
(2010) 03 OHC CK 0039
In the Orissa High Court

All Orissa Private Secondary Training Schools Management
Association

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Orissa Education Act, 1969 — Section 5

Citation : (2010) 110 CLT 73 : (2010) 1 OLR 830

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

Bench : Single Bench

Judgement

M.M. Das, J.—The petitioner is an association of Orissa Private Secondary Training Schools and was also the petitioner in W.P.(C) No. 10372 of 2008 before this Court. A prayer is made to issue a direction to the opp.party No. 3, Secretary, Board of Secondary Education, Orissa, Cuttack to allow the students of the member-institutions of the petitioner-association, who have completed their Certified Teachers Course (for short, "the C.T. Course") in the sessions 1989-90, 1990-91 and 1991-92 to appear in the C.T. Examination, 2009 to be conducted by the Board of Secondary Education, Orissa, Cuttack.

2. It is submitted by the petitioner-association that one of the members of the petitioner-association being, Bagdevi S.T. School previously filed O.J.C. No. 17574 of 1998 before this Court which was disposed of by a Division Bench of this Court on 7.1.1999 directing as follows:

Heard.

We dispose of the present writ petition with a direction to the Director Secondary Education, opp.party No. 2 to verify the record of the petitioner regarding their eligibility, for appearing in the ensuing C.T. Examination in accordance with Rules. If they are eligible and qualified, they should be allowed to sit in the ensuing C.T. Examination subject to permission, if any, by the Board/University.

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After the aforesaid order was passed, the Government in its letter dated 22.4.1999 directed the opp.party No. 2, the Director, Secondary Education, Orissa for verification of the records of the petitioner's school of the said writ petition including the genuineness of the institution and to furnish report indicating the students admitted for the year 1989-90 and 1990-91 and their eligibility. The said school was inspected by the Deputy Director (C.S.) Department of School and Mass Education with regard to land, building and infrastructure as well as the teaching staff etc. and a report was forwarded by letter dated 29.6.1999 in the affirmative mentioning specifically the students strength for those two sessions to be 145 and 240 respectively. In spite of such inspection report, by order dated 23.10.1999, the Government held that the students admitted in Private Secondary Training School during the academic session 1989-90 are not eligible to appear in the ensuing C.T. examination. Challenging the said action, some of the students filed another writ petition before this Court in O.J.C. No. 10900 of 2000 again seeking a similar prayer to appear in the C.T. examination with regular students. Various Misc. Cases were filed in the said writ petition for interim orders seeking leave to appear in the said C.T. examination, but the said Misc. Cases could not be taken up. On 18.1.2007, the said Misc. Cases were listed and due to non-appearance of the learned Counsel for the petitioner, the same were dismissed. The writ petition was heard by a Division Bench of this Court on 20.8.2007. However, in view of the Press Note published by the Government, which would be referred subsequently in this judgment, this Court was not inclined to interfere and in view of the pendency of the representation, the petitioner withdrew the writ petition, which was disposed of as not pressed observing that if any representation is made by the petitioner within two weeks to the competent authority under the State Government, then such representation be considered expeditiously preferably within three months from the date of such representation. It is the case of the petitioner that subsequent to the said orders, it made representation on 1.9.2007 enclosing the copy of the order passed by this Court which was received by the competent authority of the Government on 13.9.2007, but no communication has been made thereon to the petitioner in the said writ petition. The Secretary of the petitioner - association thereafter again filed W.P.(C) No. 10372 of 2008 for a direction to the opp.parties to allow the students of genuine member-institution for the sessions 1989-90 and 1990-91 to appear in the C.T. examination of regular students. This Court by order dated 24.9.20.08, while disposing of the said writ petition, directed as follows:

Be that as it may, considering the case of the petitioner that students in many of the institutions, which are members of the petitioner-association have prosecuted their studies for the year 1989-90 and 1990-91, I am of the view that in the interest of justice, the opposite parties should be directed to examine as to whether the institutions which are members of the petitioner-association had the infrastructure facilities for imparting such course and as to whether, as a matter of fact, students completed their course in those schools. If on inquiry findings

are in the affirmative, the Government may consider allowing such students to appear in future examination in the C.T. course. While considering thus, the government should also take into account as to whether any prior approval or affiliation was necessary of any University or Board for imparting such course.

