

(1973) 09 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 1953 of 1971

Uma Shanker Misra

APPELLANT

Vs

Board of High School and Intermediate Education, U.P.,
Allahabad and Others

RESPONDENT

Date of Decision : 18-09-1973

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1974 All 290

Hon'ble Judges : Prem Prakash, J

Bench : Single Bench

Advocate : R. Nath, for the Appellant; Umesh Chandra and Laloo Singh, for the Respondent

Final Decision : Disposed Of

Judgement

Prem Prakash, J.—This is a petition under Article 226 of the Constitution of India asking for an appropriate writ, order or direction to quash the show cause notice (Annexure 7) issued by the Secretary, Board of High School and Intermediate Education (U. P.) and restrain the Board from cancelling the result of the petitioner's Intermediate Examination 1970; also mandamus has been sought for directing the Board and the Principal of the J. P. Intermediate College, Lakhimpur Kheri to issue the petitioner's High School Examination Certificate.

2. The Board of High School and Intermediate Education established by the Intermediate Education Act, 1921 (to be hereinafter referred to as the Act) is, inter alia, conferred power to conduct examinations at the end of the High School and Intermediate course, to publish the results of its examination and admit candidates to its examinations. The petitioner appeared as a regular candidate in the year 1968 in the High School Examination through J. P. Intermediate College; he had to appear at the Supplementary examination in mathematics which was held in July/August 1968. In the Navjeevan dated 19th August, 1968 which was given the exclusive right to publish the results by the Board, the petitioner's

name was published as a successful candidate in the Supplementary examination. No result or mark sheet was issued to the petitioner in respect of the supplementary examination by the Board or by the Principal of the college. He took admission in the same college for study of intermediate course and passed the Intermediate Examination as a regular candidate in the year 1970. The Board allowed him to appear at the Intermediate Examination because the Principal of the College had furnished the certificate that the petitioner had been admitted to the institution in accordance with the rules of the Education Code and the Regulations of the Board. After passing Intermediate Examination the petitioner took his admission in B. A. Part I in the Dayanand Brijendra Swamp College, Kanpur, where he was enrolled as a regular student of the Kanpur University. He submitted the transfer certificate granted to him by respondent No. 2. He passed his B. A. Part I examination from the Kanpur University in the year 1971 where after he discontinued his studies. He joined the Basic Training Teachers course where he was required to submit a true copy of the High School Examination certificate, which he failed to obtain from the Principal as also from the Board and instead the Secretary Board of High School and Intermediate Education served upon him the notice dated 5th October, 1971 (Annexure 7) to show cause why his Intermediate Examination should not be cancelled and action be not taken against him for taking undue admission for the Intermediate course. It is this notice that is now impugned by the petitioner.

3. The Board and the Principal of the J. P. Intermediate College have filed separate counter-affidavit, justifying the impugned action. The Principal, Rameshwar Prasad Verma, says that the petitioner got himself admitted in the 11th class with the help of Chhail Behari Misra, a lecturer in the College, who happened to be his relation concealing that he had failed at the supplementary examination, that the records of the college were tampered with and manipulated by the petitioner, on the basis of which he obtained the transfer certificate and that his subsequent appearance in the Intermediate Examination was a part of the fraudulent scheme adopted by the petitioner. These averments for want of particulars remained unsubstantiated and at this stage it may be mentioned that there is not an iota of evidence on record to demonstrate that the petitioner was guilty of any fraud, misrepresentation, suppression of facts or lack of bona fide.

4. In the counter-affidavit sworn by the respondent No. 1 it has been contended that the petitioner did not pass the High School Supplementary Examination of 1968, although the Navjeevan had shown him as having passed. It was admitted that the petitioner was admitted to the Intermediate Examination because the Principal, Sri Verma had certified that the petitioner had complied with the rules of the Education Code and the Regulations of the Board. Having not passed the High School Examination, the Board maintains that the petitioner could not be eligible to appear at the Intermediate Examination and the Board was, therefore, justified in cancelling the result of the Intermediate Examination.

5. Before we turn to the arguments advanced by the petitioner's counsel, it would be necessary to have a look at the relevant provisions of the Act and the Regulations made thereunder. Section 15 of the Act authorises the Board to make Regulations providing for, amongst other things, the conferment of certificates, the conduct of examinations the conditions under which candidates shall be admitted to the examinations of the Board. Section 7 empowers the Board to publish the results of examinations. Regulation 3 (a) Chapter XII states that no certificate of having passed an examination conducted by the Board shall be granted to a candidate unless he/she qualifies in each subject which he/she offers for an examination in accordance with the Regulations connected therewith. In Chapter XIV it provides that every candidate for admission to the Intermediate Examination shall be required to have passed the Board's High School examination or to have passed an examination declared equivalent thereto, before entering upon the course of study prescribed for the Intermediate Examination. Regulation 4 (2) of Chapter XII requires the head of the institution to furnish to the secretary of the Board, at the time of admission to an examination held by the Board, certificate showing that admission to the institution was in accordance with the rules of the Education Code and the Regulations of the Board and that the candidate has completed a regular course of study in a recognised institution. So much the Regulations prescribe about the conduct of examination and admission to the course of study; Regulation 2 of Chapter VI lays down the manner in which the cases of such examinees who have made a false statement in their applications to secure undue admission to an examination, have to be disposed of. The delinquent examinee may not only suffer the withdrawal of certificate of having passed the examination but also his examination is also liable to be cancelled.

