

(2003) 09 GAU CK 0044
In the Gauhati High Court
Case No : WP (C) No. 5589 of 2003

Anupam Lav and Another		APPELLANT
	Vs	
Central Board of Secondary Education and Others		RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 234

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami, Aslam, B. Sarma and D. Sengupta, for the Appellant; C. Choudhury, CGSC, for the Respondent

Final Decision : Partly Allowed

Judgement

Amitava Roy, J.—Two students studying in CBSE Course are primarily aggrieved by the endorsement made in their mark sheets for All India Sr. School Certificate Examination, 2003 (hereinafter referred to as the "Examination") to the effect that the results have been declared provisionally subject to the outcome of Crl. Case No. 11/03 u/s 468/471/506 IPC in Miao PS. They have prayed for appropriate reliefs, inter alia, for directing the respondents to delete the said endorsement and to issue fresh mark sheets reflecting their results.

2. I have heard Mr. Sahewalla, learned Sr. counsel assisted by Mr. Bora, advocate for the petitioner and Mr. C. Choudhury, learned CGSC for the respondents. None has entered appearance on behalf of respondent No. 4. This Court by order dated 11.9.2003 while issuing notice of motion had observed that an attempt would be made to dispose of the case finally on the next date keeping in view the urgency expressed by the learned counsel for the petitioners.

3. To comprehend the controversy, primary facts having a bearing thereon would be necessary to be set out. The petitioners, who are twins and being minors have filed this petition through their father. At the relevant time, their father's place of

posting was at Patna. The petitioners were accordingly prosecuting their studies in the CBSE Course in BD Public School at Patna. After the bifurcation of the State of Bihar, i.e., with the newly created State of Jharkhand, the service of the petitioner's father was placed at the disposal of Jharkhand State Electricity Boards Ranchi. In those circumstances, a decision was taken to get the petitioners admitted in a recognised School at Miao, Arunachal Pradesh.

It was decided that the petitioner's would be admitted in the Govt. Higher Secondary School, Miao (hereinafter referred to as the "School") where their uncle was a teacher. On being approached, the respondent No. 4, the Principal of the School, permitted provisional admission of the petitioners, subject to the production of School Leaving certificates from the BD Public School. The petitioners claim to have produced the school certificates in the month of September, 2002 and they were thereafter accorded regular admission in the School at Miao. The petitioners attended their classes regularly and appeared in the final CBSE examination. The examination forms submitted by the petitioners were duly verified by the Principal of the School and were forwarded to the authorities of the CBSE, Delhi and the same having been accepted by the authorities, admit cards were issued to them. The examination started on 3.3.2003 and was over on 25.3.2003, so far as the petitioners are concerned. The results of the said examination were declared on 23.5.2003. Though results of the other candidates were published, the results of the petitioners were shown to be withheld. The Principal of the School, thereafter made enquiries with the authorities of the Board for ascertaining the reasons for withholding the petitioners' results. The father of the petitioners also filed applications requesting for immediate publication of the results. It was thereafter, that the petitioners results were declared with the endorsement that the same were subject to the outcome of the CrI. Case referred to above. The petitioners have assailed the decision to be illegal, arbitrary and without any authority of law and have prayed for reliefs as referred to above.

4. In the counter filed by the Board, it has been, inter alia, pleaded that the admission of the petitioners in the School has been in violation of the procedure and guidelines prescribed by the Board inasmuch as under the admission procedure, no student can be admitted in Class-IX or above in a School affiliated to the Board after 31st August, except with the prior permission from the competent authority as mentioned in the guidelines. As admittedly, the regular admission had been made on September, 1992, prior permission from such authorities was necessary. Moreover, the transfer certificates issued by the School at Patna did not contain the counter signature of the competent authorities of the Education Deptt., of the concerned State or of the Board as prescribed by the guidelines. The further plea is that on receiving a complaint regarding status of the petitioners as students of the School at Miao and their eligibility to appear in the examination, an enquiry was made through a three member committee set up by the Board, which scrutinised the contemporaneous records and submitted a report confirming various irregularities in the matter of

