
(2006) 05 OHC CK 0004
In the Orissa High Court
Case No : Writ Petition (C) No. 9262 of 2004

Tarak Nath Sasmal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Education Regulations, 1991 — Regulation 5, 5(1), 5(2), 5(3), 5(4)

Citation : (2006) 05 OHC CK 0004

Hon'ble Judges : P.K. Mohanty, J;A.K. Parichha, J

Bench : Division Bench

Advocate : Satyabadi Das, S. Mohanty and S.K. Das, in W.P. C Nos. 9262 and 9839/2004 and L. Samantaray, U.K. Barik, R. Pradhan, J. Majhi and P.K. Mallik, in W.P. C No. 687/2005, for the Appellant; Additional Government Advocate for Respondent No. 2 and M.S. Panda, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—The Petitioners have filed these writ petitions praying this Court to direct the Member Secretary, Orissa State Board of Pharmacy, Bhubaneswar (opp.party No. 3 in all the writ petitions) to declare their results and issue certificate of Diploma in Pharmacy in their favour. The case of the Petitioners bereft of unnecessary details is that after completing their Higher Secondary Studies, they submitted applications in prescribed form for admission to Diploma in Pharmacy course in Pharmacy Colleges of Orissa for the year 2000-01 and after considering their applications and being satisfied with their eligibility they were directed to take admission in Sidheswar College of Pharmaceutical Science, Amarda Road in the district of Balasore, (opp.party No. 4). It is claimed by the Petitioners that they pursued their studies in the said college and appeared in Part-I and Part-II examinations on the strength of admit cards issued by the Orissa State Board of Pharmacy, Bhubaneswar (in short, "OSBP") and OSBP also issued mark sheets in their favour. They claim that after completing Part-I and Part-II Courses, they became eligible for practical training which forms Part-III of the Course and basing on the authority granted by

opp.party No. 4, they could take practical training in different hospitals. After successful completion of the course, they repeatedly requested the OSBP to declare the result and issue certificate of Diploma in Pharmacy in their favour, but OSBP did not declare their result on the plea that they did not possess the requisite minimum qualification for admission into Diploma in Pharmacy course. According to the Petitioners, when they were duly admitted to the Diploma in Pharmacy course after scrutiny of the documents, certificates etc. and were allowed to appear in the examinations and took practical training, there is no scope for the opp.parties to cancel their results and withhold their certificates on the plea that they lack the requisite minimum qualification for admission into the course. It is specifically claimed by the Petitioners that they have passed the Higher Secondary Course with required subjects, namely, physics, chemistry, biology etc. and are therefore, eligible for admission in to Diploma in Pharmacy course. They allege that the action of the opp.parties in withholding their certificates is tainted with malice and arbitrariness and so direction should be issued from this Court asking them to issue Diploma Certificates in their favour.

2. Opp.party No. 4- Principal, Sidheswar College of Pharmaceutical Science, Amarda Road, Balasore did not file any counter. Opp.party No. 2 filed counter for itself and opp.party No. 1. Opp.party No. 3 filed separate counter. In their counter, opp.party Nos. 2 and 3 while denying the assertions of the Petitioners claimed inter alia that the Petitioners do not possess the qualification prescribed under Regulation-5 of the Education Regulations, 1991 for Diploma in Pharmacy Course, (in short "Regulations, 1991"), and are accordingly ineligible for admission in the said Course. Opp.parties 2 and 3 assert that the Petitioners have passed Higher Secondary Course in Vocational Stream which is never equivalent to Intermediate of Science or 1st year of the three year Degree Course in Science or 10 + 2 Examination in Science academic Stream/Pre-degree examination in science as prescribed in Regulation 5 of the Regulations, 1991 and opp.party Nos. 2 and 3 have also not declared the Higher Secondary Vocational Course as equivalent examination to examinations mentioned in Regulation 5. Opp.party Nos. 2 and 3 further alleged that opp.party No. 4 was not included in the counseling for admission to Pharmacy Colleges of Orissa, but the said college admitted the Petitioners to Diploma in Pharmacy Course in their management quota without taking approval of opp.party Nos. 2 and 3 although the Petitioners are ineligible for admission in to Diploma in Pharmacy course. They claim that when the ineligibility of the Petitioners came to the notice of the OSBP, it had to cancel the result of Part-II examination of the Petitioners and withhold their certificates.

