

(1991) 04 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 3378 of 1990

Sridhar Samal

APPELLANT

Vs

Board of Secondary Education, Orissa

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Citation : AIR 1992 Ori 139

Hon'ble Judges : J.M. Mahapatra, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.C. Dash, for the Appellant; C.A. Rao, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Sridhar Samal, a scheduled caste youth, filed this writ application against the Board of Secondary Education, Orissa represented by its Secretary seeking to a writ of mandamus to direct the opposite party to supply his mark-sheet and provisional pass certificate of the Annual High School Certificate Examination held in 1982 within the time specified.

2. The relevant facts as stated in the writ application may be stated thus:

The petitioner was a student of the Lower Primary School and Middle English School at Choudwar till 1975. He was admitted in the Municipal High School, Choudwar in July, 1975 where he read up to 1978 in Classes VIII, IX and X. On account of poverty and illness he discontinued his studies from 1978 to 1981 and got himself admitted to Narendra Kumar Parida Ucha Vidyapitha. Maninathpur in July, 1981 in Class XI, he was sent up as a regular candidate of the school to appear in the Annual High School Certificate Examination of 1982 and took the examination from Bahudarada High School Centre. He was assigned the roll No. 49 M 147. When the results of the examination were published by the Board of Secondary Education, Orissa (for short, "the Board") the petitioner was declared to have passed in third division --vide extract of the result sheet, Annexure 3. He deposited a sum of Rs. 5/- with the Board for his mark sheet and a further sum

of Rs. 5/- for the provisional certificate on 6-7-82. He again deposited a sum of Rs. 10/- on 3-8-90 for getting the said documents. But the certificates have not been issued to him despite repeated approaches made to the concerned officials of the Board. The petitioner alleged that two other school mates of his, Bijoy Kumar Mandal having Roll No. 49 M 145 and Govinda Chandra Behara having Roll No. 49 M 150 whose certificates had not been issued initially received them in 1984. According to the petitioner, this was possible because of manipulations and offer of illegal gratification to the employees of the Board which the petitioner on account of his poverty could not afford. Having knocked at the doors of the Board several times without success the petitioner filed the writ application through the assistance of the Secretary, Legal Aid, Cuttack. It is the submission of the petitioner that having cleared the examination and the Board having declared his result "he is entitled to receive copies of the mark-sheet and provisional pass certificate, Hence the writ application seeking the relief noted earlier.

3. In the counter-affidavit filed on behalf of the Board it is admitted that the petitioner had appeared at the H.S.C. Examination, 1982 as a regular candidate of N.K.P.U. Vidyapitha and was declared to have passed in third division. It is stated that suspecting the genuineness of the candidates presented for Annual H.S.C. Examination, 1982 due to abnormal increase in the number of regular candidates presented by the Headmaster, N.K.P.U. Vidyapitha, the Headmaster was requested to produce records for verification by 4-5-82 before publication of results vide letter No. 5751 (4) dated 26-4-82 (Annexure A), Since the Headmaster did not comply with the request he was reminded by letter No. 5837-5842 (Annexure B) sent by registered post on 22-6-82 and was requested to produce the records by 26-6-82 failing which the results of the candidates presented through his School would be withheld. In spite of the said reminder when the Headmaster did not comply with the request, it was decided to withhold the results of the candidates of the School, but by that time the publication of provisional results of pass candidates was under process and the decision to withhold the results of the candidates of N.X.P.U. Vidyapitha could not be reflected in the booklet of provisional results of the Examination. Again on 30-6-82 the Headmaster was telegraphically informed to produce the records by 10-7-82 or else the applications of the candidates will be treated as cancelled (Annexure C). In response to the said telegraph the Headmaster produced some transfer certificates including that of the petitioner and stated that other records like admission register, attendance register, collection of fees register etc. were not available since they had been damaged in the last cyclone (vide Annexure D). On receiving the transfer certificates from the Headmaster, the officials of the Board verified the genuineness of the documents through the concerned schools from which they were obtained. Out of 107 candidates it was found that transfer certificates of 51 candidates were genuine and accordingly their results were published; with respect to the rest of the candidates the Headmaster could not produce the transfer certificates of 21 candidates and transfer certificates of 35 candidates were found to be tampered/forged. Regarding the petitioner, the case

of the Board is that it was found that while he was reading in Class X during the session 1978-79 in the Municipal High School, Choudhwar he left the school on 31-12-78 and took T. C. on 7-11-79. Thereafter during the session 1981-82 he got himself admitted in Class XI of N.K.P.U. Vidyapitha, thereby forging the transfer certificate to show that he had passed Class X from Municipal High School and also forging the date of birth to be 9-2-66 instead of 24-8-61. On the above ground the results of the remaining candidates including the petitioner were cancelled and the decision was communicated to the Headmaster vide notification No. 69/753 dated 13-1-84 (Annexure E). In these circumstances, it is contended by the opp. party that the question of issuing copies of mark-sheet and pass certificate did not arise. Regarding the other two candidates named in the writ petition it is stated in the counter-affidavit that on verification of the school records it was ascertained that Gobind Chandra Behera was a genuine candidate and therefore his result was published by the Board. The result of Bijay Kumar Mandal like that of the petitioner was withheld, but erroneously the Headmaster of the School appears to have issued the mark sheet to him (Annexure 5).

