
(1975) 08 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petitioner No. 663 of 1975

Kumari Inderjeet Kaur

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-08-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (1975) WLN 328

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Joshi, J.—This is a petition under Article 226 of the Constitution of India praying for quashing Annexures 3 and 4 whereby the petitioner's examination to be held in the year 1975 has been cancelled.

2. The relevant facts giving rise to this writ petition stated in brief are as follows. The petitioner Kumari Inder Jeet Kaur passed her examination of XI Class from Nathmal Jain Trust Grils Higher Secondary School Gurakhpur (Jabalpur) in the year 1974. The Xth Class examination which the petitioner passed was a home examination and was not one held by any Board. The petitioner had to shift to Bikaner as her father being a Government servant had been transferred to Bikaner. The petitioner therefore through her guardian applied on the prescribed form to the Head Mistress of Government Maharani Higher Secondary School Bikaner for being admitted to XIth class Provisional admission was given by the Head Mistress in class XI and the petitioner's application was forwarded to the Board at the petitioner was coming from the School which was not within the jurisdiction of the Board. The Assistant Secretary to the Board by his letter dated 30th of July, 1975 intimated the Head Mistress that the petitioner may be permanently admitted to XI Class. The Head Mistress was, however, directed to verify some facts one of which was whether the petitioner had passed any

Board's examination or any examination equivalent there to. On 11th of November, 1974 the Head Mistress informed the petitioner's father that the Board had accorded permission allowing the petitioner to appear at the Higher Secondary Examination comprising three year's course as she had passed XI class in the home examination held by the concerned school. The petitioner continued pursuing her studies in XI class. Thereafter the petitioner filled the application form for appearing at the examination which form was sent by the Head Mistress to the Board which allotted roll number 688940 to the petitioner. It may be mentioned here that the petitioner was a student of Science and was, therefore, to take the practical examination in Science subjects as per the regulation of the Board. The petitioner was allowed to take practical examination in Physics, Chemistry and Biology held between the 17th of February, 1975 to 6th of March, 1975. However, by a letter dated 7th of March, 1975 of the Assistant Secretary to the Board the Head Mistress was informed that the petitioner's application for admission to the examination has been cancelled and the examination fee recovered from the petitioner shall be refunded as permissible under the Rules. The Head Mistress by her letter dated 10th of March, 1975, informed of this fact to the petitioner the petitioner took objection to this and made representations through her father but they did not bear any fruit. Hence this writ petition.

3. The petition was admitted by Gupta J. on 2nd of April, 1972, and on that every day on the stay application filed along with the writ petition a direction was issued to the Board to permit the petitioner to appear at the Higher Secondary School Examination of the year 1975 Gupta J. further ordered that the petitioner's result should not be declared till further orders of this Court.

4. The case of the petitioner is that the petitioner having been permanently admitted without any reservation, the Board was estoppel from denying the petitioner's right to appear at the Higher Secondary Examination. It has been submitted that the petitioner was led to believe that she had been admitted in class XI and that she will have right to appear at the Examination. The petitioner goes on to say that not only this, the petitioner was allotted roll number and she actually was permitted to take practical examinations held in the month of February, 1975 and the Board was estopped from debarring the petitioner to appear at the Examination after a period of about 8-9 months when she had gone through the ordeal of studying the complete course.

5. The Board in its return admitted that it had confirmed the admission of the petitioner to class XI by its letter dated 30th of July, 1974, but that was done under a bonafide mistake as the transfer certificate and other documents were not received from the Head of the institution. It has been further stated in the reply that the admission of the petitioner was subject to verification of certain facts including the fact as to whether the petitioner had passed the Secondary Examination or any other equivalent examination and as it was subsequently found that the petitioner had passed only home examination she was not eligible

to be admitted to XI class under the regular ions of the Board and, therefore, her admission to appear at the Examination was rightly cancelled by the Board.

6. It may be mentioned here that the petitioner has taken Examination under the orders of the Court & the result of the Examination has been declared, but the petitioner's result has not yet been declared as per the orders of this Court.

7. The question which arises for consideration is whether the order of the Board cancelling the petitioner's admission to the Examination is bad in law. It has been argued on behalf of the petitioner that the petitioner had been given admission to class XI by the Board's letter dated 30th of July, 1974, on permanent basis and in pursuance to the orders of the Board, the petitioner continued her studies after defraying the school fee and her application form for appearing at the Examination was also accepted by the Board, which had allotted the roll number to her for the purpose of appearing at the Examination. It has been further pointed out that the petitioner was permitted to take the practical Examinations in Science subjects in the month of February, 1975, and it was only on 7th of March, 1975, that the Board for the first time informed her that her Examination has been cancelled. In these circumstances, it has been urged that the Board is estopped from challenging the validity of the admission of the petitioner in the school and further her eligibility to appear at the Higher Secondary Examination.

