

(1991) 07 OHC CK 0016

In the Orissa High Court

Case No : Original Jurn. Case No. 3008 of 1991

Subhash Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 34
Constitution of India, 1950 — Article 226

Citation : AIR 1992 Ori 44

Hon'ble Judges : S.K. Mohanty, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R.C. Mohanty, for the Appellant; P.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The Secretary of Prasannamani College of Physical Education & Yoga at Tigriria in the district of Cuttack filed an application in a disposal of writ application O.J.C. No. 706 of 1991 filed at his instance for permitting the students of the said College to appear at the B.P.Ed. Examination of the year 1991. The Government had granted concurrence to the College for B.P.Ed. Course only for 1988-89 and as so further concurrence was granted for the next year 1989-90 and necessarily as the University did not grant affiliation, a writ application was filed in this Court in O.J.C. No. 1830 of 1990 with the prayer that the students may be permitted to appear at the B.P.Ed. Examination of the year 1990. In that writ application, a miscellaneous application being filed for grant of interim relief, the learned Vacation Judge directed that the students who underwent the Course shall be allowed to take the examination but the results of the said examination shall not be published until further orders. Ultimately the writ application was disposed of by order dated 31-7-1990 directing the petitioner to move the Government by filing a representation for grant of further concurrence and Government was directed to dispose of the representation at an early date. In accordance with the direction, representation having been filed,

but not being disposed of, the petitioner again approached this Court in O.J.C. No. 706 of 1991. That application was disposed of at the admission stage on 14-2-1991, the operative part of the order being to the following effect:--

"..... we dispose of the writ petition with the direction to the opposite party No. 1 to dispose of the representation in Annexure-1 with a speaking order, if not already disposed of, within a period of one month from the date of receipt of writ from this Court. The other question raised by the petitioner in this case as regards the demand of the University to examination fees and other dues in respect of the students who appeared in the examination 1990-91 may be agitated in a separate petition."

Thereafter on 10th of May, 1991, the petitioner filed an application in the aforesaid O.J.C. No. 706 of 1991 for permission to appear at the B.P.Ed. Examination of 1991 which was registered as Miscellaneous Case No. 2890 of 1991. On 17-6-1991, a Bench of this Court directed that the miscellaneous case be treated and registered as a separate writ petition. By an interim order, the Court permitted the students of the College for appearing at B.P.Ed. Examination of 1991 and further directed that the writ application be listed after summer vacation and that is how the said petition being registered as O.J.C. No. 3008 of 1991 has been listed before us for hearing.

2. The prayer in the writ application is that the candidates of the college may be permitted to appear at the B. P. Ed. Examination of 1991 and their forms be accepted without demand for any fees other than given in the notification under Annexure-4. The main ground on which the aforesaid prayer has been made is that the petitioner's representation not having been disposed of with a speaking order and no reply from the Government having been received and students having taken admission to the B.P.Ed. Course in July, 1990, they should not be debarred from appearing at the B.P.Ed. Examination of 1991. It further transpires from the assertions made in the writ application that the State Government by order dated 5-2-1991 informed the petitioner that no concurrence could be given to any of the private Training Colleges. Being aggrieved by the said communication, the petitioner moved this Court in O.J.C. No. 1239 of 1991 and a Bench of this Court disposed of the writ application by judgment dated 1-5-1991 wherein it has been categorically held that in view of Section 7-E of the Orissa Education Act, the State Government has no jurisdiction to accord recognition to the college in respect of B.P.Ed. Course and the Utkal University was prohibited from granting affiliation to the College in respect of the privileges of the University so far as B.P.Ed. Course is concerned. It is really unfortunate to notice that though this judgment was delivered on 1-5-1991, but the petitioner while filing the present writ application on 10-5-1991 made an assertion in paragraph-3 to the effect:--

" Aggrieved by this order the petitioner filed O.J.C. No. 1239 of 1991 challenging the Government order and it has been disposed of by the Hon"ble Court on 1-5-91 restoring the concurrence to B.P.Ed. Course only....."

There has thus been a deliberate suppression in the present application with regard to the decision of this Court in O.J.C. No. 1239 of 1991 relating to B.P.Ed. Course which has been dealt with in paragraph-3 of the said judgment. Obviously not being aware of the earlier direction of this Court in O.J.C. No. 1239 of 1991, wherein this Court has held that State Government has no jurisdiction to accord recognition to the college in respect of B.P.Ed. Course and the University is prohibited from granting affiliation to the College in respect of the privileges of the University so far as B.P.Ed., Course is concerned, which is because of deliberate suppression made by the petitioner, a Bench of this Court permitted the institution as an interim measure to present its students for the B.P.Ed. Examination of 1991. It is indeed unfortunate that an interim order has been snatched from this Court by deliberately suppressing the relevant portion of an earlier decision and, therefore, the petitioner cannot claim any equity on the basis of the interim order passed by this Court on 17-5-1991. This Court was misled on 17-5-1991 on account of the suppression referred to earlier and, therefore, notwithstanding the said interim order dated 17-5-1991, we are of the considered opinion that the institution has no right to present its students for the B.P.Ed. Examination of 1991 nor the students are eligible to appear at the said examination of the year 1991. To that extent, the earlier interim order dated 17-5-1991 stands revoked.

3. In view of the categorical finding and the direction of this Court in O.J.C. No. 1239 of 1991 with regard to the B.P.Ed. Course of the petitioner's institution the question of permitting the students to appear at the B.P.Ed. Examination does not arise. In the said judgment there has been a categorical pronouncement that the State Government has no jurisdiction to accord recognition to the petitioner's college in respect of B.P.Ed. Course and further the University has been prohibited from granting affiliation to the College in respect of the privileges of the University so far as B.P.Ed. Course is concerned. This judgment and directions contained therein so far as B.P.Ed. Course of the petitioner's institution is concerned would operate as *res judicata* and it would not be open for this Court again to re-consider the same and come to a different conclusion. That apart, in view of our decision in O.J.C. No. 1142 of 1991 (*Principal, Sikhaka Mohasangha Institute of Education (Physical Education), Khursa v. Utkal University*), disposed of today by us, Section 7-E of the Orissa Education Act would stand as a bar and consequently the petitioner's College cannot claim to get recognition from the Government or affiliation from the University. In the premises, as aforesaid, the writ application fails and is dismissed. The interim order passed on 17-5-1991 is recalled.

4. Since the petitioner obtained an interim order by deliberate suppression of a portion of the judgment of this Court, we think it appropriate to grant exemplary costs against the petitioner and accordingly direct that the petitioner shall pay a cost of one thousand rupees to be divided half and half amongst opposite parties 1 and 3.

K. Mohanty, J.

5. I agree.