

(2007) 09 OHC CK 0053
In the Orissa High Court

Saurav Maharana

APPELLANT

Vs

Council for the Indian School Certificate Examinations and
Others

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2007) 2 OLR 595

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—Petitioner being a minor has filed this writ petition through his father guardian assailing the decision under Annexure-12 taken by opp. parties 1 and 2 and seeking a direction to the opp. parties to allow him to appear at the Annual Indian School Certificate of Secondary Education Examination, 2007 through Montfort School complex Kansbahal.

2. The case of the petitioner in nub is that he passed I.C.S.E. Examination in the year 2005 scoring 80.6% of marks from Jayashree Chemical Schools, Ganjam (opp. party No. 3) and took admission in Class-XI of the same school in the month of August of the same year and accordingly the Council for the Indian School Certificate Examination, New Delhi (Council in short) assigned him Registration No. B/OR015/007/07 under Annexure-1. He appeared in the First Terminal Examination held in the month of August, 2005 conducted by the said Jayashree Chemical Schools, Ganjam and prosecuted his study there up to 2.12.2005. Due to shifting of residence of his parents from Berhampur to Kansbahal and for some other reasons the petitioner took Transfer Certificate from Jayashree Chemical Schools on 3.12.2005 and got himself admitted to Class-XI Montfort School Complex, Kansbahal under Sundargarh district in the month of February, 2006 which was duly intimated by the Principal of Montfort school complex to the council and its Education Officer (opp. party No. 2).

Because of serious heart problem of the mother of the petitioner and shifting of residence from Berhampur to Kansbahal, the petitioner could not prepare well for the Annual Examination of Class XI held in the month of March, 2006 and as such he could not do well in the examination. Opp. Party No. 2 vide letter dated 6.3.2006 requested the Principal Montfort School Complex, Kansbahal. (Opp. party No. 4) to send him the attested photo copies of Class XI admission form of the petitioner, his Class XI attendance certificate from Jayashree Chemical Schools, Berhampur, report card and the Transfer Certificate issued in his favour by said Jayashree Chemical Schools. In response to it, opp. party No. 4 by his letter dated 25.3.2006 transmitted all those documents to the Chief Executive and Secretary of opp.party No. 1. On 4.4.2006 opp. party No. 2 called upon opp. party No. 4 to send the attested photo copy of the attendance certificate of the petitioner and the original Registration card issued in his favour by the Council and accordingly opp. party No. 4 vide letter dated 28.4.2006 sent all the required documents to her. Again opp. party No. 2 by her letter dated 26.5.2006 called upon opp. party No. 4 to send the attested photo copy of Class XI Progress Card of the petitioner which was complied with vide letter, dated 19.6.2006. Further on 3.8.2006 opp. party No. 2 called upon opp. party No. 4 to clarify as to how could the petitioner be promoted to Class XII passing only three out of six subjects in Class XI examination. In his reply vide letter dated 6.9.2006 opp. party No. 4 clarified that due to change of school and some family problems the petitioner could not do well in Class XI examination, but with the hope that he would perform better in Class XII, he was given promotion from Class XI to Class XII. After such protracted correspondences in the matter, the decision of the Council that the petitioner should not be promoted to Class XII was conveyed to opp. party No. 4 through opp. party No. 2 vide letter under Annexure-12 dated 26.9.2006.

3. Before receipt of Annexure-12, the petitioner and his classmates had already submitted their applications forms with required fees before opp. party No, 4 for onward transaction of the same to the Council to appear in Annual I.S.C.Examination, 2007 which was scheduled to be held in the month of March. But on receiving Annexure-12 opp. party No. 4 did not forward the application form of the petitioner to the Council and debarred him from attending the classes.

