

(2010) 02 GAU CK 0066

In the Gauhati High Court

Case No : Writ Petition (C) No's. 231, 233, 403 and 632 of 2010

Miranyamoi Rabha and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Board of Secondary Education Assam Regulations — Regulation 15
Board of Secondary Education Assam Rules — Rule 13, 14, 15, 5
Constitution of India, 1950 — Article 226

Citation : (2006) 1 GLT 964

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : R.P. Sarmah, J.P. Sarma, M.R. Adhikari, K.D. Singh, G. Uzir and S.K. Sarkar, for the Appellant; T. Chutia, for the Respondent

Judgement

C.R. Sarma, J.—This set of writ petitions carry the common. question of law s tintured on almost identical factual premise. Therefore as agreed to by the learned Counsels appearing for the parties, die above mentioned writ petitions were heard together and I propose to dispose of the writ petition by this common judgment and order. 2. The writ Petitioner Nos. 1 to 4 of Writ Petition (C) No. 403 of 2010 are the candidates who applied for appearing in the High School Leaving Certificate Examination, for short "HSLC Examination", from the Kukurkata High School Leaving/Assam High Madrassa (Independent Venue) Centre, for short "Kukurkjita HSLC/AHM". The writ Petitioner of W.P. (C) No. 632/2010 is the Kukurkata High School Leaving Certificate Examination Centre (Independent Venue) represented by the Officer-in-Charge Shri Abdul Haque. The writ Petitioner Nos. 1 to 3 of W.P. (C) Mo. 233 of 2010 and W.P. (C) No. 231/2010 are two guardian Associations of the candidates appearing in HSLC Private Examination from Kukurkata HSLC Centre, the Presidents and the Secretaries of the said Associations.

2. A The Petitioners of W.P. (C) No. 403/ 2010 and the soi is and daughters of Petitioner No. 1 of W.P. (C) No. 231 of 2010 and 233 of 2010 along with others

filed their prescribed forms, after paying necessary examination and centre fees for appearing in the High School Leaving Certificate Examination, 2010 and the Assam High Madrassa Examination from "Kukurkata HSLC/AHM Examination Centre (Independent Venue)". The total number of candidates who applied for the said Centre were 1524.

3. The Secretary, Board of Secondary Education, Assam issued a show cause notice dated 30th November, 2009 to the Officer-in-Charge, Kukurkata HSLC/AHM Examination Centre (Independent Venue) alleging therein that the Officer-in-Charge aforesaid had submitted forms and statements of 390 candidates as regular candidates and 1126 candidates as private candidates, although out of the said 390 regular candidates, 121 candidates were found not prosecuting studies either in the school of the Officer-in-Charge or in any other feeder schools of the said Centre and that the forms of 12 candidates were sent without any registration number thereby violating the instructions. Rules and Regulations of the Board. It was also alleged, in the said Show Cause Notice, that on scrutiny, it was found that 1126 numbers of candidates, who were recommended as private candidates were not failed students of this Centre, but they were students of 52 other centres, located in different districts of the State and that their applications were forwarded without any permission from the competent authority for such change or transfer. Accordingly, the Officer-in-Charge aforesaid was asked to show cause as to why the said Centre shall not be cancelled declaring the candidates ineligible for appearing in the said Examination. In response to the show-cause notice, the Officer-in-Charge submitted his reply, on 14.12.2009, admitting the lapses alleged against. In the said reply, the Officer-in-Charge assured the Board that such mistake would never be repeated in future and that he would pay the fees of transfer etc. After considering the said reply, the Board, vide Notification dated 5th January, 2010, cancelled the said Examination Centre on the ground of gross irregularities and violation of the Examination Rules in presenting the candidates for appearing in the HSLC/AHM Examination, 2010. In view of the said cancellation of the examination centre, the Board made certain alternative arrangements allowing the candidates to appear in the examination from some other Centres. By the said notification, all the private candidates were asked to pay fine at the rate of Rs. 200/- each. Subsequently, the Board issued another notification dated 7th January, 2010 requiring the Headmasters of (1) Nibari H. School, (2) Habanggiri Anchalik H. School. (3) Bishnu Rabha 11. School, asking them to produce the original admit cards/mark sheets and registration card on 18th January, 2010 in respect of 62 candidates who, though not failed candidates of the institution of the said Officer-in-Charge, were allowed to appear from the said School/Centre without permission for change of centre, for considering their cases for allowing them to sit in the Examination. In the said notification it was mentioned that in the event of failure to produce the said documents, the candidates would be declared as ineligible to appear from the Examination.

