

(2005) 08 RAJ CK 0081
In the Rajasthan High Court
Case No : Civil Writ Petition No. 710 of 2005

Master Arpit Dadhich

APPELLANT

Vs

Managing Committee, St. Edmund's School and Others

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Citation : (2006) 1 RLW 193 : (2006) 2 WLC 58

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Manoj Pareek, Abishek Sharma, Sandeep Saxena, for the Appellant;
R.P. Singh and Naina Saraf, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—Since similar controversy is involved in both the writ petitions these petitions are being decided by this common order. The facts of the writ petition No. 710/05 are taken as a leading case,

2. The petitioner's son was studying in St. Edmund's School, Malviya Nagar, Jaipur in 12th Standard with commerce subject. It was alleged that the petitioner's son along with other students of his class fired crackers in the school. On this act of the petitioner's son, his name was struck off from the roll of regular student and he was not allowed to attend the regular class. Vide order dated 1st March, 2005 this Court allowed him to appear provisionally in the examination of 12th Standard subject to decision of this writ petition.

3. Learned Counsel for the CBSE referred Rules 11 and 12 of the Examination bye-laws which deals with the admission to examinations, according to which, only regular candidate who is on the active rolls of the School and who has completed a regular course of study are entitled to appear in the examinations conducted by the CBSE.

4. Rule 11 reproduced hereunder:

Definition: For the purposes of the Bye laws contained in this chapter and chapter 5 unless there is something repugnant in the subject or context, a "Regular Candidate" means a student enrolled in a school, who has prosecuted a regular course of study in a school and seeks admission as such to the All/India/Delhi Senior School Certificate/Secondary School Examination of the Board.

5. Rule 12 under which the candidate is entitled to appear in the examination conducted by the CBSE and relevant portion is reproduced hereunder:

Rule 12(iii)- That he is on the active rolls of the School;

12(iv) that he has completed a "regular course of study" as defined and detailed in the bye laws 13 of these bye laws, in a school in the subjects in which he would appear in examination;

Rule 12.1 lays down certain conditions to be fulfilled by the school which is affiliated to the CBSE. "No affiliated school shall endeavour to present the candidates who are not on its roll nor will it....

6. Since the petitioner is admittedly not a regular student and was not on the roll of St. Admund School, in view of Rule 11 the petitioner cannot be treated as a regular candidate. As per the 11, regular candidate means a student enrolled in a school, who has prosecuted a regular course of study in a school and Rule 12.1 specifies that no affiliated school shall endeavour to present the candidates who are not on its roll nor will it.

7. Learned Counsel for the CBSE placed reliance on the judgment in the case Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, and relevant paras 5 and 6 are reproduced hereunder:

We also find that in writ petition No. 484/95, interim orders were granted permitting the filling up of the form of high school examination. But while ultimately disposing of the petition, it was held that the writ petition had become infructuous since the examination form of respondent No. 1 had been forwarded to the Central Board of Secondary Education, Delhi and it is attributed to the respondents in the petition, that "as per the respondents". The candidate would be permitted to take part in the examination. It was, therefore, thought that no further direction was required and the matter was disposed of as infructuous. Merely forwarding of an examination form by an institution affiliated to the examining body is no surety that the examining body would necessarily permit the candidate to take the examination. The forms after being sent are scrutinized and checked by the examining body.

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, against the legal provisions. A few decisions on the point may

be perused. In *CBSE v. P. Sunil Kumar*, the institutions whose students were permitted to undertake the examinations 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 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.

8. 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 *Sunil Kumar*. A passage from the above noted decision was also quoted therein which reads as follows: (SCC p.403, para 7)

We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no 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 serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matter, 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 was 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: (SCC p.678 para 10).

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.

9. Having heard rival submissions of the respective parties and upon careful perusal of the judgment rendered by Hon"ble the Supreme Court in the case *Regional Officer v. CBSE (supra)*, Validity of the examination undertaken by respondent should have been properly scrutinized in the light of the relevant by

laws of CBSE. It is not disputed that the petitioner's son is not a regular student as defined under Rule 11 of the bye laws and has not completed regular course of study as defined in bye laws 13 and it is no doubt that the petitioner was allowed provisionally to appear in the examination of 12th standard and under the direction of this Court he has appeared but since Hon"ble the Supreme Court has deprecated this practice and held that the case of the individual should be examined in the light of the CBSE regulations and after examining on the basis of regulations as well as in view of the ratio decided by the Supreme Court, the petitioners in these writ petitions have no case in their favour.

10. Consequently, the writ petitions fails and hereby dismissed. The respondents need not declare the result of the petitioners and the result of the petitioners stand cancelled.