4. According to the petitioner, he being eligible to get promotion from Class XI to Class XII has rightly been promoted and as such Annexure-12 deserves to be quashed. Annexure-12 also deserves to be quashed because of gross delay and laches of opp. party Nos. 1 and 2, inasmuch as while the petitioner was given promotion to Class-XII in the month of March/April, 2006 the letter under Annexure-12 was issued on 26.9.2006 after a long gap of 3 months, during which the petitioner was regularly attending the classes and paying fees to the school. He also filled up and submitted the examination form to opp. party No. 4 to appear in the Annual I.C.S.Examination, 2007. Hence, opp. party Nos. 1 and 2 are estopped from annulling the promotion of the petitioner vide Annexure-12 in view of the doctrine of promissory estoppel. It also violates the principle of

natural justice inasmuch as no notice whatsoever was issued by opp. party Nos. 1 and 2 to the petitioner before taking the impugned decision. It is further case of the petitioner that some of the students standing in similar footing to that of him were allowed promotion from Class-XI to Class-XII by the council. Under such circumstances, the petitioner filed the writ petition praying to quash Annexure-12 as stated earlier.

5. The Officiating Chief Executive and Secretary of opp. party No. 1 (Council) in his counter affidavit contended that the Council is an unaided autonomous educational body, constituted under the Societies Registration Act and as such, is not a State within the meaning and scope of Article 12 of the Constitution of India and accordingly, the writ petition is not maintainable against it. The petitioner was not eligible to be promoted to Class XII in terms of the Examination Regulations and Affiliation Guidelines of the Council since he passed only in three subjects in Class XI annual examination. Further, the Council by its letter dated 14.11.2006 (Annexure-A/1) communicated its decision to the writ petitioner and since he accepted the same now he cannot challenge it and the writ petition is liable to be dismissed on this ground also. Opp. party Nos. 2 to 4 did not prefer to file any counter-affidavit.

6. Learned Counsel for the petitioner submitted that a close reading of the provisions contained under Chapter-II(B)(1)(b), II(B)(2) and (4) along with the provisions contained under Chapter-I(B) of the I.SC. Regulations and syllabuses, March, 2006 (in short "the Regulations") shows that at the end of Class XI, examination would be conducted by the school and the promotion of the candidate to Class XII is the responsibility of the school and in that respect the decision of the institution is final. There is no provision in the Regulations that a student from Class XI would be promoted to Class XII only when he secures pass marks in four subjects. As against this, learned Counsel appearing for the opp. party-Council submitted that Chapter I(iv)(7) of the Guidelines for Affiliation to the Council ("Guidelines" in short) stipulates that the eligibility of candidates for admission to the I.SC.-12 course shall be processed by the office of the council. Promotion criteria of the students are laid down in Chapter-IV (6) of the Guidelines. As per provision iv (6)(vi) promotion from Class XI to Class XII shall be made on the basis of promotion criteria as laid down by the Council for the Indian School Certificate Examination. Clause (D), Chapter-II of the Regulations lays down that pass certificate may be awarded to candidates who at one and the same examination attained the pass standard in four or more subjects which must include the subject English. In the present case the petitioner having passed only in three out of six subjects, he cannot be promoted to Class XII. Learned Counsel for the Council further submitted that the provisions contained under Chapter-II(B), II(B)(1)(b), II(B)(2), (4) and II(D) of the Regulations and Chapter-I(iv)(7) and iv (6)(vi) of the Guidelines should be read together harmoniously so as to achieve the intention of the Council. If it is so read, then the ultimate conclusion would be that unless a candidate secures pass marks in four subjects including English, he cannot be promoted from Class XI to Class

XII. Chapter II(B)(2) of the Regulations which provides that examination at the end of Class XI shall be conducted by the School and the promotion of the candidates from Class XI to Class XII will be the responsibility of the head of the institution and in that respect his decision is final does not mean that he would bypass the Guidelines and the Regulations while promoting a candidate from Class XI to Class XII. Learned Counsel for the opp. party further submitted that "responsibility" has been defined in the Concise Oxford Dictionary, 9th Edition as (i) liable to be called to account (to a person or for a thing) (ii) morally accountable for one's action; capable of rational conduct. Thus, the head of the institution is obliged to account for the reasons and basis behind the promotion of a student of his institution from Class XI to Class XII and provide the rationale behind such a decision. In the present case the Council called upon the head of the school to account for the illegal promotion of the petitioner from Class XI to Class XII and the explanation given shows that he promoted him on mere sentimental conjecture and fond supposition rather than on merit. If the said explanation is accepted, it would create floodgate for undeserving candidates thronging on the Courts. Hence, learned Counsel appearing for the Council pressed to dismiss the writ petition.