4. Being aggrieved by the said notifications and the order of cancellation of the

examination centre, distribution of the candidates to some other centres and imposition of fine, the above mentioned writ Petitioners have come up with this set of writ petitions invoking the writ jurisdiction of this Court under Article 226 of the Constitution for setting aside the impugned notifications and seeking a direction to allow the candidates to appear in the Examination aforesaid, from the said "Kukurkata Examination Centre".

5. I have heard Mr. R.P. Sarma, learned senior counsel and Shri G. Uzir, learned Counsel appearing for the writ Petitioners. I have also heard Mr. T. Chutia, learned Counsel appearing for the Secondary Education Board, Assam.

6. Mr. R.P. Sarma, learned Counsel appearing for the Petitioners, taking me through the impugned notifications and the provisions of "the Board of Secondary Education Assam Regulations for conduct of Board Examination", hereinafter called the "Regulation", has submitted that the impugned actions taken by the Respondent authority being de-hors the regulation, the said notifications were liable to be set aside. The learned senior counsel further submitted that no illegality or violation of the provisions of the Regulation was committed by the Officer-in-Charge by submitting the applications of the candidates and that "the instructions to the Officer-in-Charge for conduct of HSLC/AHM Examination" not being part of the regulation, issuance of the impugned notifications on the ground of violation of the said instructions was not at all lawful and, as such, keeping in mind the interest of candidates, the notifications were liable to be set aside and quashed.

7. It is further submitted that the candidates, who applied as per the provisions laid down in the Regulations were arbitrarily penalized by the Respondents by refusing to allow them to sit in the examination from the "Kukurkata HSLC/AHM Examination Centre" and distributing them to some other centres for no fault on their part and that fine of Rs. 200/- having being imposed without giving any opportunity of hearing to the candidates was unlawful and in violation of the principles of natural justice.

8. Mr. G. Uzir, learned Counsel appearing for the Officer in-Charge of Kukurkata HSLC/AHM Examination Centre submitted that the action taken by the Respondent authority was not lawful and that as the Officer-in-Charge had not violated any of the provisions laid down in the Regulations, the cancellation of the examination centre was illegal and arbitrary in nature and in violation of natural justice. The learned Counsel further contended that the "instructions" issued by the Board on 15.10 2009 was addressed to the Head of the Institutions and, as such, the Petitioner i.e. the Officer-in-Charge did not received the said instruction for which the same was not binding on him.

9. Refuting the arguments, advanced by the learned Counsels for the Petitioners, Mr. T. Chutia, learned Counsel appearing for the Board of Secondary Education Assam, drawing my attention to the affidavit-in-opposition filed by the said Respondents in W.P. (C) No. 23 3 of 2010 and the provisions of Rule 15 of the

