

(1985) 04 OHC CK 0029

In the Orissa High Court

Case No : Original Jurn. Case No's. 773, 1133, 1320, 1321, 2131, 2730 of 1984 and 135 of 1985

Debendra Nanda Goswami and Others etc.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-04-1985

Acts Referred:

Orissa Education Act, 1969 — Section 5 , 6
Orissa Education Code — Article 437

Citation : AIR 1986 Ori 5 : (1985) 60 CLT 1

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.C. Mash and B.K. Patnaik, for the Appellant; Addl. Standing Counsel and Addl. Govt. Advs., for the Respondent

Final Decision : Allowed

Judgement

P. P. Mohapatra, J.—The Petitioners in all these seven applications under Article 226 of the Constitution of India raise a common grievance relating to accord of recognition of their educational institutions. In all the applications, excepting O.J.C. Nos. 773/84, 1320/84 and 2730/84, the Management of the respective institutions are the applicants. In O.J.C. Nos. 773/84, 1320/84 and 2730/84 some students of different institutions are the petitioners. The State of Orissa represented by the Secretary in the Education and Youth Services Department, Director of State Council of Educational Research and Training, the Inspector of schools having jurisdiction over the area where the institution is situated and the Board of Secondary Education, Orissa are the opposite parties in the writ applications. The institutions concerned are privately managed Secondary Training Schools located in different parts of the State. They prepare students for the certified teachers Examination. (C. T. Examination) held every year under the Board of Secondary Education. In some of the writ applications, the reliefs sought are for issue of a writ of mandamus to the opposite parties commanding them to students recognition to the concerned school and to admit eligible

students of the school to appear at the C.T. Examination and to quash the order of the State Government expressed in the letter No. 674 dated 13-2-1984 from the Deputy Director, S.C.E.R.T., Orissa, Bhubaneswar to the Secretary, Board of Secondary Education, Orissa, conveying the Government decision that no permission will be accorded to the non-recognised private Secondary Training School in the State to present their candidates at the Board Examination, 1984. In the other cases the relief sought is confined to issue of a mandamus commanding the opposite parties to admit the petitioners and other eligible students of their schools to appear at the C.T. Examination and to quash the decision of the State Government referred to above.

2. As stated earlier, the institutions in question are non-Government Secondary Training Schools established and managed with the initiative taken by the private persons. They have been established in 1980 or 1981 and since then have been imparting education and training to students preparing them for the C.T. Examination. Management of these institutions have submitted applications to the Director of State Council of Educational Research and Training (opposite party No. 2) for according recognition to their respective institution. Admittedly, these applications have not been disposed of by the Director who is the competent authority to deal with the same. It appears that the question of privately owned Secondary Training Institutions has been under consideration of the State Government since about four years. Due to the delay in according recognition to the institutions in question the Managements have been facing serious difficulties in presenting their students at the C.T. Examinations every year. It is asserted by the petitioners and not denied by the opposite parties that under the direction of the State Government students recruited in their institutions during the years 1981 and 1982 were permitted to take the Final Examination held in 1983. When the question of presenting their students in the Examination, 1984 arose the authorities refused to accede to their request in view of the Government decision contained in the letter dated 13-2-1984 referred to above. On these allegations, the petitioners contend that the aforesaid decision of the State Government is incompetent and without jurisdiction.

Accordingly, they seek the reliefs noticed earlier.

3. The opposite parties have filed their counter affidavit only in O.J.C. No. 773/84. At the hearing the learned Additional Government Advocate appearing for the State and the Director has submitted that the stand taken in the counter affidavit filed in O.J.C. No. 773/84 is applicable to the other cases and the same may be treated as counter affidavit in all the cases. The gist of the stand taken in the counter affidavit is that the State Government have been following a consistent policy in regard to the opening of the Secondary Training Schools in the State and it has been repeatedly notified in the form of press notes (Annexures "A" and "B") that Government do not consider it necessary to open such schools privately and that Government would not give recognition to such

schools. As a justification for such policy decision it is stated that the students coming out every year from the sixty-nine Secondary Training Schools run by the State Government are sufficient to rest the need for trained teachers throughout the State and hence there is no necessity to run private Secondary Training Schools anywhere in the State. It is further stated in the counter affidavit that one batch of students from these private Training Schools were permitted to appear in the Examination through recognised Secondary Training Schools as per Rules and taking into consideration of the fact that some of the schools were established before the issue of the press notes under Annexures "A" and "B". The opposite parties take the stand that in view of the clear warning the press notes there was no justification for the management of the Schools to accept students and the opposite parties are in no way responsible if the students in these institutions suffer due to their inability to appear in the Board Examination

