

(2009) 10 OHC CK 0092

In the Orissa High Court

Case No : Misc. Case No. 270 of 2009, Writ Appeal No's. 126, 141, 142, 143, 146 and 147 of 2009

In Re: State

Date of Decision : 30-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 10 OHC CK 0092

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Misc. Case No. 270 of 2009.

Having heard Learned Counsel for the parties, the prayer for amendment is allowed. Accordingly, challenge in Writ Appeal No. 126 of 2009 is confined to the Order Dated 3.8.2009 passed in Misc. Case No. 6989 of 2009 arising out of WP. (C) No. 5640 of 2009.

Misc. Case is disposed of.

Writ Appeal Nos. 126. 141. 142. 143. 146 and 147 of 2009. Since common questions are involved in all these writ appeals, they were heard together and are being disposed of by this common order.

2. While WA. Nos. 146 and 147 of 2009 have been filed by the State of Orissa challenging respectively the Order Dated 24.09.2008 passed in WP.(C) No. 10372 of 2008 and the Orders Dated 16.04.2009 and 3.8.2009 passed in WP.(C) No. 5640 of 2009, the Secretary, Board of Secondary Education, Orissa has filed W.A. Nos. 141, 142 and 143 of 2009 challenging respectively the Orders Dated 16.04.2009, 8.5.2009 and 17.7.2009 in WP.(C) No. 5640 of 2009. By Order Dated 24.09.2008, the Learned Single Judge while disposing of WP.(C) No. 10372 of 2008 filed by Respondent No. 1 in all the writ appeals directed the Opp. Parties therein to examine whether the institutions which were members of the Petitioner-association had the infrastructure facilities for imparting such course

and as to whether, s a matter of fact, students completed their course in those schools. If on enquiry the findings were in the affirmative, the Government might consider allowing such students to appear in future examination in the C.T. Course 2009. It was further directed that while considering the matter 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. By Order Dated 16.04.2009 passed in Misc. Case No. 4448 of 2009 arising out of WP. (C) No. 5640 of 2009, the Learned Single Judge while permitting the students of the Petitioner-institute to appear in the C.T. Examination, 2009 without prejudice to the rights of the parties directed the Secretary, Board of Secondary Education, Orissa to supply required number of forms to be filled up by the eligible candidates who have prosecuted their studies in the institutions of the Petitioner-association in the C.T. Course for the Sessions 1989-1990, 1990-1991 and 1991-1992 and resubmit the same along with required fees but the result of such candidates was directed not to be declared without leave of the Court. Alleging that the aforesaid Order Dated 16.4.2009 had not been complied with, the Petitioner filed Misc. Case No. 5462 of 2009 and by Order Dated 8.5.2009, the Learned Single Judge directed that if required number of forms were not issued to the memberinstitutions of the Petitioner-association by 15.5.2009 by the Board of Secondary Education, proceeding under the Contempt of Courts Act shall be initiated. However, the Secretary, Board of Secondary Education filed Misc. Case No. 7622 of 2009 in W.P(C) No. 5640 of 2009 praying for recalling/ vacating the Order Dated 16.04.2009 and 8.5.2009, as stated earlier but by Order Dated 17.07.2009, the Learned Single Judge dismissed the said misc. case as no ground had been stated in the application.

3. In pursuance of Order Dated 3.8.2009 passed by the Learned Single Judge of this Court in Misc. Case No. 6989 of 2009, All Orissa Private Secondary Training School Management Association had filed forms of the students before the Board to allow the students of the academic Sessions 1989-1990, 1990-1991 and 1991-1992 to appear in the ensuing C.T. Examination, 2009 which was scheduled to be held on 8th September, 2009. The Learned Single Judge directed the Board to accept the application forms by 17th August, 2009 along with the required examination fees, as has been collected from the regular students. However, as an interim measure, the Learned Single Judge further directed that the result of the said students should not be declared without leave of the Court.

4. In the said order, the Learned Counsel appearing for the Board submitted that in view of the decision of the Apex Court that any private, non-recognized or un-permitted institution cannot be permitted to present their students to appear in such examination, that aspect should be dealt with during final disposal of the Writ Petition and/or at the time of passing orders on the question of declaration of their result.

5. The aforesaid misc. case was filed in W.P(C) No. 5640 of 2009 wherein All Orissa Private Secondary Training School Management Association prayed to

permit the students to appear in the ensuing C.T. Examination. The Learned Single Judge by Order Dated 16.04.2009 in Misc. Case No. 4448 of 2009 directed the Secretary, Board of Secondary Education, Orissa, Cuttack to supply the required number of forms to the Petitioner-institute which should be filled up by the eligible candidates who had prosecuted their studies in the C.T. course for the Sessions 1989-1990, 1990-1991 and 1991-1992 and those forms should be submitted before the Board along with the required examination fees. Such students should be permitted to appear in the C.T. Examination, 2009 which was scheduled to be commenced on 26.06.2009 without prejudice to the rights and contentions of the respective parties. However, the result should not be declared without leave of the Court. Since the aforesaid order was not complied with, apprehending that the students may be deprived of appearing at the C.T. Examination, 2009, the Petitioner-association filed Misc. Case No. 5462 of 2009 wherein the Learned Single Judge by Order Dated 8.5.2009 directed that if the required number of forms are not issued to the member-institutions of the Petitioner association by the Board, a proceeding under the Contempt of Courts Act shall be initiated against the Secretary, Board of Secondary Education, Orissa, Cuttack.