3. Mr. Satyabadi Das, learned Counsel appearing for the Petitioners in W.P.C. Nos. 8262 and 9839 of 2004 and Mr. L. Samantaray, appearing for Petitioner in W.P.C. 687 of 2005 submitted that the Petitioners had passed such Higher Secondary Examination in vocational stream with subjects like Physics, Chemistry, Bioscience, and so they had the requisite minimum qualification for admission into Diploma in Pharmacy course prescribed under Regulation 5 of the

Regulations, 1991. They also argued that after giving the Petitioners admission into Diploma in Pharmacy Course, allowing them to appear in Part-I and Part-II Examinations and then sending them for practical training in Part-II in Part-III of the Course, opp.party No. 1 cannot now refuse to publish the results or to issue the Diploma Certificate to the Petitioners, as the same would be against equity and principles of promissory estoppel. In support of the contention, learned Counsel relied on several decisions of this Court and the apex Court.

4. Mr. M.S. Panda, learned Counsel appearing for opp.party No. 3 on the other hand, contended that Higher Secondary Course in Vocational Stream is never equivalent to +2 course of academic stream; and the Regulations, 1991 also do not contain any provision declaring Higher Secondary Vocational as equivalent to +2 Science Academic stream, and as such the Petitioners do not possess the required minimum qualification for admission into Diploma Course in Pharmacy prescribed under Regulation 5 of the Regulations, 1991. He further submitted that the Petitioners were allowed to appear in Part-I and Part-II examinations in good faith, but on discovery that they did not possess the minimum required qualification for admission into Diploma Course, their result was cancelled and in such situation the Petitioners cannot demand for declaration of their result and issuance of Diploma certificates on the plea of promissory estoppel. In support of such contentions, learned Counsel relied on the case of *Miss. Reeta Lenka v. Berhampur University and Anr.*, (1992 (II) OLR 341).

5. Learned Addl. Govt. Advocate appearing for opp.party Nos. 1 and 2 supported the submission of Mr. Panda and further added that opp.parties 1 to 3 were never involved in the process of selection and admission of the Petitioners and that opp.party No. 4 admitted them at its own risk and so the Petitioners cannot now claim promissory estoppel against opp.parties 1 to 3.

6. From the above noted submissions of the respective parties, the following controversies emerge for consideration:

(i) Whether Higher Secondary Education in vocational stream with Physics, Chemistry and Biology or Mathematics subjects is equivalent to +2 Science academic stream ?

(ii) Whether by giving admission to the Petitioners and allowing them to continue the course and appear in Part-I and Part-II examinations, the opp.parties are bound by the principle of promissory estoppel ?

7. From the averments made in the writ petitions well as the submission of the parties, it is evident that the Petitioners passed their Higher Secondary Examination in Vocational Stream conducted by the West-Bengal Council of Higher Secondary Education in 1999, 1998 and 2000 respectively. According to the Petitioners, such Higher Secondary Course is equivalent to +2 Science course prescribed under Regulation 5 of the Regulations, 1991 and therefore, they had the required minimum qualification for admission into the Diploma in Pharmacy course. Opp. Parties 1 to 3, on the other hand, have countered this claim stating

