

(2001) 01 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 7858 of 2000

Rohit Chauhan

APPELLANT

Vs

Chairman, Admission Sub-Committee, Joint Entrance
Examination-E and M-2000, University College of
Engineering, Burla, District - Sambalpur

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 6
Orissa Miscellaneous Certificate Rules, 1984 — Rule 3
Representation of the People Act, 1951 — Section 80

Citation : AIR 2001 Ori 125 : (2001) 91 CLT 454 : (2001) 1 OLR 305

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Advocate : M/s B.P. Ray, S. Pujari, P.K. Patnaik, B. Sahoo and J.A. Reddy, for the Appellant; M/s R.K. Mohapatra Mr. B. Swain, R.K. Dash, D.R. Swain, S.Kar and A. Mishra, for the Respondent

Final Decision : Allowed

Judgement

P.C. Naik, J.—The challenge in this writ application is to the inaction of the opposite party by not permitting/allowing the petitioner to participate in the counselling for admission to the Engineering Courses in the State of Orissa.

2. The facts giving rise to this petition are that in response to an advertisement that was issued, the petitioner submitted an application to appear at the Joint Entrance Examination (Engineering & Medical) 2000 for admission into the Engineering stream. It is the case of the petitioner that as his application form was in order, he was issued an Admit Card, copy whereof is Annexure-1 to the writ petition, on the basis of which he appeared at the said Examination from the B. J. B. College Centre. Since he succeeded in the written test, he was issued a Call Letter to appear at the counselling scheduled to be held at Bhubaneswar on 9-8-2000. The petitioner went to Bhubaneswar and though the authorities collected the Call Letter from him and though the petitioner submitted the

residential certificate issued to him by the Tahasildar, Jatni he was not permitted to participate in the counselling. He was however, informed, though not in writing, that as the certificate submitted by him was mutilated, he could not be permitted to participate in the counselling.

3 The petition was opposed, inter alia, on the ground that as the certificate produced by the petitioner had been mutilated and had not been filled up as per the requirement, the same was not accepted by the Chairman, Admission Sub-Committee and as such, the petitioner was not allowed to participate in, the counselling on 9-8-2000. In paragraph 3 of the counter-affidavit, it has been averred that the "candidature of the petitioner was rejected because the resident/nativity certificate produced by him has been mutilated. The word "Nativity" has been scored through in the certificate Appendix-I (Form No. III). Further the portion "is a native of the District of..... in the State of Orissa and" in the resident/nativity certificate has been scored through by the Tahasildar which indicates that the petitioner is not a native of Orissa. Since the Appendix-I (Form No. III) resident/nativity certificate has not been completely filled up and has been scored through the same was not accepted by the Chairman, Admission Sub-Committee and the petitioner's candidature was rejected. The other eligible candidates who were below the rank of the petitioner took admission and the seat commensurate with the rank of the petitioner was filled up. Therefore, the writ application has become infructuous and is liable to be dismissed.

4. It is also the case of the opposite party that even though the petitioner's name was there in the merit list" he was not entitled to participate in the counselling after defect was subsequently detected in the documents furnished by him. Reliance was also placed on Clause 2.17 of the Information Brochure which provides.

"Mere appearance of the Roll Numbers in the published merit list or receipt of a call letter does not necessarily entitle a candidate to admission unless a seat is available commensurate with his/her merit position and unless the candidate also qualifies in all respects".

It is also alleged that as the certificate produced by the petitioner did not indicate about his permanent residence or that he is a native of Orissa, he was rightly not permitted to participate in the counselling.

5. What is, therefore, to be determined in this writ application is, whether or not the certificates issued by the Tahasildar in favour, of the petitioner copies were of Annex-ures-3 and 4 to the writ petition were in accordance with the requirement of Clause 2.2.2(i) of the Information Brochure, and whether or not the said certificates being mutilated, were liable to be rejected.