The said order was modified to some extent by order dated 12.12.2008 passed in Misc. Case No. 14361 of 2008. Enclosing the copy of the said orders, the petitioner filed representation on 10.11.2008 requesting the authority to make an enquiry and allow the genuine students of the member - institutions, who prosecuted their studies for the sessions 1989-90 and 1990-91 to present their students in the ensuing C.T. Examination, 2009. In some of the other connected writ petitions filed by various other institutions and the students of the batches 1989-90, 1990-91 and 1991 -92, this Court passed interim orders directing that the students should be allowed to appear in the C.T. Examination, 2009, but their results shall not be declared without leave of the Court. The order dated 24.9.2008 passed in W.P.(C) No. 10372 of 2008 and the interim orders passed in other connected writ petitions directing to allow the students to appear in the C.T. Examination, 2009 were questioned in Writ Appeal Nos. 126, 141, 142, 143, 146 and 147 of 2009. The Division Bench set aside the interim order dated 16.4.2009 and the consequential order dated 8.5.2009 by which the prayer for recalling of the order dated 16.4.2009 was refused and directed that the Board may proceed with the C.T. Examination for regular students of the year 2009. Cases of those, who appeared through the petitioner - association and had prosecuted their studies in the C.T. Course for the years 1989-90, 1990-91 and 1991-92-, will be considered on the final adjudication of the matter. The Writ Appeal No. 146 of 2009 was filed against the order dated 24.9.2008 passed in W.P.(C) No. 10372 of 2008. The said writ appeal having been filed more than eleven months after passing the said order, though an application was filed for condonation of delay before the Division Bench, the Division Bench was not inclined to condone the delay and, accordingly, rejected the Misc. Case for condonation of delay and consequently, dismissed the Writ Appeal No. 146 of 2009. Hence, the order passed on 24.9.2008 as modified subsequently by order dated 12.12.2008 became final.

3. Mr. Routray, learned Counsel for the petitioner alleged that the said directions were not complied with by the opp.parties for which, a contempt petition was filed. Subsequently, on receiving notice on the contempt petition, in a Government were rejected, which is not only illegal and arbitrary but also discriminatory.

4. A show cause affidavit has been filed by the Principal Secretary, School and Mass Education Department in a connected Misc. Case arising out of W.P. (C) No. 10372 of 2008, inter alia, stating that after receipt of the copy of the order dated 24.9.2008 as modified by order dated 12.12.2008 passed in W.P.(C) No. 10372 of 2008, the opp.party No. 1 requested the Collectors by his letter dated 9.3.2009 to cause enquiry into the institutions of the aforesaid association

relating to their respective districts and submit the reports to the Government. The reports submitted by the Collectors in respect of the 16 institutions were examined by the said Principal Secretary and orders have been passed in respect of 12 institutions, annexed as Annexure-B/1 series to the said show cause affidavit. By the said orders, while referring to various connected writ petitions disposed of by this Court, the Secretary also referred to the individual enquiry reports of the Collectors individually and in each case, came to the conclusion that the claim of the petitioner is found to be incorrect in respect of the member-institutions and, as such, allowing the students to appear in "future C.T. Examination cannot be considered by the Government. It further appears that by a letter dated 27.1.2009 of the Joint Secretary to Government addressed to the President, Board of Secondary Education, Orissa, it was enquired from the Board as to whether any prior approval or affiliation is necessary for permitting the candidates to appear at the examination. The Board of Secondary Education clarified the position that no prior approval or affiliation is necessary for the purpose (Annexure-14 to the rejoinder). This gave rise to a fresh cause of action for the petitioner-association to file the present writ petition.