admission of the petitioners. It was alleged that the petitioners were not the regular students of the School. It transpired from the FIR lodged by one of the teachers of the said School before the police (on which the above mentioned police case has been registered) that the petitioners had not attended classes in Mathematics even for a single day. The authorities of the Board therefore were satisfied that the students were not bona fide students of the Govt. Higher Secondary School, Miao and accordingly they did not publish the results initially. However, on a request made by the Principal of the School and the father of the petitioners, the results were declared subject to the endorsement appearing in the mark sheets. It is the contention of the Board that though the impugned decision has not been taken under rule 361 of the CBSE Examination Bye laws, Rule 12"1 thereof permitted it to take such action as it deemed it fit and proper in the facts and circumstances of the case. The stand of the Board therefore is that action was taken bona fide and in accordance with the provisions of the examination bye laws to uphold the vigour and probity of the admission procedure of Schools affiliated to the CBSE and discourage use of unfair means in such matters as well as irregularities connected with the examination process of the Board.

5. Though a rejoinder affidavit has been filed, by the petitioners, no new facts as such has come to light therefrom. Mr. Sahewalla, learned counsel for the petitioner has strenuously urged that there has been no violation of the admission procedure prescribed by the Board and the allegation that the petitioners have not attended the classes in English and Mathematics is wholly baseless and had been made mala fide by teachers of the School who are inimical towards their guardians who is also a teacher thereof. Learned Sr. counsel with reference to the relevant facts and the documents annexed to the writ petition has contended that the petitioners were provisionally admitted in the School in May 2002 and were directed by the Principal thereof to produce School Leaving Certificates from their earlier School. They did so in September, 2002 and thereafter their admission was regularised. They duly attended the classes and having done fairly well in the examination have passed the same with flying colours. According to Mr. Sahawella, the report of the Enquiry Committee, which has been taken into consideration while taking the impugned action is nonest in law as no opportunity of hearing was given to the petitioners by making them aware of the allegations levelled against them. He has further contended that the allegations made in the FIR are all against their uncle and it cannot be presumed therefore that the petitioners were parties to the alleged irregularities. Learned Sr. counsel has submitted that assuming there has been some irregularities in their admission, the Principal of the School can at best be responsible and no adverse consequences should visit the petitioners therefor. According to him, admittedly the authorities of the Board had not taken action under Rule 36"1 of the examination bye-laws, according to which they can withhold the results of a candidate if he is found to have made a wrong statement in his/her application form for admission to the examination or had

attempted to insure or had secured admission to any of the examinations of the Board by making false statement or by producing false documents. The Board having declared the results, it was not open to issue the mark sheets with the condition that the same were provisional and subject to the out come of the Crl. Case. It is contended that the results of the petitioners would show that they were brilliant students with a bright future and therefore intervention of the court was urgently necessary so that their academic career was not jeopardised,

6. Mr. C. Choudhury, on the other hand, submitted that the admission procedure adopted in the instant case for admitting the petitioners in the School was in breach of the guidelines prescribed by the Board. The transfer certificates were also not in conformity with the requirements of the said guidelines. Moreover, the report of the enquiry committee which was submitted after a threadbare scrutiny of the relevant facts and records indicates that the petitioners, besides being admitted in violation of the prescribed guidelines, have also not attended the classes in English and Mathematics. According to Mr. Choudhury, therefore, from the attending facts and circumstances, the action taken cannot be faulted with. He has argued that though no final decision had been taken by the Board, the impugned action was taken on a provisional basis subject to the outcome of the investigation of the Criminal case and the enquiry initiated by the Education Deptt. of Arunachal Pradesh. He therefore submitted that the petitioners have not made out a prima facie case for interference with the impugned action.

7. The very fact that the results of the petitioners have been declared on provisional basis and that the mark sheets have been issued subject to the final out come of the Crl. Case makes it ex-facie clear that the authorities of the Board have taken note of the allegations regarding non-compliance of the guidelines in the matter of admission of the petitioners in the School at Miao and also the report submitted by the enquiry committee. A bare reading of the FIR reveals that no allegation of any criminal offence as such has been levelled against the petitioners. The same are directed towards their uncle, who is a teacher of the School. It is also not disputed that the petitioners were not afforded a reasonable opportunity of hearing by the enquiry committee on the allegations before recording its findings as contained in the report. Though the writ petition contains some fleeting statements that the petitioners were asked some questions by the Committee about their admission in the School, the same cannot substitute the requirement of a meaningful opportunity of defence by specifically bringing to their notice the allegations. The findings of the enquiry being adverse to the petitioners on the issue, the same could not have been recorded without affording any opportunity of hearing to them to disprove the charges. The report therefore, being in violation of the principles of natural justice, has to be discarded as nonest in law at this stage. The materials on record are not sufficient to conclude that the petitioners had any role to play in the admission process and that they had in any manner committed the irregularities, if any, for the same. Admittedly, the examination forms of the petitioners were forwarded by the Principal to the authorities of the Board, along

