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**(1998) 04 OHC CK 0001**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 882 of 1998**

Pratusha

APPELLANT

Vs

Board of Secondary Education, Orissa, Cuttack and Others

RESPONDENT

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**Date of Decision :** 16-04-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226  
Orissa Secondary Education Act, 1953 — Section 21

**Citation :** AIR 1998 Ori 149 : (1998) 2 OLR 25

**Hon'ble Judges :** S.N. Phukan, C.J.;C.R. Pal, J

**Bench :** Division Bench

**Advocate :** B.B. Ratho, C.R. Dash, D. Mohapatra, S. Mohanty, S.P. Swain, S.K. Rath, B.K. Parida and R.K. Panda, for the Appellant; P. Acharya, A.C. Samantray, A. Patnaik and S.S. Das, for the Respondent

**Final Decision :** Allowed

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## Judgement

C.R. Pal, J.—The O.J.C. No. 882 of 1998 and O.J.C. No. 2286 of 1998 are taken up together for disposal as the questions raised in both the petitions are common.

2. The facts giving rise to the aforementioned two cases can be briefly stated as follows :--

The petitioners of both the writ petitions were prosecuting their study in an English medium school, i.e., St. Joseph Girls' High School, Cuttack. While reading in Std. VIII they took school leaving certificates and left the school to prosecute their study in vernacular as the medium of education. Both the petitioners applied for admission into correspondence course conducted under the Board of Secondary Education, Orissa (In short, the "Board") for preparing themselves to appear in the Annual High School Certificate Examination of 1998. The petitioner in O.J.C. No. 882 of 1998 coming to know from the brochure that unless a candidate completes 14 years of age by the 31st day of July, 1997 he/she will not be allowed admission, made a representation to the opposite party No. 2 to relax the age stating therein that no such age restriction is stipulated for other

category of candidates, and such a restriction was not there in respect of external candidates, but she was also not informed about the result of her representation. Subsequently, coming to know about the last date for filling up forms for the examination she enquired from the office of the opposite party No. 2 about the same and was supplied with the format for admission to the said examination on her depositing the prescribed fees and she submitted the said application in the office of the opposite party No. 2 with prescribed fees. The petitioner in O.J.C. No. 2286 of 1998 also applied for admission into correspondence course and she was allotted with enrolment number and was also supplied with the necessary format on her depositing the prescribed fees. She also filed a petition for admission into the said examination on depositing the necessary fees and waited for further intimation from the concerned authority. But to their dismay, the petitioners of both the writ applications received intimation respectively under Annexure-5 and Annexure-6 of their petitions that their applications for admission into correspondence course have been rejected on the ground that they are below 14 years of age by the 31<sup>st</sup> day of July, 1997 as laid down in Col. No. 5(11) of the instruction brochure Annexure 2 to O.J.C. No. 882 of 1998. Being aggrieved by the aforesaid order of rejection both the petitioners have approached this Court to declare the Col. No. 5(11) of the brochure as illegal and invalid and also to quash Annexure 5 and Annexure 6 to O.J.C. No. 882 of 1998 and O.J.C. No. 2286 of 1998 respectively.

3. According to the Board, as laid down in the instruction brochure for admission into correspondence course, no one can be admitted into said course unless he/she is above 14 years of age as on 31<sup>st</sup> day of July, 1997. The decision of the Board refusing admission to any candidate is final and binding on the candidates and they cannot challenge its correctness. It is further submitted that the restriction has been imposed to improve the standard of education. The petitioners on the other hand challenged the aforesaid order and stipulation of the brochure contending that the order passed by the Board's authority in refusing admission to the petitioners is illegal and without any legal sanction behind the same. It is also submitted that there is no nexus between the restriction imposed and the object sought to achieve.

4. We have heard the learned Counsel for the petitioners and the learned Counsel for the opposite parties at length and perused the written submissions filed by the learned Counsel for the petitioner in O.J.C. No. 882 of 1988 and learned Counsel for opposite parties 1 and 2. In course of hearing, learned Counsel for the opposite parties took us through the relevant provisions of the Orissa Secondary Education Act, 1953 (in short, the "Act") and the Regulations made thereunder. After going through the Act, we find that Section 11 of the Act enumerates the powers and functions of the Board. The provisions of Section 11 which are relevant for the purpose of the present case run as follows :--

"Section 11. Subject to the provisions of this Act, the Board shall have the following powers and functions, namely :--

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(f) to admit candidates to its examinations in accordance with regulations;

