

(1996) 07 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5746 of 1995

Prakash Chandra Kuanr

APPELLANT

Vs

Secretary, Board of Secondary Education and Others

RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 82 CLT 783 : (1996) 2 OLR 268

Hon'ble Judges : R.K. Patra, J;R.K. Dash, J

Bench : Division Bench

Advocate : S.P. Sahoo, for the Appellant; P. Mohanty and T.N. Patnaik for opp. party No. 1, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The petitioner in this application under Article 226 of the Constitution of India seeks to assail the notification dated 22-7-1995 cancelling his result of the Annual High School Certificate Examination, 1995 at Annexure-3 and letter dated 24-7-1995 cancelling his marks at Annexure-4.

2. Petitioner's case is that after passing 7th class examination in the year 1992, he took admission in Class VIII (Madhyama First Year) in Sri Raghunath Jew Bidya Niketan, Charbatia and prosecuted his studies up to Class X (Madhyama 3rd year) when he obtained his school leaving certificate. Thereafter he took admission in Class X in G. C. High School. Anuri and continued his studies. After completing his 10th class course in the said High School, he applied to sit in the Annual High School Certificate Examination, 1995. The Board of Secondary Education on being satisfied that his application was in order permitted him to take the examination and issued admit card bearing Roll Number 27 AB 062 (Annexure-2). He appeared in the examination and was expecting to get 60 per cent marks in all the papers. When the result was published on 1-7-1995, he found that it was withheld "for other reasons". Later, he was informed by the impugned notification at Annexure-3 that his result had been cancelled. The

Headmaster of G. C. High School. Aunri was also informed by Annexure-4 about the cancellation of the marks of the petitioner.

3. The Board of Secondary education Orissa-opp. party No. 1 through its Secretery and the controller of Examinations (opp. party No 2) have filed counter affidavit justifying cancellation of the result of the petitioner name(error) stated that the application form of the petitioner alongwith other (error) forwarded by the Headmaster of G. C. High School. Aunri was a regular candidate and on that basis, he was given the admission in June.(error) June 1996 aligation(error) in writing (Annexure-) error a error one Hadibandhu Rout, Asssistant Teacher of GC. high School Aunri alleging that the petitioner was illegally admitted in Class X in G.C. High School, Aunri during the session 1994-95. According to the allegations, the petitioner was a student of a Sanskrit (error) and was not eligible to be admitted to class X in G. C. High School Aunri On receipt of the said allegation, enquiry was conducted from which it revealed that the petitioner after passing M. Examination took admission in a Sanskrit Tell called Sri Raghunath ew(error) Bidya Niketan. Char(error) which is not recognised by the Board of Secondary Education, Orissa to present candidates for the High School Certificate Examination. The petitioner was not a student of Class IX in G. C High School, Aunri but he got himself admitted in Class X of the said High School on the basis of transfer certificate issued by the Sanskrit Toil. The classes of Sanskrit Toll are not declared equivalent to the corresponding classes of a High School and as such the petitioner could not have been admitted to Class X of a recognised High School. The Headmaster of G. C. High School without mentioning about such transfer forwarded the application of the petitioner in the prescribed form certifying that he had secured 90 attendance in Class X and 88% attendance in Class X. When misrepreasentation on the aforesaid material facts came to light the petitioner"s result was cancelled by the impugned notification as he was not eligible to sit in the High School Certificate Examination.

4. Learned counsel for the petitioner contended that the impugned notification cancelling the result is vitiated for violation of the principle of natural justice. It was also contended that the petitioner in his application form furnished all material facts and the Board of Secondary Education having accepted it to be in order, permitted trim to sit in the examination. Having allowed him to sit in the. examination, the Board of Secondary Education should not have cancelled the result.

Learned counsel for the Board of Secondary Education on the other hand submitted that the classes in Sanskrit Toll where the petitioner was earlier reading were not equivalent to the corresponding classes in a recognised High School and as such, the petitioner could not have bean admitted in Class X of G. C. High School, Aunri. His admission to Class X in the said High School being irregular, his application to take the High School Certificate Examination was not legally entertainable.

