
(2010) 07 OHC CK 0068

In the Orissa High Court

Case No : Writ Petition (C) No. 11028 of 2010

Udayabhanu Pani and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Citation : (2011) 111 CLT 510 : (2011) 1 OLR 229

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard Mr. Routray, learned senior counsel for the Petitioners and Mr. Parija, learned senior counsel for the opp. party No. 2 -school.

2. The Petitioners were the students of Buxi Jagabandhu English Medium School - opp. party No. 2, which is affiliated to the Central Board of Secondary Education (in short, "the C.S.B.E."). The Petitioners appeared in the Class-X examination which was conducted by the C.B.S.E. Intending to take admission in Class-XI in the said school, all the Petitioners obtained the prescribed forms upon payment of the requisite amount and submitted the applications within time, i.e., within 23.2.2010. By then, the Class-X result was not declared by the C.B.S.E. The Petitioners were asked to appear in the Entrance Test and all of them appeared in the said test. By the Indian Law Reports, Cuttack Series (2010) time the entrance test was conducted, result of Class-X examination was not published. The results of the entrance test were declared on 7.4.2010 and as the names of the Petitioners appeared in the merit list of selected candidates, intimations were sent to them through their guardians for taking admission over telephone. Accordingly, the Petitioners took admission in Class-XI on different dates. The Petitioners submit that each of them deposited Rs. 20,000/-towards admission fee. On commencement of classes of Class-XI, the Petitioners started attending the said classes from 18.4.2010. While the school was closed for summer vacation, the Class-X result was published by the C.B.S.E. on 28.5.2010. All the

Petitioners were declared to have passed with A-1 and B-1 Grade in three papers, i.e., English, Science and Mathematics. The school reopened on 17.6.2010 and when the Petitioners went to attend the class, it is alleged that they were prohibited on the plea that they were not eligible to continue in the class as per the prospectus. No written order relating to cancellation of their admission or reasons for not allowing the Petitioners to continue in Class-XI have been communicated to any of the Petitioners, as stated by them.

3. Mr. Routray, learned senior counsel for the Petitioners submits that the opp. party No. 2 -school in its prospectus has laid down a procedure for admission to Class-XI. As revealed therefrom, it has been mentioned that a candidate has to secure minimum 40% marks in each of the entrance subjects to be eligible to take admission into Class-XI and such admission will be regularized after declaration of the result of Class-X by the C.B.S.E./ICSE and a condition has been fixed that a candidate has to secure more than 80% marks in aggregate in the said examination as well as 80% marks in English, Mathematics and General Science. On the assertion that the Petitioners have secured such percentage of marks in the aggregate, it is urged that they can never be said to be ineligible for the admission on the ground that in some individual subjects they have not secured 80% of marks. Several other contentions were raised with regard to grading system.

4. The moot question which has been raised for consideration of this Court is that preference should be given to the Petitioners as they were studying in the said school for the last 10 years and appeared in the C.B.S.E. Class-X examination from the said school.

5. Mr. Parija, learned senior counsel appearing for the opp. party No. 2 - school contends that a procedure was followed for giving admission to Class-XI and sticking to the said procedure, the Petitioners were found to be not eligible for which their admissions were not regularized.

6. Mr. Routray, learned Counsel relies upon the decision in the case of Principal, Kendriya Vidyalaya and Others Vs. Saurabh Chaudhary and Others, in support of his contention. In the said case, the Udayabhanu Pani v. State of Orissa Supreme Court was dealing with admission of students to Class-XI in Central School and categorically laid down that a Central School cannot deny admission to Class-XI to one of its own students on the ground that he/ she failed to secure the cut-off marks in the Class-X C.B.S.E. examination. It was observed by the Supreme Court that there can be no objection to a school laying down cut-off marks for selection of suitable stream/course for a student, giving due regard to his/her aptitude as reflected from the class - X marks where there are more than one stream. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut off marks in the Class-X examination. The Supreme Court further observed that when the Petitioner therein was reading in the same Central school and appeared in Class-X examination from that school, the school must share at least some responsibility

for the poor performance of its student and should help him in trying to do better in the next higher class. Further, with regard to the cut-off mark the Supreme Court held that it would have been perfectly open to the school to offer admission to the Respondent therein in Class-XI in streams/courses other than science stream with Mathematics on the basis of the prescribed cut off level of marks had such courses been available in the Central School. But when the Appellant school has only science stream with Mathematics for Class - XI and XII, it cannot turn down a student because he/she failed to get the cut off level of marks for admission to Class-XI. In the case of The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, the Supreme Court examining a similar question held that the head of an educational institution is not authorized to prescribe a cut-off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination. Therefore, where a student passed Xth class which was a public examination of Central Board of Secondary Education in an unaided recognized school, he cannot be denied admission to X Ith Class of the same school by head of the institution by prescribing cut off level of marks.

7. Mr. Parija, learned senior counsel in his usual fairness, on being apprised about the above decision of the Supreme Court submitted that the ratio of the aforesaid decisions squarely apply to the facts of the present case and the Petitioners are entitled to the relief prayed for. This Court also finds that the opp. party No. 2 - school could not have fixed the cut-off marks for giving admission to Class - XI for the students of the same school, who passed Class-X examination conducted by the C.B.S.E.. It is, therefore, clear that the opp. party No. 2 - school could not have prohibit the Petitioners from attending the Class - XI on the above ground of Indian Law Reports, Cuttack Series (2010) eligibility on account of non securing cut-off marks as prescribed in the Class - X examination.

8. In the result, the writ petition is allowed and the opp. party No. 2 -school is directed to regularize the admission of the Petitioners in Class-X I and allow them to continue to prosecute their studies in Class-XI and XII of the said school.