8. On the other band, it has been argued by the counsel for the Board with equal vehemence that the Board was within its right to cancel the petitioner's admission for appearing at the Higher Secondary Examination as she had not passed Secondary Examination or any equvalant examination so recognised by the Board, The learned Counsel for the Board further urged that the regulations of the Board are of statutory character and did not permit the students passing home examination of class XI to appear at the Higher Secondary Examination. So even if the petitioner was allowed to continue her studies and admitted to take practical test, those facts would not confer any light upon the petitioner as there could be no estoppel against the statute in as much as the regulations which had statutory force debarred the petitioner from appearing at the Higher Secondary Examination.

9. In order to appreciate the rival contentions, it will be appropriate to deal with relevant regulations having material bearing on the controversy raised before me. Chapter XIX deals with the provisions regarding the Higher Secondary Examination. Regulation 5 in Chapter XIX, amongst others, provides that any student coming from the place outside the jurisdiction of the Board and who had not passed Secondary School Examination or any equivalent examination with compulsory English subject shall not be admitted in class XI of any school affiliated to the Board and shall have to first clear the Secondary School Examination. The next relevant provision finds place in Chapter XXVIII Regulation (kh)(1) in Chapter XXVIII is also in similar terms. Further Regulation (kh)(6) confers powers upon the Chairman of the Board to relax the rigour of any

regulation for the purpose of admission of the students coming from a place outside the jurisdiction of the Board and also for appearing in the Higher Secondary Examination. From the analysts of the above regulations it will appear that the aforesaid regulations do not create absolute prohibition, for admission to the Higher Secondary Examination. They are capable of being relaxed by the Chairman under the Regulation (kh)(6) finding place in Chapter XXVIII. As mentioned earlier, the Board by its letter dated 30th of July, 1974 had permitted the petitioner's admission to class XI subject to verification of certain facts. The Head Mistress was addressed in this behalf and the petitioner was never informed of that fact. The Head Mistress had by her letter dated 11th of November, 1974 had led the petitioner to believe that she had been permitted to appear at the Examination to be held in the year 1975. The Head Mistress also sent the petitioner Examination form to the Board which allotted the roll number without insisting for the verification of facts which had been conveyed to the Head Mistress in its letter dated 30th July, 1974. Not only this the petitioner was allowed to take Examination in practical in the Science subject without any demur or objection on the part of the Board although the Examinations were held as late as in the month of February 1975. It was only on 7th of March, 1975 that the Board informed the Head Mistress that the petitioner's Examination form had been cancelled. It has been urged by the learned Counsel for the Board that the petitioner did not supply the full information in her application which was sent to the Board asking for the petitioner being permanently admitted to Class XI. This is of course true that the petitioner did not make a mention in her application that she had passed the home examination. But the application was perused by the Board and the Board had asked the Head Mistress to verify certain facts as back as on 30th of July, 1974. In November, 1974 the Head Mistress had informed the petitioner that she will be allowed to appear in the Examination to be held in the year 1975. Thereafter the petitioner was allotted the roll number and further permitted to take practical test in three science subjects. In these circumstances it was due to inaction of the Board that the petitioner had to work to her detriment by pursuing the studies and in taking practical test in science subjects. The question, therefore, arises whether in these circumstances the principle of estoppel will operate against the Board to preclude it from challenging the right of the petitioner to appear at the Higher Secondary Examination. It is true that the principle of estoppel does not operate against the statute provided the statute gives absolute direction or create absolute prohibition against doing of a particular act. The learned Counsel for the Board strongly urged that the principle of estoppel could not be brought into against the Board as the regulations prohibited students in passing home examination in Xth class to appear at the Higher Secondary Examination. He relied upon *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, . In *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, the Udipi Municipality had accorded sanction for conversion of a Kalyanmantap-cum-lecture hall into a cinema theatre in contravention of the town planning scheme. In that case the Municipality had