that vocational stream of any Higher Secondary course or +2 course cannot be equivalent to +2 academic course, because the streams are entirely different. A similar controversy came up before the apex Court in the case of *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, . In that case the condition for eligibility for admission to B.E. degree course of Karnataka University was in question. The minimum required qualification for admission into the B.E. degree course of Karnataka University was passing of 2 year Pre-University Examination of the Pre-University Education Board, Bangalore or an examination held by any other Board or University recognized as equivalent to it. The Petitioner in that case had passed Higher Secondary Education Examination of the Secondary Education Board of Rajasthan and basing on such qualification he took admission in the B.E. degree course of Karnataka University. Since the examinations held by the Secondary Education Board, Rajasthan had not been recognized as equivalent to the Pre-University Examination of Pre-University Board, Bangalore, it was held that the Petitioner was ineligible for admission to the B.E. degree course of Karnataka University. The apex Court clearly observed in that case that it is for the University to decide the question of equivalence of an examination held by any other Board or University with the examination which primarily constitutes the basis of eligibility and that it would not be proper for the Supreme Court or the High Court to sit in judgment on the decision of the University because it is not a matter on which the Court possess any expertise. The same principle was reiterated in the case of *Kusum Lata Vs. State of Haryana and Others*, . Though the fact of that case was somewhat different, yet the ratio is the same. In that case also the apex Court observed that unless the examination conducted by a Board of School Education is recognized by the Board/University where the applicant wants admission, passing of the said examination will not make him eligible for admission.

8. Regulation 5 of the Regulations, 1991 reads as follows:

5. Minimum qualification for admission to Diploma in Pharmacy Part-I course- A pass in any of the following examinations with Physics, Chemistry and Biology or Mathematics.

- (1) Intermediate examination in Science;
- (2) The first year of the three year degree course in Science;
- (3) 10+2 examination (academic stream) in Science;
- (4) Pre-degree examination;
- (5) Any other qualification approved by the Pharmacy Council of India as equivalent to any of the above examination.

Provided that there shall be reservation of seats for Scheduled Caste and Scheduled Tribes candidates in accordance with the instructions issued by the Central Govt./State Govt./Union Territory Admns as the case may be from time to time.

9. As per the said Regulation 5, the Pharmacy Council of India has to declare any other qualification as equivalent to the examinations noted in sub-Regulations (1) to (4) of Regulation 5. There is no indication in the Regulations, 1991 that Pharmacy Council of India has ever approved or recognized the Higher Secondary Vocational examination conducted by the West-Bengal Council of Higher Secondary Education as equivalent to the examinations noted in Sub-Regulations (1) to (4) of Regulation 5. In the connected case, i.e., WPC No. 10473 of 2004, the Pharmacy Council of India as one of the opposite parties has claimed that the vocational Higher Secondary Course of West-Bengal Council of Higher Secondary Education is not equivalent to the examinations mentioned in Regulation 5. When the Council has made positive assertion that the Higher Secondary Vocational Stream examination passed by the Petitioners is not equivalent to the examinations indicated in Regulation 5 and when the Petitioners have not produced any material to show that the Vocational Stream of Higher Secondary Education passed by them is equivalent to +2 Science examination, there is no scope for this Court to declare such vocational course as equivalent to the course mentioned in Regulation 5 of the Education Regulations, 1991.

10. Admittedly, the Petitioners were admitted into Siddheswar College of Pharmacy, Amarda Road, Balasore where they pursued their study in Diploma in Pharmacy course and appeared in Part-I and Part-II examinations on the basis of admit cards issued by the Member-Secretary, Orissa State Board of Pharmacy, Bhubaneswar (opp.party No. 3) and were also declared to have passed the Part-I examination with 1st class. Copies of the admit cards, mark-sheets of those examinations are annexed to the writ applications. The certificates issued by the Principal of Siddheswar College of Pharmaceutical Science, Amarda Road, Balasore further indicate that after passing the Part-II Examination the Petitioners have undertaken practical training as required in Part-III of the course. Now the question is whether such developments and the conduct of opp.parties 1 to 4 attract the principle of promissory estoppel and whether basing on such principle the Petitioners are entitled to get certificates in Diploma in Pharmacy from opp.party No. 3.

11. In the above context it would be helpful to take note of some judicial pronouncements of the apex Court and this Court. In the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, the following observation was made by the apex Court in paragraph 6 and 7 of the judgment.

Once the candidate is allowed to take the examination, rightly or wrongly, then the Statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. (quoted from placitum of para-6).

