

(2001) 02 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 7778 of 2000

Somanath Dwibedi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 91 CLT 513

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

Bench : Single Bench

Advocate : M/s C.A. Rao and A. Tripathy, for the Appellant; Addl. Govt. Advocate, M/s R.K. Mohapatra Mr. R.K. Dash, D.R. Swain, B. Swain and A. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The alleged wrongful action of the opposite parties in not calling the petitioner for counselling and consequent refusal to give admission in the discipline of Computer Science at College of Engineering, Nayapalli, Bhubaneswar against an open category (Free) seat is the subject-matter of challenge in this writ petition.

2. According to the petitioner, he passed the High School Certificate examination with aggregate of 85% of marks and the +2 Science Examination in the first division. Thereafter, he joined the +3 Science Stream at the N. C. College, Jajpur. He appeared at the Joint Entrance Examination (Engineering & Medical)-2000 and was at serial No. 2078 (E) in the merit list. It is his case that considering his rank a call letter was issued to him and in response thereto, he duly reported himself for counselling along with the relevant certificates. The authorities, however, after going through the certificates, did not allow him to take part in the counselling and exercise his option on an erroneous ground that he had failed to submit the original High School Certificate though, a copy thereof was submitted by him. The action, according to the petitioner, was wholly unjustified

which has wrongly deprived him of admission though candidates below him have been admitted.

3. According to the opp. party No. 2, since the petitioner failed to submit the High School Certificate or certificate of equivalent examination showing the date of birth which was a mandatory requirement, he was not permitted to participate in the counselling. It was further submitted that as the petitioner was not able to produce the relevant certificate, he took back his papers and signed under an endorsement that "I refuse to take admission and have taken back all my original documents along with the call letter". This endorsement is on the option form for admission and as stated has been signed by the petitioner.

Since the dispute is confined to a narrow compass as to whether or not the petitioner had submitted the High School Certificate and whether or not action of the opp. party No. 2 in refusing to permit him for counselling was proper, it is not necessary to go into the other aspects on which arguments were advanced.

4. The main contention raised on behalf of the petitioner was that High School Certificate was not necessary for showing the date of birth, as there was other material on record, namely, the provisional certificate-cum-memorandum of marks supplied by the Board of Secondary Education wherein his date of birth was reflected. It was also submitted that in view of Note (i) to Clause-8 of the call letter, the opp. party No. 2 was not justified in refusing to accept the provisional certificate issued by the Board. Thus, according to the petitioner, he had fulfilled the requirement of Clause-8 and, as such, the action of the opp. party No. 2 in not taking him up for counselling was unwarranted and unjustified.

5. Before proceeding further, a reference may be made to the relevant extract of Clause-8 of the call letter for counselling which leads thus :

"8. Along with this call letter duly signed, you are to submit the following documents in ORIGINAL while signing the attendance register between 8.30 a.m. & 9.30 a. m. .

- a. H. S. C. or certificate of equivalent examination showing date of birth,
- b. Original pass certificate and mark sheet of 10+2 Sc. or equivalent/Diploma examination passed.

Note: (i) If the priginal pass certificate is not received, the provisional certificate issued by the Council/Board/ University should, be submitted.

(ii) to (iv) xx xx

c. to g. xx xx."

The question, therefore, is whether. Note (i) quoted above applies to both sub-clauses (a) and (b) of Clause-8 of the call letter for counselling or only to sub-clause (b) of the said letter. A mere perusal of the relevant clause would show that sub-clause (a) of Clause-8 refers to "H. S. G. or certificate of equivalent

examination showing date of birth" whereas sub-clause (b) thereof refers to "Original pass certificate and mark sheet of 10+2 Sc. or equivalent/Diploma examination passed". Note (i) to Clause-8 speaks of "original pass certificate". Thus, in terms of Note (i), if the original pass certificate has not been received by a candidate, the provisional certificate issued by the Council/ Board/University is to be submitted. The original pass certificate mentioned in Note (i) necessarily refers to the original pass certificate which is required to be submitted in accordance with sub-clause (b) of Clause-8 of the call letter. It, obviously, cannot refer to sub-clause (a) of Clause-8 because that clause relates not to "original pass certificate" but to "H. S. C. or certificate of equivalent examination showing date of birth". Therefore, the Contention raised on behalf of the petitioner that Note (i) contained in Clause-8 of the call letter refers to sub-clause (a) also, cannot be accepted.

6. It was then contended that since there were other documents showing his date of birth, the petitioner's claim for counselling ought not to have been turned down; This contention also cannot be accepted. As per the brochure and the call letter, certain requirements are to be complied with by the candidates. One such requirement is to produce High School Certificate or certificate of equivalent examination showing the date of birth. The said document is to be produced in original which obviously has not been done by the petitioner. Therefore, it follows that he is guilty of non-compliance of Clause-8(a) and in that view of the matter, the opp. party No 2 was justified in turning down the petitioner's claim for counselling. The contention that there were other documents from which his date of birth could be ascertained, cannot be of any help to the petitioner because the document that was required by the authorities was the High School Certificate or certificate of equivalent examination, which was not submitted. It may be stated that it is not the case of the petitioner that he alone was singled out for differential treatment. In the case at hand, all the candidates were required to produce the original documents and those who failed to do so, were not taken up for counselling. Therefore, the rule has been uniformly applied and in the opinion of the Court, rightly.

The petitioner had received the call letter well in advance of the date of counselling and it was for him to have gone through the conditions mentioned therein carefully and to have arranged for all necessary documents that were required to be produced at the time of counselling. If he failed to do so, he has to thank himself for his lapse and the consequences arising therefrom.

7. Apart from this, the petitioner has also signed under the endorsement in the option form for admission that he has taken back the original documents along with the call letter. It is not disputed that the signature in the option form for admission is of the petitioner. Thus, the contention raised on behalf of the petitioner that the opp. party No. 2 has intentionally put the seal of refusal on the body of the call letter in order to cover up his illegal, arbitrary and high handed action, cannot be accepted.

8. It is no doubt true and as contended by the learned counsel for the petitioner that under Clause-2.16 of the Information Brochure, on selection of college and discipline, the candidate is to be referred to the Admission Cell of the college of his/ her choice at the venue of counselling for verification of original certificates and payment of fees. But, this is a stage subsequent to the stage of counselling, where the concerned college also verifies the original certificates. It does not follow from Clause-2.16 that the requirement of submission of original certificates as required under Clause-8 of the call letter is wiped out. During counselling, verification is at the preliminary stage and it is only, as appears from the scheme, when all the documents are found in order and there is compliance with the requirement, that a candidate is permitted to participate in the counselling. In the case at hand, since the petitioner failed to clear the first hurdle due to his inability to produce the High School Certificate, the question permitting him to participate in the counselling did not arise. Consequently, the authorities committed no error in calling the candidates below the petitioner who had complied with the requirement for counselling.

9. In the result, the writ petition fails and is dismissed. However, there shall be no order as to costs.

10. Writ petition dismissed.