
(1998) 03 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 1307, 1458, 1694, 1805, 2154, 2156 and 2316 of 1996

Jagamohan Higher Secondary School and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Ori 136

Hon'ble Judges : R.K. Patra, J; Pradipta Ray, J

Bench : Division Bench

Advocate : B.B. Ratho, B.N. Ratho, B. Senapati, J.N. Rath, S.K. Jathi, M.K. Panda, P.K. Panda, P.K. Samantara, S.K. Patjoshi and S.B. Mohanty, for the Appellant; S.D. Das, I. Samantaray, H.S. Satapathy and B.K. Mohanty, for the Respondent

Judgement

1. This batch of writ application filed on behalf of different Higher Secondary Schools and + 2 Colleges through their respective Secretaries is directed against the decision of the Council of Higher Secondary Education, Orissa, Bhubaneswar published in the daily news-paper "The Samaya" dated 22-1-1998 (Annexure 3) prescribing certain norms for location of examination centres to conduct the Annual Higher Secondary Education Examination, 1998. Out of several criteria fixed for the purpose, the petitioners feel aggrieved at one condition only which provides that such of the educational institutions which have been established by 1993-94 with the permission of the Government would be selected as examination centres. All the cases being analogous have been heard together and are disposed of by this common judgment. For the sake of convenience, the parties as described in O.J.C. No. 1307 of 1998 and their pleadings in that case are referred to hereinafter.

2. In O.J.C. No. 1307 of 1998, eight different educational institutions are petitioners. In O.J.C. No. 2154 of 1998, Bhagabati Women's College at Manijanga and Maba Balunkeswar College, Khurrtapali are two petitioners. In

each of the remaining five writ applications (O.J.C. Nos. 1458, 1694, 2154, 2316 and 2805 of 1998), individual educational institution is the lone petitioner.

3. The common grievance of the petitioners is that each of their own colleges has been established as per the procedure and has also got due recognition from the educational authorities. Their infrastructures are very good. They have also got adequate staff. In the academic years 1994-95 and 1995-96 the petitioners' institutions were selected as examination centres in which the students appeared in the Annual Examinations. There was no adverse reports against any of the colleges where such examinations were held. All of a sudden during the last academic year 1996-97, the Council of Higher Secondary Education, Orissa (hereinafter referred to as "the Council") took decision (which was published in the daily "The Sambad" dated 22-1-1997 at Annexure 2) prescribing certain criteria for having examination centres, one of them being that those institutions which have been established by virtue of permission granted by the State Government by 1993-94 would alone be qualified as examination centres. As a result of such condition, petitioners' institutions having even established after 1993-94 were not selected as examination centres and on the contrary, they were tagged to other examination centres located in other colleges. The petitioners raised their grievance and approached the Chairman of the Council who told them that it was not possible to change examination centres as the time was too short. He however assured the petitioners that their cases would be duly considered for the next Annual Examination. The petitioners were expecting that for the current academic year 1997-98 their colleges would be declared as examination centres but surprisingly, the Council stuck to its previous decision as per the impugned press note at Annexure 3 and reiterated the very condition that such of the educational institutions which have been established with the permission of the Government by 1993-94 would alone be qualified as the examination centres. The allegation of the petitioners is that by the impugned condition their own students are deprived of having their examination centres in their own colleges and they have been tagged to other colleges and by such arbitrary action, the students of the petitioners' colleges will have to travel about 20 to 35 K.Ms. to take their examination at the ear-marked examination centres. By this, the examinees will face a lot of difficulties which would ultimately affect their performance.

4. The Council-opp. party No. 2 has not filed any counter-affidavit. The Controller of Examinations -- opp. party No. 4 has however filed his counter-affidavit for self. His case is that no one can claim as a matter of right to have the examination centre in his own educational institution. The Examination Committee is empowered to take decision at which place the examination centre would be held. The experience in the past was not satisfactory with regard to holding of examination in certain examination centres and keeping that in view, the Examination Committee in its meeting held on 31-12-1997 resolved as follows :

"Resolution No. 1596:-- The members of the Committee thoroughly discussed the matter regarding criteria for fixation of Examination Centres for the Annual H. S. Examination, 1998 taking into account the past experience and the present situation and after careful consideration of the facts the committee resolved as follows:--

- (a) All the Govt. Colleges be made Examination Centres.
- (b) All the fully aided Non-Govt. Colleges be made Examination Centres.
- (c) All Non-Govt. Colleges having permanent recognition/affiliation be made examination centres.
- (d) All other colleges having been established with Govt. permission up to Academic Session 1993-94 be made examination centres provided that, they fulfill the minimum eligibility criteria as noted below.
 - (i) The college presents at least 60 (sixty) candidates for the examination, except in case of women's college and colleges located on educationally backward areas where the minimum number of candidates for the said examination is to be 50 (fifty).
 - (ii) Sufficient infrastructural facilities like building, furniture, boundary wall/fencing etc.
 - (iii) Required number of teaching staff for invigilation duty. Provided further that, the results of such colleges have not been cancelled for 4 (four) consecutive examinations preceding to the Annual H. S. Examination, 1998.

