

(1991) 07 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No. 3690 of 1991

Nasiffa

APPELLANT

Vs

Central Board of Secondary Education, New Delhi and others

RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 Mad 52 : (1991) 2 MLJ 267

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Judgement

1. This Writ Petition coming on for hearing on Thursday the 4th Friday the 5th days of July 1991 and on this day, upon perusing the petition and

the affidavit filed in support thereof the order of the High Court, dated 14-3-91 and made herein and the counter-affidavit filed herein and the

records relating to the prayer aforesaid comprised in the return of the respondents to the writ made by the High Court, and upon hearing the

arguments of Mr. R. Sukantha Raj, Advocate for the petitioner, and of Mr. S. Muthura-malingam, Advocate for the Respondents, I and 2 and of

Mr. K. G. Subramaniam, Advocate for the 3rd respondent the Court made the following order;

The petitioner has filed this writ petition challenging Rule 4(1)(b) of the Examination Bye-laws 1988 of the Central Board of Secondary Education

(hereinafter referred to as the ""bye-laws"") published by the Central Board of Secondary Education Delhi.

2. After hearing the writ petition for some time, a doubt was raised regarding bye-laws which are applicable whether 1990 or 1988 and as such a

miscellaneous petition has been filed to amend the prayer to issue a writ of

declaration declaring that the Rule Examination bye-laws published by the first respondent, CBSE, New Delhi in 1990 is illegal, unconstitutional and inoperative, and the miscellaneous petition has been ordered on 10-7-1991 in W. M. P. No. 14116 of 1991 amending the prayer in the main writ petition.

3. The brief facts of the case are:

The petitioner before me hails from the Republic of Maldives, which is one of the member Nations of S A ARC. it seems that she completed her

P. U. C. Course and obtained a certificate from the Board of Pre-University Examination in Mysore, Bangalore. After that, the petitioner came to

Tamil Nadu in the beginning of academic year 1990 and applied for admission to plus 2 course in the third respondent school. In the application

from for admission to plus 2 course, she has mentioned the year of passing X Standard examination as 1986, she continued her education in the

third respondent school. By letter dated 6-12-1990, the third respondent school was informed by the second respondent that the petitioner cannot

be admitted as per the provisions contained in Chapter 4 under point 4.1 (b) of bye-laws, published by CBSE, Delhi in 1988 on 13-12-1990, the

3rd respondent school requested the first respondent to issue necessary relaxation orders relaxing the examination bye-laws 4.1 b. vide Chapter 4

in respect of the petitioner as a special case. However, on 17-12-1990 a communication was received from the second respondent stating that the

petitioner is not eligible for admission and her name to be deleted from the rolls. Accordingly, the respondent school wrote a letter to the controller

of examinations at Delhi Office of the Board apprising him of the non-eligibility of the petitioner herein requesting her name may be dropped from

the list. However, the first respondent Board by communication dated 24-12-1990 called upon the respondent School to finish the particulars of

qualifications etc. of the petitioner so as to take suitable action regarding the candidature of the petitioner herein. By communication dated 2-2-

1991 the respondent school sent its reply to the respondent Board for which no reply has yet been received. In the meantime, the first respondent

Board has sent the hall ticket numbers for 31 candidates of the respondent School, including that of the petitioner. However, the petitioner's name

was circled on red in the list and noted ""not eligible"" and signed by the

Regional Officer at Madras. Only 30 hall tickets were handed over to the respondent school. At this stage, the petitioner has come up to this court praying to direct the respondents 1 and 2 therein to permit the petitioner to write for the examination commencing from 15-3-1991, and this court in W.M.P. No. 5708 of 1991 in W.P. No. 3690 of 1991 by Order dated 14-3-1991 permitted the petitioner to write her examinations commencing from 15-3-1991. Now the present position is that the petitioner has written the examinations and has also completed the course and the results of the examinations alone have to be punished. At this stage, the petitioner is before me with the prayer cited supra.

2. The first respondent Board has filed a counter-affidavit in which the Board has taken the stand that the petitioner is not at all eligible for

admission into the course as per the Rule 3.1 .(ii) of the bye-laws for admission and more so, she is not eligible to sit for the examination. It is

further claimed in the counter-affidavit filed by the respondent Board that the petitioner has not undergone any regular course of study in Class IX

in an institution affiliated to the respondent Board, that under Rules concerning admission to Class XII from any institution not affiliated to the

Board must be referred to the Board for necessary permission before granting admission and that in this case no prior permission was sought either

by the petitioner or by the respondent school. It is further claimed in the counter-affidavit that the petitioner is not entitled to admission to class XII.