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From the above provisions, it is clear that the Board is empowered to admit candidates to the examinations held by it in accordance with the regulations. Section 21(i) of the Act stipulates that the Board may make regulations for the purpose of carrying into effect the provisions of the Act on the matters enumerated u/s 21 (ii) Clauses (a) to (q). Section 22 of the Act further lays down that the first set of regulations shall be made by the State Government after previous publication and they shall be deemed to have been made by the Board and continue in force until regulations are framed by the Board as required u/s 21 of the Act either by revision, addition, alteration or modification. From Section 1 of Chapter X of the new regulations for the H.S.C. Examination, 1981 onwards, it appears that the candidates for H.S.C. Examination have been classified into five categories, viz., (a) regular candidates (b) ex-regular candidates (c) quasi-regular candidates (d) external candidates and (e) private candidates. The present petitioners who were prosecuting their study in an English medium school have approached the Board to admit them into correspondence course and to allow them to appear in the H.S.C. Examination, 1998 as external candidates. The Board, however, refused to admit them on the ground of under age. Regulation 21 of Chapter X prescribes certain conditions for regular, ex-regular and quashi-regular candidates. Clause (a) of Regulation 21 of that Chapter prescribes that the minimum age limit for regular candidates to appear at the H.S.C. Examination, 1992 and onwards shall not be less than fourteen years. But, subsequently, the State Government in the Department of School and Mass Education letter No. 4191/SM8 dated 9-2-1995 communicated its decision that the age restriction imposed by the Board u/s II of the regulations stands waived irrespective of primary class in which a student took admission till 1992 (a copy of the letter is available as Annexure 7 to O.J.C. No. 882 of 1998). Thus there is no restriction of age for admission to the H.S.C. Examination relating to any other category of candidates. Clause (a) of Regulation 21 however does not also say anything about the external or the correspondence course candidates. Section III of that Chapter containing Regulations 32 to 34 prescribes certain conditions for the correspondence course candidates. u/s III no age limit has been prescribed for such candidates. There is no other provision either in the Act or in the Regulations prescribing any age limit for the correspondence course candidates. As has been mentioned earlier, the age limit prescribed under Regulation 21 for regular candidates has also been waived. Learned counsel for the opposite parties relying on Annexure 2 to O.J.C. No. 882 of 1998 which is also available as Annexure 7 to O.J.C. No. 2286 of 1998 and on Annexure 9 to O.J.C. no. 2286 of 1998 which contain special instruction for Annual H.S.C. Examination, 1998 issued by the Board contended that the age limit prescribed in the instruction brochure (Annexure 2 to O.J.C. No. 882 of 1998) having been

prescribed by the Board is binding and as the petitioners have not completed 14 years of age by 31st day of July, 1997 they have rightly been refused admission into the correspondence course. But, the learned Counsel for the opposite parties failed to show that the Board has adopted any regulation following the provisions of Section 1 I (g) read with Section 21 of the Act prescribing the age limit for the external candidates for taking admission into correspondence course. In the above context, it becomes necessary to look into the relevant provisions of Section 21 of the Act which runs as follows :--

"2 I(i). The Board may make regulation for the purpose of carrying into effect the provisions of the Act.

(ii) In particular and without prejudice to the generality of the foregoing power the Board may make regulations providing for all or any of the following matter namely :--

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(h) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates;

(iii) No regulation or addition or amendment to or repeal of the Regulation made by the Board shall be valid without approval of the State Government.

(iv) If the State Government do not approve of any regulation, amendment or repeal of the Regulations submitted by the Board they shall refer the matter back to the Board for reconsideration and resubmission. In doing so, the State Government may give such direction as they consider fit. If the Board do not comply with the said directions within reasonable time, the State Government may make such regulations, addition, amendment or repeal as they consider fit and such regulations, addition, amendment or repeal shall be deemed to have been made by the Board.

The minimum age stipulated in the instruction brochure is a condition, fulfilment of which makes a candidate eligible for admission into the correspondence course as well as to appear in the ensuing examination. u/s 11 (f) of the Act all admissions to the examination under the Board are to be made in accordance with the regulations. u/s 21 (ii)(h) the Board is empowered to make regulations imposing conditions under which candidates shall be admitted to the examination of the Board and shall be eligible for diplomas and certificates. Here in the instant case, the Board has not adopted any regulation prescribing any minimum age as a condition making a candidate eligible for admission to the course as well as examination. Therefore, the instruction issued by the Board prescribing the minimum age which has got no legal sanction cannot be imposed and must be held to be illegal and invalid.

