
(2002) 10 OHC CK 0036
In the Orissa High Court
Case No : Writ Petition (C) No. 777 of 2002

Sharmistha Chakravarty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2002) 94 CLT 717 : (2002) 2 OLR 620

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : G. Mukherji, P. Mukherji, S. Patnaik and A.C. Panda, for the Appellant; R.K. Mohapatra, N.K. Sahoo and B. Swain, For O.P. No. 2 and A.G.A. For O.P. No. 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—An Information Brochure was published for Joint Entrance Examination, Engineering & Medical - 2002, Orissa for admission to the First Year of Degree Courses in Engineering/Technology/ Architecture, Medicine/Dentistry/ Pharmacy by the authorities of the Joint Entrance Examination (for short, "the J.E.E."). The petitioner applied for the MBBS Course as an Orissa State candidate and as a candidate for the 5% of the seats reserved for children of green card holders. For applying to the 5% of seats reserved for the children of green card holders, a candidate is to be a native/ permanent resident of Orissa State and has to furnish along with the application form a copy of the resident/nativity certificate in the prescribed format provided in the Brochure as Appendix-1. The petitioner furnished along with her application such a certificate in Appendix-I to show that she was a permanent resident of Orissa State. An Admit Card was issued to her for joint entrance examination as an Orissa State candidate and she took the JEE and secured 658 marks and in the general merit list as Orissa State candidate, her rank was 311. The rank of the last candidate in the general merit list who got admission in the MBBS Course was 228 and thus the petitioner could

not get admission in the general category. The last candidate who got admission under the green card category had secured 653 marks and had ranked 335 in the general merit list and had ranked 68 in the green card category. The case of the petitioner is that since she had applied for the green card reserved category and has secured more marks than the last candidate who had been given admission in the green card category, she was entitled to admission in the green card category. But such admission in the green card category has been denied to the petitioner by the JEE Committee on the ground that she is not a permanent resident of State of Orissa and for this reason is not entitled to admission to the quota reserved for green card category, Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution for appropriate writs/directions.

2. At the hearing, Mr. G. Mukherji, learned counsel for the petitioner submitted that Clause - 2.2.2 of the information Brochure provided that for admission to Medical Colleges, a candidate must satisfy any of the criteria indicated therein to qualify as Orissa State candidate and the petitioner satisfied two criteria indicated therein. The first criterion in Clause - 2.2.2 of the Information Brochure is that the candidate must be a permanent resident of Orissa and must furnish along with the application form a resident/ nativity certificate in the prescribed format provided in the Information Brochure as Appendix-I from a Revenue Officer not below the rank of Tahasildar of the area where the candidate is a permanent resident. The petitioner had furnished along with the application such a resident/nativity certificate issued by the Additional Tahasildar, Rourkela. A third criterion in Clause - 2.2.2 of the Information Brochure is that the candidate must be a son or daughter of a permanent employee of Government of India undertaking located in Orissa who was serving in Orissa at the time of application. Mr. Mukherji pointed out that along with the application, the petitioner had filed a certificate of employment of the father of the petitioner as prescribed in Appendix-III of the Information Brochure which indicated that her father was working in the Steel Authority of India Limited, Rourkela Steel Plant at Rourkela in the State of Orissa. He further submitted that the petitioner also submitted photo copy of page-5 of the green card of the mother of the petitioner along with her application as required in Clause - 2.3.2 of the Information Brochure and he also furnished a certificate in the prescribed format in Appendix-V of the Information Brochure as required by the Note appended to Clause - 2.3.2 of the Information Brochure. According to Mr. Mukherji, therefore, the JEE Authorities acted arbitrarily and in violation of the rights of the petitioner in not considering the petitioner as a candidate in the green card category and in denying the admission to the petitioner on the ground that she (petitioner) is not a permanent resident of Orissa State. Mr. Mukherji vehemently contended that this is a fit case in which this Court should direct the Opp. parties to give admission to the petitioner in the MBBS Course as per her merit in the green card category.

