate for a particular programme except on the basis of the rules/ regulations/instructions provided by the university.

7. The IGNOU offers various sorts of academic programme covering almost all the branches of studies through its different schools of studies/departments. B.Ed. is one of such academic programmes offered by the school of education of the University. It was commenced with the aim for developing the understanding and competencies required by practicing teachers for effective teaching-learning process at secondary stage. It also helps the elementary level teachers by giving them an opportunity for their career advancement. This programme also provides opportunities of sharing experiences gained by practicing teachers. It enables teachers to select and organize learning experiences according to the requirement of learners. In addition, it provides knowledge and develops in them and understanding of areas such as educational evaluation, school management, etc.

8. As per the advertisement dated 31.07.2015 (Annexure-2), there are 400 seats for the year 2016-17, as sanctioned by the NCTE, which the statutory body of the Govt. of India and is the guiding and controlling authority in this regard. The NCTE framed the eligibility criteria for taking admission of the candidates, curriculum for B.Ed. etc. and also framed relevant Rules, Regulations and Guidelines which are mandatory to be followed by the IGNOU for imparting the B.Ed. Education.

9. In general, the student handbook and prospectus for B.Ed. Programme is the guiding instrument for a student intending to take admission into the programme. The student hand book & prospectus containing the application form is the guiding factor for applicants for B. Ed., January, 2016. The prospectus covers everything in it for guiding a candidate, such as the relevant university rules, reservation provision, procedure of selection, manner of entrance examination, mode of selection and application form etc. For better understanding, instructions are being incorporated in the prospectus caption-wise so that there may not be any confusion in the mind of a student to know the procedures being followed and would be adopted in the scheme of the things. In the said prospectus the eligibility of a student to take admission for B.Ed. course

has been provided.

10. Undisputedly, IGNOU published an advertisement on 31.07.2015 (Annexure-2) that it would be admitting the students for B.Ed. Programme starting from January, 2016 through entrance test to be held on Sunday, the 20th September, 2015 all over the country. In the same, the eligibility of a student to take admission for B.Ed. Programme has been provided under the heading "Eligibility for Admission". Clause-1 of the "Eligibility for Admission", which is relevant for the purpose of the case in hand, is reproduced below.

"Eligibility for Admission:

1.(a). Candidates with at least 50% marks either in the Bachelor's Degree and/ or in the Master's Degree in Sciences/Social sciences/Humanity/ Commerce, Bachelor's in Engineering or Technology with Specialization in Science and Mathematics with 55% marks or any other qualification equivalent thereto.

AND

(b)(i) Trained in-service teachers in elementary education.

Or

(ii) Candidates who have completed a NCTE recognized teacher education programme through face-to-face mode."

11. The petitioner, after going through the eligibility criteria to take admission for B.Ed. Programme from January, 2016, as mentioned in the advertisement vis-avis the prospectus, and understanding the terms and conditions fixed by IGNOU, downloaded the application form from the website and after filling it up, on depositing the requisite fees of Rs.1000/- for entrance test examination in the office, submitted the same with the following declaration:

"I hereby declare that I have read and understood the conditions of eligibility for the B. Ed programme for which I seek admission. I fulfill the minimum eligibility criteria on the date of submission of application form. I have provided necessary information in this regard in the application form. I shall provide proof of my eligibility along with the original certificates in the event of qualifying for admission after Entrance Test at the time of counseling. I have carefully studied the rules of the University as printed in the prospectus and I accept them and shall not make any dispute in future over the same rules. in the event of my information being found blank, incorrect or misleading my candidature shall be liable to cancellation by the University at any time I shall not be entitled to refund of any fee paid by me to the University."

As per the up-quoted declaration, the petitioner had to give current information and would not raise any dispute in the event the information found incorrect or misleading and his candidature was cancelled by the University at any time, nor would he be entitled to refund of any fees paid by him to the University.

12. The petitioner appeared at the entrance test examination held on 27.09.2015 for admission to B.Ed. Programme-January, 2016 and came out successful. Consequentially, the letter of offer dated 21.04.2016 was issued to take admission on 13.05.2016. In pursuance of the letter of offer, the petitioner attended and submitted his documents in the office of opposite party no.2, namely, Regional Director, IGNOU. During verification of the documents, it was found that he had not completed the NCTE recognized teacher education programme through face to face mode. The letter of offer dated 21.04.2016 specifically contained that at the time of admission besides other documents, the petitioner was required to submit the following document:

"Copy of Mark sheet and Certificate of NCTE recognized teacher education programme completed through face to face mode duly self-attested. For NCTE recognized qualification, Certificate of Authentication is to be provided by the Certificate Issuing Authority stating that the "Certificate awarded to the candidate is the NCTE recognized and approved teacher education program through face to face mode""

13. While filling up of the application form (Annexure-A/1), in Column-21 the petitioner had stated as follows:

"21. Professional Qualification (NCTE Recognised teacher education programme through face-to-face mode)

Name of Programme	Year	Division	% of mark	Whether NCTE Recognized
-------------------	------	----------	-----------	-------------------------

DIPLOMA	2007	1ST	78%	Yes No
---------	------	-----	-----	--------

From the above, it would be evident that the petitioner, while filling his application form, had clearly stated that has completed the NCTE recognized teacher education programme through face to face mode. But, on scrutiny of documents submitted by the petitioner it was found that the petitioner has completed Diploma Course in Special Education, which was not the valid eligibility criteria prescribed in the advertisement under Annexure-2 in pursuance of the norms fixed by the NCTE.

