
(1992) 04 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 514 of 1991

Pratap Kumar Rath and Others

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 22-04-1992

Acts Referred:

Orissa Secondary Education Act, 1953 — Section 21

Citation : AIR 1993 Ori 143 : (1992) 74 CLT 734

Hon'ble Judges : J.M. Mahapatra, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.C. Dash and B.K. Patnaik, for the Appellant; C.A. Rao, for the Respondent

Final Decision : Allowed

Judgement

J.M. Mahapatra, J.—This writ application presents the woeful story of some candidates who had appeared in Certificate Course in Physical Education Examination, 1990 as private candidates, and who having been declared to have passed the examination on 12-11-90 were again declared to have failed by notification dated 14-12-1990. The petitioners, in number of Jagannath College of Physical Education, Mundal have prayed for commanding the apposite parties to restore their results declaring them to have passed and to quash Annexure-2 dated 14-12-90 communicating the revised results declaring them to have failed.

2. The facts of the case may be briefly stated thus:-- The petitioners had all appeared as private candidates in the P.E.T. Examination, 1990 at the Government College of P.E.T. held in Secondary Board High School, Cuttack and their results were communicated by opposite party No. 2, the Principal, Government College of Physical Education, Orissa to the Principal, Jagannath College of Physical Education by letter dated 3-12-1990, Annexure-1. Subsequently, the Board of Secondary Education, opposite party No. 1 by notification No. 1427 dated 14-12-90 declared that the petitioners had failed in the examination. It is this action of the opposite party No. 1, which is the

conducting authority for the examination, that has been challenged in this writ application.

It is averred in the petition that Chapter XG of the Regulation of the Board framed u/s 21 of the Orissa Secondary Education Act, 1953 (for short, "the Act") and approved by the Government in notification dated 17-2-1969 provides for the Regulation for conduct of certificate course in physical education examination. Clauses 8 and 9 of the Chapter deal with respectively the written examination and the practical examination for the candidates. These prescribe 400 marks for the written test and 400 marks for the practical. It is provided in Clause 10(a) that a candidate to pass in third division shall have secured at least 30% in each of the written papers and 50% in practical portion. It is contended that notwithstanding the aforesaid provisions, the candidates had appeared in written examination for 300 marks and for practical examination consisting, of two parts of 300 marks each. Their contention is that they having secured 50% marks in the practical examination calculated on the basis that 400 marks were prescribed for the practical must be taken to have passed in the examination according to the provision contained in Clause 10(a) of the Chapter. According to them they have not been accused of taking resort to any malpractice and as such there was no reason as to why they having been declared to have passed shall again be declared to have failed in the self-same examination of the year. 1990. Their further contention is that the opposite party No. 1 should be estopped from declaring them to have failed once they have been declared to have passed in the examination.

3. Opposite Party No. 1, the Board of Secondary Education, Orissa represented by its Secretary, while not denying the factual averments made by the petitioners, in the writ application has contended, inter alia, that the results were provisionally declared in which the petitioners were shown to have passed, but after the post publication review when it was found that they having failed to secure 50% marks in the practical portion of the examination they were declared to have failed. It is also contended that the Board is competent to rectify the mistake committed at the time of tabulation, and as such there was no illegality in rectifying the mistakes committed and in publishing the results subsequently. It is also submitted that the results declared on 12-11-90 was provisional in nature subject to modification on post publication review, and as such the subsequent result published on 14-12-90 is not open to challenge nor does the rule of estoppel apply.

4. In the rejoinder to the counter affidavit, the petitioners have further contended that the Regulations in Chapter XG do not provide for any provisional or final publication of results and that the results are published only once. It is also contended that the regulations do not provide for post publication review of the results. It is asserted that the petitioners had to secure 50% marks in the practical examination. It is also averred that although regulations provide for 400 marks in theory and 400 marks in practical, the mark sheet supplied by the

Board and issued to the petitioner provide for 300 marks in theory and 600 marks in practical, which are inconsistent with the Regulation and as such illegal. It is contended that for these reasons the C.P.Ed. Examination, 1990 was not held in accordance with the Regulation for which they are liable to be quashed in entirety. As the Board had not been able to produce any amended Regulation u/s 21 of the Act approved by the Government, the mark-sheet and the result are ultra vires of the Orissa Act. It is submitted that according to the well settled principle of law students admitted to a course in accordance with a set of regulations notified to them cannot be made to appear for another set of regulations not notified to them. As such if the Board had acted in accordance with any change in the Regulation and not notified to the candidates, it has to be ignored.