However, in spite of fulfilment of all the above mentioned criteria, a college may not be declared as a centre if the authorities of the Council feel that the examinations in such centre cannot be conducted as per rules of the CHSE".

5. The petitioners have filed their reply to the counter-affidavit. The Controller of examinations -- opp. party No. 4 has filed further affidavit on 4-3-1998 stating that in the last Annual 1997 examination, the number of candidates was 2,13,975 and there were 794 examination centres and during the current year, the number of candidates is 2,02,121 and the examination centres are 793 (not 790 as stated in the counter-affidavit).

6. Let us first consider the prerogative claimed by the council to fix an examination centre for conducting its examinations. The Council has been constituted u/s 3 of the Orissa Higher Secondary Education Act, 1982 (hereinafter referred to as "the Act"). Sub-section (1) of Section 21 of the Act provides that the Council shall have different committees including Examination Committee. Sub-section (6) thereof provides that the powers and functions of the committee shall be, as may be prescribed. Section 30(1) states that the Regulations may provide for all or any of the matters enumerated therein including the conduct of examinations. Regulation 77(v) provides that the selection committee shall have power to select centres for examination and fix

dates for each examination. Regulation 156 (as amended) provides that all examinations shall be held at such places as the Examination Committee may decide from time to time and a list of such centres shall be published in the Gazette annually at least one month before the commencement of the examination provided that the Examination Committee may withdraw any centre from the list or add any centre to it without assigning any reason. From the aforesaid provisions, it is clear that the Examination Committee is competent to decide from time to time as to the places at which the examinations shall be held during a particular academic year.

7. There is no dispute that the petitioners colleges are all recognised institutions and are affiliated to the Council, The office orders at Annexure 1 series show that the/Director, Higher Education, granted permission to the educational agencies to establish the petitioners' colleges from the academic year 1994-95. It is not the case of the Council that any of the petitioners' institution had any adverse report against them while conducting the examinations previously at their own centres. It is also not its case that any of them had not fulfilled any of the conditions for established or recognition of their institutions. The only ground on which the petitioners' institutions have not been chosen to be the examination centres is that none of them was established with the permission of the State Government by 1993.

8. The thrust of the argument of Shri B. B. Ratho, learned senior counsel for the petitioners is that the cut-off year 1993-94 which has been taken to be the base year is arbitrary inasmuch as it has no nexus with the object sought to be achieved, namely, fixation of examination centres for the Annual Higher Secondary Examination, 1998. According to Shri Ratho, because of such fixation of cut-off year, all the petitioners -- colleges having been established after the cut-off year 1993-94 are deprived of having their examination centres in their own colleges which is not only arbitrary but also out-come of non-application of mind.

Shri S. D. Das, learned counsel appearing for opposite parties 3 and 4, submitted that no educational institution can claim as a matter of right that the examination centre should be fixed in the very institution itself. The Council is free to select and fix the examination centres in its own discretion. Regarding the cut-off year, he candidly and fairly stated that from the records which were made available to him by the Council, he did not find any decision of the Council as to why 1993-94 was taken to be the base year. In fact, in the counter-affidavit filed by opposite party No. 4, no reason in support of the cut-off year has been indicated. Shri Das, however, contended that 1993-94 was taken as the cut-off year for fixing the examination centres during the last academic year 1996-97 on the basis that the educational institutions established after 1993-94 being raw institutions might not have equipped themselves with experienced staff and accommodation for holding the examinations and for that very reason during the current academic-year 1997-98, "1993-94" has been taken to be the best year for fixing

the examination centres.

