

**(2024) 03 OHC CK 0226**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 18706 Of 2015**

Surekha Samal & Ors

APPELLANT

Vs

State Of Orissa & Others

RESPONDENT

**Date of Decision : 28-03-2024**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Orissa Higher Secondary Education Act, 1982 — Section 2(i), 2(j)

**Citation : (2024) 03 OHC CK 0226**

**Hon'ble Judges : Sashikanta Mishra, J**

**Bench : Single Bench**

**Advocate : Mahendra Kumar Sahu, S.K. Rath, S.N. Pattnaik, D.N. Rath, P.K. Rout, P.K. Behera**

**Final Decision : Allowed**

## Judgement

Sashikanta Mishra, J.

1. The order dated 21.08.2015 passed by the Collector-cum- Chief Executive Officer, Zilla Parishad, Bhadrak in Misc. Case No. 03/2014 pursuant to direction of this Court in W.P.(C) No. 5077 of 2014 and batch is under challenge in the present writ application.

### FACTS

2. An advertisement was issued by the Collector, Bhadrak on 08.12.2011 inviting applications from eligible candidates for engagement as Sikshya Sahayaks. The educational qualification required was, the candidate must have passed +2 examination in Science/Arts/Commerce or its equivalent examination declared by appropriate authority and C.T. training. Pursuant to such advertisement, the petitioners submitted their applications. A merit list was prepared for all categories of candidates. Petitioner No.1 was placed at serial No. 11 of the merit list, Petitioner No.2 at serial No.4 of UR merit list and petitioner No.3 at serial No. 1 of SEBC female list. In the initial provisional merit list of different categories,

vocational course qualified candidates were not included, for which some of them approached this Court in W.P.(C) No. 6438 of 2011 and 6458 of 2011. By order dated 18.03.2011, a coordinate Bench of this Court disposed of the writ applications directing that the cases of the candidates (petitioners therein), who have completed +2 Vocational course with C.T. training shall be considered by the Collector-cum-CEO, Zilla Parishad and the provisional list of selected candidates already published shall be revised accordingly. Pursuant to such order, a fresh merit list was prepared including the candidates with Vocational qualification. At this stage some of the candidates similarly situated as the petitioners submitted grievance before the authorities (opposite party Nos. 2 and 3) that the Vocational candidates and Upasastri candidates had obtained those certificates by suppressing the fact of their passing +2 Arts/Commerce/Science examination earlier, which amounts to fraud. Further, some bonafide candidates having Vocational qualification approached this Court in W.P.(C) No. 7478 of 2011, which was disposed of by order dated 24.03.2011 directing the District Project Coordinator, SSA, Bhadrak to consider and dispose of the representation submitted by those petitioners within three weeks. Accordingly, opposite party Nos. 2 and 3 conducted enquiry into the allegations regarding submission of fake certificates but without completing the same, published a second merit list including their names with the remark that enquiry is pending against the Vocational and Upasastri candidates. Being aggrieved, some similarly situated persons including the petitioners approached this Court in W.P.(C) No. 18256 of 2011, which was disposed of by order dated 15.07.2011 with direction to the authorities to complete the enquiry and thereafter consider the representation of the petitioners in the light of the enquiry report. It was however, made clear that the authorities shall not appoint the candidates against whom the enquiry is pending till it is complete. Notwithstanding such order, the opposite party Nos. 2 and 3 asked the Vocational/ Upasastri candidates to furnish an undertaking that they had not passed +2 Arts/Commerce/Science before obtaining Vocational/ Upasastri certificates. The concerned candidates submitted individual undertakings that they had not passed any other +2 course examination other than Vocational/ Upasastri examination and if such undertaking is found to be incorrect they shall be disengaged from the post of Sikshya Sahayak. As such, opposite party Nos. 2 and 3 issued conditional engagement orders in favour of those candidates making it subject to the order of this Court in W.P.(C) No. 7478 of 2011 with further stipulation that if any irregularity is detected in future, the engagement would be terminated. The enquiry proceeded thereafter and on its completion it was established that all those candidates had passed +2 examination earlier but had suppressed such fact to further prosecute Vocational/ Upasastri courses in contravention of the CHSE Act and Regulations and Sanskrit University Regulations. Accordingly, all six candidates including the private opposite party Nos. 4, 5 and 6 were issued with second show cause notices for disengagement. Said private opposite parties approached this Court in W.P.(C) No.32024 of 2011, in which an interim order of protection was granted. At this stage, the petitioners and similarly placed candidates, who had been

deprived of appointment because of the inclusion of the Vocational/Upasastri candidates filed independent writ applications challenging the engagement of the so called fake candidates. Several such writ applications having been filed, all were clubbed together and finally disposed of by a common order passed by this Court on 05.05.2014 in W.P.(C) No. 5077 of 2014 and batch. After taking note of the relevant facts, a coordinate Bench of this Court, inter alia, held as follows:

"In view of the above, the Collector-cum-C.E.O. S.S.A. Bhadrak is directed to take a decision by taking into consideration the show cause reply along with the enquiry report after supplying copy of the enquiry report to the petitioners and affording reasonable opportunity of hearing to them.

