
(2000) 04 OHC CK 0026

In the Orissa High Court

Case No : Original Jurn. Case No's. 11834 and 13685 of 1999

Santosh Kumar Mohanta and Others, etc.

APPELLANT

Vs

Council of Higher Secondary Education, Orissa and Others

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Ori 105 : (2000) 89 CLT 760

Hon'ble Judges : P.C. Naik, J;B.P. Das, J

Bench : Division Bench

Advocate : R.C. Mohanty, R. Mohanty, D.K. Mohanty, N. Behuria, P.K. Rath, A.P. Bose and Priyambad Sahoo, for the Appellant; S.D. Das, L. Samantaray, H.S. Satapathy, B. Pattnaik, B.K. Sinha, A. Mohanty, D. Dhar, B.P. Ray and S. Pujari, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—In these two writ applications, which were heard on separate dates, the prayers made being similar, they are disposed of by this common judgment.

2. These two writ applications have been filed for issuance of an appropriate writ, direction or order quashing the notification of the Council of Higher Secondary Education, Orissa, revising the results of the candidates in Science stream of Gourishankar Mahavidyalaya, Khadiasole. Mayurbhanj by invalidating their results and the Notification No. 8937 invalidating the results of the candidates of Commerce stream.

3. The facts in brief are that out of the petitioners in O.J.C. No. 11834 of 1999, petitioners 1 to 4 belong to Science stream and petitioners 5 to 9 belongs to Commerce stream. It is their case that after making due inquiry that the institution in question was permitted, recognised and approved, they had taken admission in the Science/Commerce stream. Accordingly, they had completed the course and appeared at the Annual Higher Secondary Examination, 1999 in the Science and Commerce streams along with other candidates. Initially, their result

were withheld, but by the subsequent notification (Annexure-1 and 2) their results were invalidated which has obliged them to approach this Court for relief.

4. The petitioner in O.J.C. No. 13685 of 1999 was a student of Gourishankar Mahavidyalaya, Khadiasole and had appeared +2 Science Annual Examination, 1999. His case is that he had taken admission in the Science stream of the college after making due inquiry and on being informed that the institution was permitted, recognised and approved. Though the results were published on 30th of June, 1999, his result was withheld and later, it transpired that the same had been cancelled. He has accordingly approached this Court for commanding the opposite parties for publishing his result.

5. Thus, in substance, the prayer in both the writ applications, which were filed by the students of Science and Commerce stream of Gourishankar Mahavidyalaya, Khadiasole, is for quashing the notification by which their results were withheld and later invalidated and for directing the Council of Higher Secondary Education (in short, the Council) to publish their results and issue their mark-sheets.

6. Separate counter affidavits have been filed by the Council opposing both the writ applications. According to the Council, Gourishankar Mahavidyalaya is a non-permitted non-affiliated, college in respect of Science and Commerce streams and as such, its action in admitting students in the said streams during the session 1997-98 was wholly unauthorised. It has further been stated that recognition is to be accorded in terms of the Council's Regulation No. 104 which lays down that recognition to admission to privileges of the Council shall be granted or refused only by the Council. It is further provided that it shall be incumbent upon the Recognition Committee to place before the Council at its first available meeting every application which it recommends or does not recommend. The Proviso to the said Regulation lays down that in case of an application by the management of a non-Government institution, before proceeding with the matter, the Recognition Committee shall satisfy itself that concurrence of the Government to establish the institution has been secured by the management. It is accordingly the case of the Council that in terms of the resolution, permission of the State Government to establish/open a new Course or Institution is a condition precedent for consideration of a grant of affiliation by the Council. But, no such permission has been obtained by the institution in question. It is, however, fairly admitted by the Council that in the year 1998, some students of Science and Commerce streams who were admitted during the Session 1996-97 were allowed to appear at the Annual Higher Secondary Examination, 1998 by virtue of special permission granted by the Government which was for that particular year. However, no such permission was obtained or produced before the Council for permitting the students to appear at the Annual Higher Secondary Examination, 1999, it is pleaded that the Northern Zonal Office of the Council at Baripada, was misguided by the College authorities to accept the forms of the students to appear at the Annual Higher Secondary

