

(2001) 05 OHC CK 0033
In the Orissa High Court
Case No : O.J.C. No. 15167 of 1999

Md. Sakil Khan and Others

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 09-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 OLR 258

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—After hearing the parties, it appears to me that a mountain has been created out of a mole. For appreciating the case, short facts are necessary.

2. The petitioners are the students of Urdu Secondary Training School, Bhadrak. They appeared at the Teachers Certificate Examination, 1999. The said Examination was conducted by the Board of Secondary Education, Orissa. When the results were published, it was found that all the petitioners have failed. An enquiry being made, it was revealed that the petitioner have failed in Paper-XI i.e. Practicals (internal assessment), as would also be apparent from the tabulation of marks supplied by the Headmaster.

3. Paper-XI carries totals marks of 250 and the pass mark being 40% of the total marks, comes to 100. The mark sheet supplied by the Board of Secondary Education indicates that, all the petitioners have secured 98 marks, each, in the said paper and thus, they were declared failed. Copies of memorandum of marks have been filed as Annexure-1 series to, the writ application.

4. Counsel for the petitioner vehemently submitted that there are errors in tabulations of marks and without correcting the addition of marks, the Board of Secondary Education Authorities have declared them fail. It is submitted that, in fact, they have secured "108" marks and not "98" as tabulation sheets wrongly

reflect.

5. A counter affidavit has been filed by the Board of Secondary Education Authorities (Opp. parties 1 and 2) taking a plea that the tabulation sheet which was submitted by the Headmaster of the Institution clearly reveals that the petitioners have secured only "98" marks out of 250 marks in "internal assessment" Paper XI. The pass marks being 100, they are declared failed. It is further stated that the descriptive roll issued by the High School cannot be altered since the same is contrary to Regulation- 10(b) of Chapter-X-D of the Board's Regulation.

6. After hearing the parties, this Court by its order dated 25.8.2000, directed the Headmaster, Government, Urdu Secondary Training School, Bhadrak to produce the original Tabulation sheet of Teachers Certificate Examination, 1999 for perusal of the Court, In consonance with the said order, original tabulation sheet was produced in Court and I have gone through the same. The names of petitioner Nos. 1,2 and 3 are found at serial Nos. 20,11 and 19 respectively of the Tabulation sheet of Internal marks. For sake of convenience and appreciation, the marks secured by the petitioners are quoted below :

PAPER - XI (Internal Marks).

Name of the Md. Sakil Khan Kausar Jahan Md. Muslim items Javed. Psychological Practical (F.M.50). 23 23 23 Science Experiment (F.M.50). 14 14 14 Improvising Aids (F.M.20). 10 10 10 Health and Physical Edn. (F.M.50). 21 21 21 Work Edn. S.U.P.W. 20 20 20 Aesthatic Education (F.M.30). 12 12 12 Cumulative records. 08 08 08 Grand total 98 98 98

7. To the naked eye, the error committed while adding the marks becomes apparent inasmuch as if the marks secured by each of the petitioners in different heads are added, it comes to "108" and not "98", as wrongly reflected in the tabulation sheet. The pass mark in Paper-XI admittedly being 100, and the petitioners having secured 108 marks, definitely they should be declared pass. This conclusion is also fortified from the "Application Form" submitted by the Headmaster which are filed as Annexure-A series to the counter affidavit, serial No. 10 of the said application reads as follows :

"10. (a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) Whether passed in Paper XI and XII .. "Yes"" The Board authorities having accepted the statement made by the Headmaster and having permitted the petitioners to appear rest of the Examination, are estopped from taking a plea that, in fact, the petitioners have failed. It is submitted that the "Board" permits only those candidates who have passed in Paper XI and XII.

8. Awarding 98 instead of 108 marks in the Tabulation sheet as stated above, is

an error apparent on the face of the record, which can be rectified under the writ jurisdiction in exercise of power under Article 226 of the Constitution.

9. Mr. Pinaki Mohapatra, learned counsel for the Board has vehemently urged that the marks awarded in the tabulation sheet being sacrosanct, the same cannot be changed. I do not appreciate to accept the said argument specially in view of the fact that by addition of marks awarded in different heads clearly reveals that there is mistake in totalling/calculating, which, according to me, is an inadvertent mistake and can be corrected at any stage. It is not a case of changing or varying the marks awarded, but correcting a mistake which is apparent to the naked eye.

10. The petitioner, who are students, should not be permitted to be victims of errors apparent on the face of the record.

11. Mr. Mohapatra, then argued that tabulation cannot be relied upon because the marks awarded to all the three petitioners are indetical.

12. I am also not convinced with the said argument inasmuch as the Board Authorities have accepted the tabulation sheet in respect of 49 students. Thus, the said document cannot be held to be incorrect and/or created so far as it relates to the petitioners. Further the "tabulation sheet" has been signed by three teachers including the Headmaster and the same has been prepared in due course of business and cannot be held to be a created document. Thus, Mr. Mohapatra failed in his endeavourment to convince me to arrive at any alternative conclusion.

13. Accordingly, the writ application is allowed and the Board Authorities are directed to correct the arithmetical error committed in course of the tabulation, holding that the marks secured by each of the petitioners is "108" and not "98" and declare the results. The entire exercise is to be completed within three weeks from the date of receipt of this order.