Though rejoinders to the counter, affidavit in reply to the rejoinder and further affidavit have been filed by the parties, the averments therein are arguments in support of the respective cases of the Parties and certain facts which are not very relevant for the present purpose.

4. The main thrust of the arguments of Shri S. C. Dash appearing for the petitioner was that the impugned decision of the Board was vitiated due to non-compliance with the principle of natural justice and the Board was not competent to cancel the petitioner's result for the reasons set out in the counter-affidavit.

Shri C. A. Rao appearing for the opp. Party Board contended, on the other hand, that the writ application should be summarily rejected on the ground of delay and that the Board had ample power to take the decision in question. He placed reliance on Regulations 41 and 42 of Chapter X of the Regulations of the Board of Secondary Education, Orissa (for short, "the Regulation").

5. From the case of the parties discussed earlier, the factual positions that emerge are that the petitioner was admitted to the Annual High School Certificate Examination conducted by the Board in 1982 as a regular candidate of the N.K.P.U. Vidyapitha. He was assigned the Roll No. 49 M 147 and issued the admit card. He appeared at the said examination and when the results were declared by the Board he was declared to have passed in third division, On suspicion whether he was a genuine student of the school the Board directed the Headmaster to submit his transfer certificate, admission register and other relevant records; the Headmaster failed to comply with the request of the Board; on account of such default, the Board decided to withhold the result of the petitioner. Subsequently on verification of the transfer certificate the Board on enquiry ascertained that he had jumped one class while getting himself admitted to Class XI on N.K.P.U. Vidyapitha in 1981 and there was a discrepancy in the

date of birth mentioned in the two transfer certificates issued to him. From these materials the Board concluded that the petitioner had forged the transfer certificates and his admission to Class XI in N.K.P.U. Vidyapitha was irregular and therefore cancelled his result,

6. From the facts discussed above it is manifest that the reason for cancellation of his result was not based on any misconduct by the petitioner during the examination. It is also clear that the alleged irregularities did not relate to his admission to the Board Examination but related to admission in Class XI of N.K.P.U. Vidyapitha. The Board on being satisfied about his eligibility to appear at the Annual High School Certificate Examination admitted the petitioner to the said examination, assigned him a roll number and issued him an admit card. Again after evaluation of the answer papers on being satisfied that he was eligible to be declared to have passed the examination declared the result accordingly. No material has been placed by the Board to show that the petitioner was notified about the decision to withhold his result or the enquiry said to have been held into the alleged irregularities and the decision regarding cancellation of his result. The entire exercise was made behind his back. The allegation of forgery is a serious charge. If the authorities of the Board wanted to probe into the matter and establish a case of forgery against the petitioner they ought to have initiated appropriate proceeding, given a notice to the petitioner and after obtaining his explanation, if any, taken a decision on due application of mind and on proper consideration. No such procedure has been followed. By some enquiry, details of which have not been produced before us, it is contended that the concerned authorities of the Board satisfied themselves that the petitioner committed forgery of his transfer certificate. It is relevant to note here that the alleged transfer certificate issued by Laxminarayan High School, Khadimahara (Annexure F) to the petitioner has been denied by him. He asserted that the said certificate does not relate to him. It was therefore necessary for the authority to enquire whether the petitioner had at all utilised the certificate (Annexure F) to get admission to N. K. P. U. Vidyapitha and for that purpose it was necessary to give him an opportunity to the petitioner to have his say. No such enquiry was admittedly held. Concededly the petitioner was not aware of the suspicion of the Board, its queries to the Headmaster of the School and the enquiries made through its own agency. All on a sudden he was visited with the penal consequence of having his result cancelled for the alleged irregularity at the time of admission in Class XI in the school in which he admittedly studied as a regular student. On the premises discussed above it is our considered view that the Board's decision to cancel the result of the petitioner was vitiated due to non-compliance with the principle of natural justice. Further, in the facts and circumstances of the case, the Board having admitted the petitioner to the examination in question and having declared him to have passed is estopped from going back on the position and the decision to cancel his result is therefore vitiated.