It is further stated in the counter-affidavit that Rule 4.1(b) of the bye-laws provide that the examinations of the Board to regular candidates shall be

open to a student who has not passed equivalent or higher examination of any other Board or University, that Rule 4.1(B) of the bye-laws is

equivalent to bye-law 9(ii) of the bye-laws 1990. It is further claimed in the counter-affidavit that admittedly, the petitioner has passed the two

years Pre-Univer-sity course in March 1988 in Second Class in Karnataka Board of Education, through Jyothi Nivas College, Bangalore. It is

further claimed in the counter-affidavit that the examination conducted by the Karnataka Board of Education is equivalent to All India Senior

School Certificate Examination conducted by the respondent Board. It is further claimed in the counter-affidavit that even assuming the petitioner

wants to appear for improvement examination in other schemes of education,

since the petitioner has studied under different schemes of study in the State of Karnataka. As such, as per Rule 20(1) of the Rules for improvement of performance as per its syllabi and courses for said examination 1987, and also as per bye-law 44 of bye-laws 1990, the petitioner herein is not entitled to appear for improvement examination. It is further stated in the counter-affidavit that the hall ticket was not issued to the petitioner since she does not satisfy the admission rules as well as the examination rules of the respondent Board and that she was permitted to appear for the said examination, though she is ineligible for admission to Class XII as well as to appear for the said All India Senior School Certificate Examination, only because of the interim directions given by this court in W.M.P. No. 5708 of 1991 dated 14-3-1991.

3. The respondent School, the third respondent herein, who has been impleaded as party respondent by order of this Court dated 10-7-1991 in

W.M.P. No. 14115/91 has filed a counter affidavit stating that during the year for XII Standard, 31 Students were admitted for the course for the

academic year 1990-91, that the application for examination of 31 candidates with Sl. No. 1 to 31 were sent to the first respondent Board through

the second respondent, that two candidates with Sl. Nos. 30 and 31 were students from foreign countries, that the petitioner herein is one of the

two students, that the petitioner had already passed P. U. C. in Bangalore conducted by the Karnataka Government Educational Board and that

she was admitted since she wanted to improve her performance in her P. U. C. examination recognised as equivalent to A.I.S.S.C. examination by

joining afresh in Class XII of the third respondent school with avowed object of getting more marks and to prosecute higher studies in the medical

field. A reference to Rule 44.2 of the bye-laws 1990 is made in the counter-affidavit. The respondent school thought that the petitioner has fulfilled

such provisions as per Rule 44.2 of the bye-laws and as such she is eligible to be admitted. It is further stated in the counter-affidavit that the P. U.

C. examination of the Karnataka Board is treated by the respondent Board as equivalent to All India Senior School Certificate Examination

(A.I.S.S.C.E.) and since the petitioner has produced transfer certificate and other certificates so as to show that she has fulfilled the requirements,

the petitioner was admitted in the school. It is further claimed in the counter

affidavit that since the petitioner has produced transfer certificate, she was admitted in the XII Class of the respondent School, taking note of the fact that Chapter 3.1 (ii) of bye-laws 1988 provides a student who has completed regular course of studies and has passed Class XI from an institution affiliated to a recognised Board can be admitted to Class XII of the Institution affiliated to the Board. It is categorically stated in the counter affidavit that the school was under the impression that the petitioner student was eligible and was admitted actually as stated above. A reference to correspondence made by the school has been referred in the counter-affidavit, which I think as unnecessary to refer. It is further claimed that the examination bye-laws of 1990 were published in December 1990 containing in Chapter (1) Rule (1) stating that those bye-laws are effective from 24-9-1990 and that the said bye-laws were published in December 1990 giving retrospective effect from 24-9-1990, the school was not aware of those bye-laws at the time of admission of the petitioner. It is further claimed in para 7 of the counter affidavit filed by the respondent school, that it has not committed any mistake wilfully or want only or violated any of the bye-laws to its knowledge.

4. Mr. R. Sukuntharaj, learned counsel appearing for the petitioner, though originally wanted to challenge the validity of Rule 4(I)(b) of the bye-laws 1988 amended in the year 1990 which is almost *pari materia* during the course of his arguments, he limited his argument to the extent that when a student has been admitted and has completed the course, it is not fair on the part of the respondent Board to take such an attitude not to publish the result. Preventing her from prosecuting her further studies. The learned counsel further contends that the petitioner herein is a foreign student that she belongs to Maldives, one of the member Nations of SAARC Countries and that she should not be penalised when she has been admitted by the third respondent school bona fide and that when she has also not made any mis-representation to the school authorities about her qualification. The learned counsel further states that in similar matters like this, the apex court of this country as well this court have taken a liberal view not to destroy or spoil the future of a student who has completed the course and awaiting for the publication of results alone.

