

(2006) 12 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (C) No's. 9522 and 9603 of 2006

Sidhartha Mishra and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

Binit Puspalak and Others Vs Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Citation : (2007) CLT 817 Supp

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

Bench : Division Bench

Advocate : Rakesh Sharma, S.R. Singh Samant, R. Patnaik, P.K. Behera and B.K. Tripathy, in W.P. C No. 9522/2006, Rakesh Sharma, S.R. Singh Samant, P.R. Patnaik, P. Behera, B.K. Tripathy and B.M. Patnaik, in W.P. C No. 9592 of 2006, B. Routray, P.K. Dash, D.K. Mohapatra, B.B. Routray, D. Routray, P.K. Sahoo and R.P. Dalai, in W.P. C No. 9603 of 2006, B. Routray, P.K. Dash, B.N. Satpathy, B.B. Routray, D. Mund and R.P. Dalai, in W.P. C No. 9683/2006, B. Routray, P.K. Dash, B.N. Satpathy, B.B. Routray, D. Mund and R.P. Dalai, in W.P. C No. 9684/2006, B. Routray, B.N. Satpathy, B.B. Routray and R.P. Dalai, in W.P. C No. 9685/2006, B. Routray, P.K. Dash, B.N. Satpathy, B.B. Routray, D. Routray and R.P. Dalai, in W.P. C No. 9686/2006, J.K. Rath, S.N. Rath and P.K. Rout, in W.P. C No. 9711/2006 and S.R. Patnaik, P. Patnaik, D. Pradhan and N.K. Senapati, in W.P. C No. 11020/2006, for the Appellant; Tarananda Patnaik and S. Patnaik for O.P. 3, J.K. Rath, D.N. Rath and S.N. Rath for O.P. 4 in W.P. (C) No. 9522/2006, Tarananda Patnaik and S. Patnaik for O.P. 3 in W.P. (C) No. 9592 of 2006, Tarananda Patnaik and S. Patnaik, in W.P. (C) Nos. 9603 and 9711 of 2006, Tarananda Patnaik, S. Patnaik and Bharati Dash for O.Ps. 1 and 2 in W.P. (C) Nos. 9683, 9684, 9685 and 9686/2006 and Tarananda Patnaik and S. Patnaik for O.P. 2 in W.P. (C) No. 11020/2006, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—In this batch of writ petitions the Petitioners sought for issuing a writ in the nature of mandamus directing the opp.parties to publish the result of the students who appeared All India Secondary School (Class-X) Examination, 2006 (hereinafter referred to as "AISSE") being sponsored by Children's

Paradise Public School, Badarukha under Dharmasala Police Station. As common question of law and facts are involved in these writ petitions, on the prayer and with the consent of the learned Counsel for the parties, they are taken up together and are being disposed of by this common judgment.

2. The name of the Petitioners in all the writ petitions, except in W.P.(C) No. 9711 of 2006, where the President and Managing Committee of Children's Paradise School are the Petitioners, were registered under the Central Board of Secondary Education (hereinafter referred to as "the CBSE") on 14.3.2005 and they filled up the forms to appear in AISSE, 2006. On 10.1.2006 a committee, being constituted by CBSE, conducted an enquiry to ascertain the eligibility of the Petitioner-students for their appearance in the said Examination and on completion of the enquiry Admit Cards were issued in their favour on 28.2.2006 and they appeared in the examination on due date, as regular students in Kendriya Vidyalaya, A.R.C., Charbatia. Except result of the Petitioner-students result of all other students appearing in the said examination was published by CBSE on 27.5.2006 and on query the Petitioners learnt that since the sponsoring school could not meet some queries, made by the CBSE, their result was withheld. Subsequently, they came to know that the sponsoring school met all the queries of the CBSE. As per the writ petitions, having permitted the Petitioner-students to appear in the examination the opp.parties were duty bound to publish their result. Hence the writ petitions.

3. The CBSE in its counter affidavit contended that on 14.9.2005 the then Principal of the Children's Paradise Public School submitted a list of 60 number of candidates to appear in the AISSE, 2006. On 21.9.2005 the new Principal of the school submitted another list of 46 candidates to appear the said examination. On scrutiny of both the lists by the CBSE, name of 20 candidates were found to be common. Thus, the actual number of candidates sponsored by the said school was 81. When such anomaly in the lists of candidates was detected the Regional Officer, CBSE, Allahabad, immediately ordered for constitution of an Enquiry Committee consisting of Sri U.C. Bodh, Assistant Secretary (confidential), Sri Gangaram, Assistant Secretary (Examination) and Sri Abnish Kumar, (Section Office) to verify the original records of the Children's Paradise Public School to ascertain the eligibility of the 81 candidates for their appearance in the AISSE, 2006. Accordingly an Enquiry Committee was constituted which enquired into the matter, but since the school authority produced incomplete records, the eligibility of those candidates could not be ascertained. However, keeping in view the future career of the candidates, the Regional Officer, CBSE, Allahabad again in consultation with the Controller of Examinations of the headquarters in Delhi constituted another Committee comprising of the Principal of Kendriya Vidyalaya, Cuttack, Assistant Secretary (Confidential) and Section Officer (Confidential), CBSE and R.O., Allahabad to inspect the aforesaid school to ascertain the eligibility of the said candidates. Accordingly the committee inspected the Children's Paradise Public School on 10.1.2006 and submitted their report stating that the school manipulated the