5. From the rival contentions of the parties, the sole question falling for determination is whether the subsequent notification in Annexure-2 dated 14-12-90 of the Board (Opp. party No. 1) declaring the petitioners to have failed in the C.P.Ed. Examination is sustainable in law. At the time of hearing of the case Mr. Rao, learned counsel appearing for the Board had filed a memorandum to show that on the basis of amended regulations approved by the Board in its meeting dated 30-9-1989, and in accordance with the recommendation from the D.P.I. Orissa based on the syllabus prescribed by the Government of India, Ministry of Education for all Physical Education Institution in the country, the Board has been conducting the examination with effect from 1970 with theory marks of 300 and practical marks of 600. It is also stated in the memorandum and urged by the learned counsel that at no point of time, the Board had conducted the examination with theory marks of 400 and practical marks of 400 as reflected in the Board's Regulations, that is, Chapter XG of the Regulation (referred to earlier). Learned counsel for the petitioners has vehemently urged that the aforesaid supposed amendment in the Regulation has not been notified to the candidates nor published in the Gazette to be brought to the knowledge of the candidates or to their guardians or to the educational institutions presenting students for examination. As a matter of fact, Chapter XG of the Regulations published in the Text books clearly show that it was approved by the State Government in Education Department in Notification No. 3837/E dated 17-2-1969. It is not understood as to how the amended Regulation, if at all approved by Board on 30-9-1969, did not find place in the text. It is also curious to find as to how the amended regulation was not approved by the Government and as to how without such approval of the Government the Board has been continuing to conduct the examination on the basis of the recommendation of D.P.I. Orissa. It is well settled that Section 21 of the Act empowers the Board to make regulations in regard to matters contained in Sub-section (2) of Section 21 of the Act. It is provided in Sub-section (3) of Section 21 of the Act that no regulation or addition or amendment or repeal to the regulations made by the Board shall be valid without approval of the State Government. This would clearly show that the action of the Board on the basis of the amendment adopted in the

meeting of the Board dated 30-9-1969, not having been approved by the State Government cannot be said to be valid in the eye of law. The stand taken by the Board for the reasons stated above, therefore, falls to the ground.

6. In view of the discussions in the preceding paragraphs the action of the Board of Secondary Education Opposite Party Np. 1 in making a deviation from what is provided in Chapter XG of the Regulation for conducting C.P.Ed examination cannot be countenanced and as such, it has to be quashed. On behalf of the petitioners the result-sheet of one of the petitioners, namely, petitioner No. 8 has been filed and appended as Annexures 5 and 6 to show that she had passed in C.P.Ed. course examination and that she had been issued the college leaving certificate also to that effect. These documents would thus go to show that on assessment of the performance of the candidates their results were duly published on 3-12-90 as per Annexure 1. The regulation in Chapter XG does not indicate in any of the provisions for post publication review of the result. In that view of the matter, it was not open for the Board to say that the result was declared on provisional basis, or that it was entitled to have post publication review and change the result of the candidates on the basis. On the aforesaid analysis, we are of the view that the action of the Board in subsequently publishing the result of the petitioners and declaring them to have failed in the examination cannot stand the scrutiny.

7. In the result, the notification of the Board as per Annexure 2 and the communication of the Principal, Government College of Physical Education, Orissa, opposite party No. 2 to the Principal, Jagannath College of Physical Education (opposite party No, 3) as per Annexure 3 are quashed, and the petitioners are declared to have passed in the C.P.Ed examination of the year 1990 as notified in Annexure 1. The writ application is accordingly allowed. We, however, make no order as to costs.

D.P. Mohapatra, J.

8. I agree.