7. Clause-6, Chapter-IV of the Guidelines lays down the promotion criteria, beginning from pre-Primary to I.Sc. Pass Certificate. Sub-clause (vi) of Clause-(6) reads as follows:

(vi) Classes - XI to XII,

Promotion Criteria as laid down by the Council for the Indian School Certificate Examinations, under conditions for the award of an ISC (Class XII) Pass Certificate.

Chapter-II of the Regulations deals with conditions of award of Indian School Certificate Examination, Clause (D) of which reads as follows:

Awards and Conditions for Awards.

1. PASS CERTIFICATES will be awarded to candidates who at one and the same examination attain the pass standard in four or more subjects which must include the subject English.

Provided that no candidate except as otherwise exempted by the Council, shall be awarded a Pass Certificate unless in addition to fulfilling the conditions above, he has attained a pass grade in SUPW and Community Service as examined/assessed internally by the School.

This provision relates to passing of Indian School Certificate Examination (Class-XII). As per this provision a candidate has to pass in one and the same examination in four or more subjects including English. He has also to attain pass grade in SUPW and Community Service as internally examined/assessed by the School, unless the council exempts of such passing. There is nothing to show in this provision that these criteria are applicable for promotion from Class-XI to

Class-XII, but as noted earlier as per Chapter IV (6)(vi) of the Guidelines, the criteria for the award of an I.SC. (Class-XII) Pass Certificate is the criteria for promotion from Class-XI to Class-XII. As submitted by the learned Counsel for the petitioner Clause-B(2), Chapter-II of the Regulations prescribes the criteria for promotion from Class XI to Class XII. The said provision reads as follows:

The examination at the end of Class XI will be conducted by the schools and the promotion of candidates from Class XI to Class XII will be the responsibility of the Heads of the Schools and in this respect, the decision of the Head of the College/ School is final.

Clause-B(1)(b) of the same "hapter further envisages that the syllabuses prescribed for Class XI will be examined internally by the School and the syllabuses for Class XII will be examined externally by the Council. So learned Counsel for the petitioner submitted that when examination of the students of Class XI is conducted by the school and Heads of the Schools are responsible for the same and the syllabuses for Class XI are to be examined internally by the School, opp. party No. 4 did not commit any illegality by promoting the petitioner from Class XI to Class XII, when he was satisfied that the petitioner would do well in LSC. Examination. According to the counsel for the petitioner, Clause-D of Chapter-II of the Regulations would not be applicable to promotion from Class XI to Class XII. No doubt it is the responsibility of the Head of the School for promotion of a candidate from Class XI to Class XII and the syllabuses prescribed for Class XI are to be examined internally by the School, but the same would not provide an unbridle authority to the head of the school to promote any student he de hors of the Regulations and Guidelines. The Council is not expected to give such authority to the head of the school. When Chapter IV (6) (vi) of the Guidelines provides that promotion criteria as laid down by the Council for the Indian School Certificate are also applicable for promotion from Class XI to Class XII, the promotion criteria laid down in Clause-D, Chapter-II of the Regulations would be applicable as far as practicable for promotion from Class XI to Class XII. The provision in Regulations that the decision of the head of the school with regard to promotion of candidates from Class XI to Class XII is final does not mean that the same is sacrosanct and cannot be called in question by the Council. If promotion is duly given in accordance with the Regulations and the Guidelines, such promotion cannot be called in question, otherwise the Council has every right to interfere in the promotion. So the submission of the learned Counsel for the petitioner cannot be sustainable.