4A. The petitioners also challenged the validity of Annexure 2 on the ground that there is no nexus between the imposition of condition prescribed under Col. No. 5(11) of the instruction brochure and the object sought for. In support of the

contention, learned Counsel for the petitioners placed reliance on a decision of Allahabad High Court in the *The Board of High School and Intermediate Education, U.P. and Another Vs. Gopal Narain Singh*, It is also contended that there is no reasonable basis for debarring students below the age of 14 years from appearing at the High School examination. According to the learned Counsel for the petitioners grouping the students below the age of 14 years seeking admission to the correspondence course for the H.S.C. Examination, 1998 into a separate class is arbitrary and had no rational relation to the objects sought to be achieved. Learned counsel for the opposite parties on the other hand submitted that the restriction has been imposed to prevent the students from leaving regular class and prosecuting their study in correspondence course. Further, in the written submission filed by the opposite parties it has been mentioned that such restriction is necessary for maintaining the standard of secondary education. The reasons advanced by the opposite parties in support of imposition of restriction does not appear to have any scientific basis for the same. No material has been placed before us to suggest that any appreciable number of students left the regular school and took admission in correspondence course prior to the imposition of the age restriction. Here it may also be mentioned that though it is the positive case of the petitioners that the age restriction has been introduced from the current year and no such restriction was there previously. The opposite parties have not denied the said assertion. Therefore, in absence of any other material, the reasons assigned is not acceptable. Regarding the other reasons advanced by the opposite parties, we find that there is no material before us to hold that a student below 14 years of age will not be able to grasp the courses of study and, as a result, there will be a degeneration in the standard of secondary education. In connection with the above contention, no material has also been placed before us to show that any attempt was made by the State to make a scientific study on the matter. There is also no record before us to show how the students below 14 years of age fared in the previous examinations. Similar questions came up for consideration before the High Court of Allahabad in the case of the *Board High School and Intermediate Education (supra)*. In the said case, the Board of High School and Intermediate Education adopted the regulation making provision that no candidate shall be eligible for admission to High School Examination of 1971 and onwards unless his/her age on the 1st July of the year in which he/she intends to appear at the examination is 14 years or more. The validity of the said regulation was challenged in the High Court which came before a single Judge for hearing. The learned single Judge held that the basis of classification for appearing in the High School Examination on the ground of age has no nexus with the object sought to be achieved by the law and struck down the said regulation being violative of the Article 14 of the Constitution. Against the said order, the Board of High School and Intermediate Education preferred an appeal which came before a Division Bench of the said High Court. There also the appellant's case was that the restriction is necessary as very often children of immature age and frail physique got promoted to secondary classes and later to the intermediate and

Secondary Degree stages and it was necessary that some minimum age limit was prescribed for admission of those students. The Court after considering the submissions observed that if a student though of immature age and frail physique is able to pass the examination, it cannot be inferred that he had displayed a lesser degree of standard than other boys who were not so immature in age. The Court, further observed as follows at page 346 of AIR:--

"So far as immaturity of age is concerned, the State Government or the Board has furnished no material to suggest that students below the age of 14 are immature from the point of view of appearing at the High School Examination than boys who are above that age. The Board of High School is conducting the High School Examination for the last several decades. The State Government has had supervisory powers over the Board. These authorities could have collected data of all students below the age of 14, who have appeared at the High School Examination. It could have then examined and analysed [he condition of their physique, mental capacity and if after an examination of the matter from these points of view the State or any of its Committees had come to the conclusion that in a great majority of cases students below the age of 14 appearing at the High School Examination displayed immaturity of mind and were of frail physique, which was not proper then a rational basis for the classification would have been established. But there is not even a whisper in any of the counter affidavits that any effort was made to examine the question from these relevant and material aspects. The classification made by the State Government and the impugned regulation appears to have been based on theory not on facts."

We are in respectful agreement with the above observations of the Allahabad High Court which are applicable to the present case. In the above premises, the contention raised by the learned Counsel for the opposite parties before us for imposing the age restriction only on the candidates seeking admission to correspondence course cannot therefore be supported. In our view, in the absence of regulation, the grouping of students below 14 years of age seeking admission into correspondence course and the ensuing examination into a separate class is arbitrary and had no rational relation to the object sought to be achieved by the Board. Therefore. Col. No. 5(11) of the instruction brochure suffers from the vice of discrimination and the same violates Article 14 of the Constitution.

5. In the result, the writ petitions are allowed and the Board is restrained from disentitling the petitioners from appearing at the examination on the ground that they are below 14 years of age and we direct that the petitioners be admitted into correspondence course and allowed to appear at the ensuing H.S.C. Examination, 1998.

S.N. Phukan, C.J.

6. I agree.