5. Per contra, Mr. S. Muthuramalingam, the learned counsel appearing for the

respondents 1 and 2, contends that the petitioner is not at all eligible for admission to the said course and she should not have been allowed to write the examination. The learned counsel contends that the syllabi is different, that there is no comparison between the studies she has undergone in Karnataka Board of Education Syllabus to that of the respondent Board and as such it cannot be taken as equivalent, to write an improvement test. He further contends that though it is held that the pass in P.U.C. examination of the Karnataka Board of Education is equivalent to that of C. B. S. C. E. examination, it cannot be taken that she could be allowed to write the improvement examinations, in so far as she has not undergone any studies in this particular stream of education. According to the learned counsel the petitioner could appear for the improvement examination only in P. U. C. conducted by Karnataka Board of Education and that she cannot appear for the improvement examination in other stream of education such as the one conducted by the respondent Board.

According to the learned counsel, when the respondent school has been specifically informed not to admit the student and allow her to write the examination, it is wrong on the part of the respondent school in admitting her in the course and allowed her to attend the classes. The learned counsel goes to the extent of saying that if the case of the petitioner is going to be accepted, then it will be a bad precedent and many students will start coming to this court with such pleas and that this court should not interfere with such matters, especially in educational matters, which, are purely within the purview of academicians. The learned counsel further refers to bye-laws regarding admission and examination of the course. He brings to my notice that there is difference between the admission and examination of the course. The learned counsel further contends that it is true that the respondent Board asked for particulars from the school, that no reply has been sent to the letter sent by the respondent school, that even the hall ticket was not sent to the school and that only a particular number, which has been marked in red circle had been sent by the second respondent herein. According to the learned counsel, because of the interim directions given by this Court, the petitioner was permitted to appear for the examinations and that no hall ticket was sent, as alleged by the petitioner. He further contends that even assuming that the petitioner has

passed XI Standard under Karnataka Board of examinations, since she has not completed XI Standard in CBSC System she should not be

admitted in XII Standard in the respondent Board. He refers to Rules of the By-laws 1990, with regard to migration of the student, to support his argument.

6. I have considered the arguments of Mr. R. Sukantharaj, the learned counsel appearing for the petitioner, Mr. S. Muthuramalingam, the learned

counsel appearing for the respondents 1 and 2 and of Mr. K. G. Subramaniam, the learned counsel appearing for the respondent school, who has

been impleaded, during the course of hearing. Facts are not in dispute. The petitioner before me has studied up to P. U. C. under the Karnataka

Board of Education and has passed the same in the year 1988. It is also not in dispute that the pass in P. U. C. under Karnataka Board of

Education system is equivalent to 12th standard conducted by the respondent Board. There cannot also be any dispute about the fact that the

petitioner has been admitted in contravention of the bye-laws 1990 of 1988 framed by the respondent Board. In such circumstances, what has to

be done? The Student, the petitioner before me, has completed the course and has studied and has also appeared for the examinations for

improvement under the interim orders of this court. As seen from the records, it is not in dispute what the respondent school had written a letter

requesting for the relaxation and the respondent Board has got the power to relax the regulations as per the provisions of bye-laws 1990. It is also

seen from the records that after asking for certain queries, the Central Board of secondary Education, the respondent Board herein has kept quiet.

Here is a case of a student, who hails from Maldives -- one of the member Nations of SAARC has come to India for prosecuting her studies with

a avowed object to continue her education in any of the professional course, i.e., engineering or medical in our country. The third respondent

school, as stated in the counter affidavit and also seen from the records produced before me, has bona fide thought that the petitioner is fit enough

to be admitted into the course and has admitted her. It is submitted in the counter affidavit filed by the third respondent school that the bye-laws

1990 were published in December 1990 giving retrospective effect from 24-9-1990, that it was not aware of those bye-laws and that it has not

received any information from the respondents 1 and 2. A reading of the counter-affidavit filed by the respondent school clearly shows that the

school bona fide thought that it could get relaxation from the respondent Board since it admitted two candidates, hailing from foreign countries,

including the petitioner herein, to continue their education. It is not also the case of the respondent school that the petitioners suppressed the facts.

So far as I could see from the records the respondent school is aware of the position that the petitioner has passed P.U.C. examination conducted

by the Karna-taka Board of Education and applied to the respondent school for admission into 12th standard and got admitted. I could also see

from the records that the relaxation was not given by the respondent school, with regard to the admission of the petitioner herein, which ought to

have been given by the authorities of the respondents 1 and 2 at a later stage. As such, this is a case where the respondent school has committed a

mistake rather than the petitioner. In such circumstances, if it necessary for this court to apply the bye-laws very vigorously against the petitioner

who is innocent when she has been admitted and completed the course.