6. The main argument of the counsel for the petitioner is that it being a case where the petitioner was not guilty of any misrepresentation or suppression of fact, the Principal of the College and the Board by their conduct caused the petitioner to act on the faith of the existing slate of affairs which, to his great detriment, he was told more than three years later, did not exist. In the name of alleged rectification of mistake respondents cannot in equity and justice seek to do an irreparable harm to the petitioner who was not only declared as having passed the High School Examination but was admitted and declared, subsequently, as passed at the Intermediate Examination, in 1970.

7. The essential question to be considered is whether the facts established in the case support the plea of equitable estoppel put forward by the petitioner. "An estoppel is a rule of equity." I shall presently refer to decisions bearing on the topic but before doing so let me examine whether the respondents made any representation to the petitioner, if so, what is that representation. Further, whether the petitioner acted on the basis of that representation to its disadvantage. It is not denied that the failure of the petitioner at the High School Examination was discovered in May/June, 1971 when the petitioner approached the respondent No. 2 for the High School Certificate. There can be no doubt that

the petitioner was admitted to the Intermediate Class, but for his application having been forwarded and being certified by the Principal that he had complied with the regulations of the Board and completed the course of study, he would not have been permitted by the Board to appear at the Intermediate Examination. That the petitioner secured his admission to 11th Class by misrepresentation or concealment of facts, is a plea which cannot be countenanced because no foundations have been laid by respondent No. 2, in support of it. The petitioner passed the Intermediate Examination and he was subsequently admitted on the basis of that result to B. A. Part I in Daya Nand Brijendra Swarup College, Kanpur. In the year 1970 while the petitioner was pursuing his further studies at no time the Board or the principal intimated him of his failure at the High School Examination. Even the transfer certificate was granted by the Principal when the petitioner sought for it in order to secure his admission to B. A. Degree. The Board now insists upon strict legal rights to cancel the result of the Intermediate Examination when it would be unjust to allow it to enforce the Regulation having regard to the dealings which have taken place between the parties. The question is whether the Board is estopped from making the claim in question.

8. In support of his case the petitioner relies primarily on the doctrine of equitable estoppel.

9. The principle is that where a party with full knowledge or with sufficient notice or means of knowledge of his rights and of all the material facts remains inactive for a considerable time or abstains from impeaching a transaction or freely does what amounts to a recognition thereof or acts in a manner inconsistent with its repudiation so as to affect the situation of the parties so that the other party is induced to suppose that it is recognised, this amounts to acquiescence and the transaction although originally "impeach-able" becomes "unimpeachable". In my view the instant is a case which falls within the four corners of this doctrine.

10. The rule of equitable estoppel has assumed new dimensions in recent years. A strong recent trend towards the application of equitable principle of estoppel against public bodies has been noted where the interest of justice, morality and common fairness clearly dictate such a course. The doctrine of estoppel is not applied to the extent of impairing sovereign powers of a State, for example in the enactment of taxation laws, in exercising power of eminent domain nor could the state be deprived of its right to legislate; one legislature cannot abridge the powers of a succeeding legislature. But apart from these constituent functions the welfare state has to undertake in performance of its ministrant functions, varied activities where under some circumstances, a state may be held, estopped if an individual would have been held estopped. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, the Supreme Court held that the Government is not exempt from liability to carry out the representation made by it as to its future conduct. In that case the Central Government in exercise of its powers u/s 3 of the Imports and Exports (Control) Act, 1947 issued the Imports