Before issuing an admit card to student to appear at Part-I Law Examination in April, 1972, it was the duty of the University authorities to scrutinize the

admission form filled by the student in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements. If neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then in not disclosing the shortage of percentage in attendance the question of the candidate committing a fraud did not arise. Similarly when the candidate was allowed to appear at the Part-II Law Examination in May 1973, the University authorities had no jurisdiction to cancel his candidature for that examination. If the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the examination, they by force of the University Statute the University had no power to withdraw the candidature of the candidate.

(quoted from placitum of para-7)

12. In the case of Rajendra Prasad Mathur (supra) the Petitioner had passed the Higher Secondary Examination from Secondary Education Board, Rajasthan which was not an examination approved by the Karnataka University. The apex Court, therefore, held that the Petitioner did not possess the eligibility for admission to B.E. Degree Course of Karnataka University. However, taking a sympathetic view that the Petitioner and some other students like him had pursued the course for about four years by interim order of the learned Single Judge/Division Bench of the High Court and of the Supreme Court, the apex Court allowed the Petitioners to complete their studies. It was emphasized that the University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the course, the syllabus, the quality of teaching or instruction and the standard of examination. It is an academic question in which the Court should not disturb the decision taken by the University. The apex Court observed that the Appellants therein were not eligible for admission to the Engineering Degree Course of the Karnataka University and their admission was contrary to the Ordinance prescribing the condition of eligibility. The case at hand is not similar to the aforesaid case and, therefore, it does not lend any support to the Petitioners' case. In the case of Ashok Chand Singhvi Vs. University of Jodhpur and Others, , the application of a Diploma-holder in Engineer working as an Instructor in an Engineering College for admission to a Degree Course on study leave was accepted even though it was made after the last date for admission in the general seats had expired. On consideration of all objections including those raised by the Officer-in-charge of admission that the applicant had obtained less than 60% marks in Diploma examination, the applicant having been communicated with the decision of the Dean as approved by the Vice-Chancellor admitting him to the second year of the Degree Course and the student having deposited the required fees and started attending the class, at a subsequent stage the admission was put in abeyance. The apex Court observed that the direction of the Dean putting in abeyance the student's admission was

unsustainable since on examination of all materials, the Dean as well as the Vice-Chancellor admitted the student. Therefore, the decision has no application to the facts of the present writ petitions.

13. In the case of Sanatan Gauda Vs. Berhampur University and others, , the Appellant passed the M.A. Examination securing more than 40% of the total marks. In 1983 he got admission in Ganjam Law College for 3 year Law course and in 1984 he was promoted to 2nd year course. In 1985 he appeared at the Pre-Law and Inter-Law Examinations held by the Berhampur University to which Ganjam Law College is affiliated and, therefore, he was admitted to final year law course in the same college. Although he was admitted to final law classes his results of Pre-Law and Inter-Law Examinations were not declared on the plea that he was not eligible for admission to law course as he had secured less than 40% marks in his B.A. Examination which was the prescribed minimum qualification contemplated under the University Regulations. Considering the fact that the Appellant had submitted his mark-sheet along with the application and that he had passed M.A. Examination where he had secured more than 40% marks, the apex Court held that the University is estopped from refusing to declare the result of his examinations or preventing him from pursuing his final year law course. The apex Court have taken the view on consideration of the fact that the Petitioner not only had passed the B.A. Examination but had passed the M.A. Examination securing more than 40% of marks, the eligibility criteria being 40% at the B.A. Examination.

14. In the case of Miss Reeta Lenka v. Berhampur University and Anr. 1992 (II) OLR 341, the result of the Petitioner was declared but shortly thereafter the said result was cancelled on the ground of mass copy. The Petitioner claimed promissory estoppel on the plea that after passing the examination she had taken steps for further studies. The matter was considered by the Full Bench. After discussing the scope and effect of promissory estoppel and the previous judicial pronouncements, the Court observed that because opportunity of show cause and hearing was not given before withdrawal/cancellation of the result and because the Petitioner had already pursued the higher studies in the meantime, she deserved protection. However, in paragraph-10 of the judgment, the Full Bench observed as under:

Because of the above, we are of the view that public interest and equity demand that the doctrine of promissory estoppel should not be extended to that extent where cancellation of the result would not be permitted by the Courts virtually in any case, which would be the effect if the ratio of Rajkishore's case is upheld. This apart, it may be remembered that principle of promissory estoppel is available only where the person concerned has changed or altered his position. Taking of steps like application for admission in higher courses or seeking of job or registration with employment exchange would not amount to change or alteration of position.