5. At this juncture, it would be appropriate to refer to the earlier actions taken by the Government in allowing the students of Private Secondary Training Schools to appear in the examination conducted by the Board of Secondary Education. The first batch of students (admitted in 1980) on completion of the two years C.T. Course with the permission of the Government appeared in the C.T. Examination as private students. Some of the institutions have presented their students admitted till 1987-88 in the C.T. Examination. In some cases, the Government allowed the students admitted till 1987-88 as per orders passed by this Court in the writ petitions filed by the member - institutions individually. It, therefore, transpires that admittedly in the process, the students admitted till 1988-89 were allowed to appear in the C.T. Examinations. On 24.6.1989, a Press Note was published for non-continuation of Private C.T. Schools in the State of Orissa. But the petitioner alleges that since the Press Note was not widely published, the petitioner institution admitted students in the year 1989-90 also. On 10.5.1990, Government issued a further Press Note giving a last chance to the students of unrecognized Private Secondary Training Schools to sit in 1990 Special C.T. Examination declaring that students of un-recognized Private Secondary Training School admitted in 1986-87, 1987-88 and 1988-89 or prior to it, who have completed their two years C.T. Course successfully, shall be allowed to appear in the C.T. Examination as a last chance for all times to come. In Government Order dated 19.12.1986, the Government directed the Secretary, Board of Secondary Education, Orissa to allow the unrecognized Private Secondary Training Schools to appear in the C.T. examinations, those who were allowed by the Government to appear at the Annual 1987 C.T. Examination as private candidates with the condition that those schools will give an undertaking that they will neither admit any students in their school nor ask for conducting Special C.T. Examination in future. Again a notification was made on 28.3.1992 reiterating the same

contention to hold the examination of the students admitted in 1986-87, 1987-88 and 1988-89 or prior to it as a last chance. The petitioner has alleged that students of PAN School of Education, Bankoi, which was also a private unrecognized Secondary Training Schools admitted students in 1989-90 and presented its students to appear in the C.T. Examination, 1992 as per order passed by this Court on 29.9.1992 in a connected writ petition, being O.J.C. No. 5629 of 1991. Again, this Court by interim order dated 30.8.1993 passed in Misc. Case No. 5274 of 1993 arising out of said O.J.C. No. 5629 of 1991, allowed a batch of students, who were admitted in the said PAN School to sit in the C.T. Examination, 1993.

It appears that the erstwhile Managing Committee of the P.A.N. school filed a writ petition, being O.J.C. No. 144 of 1988 in this Court praying for a direction to the opp.parties to accord permanent recognition to it as envisaged u/s 5 of the Orissa Education Act. For the self-same relief another writ petition, i.e., O.J.C. No. 367 of 1989 was also filed by some of the students of the school. This Court by judgment dated 31.3.1989 (vide 67(1989) CLT 756) allowed both the writ petitions by issuing a writ in the nature of mandamus to the State Government to accord recognition to the school within a month. Civil Review No. 12 of 1989 against the aforesaid judgment filed by the State Government was rejected by the Court on 22.12.1989. As the State Government did not grant recognition to the school as directed above, the Managing Committee of the school filed Original Criminal Misc. Case No. 107 of 1989 alleging non-compliance. Pursuant to the notice issued, the State government appeared and took various pleas like intake capacity of the school and other deficiencies said to be found in the school. By order dated 13.2.1991, this Court over-ruled the objections taken by the State Government. Thereafter the State Government filed Misc. Case No. 35 of 1991 for review of the above order dated 13.2.1991. The review application was rejected by order dated 25.2.1992. The State Government then filed Civil Appeal No. 44 of 1993 challenging the order dated 25.2.1992 in the Supreme Court which was rejected by order dated 17.8.1993. As the Board of Secondary Education did not hold practical examination for the students who were allowed to appear in the theory examination in the year 1993, the Managing Committee filed writ petition being O.J.C. No. 711 of 1994 for grant of permanent recognition within a stipulated period to the school and holding of C.T. practical examination for the year 1993 for the students. Upon hearing both parties, this Court allowed the aforesaid writ petition by order dated 9.3.1994. Thereafter, the Director, Secondary Education, Orissa accorded permanent recognition to the school and the school admitted students to the C.T. course in the academic year 1994-95. The students prosecuted their study regularly and became eligible to appear in the annual C.T. examination, 1996. The Board of Secondary Education, Orissa did not allow them to appear in the examination on the ground that no recognition was granted to the erstwhile school of education. The Managing Committee filed O.J.C. No. 4925 and 8369 of 1996 challenging the aforesaid decision of the Board of Secondary Education. The State Government as well as

