
(2019) 01 CAL CK 0028
In the Calcutta High Court
Case No : Writ Petition No. 613 Of 2018

Rahul Tewari

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Citation : (2019) 01 CAL CK 0028

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Amritam Mandal, Aditya Mondal, Rajmohan Chottoraj, Diviya Tiwary, Anindita Chakraborty, Sanjay Baid

Judgement

1. The present writ petition deals with a situation where a student of class XI was promoted to class XII in violation of the rules governing the Council for The Indian School Certificate Examinations (hereinafter referred to as 'ISC Rules'). The ISC Rules clearly specify that every student has to pass in English and three more subjects in class XI to be promoted to class XII. Unfortunately, the petitioner herein did not pass in three subjects but was wrongly promoted by the school authorities. The petitioner submits that the petitioner continued to study in class XII and only came to know of his predicament in the month of August/ September, 2018 when the Indian School Certificate Examination Board (hereinafter referred to as 'the Board') refused to register his name for the class XII Board Examinations. The present writ petition was filed on December 6, 2018, wherein the writ petitioner is seeking a prayer for a Writ of Mandamus to be issued on the Board to allow him to take the class XII examinations.

2. Counsel appearing on behalf of the school authority concedes that inadvertently the student was promoted to class XII and on coming to know of such an error in the month of August they had orally intimated the same to the petitioner. However, the counsel admits that the information sent by the Board was not communicated to the petitioner in writing and, therefore, the petitioner did not know the reasons for not being able to register with the Board.

3. Mr. Baid, counsel appearing on behalf of the Board, relies on the judgments of the Supreme Court in Council For Indian School Certificate Examination -v- Isha Mittal and Another reported in (2000) 7 SCC 521 [Coram: S.P. Bharucha, Ruma Pal and Shivaraj V. Patil, JJ.], Regional Officer, CBSE -v- Ku. Sheena Peethambaran and Others reported in (2003) 7 SCC 719 [Coram: Brijesh Kumar and Arun Kumar, JJ.], Mahatma Gandhi University and Another -v- GIS Jose and Others reported in (2008) 17 SCC 611 [Coram: Ashok Bhan and V.S. Sirpurkar, JJ.] and the Orissa High Court judgment in Saurav Maharana -v- Council for the Indian School Certificate Examinations and Ors. reported in 2007(II)OLR 595 [Coram: P.K. Tripathy and R.N. Biswal, JJ.] to buttress his submissions that the ISC Rules are sacrosanct and there is no scope whatsoever for the courts to interfere. He submits that the Supreme Court has time and again reiterated that mercy and sympathy cannot overrule the ISC Rules established by the Board as the same are promulgated to maintain academic standards. He further submitted that allowing even one child to appear in the examination de hors the ISC Rules would open the floodgates resulting in collapse of the entire system governed by the Board.

4. I have heard counsel appearing on behalf of both the parties and perused the materials on record.

5. At this juncture, I embark on an examination of the judgments cited by counsel appearing on behalf of the Board. In Isha Mittal (supra) the three Judges Bench of the Supreme Court clearly stated that if the law was in favour of the Board/Council, the High Court was obliged to issue an order in its favour and considerations of equity would not permit the High Court to pass an order contrary to law.

6. In Sheena Peethambaran (supra), the Supreme Court after examining several judgments of the Supreme Court held that condoning the lapses or overlooking the legal requirements in consideration of mere sympathy does not solve any problem, rather breeds more violations and disturbs the discipline of the system and ultimately, adversely affects the academic standards.

7. In GIS Jose and Others (supra) the Supreme Court relying on Sheena Peethambaran (supra) stated that misplaced sympathies cannot be shown in total breach of the rules. The relevant portion of the judgement is delineated below:

"10. The misplaced sympathies should not have been shown in total breach of the rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court CBSE v. Sheena Peethambaran. In para 6 of the judgment, this Court observed as follows:

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been

declared, the matter deserves to be considered sympathetically. It results in very awkward difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions."

11. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal."

8. Apart from the above judgments cited by the petitioner, I find the ratio in *Guru Nanak Dev University -v- Parminder Kr. Bansal* reported in (1993) 4 SCC 401 [Coram: M. N. Venkatachaliah, C.J. and Dr. T.K. Thommen and S. Mohan, JJ.] to be relevant and accordingly the same is reproduced below:

"7.We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

9. Furthermore, the Supreme Court in *A.P. Christians Medical Educational Society -v- Government of A.P.* reported in (1986) 2 SCC 667 had also categorically stated that institutions cannot be asked to disobey the regulations made by the institutions itself for its smooth functioning. The relevant portion at paragraph 10 is delineated below:

"10.We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws....."

10. The facts of the present case are akin to the judgment in *Saurav Maharana* (supra) delivered by the Orissa High Court wherein the Division Bench of the High Court relying on the Supreme Court judgment in the case of *Guru Nanak Dev University* (supra) refused to direct the ISC Board to publish the results of a student who had failed to secure pass marks in four subjects including English in Class XI but had been promoted by the school from class XI to XII and had been allowed to take the examination on the strength of an interim order passed by the High Court.

11. The principles that emerge from the above precedents are as follows:

(a) Rules framed by various examination boards are for the purpose of maintaining academic standards and the same cannot be bent on the whims and fancies of the court.

(b) Bending or bypassing the rules would result in disturbance of the academic system adversely affecting the academic standards.

(c) Principles of equity should not be applied to circumvent the rules and regulations framed by academic institutions for the smooth running of the institutions and for maintenance of the high standards of learning.

(d) A sympathetic approach cannot be a substitute to adherence of the rules and regulations and should not be used as a tool to sidestep and dodge the rules established by the academic institutions.

12. In light of the principles emerging from the judgments of the Supreme Court and the judgment of the High Court of Orissa, I am unable to grant any relief to the writ petitioner before me. Allowing even one student to bypass the rules and regulations would not only undermine the rules and regulations established by the Board but also create confusion in the minds of other students who put in great efforts to secure pass marks so that they are promoted.

13. It is to be noted that the students and their parents choose to put their children in schools affiliated with certain Boards and are accordingly presumed to know the rules and regulations of the particular Board. Ignorance of the rules and regulations cannot be an excuse and cannot lead to Writs being issued in their favour against the Board.

14. However, keeping in mind, the present peculiar facts and circumstances, I direct the petitioner to sit for the class XI final examination once again to be held in February/March this year. I further direct the school authorities and the Board to take into consideration only the final assessment marks (for the examination the petitioner shall be taking in the month of February/March) to consider his promotion to class XII.

15. It is made clear that in the event the petitioner specifically clears the class XI final examination to be taken by him this year, the Board shall register him and allow him to sit in class XII Board examinations next year in accordance with law.

16. I would also like to add a word of caution to parents who insist on their children pursuing subjects of the choice of the parents without taking into consideration the capabilities and wishes of the child. It is seen very often that children are forced to undertake subjects in classes XI and XII solely based on the wishes of the parents. The present case before me is a classic example where the student is obviously weak in the science stream subjects he has undertaken in classes XI and XII. I am of the view that the schools should counsel the students during/after class X with regard to the subjects they are fit

to pursue in class XI and XII and the parents of the children should go with the advice of the school keeping in mind the ability of the children.

17. Since no affidavits have been called for, allegations made in the writ petition are deemed not to have been admitted by the respondents.

18. All parties to act as per the website copy of the order. Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

19. With the above directions, WP 613 of 2018 is disposed of.

20. As prayed for by the writ petitioner, liberty is granted to the writ petitioner to approach the appropriate authority/forum, if so advised, for seeking compensation from the school authorities.