
(1992) 04 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Special Appeal No. 101 of 1992

Dharmendra Acharya

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (1992) 1 RLW 438 : (1992) 2 WLN 64

Hon'ble Judges : Y.R. Meena, J;J.R. Chopra, J

Bench : Division Bench

Judgement

J.R. Chopra, J.—This appeal is directed against the judgment of the learned single Judge dated 14.2.1992 whereby the writ petition filed by the petitioner-appellant has been dismissed.

2. The case of the petitioner-appellant is that he passed the Secondary Education Examination in the year 1990 from the Board of Secondary Education, Assam and thereafter, his father migrated to Rajasthan and so, he obtained his School Leaving Certificate and sought his admission in Rajasthan Bal Mandir, Senior Higher Secondary School, Bikener in the 10 + 2 scheme in the session 1990-91. He passed XI Class and secured 59% marks. Thereafter, his form was sent for the Senior High Secondary Examination to the Board of Secondary Education, Rajasthan, Ajmer but his form has been rejected on the ground that while passing secondary school examination from the Board of Secondary Education, Assam, he has only obtained 30% marks in two subjects whereas the Regulations of the Board of Secondary Education, Rajasthan, Ajmer require that a candidate must pass in all the six subjects including English with minimum 33% marks. No candidate can be admitted in 11th Class unless he obtains 33% marks in all the subjects including English.

3. There is no disputes about this fact that the Secondary School Examination held by the Board of Secondary Education, Assam has been recognized by the Board of Secondary School Examination, Rajasthan, Ajmer but it has been

recognized with this condition that a candidate must obtain 33% marks in all the six subjects including English. The condition is very much contained in the prospectus that have been issued under Chapter XVI of the Rajasthan Secondary Education Regulations, 1957 since 1991.

4. It is admitted case of the petitioner-appellant that he has passed two papers from the Board of Secondary Education, Assam with 30% marks only and, therefore, according to these instructions, he was not entitled to be admitted in Class XI. We may state here that the Board of Secondary Education, Rajasthan, Ajmer is the creature of the Statute i.e. Rajasthan Secondary Education Act, 1957 and the purpose for which this Board was constituted was to develop the system of Secondary Education in the State on modern, scientific and progressive lines and to reorganise, regulate and supervise such education. With this aim and object, the Board of Secondary Education, Ajmer was constituted and Section 36 of the Rajasthan Secondary Education Act, 1957 empowers the Board to make Regulations providing for the procedure of the Board and its Committees; the conferment of diplomas and certificates; the courses of study to be laid down for all certificates and diplomas; the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for conferment of diplomas and certificates and the admission of institutions to the privileges of recognition and the withdrawal of recognition.

5. It has been contended by Mr. J.L. Purohit, the learned Counsel appearing for the petitioner-appellant that u/s 36(2)(h) of the Act, the Board has been empowered to make regulations providing for the admission of institutions to the privileges of recognition and the withdrawal of recognition. It can grant or withdraw any of such recognitions but when a particular recognition has been granted, the Board cannot put any condition while granting such recognition. We are unable to accept this submission of Mr. S.L. Jain, and Mr. J.L. Purohit, the learned Counsel appearing for the petitioner-appellant. The Board of Secondary Education, Rajasthan, Ajmer is an academic institution, which has been authorised to regulate the Secondary, Higher Secondary and Senior Higher Secondary education in the State of Rajasthan and to prescribe conditions and standards of education. It has been further authorised to grant or withdraw recognition to a particular certificate or diploma granted by the other Boards. As per the Regulations and prospectus of the Board, for passing secondary school examination from the Board, a candidate is required to secure 33% marks in all the six subjects including English and it is because of this that while granting recognition to the certificates and diplomas granted by other Institutions, which are mentioned in the prospectus of the Board, a condition has been put that only those diplomas and certificates of secondary education will be recognized, where the student has secured 33% marks in all the six subjects including English. Such a conditional recognition is not beyond the powers of the Board. It can prescribe any standards for bringing them in parity with the diplomas and certificates issued by other Institutions. In this respect, Mr. D.S. Shishodia, the learned Counsel appearing for the respondents has drawn out attention to a