Regulations, has submitted that, in compliance with the provisions laid down in Rule 15 of the Regulations, the Board issued the instructions to the Officer-in-Charge for conduct of H 3LC/AHM Examination and that the Officer in-Charge of the said Centre submitted the applications of the concerned candidates violating the provisions of the guidelines, more particularly the Clauses Nos. 18, 19, 24 and 25 of the Instructions for which the Board, in exercise of its powers, after due scrutiny and giving sufficient opportunity to the Officer-in-Charge of the said Examination Centre, found the Officer-in-Charge guilty)" of violating the instructions and, accordingly, the said Centre was cancelled. It is also submitted that considering the academic career and interest of the candidates, the board made alternative arrangements by allowing the said candidates to appear in the Examination from different nearby Centres. The learned Counsel further submitted that in order to maintain the high standard of education and for fair and proper conduct of the examination, the board, in view of the violation of the guidelines, which was issued on 15th October, 2009 to all the heads of the institutions, had no other alternative but to take the above mentioned actions against the Officer-in-Charge thereby cancelling the Examination Centre. In support of his contention, the learned Counsel relied on the decision of the Hon"ble Supreme Court in the " Central Board of Secondary Education Vs. Nikhil Gulati and Another, and in the case of Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others,

10. In the case of Central Board of Secondary Education (supra), it was held-- "we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it put the "Rule of Law" to a mockery, and promotes rather the "Rule of Man". In the case of Chairman, J. & K. State Board of Education (supra), the Hon"ble Supreme Court held the view "in matters concerning campus discipline of education institutions and conduct of examinations, the duty is primarily vested in the authorities in charge of the institutions. In such matters the Court should try not to substitute its own views in place of the authorities concerned, nor thrust its views on them. That is not to say that the Court cannot at all interfere with the decisions of the authorities in such matters. The Court has undoubtedly the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidate. In judging the validity of a notification containing provisions regarding steps to be taken when a report of mass malpractice is received it is to be kept in mind whether the provisions contained in the notification are relevant for achieving the purpose for which the notification is issued and if it is found that the notification is relevant for and has a nexus with the purpose to be achieved then the notification cannot be said to be arbitrary and discriminatory". The above referred case was in connection with mass copying in the examination held by the "Jammu and Kashmir State Board of School Education". The Chairman of the Board made certain notifications cancelling the examination. Being aggrieved, the candidates approached the High Court. The High Court struck

down certain provisions of the notification and quashed the notification dated 29.6.1993 directing the Board to form a Committee of Experts for examining the answer scripts and verify. An appeal being preferred by the Chairman of the Board against the said judgment and order of the High Court, the Hon''ble Supreme Court, with the above observation, allowed the appeal and set aside the impugned judgment and order. There can be no dispute that the Board is an expert body entrusted with the duty of maintaining high standard of education. For properly conducting the examination and for the purpose of maintaining discipline in conducting the examination, the Board is required to adhere to strict measures. The decisions of the said expert body should be given due weightage and the action taken by such Body should not be normally interfered unless the action reflects violation of natural justice and established rules and regulation.

11. In view of the above principles, we are required to examine as to whether the impugned action taken by the Board was grossly illegal, violative of natural justice and without any authority of law. From the rival arguments advanced on behalf of both the parties, it appears that the Board had taken the impugned action regarding cancellation of the examination centre followed by distribution of the candidates to different centres and imposition of fine for the following lapses on the part of the Officer-in-Charge of the examination centre and the candidates:

(i) Out of 390 candidates whose statements and forms were sent as regular candidates, 121 candidates were not prosecuting studies either in the Kukurkata HSLC Examination Centre/School or in any other feeder Schools of the said Centre. This implies that candidates belonging to the jurisdiction of other centres were also allowed to submit their forms from the said School Centre.

(ii) Names of 12 candidates were sent without any registration number violating the instructions, rules and regulations of the Board.

(iii) None of the 1126 candidates, whose forms and statements were sent as private candidates were failed candidates of the said centre. In-fact, they belonged to 52 other centres located in different districts of the State.

(iv) Their statements and forms were sent without any permission from the competent authority regarding change of centre.

(v) Forms and statements of 121 candidates were sent without any registration number certificates from the Board.

(vi) Names of 12 regular candidates were sent without having any Class-IX registration certificate.