inherent lack of jurisdiction to allow the construction of a cinema house on the lands which were reserved for the residential purposes in the town planning scheme. Despite that the Municipality, however, accorded the sanction for the conversion of the Kalyan-mantap-cum-lecture hall into a cinema theatre. The resolution granting sanction was challenged on the ground that the conversion was in violation of the town planning scheme before the High Court. The High Court repelled the challenge on the ground that although there was no statutory power to convert the hall into the cinema theatre but the excess of statutory power was validated by acquiescence on the part of the Municipality or by operation of the principle of estoppel against it. The Supreme Court, however, on appeal disagreed with the High Court and held that an excess of statutory powers cannot be validated by acquiescence or by operation of the principle of estoppel. That case in my view is distinguishable as there was an absolute prohibition under the scheme against the Municipality to accord permission for conversion of the Kalyanmantap cum-lecture hall into cinema theatre. In my view where the statute is absolute in character and not liable to be relaxed in any case then the principle laid down by the Supreme Court will be fully attracted. It will be worthy of note that in the above mentioned Supreme Court case *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, the Municipality had no authority at all to sanction the conversion of the hall into a cinema theatre in violation of the town planning scheme. But the same is not the case here. There is a provision contained in regulation (kh)(6) in Chapter XXVIII which confers power on the Chairman to relax the regulations and accord permission to a student coming from the institution situate outside the jurisdiction of the Board, although the student does not fulfil all the conditions necessary for admission to class XI. In such a situation the petitioner's admission to class XI cannot be termed as wholly ultra vires. At the best it may be irregular, inasmuch as the Chairman of the Board had power to relax the Rules. In this connection reference may be made to *University of Delhi Vs. Ashok Kumar Chopra and Another*, wherein it has been laid down that where the terms of the statute are absolute and do not admit of any relaxation or exemption then anything done contrary to the terms of such a statute will be ultra vires and would be void and the principle of estoppel cannot operate as a bar to challenge any act. On the other hand, if a statute prescribes conditions or qualifications for doing of certain things but also provides relaxation of such qualifications then anything done not in terms of the conditions or qualifications so prescribed will not be ultra vires but will be merely irregularity. The view taken by the Delhi High Court in *University of Delhi Vs. Ashok Kumar Chopra and Another*, commends itself to me. As stated earlier the Ordinance (kh)(6) of Chapter XXVIII confers power on the Chairman to relax the rigour of the regulation and admit a student coming from an institution situate outside the jurisdiction of the Board although he may not possess the requisite eligibility for admission to a particular class. In such a situation, in my opinion, the principle contained in Section 115 of the Evidence Act will be attracted and the Board is precluded from challenging the validity of the admission of the petitioner in class

XI and further cancel her admission to the examination. The learned Counsel for the Board invited my attention to Inder Kumar Purohit v. Board of Secondary Education Rajasthan Ajmer and Anr. S.B. Civil Writ Petition No. 66 of 1973 decided on 23rd of March, 1975. In that case Inder Kumar was provisionally admitted to class XI and there was no communication of his being admitted permanently and this Court was mainly influenced in its decision on the ground that Inder Kumar's admission was provisional one, the same cannot be said in this case, Inderkumar's case is, therefore, distinguishable.

10. The learned Counsel for the Board strenuously urged that the Board has to deal with large number of cases and the inaction on the part of the Board to raise objection till 7th of March, 1975 should not be taken to be such as to preclude the Board from challenging the validity of the admission of the petitioner. It is not disputed that the Board has to deal with large number of cases & allowance has to be made for the inaction of the Board but that too only for a reasonable time. In the case before me after allotting the roll number the Board further allowed the petitioner to take the practical Examination and did not raise objection till 7th of March, 1975. The petitioner was, therefore, put to a great detriment and if it is viewed on practical reality, the petitioner would be put to a great detriment in her future educational career as she will lose years together. The reason is obvious. If the petitioner is now held ineligible for appearing at the Higher Secondary Examination, she will have to sit in Xth class with no culpable fault of her. If the Board would have informed the petitioner earlier she would have gone to other Educational Institution for pursuing her studies which would not lengthen her educational career. In the facts and circumstances of this particular case it will be rather inequitable to the petitioner to deny her right to appear at the Examination, as, such denial will bring ruin on her future career and in my opinion the Board, in the circumstances, is precluded from denying the right of the petitioner to appear at the Examination.

11. In the result, the writ petition is accepted, the impugned order dated 7th of March, 1975 (Annexure 3) and 16th of March, 1975 (Annexure 4) are hereby quashed. The respondents Nos. 2, 3 are directed to declare the result of the petitioner's Examination held in the year 1975. In the facts and circumstances of the case there shall be no order as to costs.