6. Before proceeding further. Clause 2.2.2 (i) of the Information Brochure, which is relevant for the purpose of deciding this case, may be quoted :

"2.2.2. Orissa State Candidates (S-Category)

XX XX XX

(i) Permanent resident of Orissa as provided in The Orissa Miscellaneous Certificates Rules, 1984 (Form No. III). Such candidates shall furnish along with their application form a Resident/Nativity certificate in the prescribed format provided in this brochure as Appendix-I from a Revenue Officer not below the rank of Tahsildar of the area where the Candidate is a permanent resident."

Appendix-1 to the Information Brochure is a perforated form which was to be detached from the brochure and in which the resident/nativity certificate was to be submitted in the prescribed format. The petitioner had submitted a certificate in the prescribed format, a xerox copy whereof is Annexure-4 to the writ application. This format is in fact the format of Form-III of the Orissa Miscellaneous Certificate Rules, 1984. Reference at this stage may also be made to the said Rules. Rule 3 whereof relates to category of Miscellaneous Certificate which Revenue Officer is competent to grant, Resident/nativity certificate is one such category and such a certificate is to be issued in Form -III which is prescribed in the Rules. The Form in question reads thus :

"FORM No. III (See Rule 3)

Resident/Nativity Certificate Office of the..... Miscellaneous
Certificate Case No.....of.....19.....

This is to certify that Shri/Smt/Miss.....son/daughter/wife of
Shri.....is a native of the district of.....in the State of Orissa and he/
his family ordinarily resides in village/ town.....
P.S.....Tahsil.....in the district of.....

2. This,,certificate is being granted only for the purpose of.....

Signature of the Revenue Officer

Date..... Designation (with seal of office)"

Signature of the applicant.

7. The petitioner has submitted two certificates one which is a residential certificate signed by the Tahsildar, Jatni and the other is also a certificate which is in the format appended to the Information Brochure as Appendix-I. In view of the stand of the opposite party, it would be necessary to quote the relevant portions of the said certificates. The relevant portion of the residential certificate issued by the: Tahsildar, Jatni under the Orissa Miscellaneous Certificate Rules, 1984 reads as under:

"FORM No. III (See Rule 3)

OFFICE OF THE TAHSILDAR : JATNI MISC. CERTIFICATE CASE No. 749/2000
RESIDENTIAL CERTIFICATE

This to certify that Sri Rohit Chauhan s/o. Sarat Chauhan and his family

Ordinarily resides in the Town Kudiary (Raja-bazar) P. S. Jatni Tahasil Jatni in the district of Khurda in the State of Orissa .

2. This certificate is being granted only the purpose of studies."

The relevant portion of the certificate issued by the said Revenue Officer in the prescribed formant appended as Appendix-I to the Information Brochure reads as under :

"APPENDIX-I (Clause 2.2.2. (i) of Information Brochure of JEE)

FORM No, III (The Orissa Miscellaneous Certificates Rules, 1984) Office of the
Tahasildar Jatni

Miscellaneous Certificate Case No. 749/of 2000

RESIDENT CERTIFICATE

This is to certify that Shri/Smt./Miss Rohit Chauhan son/daughter/wife of Shri Sarat Chauhan and he (she)/his (her) family ordinarily resides in Village/ Town Kudiary (Raja Bazar) P. S.....Tahasil Jatni in the District of Khurda in the State of Orissa.

This certificate is being granted only for the purpose of Studies."

8. The question therefore is. whether the certificates submitted, wherein something has been scored through by the authorities because it was not relevant can be said to be an act of mutilating the form, or in other words, can it be said that the scoring through by the authority of something that was not necessary or required, would amount to mutilation of the form, and whether the certificates are in accordance with the requirement of clause 2.2".2(i) of the Information Brochure, or not. To consider this, it will be necessary to go to the Dictionary meaning of the word "mutilate" which is quoted hereunder : The Law Lexicon, Reprint Edition, 1995-

"Mutilate. To cut off a limb or an essential part of the body; to deprive of some essential part, to render imperfect."