Examination, 1999 in respect of Science and Commerce stream, as they were procuring special permission from the Government. Acting on this misrepresentation, the forms were accepted and student permitted to appear. However, no such permission was granted by the State Government, and as no permission granted by the State Government was produced before the Council, the results were withheld and ultimately declared invalid.

7. In support of its contention, the Council has made a reference to Annexure A, a memo from the Director of Higher Education dated 9-7-1999 addressed to the Controller of Examinations wherein it is clearly indicated that "no permission has been granted in favour of Gourishankar Mahavidyalaya, Khadiasole in the district of Mayurbhanj for opening +2 Commerce and +2 Science for the Session 1997-98" and accordingly, it is submitted, they were justified in invalidating the results in question.

8. Reference is also be made to Annexure 11 which is a letter of Controller of examinations of the Council addressed to the Principal of Gourishankar Mahavidyalaya to the effect that the result of the Annual Higher Secondary Examination, 1999 has been withheld as the institution has failed to submit the permission of the Government and the recognition as required under Sections 5(6) and 6 (6) of the Education Act, 1969.

9. The contention on behalf of the petitioners is that as in the earlier years the students were permitted to appear, the Council was not justified in adopting a different approach with respect to the examination in which they had appeared. It is also submitted that at any rate the institution having admitted them and the Council having accepted their forms to take up the examination, it was not justified in not declaring their results, rather in invalidating the same. It is further contended that the petitioners had taken admission in the institution after making bona fide inquiries from the institution as also the students who had earlier appeared and for the fault of the institution, they ought not to be made to suffer.

10. It is no doubt true that the petitioners had taken admission and appeared at the examination along with other students in Arts, Science and Commerce streams, but at the same time, it cannot be denied that the institution in question did not have any permission for the academic session in question for admitting students into Science and Commerce streams. Though the management has filed a counter, no document has been filed to indicate that it had obtained permission for the sessions 1997-98 and 1998-99. On the contrary, it has been mentioned in the counter that a writ application had been filed by the institution for issuance of an appropriate direction to the State Government for grant of permission for the sessions 1997-98 and 1998-99. That writ application i.e. O.J.C. No. 36 of 1999 was, however, withdrawn on 14-12-1999 as the counsel for the petitioner therein had prayed for a withdrawal on the ground that the matter relating to grant of permission and recognition to the institution was pending before the State Government. This clearly indicates and supports the stand of the Council

that the institution did not have the necessary permission and recognition for the session in question in respect of +2 Science and +2 Commerce streams.

11. It is no doubt true that in the counter filed by the institution, there is a reference to Annexure-1 thereto which shows that in the year 1992 permission was granted for establishment of the institution in the Core Course English, Science and Commerce. But it appears that subsequently, the permission with respect to Science and Commerce was either deferred or withdrawn for which the institution had approached the authorities vide its letter dated 15-11-1996 (Annexure-2 to its counter) which indicates that a prayer was made to the Government for fresh concurrence for +2 Commerce stream with 64 seats for 1994-95 and 1995-96 and likewise, the letter dated 28/29-11-1996 (Annexure-3) which was for fresh concurrence of the Government for +2 Science stream with 64 seats for the session 1996-97 and 1997-98. But, as indicated above, the letter of the Director reference to which has been made, clearly indicates that no permission had been granted to the institution in question for opening +2 Commerce and +2 Science streams for the session 1997-98.

12. Thus, it is evident that being fully conscious of the fact that it did not have any permission or concurrence from Government for opening +2 Science and +2 Commerce streams for the academic session 1997-98, the institution opened the two streams and admitted students to the said courses. The effect of this has to be considered.