It is needless to mention that if the petitioners have committed fraud by submitting the +2 Vocational course certificates contrary to the C.H.S.E. Act and the Regulations then they shall be disengaged and consequently the merit list shall be recast. The entire exercise shall be completed within a period of three months from the date of receipt of the certified copy of this order.

However this Court has not expressed any opinion on the merit of the case." [Emphasis added]

Pursuant to such order, the petitioners and the Vocational/ Upasastri candidates including the private opposite parties appeared before the Collector and participated in the hearing. After considering the contentions raised by the parties, the Collector vide order dated 21.08.2015, copy of which is enclosed as Annexure-12, refused to interfere in the matter by holding that even though there is evidence of suppression of facts by the Vocational/ Upasastri candidates but the examination conducting authority had not cancelled or withdrawn the certificates issued in their favour. Furthermore, those persons had put in around four to five

years of service. Assailing the order of the Collector, the petitioners have approached this Court seeking the following relief:

"Under the above facts and circumstances of the case, it is humbly prayed that this Hon'ble High Court be pleased to allow the writ application by granting following reliefs-

A. An appropriate writ/writs be issued quashing the impugned order under Annexure-12 and in consequence thereof the conditional engagement orders be declared illegal and arbitrary.

B. An appropriate writ / writs be issued to recast the merit list by excluding the fake Vocational and Upasastri candidates those have obtained engagement by suppressing the material facts as described above and thereafter necessary direction be made to engage the petitioners as Sikshya Sahayak with all benefits at par with others notionally.

(C) Or in alternative, any other writ(s), direction(s), order(s) be issued as this

Hon'ble court may deem fit and proper"

3. Counter affidavit has been filed by the opposite party Nos. 2 and 3 seeking to justify the impugned order. It was reiterated that the certificates issued by the Council of Higher Secondary Education, Odisha or Shri Jagannath Sanskrit University, Puri in favour of the Vocational/Upasastri candidates had not been cancelled and that the selection committee cannot ignore the certificates nor has authority to cancel the same.

4. Counter affidavit has also been filed on behalf of private opposite party No.4. It is stated that the certificate issuing authority not having cancelled the certificate issued in her favour, the opposite party No.3 cannot declare the same as illegal and void. Moreover, the restriction regarding appearing of candidate in Vocational examination after passing +2 examination came in the year 2011 whereas she had obtained such qualification in the year 2008. In any case, having already issued a certificate it would not be permissible for the authority to cancel/withdraw the certificate as the law of estoppel would apply.

5. In the rejoinder filed by the petitioners it has been stated that the candidates in question are guilty of wilful suppression of fact, which was accepted by the Collector and therefore, it was not proper for him to not interfere in the matter. It was clearly proved that the private opposite parties had submitted false undertakings, which amounts to fraud.

6. Heard Mr. M.K. Sahoo, learned counsel for the petitioners; Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State and Mr. D.N. Rath, learned counsel appearing for the private opposite party No.4.

7. Mr. Sahoo forcefully argues that having accepted that Vocational/Upasastri candidates had suppressed material facts and had submitted false undertakings only for the purpose of getting engagement as Sikshya Sahayak, it was not open to the Collector to not interfere in the matter. Referring to the reasoning adopted by the Collector for his disinclination to interfere in the matter, Mr. Sahoo would argue that wilful suppression of facts and submission of false undertakings amounts to playing fraud on the authorities, which can never be countenanced in law. As such, the engagement orders issued in favour of these candidates are null and void. It is for these illegal appointments that bonafide candidates like the petitioners were deprived of their legitimate right of being engaged as Sikshya Sahayaks at the relevant time.

