

(2014) 09 OHC CK 0074
In the Orissa High Court
Case No : W.A. Nos. 180 and 186 of 2012

Vice Chairman

APPELLANT

Vs

Manorama Institute of Industrial Training and Engineering

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Citation : (2014) 09 OHC CK 0074

Hon'ble Judges : Amitava Roy, C.J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The Opposite party no. 5 in W.P.(C) No. 18396 of 2011 is the appellant has filed these Writ Appeals under Article 4 of Orissa High Court Order, 1948 read with Clause-10 of the Letter Patent and Chapter-III, Rule-6 of Orissa High Court Rules challenging the judgment dated 16.03.2012 passed by the learned Single Judge in the aforesaid writ petition and a batch of cases directing it to grant registration numbers in favour of the trainees, who appeared in the All India Trade Test Examination, 2011 pursuant to the order of this Court and further directing it to publish their final results and issue certificates to those who came out successful in the said examination.

2. The factual matrix of the case in hand are that appellant was the opposite party no. 2 in W.P.(C) Nos. 18281 and 19374 of 2011. W.P. (C) No. 18281 of 2011 was filed at the behest of Manorama Institute of Industrial Training & Engineering wherein the writ petitioner seeking direction to allow 15 numbers of trainees and 18 numbers of trainees pertaining Electrician Trade and Fitter Trade respectively in the A.I.T.T. Examination, 2011 which was to be held on 22.07.2011 whereas in W.P.(C) No. 19374 of 2011, the writ petitioners were the students of Manorama Institute of Industrial Training & Engineering who sought direction to allow 15 numbers of trainees and 18 numbers of trainees pertaining to Electrician and Fitter Trade respectively in the A.I.T.T. Examination, 2011 which was to be held on 22.07.2011. Virtually, both the writ petitions were filed

one by the institution and another by the students seeking same relief. Therefore, the Writ Petitions were heard together and were disposed of by a common judgment by the learned Single Judge vide Annexure-5 dated 16.03.2012.

3. The appellant filed its counter denying the eligibility of the trainees to appear in the aforesaid examinations on the ground that they were not the bonafide trainees of the institute and had not deposited the requisites fee for registration of their names as trainees. Further it was stated that it had only received the registration particulars of 41 trainees in Electrician trade and 19 trainees in Fitter trade on 15.10.2009 vide Annexure-1 to the Writ Appeal. Therefore barring those candidates as mentioned in Annexure-1, others were not bonafide candidates, so that permission could be granted to them to appear in the examination. But the institute filed a list of candidates including some names of candidates as per Annexure-1 along with the names of other candidates and such list has been filed as Annexure-2 to the two Writ Appeals. It is stated that so far as registration proposal for the session 2009-10 was concerned, the period was extended from 15.10.2009 to 21.10.2009 as per the order of the DTE & T dated 19.10.2009 wherein it was specifically mentioned that the institute would submit the registration proposal in duplicate besides soft copy to be enclosed in the form of C.D. along with requisite registration fee. In compliance with the said letter dated 19.10.2009, the institute was furnished a registration proposal in the prescribed format for 19 trainees in Fitter trade and 41 trainees in Electrician trade on 15.10.2009 without complying with the other stipulation i.e. soft copy of C.D. which was required to maintain transparency so that manipulation could be avoided. Without complying with the requirement pursuant to letter dated 19.10.2009, the institute submitted a list of candidates wherein 17 names of the candidates did not tally with the names submitted to the SCTE & VT on 15.10.2009 and no registration number was allotted by the SCTE & VT to those trainees which indicated that they were not the bonafide trainees of the institute and were otherwise eligible to appear in the said examination of 2011. The said fact was not controverted by the institute and therefore the names of the trainees submitted in exclusion of names submitted in Annexure-1 could not be said to be eligible to appear in A.I.T.T. Examination, 2011 as they were not the bonafide students of the institution. As per letter dated 4.6.2009 issued by the DTE & T the admission to the institute was to be completed by 31.07.2009 and might be extended up to 31.08.2009 (in two year course) and 15 days for One Year course. Save and except the names of candidates indicated in Annexure-1, the candidates whose names were indicated in Annexure-2 being not bonafide students were not permitted to appear in the examination. Hence these Writ Appeals.

4. The learned Single Judge while entertaining the writ petition, vide order dated 15.07.2011 in Misc. Case No. 10338 of 2011 directed the opposite party to allow 15 numbers of trainees in Electrical trade and 18 numbers of trainees in Fitter trade, whose names appeared in Annexure-2. But initially those names were not

mentioned in Annexure-1 to allow them to appear in A.I.T.T. Examination, 2011 with a condition that their results shall not be published without leave of the Court as well as the order was subject to final outcome of the writ petition. Thirteen similar writ petitions were heard and a common judgment was passed on 16.03.2012 with a direction for grant of registration numbers and for publication of results thereof and consequently for issuance of certificates to those trainees who would become successful in the said examination. Against the said judgment of the learned Single Judge, the present Writ Appeals have been filed.