4. From the pleadings of the parties as stated above, it is clear that the principal stand taken by the opposite parties is that in view of the policy decision expressed in the two press notes, Annexures "A" and "B" issued by the State Government containing a total plan for establishment of private Secondary Training Schools throughout the State the action taken in the letter dated 13-2-1984 prohibiting students to appear at the Examination is justified. In view of this plea two principal questions arise for consideration : (i) whether the State Government is competent to be (sic) establishment of Private Secondary Training Schools in the State by issue of press notes and (ii) what is effect of such Press notes regarding accord of recognition to these institutions.

The matter relating to recognition of Private Educational Institutions and effect of non-recognition of such as Institution are dealt with under Sections 5 and 6 of the Orissa Education Act, 1969 (Orissa Act 15 of 1969). It would be helpful to quote the said provision : --

"5. Application for recognition -- (1) Any person or body of persons desirous of establishing any private educational institution may, within the prescribed period and in the manner prescribed, make an application in the prescribed authority for according recognition thereto.

(2) While according recognition under Subsection (1) to the establishment of a private educational institution the prescribed authority shall have regard to the following matter, namely : --

(a) that there is adequate financial provision as may be prescribed for its continued and efficient maintenance:

(b) that provision for suitable and adequate accommodation, staff and equipment has been made;

(c) that the institution is proposed to be located in sanitary and healthy Surroundings; and

(d) such other matters as may be prescribed.

(3) Any applicant aggrieved by an order of the prescribed authority refusing to accord recognition may, in such manner and within such time as may be prescribed, refer the matter to the State Government whose decision thereon shall be final.

6. Effect of non-recognition -- Notwithstanding anything to the contrary contained in any other law for the time being in force no private educational institution which has not been recognised by the State Government under this Act shall be entitled -

(a) to be recognised by the Board of Secondary Education constituted under the Orissa Secondary Education Act, 1952 or the Council of Higher Secondary Education constituted under the Orissa Higher Secondary Education Act, 1982 or, as the case may be, to be affiliated to any University established under any law; or".

It is agreed by the learned counsel appearing for the parties that no rule or regulation relevant to the issue of recognition of private educational institution has been framed under the Act Article 437 of the Orissa Education Code provides as follows :--

"437. Schools Under Private Management :-- Schools under private Management may be recognised by the Director as secondary training schools and may be permitted to send up students to the Teacher's Certificate examination."

It is under this provision that the Director of S.C.E.R.T. is taken as the competent authority to deal with applications for accord of recognition.

From the provisions of Section 5 of the Act it is clear that an application for recognition of a private educational institution has to be dealt with by the prescribed authority having regard to the criteria enumerated under Sub-section (2) of the Section. Any applicant aggrieved by an order by the prescribed authority refusing to accord recognition may refer the matter to the State Government whose decision thereon shall be final. The criteria prescribed u/s 5(2) are adequate financial provision for continued and efficient maintenance of the institutions; provision for suitable and adequate accommodation; staff and equipment and the surroundings of the area where the institution is located being sanitary and healthy. It is pertinent to note that the number of similar institutions already existing and the adequacy of the candidates coming out from such institutions to meet the demand are not criteria prescribed under the statute for disposal of application for accord of recognition. In view of the express statutory provision prescribing the manner of disposal of applications for recognition and the matters to be considered while dealing with such application, it was not open to the State Government or any other authority to pose any direction relating to the matter dehors the statutory provisions. It is further clear from the statutory provisions that such application for recognition has to be judged on its merit in the matter prescribed under the statutory provisions of the Act, first by the prescribed authority and finally by the State Government. As

such, a blanket ban on establishment of private secondary training schools as is sought to be done in these cases is not contemplated under the statute. Further no material has been produced before us to show that the press notes issued by the State Government were brought to the notice of the Management of the institutions in question or that any specific direction was issued to them not to admit students in view of the press notes.

