

CASE NO.:
Appeal (civil) 3068 of 1997

PETITIONER:
REGIONAL OFFICER C.B.S.E.

RESPONDENT:
KU. SHEENA PEETHAMBARAN AND ORS.

DATE OF JUDGMENT: 01/09/2003

BENCH:
BRIJESH KUMAR & ARUN KUMAR

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 275

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. The Central Board of Secondary Education (for short 'the Board'), felt aggrieved by the decision of Madhya Pradesh High Court rendered on 2.7.1996 in writ petition No. 426 of 1996, filed by the respondents No. 1 and 2, whereby directing the Board to declare the result of the examination undertaken by the respondent No. 1 for class X in the year 1996, hence the present appeal. In the impugned judgment it was also directed that a fresh marks-sheet be also issued to her, since the result had been declared earlier only provisionally. The grievance of the Board that the respondent No. 1 was not eligible to appear in the high school examination, was not accepted.

The brief facts of the case are that the respondent No. 1 was a student of St. Paul's School, Morar, Gwalior, affiliated to the Central Board of Secondary Education, New Delhi. She filled up form for high school examination but the same was withheld by the school authorities on the ground that she had not cleared her class IX examination. It gave rise to filing of a writ petition No. 484/95 by respondents nos. 1 and 2, the candidate and her father. On 4.4.95 an interim order was passed by the High Court to the following effect :-

"4.4.95

ORDER

- (1) Notice of admission was given to the respondents.
- (2) There is a report that respondents have refused the notice.
- (3) Let a fresh notice be sent by way of registered post also and service be effected by affixation. The Notices be issued for 18th April, 1995.
- (4) In para 11 of the Petition, it has been stated that the Petitioner was initially "promoted" but later on she was declared to have "failed". In this view of the matter, a direction is given to the respondents to permit the petitioner No. 2 to join Class X. This would be subject to the decision of this petition.

C.C. Today.

Sd/-

T.S. Doabia Judge"

Later yet another interim order was granted on 19.9.1995 in Writ Petition No. 484 of 1995 to the following effect :-

"19.9.1995

ORDER

Petitioner No. 2 be permitted to take part in the examination. To come up on the date already fixed.

Sd/- T.S. Doabia Judge"

The Writ Petition No. 484/95 was thereafter disposed of by order dated 5.12.95, which reads as under :-

"Heard.

This petition is rendered infructuous as the admission form for appearing in examination of the petitioner has since been sent to the Central Board of Secondary Education, Delhi. This is class X examination. As per the respondents the Petitioner would be permitted to take part in this examination. No further direction is required.

Disposed of as such.

Sd/- Judge"

It, however, appears that another writ petition No. 426 of 1996 was filed by respondents No. 1 and 2 with a prayer that a telegram sent by the Regional Officer of the Board, Ajmer, Rajasthan not permitting her to appear in the examination may be quashed and the petitioner No. 1 may be allowed to appear in the examination of the Board which was to start on 6.3.1996. On 1.3.1996 the High Court passed the following interim order :-

".....In view of these circumstances, it is directed that petitioner should be permitted to appear in the examination at the roll No. 1118864 as mentioned in the telegram, in all papers of Class Xth. The result, however, would be subject to the decision of this petition, Certified copy today, on payment.

Judge"

Thereafter the next order was passed on 17.5.1996 saying "...Let the result of the petitioner be declared. List in the last week of June, 1996". Ultimately, the petition was finally disposed of by order dated 2.7.1996. The High Court in its judgment refers to the plea raised by the appellant to the effect that for taking up examination for Class X a student must complete a regular course of studies for Class IX from an institution affiliated to the Board. Since the respondent No. 1 had not passed her class IX examination she was not eligible for appearing in the examination in Class X. Thereafter bye-law 10.2 was quoted in the judgment, which provision, according to the High Court, was very material. It is as follows :-

"10.2 A candidate for All India/Delhi Secondary School Examination should have :-

- (a) passed the Middle School Examination (Class VIII) of a Board or of an affiliated/recognized school at least two years earlier than the year in which he would take secondary school (Class X) examination;
- (b) secured a grade higher than grade E in each of the subject of internal assessment at the Examination referred to at (a) above; and
- (c) passed the third language as per requirement laid down in the

scheme of studies."

On the basis of the above provision, the Court found that the respondent No. 1 possessed minimum educational qualification of middle school examination (Class VIII) so as to be entitled for appearing in the class X examination. Hence direction was issued to finally declare the result of respondent No. 1 and to issue a fresh marks-sheet. Learned counsel for the appellant has, however, drawn our attention to provision contained in bye-law 7.3 of the bye-laws of the Board which reads as under :-

"7.3. Admission to Class X in a school shall be open only to such a student who :-

- (a) has completed a regular course of studies for class IX, and;
- (b) has passed class IX examination from an institution affiliated to this Board or to any recognized board or to any recognize board or is recognized by the Education Department of the govt. or the State/U.T. in which such an institution is located.

xxx

xxxx"

Thereafter bye-law no. 16 is referred, relating to private candidates. It is as follows :-

"16. Private Candidates

Definition : For the purposes of the bye-laws contained in this chapter and the chapter 5, unless there is something repugnant in the subject or context a 'Private Candidate' means a person who is not a Regular but, under the provisions of the bye-laws, is allowed to undertake and/or appear in the All India/Delhi Senior School Certificate Examination or All India/Delhi Secondary School Examination of the Board.

xxxx

xxxxx

xxxxx"

We find that bye-laws nos. 21 and 22 are also relevant which are quoted below :-

"21. Person eligible to appear as a Private Candidate for All India Secondary School Examination :-

(i) A candidate who had failed at the All India Secondary School Examination of the Board, will be eligible to reappear at the subsequent examination as a private candidate in the syllabus and text books as prescribed for the examination of the year in which he will reappear.

