
(1999) 10 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8766 of 1999

V. Sarmista and Others

APPELLANT

Vs

Board of Secondary Education and Another

RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Orissa Secondary Education Act, 1952 — Section 11, 22

Citation : (2000) 89 CLT 397 : (2000) 1 OLR 266

Hon'ble Judges : Pradipta Ray, J;P.K. Misra, J

Bench : Division Bench

Advocate : C.A. Rao, S.K. Behera and A. Tripathy, for the Appellant; P. Acharya, A. Patnaik and S.R. Pati, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—In this writ petition, the petitioners have assailed the regulation regarding admission to One-year Correspondence Course or the High School Certificate Examination, 2000 framed by the Board of Secondary Education (hereinafter referred to "as "the Board") so far as it stipulates a minimum period of two years gap for a student passing Class-VII and one year gap for a student passing Class-VIII to make him eligible to take admission to the said course. According to the petitioners, the above regulation is in clear violation of the provisions of the Orissa Secondary Education Act, 1952 as well as Article 14 of the Constitution of India. They have, therefore, prayed to quash the same.

2. Section 11 of the Orissa Secondary Education Act, 1952 empowers the Board, inter alia, to admit candidates to its examinations in accordance with regulations. Section 21 of the said Act enables the Board to frame regulation for giving effect to the provisions of the Act, which includes the power to lay down conditions under which candidates are to be admitted to the examinations of the Board. The relevant provisions are quoted below :

"11. Powers and functions of the Board -

Subject to the provisions of this Act, the Board shall have the following powers and functions, namely :

xx xx xx

(f) to admit candidates to its examinations in accordance with regulations;

xx xx xx

22. Power of Board to make regulations -

(1) The Board may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Board may make regulations providing for all or any of the following matters, namely :

xx xx xx

(h) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates:

xx xx xx"

3. In exercise of the above power, the Board framed a set of regulations regarding admission to One-year Correspondence Course for the High School Certificate Examination. The Board published a brochure with regard to such regulations for the examination, 1999. Para-6 of thereof provided that a candidate at least passing Class-VII from any recognised institution in the State of Orissa is eligible to take admission in the said course. With regard to outside State students, the same qualification was required with a rider that their transfer certificates should be countersigned by the respective Circle Inspectors or District Inspectors of Schools.

4. On 26.4.1999, the Correspondence Course Committee of the Board held a meeting to decide, inter alia, the eligibility of students for admission to Correspondence Course. In the said meeting, it was resolved that for admission to Correspondence Course, a student must have passed Class-VII and there must be a gap of two years after passing Class-VII and one year after passing Class-VIII at the time of admission to such course. Thereafter the Board published the brochure for admission to One-year Correspondence Course for the High School Certificate Examination, 2000. Para-5(ka) thereof provides that to become eligible to take admission to the aforesaid course, a candidate must have passed Class-VII from a recognised institution in the State of Orissa, and there must be a gap of two years after passing Class-VII or one year after passing Class-VIII. Para-5(kha) provides that students passing from any recognised institution outside the State are also eligible to take admission to the course provided their transfer certificates are countersigned by the respective Circle/District Inspectors of Schools.

5. Mr. Rao, learned counsel for the petitioners, states that though para-6(ka) laying down the eligibility criteria for the students passing from any recognised institution of the State of Orissa speaks about the gap of two years or one year, as the case may be, para-5(kha). which lays down the eligibility criteria for outside State students, does not speak of the same. Thus, there is a discrimination between the students passing from institutions in Orissa and those passing from outside the State.

6. Mr. P. Acharya, learned counsel for the Board, on specific query from the Court, states that the same standard/gap is applicable to students from outside the State. No student from outside the State has been admitted into the Correspondence Course just after passing Class-VII. We are also of the view that both the paragraphs are to be read together in a harmonious manner. The students from outside the State are also required to satisfy the conditions regarding the gap with the additional requirement of their transfer certificates having been countersigned by the respective Circle/District Inspectors of Schools.