The learned Additional Government Advocate raised a contention that Section 5 contemplates prior permission of the prescribed authority before establishing any private educational institution and since the Managements of the institutions in question did not obtain prior permission, the applications submitted by them after the institutions were established are not in accordance with the statute. On careful consideration we are unable to accept this contention. A bare reading of the provisions of the Section 5 is sufficiently indicative of the position that though the Section contemplates application for according recognition to a proposed private educational institution, prior permission cannot be said to be a sine qua non for establishing private educational institution. The criteria prescribed under Sub-section (2) of Section 5 clearly show that financial provision, suitable, and adequate accommodation, staff and equipments have to be made before application for according recognition is made, otherwise it would not be possible for the prescribed authority to satisfy himself about these matters which are relevant for disposal of the application for recognition. To give an interpretation to the provision that at the time of submitting application for recognition all that the management of the institution need do is to submit the plan and scheme relating to the criteria prescribed without any concrete steps in the matter would be unreasonable and would render the provision ineffective. In our view, a reasonable construction of the provision would be to hold that it is open to any person or group of persons to establish a private educational institution and run the same, but the Management has to apply to the prescribed authority for recognition before presentation of students at the Examination conducted by the Board or University, as the case may be. This view gains support from the provisions of Section 6 of this Act which provides the effect of non-recognition. As the provision indicates the consequences are that no private Government under the Act shall be entitled to be recognised by the Board of Secondary Education or the Council of Higher Secondary Education or be affiliated to any University established under any law or to receive aid from the State Government. Further, in the present cases, as indicated earlier, none of the applications submitted by the Management of the institutions concerned has been disposed of by the prescribed authority. As such, the contention raised by the learned Additional Government Advocate regarding entertainability of the application is premature.

5. On the aforesaid analysis it has to be held that the letter dated 13-2-1984 from the Deputy Director, S. C. E. R. T., Orissa, Bhubaneswar to the Secretary, Board of Secondary Education, Orissa which conveyed the decision of the State Government not to accord permission to the private secondary training schools in

the State to present their candidates at the Board's Examination, 1984, is incompetent and unauthorised and the applications submitted by the Managements of the institutions concerned in these applications are admittedly has not yet been disposed of by the Director, S. C. E. R. T. Orissa are to be disposed of in accordance with the statutory provisions, not being influenced in any manner by the press notes under Annexures "A" and "B".

Normally we would have referred the matter by issuing necessary directions as indicated above, but in the facts and circumstances of these cases that would serve little purpose. It is stated at the Bar that the final C. T. Examination is to be held by the Board of Secondary Education shortly. The applications of the students of the Institutions in question intending to take the said examination have not been accepted by the Board in view of the intimation received from the Deputy Director, S.C.E.R.T.. Unless necessary directions are issued to the Board to accept the application, the students of these institutions, numbering about 1200 would not be able to take the examination and would lose a valuable year in their career. As discussed in the foregoing paragraph, while the matter relating to accord of recognition to the institutions has been pending consideration, under instructions from the State Government the students were permitted to appear to the final C. T. Examination held by the Board in 1983. No specific reason has been placed before us why the same arrangement cannot be made for the coming final examination this year also since the conditions that were prevalent then still continued. In these special circumstances, by taking into account the future of a large number of students we would issue a direction to the Board of Secondary Education, Orissa to entertain the applications of students intending to take the coming final C. T. Examination and accept the same if they are found to be in order.

6. Accordingly, the writ applications are allowed, the letter No. 674 dated 13-2-1984 from the Deputy Director, S. C. E. R. T., Bhubaneswar to the Secretary, Board of Secondary Education, Orissa, Cuttack is quashed. The Director of State Council of Educational Research and Training is directed to consider the application submitted for accord of recognition of the private secondary training schools, namely, Durgapur Secondary Training School at Durgapur, Rahama S. T. School at Rahama, Secondary Training School at Badachana, Bagdebi Secondary Training School at Daligi (O. J. C. No. 773/84), Salijodi S. T. School at Balijodi (O. J. C. No. 2131/84). Secondary Training School at Adhalpank (O. J. C. No. 2730/84), Sri Swami Chidanada S. T. School, Barhampur (O. J. C. No. 1133/84), Anchalik Secondary Training School at Alkunda Nuagaon (O. J. C. No. 1321/84), Raghunathjew S. T. School, Deulisahi, Cuttack (O. J. C. No. 1320/84) and Secondary Training School at Talpada (O. J. C. No. 135/85) in accordance with the provisions of the Orissa Education Act, 1969 and without being influenced in any manner by the press notes issued by the State Government under Annexures "A" and "B" to the counter affidavits filed by the opposite parties within two months hence. The Board of Secondary Education, Orissa is directed to accept the forms and fees from the eligible

students intending to take the final C. T. Examination, 1985. The opposite parties are directed to make necessary arrangements to enable the students of the institutions concerned in the writ applications to appear to the said examinations. There shall be no order for costs.

R.C. Patnaik, J.

7. I agree.