9. May it be stated that year of establishment of an educational institution as the cut-off year for selection of examination centre is not per se arbitrary. Whenever a particular academic year is taken as the cut-off year there will be some educational institutions which would fall on its right side and sons will be hit by it. It has been held by the Supreme Court in *Union of India (UOI) and Another Vs. Parameswaran Match Works and Others*, that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or point there must be, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off any reasonable mark. The aforesaid ratio was cited with approval by the Constitution Bench of the Supreme Court in *D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another*, . In *Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others*, , the choice of date as relevant date for absorption in service was not regarded as arbitrary even though it was observed that the same may have "some colour to some people". On the basis of the aforesaid judgments of the Supreme Court, this Court in *Priyambada Debi Vs. State of Orissa and Another*, held that the cut-off date "26-1-1950" fixed for entitlement to the benefit of pension under the Orissa Legislative Assembly Members Salaries, Allowances and Pension Act, 1954 as not arbitrary. In *Dr. Ami Lal Bhat Vs. State of Rajasthan and others*, the question arose whether a cut-off date can be fixed with reference to the calendar year for determining the maximum age of a candidate who is to be considered for direct recruitment to service under the State. By applying the rule that a cut-off date is not per se arbitrary unless it is so wide off the mark as to make it wholly unreasonable, it was held that the impugned cut-off date was not capricious or unreasonable.

10. The question similar to the case at hand came up for consideration before the Full Bench of this Court in *Dr. Basanta Kumar Behera and Others Vs. State of Orissa and Others*, . In that case, 30th of June was fixed as the cut-off date to consider eligibility of candidates for appearing at the entrance examination for Post-Graduate Course in Medical Colleges of the State. The contention of the writ petitioner was that the eligibility requirement by 30th of June of the year of admission was fixed arbitrarily. According to the State Government, the cut-off date was fixed taking into consideration the commencement of the academic session under the Statutes of the three Universities to which the Medical Colleges are affiliated and since the exact date when each of the Universities would hold the M.B.B.S. examination could not be ascertained, 30th June has to be fixed as the base date. On consideration, the Court found that during the year in question, i.e., 1986-87, the authorities while finalising the prospectus in August, 1986 were fully aware that the M.B.B.S. examination which was scheduled to be held in April, 1985 was held in the month of August and the results were published in November of that year. The Court further noticed that the authorities were aware that the course of studies could never commence before November,

1986 even making conservative estimate of the time taken for finalising the list of candidates. In paragraph 8 of the judgment, the Court observed as follows at page 127 :

"In view of the aforesaid circumstances, fixing 30th June as the cut-off date for 1986-87 can neither be said to be reasonable nor germane. In my view, it would, on the other hand, give an impression as if a date has been picked up out of the hat by completely ignoring the relevant factual positions prevailing then. As noticed earlier, the stand taken by the opposite parties is that the date has been selected considering the provision in the University Statutes that the academic year is to commence from the first day of June of the year and close on the 21st of May of the succeeding year. At the outset I may observe that no material has been placed to show on what basis these dates are fixed for the academic year in the Statutes. No material is also produced to show that the academic year is fixed by the authorities in the University considering the relevant facts from time to time. It is common knowledge and judicial notice can be taken of the fact that the aforesaid description of the academic year in the University statutes is followed more in its breach. Schedules for University Examination are very often changed, inordinately long time is taken for declaration of results and there is a good bit of uncertainty about commencement and close of the academic session in the Universities. However, I need not delve further into the matter since that is not the question for consideration in the instant case. Suffice it to say that picking up the cut-off date for purpose of admission to the Post-Graduate Medical Courses on the basis of the academic session stated in the University Statutes ignoring the facts prevailing during the year in question would, in my opinion, be unreasonable and arbitrary."

11. It may be emphasized that although a cutoff year or date can be fixed, it must be with some definite objective in view and such fixation must have a nexus with the object sought to be achieved. As has been held by the Supreme Court in State of Orissa and others, etc. Vs. Niranjan Nayak and another, etc., a "cut-off date" in order to be valid has to bear reasonable relationship with the object sought to be achieved. As already mentioned, an argument was advanced at the bar without any supporting material that the Examination Committee was of the view that no educational institution should be made examination centre within three years of its establishment. We have not been able to persuade ourselves to accept this submission for the following reasons :

(a) In the last academic year 1996-97 educational institutions established from academic session 1993-94 were excluded from being examination centres on the plea, as stated by the counsel for opposite parties 3 and 4, that they were not three years old. If the age of three years of an educational institutions was the criterion to make it an examination centre, the cut-off year for the current academic session 1997-98 ought to have been "1994-95" and not "1993-94". It is thus a clear case of non-application of mind by the concerned authority in closing the examination centre.