12. Rule 5 of the Regulation provides that the Board may permit a student to appear at the HSLC/AHM Examination even though such student has not undergone the prescribed course of study as may be specified in a Recognised School/Madrassa with such terms and conditions decided by the Board from time to time. Rule 5(a) requires permission of the Board for presenting candidates as

private candidates. Rule 5(b) prescribes requirement of special permission in respect of candidates completing the course from a school not permitted by the Government to Class-VII. Rule 5(c) requires registration of students while in Class-IX. Rule 15 of the Regulation, which reads as follows, prescribes the duties and functions of the Officer-in-Charge:

15. DUTIES AND FUNCTIONS OF THE OFFICER-IN-CHARGE:

The Officer-in-Charge shall perform all duties and functions as given in the "Instruction to the Officer-in-Charge for conduct of HSLC/AHM Examinations". The Officer-in-Charge shall satisfy himself well before the commencement that the arrangement for the conducting of the examinations are perfect as per Rules. Non-adherence to the Rules will invite penalty such as withdrawal of Centre, action against Officer-in-Charge etc.

13. Therefore, it appears that the said Regulation authorized the Board to issue "instructions" to the Officer-in-Charge for conduct of HSLC/AHM Examination and the Officer-in-Charge is required to satisfy himself well before the commencement regarding the arrangements made as per the said instructions. The instruction was issued on 15th October, 2009 to all the Heads of the institutions of Higher Secondary Schools, High Schools, High Madrasa under the Board of Secondary Education Assam.

14. As per Rule 14 of the Regulation, the Secretary of the Centre Committee is the Officer-in-Charge of the Centre and he is the custodian of all relevant and confidential papers and also of the fund for the Centre. Rule 13 of the Regulations prescribes the formation of Examination Centre. The guidelines for formation of Examination Centre Committee provide that the Secretary will also be the Officer-in-Charge of the Centre and custodian of the fund in the Centre and other confidential records. The said Regulation has defined the Secretary as the Principal of a local College or H.S. School or Headmaster/Headmistress/Superintendent of a Govt./Provincialised/Recognised High School/High Madrasa who can efficiently and smoothly conduct the examination.

15. In view of the above, it is clear that the Head of the Institution, where examination is held is the Secretary of the Examination Committee and he is the Officer-in-Charge for conduct of such examination. Therefore, the instruction dated 15th October, 2009 issued to the Heads of the Institutions was the instructions issued to the Secretary/Officer-in-Charge. This being the position, I find no force in the contention of Mr. Uzir, learned Counsel for the said examination centre that the Officer-in-Charge did not receive the said instruction. As the said instruction was issued in conformity with Rule 15 of the Regulation, the Officer-in-charge concerned was duly bound to strictly comply with the requirements prescribed by the said instruction.

16. The Officer-in-Charge in his reply dated 14th December, 2009 to the show cause issued to him stated as follows (the reply quoted in his own language):

To

The Secretary,

Board of Secondary Education, Assam,

Guwahati-21.

Sub: Submission of the Reply of Show Cause notice of presenting candidates for appearing in the HSLC Examination, 2010 of my centre.

Sir,

With reference to the subject cited above, I have the honour to inform you, that I have Received an show cause notice from your office, on 11.12.2009. I hereby reply to you on the following points:

(1) I thought that the registration certificate Transfer of Class IX (Nine) of same District, who comes from other School is not Transfer. Therefore, I am great mistake for cent 119 Nos. of regular candidates through my centre. I hereby highly request to you, that you will kindly appearing the 119 Nos. of candidates of the said Examination in 2010 of my centre. I will give the Registration Transfer Certificate fees to the Board as per norms.

On the other hand 10 Nos. of candidates not 12 Nos. of candidates to sent without Class IX (Nine) Registration Certificate, Because they have been lapse out the Class IX Registration letter from your office on 11.12.09 for submit the necessary documents to the Board Office on 22.12.09 for Class IX (Nine) Registration Certificate. I hereby informed to you, that I will submit the necessary documents to the Board office of 10 Nos. of candidates who sent without Registration Certificate. I also submit the Apex Bank challan Xerox copy with this application for submitted the fees of 10 Nos. of candidates on 26.8.09. Please consider the above mentioned candidates for appearing the said Examination in 2010 of my centre.