7. Mr. Rao further submits that since the introduction of the Correspondence Course, students passing Class-VII from recognised schools were being admitted to the said Course without any gap and. therefore, the Board cannot suddenly change to the condition to the prejudice of such students. According to him, when the previous system was working for so many years, there is no need to change the same.

8. Board has the power to frame regulations to regulate conditions for admission into various examinations conducted by it. Continuation of a system for a long time cannot be a ground for maintaining status quo if the change is found to be necessary. The previous regulations whereby students passing Class-VII were being admitted into the One- year Correspondence Course and permitted to appear at the High School Certificate Examination next year was ex facie unreasonable and discriminatory. Under the old regulation, a student could leave the school after passing Class-VII, get himself enrolled in Correspondence Course of one year duration and appear at the High School Certificate Examination next year. But, if he had continued as a regular student in any school, he would have been reading only in Class-IX at that point of time. Correspondence Course has been introduced not to give advantage to a section of students, but to enable those students, who for various reasons cannot continue study in a school as regular students, to study at home and acquire the High School Certificate or equivalent qualification. If the old system is continued, it will encourage students to leave schools after passing Class-VII merely for the purpose of passing the High School Certificate Examination two years before the regular students of Schools. The new regulation, according to us, has removed the discrimination and has placed the students of both the systems on the same level. We do not find any substance in the submission of Mr. Rao.

9. Normally, a student can appear at the High School Certificate Examination after completion of Class-X, i.e. three years after Class- VII and two years after

Class-VIII. In case of students admitted to the Correspondence Course, the same standard is being maintained by providing the gap of two years for a student passing Class-VII and one year for a student passing Class-VIII as the course itself is for one year. If such gap is not maintained, there will be discrimination between a regular student reading in the school and a student taking admission into the Correspondence Course. The Board by specifying such a gap has only avoided the discrimination. Further, in view of the statement made at the Bar that the same standard/gap is applicable to students inside the State and outside the State, it is clear that no discrimination has been caused to the petitioners.

10. Mr. Rao has drawn our attention to the advertisement issued on May, 22, 1999 (Annexure-4) to urge that the Board did not mention the impugned condition in the said advertisement and the petitioners without any knowledge of the new condition left their respective schools to study the Correspondence Course and to appear at the High School Certificate Examination next year. According to him, if the students were informed about the new condition, they would not have left their study as regular students.

11. Mr. Acharya appearing for the Board has referred to the last sentence of the advertisement and submitted that the advertisement clearly indicated that all informations regarding enrolment would be available from the prospectus supplied by the Board. The petitioners had taken transfer certificates without making any attempt to obtain the necessary information regarding enrolment from the prospectus. After going through the advertisement, we accept the submission of Mr. Acharya that the advertisement clearly mentioned that the students should obtain all informations from the prospectus. It is very clear from the facts as appear from the writ petition that the petitioner left study as regular students not for any other reason, but only for getting the advantage of the Correspondence Course so that they can appear at the High School Certificate Examination two years earlier than the regular students.

12. Mr. Rao has referred to a decision of this Court in *Pratusha Vs. Board of Secondary Education, Orissa, Cuttack and Others*, in support of his submission. The said decision does not support the submissions of Mr. Rao. The Board introduced a regulation prescribing a minimum age for the students of Correspondence Course to appear at the High School Certificate Examination. The said regulation was challenged in this Court. A Division Bench of this Court held that the Board has the power to make regulations, but struck down the said condition on the ground of discrimination, because no such minimum age has been prescribed for the regular students. According to the said decision, there cannot be any rule or regulation which places the students of one of the systems in a disadvantageous position. The impugned regulation has, in fact, removed an unreasonable advantage in favour of the students of Correspondence Course and has treated the students of both the systems in an even manner.

13. With regard to the challenge regarding lack of power of the Board for specifying such a gap, we have already seen that Section 21 of the Orissa

Secondary Education Act, 1952 gives ample power to the Board to make such conditions as it deems proper for admission of candidates to its examinations. Therefore, prescription of the gap is well within the power of the Board.

14. For the foregoing discussions, we do not find any merit in the writ petition, which is accordingly dismissed. No costs.

Pradipta Ray, J.

15. I agree.