

(1981) 02 OHC CK 0009
In the Orissa High Court
Case No : Original Jurn. Case No. 573 of 1980

Krupasindhu Mallik

APPELLANT

Vs

Orissa Board of Secondary Education and Others

RESPONDENT

Date of Decision : 13-02-1981

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1981 Ori 91 : (1981) 51 CLT 455

Hon'ble Judges : R.N. Misra, C.J.;B.N. Misra, J

Bench : Division Bench

Advocate : S.C. Dash, S.K. Acharya and B.K. Patnaik, for the Appellant; G. Rath, R.K. Rath, N.C. Panigrahi, A.B. Misra and P.K. Patnaik and Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, C.J.—Petitioner appeared at the Annual High School Certificate Examination of 1979 conducted by the Orissa Board of Secondary Education (hereafter referred to as the "Board") with Roll No. 29 S 143 as a regular candidate from the M. S. High School, Baramba. He obtained a certificate of transfer from the opposite party No. 2 Headmaster as per Annexure-1 which indicated that petitioner had passed the examination and a mark-sheet (Annexure-2) which showed that he had secured 302 marks in the different subjects as against the minimum requirement of 264 marks. The petitioner alleges that on the basis of the transfer certificate and the mark-sheet, he got himself admitted into the first year class of the College whose Principal is opposite party No. 3. While he was continuing his study in the college, he received a letter from the Headmaster dated 14-3-1980 (Annexure-4) enclosing a corrected mark-sheet (Anne-xure-5). The letter informed him that the petitioner had failed and the mark-sheet showed that petitioner had obtained total marks of 272 but in view of grossly low marks obtained in different subjects, he had failed. Petitioner in this application seeks to challenge the letter

of the Headmaster and the corrected mark-sheet and maintains that he has passed the Board examination as evidenced by Annexures 1 and 2 and his career should not be affected by the subsequent action of the Headmaster.

2. Opposite parties Headmaster and Principal have appeared but they have not filed any counter-affidavits. The Board in its return has contended that the petitioner had not passed in the examination and he was never declared as a successful candidate. It has been asserted that the Board never sent a mark-sheet corresponding to Annexure-2 and the genuineness of the mark-sheet issued by the Headmaster has been challenged. Shortly stated, it is said that Annexures 1 and 2 are based upon fraudulent documents and details given therein differ from the actual marks obtained by the petitioner.

3. At the hearing of the matter, counsel for the Board has produced the Marks Register maintained in the statutory form B. S. E.-42, from where it is clear that the mark-sheet (Annexure-2) produced by the petitioner is not a genuine one. The particulars in Annexure-2 and in the Register so far as petitioner is concerned are shown in a tabular form below :--

Subject	Full Marks	Pass Marks	Marks obtained
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	As shown in Annexure-2	As shown in the register	Excess
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English Paper - I	100	30 35 25 10	
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English Paper- II	100	30 41 21 20	
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M. I. L. (O)	100	30 34 24 10	
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Sanskrit	100	36 41 41 -	
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Mathematics	100	30 53 53 -	
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History-Civ.	60 }	30 24 22 -	
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Geography.	40	18 08 10	
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G. Science.	100	30 47 47 -	
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Optional (E. P. H.)	100	30 71 31 40	
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Total -	800	264 36 272 90	
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Thus it appears that marks in Annexure-2 have been inflated by 90 over and above what petitioner as a fact had secured at the examination. In the register maintained by the Board, petitioner has been shown to have failed. The original answer books have been destroyed after the results were finally published and, therefore, no reference to the primary material is possible at this point of time. According to the Board, what is alleged to have been communicated to the Headmaster on the basis of which Annexures 1 and 2 are said to have been drawn up is not in accordance with the Board's practice as current at the relevant time, as the form that was being sent was of a different colour. It is

stated that there is a fraudulent racket in operation which has made the present situation possible.

4. Admittedly on the basis of the certificates in Annexures 1 and 2, petitioner has changed his position and if he is now treated to have failed he would be prejudiced. In the present case, there is no allegation that the Board had directly made any representation to the petitioner, nor is it the allegation of the petitioner that he would be prejudiced on account of any revised situation brought about by the Board. The Board has taken the stand that petitioner's claim is based upon a fraudulent situation. As a fact, at no point of time, the Board treated the petitioner to have passed nor was his result ever declared that way. On account of fraudulent communications said to have been sent from the Board, the Headmaster who was working on behalf of the Board had so acted. Prima facie, the stand taken by the Board seems to be correct. Admittedly, the Marks Register is a statutory one. It has been produced from proper custody. It has been duly maintained and signed. It must, therefore, have presumption of correctness. There is no denial of the position that the mark-sheets that were being sent at the relevant time were of a different type. The Board had changed the colour of the form to avoid the possibility of mischief.

Counsel for the petitioner took strong exception to the plea of the Board that petitioner cannot take advantage of his own fraud. We have already pointed out that the Board did not make any mistake. The fraud out of which petitioner claims benefit should be assumed to have been on the basis of some association of the petitioner with the racket that was operating. Otherwise, there could be no occasion for wrong information to be communicated to the Headmaster in regard to the petitioner. Admittedly, all the communications have not turned out to be wrong. It would not be presumptuous on our part to assume, in such circumstances, that on account of some unholy alliance, in some cases wrong particulars have been supplied and it would be reasonable to hold that to such unholy alliance, the beneficiaries would have been parties.

5. It is too well-known that fraud vitiates all actions and no court can uphold a right based on fraud. Even for considering a claim of estoppel, we do not think, the law is different and one's own fraud can be allowed to support the claim of a right. Petitioner's counsel was anxious that we must protect the petitioner by giving him compensation for the period he has lost by prosecuting higher studies by spending a huge sum of money. In the background indicated, we do not think any equity arises for consideration. The principles indicated by this Court in *Chandrakanta Pani Vs. Kamalalochan Pani and Others*, and *Miss Umamoni Dash v. Utkal University* (1979) 48 CLT 595, support the position that in a case involving facts of the type as here, the principles of estoppel do not apply.

6. While the writ application is being dismissed, we must sound a word of caution to the Board. What we pointed out sometime back in the case of *Ananta Prasad Nayak Vs. The Utkal University and Others*, deserves to be referred to here :--

".....Universities have been set up for teaching and conducting of examinations. The institution is a big social trust. Thousands of students sit at the different examinations conducted by the Utkal University and accept the adjudicatory assessment made of their performance by it. The system of examination has been intended to be fool-proof. Acceptance of the assessment made by the University lies upon the same being just and correct. Social institutions accept the valuations to be appropriate on the basis that the performance is assessed in a dispassionate manner. In order that assessments made by the University have universal acceptance, it is absolutely necessary that the foolproof character of the process should not be doubted. If, however, after the answer papers are collected and are in the custody of the University they are available to be substituted, the basic confidence would soon be lost and the Utkal University would soon cease to be of any utility to society. Examinations conducted by the University would be more a mockery than a social event....."

We think, the Board should be more careful, take prompt action to weed out the undesirable hands associated with the conduct of examinations so that the institution may continue to serve society in an appropriate way.

7. The writ application is accordingly dismissed, but without costs.

B.N. Misra, J.

I agree.