(2) 100 Nos. of private candidates have been failed of my centre in the last and previous years out of 1126 Nos. of candidates. 1026 Nos. of candidates comes from the neighbouring and own District of my centre without permission of the Board for Guardians pressuries of the candidates and, it's great mistake for me, for sending the said candidates. Please perdone me and consider to appearing the said candidates to the ensuing H.S.L.C. Examination in 2010 of my centre.

Lastly, I here by assurance to you, that I will never not do the same mistake in future. So you will kindly consider me and the candidates for their future live. I will give the fees of Transfer, who comes from other centre, as a Regular and Private candidates as per Boards rule.

For this act of kindness, I shall be ever highly grateful to you. I remain Sir.

16.A. From the above reply submitted by the Officer-in-Charge, it is clearly found that the Officer-in-Charge admitted all the allegations brought against him and

requested the Board to permit him to conduct the examination from his Centre with an assurance that he would pay the fees of transfer of the candidates who came from other Centres as regular and private candidates. He also assured that he would submit the necessary documents in respect of the 10 candidates, whose applications were sent without registration certificates. He further admitted that out of the 1126 private candidates, 1026 candidates belonged to the neighbouring districts and some other centres of his District while only 100 candidates failed from his centre. From the said reply submitted by the Officer-in-Charge, it is found that the applications and forms of the candidates, who came from other centres were also forwarded that without having registration certificates and transfer certificates. The instructions, which was issued on the basis of the provisions prescribed by Rule 15 of the Regulations, clearly indicated at Clause-18 that change of examination centre could be allowed with prior permission, only on the ground of unavoidable change of residence due to transfer/retirement of parents/guardians and due to marriage in case of Female Candidates. Clause-19 of the said instruction provides that change of Centre by a School, without prior permission from the Board, was liable for punishment. It was clearly mentioned that the School sending up candidates in 2009 Examination must send up the candidates through that Centre for the Examination 2010. This was sufficient to indicate that candidates, who appeared from other centres in the previous year examination i.e. in 2009 should not have been allowed to apply/appear through any other centre except the centre in which he/she appeared in 2009.

17. In view of the above, it appears that the Petitioner of W.P. (C) No. 632 of 2010 i.e. the Officer-in-Charge had no authority to send candidates, who did not appear from his centre in the 2009 examination. Therefore, as admitted by the Officer-in-Charge, in his reply to the said show cause, it is found that the Officer-in-Charge had clearly violated the said provision by sending some of the candidates, who did not appear from his centre in 2009 Examination. Clause-24 relates to private candidate. Clause-24(d) provided that the centre/school/Madrassa should fill up statement as instructed in case of Regular candidates. Clause-27 clearly provides that it is the duty of all the Heads of the Institutions to check so that not a single false/dummy candidate is allowed to fill-up forms or sent up with false/forged registration document/false signature. By virtue of Clause-31, the Board reserves the right to cancel the Examination of a Candidate, who furnishes wrong information and false documents.

18. In their affidavit-in-opposition, the Secretary of the Respondent Board clearly stated that the Officer-in-Charge of the said Centre violated the instructions issued by the Board by allowing 1126 private candidates from 89 different centres all over Assam to appear from the said Centre in the examination of 2010 even though they were not eligible to appear from the said examination centre. It was also averred that the Officer-in-Charge committed illegality by allowing candidates to fill up applications through his centre. At paragraph-9 of the affidavit-in-opposition, it was further stated that the Officer-in-Charge

aforesaid collected as many as 1126 private candidates and 121 regular candidates from other centre allowing them to fill up forms and statements for his personal gain against sitting capacity of 400 students in his institution. It was also averred that there was no infrastructure and boundary wall at the Kukurkata Centre to accommodate 1416 Nos. of candidates in the examination. The said allegations, which are quite serious in nature, have not been denied by filing any affidavit-in-reply. Therefore, the allegations made by the above mentioned Respondents in his affidavit-in-opposition remained uncontroverted.