6. From the above facts, it appears that while the matter is still pending before the Single Judge of this Court, challenging the Order Dated 3.8.2009 passed by the Learned Single Judge in Misc. Case No. 6989 of 2009, the present writ appeal has been filed.

7. There is no doubt that the Apex Court in the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, in paragraph-6 held as follows:

6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In C.B.S.E. v. P. Sunil Kumar the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board hence the students were not entitled to appear in the examination. They were however allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and Regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court observed thus:

But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the

orders issued by the High Court on misplaced sympathy in favour of the students.

The order of the High Court was set aside. Another decision reported in *Guru Nanak Dev University v. Parminder Kr. Bansal*, a three-Judge Bench decision was relied upon in the case of *Sunil Kumar*. A passage from the above noted decision was also quoted therein which reads as follows:

We are afraid that this kind of administration of interlocutory remedies more guided by sympathy quite often wholly misplaced does not service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it leading to series impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case the High Court "Has apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by themselves taking over their functions.

Yet another decision referred to is reported in *A.P. Christians Medical Educational Society v. Govt. of A.P.* again a three-Judge Bench decision. It was observed in this case:

We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the Regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws." The above-referred matter relates to the admission and examination of MBBS courses.

8. The said view of the Apex Court has also been reiterated in the case of *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, wherein it deprecated the practice of educational institution admitting students without requisite recognition or affiliation and not fulfilling the essential condition nor abiding by Examination Bye-laws and even after filing undertakings, the school nonchalantly continued the violations of affiliation bye-laws of CBSE and held that not allowing the students to appear in the examination conducted by CBSE in proper.

9. Earlier, this Court in the case of *Managing Committee, Swarnachuda Secondary Training School and 39 Ors. v. State of Orissa and Ors.* reported in 77 (1994) CL T 459 considering the applications of the students to appear in the C.T. Examinations in unauthorized private institutions dismissed the Writ Petition and held as follows:

....the field of education is found to be fertile, perennial and profitable business

ventures with least capital outlay. Notwithstanding the statutory warnings given by the State that establishment of such institutions was not to be encouraged, the mushroom growth continued and students allegedly took admissions into the institutions. Private institution unauthorisedly established were invariably ill-housed, ill-staffed and ill-equipped. If the Government is directed to permit the students admitted into those institutions to appear in various examinations, that would lead to encouragement and condonation of the establishment of unauthorized institutions. The jurisdiction of the Court under Article 226 of the Constitution is not to be frittered away for such a purpose.

10. It is submitted by the Learned Counsel for the parties that due to unavoidable circumstances the examination of the regular students has been deferred from time to time and if the regular students and the students who would appear through the Petitioner-association would appear in the one and the same examination, in a short span of time it would be difficult for the Board to scrutinize their records and collect the examination fees.

11. Considering the aforesaid submissions and since the Learned Single Judge has already taken a view that the matter will be heard finally during the course of hearing of W.P.(C) No. 5640 of 2009, we feel it proper that the regular students who have prosecuted their studies through an approved recognized institutions should not be made to suffer as they have completed their regular course of studies satisfactorily for two schooling years recognized by the Board and attended the school for not less than 75% of working days in each year and also practised teaching in a school or schools recognized for the purpose.

12. Vide impugned Order Dated 16.04.2009 passed in Misc. Case No. 4448 of 2009 arising out of W.P.(C) No. 5640 of 2009 the Learned Single Judge directed the Secretary of the Board to supply the required number of forms to the Petitioner institute which shall be filled up by the eligible candidates who have prosecuted their studies in the C.T. course for the Sessions 1989-1990, 1990-1991 and 1991-1992 by way of interim order and the matter is still pending for final disposal before the Learned Single Judge and they having waited nearly for 9 years to appear in the examination, they should not be treated at par with the regular candidates and in case the result goes in favour of them they can fill the forms on that basis and as such, at this stage filling of forms, in our opinion, is of no use.

13. Therefore, since the Hon'ble Apex Court has deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions, we are of the opinion that the matter requires final adjudication in respect of those who appeared through Petitioner-association in WP.(C) No. 5640 of 2009. Hence, we set aside the impugned Order Dated 16.4.2009. Consequently, the Order Dated 8.5.2009 directing compliance of the Order Dated 16.4.2009 and the Order Dated 8.5.2009 refusing to recall the Orders Dated 16.4.2009 and 8.5.2009 are also set aside. Consequently, 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 in the years 1989-1990, 1990-1991 and 1991-1992 will be considered on the final adjudication of the matter. W.A. No. 146 of 2009 has been filed against the Order Dated 24.09.2008 passed by the Learned Single Judge in WP.(C) No. 10372 of 2008. This WA. was filed on 4.9.2009, i.e., more than eleven months after passing of the order. Though an application (Misc. Case No. 259/2009) has been filed for condonation of delay, we are not satisfied with the reasons ascribed for the delay. Hence, we are not inclined to condone the delay and accordingly reject Misc. Case No. 259 of 2009. Consequently, WA. No. 146 of 2009 is dismissed.

Resultantly, W.A. Nos. 126, 141,142,143 and 147 of 2009 are allowed.