14. On perusal of the pleadings available in the writ application in paragraph-3, the petitioner himself has admitted that he, being M.A. and DI.Ed. in (Special Education), was selected as Sikshya Sahayak in Swapneswar Dev Nodal U.P. School, Khanda Sahi, P.O.- Astaranga, Dist- Puri, where he continued as such. On the basis of such admitted fact, the petitioner, having completed DI.Ed. in Special Education, is not eligible for B.Ed. General Course, for which the advertisement dated 31.07.2015 (Annexure-2) was issued by the opposite parties. The petitioner submitted his certificate of Diploma in Special Education (Visual Impairment) at the time of counseling, from which it was evident that he had completed the said course from Training Centre for Teachers of the Visually Handicapped, Bhubaneswar, which is a centre of the National Institute for the Visually Handicapped. But, the advertisement under Annexure-2 issued by the

IGNOU is meant for offering General B.Ed. Programme and not Special B.Ed. programme, to which the petitioner may be eligible. Therefore, the statement, as made by the petitioner in Column-21 of the application form, amounts to false declaration and from the same it can be safely inferred that the petitioner, by suppressing the material facts, was fraudulently trying to take admission to B.Ed. General Course to which he is not eligible, thereby violating the conditions of declaration as mentioned above.

15. Mr. S. Behera, learned counsel for the petitioner vehemently contended that if the condition stipulated in Clause-1(b)(ii), with regard to eligibility for admission, is ignored, the petitioner will have a fair chance to get himself admitted into course and as such, he has made a prayer to that extent in the writ application. Even if Clause-1(b)(ii) is not taken into consideration, the petitioner cannot be admitted to B.Ed. General Course, for the simple reason that he does not satisfy the requirement under Clause-1(b)(i), meaning thereby, he is not a trained in-service teacher in elementary education.

16. The NCTE (Recognition Norms & Procedure) Regulations, 2014 is clear on the terms "trained teacher" and "in-service teacher". The University on 02.06.2016 has downloaded from the website of the NCTE, the relevant portion of the said guidelines on frequently asked questions on the same subjects, wherein at serial no.1 it has been stated as follows:

1. Can a candidate having diploma in teacher education through face-to-face mode and not in any job, be admitted to B. Ed(ODL)? A person who is a trained in-service teacher in Elementary Education provided he/she possesses BA/BSc/B. Com/MA/ MSc./M. Com degree with 50% marks with specialization in Science & Mathematics, is eligible for admission in B. Ed. (ODL) Programme. The trained teacher means a person who has completed as NCTE recognised teacher education programme through face to face mode. An in-service teacher means who is employed as a teacher in elementary school or elementary stage of education. (Emphasis Supplied)

17. In view of the aforesaid clarification, even though the petitioner is claiming that he is a trained in-service teacher, he has completed DI.Ed. in Special Education, which cannot be the criteria for being selected to take admission to B.Ed. Programme in general stream offered by IGNOU pursuant to the advertisement issued under Annexure-2 dated 31.07.2015. Consequentially, the petitioner is not fulfilling the requisite norms for taking admission to B.Ed. Programme-January, 2016. Therefore, the prayer made to ignore the condition stipulated in the letter of offer with regard to filing of copy of mark sheet and certificate of NCTE recognized teacher education programme completed through face to face mode cannot be acceded to.

18. In view of the foregoing discussion it is tell-tale that the petitioner, having made a false statement with regard to his professional qualification in Column-21 of his application, has fraudulently tried to get admission B.Ed. Course. Once the

fraud has been played by giving a misrepresentation of the fact, the same should be seriously viewed.

19. In *Vimal v. Delhi Administration*, AIR 1963 SC 1572, the expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage.

20. In *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853, the apex Court held as follows:

"It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal."

21. In *United India Insurance Co. Ltd. V. Rajendra Singh*, AIR 2000 SC 1165, the apex Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

22. In view of the fact and law discussed above, this Court is of the considered view that the petitioner, having furnished the information fraudulently in Column-21 of the application form, is not entitled to get relief as claimed in this writ application. Further, the question of ignoring the criteria mentioned in the letter of offer dated 21.04.2016 with regard to submission of copy of the mark sheet and certificate of NCTE recognized teacher education programme completed through face to face mode does not arise, as the petitioner has no requisite eligibility criteria pursuant to the advertisement dated 31.07.2015 in Annexure-2 along with conditions stipulated in the prospectus itself.

23. In the above view of the matter, the writ petition merits no consideration on either of the two accounts and is thus dismissed. No order as to cost.