Division Bench decision of this Court in *Vijay Kumar v. State of Raj.* and Ors. D.B.Civil Writ Petition No. 2323 of 1987, decided on 22.8.1987. In that case, the Board took a decision that the examination of Central Board of Secondary Education cannot be recognized equivalent to the Secondary School Examination of the Board of Secondary Education, Rajasthan. It was held that this Court cannot enter into the question as to why equivalence has been refused. The Board of Secondary Education is an academic body and is competent to take such a decision. Thus, the question of equivalence is not open to examination. Keeping in view these observations made by the learned Judges of the Division Bench in *Vijay Kumar's* case (*supra*), we are firmly of the opinion that the Board of Secondary Education, Rajasthan, Ajmer is the only competent authority to decide the academic standards for a particular examination and to grant parity with that examination to the similar examinations held by other Institutions. Thus, we are unable to accept this contention of Mr. Jain and Mr. Purohit, the learned Counsel appearing for the petitioner-appellant that the Board cannot put any condition, while granting recognition to a particular examination held by other institutions.

6. The learned Counsel appearing for the petitioner-appellant have next contended that in this case, the student has already been admitted to Class XI by the respondent No. 3 and he has also passed that examination by securing 59% marks and, therefore, it will result in hardship if he is refused admission to the Senior Higher Secondary Examination. In support of his submissions, he has placed reliance on a decision of their lordships of the Supreme Court in *A. Sudha Vs. University of Mysore and Another*, wherein the Karnataka Medical Colleges (Selection of Candidates for Admission to 1st MBBS) Rules, 1985 provided that the candidate not securing 50% marks in Physics, Chemistry and Biology taken together in qualifying examination (PUC), seeking admission after passing B.Sc. will not be eligible for admission. However, their lordships held that these Rules are not applicable to the seats in Private Colleges other than Govt. seats. It was further held that even assuming that the Rules are applicable, the candidate would not be eligible not having secured required 50% marks at qualifying examination. However, since the candidate has completed first MBBS, was innocent and had relied on representation of College authorities that candidate was eligible having secured more than 50% marks in B.Sc, the admission was not cancelled. That was a case, where their lordships were not certain whether the Rules were applicable to the seats in Private Colleges other than Govt. seats. Moreover, the petitioner had relied on the representation of college authorities that the candidate was eligible having secured more than 50% marks in B.Sc. It is not the case here. In this case, the prospectus of the Board of Secondary Education, Rajasthan clearly provide that a candidate who has not secured 33% marks in all the six subjects including English in his secondary examination from the Board or any Institution recognized by the Board will not be admitted to Class XI and despite such a clear provision, the petitioner- appellant got his admission in Class XI. Thus, he should thank himself for getting his admission in

Class XI despite knowing this clear provision regarding admission to Class XI. In this respect, we are tempted to quote certain observations made by their lordships of the Supreme Court in *Punjab Engineering College v. Dhamninder Kumar Singhal* 1990 AIEC 75, wherein their lordships of the Supreme Court have observed that the students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul. Once you are in, no one will put you out. Law...work their wonders in such diverse fashions. It was further observed that this situation has emboldened the bring authorities of educational institutions of various States to indulge in violating the norms of admission intact, even if the admissions are granted contrary to the Rules and Regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the Institution. We might have been justified in adopting this course in this case itself, but we thought that we may utter a clear warning before taking that precipitate step. Thus, warning has already been given by their lordships of the Supreme Court and it has been impressed upon the Courts which are governed by the Rule of Law and which are obliged to obey the decisions of their lordships of the Supreme Court under Article 141 of the Constitution that such admissions which are made against the Rules by the emboldened authorities of the Educational Institutions should not be allowed to continue and the Courts should not become a party to maintain such wrongful admissions made or obtained by interested parties against clear instructions of the Board as set out in the prospectus which are in force since 1988 at least.