5. It is now well-settled that result of an examination cannot be cancelled

without informing the candidate of the nature of accusation made. Coming to the facts of the case at hand, it would appear that the petitioner was not given an opportunity of being heard before cancelling his result. On receipt of allegation the Board of Secondary Education, Orissa made enquiry and came to hold that the admission of the petitioner to Class X in G. C. High School, Aunri was irregular and on the basis of such enquiry, it cancelled the result of the petitioner. The said enquiry was made behind the back of the petitioner and the petitioner had no opportunity to meet the accusation. For the aforesaid reasons, we have no hesitation to hold that there was violation of the principle of natural justice and as such, the impugned notification cancelling the result of the petitioner is unsustainable. We, therefore, quash the impugned notification relating to the petitioner at Annexure-3.

6. The next question that arises for consideration is whether the petitioner is entitled to have his result declared. A similar problem came up for decision before the Supreme Court in *Sanatan Gauda Vs. Berhampur University and others*, . In that case, the candidate pursued his studies for two years in the Law College, The University also granted him the admit card for the Pre Law and Inter Law Examinations. He was permitted to appear in those two Examinations. He was also admitted to the Final Year of the Course. the stage of declaration of his result of the Pre Law and Inter Law examinations, the University raised objection to his ineligibility to be admitted to the Law Course. In paragraph-10 of the Judgment. Justice Sawant held that the University is estopped from refusing to declare the result of the candidate's examination or from preventing him from pursuing his final year course. Sharma. J. (as he then was) in a separate opinion observed (vide paragraph-14) as follows :

".....It is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his mark-sheet before the College authority with his application for admission, and cannot be accused of any fraud or mis-representation. The interpretation of the rule on the basis of which the University asserts that the appellant was not eligible for admission is challenged by the appellant and is not accepted by the college and my learned Brother accepts the construction suggested by him as correct. In such a situation even assuming the construction of the rule as attempted by the University as correct, the Principal cannot be condemned for recommending the candidature of the appellant for the examination in question. It was the bounden duty of the University to have scrutinised the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results."

In *Naiffa v. Central Board of Secondary Education, New Delhi* :AIR 1992 Mad. 52, a candidate after completing her course was permitted to sit in the C. B. S. Examination. Her result was withheld on the ground that she was "an irregular student". The Madras High Court held that the concerned candidate should not be penalised for the mistake committed by the school and accordingly her result

was directed to be published.

In *Randhir Singh Vs. State of Rajasthan and Others*, , the candidate was admitted to the course of Physical Training Instructor and after he had undergone full training for about a year, his admission was cancelled on the ground that the sports certificate given by him was not properly authenticated. A learned Single Judge held that the concerned authority ought to have carefully scrutinised the documents at the time of admission itself and for their fault the candidate cannot be blamed. Accordingly, cancellation of his admission to the course was quashed.

7. In the back-drop of the aforesaid decisions, we may examine the facts of this case. There is no dispute that the petitioner took his admission in Class X in G. C. High School, Aunri. After completing his 10th class course in that school, he applied through the Headmaster of the school to appear as a regular candidate of the said High School for the High School Certificate Examination, 1995. The application was found in order and the Board of Secondary Education, Orissa allowed him to sit in the examination by issuing the admit card at Annexure-2. He appeared in the Annual High School Certificate Examination, 1995. Having permitted the petitioner to appear in the examination, the Board is not justified in cancelling his result and the marks secured by him in the examination. On the facts and circumstances of the case, we do not find any valid reason to deny the petitioner the benefit of his result being declared. The opp. parties 1 and 2 are directed to declare the result of the petitioner in the Annual High School Certificate Examination, 1995 within a fortnight of the receipt of writ.

The writ application is accordingly allowed. There would be no order as to costs.

R.K. Dash, J.

I agree.