5. Mr. B.M. Pattnaik, learned Sr. Counsel appearing for the appellant in both these Writ Appeals strenuously urged that the appellant had published the result of the names of the trainee candidates furnished to the institution vide Annexure-1. So far as the names of the 15 number of trainees in Electrician trade and 18 numbers of trainee in Fitter trade, whose names find place in Annexure-2 in exclusion of names available under Annexure-1 are concerned, they were not being the bonafide students even though they had been permitted to appear in the examination by virtue of an interim order passed by this Court but their results should not be published as the Apex Court time and again deprecated such practice of the Court interfering in the matter of examination permitting unrecognized students to appear in the examination and issuing direction for publication of the result.

6. Mr. P.K. Sahoo, learned counsel appearing for the institution-respondent no. 1, strenuously urged that the Director of Technical Education & Training, Orissa issued letter dated 4.6.2009 vide Annexure-4 to the Writ Appeal directing the Principals of all ITIs/Affiliated ITCs furnishing a Training Calender and Planner for the session 2009-10 for smooth implementation of CTS confirming to NCVT norms and standards in ITIs/ITCs. It is stated that since the institution followed the said Training Calender and Planner, the authority could not have denied the 15 number of Electrician trade and 18 numbers of Fitter trade trainees to appear in the A.I.T.T. Examination, 2011. Thereby the action is arbitrary and contrary to the provisions of law.

7. After hearing learned counsel for the parties and going through the records, it appears that the Director of Technical Education & Training, Orissa issued a circular dated 4.6.2009 wherein it was directed that the Training Calender and Planner for the session 2009-10 and other generic procedural measures as stipulated in the said planner would be strictly followed by the institution for smooth implementation of CTS in the institution. Clause-B of the said circular deals with admission of the trainees, wherein it is stated that the Selection Committee for admission of the candidates was to ensure that all the admission formalities are completed latest by 31st July and admission to be made against the sanctioned strength of seats, so that training programme in all such trade/units could be started with effect from 1st August. It was further directed that in the cases of Private institutes, the identical date lines were to be strictly followed

and admission should be made only in the trades/units which are NCVT affiliated as on the date. No admission should be made in anticipation of approval from NCVT. Where it would be necessary to continue admission beyond the above date of commencement of the training session for filling up the vacant seats of any ITIs/ITCs, it should not, in any case go beyond one month, i.e. 31st August in the case of two year trades and 15 days, i.e. 15th August, in case of one year trades. But in both the cases, the training session should commence from 1st August without waiting for the last admissions to complete. Clause-E of the Training Calender and Planner deals with submission of admission particulars to DTE & T, Orissa, Clause-F deals with submission of Registration Proposals with SCTE & VT, Orissa and Clause-G deals with Verification of entry level certificates by Board/Council. For better appreciation, Clause-E, F and G are quoted below:-

"(E) Submission of admission particulars to DTE & T, Orissa.

The admission particulars of all the candidates must reach this Directorate not later than 15 days of the completion of admission. If required, an officer with due authority of DTE & T, Orissa will visit specified ITCs for verification of the admissions taken by the ITCs concerned and collect admission particulars in prescribed format in duplicate sets by 30th September for compilation and onward transmission of one set to SCTE & VT, Orissa.

(F) Submission of Registration Proposals with SCTE & VT, Orissa.

All the ITIs/ITCs will submit Registration proposal in prescribed format with prescribed registration fee with SCTE & VT, Orissa latest by 15th October for considering issue of provisional registration numbers on comparing the admission particulars by 30th October. (Revised procedure on e-registration likely to be issued by SCTE & VT).

(G) Verification of entry level certificates by Board/Council.

All the ITIs/ITCs will take prompt action to get the certificates verified by the concerned Board/Council latest by 31st December and submit the same to the SCTE & VT, Orissa by 15th January for considering issue of final Registration numbers.

8. In view of Clause-F of the Training Calender and Planner, all the ITIs/ITCs will submit registration proposal in the prescribed format with prescribed registration fee with SCTE & VT, Orissa latest by 15th October for considering issue of provisional registration numbers comparing the admission particulars by 30th October. The date line fixed for submission of registration proposal being 15th October was extended by subsequent letter to 21.10.2009, by that time whatever registration proposal had been submitted to the SCTE & VT, the same was to be taken into consideration for issue of provisional registration number on comparing the admission particulars by 31st October.

9. On perusal of records, it appears that respondent no. 1-Institute submitted the list of registration proposal vide Annexure-1 to the SCTE & VT in prescribed

format with prescribed registration fees for consideration for issue of provisional registration numbers comparing the admission particulars and on that basis the institute allowed those trainees to appear in the examination being bonafide students of the institute. The contention raised that due to extension of time till 21.10.2009, there were some other candidates those who had been taken admission and whose names had been furnished in Annexure-2, were not permitted to appear in the examination. As it appears, Annexure-1 was furnished well within the time prescribed by the authority but Annexure-2 was furnished indicating the name of some the trainees in Annexure-1 including some new names stated to have been admitted as trainees for issuance of provisional registration number. But on comparison of the admission particulars, name of those candidates were not available. In that view of the matter, it appears that 15 numbers of trainees in Electrician trade and 18 numbers of Fitter trade, whose names did not find place in Annexure-1 had been included in Annexure-2 in whose favour no provisional registration number was issued nor any registration fees was received by the authority. Thereby, they were not bonafide students to appear in the examination, more particularly when they were all non-permitted, non-recognized and non-affiliated trainees for which they were not issued any provisional registered number to enable them to appear in the A.I.T.T. Examination, 2011. When this 15 number of Electrical trade and 18 number of Fitter trade trainees of the institute sought to appear in the A.I.T.T. Examination, 2011 and were not permitted, they filed the aforesaid writ petition alleging that on flimsy ground they were not issued registration numbers and they were denied to appear in the examination.

