

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22927 of 2015

An application under Articles 226 and 227 of the Constitution of India.

Bramhananda Nayak

.... ***Petitioner***
In person

-versus-

State of Odisha and others

.... ***Opposite Parties***
Mr. T.K. Pattanaik,
Learned Additional Standing Counsel

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 16.11.2022 | Date of Judgment: 23.12.2022

A.K. Mohapatra, J. :

1. The present writ petition has been filed by the petitioner seeking refund of the course fee along with accrued interest.
2. The petitioner, who is the young boy aged about 17 years in the present writ petition through his father guardian, has approached this Court by filing the above noted writ application with a prayer for a direction to the Opposite Parties to refund Course Fee along with interest, which has been deposited by the petitioner at the time of taking admission into Opposite Party Educational Institution. After taking admission, he did not continue study in the institution.

3. The factual matrix, in a nutshell, is that the petitioner on being duly selected to take admission into B.Sc. Information Technology and Management (ITM) course imparted by Ravenshaw University, Cuttack for the academic session 2014-15 took admission on 12.07.2014 and was accordingly assigned the Roll No.as 14DIT-049. On the date of admission, the petitioner was asked to deposit a sum of Rs.30,000/-(rupees thirty thousand) towards course fee in addition to the admission fees that fees for Rs.1760/-(rupees one thousand seven hundred sixty) before the Opposite Parties. Further the petitioner was intimated that the course fee that be deposited at the time of admission in a shape of Bank draft and nowhere in the prospectus/intimation, it was mentioned that the course fee shall be forfeited in the event the petitioner does not continue course in the Opposite Parties college.

4. While the matter stood thus, the petitioner got selected for C.T. Training in the entrance examination conducted by the Directorate of Teacher Education and SCERT, Odisha, Bhubaneswar and accordingly, he was sent to R.N.S.T. School, Cuttack. The date of admission into C.T. Course was fixed from 21.08.2014 to 27.08.2014. Since the petitioner was interested to

undergo C.T. Training, the petitioner applied to the Opposite Parties prescribed proforma for issuance of transfer certificate and conduct certificate on 27.08.2014. The petitioner had also made an application to the Opposite Parties to refund course fee of Rs.30,000/-(rupees thirty thousand), which was deposited at the time of admission. On 27.08.2014, the transfer certificate was issued. Further such transfer under Annexure-5 reveals that the tuition fee has been paid upto May, 2015 by the petitioner. On 28.08.2014, another application was filed to refund the admission fees of Rs.1760/-.

5. Since the Opposite Parties did not refund the fees, as paid by the petitioner, the petitioner approached this Court by filing the writ petition bearing W.P.(C) No.23865 of 2015. By order dated 12.12.2014 which was subsequently modified dated 22.01.2015 directing the Opposite Party No.1 to consider and dispose of the representation of the petitioner within a period of two weeks. Accordingly, the petitioner submitted representation on 29.01.2015, however, no action whatsoever was taken on the said representation of the petitioner which compelled the petitioner to file CONTC No.292 of 2015. By order dated 09.12.2015, the said CONTC was disposed by granting further two weeks time to the

contemnors. Thereafter, the representation of the petitioner was disposed of vide order dated 16.12.2015 holding that the claim under representation has no merit. Challenging the order dated 16.12.2015 rejecting the petitioner's representation under Annexure-9, the present writ petition has been filed.

6. The Opposite Parties have filed counter affidavit. In the counter affidavit, it has been stated that the admission information brochure undergraduate classes 2014-15 of the Ravenshaw University clearly provides that the course fee is not refundable after the last date of admission. Annexure-1 to the writ petition is provisional list of the candidates selected for counseling/admission into ITM Course and the same need not said about the information refunding course fee or admission fee. It has also been stated that the admission information brochure for the U.G. Classes 2014-15 of the Ravenshaw University provides a detailed guideline as regards admission. Clause-17 and clause-20(2) categorically provides that neither the course fee nor admission fee is refundable. It also provides that in case cancellation of admission, the course fee may be refunded only within the last date of admission has declared by the university.

7. In the counter affidavit it has also pleaded by the Opposite Parties that since the petitioner had taken admission on 12.07.2014 in B.Sc ITM Course in the academic session 2014-15. The last date of admission to such course was 31.07.2014. However, the petitioner took transfer certificate on 27.08.2014 for prosecuting studies in other institution and admittedly, the same after the last date of admission. As such, the petitioner is not entitled to refund of course fee.

8. Heard Mr. B.N. Nayak, father of the petitioner I person and Mr. T. Pattanayak, learned counsel appearing for the Opposite Parties. Perused the pleadings and examine the documents annexed to the pleadings of the respective parties.

9. Mr. B.N. Nayak, the father of the petitioner appearing in person submitted before this Court that although the petitioner took admission on being duly selected and he has also paid admission as well as course fees to the Ravenshaw University. He further submitted that after taking formal admission before the classes started, the petitioner was also selected for C.T. Training course and accordingly, the petitioner decided finally to pursue the C.T. Training Course as the petitioner was unable to afford high course fee payable to the Opposite Parties for ITM course

and accordingly he had applied for transfer certificate and accordingly, he had applied for the transfer certificate of the petitioner immediately on being selected for C.T. Training Course and the same was supplied to him on 27.08.2014. It is further contended by the father of the petitioner that the petitioner did not attend a single class for the academic session 2014-15 at the Opposite Party institution. He further submits that by the time, transfer certificate was applied the classes for the academic session 2014-15 had not supported and the admission process on different institution under the Government was not over by then.