7. When looking at the records of the case, it see as that a responsible person, vice-Chancellor of Dr. M. G.R. University, Madras is the local

guardian of the petitioner student. I fail to understand how the local guardian, who is an eminent educationalist and also a Vice-Chancellor of an

University missed to look into the rules and regulations of C.B.S.C., the respondent Board. In my view, the local guardian, who is the Vice-

Chancellor of Dr. M.G.R. University could have been more careful in getting the petitioner admitted into the school. Only because of the

carelessness of the local guardian, a Vice-Chancel lor of Dr. M.G.R. University and also because of the mistake committed by the respondent

school in entertaining the petitioner's application, the poor student, who hails from Maldives, one of the Member Nations of SAARC, is driven

from Pillar to post and ultimately has landed before this court with this writ petition, invoking the extraordinary jurisdiction under Article 226 of the

Constitution of India.

8. At this stage, it is necessary for me to refer to a decision of the apex court of this country in A. Sudha Vs. University of Mysore and Another, .

In that case, the Supreme Court had an occasion to consider a case of a

candidate who has been admitted to medical College and who has not securing 50% marks in Physics, Chemistry and Biology taken together in qualifying examination (P.U.C.). That case was preferred by a student, seeking SLP against the Judgment of Karnataka High Court. The Supreme Court, in that case, upheld the judgment of the Karnataka High Court holding that the student, (i.e.) the appellant before the Supreme Court, was not eligible for admission in the first year M.B.B.S. Course. However, after holding so, the Supreme Court considered the question whether the student should be allowed to continue her studies in the M.B.B.S. Course. In that case, the Supreme Court took note of the fact that by virtue of the interim order of the High Court the appellant completed the First Year MBBS course and by virtue of the interim order passed by the Supreme Court, the appellant appeared in the First Year MBBS examination. In that case the Supreme Court considered its earlier judgments in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, and in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, . After considering those cases, the Supreme Court in the abovementioned case has held as follows (at p. 2309):

The appellant was, therefore, quite innocent and she was quite justifying in relying upon the information supplied to her by none else than the principle of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS Course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS Course. Prima facie it was the fault of the principal of the Institute, but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the MBBS Course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS Course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, . While we dismiss the appeal, we direct that the appellant shall be allowed to prosecute her studies in the MBBS Course, and that her result for the First Year MBBS examination be declared within two weeks from date"".

The abovementioned Supreme Court cases were considered by me in Jagdish Chandra A. D. v. University of Madras, 1988 Writ LR 277. In that

case, I have referred to all the decisions of the Supreme Court on this aspect and after having held that the student therein cannot claim the right to

sit for the examination the facts and circumstances of that case, I directed the publication of the result therein. Apart from that, the Supreme Court

again in Ashok Chand Singhvi Vs. University of Jodhpur and Others, had an occasion to consider the question where the application of a Diploma

Holder in Engineering in Jodhpur University was kept in abeyance by the Dean, with regard to his admission, the Supreme Court has held as

follows (at p. 826):

Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the

admission of the appellant. In this connection, we may refer to a decision of this court in Rajendra Prasad Mathur Ors. Vs. Karnataka University

and Another, .

In that case, the appellants were admitted to certain private engineering colleges for the B.E. Degree course, although they were not eligible for

admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of

cancellation was upheld by the High Court. At the same time, this Court took the view that the fault lay with the engineering colleges which

admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of those engineering colleges,

Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission.

The same principle which weighed with this Court in the instant case. The appellant was not at fault and we do not see why he should suffer for the

mistake committed by the Vice Chancellor and the Dean of the Faculty of Engineering".

Following the abovementioned decisions, I am of the view that the petitioner herein should not be penalised for the mistake committed by the third

respondent school and the local guardian. As I have already stated the petitioner herein did not give any incorrect information regarding her

qualifications or her eligibility. She was admitted by the third respondent school

and wrote the Limitation under Orders of this Court. As I have already stated the third respondent school was under the bona fide impression that necessary relaxation will be given by the respondent Board from New Delhi. In view of that, as the apex court of this land has done, I dismiss the writ petition. No costs.

9. However considering the peculiar fact of this case, this court has got jurisdiction to mould the prayer to suit the occasion and as such, instead of deciding the validity of the bye-laws 1988 or bye-laws 1990 which is raised in the writ petition a direction is to issue to the first respondent Board

to relax the relevant rules, in favour of the petitioner herein, both with regard to the admission of the petitioner in Class XII and also for the

appearance of the petitioner in Class XII examination conducted from 15-3-1991 and published the results of the examination within one week

from the date of receipt of a copy of this order.

10. Order accordingly.