10. Prima facie, the learned Single Judge as an interim measure vide order dated 15.07.2011 allowed the trainees to appear in the examination subject to condition that their results would not be published and the same would be subject to result of the Writ Petition. It is the consistent stand of the appellant that as per the norms of the Training Calender and Planner in cases of Private ITIs, the identical date lines are to be strictly followed and also admission should be made only in the trades/units which are NCVT affiliated as on date. No admission should be made in anticipation of approval from NCVT. It has also been clarified in letter dated 5.5.2009 by DGET to all the State Commissioners/Directors dealing with craftsman training to give wide publicity for the admission seekers to confirm and satisfy themselves before seeking admission in any trade that the trade/unit in the Industrial Training Institutes (Govt./Industrial Training Centres (Pvt.)/ITIs/ITCs is affiliated to NCVT. Accordingly, DGET published an advertisement in the local dailies. In spite of such advertisement, respondent no. 1 did not follow the same and, as it appears, some of the trainees did not complete two years course, rather respondent no. 1 admitted them just before the Test in 2011. Consequently, the appellant did not register the names of those trainees as they were not bonafide students of the institution eligible to appear in the examination. Those students being non-recognized students were not permitted to appear in the examination as their names were not provisionally

registered by the authority.

11. The Apex Court time and again deprecated such practice of institutions acting arbitrarily and unreasonably causing harassment to the students. It is held that the ill-equipped, ill-housed institutions and substandard institution are counter production and are detrimental to inculcate spirit of inquiry and excellence to the students. When the students' names were not recommended by the institution as per the time schedule fixed vide Annexure-4 and they were not granted provisional registration numbers, they were not permitted to appear in the examination but the learned Single Judge in paragraph-9 of the judgment has stated that the Principals of the institutions submitted the detailed list of the trainees, who had been admitted to the course but without verifying those documents within stipulated period and without affording opportunity to the institution to clarify any discrepancy, rejection of their applications to issue registration number amounted to violation of principles of natural justice. In our considered opinion, as per Annexure-4, the Training Calendar and Planner, the institute furnished a list of trainees in prescribed form within the time framed vide Annexure-1 and for those candidates the provisional registration numbers should have been issued and they should have been permitted to appear in the examination and there is no impediment to publish their result as such result have been published for them. But the 15 numbers of trainees in Electrician trade and 18 numbers of Fitter trade trainees, whose names had been subsequently furnished in the prescribed form after the cut off date including some names mentioned in Annexure-1 were entertained as the same was not recommended in due time and no registration numbers were issued to them because they were not bonafide trainees nor did they complete the training as required vide Annexure-4. Therefore, the learned Single Judge without considering the factum in perspective misdirected herself by passing the impugned judgment and directing the authorities to grant registration numbers in favour of those non-bonafide trainees who had been permitted to appear A.I.T.T. Examination, 2011 pursuant to interim order passed by this Court and further directing to publish their results and to issue certificates to them, who became successful in the said examination.

12. In *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, the Apex Court held as follows:

"We cannot by our fiat direct the University to disobey the statute to which it owes its existence 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."

13. In *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, the Apex Court observed that such interim order is subversive of academic discipline. The relevant observation are as follows:

"We are afraid that this kind of administration of interlocutory remedies, more

guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates... The courts should not embarrass academic authorities by themselves taking over their functions."

14. In *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, the Apex Court held that the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the High Court. In that context the Supreme Court observed as follows:-

"4..... But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

15. In *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*, the Apex Court held as follows:-

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions."

16. In *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, the Apex Court categorically held that time and again this Court had deprecated the practice of educational institution seeking interim relief to allow the unrecognized students to appear in the examination. The students have suffered because of the objectionable conduct of the school. Therefore, it is open for them to seek such remedy against the institution as is available in law.

17. It appears that by overlooking the aforesaid settled principles of law laid down by the Apex Court, the learned Single Judge permitted the unrecognized students, who had no registration number, to appear in the examination, which was contrary to the direction given by the apex Court in the catena of decisions referred to above.

18. Taking into consideration the law laid down by the Apex Court, in our

considered opinion, the judgment so passed by the learned Single Judge cannot be sustained in the eye of law. Accordingly, the impugned judgment dated 16.03.2012 passed by the learned Single Judge vide Annexure-5 is set aside.

19. The Writ Appeals are allowed.