Words & Phrases, Permanent Edition, Volume 27-A-

"Mutilate" means something less than total destruction..... "To mutilate", in the sense in which it is generally used by law writers and judges, means to render imperfect....."mutilate"means to destroy or remove a material part of so as to render imperfect, erroneously defined word as applied to articles such as books and manuscripts, rather than defining it as applied to the human body as meaning to cut off a limb or an essential part of the body."

The Oxford English Dictionary, Second Edition, Volume-X-- ""Mutilate"--To render (a thing, esp. a record, book, etc.) imperfect by cutting off or destroying a part.

"Mutilated"--Of things : Having some part cut off or destroyed, wanting some portion essential to completeness."

9. From the aforesaid meaning, "mutilate" means, "something less than total destruction" or "to deface". Thus, judged in the light of the aforesaid meaning of the word "mutilate", I am not inclined to accept the submission of the learned counsel for the opposite party that the act of scoring through some part of Appendix-I Resident/Nativity Certificate by the authority which were not relevant, would amount to an act of mutilation thereof. It is not the case of the opposite party that the said certificates have in any way been deformed/ defaced/ damaged by slitting or removing a material part thereof and hence this aspect is not considered.

10. It is now to be considered, whether or not the certificates annexed by the petitioner were in accordance with requirement of clause 2.2.2(1), and whether or not the authorities were justified in rejecting his candidature.

11. The contention of the learned counsel for the opposite party is that in the absence of a Nativity Certificate the authorities were justified in rejecting the petitioner's candidature. In support of his contention, reliance was placed on Clause 2.2.(2(i) of the Information Brochure which has been quoted in the earlier part of this judgment. Said Clause provides that such candidates shall furnish along with their application form a "Resident/Nativity Certificate" in the prescribed format. In the case at hand, the petitioner had admittedly not furnished a nativity certificate, but had furnished a resident certificate in the prescribed format. From the contentions advanced by the learned Senior Advocate for the opposite party it appears that what is required by the authority is that the certificate should be in relation to both, i.e., Resident and Nativity, and the Clause in question has to be read in that light. In other words, it is the submission that the candidate must satisfy that he is a permanent resident of Orissa as provided in the Orissa Miscellaneous Certificate Rules, 1934 and that he is a native of Orissa. Thus, according to the opposite party, the petitioner has failed to do so and instead, has submitted a Resident Certificate in which the word "Nativity" has been scored through and it is mentioned that he "ordinarily" resides in village Kudiary (Raja Bazar). Tahasil Jatni in the District of Khurda in the State of Orissa and as such, the twin requirement - that he was a "permanent resident" and a "native" of Orissa - was not fulfilled.12. To begin with, it may be stated that the words "permanent resident" do not find place in the 1984 Rules Even, in Form III which is prescribed by the rules, the words "permanent resident" are not there. Instead, the words used therein are "ordinarily resides in". In the certificates submitted by the petitioner also, the words "ordinarily resides in" find place. Annexure-4 to the writ application is the certificate submitted by the petitioner in the prescribed format which in fact is a perforated form taken out from the Information Brochure. This format is in conformity with or is rather in the format of Form HI of the 1984 Rules. This format is used, as it indicates, for two purposes--for a resident certificate, or for

a nativity certificate. The certificate submitted by the petitioner is a Resident Certificate which is clear from the fact that the word "Nativity" has been scored through by the Tahasildar. Since the word "Nativity" was scored through, it is obvious that that, part of the Form which relates to the question of nativity, has necessarily been scored through by the authority, which, as has been held above, cannot amount to mutilation of the Form. Thus, it cannot be denied that a Resident Certificate issued by the Tahsildar, Jatni in the prescribed format was submitted by the petitioner to the authorities. But, this, according to the learned counsel for the opposite party, was not sufficient compliance. The contention, however, cannot be accepted.

13. Clause 2.2.2. of the Information Brochure, as has been observed in the earlier part of the judgment, provides for three different criteria for admission and a candidate must satisfy any one of the said three criteria to qualify as an Orissa State candidate. Of them, the first one relates to permanent residents of Orissa who are to submit their resident/nativity certificate in the prescribed format; the second relates to Oriyas belonging to outlying Oriya speaking tracts (as defined by Government of Orissa, erstwhile P & S Dept. Resolution No. 13411 Gen. dated 8-8-69, as amended from time to time); and third, to Sons, daughters and spouse of permanent employees of Government of Orissa, inservice members of Orissa Cadres of All India Services and permanent employees of Government of India serving in Orissa at the time of application.