10. Mr. Nayak, the father guardian of the petitioner, who appeared in person before this Court to argue the matter contended that a sum of Rs.1760/- was paid towards admission fee and a sum of Rs.30,000/- was deposited towards tuition fee up to May, 2015 i.e. for the entire academic year 2014-15. Since the petitioner had taken admission only and had not attended any class at all, therefore, the conduct of the Opposite Parties in withholding the course fee which was collected in advance as highly arbitrary, illegal and unfair. Mr. Nayak, submitted before this Court since the petitioner had taken admission only. Therefore, he does not want to press the claim with regard to

admission fee that has been paid to the Opposite Parties at the time of admission. So far the payment of course fee is concerned, it is submitted that it would be highly unfair on the part of the authorities, if they did not refund the course fee to the petitioner, who is young boy belonging very poor family in and with much difficulty he had arranged the money for education of his son. Withholding/retention of the course fee by the Opposite Parties which is a Government institution would be highly unfair, unjust, improper and the same would amount to **unjust in retention** by a education institution, which is own and managed by the Government of Odisha.

11. Next it was argued by Mr. Nayak that the time and again, it has been held by the Hon'ble Supreme Court as well as this Court that while imparting education, the educational institution are not expected to operate with a profit motive more so when the institution own run by the Government. Therefore, the Opposite Parties be directed to refund the course fee deposited before them along with interest to the petitioner.

12. Mr. T.N. Pattanayak, learned counsel appearing for the University argues that no doubt the petitioner had deposited admission course fee at the time of admission, however, the same

is non-refundable in nature in view of the admission information brochure of the Ravenshaw University regarding to clause-17 of the admission information brochure under Annexure-A/1. Mr. Pattanaik argued that processing charge Rs.500/- only be deducted from the course fee if the candidate so far as to leave the course within the last date of admission and after the last date of admission the course fee is not refundable. Referring to clause-20 Sub-clause(2), he also submitted that once admission fee is paid at the time of admission, in no case the same shall be refunded. However in case of cancellation of admission, the course fee may be refunded only within the last date of admission as declared by the university. On a specific query was put to the learned counsel for the Opposite Parties as to whether there is any statutory rules/regulations governing the payment of course fee and refund thereof, Mr. Pattanaik fairly submitted that there is no such statutory provision either in past statute or in the academic regulations of the university with regard to admission fee/course fee. However, he submitted that in the admission information brochure, the declaration of the University with regard to payment of fee and refund thereof has been clearly mentioned. Therefore, Mr. Pattanaik, submitted that the conduct of the University in no refunding/withholding the course is perfectly legal and justified.

13. On a conspectus of the factual matrix pleaded by the respective parties as well as upon hearing the rival contentions raised by the learned counsel for the parties, this Court is of the prima facie view that the petitioner after taking admission did not attend a single class in Revenshaw University before he took transfer certificate. So far refund of course fee is concerned, provisions under clause-17 and 20 of the admission information brochure of the University provides that the same can be refunded, however, before the last date of admission. In the represent case, the petitioner took transfer certificate after the last date of admission but before the close for academic session 2014-15 started. On perusal of clause-16 of the brochure, it appears that the Vice-chancellor vested with extraordinary power to grant relaxation like extending the last date of admission. Further admission information brochure is a document evidencing declaration of university. However, it cannot be said that the same as backing/rules, therefore, as has been provided under the clause-16 the Vice-chancellor of the University has been vested extraordinary power to extent last date of admission, said poser can also be exercised by the Vice-chancellor University in appropriate and deserving cases.

14. In the present case, it is crystal clear that after depositing the entire course in advance, the petitioner has not attended a single class. Therefore, the decision of the University to withhold the entire course fee is not in the large interest of justice. This is more so in view of the settled position of law by a catena of judgment rendered by the Hon'ble Supreme Court as well as by this Court on educational institutions are to be run to impart education without any profit motive. Such principle applies Government educational institution even more and without any exception, this Court is also considered view that withholding of the course fee by the Opposite Parties as has been done in the present case appears to be unfair and unjust vis-à-vis the poor and young student like the petitioner.

15. On a careful scrutiny of the counter affidavit filed by the Revenshaw University, this Court observed that they have not stated that the seat in question remained vacant causing financial loss to the university. In the absence of such pleading, this Court has valid reason to presume that the seat was filled up subsequently. Therefore, the Opposite Party-University should have refunded the course fee collected from the petitioner within a reasonable time after closure of admission.

16. In view of the aforesaid analysis of fact, this Court allowing the writ petition, directs the Opposite Parties to refund the course fee of Rs.30,000/-(rupees thirty thousand) that has been deposited by the petitioner to the petitioner within a period of four weeks from today. However, it is made clear that the refund of the aforesaid amount was not carrying any interest and the petitioner shall not claim any interest on the aforesaid amount.

17. With the aforesaid observation/direction, the writ petition stands disposed of.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 23rd of December, 2022/ P.A.