8. Mr. S.N. Pattnaik, learned Addl. Government Advocate would argue that the Collector only found that the candidates had submitted false undertakings but the concerned authorities had not cancelled/withdrawn the certificates issued in their favour. Whether the certificates were required to be cancelled/withdrawn is a matter to be decided by the certificate issuing authority but not the authority conducting selection of candidates for Sikshya Sahayaks. According to Mr. Pattnaik therefore, the Collector on equitable considerations rightly refused to interfere in the matter as the candidates in question have in the meantime

rendered five to six years of service.

9. Mr. D.N. Rath, learned counsel for opposite party No.4 submits that there was no restriction at the relevant time for a candidate to obtain Vocational course after having passed +2 examination. Such restriction came only in the year 2011. Mr. Rath further submits that even assuming that the candidates (private opposite parties) had submitted any wrong undertaking, the same cannot nullify their certificates as long as the same have not been withdrawn/cancelled by the appropriate authority.

10. The basic facts of the case as narrated in the writ application are not disputed. The enquiry was conducted by the Collector in pursuance of direction of this Court in W.P.(C) No.18256 of 2011. Further, the Collector was directed to consider the matter by hearing all the concerned parties and on consideration of the enquiry report. The enquiry report as such, has not been brought on record by any of the parties but attention of this Court has been drawn to the undertakings given by the private opposite parties, copies of which are enclosed as Annexure-4 series. In each of these undertakings the executants have solemnly affirmed that they have not passed +2 examination before appearing at the Vocational/ Upasastri examination. This undertaking was found to be false as would be evident from a perusal of the impugned order passed by the Collector. In this regard, the finding of the Collector is as follows:

"(i) The students obtaining the Vocational certificates after completing +2 ARTS/ Science/Commerce or concurrently having two courses and obtaining certificates. But their certificates have not been withdrawn or cancelled by the competent authorities."

The Collector further held as follows:

"It is a fact that, the successful candidates have given an undertaking that they have not passed the +2 ARTS/Science/Commerce stream prior to the Vocational Course. But subsequent arguments and production of documents show that this is not correct and there is suppression of facts. But this is not enough to disqualify the successful candidates and declare their recruitment as void.

(emphasis supplied)

It is therefore, clear that the Collector had accepted the factual position that the private opposite parties had suppressed the fact of passing +2 examination prior to the Vocational course. At this stage, it would apposite to consider whether it was permissible under the relevant Rules/Regulations for the private opposite parties to have acquired Vocational qualification after completing +2 course.

11. Mr. Rath, learned counsel appearing for the private opposite party No.4 has referred to the CHSE Regulations to argue that the prohibition came in the year 2011, whereas the private opposite parties had acquired such qualification prior to that. Mr. Sahoo, learned counsel for the petitioner on the other hand with reference to the Odisha Higher Secondary Education Act, 1982 submits that a

Higher Secondary course covering a period of two years can be obtained immediately following the High School Certificate course. This also includes Vocational course. This implies, both Higher Secondary course (+2)/Vocational course can only be acquired after High School Certificate course, and therefore, are of the same level. In such view of the matter, Vocational course, which itself is a Higher Secondary course cannot be obtained after passing the +2 examination, which is also a Higher Secondary course. In this regard it would be profitable to refer to Section 2(i) and 2(j) of the Orissa Higher Secondary Education Act, 1982, which are quoted hereinbelow:

"2(i) – "Higher Secondary Course" means course "immediately" following the High School Certificate Course and covering a period of two academic years which is provided for either in a College or a Higher Secondary School and includes Arts, Science, Commerce and Vocational Courses".

2(J)- "Higher Secondary Education" means such general and Vocational Education forming in itself a complete purposive whole, which immediately follows Secondary Education as has been defined in the Orissa Secondary Education Act 1952 and immediately "precedes" a stage of education controlled by any university."

12. Further, Regulation, 107 of the Odisha Higher Secondary Education Regulation, 1982 provides that only a registered student is allowed to appear in one of the examinations for not less than completion of two academic years after passing HSC Examination. Regulation 109 provides that no student shall be admitted to an institution beyond six weeks from the date of publication of the HSC result.