14. In the case at hand, the Court is concerned with the first criterion prescribed under Clause 2.2.2.(i). It may be stated that this Clause obviously relates to candidates belonging to the State of Orissa and therefore, the authorities were justified in laying down the criterion. This Clause provides that the "candidates shall furnish along with their application form a Resident/Nativity certificate in the prescribed format....."

Obviously, this was with the intention to ascertain as to whether or not the candidate was a native/permanent resident of Orissa. Said Clause, no doubt, provides that the candidate must be "permanent resident of Orissa", as provided in the 1984 Rules (Form III), but it lays down that the certificate to be submitted should be in the said form and indeed, Appendix-I to the Information Brochure is also in the format of Form III of the 1984 Rules. However, in the Form (Appendix-I to the Information Brochure) itself, there is no mention of the phrase "permanent resident". Instead, the words used therein are, "ordinarily resides in". In Form III of the Orissa Miscellaneous Certificate Rules, 1984, the format whereof is used in Appendix-I of the Information Brochure, the words "ordinarily resides" are used. It is, therefore, necessary to ascertain what would be the meaning of the phrase "ordinarily resides".

15. The common meaning of the word "ordinarily" in the Dictionary of Law, Second Edition by P. H. Collin, Universal Book Stall, New Delhi, is given thus :

"Ordinily, normally or usually, ordinarily resident --usually resident in a certain

country."

The word "ordinarily resident" occurring in Article 6(b)(i) of the Constitution of India came up for consideration before the Apex Court in Smt. Shanno Devi Vs. Mangal Sain, wherein it was observed thus :

"(16).....For applying the test of being ordinarily resident in the territory of India since the date of his migration", it is necessary therefore to consider the period up to the 26th day of November, 1949 from the date of migration. It is not however even necessary that on the 26th day of November, 1949 or immediately before that date he must have been residing in the territory of India, What is necessary is that taking the period beginning with the date on which migration became complete and ending with the date November 26. 1949, as a whole, the person has been ordinarily resident in the territory of India". It is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words "ordinarily resident" in the Constitution it is reasonable to take the words to mean resident during this period without any serious break". The materials on the record leave no doubt that there was no break worth the name in Mangal Sain's residence in the territory of India from at least August 15, 1947 till the 26th November, 1949".

Interpreting the meaning of the word "ordinarily resident" occurring in section 80AC(2) of the Representation of the People Act, 1951, the Apex Court in Krishan Gopal Vs. Sri Prakashchandra and Others, observed ."

"The word "ordinarily" does not indicate that the provisions of sub-section (2) of section 80A are not mandatory and that relaxation in compliance with those provisions is permissible. The word "ordinarily* only qualifies the number of judges who can exercise the jurisdiction which is vested in the High Court to try an election petition. The said word indicates that normally it would be a single judge of the High Court who can exercise the jurisdiction which is vested in the High Court, but in appropriate cases, such jurisdiction can also be exercised by two or more judges."

16. Thus, it cannot be disputed that Annexure-4 is in the said formant. Therefore, since the certificates submitted by the petitioner were in the formant prescribed, and unless the petitioner himself or the authorities had inserted the words "permanent resident" in Appendix-I, it was not possible for the petitioner to submit such a certificate. In case said words had been introduced in the Form, the certificate may have been said to be not in the prescribed format. Therefore, if the certificate submitted is in the form prescribed, nonmention of the words "permanent resident" therein cannot be taken as a fact against the petitioner when it was certified by the Tahsildar that the petitioner ordinarily resides in Khurda district. It, therefore, follows that the petitioner has complied with the first part of the requirement, i. e., the candidate should be a resident of Orissa. But, that is not the end of the matter.