13. Before proceeding further, we may make a brief reference to the decision of this Court in *Gopinath Panda Vs. State of Orissa and Another*, which was rendered by a Bench of which one of us (P.C. Naik, J.) was a member. That was a case in which the opening of a new institution or new stream in an existing institution or opening of new subjects or increase of permitted strength came up for consideration. Taking note of the provisions contained in Sections 5 and 6 of the Education Act, 1969, as amended by the 1994 Amendment Act, and Rules 6, 10 and 15 of the Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules 1991 the Court observed thus:--

"From the reading of the above provisions, it is clear that prior permission is sine qua non either for opening a new institution or for opening a new stream in the existing institution or for opening new subjects or for increase of the permitted roll strength in the existing subjects. The provisions also indicate that prior permission is also sine qua non for recognition."

What would be the effect of admitting students contrary to the statutory provisions, the Court observed:--

"..... So, if ignoring the permission as institution does something which is not permissible it has to suffer the consequences. It cannot first do something in breach of the rules and regulations and then take recourse to "hardship" likely to be suffered by the students as a sword to literally blackmail the authorities for

granting retrospective permission and recognition. And, if the Courts are to regularise such illegal acts, it would amount to directing the authorities to do something which is contrary to law. Obviously, no such direction can be Issued as the writ jurisdiction is to be exercised for directing the authorities to act in accordance with law and not to do something which is contrary to law. The fact that the temporary recognition was granted cannot ipso facto, in the facts and circumstances of the case, be used as a lever by the petitioner for directing the Government authorities to grant permanent recognition."

The Court further observed:--

"We may add that in case an educational agency establishes an institution without permission or opens a new faculty and introduces a new subject or increases the roll strength without prior permission, the authorities concerned will be fully justified not only in refusing to grant recognition but also in taking suitable appropriate action against the erring educational agency for acting in breach of the statutory provisions.

14. The case at hand is also an example where the institution in question has admitted students to +2 Science and +2 Commerce streams though it did not have necessary permission and recognition for the particular session. May be, the petitioner did not have any indication that the Institution in question did not have the requisite permission and recognition, Then, again it was also possible that despite this knowledge, they took admission in the hope that the illegalities committed by the authorities of the institution would not come in their way. But, unfortunately, for the petitioners, contravention of the statutory provisions by the institution in question cannot be overlooked and to quash the impugned notifications would amount to perpetuating an action of the institution which was clearly in contravention of the statutory provisions. The relief claimed by the petitioner, therefore, cannot be granted.

15. Before parting with the case, we may observe that it is because of some slackness on the part of the appropriate authorities and the indifference shown by them that institutions which have been established in contravention of the provisions contained in the Education Act and the relevant rules, are continuing to flourish. If an institution is established without prior permission appropriate action should be taken against the educational agency which has established the same. Instead of doing that, the authorities are permitting such institutions to continue by according temporary permission/recognition. Once this happens, even if for a single year, said institutions become emboldened and continue to admit students year after year and in the process, they make money but jeopardise the career of the students. It is, therefore, hightime that some action is taken by the authorities against such institutions. We feel that appropriate directions should be issued by the authorities mandating that each institution should disclose in the Admission form as to whether or not it is permitted, affiliated and recognised, and if so, the number and date of the order of the concerned authority granting the same, and also the permitted stream(s) and

sanctioned roll strength.

16. Reverting to the case at hand, we may observe that the institution in question, as it appears from the facts and circumstances on record admitted students in +2 Science and Commerce streams in contravention of the statutory provisions and as such, no relief can be granted to the petitioners. It shall, however, be open to them to take appropriate action against, the institution in question including a claim for damages, before the appropriate forum, if they so desire.

17. With the aforesaid observations and directions, both the writ applications are dismissed. There shall, however, be no order as to costs.

B.P. Das, J.

18. I agree.