3. Mr. N. K. Sahoo, learned counsel appearing for the Opp. party No. 2 relying on the averments in the counter affidavit filed on behalf of the opp. party No. 2

submitted that the petitioner herself mentioned in the application form the permanent address of her father as "Gooli Bhatta, P.O. Sahibganj, District-Santal pargana (S.P.), State - Jharkhand". He further submitted that the certificate of employment in Appendix-III of the Information Brochure which was furnished by the petitioner in proof of the employment of her father in the Steel Authority of India Limited, Rourkela Steel Plant at Rourkela it was also stated that the permanent residence of the father of the petitioner was "Gooli Bhatta, P.O. - Sahibganj, District S.P. (Jharkhand)". He further submitted that in the copy of the green card of her mother furnished by the petitioner along with the application form, the address of the mother of the petitioner has been shown as village-Bhauraga, P.O. - Mukalayan, District - Howrah (West Bengal)". He submitted that from these statements of the petitioner in the application form and the accompanying employment certificate and copy of the green card it is clear that the petitioner was not a permanent resident of the State of Orissa but was a resident of the State of Jharkhand and for this reason, the JEE Committee at the time of scrutiny of the documents found that the certificate issued by the Tahasildar is totally contrary to the statements made by the petitioner with regard to her permanent residence and the JEE committee had no option but to reject the candidature of the petitioner in the green card category. He argued that the Additional Tahasildar, Rourkela appears to have furnished the permanent residence certificate to the petitioner because the petitioner was residence in the quarters allotted to her father at Rourkela by the Rourkela Steel Plant, at Rourkela, I.e., quarter No. B-58, Sector-17 P.S. Sector - 15, Rourkela, but on the basis of such residents in the quarters at Rourkela, the father of the petitioner cannot be treated as a permanent resident of the State of Orissa. Mr. Sahoo further submitted relying on the counter affidavit filed on behalf of the opp. party No. 2 that since the father of the petitioner was serving in Rourkela Steel Plant, at Rourkela, the case of the petitioner was considered as Orissa State candidate(s) category and Admit Card was issued to her to appear in the examination as a general candidate. The petitioner should have raised an objection before the Chairman, Admission Sub-Committee, JEE as indicated in Clause 2.10.4 of the Information Brochure as soon as she received the Admit Card if she felt that she has not been properly categorised. But the petitioner did not raise any such objection and at a later stage, she cannot make a claim in this writ petition as a candidate for the green card category.

4. The only question that is to be decided in this writ petition is whether the petitioner is entitled to admission into the seats in MBBS Course in Medical Colleges of Orissa reserved for the children of green card holders under Clause 2.3.2. of the Information Brochure. Clause 2.3.2. of the Information Brochure and the notes appended thereto which are relevant for deciding this case are quoted herein below :

"2.3.2. 5% of total seats in all Govt Colleges, free seats of all Private Colleges and Orissa quota seats in REC, Rourkela are reserved for children of Green Card holders, Candidates applying for this category shall furnish along with the

application form, a photocopy of Page 5 of the Green Card.

Note : The Green Card must have been issued by Family Welfare Department, Government of Orissa and should not have been used more than once prior to claiming admission under this reserved category. In case the father/mother of the applicant has undergone terminal method of contraception and is awaiting issue of Green Card, the candidate shall furnish a certificate in the prescribed format provided in this brochure as Appendix-V. Benefits will be given only on the production of original Green Card (vide Government Resolution No. 34707 dated 19.10.83 and memo No. 3154/H dated 30.10.84) issued by Health and Family Welfare Department, Government of Orissa latest by the specified date of admission failing which the offer of admission to the candidate against this category, will automatically stand cancelled."

"Notes :

1. All reservations shall apply to the natives/permanent residents of Orissa State only.
2. Candidates applying for reserved categories under Clause 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.5 and 2.3.6 are also required to furnish along with the application form a copy of the Resident/Nativity certificate in the prescribed format provided in this brochure as Appendix-I, No deviation of the form in any manner shall be entertained under any circumstances. JEE authorities will verify the submitted Resident/Nativity certificate of the candidates only at the time of admission. If the Certificate is detected not to be in order, the offer of admission to the candidate concerned against the reserved category will automatically stand cancelled without any liability on JEE authorities.