17. What now remains to be considered is whether under the relevant Clause the

petitioner was required to submit "a permanent resident and nativity certificate" or "a permanent resident or nativity certificate".

18. If the case of the opposite party that the petitioner was required to submit a "permanent resident certificate" and a "nativity certificate" is accepted, it would amount to reading the obliqtte (/) between the words "Resident" and "Nativity" as "and" which would mean, a composite certificate is or two separate certificate are required to be submitted. However, the oblique between the two words cannot be read as "and", but it has to be read as "or". The dictionary meaning of the "oblique" is as follows : Cambridge International Dictionary of English, (Cambridge Low Price Editions)-

"Oblique (Stroke) (C) Br. and Aus.

An obhque (also slash or specialised solidus) is a sloping line often used for separating numbers or words : Fractions can be written with oblique strokes, for example 2/3. Every student must hand in her/his (= her or his) completed application form by the end of the week."

Chambers 21st Century Diciionary-1997 Reprint published by Allied Chambers (India) Ltd.,--

"An ""oblique" indicates alternatives--Bring your swimming costume and/or a tennis racquet--Tea/coffee will be served -- Dear Sir/Madam--Each candidate will be required to give a report on his/her research,"

(Underlinings supplied)

19. At this stage, a reference may be made to Appendix-VI of the Information Brochure which reads thus :

"APPENDIX-VI (Clause 2.3.4 of Information Brochure of JEE)

Certificate of Defence/Paramillitary

Service of Candidate"s Parent/Spouse

1. Full name of employee/person
2. Permanent address as per service records
3. Whether serving/retired/deceased/permanently disabled/killed in war/hostilities
4. Rank in Defence Service
5. Full Name of the candidate
6. Relationship of the employee/person with the candidate .
7. Present place of posting including details of unit (in case of servingpersonnel)
8. Last place of posting including details of unit (in case of retired/killed in war/

hostilities/deceased personnel

Full signature of Full Signature of Candidate's Parent/Spouse Station Commander/ Officer Commanding/ Officer-in-Charge/ Secretary, Zilla/Rajya Sainik Board Date..... Designation (with office seal)"

From a mere reading of the above, it is clear that the oblique (maik) wherever occurring, definitely cannot be read as "and", for example, if it were so the same would be required to be signed by the Station Commander and the Officer Commanding and the Officer-in-Charge and the Secretary, Zilla Sainik Board and Rajya Sainik Board. But, in fact, it is not so intended and obviously it is required to be signed by any one of the officials mentioned therein, as the case may be.

20. In view of the aforesaid discussion, this Court is of the view that what was required to be submitted by the petitioner in accordance with the clause, as it reads, was "as permanent resident certificate" or "a nativity certificate" and since the petitioner had in fact submitted a permanent resident certificate, his candidature for counselling ought not to have been rejected. The action of the opposite party, there, cannot be upheld. However, it does not follow that a direction, as claimed by the petitioner, for admitting to the Course in question flows therefrom for, obviously like the petitioner there may be many others whose applications are likely to have been dismissed for the same ground, i. e. for not submitting a permanent resident certificate and a nativity certificate. The prayer in the writ application is for ordering petitioner's admission, which means, no challenge has been made to the admissions already given. Therefore, the admissions of those who have already been admitted, have become final. That, as regards the question of filling up the one seat which has been kept vacant or the seats which are lying vacant, in the interest of justice it would be just and proper if against the said seat (s) the authorities shall consider the cases of all such candidates who had appeared in the written examination but were not called for counselling because of their failure to submit a permanent resident certificate and a nativity certificate. In other words, against such vacant seat (s), the cases of all those who had submitted either a permanent resident certificate or a nativity certificate in the prescribed format, should be considered for counselling for admission to the Course in question.

Before parting with the case, it may however be observed that in case what is intended by the authorities is that a candidate should submit a permanent resident certificate and a nativity certificate, nothing prevents them from suitably wording the relevant Clause of the Information Brochure.

21. Accordingly, the writ application is allowed to the extent indicated above. There shall, however, be no order as to costs.

22. Writ application allowed.