

(1993) 11 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No. 3321 of 1993

Shivanna

APPELLANT

Vs

Karnataka Secondary Education Examination Board

RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:

Karnataka Secondary Education Examination Board Act, 1966 — Section 26, 33

Citation : (1993) ILR (Kar) 3289 : (1993) 4 KarLJ 538

Hon'ble Judges : S.B. Majmudar, C.J.; Raveendran, J

Bench : Division Bench

Advocate : G.S. Visveswara, for the Appellant; S.R. Nayak, Government Advocate for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majmudar, C.J.—We have heard the learned Advocate for parties. With the consent of the learned Advocate, this Appeal is treated to have been admitted and having been heard finally, disposed of by this Order.

2. The short question involved in this Appeal is, whether the appellant-student can be said to have passed the S.S.L.C. Examination conducted in the month of April, 1993. The appellant had obtained the following marks in each of the subjects.

Kannada

67 for 125

English

37 for 100

Hindi

11 for 100

Mathematics

43 for 100

General Science

39 for 100

Social Science

34 for 100

Total

231

3. The appellant was declared to have failed. He relied upon a Government Order, Annexure-"B", which stated that the candidates who have failed in Third Language in the S.S.L.C. Examination held in the month of March, 1993, shall be declared to have passed. The learned Single Judge before whom the Writ Petition was moved by the appellant for a declaration that he be declared to have passed the S.S.L.C. Examination on account of the Government Order, Annexure-"B", took the view that the Government Order could not be relied upon as it did not form part of the statutory regulation. The appellant's Writ Petition in W.P.No. 28516/93 was, therefore, dismissed. The learned Single Judge has disposed of that Petition along with a group of other Petitions with which we are not concerned. What weighed with the learned Single Judge was that the regulation already framed by the Board, according to the learned Single Judge, occupied the field and, therefore, the State could not issue any such order as Annexure-"B". It is difficult to agree with this line of reasoning adopted by the learned Single Judge. Section 26 of the Karnataka Secondary Education Examination Board Act, 1966, empowers the Examination Board to frame regulations not inconsistent with the Act. While Section 27 provides that no regulation made" u/s 26 shall have effect until it is approved by the State Government, Sub-section (1) of Section 33 provides that the State Government shall have the right to address the Board with reference to anything conducted or done by the Board and to communicate to the Board its views on any matter with which the Board is concerned. Under Sub-section (3) of Section 33, it is laid down that the Board shall report to the State Government such action, if any, as it proposes to take or has taken upon the communication, and shall furnish an explanation if it fails to take action. Sub-section (3) of Section 33 provides that if the Board does not within, a reasonable time take action to the satisfaction of the State Government, the State Government may, after considering any explanation furnished or presentation made by the Board, issue such directions consistent with the Act as it may think fit, and the Board shall comply with such directions. It, therefore, becomes clear that even if the Board might have made any regulations u/s 26, they are subject to the approval of the State Government. Therefore, the State Government has got paramount power to deal with any of the regulations proposed to be framed by the Board and until they

are approved by the State Government, they would have no effect. But even that apart, as per Section 33 of the Act, there is power of the State Government to address the Board with reference to anything conducted or done by the Board under the Act and as per Sub-section (3) of Section 33, appropriate directions also can be issued by the State Government consistent with the Act. Whether the candidates who have failed in the Third Language should be declared to have passed or not is not a question which is directly concerned with the mode and manner of taking the examination and the marks required for passing the examination and if the State Government in exercise of its power u/s 33(1) read with Section 33(2), issues any direction in this connection, it cannot be said that the said direction would be ultra vires the powers of the State Government under the Act. The learned Single Judge, therefore, with respect, was in error when he took the view that such a direction issued by the State Government as Annexure-"B" is contrary to Section 26 or any relevant provision of the Act. It is pertinent to note that as per Sub-section (2) of Section 26 of the Act, the Board can make regulations regarding the marks required for passing in any subject or the examination as a whole, and for exemption, credit or distinction in any subject. The passing marks in the subject of Hindi might have been laid down by the regulations, but that does not whittle down the powers of the State Government when it seeks to direct the Board not to consider the marks of the Third Language in S.S.L.C. Examination of a given year for the purpose of deciding whether the candidate has passed or not. Such a direction cannot be said to be inconsistent with the Act. Consequently, the Government Order, Annexure-"B" has to be given effect to. Once it is given effect to, it becomes obvious that the appellant is entitled to be declared to have passed the examination as he has already cleared two languages and the failure in the third language paper would not come in his way as per the Government Order, Annexure- "B". Even that apart, as submitted by the learned Counsel for the appellant, the Board also has passed a resolution regarding grace marks to be given to the concerned candidate for the examination in question and even that resolution of the Board would help the appellant. We do not base our Decision on this aspect of the matter, as this contention was not raised before the learned Single Judge. Consequently, it must be held that the appellant is entitled to have a declaration that he has passed the examination in question.

4. We direct respondent Nos. 1 and 2 to issue appropriate certificate to the appellant declaring him to have passed the examination in question. The Appeal is allowed accordingly. The Order of the learned Single Judge is, therefore, set aside and the Writ Petition is allowed accordingly.

5. Respondents Nos. 1 and 2 shall comply with this direction within 10 days from the date of the receipt of the copy of this order.