(b) The resolution of the Examination Committee as extracted in paragraph 4 of the judgment does not indicate that any such criterion was adopted.

(c) Admittedly the petitioner-colleges were made examination centres for two consecutive years, i.e., 1994-95 and 1995-96 and there was no allegation of commission of any mal-practice in those centres. It is also not the objection that they lack in adequate facility for conducting the examination.

(d) From Annexure A/4, it appears that examination centres for some of the petitioner-colleges have been set up at a distance of 30 to 35 K. Ms. from their colleges. Mechanical exclusion of institutions on the basis of year of establishment without having regard to the actual situation prevailing in a particular area or locality may affect the performance of the examinees as they have to commute long distances under stress and strain.

For the aforesaid reasons, the cut-off year "1993-94" fixed for the current academic year 1997-98 as published at Annexure 3 has to be voided and we order accordingly.

12. At this stage, it is appropriate to dispose of the objection raised by the Council which is reiterated in the affidavit filed on 5-3-1998 that the writ applications at the instance of the educational institutions are not maintainable. No doubt it was open to the examinees to raise grievance for change of the examination centres. But the writ applications filed at the instance of the educational institutions cannot be thrown overboard because of the fact that they are not busy-bodies. On the facts and in the circumstances of the case, the respective educational institutions are competent to espouse the common grievance of their students.

13. Shri Das, learned counsel for the Council, also made submission that the examination is scheduled to commence from 16-3-1998 and admit cards and question papers have already been despatched to the respective centres and if the petitioner -- institutions are directed to be untagged, it would cause dislocation in the examination thereby putting the Council authorities as well as the examinees to inconvenience. Shri Ratho submitted that some of the examination centres to which the petitioners have been tagged are located at some distance and there is no adequate facility for transport and lodging and the performance of the examinees in the examination will be greatly affected thereby. We have duly considered the aforesaid submissions of the counsel for parties. On 5-3-1998 the Council has filed an affidavit indicating the names of examination centres as well as their distance from the colleges to which they relate at Annexure A/4. It appears therefrom that the distances range from 1 k.m. to 35 k.ms. The distance of 1 to 2 k.ms. being negligible, the examination centres of those colleges which are located at a distance of 1 to 2 k.ms. need not be disturbed but the colleges, namely, (1) Jagamohan Higher Secondary School, Kuluca, (2) Palasama College, (3) Sri Sri Mula Bhanja Mahavidyalaya, Ganguda, (4) Brundaban Behari College, Gods, (5) Chaitanya Prasad College, Bhanjakia,

(6) Deo College, Biunria, (7) Nabakrushna Choudhary College of Education and Vocation (all petitioners in O.J.C. No. 1307/ 98), (8) Bhagabati Women's College and (9) Baba Balunkeswar College (petitioners in O.J.C. No. 2154 of 1998), (10) Jasoda Bishnu Nialipali Mangaspur Panchayat College (petitioner in O.J.C. No. 1458 of 1998), (11) Panchayat Samities Science and Arts College, Bhedababal (petitioner in O.J.C. No. 1694 of 1998), (12) Debendra Satpathy Memorial College, Gyan Vihar (petitioner in O.J.C. No. 2316 of 1998) and (13) Radhaballava Mahavidyalaya, Bairipur (petitioner in O.J.C. No. 2805 of 1998) will have their examination centres in their own colleges. Opposite parties 3 and 4 are directed to make necessary arrangements forthwith for the purpose.

14. In the result, O.J.C. Nos. 1458, 1694, 2154, 2316 and 2805 of 1998 are allowed. O.J.C. No. 1307 of 1998 is allowed in part and O.J.C. 2156 of 1998 is dismissed. There would be no order as to costs.

15. Before parting, we may note that the Council is a statutory authority which is incharge of regulating, controlling and developing Higher Secondary Education in the State. While conceding the power to the Examination Committee to conduct examination and select examination centres, we make it clear that the decision of the Examination Committee on selection of examination centres should be based on relevant considerations. The Examination Committee being a high power committee consisting of members who are not unaware of the difficulties and in-convenience likely to be caused to the examinees should rise to the occasion and take appropriate decision so that it would not be dubbed as arbitrary or whimsical or without any nexus with the object sought to be achieved. It needs to be emphasized that schools or colleges where examination centres were allowed to be set up should not be excluded unless there are reports against them or any other good and valid reason for such exclusion. We hope and trust that for the coming academic year, it would take decision in the matter of selection of examination centres with open mind.