The facts of that case are not similar to the cases at hand and, therefore, the

same has no application to the present cases.

15. In this context, the decision in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, is necessary to be noticed. In that case, a contention was raised that the students having been admitted into the MBBS course of the institution, interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. The apex Court observed that "any direction of the nature sought would be in clear transgression of the provisions of the University Act 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". In recent past, the apex Court in *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*, , referring to several earlier judgments including the judgment in *A.P. Christians Medical Educational Society (supra)*, held:

In the background of the law as laid down by this Court, we find that in the case in hand the fact situation was even worse as compared to the decision cited above. The student, namely, Respondent No. 1 had failed to clear her class IX examination which was a necessary requirement as provided under the bye-laws of the Board so as to be entitled to appear in the class X examination conducted by the Board. Despite notice, no one has put in appearance on behalf of the Respondents No. 1 and 2 to indicate any fact or circumstance so as to take any different view. Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately adversely affects the academic standards.

16. In the case of *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, , the writ Petitioner before the High Court appeared at the Intermediate Examination of the U.P. Board. His result was shown as withheld as a suspected case of using unfair means. He was issued a provisional mark-sheet by Principal of his College. The mark-sheet surprisingly did not show that his result had been withheld. The Petitioner did not apply for final mark sheet nor certificate of passing the examination. On the basis of provisional mark-sheet he took his admission in B.A. without disclosing the fact that his result has been withheld and passed B.A. Examination as well as M.A. Examination. He also got employment as a Teacher. Subsequently, some enquiry was made about his result. Thereupon the Principal of the College informed the writ Petitioner that his result for Intermediate Examination has been cancelled. The writ Petitioner challenged cancellation of this result of Intermediate Examination on the ground (i) that he was not afforded any opportunity of hearing before cancellation of his examination; (ii) that the cancellation after more than 10 years was wholly arbitrary and illegal; and (iii) that he having passed the B.A. and M.A. examinations had secured appointment as a Teacher in

the College and as such equity demands that the order cancelling the result of his Intermediate Examination be set aside. The apex Court held that plea of lack of opportunity of hearing is not tenable in view of positive case of the Board that an opportunity of hearing had been given to him by the Board, inasmuch as, in a case of mass copying the principle of natural justice need not be strictly complied with. Ultimately, the Court held that there is no equity in favour of the Respondent who knew the position.

17. In this context, a decision in *Paradise Printers and Others Vs. Union Territory of Chandigarh and Others*, is also relevant to be considered. The apex Court in the said case refused to apply the principle of promissory estoppel and held that the authorities cannot give assurance contrary to the statutory rules. The authorities who are bound by the rules of procedure cannot make any representation or promise to allot particular sites to the applicants. Even if they make such promises or assurance, the doctrine of promissory estoppel cannot be invoked to compel them to carry out the promise or assurance, which is contrary to law.

18. In the conspectus of the decisions referred to above, there cannot be any doubt that in the fact-situation of the cases, the principle of Promissory estoppel has no application to the present cases and, as such, the Petitioners having no basic qualification for admission to the course in an affiliated college cannot demand promissory estoppel.

19. In view of the foregoing discussions and conclusions, we find no merit in the writ petitions, which are accordingly dismissed. However, as a measure of compensation for the sufferings of the Petitioners, the management of the Sidheswar College of Pharmaceutical Sciences, Amarda Road shall pay a sum of Rs. 25,000/- to each of the Petitioners.

P.K. Mohanty, J.

20. I agree.