8. Again learned Counsel for the petitioner submitted that Annexure-10 and 12 were issued without giving any chance of hearing to the petitioner, so the same deserve to be quashed. In support of his submission he relied on a decision of this High Court in Prakash Chandra Kuanr Vs. Secretary, Board of Secondary Education and Others, The facts of the present case stand on a different footing from the facts in the aforesaid decision. In the decision cited supra, the Board of Secondary Education allowed the candidate to appear in High School Certificate

Examination and issued Admit Card in his favour. Accordingly the candidate appeared in the Examination, but subsequently the Board cancelled his result as well as the mark sheet. In the case at hand when opp. party No. 4 intimated about the promotion of the petitioner from Class XI to Class XII to the Education Officer of the Council, she requested him to explain the circumstances under which he gave the promotion. Not being satisfied with the explanation, the Council did not permit the petitioner to appear in Class XII Examination. So the decision cited supra cannot be applicable to this case.

9. Learned Counsel for the petitioner, furthermore submitted that when the Council accepted the examination form and required fees from the petitioner and he was allowed to appear in the I.SC. Examination, at this stage, it is estopped from questioning his eligibility for promotion and his competency in appearing annual I.SC. Examination in view of the doctrine of promissory estoppel. In support of his submission he relied on the decisions in *Nasiffa Vs. Central Board of Secondary Education, New Delhi and others*, *Sanatan Gouda v. Berhampur University 1990 (I) OLR 541* and *Randhir Singh Vs. State of Rajasthan and Others*, In all these cases the Board/University had allowed the candidates to appear in the Examination and subsequently cancelled their results and in none of the cases any of the candidates was at fault. So, it was decided that for no fault of their own when the candidates were allowed to appear in the Examination, the Board/University are estopped from not publishing their results. In the present case as discussed earlier, from the very inception, the promotion of the petitioner from Class XI to Class XII, was questioned by the Council. The petitioner, appeared in the I.SC. Examination only on the strength of an interim order of this Court. The interim order was passed in a special circumstance. The writ petition along with the interim petition was fixed for hearing on 14.2.2007. Mr. Mukherjee, one of the learned Counsels for the Council sought for time on that date on the ground that the conducting counsel was absent and he had to come from outside State. As the I.SC. Examination was scheduled to be held on 19.2.2007, learned Counsel for the petitioner submitted that he had no objection for adjournment of the case provided the petitioner was granted permission to appear in Annual I.SC. Examination. Counsel for opp. party No. 1 (Council) stated that he had no objection if such an order was passed without prejudice to the rights and contentions of the parties. Accordingly the case was adjourned and the opp. parties were directed to allow of the petitioner to participate in the Annual I.SC. Examination. It was further ordered that the appearance of the petitioner in the said examination would be without prejudice to the rights and contention of the parties and the result of the examination with respect to the petitioner would not be declared without leave of this Court. Under such circumstances, the petitioner cannot take advantage of the situation that he was allowed by the Council to appear in the Examination. Moreover, as per the case of the petitioner opp. party No. 4 did not forward the examination form of the petitioner to the council, when the latter found the petitioner ineligible for promotion from Class- XI to Class-XII. It appears that on the strength of the

interim order of this Court opp. party No. 4 forwarded his examination form to the council.

Moreover mere forwarding of an examination form by an institution to the Examining Body is not sufficient to claim a right to appear in the examination. In the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, , the Apex Court held:

Merely forwarding of an examination form by an Institution affiliated to the examining body is no surety that examining body would necessarily permit the candidate to undertake the examination. Forms after being sent are scrutinized and checked by the examining body.

In the case at hand the very promotion of the petitioner from Standard XI to Standard XII was called in question by the Council. So even if the Council accepted examination form of the petitioner along with the required fees, the petitioner cannot lay a claim to appear in the examination. Similarly, because he appeared in the examination on the strength of an interim order of this Court, it cannot be said that a right accrued in his favour to command the Council to publish his result.

In the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , the Apex Court deprecated the practice of allowing the candidate to appear in the examination of the Board or the University by interim order and subsequently regularizing it. Similarly in the case of Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, the Hon"ble Supreme Court held as follows:

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.