13. In the case of Somasnata Rath vs. State of Odisha and others W.P.(C) NO. 7031 OF 2016, DECIDED ON 12.05.2016 a coordinate Bench of this Court had the occasion to deal with a similar matter with reference to the Regulations of Shree Jagannath Sanskrit Viswa Vidyalaya and held that a candidate after qualifying +2 Arts/Science/Commerce cannot take admission into Upasastri course and that Upasastri course is equivalent to +2 Arts. Another Coordinate Bench, in the case of Basudev Guru & Ors. vs. State of Odisha & Ors. W.P.(C) NO. 16810 OF 2016, DECIDED ON 21.02.2024 held that as the petitioners therein had acquired +2 Vocational course after passing the +2 Arts course cannot use such qualification to their benefit. Thus, there seems to be no dispute with regard to the legal position that under the Regulations of the CHSE, +2 course is equivalent to Vocational/ Upasastri course and therefore, a candidate having passed in one cannot acquire the qualification in the other. Both are mutually exclusive. Of course a candidate, who fails in the +2 examination can acquire Vocational qualification but a pass candidate cannot. Thus, the certificates issued to the Vocational/ Upasastri candidates including the private opposite parties in the present writ application being contrary to law have no legal force and cannot therefore enure to their benefit. It is well settled that a certificate obtained in contravention of the Regulations/ Rules can have no legal

sanctity.

14. It has been argued at length that the private opposite parties could manage to obtain the Vocational certificates by suppressing the fact of their passing +2 examination and by obtaining duplicate transfer certificates from the institutions where they had appeared for the High School Certificate examination. This Court need not enter into this controversy or render any factual finding thereon as it has already been held that irrespective of the manner in which the private opposite parties managed to obtain the Vocational/ Upasastri certificates, the same can have no legal sanctity.

15. Added to the above is the question of submission of false undertaking, which according to the petitioners is an act of fraud. What amounts to fraud is no longer a matter of debate. A deliberate misrepresentation/ suppression of facts resorted to for obtaining any benefit amounts to fraud. The oft-quoted observation of the Supreme Court in the case of S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1, are noteworthy.

"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

[Emphasis added]

16. The ratio of S.P. Chengalvaraya Naidu (supra) has been relied upon in several decisions. Further, the maxim "fraus et jus nunquam cohabitant"- fraud and justice never dwell together - cannot be lost sight of. If a person guilty of committing fraud is granted the benefit of such act, it would tantamount to perpetuating the illegality.

17. Coming to the impugned order, this Court observes that the Collector has

accepted that the candidates in question had suppressed material facts and had submitted false undertakings but then by adopting a strange reasoning laced with highly misplaced sympathy for the wrongdoers, the Collector withdrew his hands off the matter. As a quasi-judicial authority it was incumbent upon the Collector to exercise the lawful authority conferred upon him to set right the wrong. Sadly the Collector chose to reward the wrong doers apparently on equitable considerations.

18. It is well settled that once a fraud is proved, it will deprive the person of all advantages or benefits obtained thereby. This Court has already held that the Vocational/ Upasastri certificates obtained by the private opposite parties can have no force of law and therefore, notwithstanding the fact that they have not been withdrawn/cancelled by the concerned authority, the same cannot be taken into consideration.

19. In the case of Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education (2003) 8 SCC 311, the Supreme Court held that non-cancellation/withdrawal of the certificates by the concerned authority will not raise any equity in favour of the certificate holders in this case and therefore, no relief can be granted to them in equitable grounds. This Court further finds that the Collector has gone on to refer to the human nature to justify the production of one of the two certificates possessed by the private opposite parties in order to take the benefit of employment. The Collector held as follows:

“Every Govt. Servant/Employee/Job Holder of this country is considered to be a privileged person. If one gets a Govt. Job/Service and thereby secures his daily bread it is like enjoying the early dawn after coming out of the perpetual groom. When he/she comes so nearer to get a Govt. job/service, it is very natural that he/she has not smart enough to declare the true facts”

20. Having himself held that the concerned candidates were guilty of suppression of facts, the Collector still proceeded to applaud them as ‘smart enough’ for doing so. This Court refrains from saying anything more in this aspect. It would suffice to say that such absurd reasoning cannot ever be countenanced in law.

21. Thus, from a conspectus of the analysis of facts and law and the discussion made hereinbefore, this Court finds that the private opposite parties having suppressed material facts before the appropriate authority at the relevant time could not have been selected for appointment and actually appointed. In the process, the fate of the bonafide candidates like the petitioners was sealed. This Court therefore, has no hesitation in holding that the impugned order cannot be sustained in the eye of law.

22. In the result, the writ petition is allowed. The impugned order under Annexure-12 is hereby quashed. The opposite party Nos. 2 and 3 are directed to recast the merit list by excluding the Vocational/ Upasastri candidates (opposite party Nos. 4, 5 and 6) and by issuing appropriate order of engagement in favour



of the petitioners either as Sikshya Sahayaks or in any equivalent post without any further delay and in any case, not later than four months.

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