with their testimonials and the petitioners were allowed to appear in the examination. The migration/school leaving certificates were also duly endorsed by the authorities of Board in due course of time after scrutiny. No objection whatsoever from any quarter was made in this connection. The petitioners have passed the examination and their results are impressive. It is understandable that they would like to pursue higher studies in some prestigious academic institutions of their choice. As a matter of fact, the petitioner No. 1 had qualified for being admitted into IIT preliminary examination. They have also applied in other Engineering Colleges and if they are prohibited from getting admission for the provisional mark sheets, they would suffer a set back in their career. Admission of students in an educational institution is subject to their performance in the qualifying examination and the results are considered to be an index thereof. If the mark sheet contains any endorsement having a bearing on the results, it is likely that the candidate concerned would face rejection of his case for admission. The petitioners presently are faced with such a situation and it is contended that they would lose one academic year, if their grievance is not redressal at this stage. It has been submitted at the bar that the admission process of the petitioners is scheduled to be conducted in the Engineering College in Maharashtra on 30.9.2003, and they genuinely apprehend that with the endorsement in the mark sheets they would be denied admissions. This is likely to happen while seeking admission in other Institutions/Colleges as well.

8. It would be relevant at this stage to take note of the stand of the Principal of the School as well as the authorities of the Board vis-a-vis the investigation of the Criminal case and the admission in the School so far as the petitioners are concerned. The Principal of the School by his communication dated 23.5.2003 (Annexure 7 to the writ petition) and dated 2.7.2003 (Annexure-XI) to the rejoinder affidavit) had brought to the notice of the authorities of the Board that the petitioners are genuine bona fide students of the School and they have been made victims of false complaints made by some teachers of the School because of their confrontation with their guardian. The Regional Officer of the Board in his communication dated 26.6.2003 (Annexure 4 to the Boards counter) addressed to the police authorities as well as the authorities of the Education Deptt. of the State has requested them to expedite the police investigation and the departmental enquiry, so that a final decision can be taken by the Board on the issue. It is apparent from the above, that no final decision had yet been taken by the Board and admittedly no action had been taken under Rule 36"1 and 36"3 of the examination bye laws. An attempt has been made by Mr. Choudhury, to impress upon this court that under Rule 12"1 the Board is authorised to impose penalties as it thinks fit if it has reason to believe that the School concerned has not followed the examination bye-laws and that the impugned action is in exercise of that power. On a reading of the said Rule 12, however it appears such penalties cannot be imposed on the student found to be flouting examination bye-laws. Be that as it may, the fact remains that on the basis of the materials available on record, the Board has not yet taken a final decision to the effect that

the allegation that the admission procedure was breached and that they were not the regular and bona fide students of the School has been proved. The petitioners, however, are seriously disadvantaged as discussed hereinabove by the provisional action. In the above premises, on adjusting the equities and having regard to the fact that the endorsement in the mark sheets of the petitioners if sustained, their academic career is likely be jeopardised, it is considered to be a fit case for this court to intervene in exercise of power under Article 226 of the Constitution of India. The authorities of the Board having failed to take a final decision so long, the petitioners cannot be made to suffer. It is, therefore, directed that the respondent Board would take immediate steps for deleting the endorsement in the mark sheets of the petitioners and issue fresh mark sheets to them without any endorsement or condition whatsoever. However, considering the stand of Board with regard to the admission procedure of the petitioners and other irregularities reflected in the enquiry report, and also in view of the pendency of the investigation in the criminal case, I am not inclined to quash the process initiated by the Board for making an enquiry into the said issue. It would be open for the Board on the conclusion of the process to take appropriate action as is permissible under examination bye-laws and other related guidelines and instructions. Needless to say that, if the Board is inclined to take any adverse decision against the petitioners, it will afford them a reasonable opportunity of hearing prior to that.

9. With the above observations and directions, the petition is partly allowed. No costs.