*** **

It will be clear from a reading of Clause 2.3.2 and Notes 1 and 2 quoted above that reservation in the green card category applies to natives/permanent residents of Orissa State only and a candidate applying for the reserved green card category under Clause 2.3.2 is to furnish along with the application form a copy of the resident/nativity certificate in the prescribed format in the Brochure as Appendix-I. Thus, it is the candidate applying for reserved green card category under Clause 2.3.2 of the Information Brochure who is to be permanent resident of Orissa State only and has to furnish his resident/nativity certificate in the prescribed format in Appendix-I of the Information Brochure and not his parents. In other words, so long as the candidate applying for the reserved green card category under Clause 2.3.2 of the Information Brochure is a permanent resident of Orissa State and has furnished his resident certificate in Appendix-I, the fact that his parents are not permanent residents of Orissa State is not relevant.

5. The question, therefore, is whether the petitioner who had applied as a candidate for reserved green card category, under Clause 2.3.2 of the Information Brochure was a permanent resident of Orissa. The words

"permanent resident of Orissa State" have not been defined in the Information Brochure. Since in proof of such permanent resident of Orissa State, a certificate in Appendix-I of the Information Brochure is to be furnished, the contents of the said certificate in Appendix-1 of the Information Brochure have to be looked into for finding out the meaning of the expression "permanent resident of Orissa State". Appendix-1 of the Information Brochure is extracted herein below :

APPENDIX-1 (Clause 2.2.2(i) of Information Brochure of JEE) FORM NO. III (The Orissa Miscellaneous Certificate Rules, 1984) Office of the Miscellaneous Certificate Case No..... of 2002 RESIDENT/NATIVITY CERTIFICATE

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 (she)/his(her) family ordinarily resides in Village/Town.....P.S..... Tahasil in the District of..... in the State of..... This Certificate is being granted only for the purpose of JEE (E & M) 2002, Orissa.

Full Signature of the applicant Signature of Revenue Officer Date.....
Round Seal of Office Designation (with Seal of Office) Note:

1. "Revenue Officer" means the Chief Officer in charge of Revenue Administration in the District, Sub-Division of Tahsil and includes an Additional District Magistrate and Additional Tahasildar.
2. No part of the form should be mutilated in any manner in case of mutilation the certificate is liable to be rejected."

A reading of the certificate in Appendix-I would show that for being a permanent resident of the State of Orissa, either the candidate or his/her family must "Ordinarily reside" in a village or a town in the State of Orissa, Thus, if a candidate ordinarily resides in village or a town in Orissa, she is to be taken as a permanent resident of the State of Orissa.

6. In Union of India and Others Vs. Dudh Nath Prasad, the Supreme Court had the occasion to consider the meaning of the expression "ordinary resident" in Section 20 of the Representation of People Act, 1950. Paragraphs-13, 14 and 15 of the said judgment of the Supreme Court as reported in the AIR in Union of India V. Dudh Nath Prasad (supra) in which the expression "residents" and "ordinary residents" have been discussed, are quoted herein below :

"13. The word "reside" has been defined in the Oxford Dictionary as "dwell permanently or for a considerable time to have once settled or usual abode; to live in or at a particular place." The meaning, therefore, covers not only the place where the person has a permanent residence but also the place where the person has resided for a "considerable time1.

14. In Black's Law Dictionary, 5th Edition, the word "reside" has been given the

following meaning :

"Live dwell, abide, sojourn stay, remain, lodge; to settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in residence, to have in abiding place, to be present as an element, to inhere as a quality, to be vested as a right."

In the same Dictionary the word "residence" has been defined as under:

"Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design, to stay permanently. Bodily presence and the intention of remaining in a place, to sit down, to settle in a place, to settle, to remain, and is made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention. Residence implied something more than mere physical presence and something (sic) than domicile."