records and succeeded to get a number of outside candidates registered, not only in the current year but also in the preceding years. However, since very short time was left for the commencement of the AISSE, 2006. the Board provisionally allowed those 81 candidates to appear in the said examination, on condition that the original records of the school would be further verified and inspected to ascertain their eligibility. On strict scrutiny of the school records and keeping in view the provisions of the Examination Bye-Laws, only 17 candidates out of 81, were found eligible to appear in AISSE, 2006. Accordingly the result of the 17 candidates was published and those of the 64 ineligible candidates was withheld. It is the further case of CBSE that in the meantime the Principal of the school vide his letter dated 31.5.2006 requested the authorities of the Board for declaration of the result of the remaining 64 candidates. In response to it, the Controller of Examinations, headquarters, Delhi vide letter dated 8.6.2006 directed him for submission of complete school records relating to those candidates. On receipt of the said letter, Sri Prafulla Kumar Panigrahi, Director, Children's Paradise Public School, replied in writing on 9.6.2006 vide Annexure-1 in W.P.(C) No. 9522 of 2006 that out of 81 candidates, only 17 candidates were of his school. Again the members of the second committee inspected the records, made personal contact with the candidates and observed that out of 81 sponsored candidates, only 17 candidates were regular students of the said school. Hence the CBSE pressed to dismiss the writ petitions.

4. Learned Counsel appearing for the Petitioners submit that after going through the reports of the two Enquiry Committees when the CBSE allowed the Petitioners to appear in AISSE, 2006, now it cannot fall back and say that they were not eligible to appear in the said examination. They are estopped to say so, in view of the doctrine of promissory estoppel and accordingly they urged to allow the writ petitions. Learned Counsel for the opp.parties, per contra, submit that the first Enquiry Committee reported that the eligibility or otherwise of the 81 sponsored candidates could not be ascertained for want of production of complete records of the school. The second Committee in its report opined that the school manipulated the records and managed to get some outside candidates registered. So the name and number of eligible candidates being uncertain, keeping in view the future career of the candidates and due to paucity of time, the Board provisionally allowed those 81 candidates to appear in the examination, subject to condition that the original record of the school would be further inspected and verified to ascertain their eligibility. On further verification, when the 64 candidates were not found eligible as per the Examination Bye-Laws of the Board to appear in AISSE, 2006 the principle of promissory estoppel cannot be attracted. Accordingly learned Counsel for the opp.parties pressed to dismiss the writ petition.

The points for consideration are:

(i) Whether the Petitioner-students were eligible to appear AISSE, 2006 as regular candidates?

(ii) Whether the CBSE is duty bound to publish their result, even if they were not eligible to appear in the Examination only because it allowed them to appear therein?

5. Chapter-IV of the Examination Bye-Laws of CBSE deals with admission to examinations. Rule 12(iii) of the said Bye-Laws reads as follows:

12. Admission to Examinations: Regular Candidates.

All India/Delhi Senior School Certificate Examination and Secondary School Examination will be open to such regular candidates who have submitted his duly completed application for admission to the concerning examination, and or his name in the manner prescribed by the Board, along with the prescribed fee (vide Annexure-II), forwarded to the Controller of Examinations by the Head of the Institution/School with the following duly certified by such head:

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) that he is on the active rolls of the School.

(iv) xx xx xx xx"

Further, Clause (ii) of Rule 12.1 envisages that no affiliated school shall endeavour to present the candidates who are not on its roll nor will it present the candidates of its un-affiliated branch/schools to any of the Board's examinations. In the present case, as it was found by the Enquiry Committee and admitted to by the Director of the Children's Paradise Public School, none of those 64 candidates was on the roll of the school. So the said school ought not have endeavoured to present them to AISSE, 2006. As discussed earlier the second Committee in its report opined that the sponsoring school manipulated the records and succeeded to get a number of outside candidates registered. but since there was very short time left for commencement of the AISSE, 2006 and keeping in view the future career of the eligible students, the CBSE allowed all the 81 candidates to appear in the examination provisionally. So, it cannot be said that they allowed the Petitioners to appear in the examination without any fetter. The doctrine of promissory estoppel cannot be invoked to compel a party to do an act prohibited by law. Even if it is held that CBSE allowed the Petitioners unconditionally to appear AISSE, 2006, still then as it is against the Bye-Laws of the Board the Petitioners cannot avail the benefit of the doctrine of promissory estoppel.

In the cases, cited below, besides in many other cases, the Apex Court have deprecated the practice of allowing ineligible students to appear in the examination of the Board/University provisionally and then regularizing the same by taking a sympathetic view.

6. In the decision C.B.S.E. and Another Vs. P. Sunil Kumar and Others, the apex Court held:

Under the bye-laws of the Board, only regular students of affiliated schools with the Board are entitled to appear in the Secondary School Examination and the Senior Secondary School Examination conducted by the Board. Since the institutions in which the Respondent-students have prosecuted their studies are admittedly not affiliated to the Board but the students have been allowed to appear at the examination pursuant to the interim direction of the Court, which is in contravention of the rules and regulations of the Board, the question that arises for consideration is: Whether the High Court was justified in issuing these impugned directions? This question no longer remains *res integra*. This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularizing the same by taking a sympathetic view of the matter.

In the decision, *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, the apex Court held:

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." Again in the case of, *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, the apex Court held:

Occasional aberrations such as these, whereby ineligible students are permitted, under Court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to its further, the Courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the "Rule of Law" to a mockery, and promotes rather the "rule of Man.

In the case of *Regional Officer, CBSE v. Ku. Sheema Peethambaran and Ors.* (2003) 7 SC Cases 719 the apex Court held:

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 and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.

7. In the case at hand, the future career of the Petitioner-students may be affected to some extent if the writ petitions are dismissed, but at the same time, we cannot ignore the rules contained in the Bye-Laws of the Board and the

directive of the apex Court as quoted above.

In the result, the writ petitions are dismissed being devoid of merit.

P.K. Mohanty, J. 8. I agree.