7. Our attention was next drawn to a decision of this Court in *Ramveersingh v. Board of Secondary Education, Rajasthan, Ajmer and Ors.* S.B. Civil Writ Petition No. 984 of 1991, decided on 20.9.1991 at Jaipur, Bench, where in N.C. Sharma, J. has observed as follows:

It is time to add that we have come across cases where ineligible students are admitted to schools or Colleges by the Principals of the Schools and Colleges and the ineligible students have been allowed to continue their studies and even, provisionally appeared in examinations under the shelter of interim orders of Courts. This affects not only the purity in the admissions of students in Schools and Colleges but also is detrimental to these students who are eligibles but are denied admissions. This also results in producing sub-standard graduates, teachers and in other academic specialities. It is time enough to stop all this mess in Schools and Colleges recognized by the Board of Secondary Education, Rajasthan or the University of Rajasthan. It is hoped that the Board of Secondary Education, Rajasthan, and the Govt. of the State of Rajasthan will take suitable action against the Principals of various Govt. and non-governmental schools or colleges where ineligible students are admitted by them in various causes. Since,

the Principal of Govt. Senior Higher Secondary School Bayana had wrongly admitted an ineligible student in XI class i.e. Higher Secondary Class, he will personally pay Rs. 5001- as costs to the petitioner.

In this case, the Principal Rajasthan Bal Mandir, Senior Secondary School, Nathusargate, Bikener has not been made a party to this petition and, therefore, we leave it open to the petitioner-appellant as to how he should proceed against that Principal, who has spoiled his two years and to take suitable action against him. He not being a party to this writ petition or special appeal, we are not going to impose any costs against him in his absence.

8. An argument was raised that denying admission to the petitioner-appellant to the Senior Higher Secondary Course will result in inequity. We are unable to accept this contention. If a student, who fails to secure 33% marks in all the subjects including English in the Secondary School Examination conducted by the Ajmer Board itself is not admitted to XI Class and a student who has failed to secure 33% marks in one or two subjects in his Secondary Examination conducted by the Board of any other Institution or State recognized by the Board of Secondary Education, Rajasthan, Ajmer is admitted to XI Class, then such admission would certainly result in inequity to those students who have secured less than 33% marks in the secondary examination conducted by the Board of Secondary Education, Rajasthan itself. Thus, the balance of equity is not in favour of the petitioner- appellant.

9. Keeping in view the ratio of the decisions referred to have we are firmly of the view that the Prospectus/Regulations of the Board of Secondary Education, Rajasthan, Ajmer do not permit a student to appear in the Senior Secondary Examination even if he got his admission in XI Class unless he has secured 33% marks in all the six subjects including English and, therefore the very admission of the petitioner-appellant in Class XI is arbitrary and against the Rules. Thus, the petitioner-appellant is not entitled to be admitted to Senior Higher Secondary Examination held by the Board of Secondary-Education, Rajasthan, Ajmer. The fact that he has passed XI Class with 59% marks will not bolster up his case in any manner.

10. In this view of the matter, we find no force in this appeal and it is hereby dismissed without any order as to costs.

11. Before parting with the case, we will like to observe that in the Prospectus/Guidelines of the Board of Secondary Education, Rajasthan, Ajmer since 1988, it has been categorically provided that nobody, who has not obtained minimum 33% marks in all the six subjects including English, should be admitted in XI Class but inspite of these clear and categorical instructions, the Principal, Rajasthan Bal Mandir, Senior Secondary School, Nathusargate, Bikener has admitted that petitioner-appellant in XI Class and has spoiled his two years and, therefore, it is expected of the Board of Secondary Education, Rajasthan, Ajmer to take suitable actions against such erring principal, who inspite of clear and

categorical instructions issued by the Board of Secondary-Education, Rajasthan, Ajmer still allowed the petitioner-appellant to take admission in 11th Class against the Rules, so that others may not have courage to become parties to such illegal admissions.

12. The appeal stands disposed of accordingly.