15. If the two meanings referred to above are to be read along with the word "ordinarily", it becomes clear that a person, before he can be said to be "ordinarily residing" at a particular place, has to have an intention to stay at that place for a considerably long time. It would not include a flying visit of a short or casual presence at that place."

The aforesaid discussion would show that "permanent resident" or "ordinary resident" would mean resident at a place for a considerably long time but would not include a flying visit or casual presence at that place.

7. Applying the aforesaid law to the case of the petitioner it appears from the certificate of employment of the father of the petitioner in Appendix-III annexed to the writ petition as Annexure-9 that he joined the Rourkela Steel Plant at Rourkela on 14.1.1971 and has remained in Rourkela for long 32 years. The petitioner who is only 18 years, therefore, he resided althrough with the parents at Rourkela right from her birth. The petitioner thus has been a resident of Rourkela in the State of Orissa for a considerable length of time and has to be treated as an ordinary resident and a permanent resident of the State of Orissa. This is why the Additional Tahasildar, Rourkela has issued a certificate in Appendix-I of the Information Brochure certifying that the petitioner ordinarily resides in Rourkela in the district of Sundergarh in the State of Orissa. The certificate could not be rejected by the JEE Committee on the ground that the permanent residence of the father of the petitioner is State of Jharkhand and the permanent residence of the mother of the petitioner is in the State of West Bengal. As discussed above, under Notes 1 and 2, it is the candidate and not his/her parents who has to be permanent resident of Orissa State and has to furnish his resident/nativity certificate in the prescribed format in Appendix-I of the Information Brochure.

8. It is also provided in Note 2 quoted in Paragraph 4 of this judgment that the JEE authorities will verify the submitted resident/ nativity certificate of the candidate only at the time of admission and if the certificate is, detected to be not in order, the offer of admission to the candidate concerned against the reserved category will automatically stand cancelled by the JEE authorities. The JEE Committee is to verify the resident/nativity certificate of the candidate at the time of admission and not at the time of issue of Admit Card. This will ensure verification of the certificate in presence of the candidate a"nd not in his/her absence. Thus, the contention of Mr. Sahoo, learned counsel for the opposite party No. 2 that the petitioner should have raised an objection immediately after receipt of the Admit Card before the Chairman, Admission Sub-Commission, JEE with a request for revision of category is misconceived. That apart, if the petitioner is denied admission arbitrarily, although as per her merit position in the reserved green card category, she was entitled to admission in any of the seats reserved for the children of green card holders in the MBBS Course in the Medical Colleges of Orissa, denial of such admission to the petitioner would be arbitrary and violative of the right of the petitioner under Article 14 of the Constitution. In *Olga Tellis and Ors. v. Bombay Municipal Corporation and others*,, AIR 1986 SC 180, the Supreme Court has held that none of the fundamental rights under our Constitution can be waived and there can be no estoppel against the constitution. Thus, the fact that the petitioner did not raise any objection soon after receipt of the Admit Card in which she was not categorised as a candidate for the reserved green card category cannot be a ground for the Court to dismiss the writ petition.

9. The upshot of the aforesaid discussion is that the petitioner has been arbitrarily and illegally denied admission in the quota of seats reserved for the children of green card holders and the petitioner is entitled to a direction from the Court for admission into MBBS Course for the academic session 2002 in the Medical Colleges of Orissa. By an interim order passed by this Court on 2.8.2002 in Misc. Case No. 554 of 2002 it was directed that if a seat in MBBS Course in VSS Medical College is available, the same shall be kept vacant until further orders. Mr. Sahoo, learned counsel for the opp. party No. 2 has stated before us that after the admissions, some seats have fallen vacant and as per the said interim order one seat in MBBS Course has been kept vacant. The petitioner will be admitted in the said seat kept vacant forthwith so that she is able to immediately attend the classes and she does not fail short of the required attendance.

10. With the aforesaid directions, the writ petition is allowed. Considering the facts and circumstances of the case, the parties shall bear their own cost.

M. Papanna, J.

11. I agree.