In the decision Haripada Das Vs. Utkal University, learned Counsel for the petitioner therein argued that the University is estopped from setting up the bar of Clause (a) of proviso after it has issued the Admit Card and allowed the petitioner to appear in the examination and to answer the papers. This Court held that the said submission is untenable. The bar of Clause (a) of the proviso to Rule 31 is statutory and goes to the root and operates to take away the eligibility or right or title of the petitioner to appear in the B.Sc. examination with the privilege of exemption under Rule 31.

In the case of Sidhartha Mishra and Ors. v. Central Board of Secondary Education and Ors. and a batch of cases 2007 (I) OLR 392 and K. Shashidhara Rao v. Or. Ambedkar Institute of Technology, Bangalore and Anr. AIR 1998 Kar 294 it has

been held that:

The doctrine of promissory estoppel cannot be applied against statute.

So the submission of learned Counsel for the petitioner that when the Council accepted the examination form along with the required fees and in pursuance of the interlocutory order passed by this Court the petitioner appeared in I.SC. Examination, the council is estopped from questioning his eligibility for promotion from Class XI to Class XII and appearing in annual I.SC. Examination is not tenable.

Learned counsel for the petitioner submitted that Santosh Kumar Nayak and Shri Suraj Eka having passed in only two subjects and failed in other four subjects were promoted from Class-XI to Class-XII in the year, 2006. Similarly Kamaldeep Singh, Kaushik Prakash, Bikram Topno having passed in three subjects and failed in other subjects were promoted from Class-XI to Class-XII as shown in Annexure-15. So, the petitioner should not have been discriminated. As against this, learned Counsel appearing for opp. party Council contended that since the case of the petitioner was a case of transfer, the Council called for all the records, including his final report card wherefrom it could be known that he failed in Class XI Final Examination conducted by the School. As Kamaldeep Singh, Kaushik Prakash, Bikram Topno, Santosh Kumar Nayak and Suraj Eka were regular students of the school, their final report cards were not before the Council and as such the Council had no occasion to know that the said candidates had failed in Class-XI Final Examination conducted by the school. So it cannot be said that the petitioner was discriminated. Moreover, even if some ineligible students were promoted from Class-XI to Class-XII, the petitioner cannot claim equity with them.

Since the Council was not aware of the fact that Kamaldeep Singh, Kaushik Prakash, Bikram Topno, Santosh Kumar Nayak and Suraj Eka were not eligible for promotion from Class-XI to Class-XII they were allowed to fill up forms to appear in the Final I.SC.Examination. So, it cannot be said that the petitioner was discriminated. Even if some ineligible students were promoted from Class XI to Class XII de hors the Regulations and Guidelines that can not be a ground for issuing a writ in favour of the petitioner. This Court cannot compel the Council to repeat that illegality again and again as held by the Supreme Court in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, .

Learned counsel appearing for the petitioner, further submitted that the current procedure with regard to promotion as laid down in the Guidelines came into force with effect from the month of May, 2006 pursuant to the decision taken by the Council, in their meeting held on 28th April, 2006. Since the petitioner appeared in the Annual school promotion examination in 2006 and promoted to Class-XII in the month of March, 2006, the criteria laid down in the said Guidelines would not be applicable to him. Per contra, learned Counsel appearing for the Council submitted that the criteria for promotion of a candidate from

Class-XI to XII were the same even before April 2006. In support of his submission he relied on Annexure-C/3, the Guidelines reprinted in 2002, on perusal of which it is found that, the criteria for promotion from Class-XI to Class-XII were the same in 2002 as in the current Guidelines, as such the contention of learned Counsel for the petitioner cannot be tenable.

Learned counsel for the petitioner at last submitted that rightly or wrongly the petitioner was promoted from Class-XI to XII. By an interim order of this Court he was allowed to appear in the final I.SC. Examination; so equity demands that his result should be published. Considerations of equity cannot prevail over law and do not permit a Court to pass an order contrary to law. We cannot direct the Council to disobey the Regulations and Guidelines made by the Council itself.

Therefore, we are of the considered opinion that the writ petition is devoid of merit and as such it stands dismissed. Consequentially, the result of the petitioner cannot be published.

P.K. Tripathy, J.

10. I agree.