(ii) Teachers serving in institutions affiliated to the Board, xxxx
xxxx

22 (v) Those regular Candidates who have failed to obtain promotion to class X of the school affiliated to the Board or any other recognized Board shall not be admitted to the Delhi Secondary Examination of the Board as private candidates."

The definite case taken on behalf of the appellant before the High Court has been that the respondent no. 1 had failed in her class IX examination for the year 1994-95. In this context the prayer made by the respondent no. 1 in her writ petition no. 484 of 1995, may be referred to, which reads as follows :

"(i) to quash the result declared by the Respondent No. 3 in so far as respondent No. 1 is concerned and Respondent No. 1 be declared as promoted;

(ii) Respondent No. 3 be directed to take supplementary examination in

Hindi and English subjects within a period of seven days with a further direction to the respondent no. 3 to give respondent no. 1 some time to prepare herself for the supplementary examination."

It is thus clear that, according to the respondent no. 1 herself, she was declared failed in her examination for class IX. The High Court, while finally deciding the writ petition no. 426 of 1996 by order dated 2.7.1996 conveniently overlooked to take note of the provision contained in bye-law no. 7.3, contents of which have been indicated above. There was only a mention of clause 7.3 of bye-laws of the Board but nothing beyond that was indicated or observed in the judgment, as to why it would not be applicable to the case. After quoting bye-law 10.2 the High Court held that the respondent No. 1 was eligible to appear in the high-school examination since there was a gap of two years in between her two examinations viz. class VIII and class X. The High Court also did not record any finding in respect of other conditions as mentioned in bye-law no. 10.2, namely, a student must have secured higher than 'E' grade in each subject of internal assessment and has also passed the third language as per requirement laid down in the scheme. The High Court failed to consider the bye-law 10.2 will not be applicable to the respondent no. 1 but it would be bye-law 7.3, which would apply in her case. Therefore, it was necessary that she must have passed class IX as a regular student before she could be allowed to undertake examination for class X held by the Board. The position stands further clarified in regard to the private candidates under bye-laws no. 16 and 21. The respondent no. 1 did not fulfill the conditions laid for private candidates and her case would only be covered by bye-law 7.3 and not by bye-law no. 10.2 of the examination bye-laws of the Board as held by the High Court. Despite the position under the bye-laws as indicated above, the High Court finally disposed of the writ petition no. 426 of 1996 cursorily holding that since the respondent no. 1 had appeared in the examination and her result had been declared provisionally therefore, the Board was directed to declare her result of class X and to issue a fresh marks sheet without any endorsement thereon (emphasis supplied). It was completely overlooked that by order dated 1.3.1996, it was provided that the respondent no. 1 was allowed to appear in examination, subject to the decision of the writ petition. Hence there was no occasion to say that since provisional result has been declared therefore, final result should also be declared with a fresh marks sheet without any endorsement thereon. The validity of the examination undertaken by respondent no. 1 should have been properly scrutinized in the light of all the relevant examination bye-laws of the Board.

We also find that in writ petition no. 484 of 1995, interim orders were granted permitting the filling up of the form for high-school examination. But while ultimately disposing of the petition, it was held that the writ petition had become infructuous since the examination form of the respondent no. 1 had been forwarded to the Central Board of Secondary Education, Delhi and it is attributed to the respondents in the petition, that "as per the respondents", the candidate would be permitted to take part in the examination. It was, therefore, thought that no further direction was required and the matter was disposed of as infructuous. Merely forwarding of an examination form by an institution affiliated to the examining body is no surety that the examining body would necessarily permit the candidate to undertake the examination. The forms after being sent are scrutinized and checked by the examining body.

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 has been declared, the matter deserves to be considered sympathetically. It results into very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In C.B.S.E. and Anr. v. P. Sunil Kumar and Ors., [1988] 5 SCC page 377, the

institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court observed thus :

"....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..."

The order of the High Court was set aside. Another decision reported in *Guru Nanak Dev University v. Parminder Kr. Bansal*, [1993] 4 SCC 401, a three judge bench decision, was relied upon in the case of *Sunil Kumar* (supra). A passage from the above noted decision was also quoted therein which reads 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. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates that by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

Yet another decision referred to is reported in *A. P. Christians Medical Educational Society v. Government of Andhra Pradesh and Anr. Etc. Etc.*, [1986] 2 SCC 667, again a three judge bench decision. It was observed in this case :

"....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."

The above referred matter relates to the admission and examination of M.B.B.S. courses.

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.

In the result, we allow the appeal and set aside the judgment and order dated 2.7.1996 passed by the High Court in writ petition No. 426 of 1996.

There would, however, be no order as to costs.

JUDIS