19. In view of the above, this Court finds no reason as to why the Officer-in-Charge of the said Centre in-spite of receiving the instruction dated 15th October, 2009 allowed about 1416 Nos. of candidates to appear in the examination from his centre against the sitting capacity of 400 students, that too, by violating the instructions aforesaid. The learned Counsel appearing for the Petitioners have submitted that the instructions issued by the Respondent, not being part of the regulations, were not binding and, as such, violation of the said instructions was not sufficient cause for cancellation of the Centre aforesaid.

20. In reply to the said contention, the learned Counsel, appearing for the Respondents, drawing my attention to Regulation 15 has submitted that the said instruction were issued on the strength of the provisions prescribed by the Regulation 15 for smoothly conducting the examination. On careful perusal of the regulations as well as the instructions, it appears that the instructions were issued on the basis of Regulation 15. That apart, the instructions were the guidelines formulated, in terms of Regulation 15 for conducting the examination in a proper and fair manner. The guidelines were issued on 15th October, 2009. The Officer-in-Charge being the head of the Institution of the said Centre, it can't be believed that he did not receive the said guidelines. That apart, in his reply to the show cause, the Officer-in-Charge had admitted the violation of the said instructions. Therefore, there was no reason for not following the said guidelines issued by the appropriate authority. In my considered opinion, violation of the said instructions amounted to gross irregularity, high handedness and devoid of fair play. As the Officer-in-Charge failed to comply with the instructions issued by the appropriate authority, the impugned actions taken by the Respondents by their notification dated 5th January, 2010. after giving opportunity of hearing and considering the reply of the Officer-in-Charge did not amount to gross violation of established principles natural justice. If the norms prescribed by the Board for proper and smooth conduct of the examination is flouted in the said manner, the Board can't have other option than drawal of the centre from such Officer-in-Charge. from the point of maintenance of high academic standard and discipline, such stern action, can't be termed as unfair. In view of the admission of the lapse and failure to adhere to the norms, the conduct of the examination in the said centre, under the above named Officer-in-Charge was not safe for academic standard. Facts remain that the Respondent, after cancelling the examination centre, for violation of instructions etc. made alternative arrangement for accommodating the candidates in other centres.

Thus, the interest of the candidates have been protected.

21. In view of the above discussion, I find no sufficient reason requiring interference with the impugned actions regarding cancellation of the Examination Centre and distribution of the candidates to other centres. However, from the record it appears that each of the candidates were asked to pay fine of Rs. 200/- as punishment for violating the Rules of the Board. The said penalty appears to be made without giving an opportunity of being heard to the said candidates. The principle of natural justice demands that no adverse action should be taken without giving an opportunity to the person concerned to defend his case. In the present case as the Respondents imposed the said penalty without giving any opportunity of hearing or defending, the imposition of said fine was bad in the eye of law and, as such, the said action regarding imposition of fine is liable to be set aside and quashed, which I do.

22. By the impugned notification dated 7th January, 2010, the Respondent authority asked the Headmasters of the concerned Schools to submit certain documents on or before 18th January, 2010. Records do not reveal that any action has been taken subsequent to the said notification. Therefore, I am of the considered opinion that the Respondent authorities committed no illegality by asking the said Headmasters to produce the relevant documents, namely Admit Card, Registration Card etc. for verification.

23. In the light of the above discussion, I find no sufficient merit in these set of writ petitions requiring; interference by this Court except to the extent of setting aside the order imposing fine @ Rs. 200/- by the impugned notification dated 5th January, 2010. Accordingly, the writ petitions are partly allowed.

24. With the above direction, the writ petitions are disposed of.