7. As noted earlier, reliance was placed by the Board on Regulations 41 and 42 in

Section VI of Chapter X of the Regulations as the source of its power. Regulation 41 makes provisions regarding conduct of examination. Under Sub-regulation (a) of the said Regulation it is provided that the Examination Committee will be competent to frame such rules and regulations as may be necessary for "efficient conduct of the examination and shall appoint officers besides the Superintendent and Deputy Superintendent of centre for supervision, inspection and surprise check of examination centre. Sub-regulation (b) of the said Regulation provides that the Examination Committee where it is satisfied on the basis of reports received from the Superintendent, Deputy Superintendent and/or supervisors, inspectors and observers appointed for the inspection of examination centres that the examination has not been conducted as per rules may take steps as considered appropriate by the committee including cancellation of the examination wholly or in part. Sub-regulation (c) which has been added by amendment provides that in case the Examination Committee decided to cancel an examination wholly or in part under Sub-regulation (b), no further examination shall be conducted for the cancelled paper(s) and results of the candidates of such cancelled centres shall be processed taking the marks of the cancelled paper(s) as "0" (zero). On bare reading it is clear that this Regulation has no application to the present case. As noted earlier, the irregularity allegedly committed by the petitioner does not relate to the examination conducted by the Board.

Regulation 42 contains rules relating to discipline of candidates, sub-regulation (a) of the said Regulation provides, inter alia, that any candidate who gains admission to the examination by suppressing any fact or facts or of making or causing to be made a false statement in his/her application form or produces forged documents, is liable to have his/her examination invalidated and also to be debarred from appearing again for the examination for such term of years as the Examination Committee may think fit, according to the nature of offence. Sub-regulation (g) which was added by amendment in January, 1984 provides that the school or schools while presenting candidates to any Examination of the Board, if found to have supplied false record, false admission or fake transfer certificate or certificates, the Managing Committee of the concerned school(s)/ Government will be asked to remove the Headmaster(s) failing which recognition of the school(s) will be withdrawn. The other provisions in the Regulation relate to misconduct of candidates during the examination and the consequence of the same.

The provision in sub-regulation (a) has also no application to the present case since it is not the case of the Board that the petitioner gained admission to the examination by suppressing any fact or facts or of making or causing to be made a false statement in his application or produced forged documents to the Board. The allegation, as discussed earlier, is that while getting himself admitted in the N.K.P.U. Vidyapitha the petitioner submitted a transfer certificate which contained certain erroneous factual statements. It is fairly stated by Shri Rao that there is no other provision in the Regulation which empowers the Board to

deal with a situation as in the present case. The resultant position therefore is that the Board had no statutory or other authority to pass the order cancelling the petitioner's result for the reason and in the circumstances stated by it.

8. There is another aspect of the matter which needs consideration. From the documents filed on behalf of the Board, it appears that one of the reasons for the decision to withhold the result of the petitioner and to cancel it was on account of the default of the Headmaster to produce in time the relevant records and registers called for by the Board. No material has been placed before us to show that any action has been taken against the Headmaster for his default. The petitioner had no role to play in this aspect of the matter but by the decision taken by the Board he is the only one who has suffered. The decision therefore, to say the least, was arbitrary, unfair and unjust. We are conscious of the position that strong action is necessary to be taken by the Board to maintain strict discipline in matters relating to examinations conducted by it and if there is some basis for the decision taken by the Board, Courts should maintain it for the sake of maintaining discipline and credibility of the system. But that does not mean that the Board can be left to ride rough-shod in all matters, particularly when it concerns future of a student. The satisfaction of the Board regarding culpability of the examinee concerned if based on a fair and proper enquiry is not to be interfered with, but if the enquiry itself was vitiated on account of non-compliance with the principle of natural justice and was unfair and arbitrary, interference by the Court becomes necessary.

9. The learned counsel for the Board urged that the writ petition should be dismissed on the ground of delay. Considering the facts and circumstances of the case we are unable to accept this contention. The petitioner had been declared to have passed the examination; the decision to withhold his result or to cancel the same was not intimated to him; there is no material produced to show that the Headmaster of the School to whom the Board is stated to have sent intimation of its decision communicated it to the petitioner; the petitioner had repeatedly deposited requisite fees for getting copies of the mark sheet and provisional pass certificate; no certificate was issued to the petitioner and no intimation was also given to him why it was not issued. As stated in the writ petition, the petitioner, a poor Harijan boy, did not have sufficient means to rush to the Court challenging the inaction on the part of the Board. In these premises, we are not inclined to deny relief to the petitioner merely on the ground of delay.

10. On giving our anxious consideration to the entire matter, it is our considered view that the decision taken by the Board to cancel the result of the petitioner is unsustainable and has to be quashed. A similar view was taken by this Court in O.J.C. No. 412 of 1990 (Prahallad Chandra Mohanty v. Board of Secondary Education, Orissa) decided on 6-12-90.

Accordingly, the writ application is allowed, the decision to cancel the petitioner's result is quashed and the opposite party is directed to issue mark-sheet and certificate to the petitioner on the basis that he had passed the Annual H.S.C.

Examination, 1982. There will be no order for costs of this proceeding.

J.M. Mahapatra, J.

11. I agree.