(Control) Order, 1955, and other orders setting out the policy governing the grant of import and export licences. The Central Government also evolved an Import Trade Policy to facilitate the working of the Act and the orders issued thereunder. In 1962 the Central Government promulgated the export promotion scheme providing incentives to exporters of woollen textiles and goods. It provided for the grant to an exporter, certificates to import raw materials of a total amount equal to 100 per cent of the F. O. B. Value of his exports. Clause 10 of the Scheme provided that the Textile Commissioner could grant an import certificate for a lesser amount if he is satisfied after holding an enquiry that the declared value of the goods exported is higher than the real value of the goods. The scheme was extended to exports of woollen textiles and goods to Afghanistan. M/s. Indo-Afghan Agencies Ltd. exported woollen textiles to Afghanistan and were issued an Import Entitlement Certificate by the Textile Commr. not for the Full F. O. B. value of the goods exported, but for a reduced amount. On the basis of some private enquiry supposed to have been held by him but not after holding an enquiry as contemplated by the scheme the representation made by the Agencies was rejected. Thereafter the Agencies moved the High Court to set aside the order of the Textile Commissioner and the Government and to issue a direction to them to grant licences for an amount equal to 100 per cent of the F. O. B. value of their exports. That prayer was resisted by the Government on various grounds, inter alia, that the Export promotion scheme was administrative in character, that it contained mere executive instructions issued by the Central Government to the Textile Commissioner and created no enforceable rights in the exporters who exported their goods in pursuance of the scheme and that it imposed no obligations upon the Government to issue import certificates. The High Court and later the Supreme Court in appeal rejected that contention. Their Lordships reiterated the dictum earlier laid down in *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, namely, "Whether it is the equity recognised in *Ramsden's* case, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power." It should be open, their Lordships added, to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it even though the promise is not recorded in the form of a formal contract as required by Constitution. In arriving at that conclusion the Supreme Court placed reliance on the decision of Denning, J. in *Robertson v. Minister of Pensions*, 1949 1 KB 227. Therein Denning J. was dealing with a case of serving army Officer who wrote to the War office regarding a disability of his and received a reply that his disability had been accepted as attributable "to military service." Relying on that assurance he did not obtain an independent medical opinion. The Minister of Pensions later decided that his disability could not be attributed to war service. The Court held that as between subjects such an assurance would be enforceable because it was intended to be binding, intended to be acted upon and was in fact acted upon, and the assurance was binding on the Crown because no term could be implied

that the Crown was at liberty to revoke it. The principle has, further been extended to Municipal Corporations they being the "political sub-divisions" of the state. In *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, their Lordships held that public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position, to their prejudice. In that case the Company had set up its factory within the limits of Taluka Kalyan and within an area known as the "Industrial Area". No octroi duty was then payable in respect of goods imported by the Company into the Industrial Area for use in the manufacture of its products. The Government of Bombay issued a notification in October, 1959 to constitute a municipality, including the Industrial Area. The Company objected to the proposed constitution of municipal area. When the company objected to the inclusion of the Industrial area within the municipal jurisdiction the District municipality made a representation to the Government of Maha-rashtra and agreed to exempt the existing factories in the Industrial Area from payment of octroi for a period of seven years from the date of levy of octroi tax. The Government of Maharashtra acceded to the request of the Municipality to restrain the industrial area within the local limits of the municipality. In 1965 the Legislature of the State of Maharashtra constituted the former District Municipality into the Ulhasnagar Municipality, The latter sought to levy octroi duty and recover from the Company octroi duty. The High Court declined to interfere under Article 226 of the Constitution but the Supreme Court remanded the case back to the High Court holding that the law is not powerless to raise in appropriate cases an equity to compel performance of the obligation arising out of the representation....." They further observed that "If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted." The rule laid down in these decisions undoubtedly advance the cause of justice and is based on an application of the golden rule to the every day affairs of men, and hence I should have no hesitation in holding that estoppel may be invoked against the exercise of powers by the State Government where it is necessary to prevent manifest injustice and wrongs to private individuals.

11. As seen earlier the Boap1 rd and the College acted in a manner amounting to a recognition of his having been duly admitted to the Intermediate course of study, and that being so when the Board has remained inactive for a considerable time the transaction although originally impeachable has become unimpeachable and the petitioner can legitimately invoke the bar of equitable estoppel against the Board.

11-A. Counsel for the Board has strenuously urged that since under the regulations the petitioner could not be admitted to Intermediate Examination unless he had passed the High School Examination, the denying of the right to the Board to cancel the result of Intermediate Examination would tantamount to defeat positive law or public policy. In support of this contention he has referred

to Nookala Setharamaiah Vs. Kotaiah Naidu and Others, their Lordships handed down the opinion that the requirement of the Rules (Mineral Concession Rules) cannot be waived by the State Government nor the State Government has any power to act in contravention of the rules. It is true that one cannot ordinarily be estopped to assert the direct violation of a statutory provision but equitable estoppel being a rule of justice should prevail over all other rules and this principle has been recognised by the Supreme Court in Century Spinning and Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council referred to above. Their Lordships have gone to the extent of saying that even when a contract against a public body is not executed in the manner prescribed by the statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity. The estoppel being a principle of equity is superior to any technical legal rule which takes effect whenever the assertion of such a rule results in perpetrating or ratifying a fraud. When equity comes into play it restrains the operation of other rules which have not run their course and when to allow them to proceed further would be inflicting a greater wrong upon a citizen.

12. For the considerations in the foregoing, the contention of the petitioner that the Board is estopped from cancelling the result of the Intermediate Examination is well founded. In so far, the direction to issue the High School certificate, the petitioner does not seem entitled to such a relief because the Board being a statutory body cannot be directed to perform an obligation in contravention of the regulations, under the Act.

13. In the result the Rule partially succeeds and is made absolute prohibiting the Board from cancelling the Intermediate Examination result of the petitioner; and an appropriate writ in that behalf may issue. Annexure 7 is hereby quashed. Petitioner's costs shall be recoverable from respondents Nos. 1 and 3.