the Board of Secondary Education opposed the writ petitions contending, inter alia, that no permission was granted to the erstwhile P.A.N. School and that, the intake capacity of the institution could not exceed 50. This Court, by judgment dated 17.1.1997 repelled all the objections raised on behalf of the State Government and the Board of Secondary Education, and allowed the writ petitions directing the Board of Secondary Education to permit 271 regular students to appear at the annual C.T. examination, 1997, since, by that time the annual C.T. examination for the year 1996 was already over. It may be noted that against the aforesaid judgment dated 17.1.1997 permitting 271 students to appear at the annual C.T. examination, 1997, the State Government as well as the Board of Secondary Education, Orissa filed SLP Nos. 7253 and 7254 of 1997 before the Supreme Court, which were rejected by order dated 3.10.1997. Subsequently, some of the students of the erstwhile P.A.N. school preferred O.J.C. No. 2355 of 1998, who were admitted to the C.T. course in that school during the academic session 1996-97 by the erstwhile Managing Committee of the said school. This Court by judgment dated 15.2.1999 quashed the order of the State Government dated 21.1.1998 by which the Government in the Department of School and Mass Education refused permission to the students of the said school to sit in the C.T. Examination, 1998 and, as pursuant to the interim order, the students already appeared in the said examination, this Court directed to declare their results.

6. The opp.parties placed strong reliance on the decision of this Court in the case of Managing Committee, Swarnachuda Secondary Training School and 39 Ors. v. State of Orissa and Ors. 77 (1994) CLT 459 and submitted that in the said case, a challenge was made to the motion of the Orissa Legislative Assembly, which is as follows:

That the House unanimously resolves that no body will be allowed to appear at the C.T. examination excepting the students of Government C.T. schools, Government will also take appropriate steps to deal with such fake C.T. schools including their illegal acquisition of huge assets.

7. Discussing various Press Notes and the notification issued by the Government, where upon last chance was granted to such students to appear in the C.T. Examination, this Court held that there is no scope for interference. The scope and ambit of the case in the case of Managing Committee, Swarnachuda Secondary Training School and 39 others (supra) is distinguishing from the facts of the present case.

8. Much water has flown in between, from the date of the said judgment of this Court in the case of Managing Committee, Swarnachuda Secondary Training School and 39 others (supra) and the position as on today. This Court is to examine as to whether strict compliance has been made to the directions issued by this Court in the order dated 24.9.2008 as modified in the order dated 12.12.2008 passed in W.P.(C) No. 10372 of 2008. From the rejection order of the Government by which, the Principal Secretary rejected the case of the Member-

Institutions after perusal of the reports of the Collectors, it is seen that even when the Collectors have given favourable reports showing that the school had infrastructure, employed required staff and the students were attending the classes, the Principal Secretary without taking the said facts into consideration has mechanically rejected the claims of the member-institutions which appears to be with the only purpose to show that the directions of this Court passed in the aforesaid orders were complied with.

9. Where, as a matter of fact, the member - institutions genuinely admitted students and such students prosecuted the C.T. course for two years and the institutions had infrastructure as well as required teaching staff, debarring such students from appearing in the examination for no fault of their, is against equity and found to be arbitrary.

10. This Court, therefore, while setting aside the orders passed by the Principal Secretary declining to entertain the claim of the member - institutions, disposes of the writ petition directing the Principal Secretary, School and Mass Educational Department to reconsider the reports of the Collectors which were called for and keeping in view the fact that previously the Government, as a matter of policy, decided to grant an opportunity to the students of the unrecognized Private Secondary Training Schools to appear in the C.T. examination on one time basis on two occasions and once pursuant to the order passed by this Court in O.J.C. No. 5629 of 1991, it is felt appropriate that the Principal Secretary on reconsidering the reports of the Collector, which were given pursuant to the orders of this Court, by the Collectors, at the first instance or subsequently, where the Collectors have given favourable reports with regard to infrastructure and staff and the attendance of the students, shall allow such students till the session 1991-92 to appear in the C.T. examination to be conducted by the Board of Secondary Education, Orissa. The Board of Secondary Education upon being communicated, shall allow such students of the petitioner-institution of 1989-90, 1990-91 and 1991-92 to appear in the C.T. examination, which should be conducted once for all latest by the end of 2010.

No order as to costs.