

C.B.S.E. AND ANR.

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v.

P. SUNIL KUMAR AND ORS. ETC.

MAY 12, 1998

[SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

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Constitution of India, Article 226—Students of institutions not affiliated to Central Board of Secondary Education (CBSE)—Whether High Court can by an interim order permit them to sit for Board exam—Whether CBSE should be compelled to issue certificates to successful students of institutions still not affiliated—Held, no; would tantamount to subversion of law—Education—CBSE.

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Students of classes 10 and 12 of certain educational institutions in Kerala were refused permission to sit for the examination conducted by the Central Board of Secondary Education (CBSE) since their institution was not affiliated to the CBSE. The Single Judge of the Kerala High Court, by an interim order, permitted the students to appear for the examination and further directed that the certificates granted would be subject to the result of the writ petitions. The Division Bench, taking a compassionate view of the matter and being of the opinion that students who had been permitted to appear for the examination should not suffer, modified the condition and directed that the certificate granted should be without any restriction. The CBSE appealed to this Court.

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Allowing the appeal, this Court

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HELD : 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. The Court would not be justified in sustaining the orders issued by the High Court on misplaced sympathy in favour of the students. [331-H; 332-A]

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A.P. Christians Medical Educational Society v. Government of Andhra Pradesh, [1986] 2 SCC 667; State of Tamil Nadu v. St. Joseph Teachers Training Institute, JT (1991) 2 SC 343; State of Maharashtra v. Vikas Sahebrao Roundale, JT (1992) 5 SC 175 and Guru Nanak Dev University

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A *v. Parminder Kr. Bansal*, [1993] 4 SCC 401, referred to.

Central Board of Secondary Education v. Nikhil Gulati, [1998] 3 SCC 5, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2662 of 1998

B Etc.

From the Judgment and Order dated 18.6.97 of the Kerala High Court in O.P. No. 2400 of 1996

C Altaf Ahmad, Additional Solicitor General, T.L.V. Iyer, R.P. Krishnamoorthy, Tara Chandra Sharma, Ms. Neelam Sharma, Ajay Sharma, Rupesh Kumar, Subramonium Prasad, Romy Chacko, Ms. V. Mohana, S. Nanda Kumar, L.K. Pandey and Ramesh Babu M.R., (Ms. Malani Poduval) for State of Kerala for the appearing parties.

D The Judgment of the Court was delivered by

PATTANAİK, J. Leave granted in all the Special Leave Petitions.

E These six appeals filed by the Central Board of Secondary Education are directed against the judgment and order of the Division Bench of the Kerala High Court dated 18.6.1997 disposing of Writ Appeal Nos. 949/97, 978/97, 285/96, 300/96 as well as the two Original Petitions filed before the Division Bench, namely, O.P. Nos. 2400/96 and 3559/96. The question that arises for consideration is : whether students studying in institutions not affiliated to the Board of Secondary Education can be permitted by the High Court by an interim order to appear at the examination conducted by the Board and ultimately can the Board be compelled to issue certificates to those students who have appeared at the examination pursuant to the interim direction of the court notwithstanding the fact that the institutions where the students were prosecuting their study have not yet received affiliation of the Central Board of Secondary Education? Writ Appeals 949/97 and 978/97 had been preferred by the Board-Appellant, against the order of the learned single Judge dated 6.2.1997 by which order the Board was directed to allow the students of Sree Narayan Vidhya Bhavan, Chandrappinny, Thrissur to appear at the examination conducted by the Board. The learned single Judge had indicated that the said order is being passed in the peculiar circumstances of the case without the matter being treated as a precedent. The learned Judge

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H also further directed that the question of affiliation to Devi Academy Educational

Society, Guruvayoor will be decided by the Board. Writ Appeal No. 285/96 A
 had also been preferred by the Board against the order of the learned single
 Judge dated 7.2.1996 disposing of O.P. No. 1566/96. In the said case on the
 basis of the order of the learned single Judge the students of the non-
 affiliated institutions were allowed to sit at the examination and further they
 were granted certificates on the basis of the result of the examination with the
 condition that the same will be subject to the result of the O.P. The Writ B
 Appeal No. 300/96 had also been preferred by the Board against the interim
 order of the learned single Judge dated 31.1.1996 by which order the High
 Court had permitted the students of appear at the examination conducted by
 the Board and then further directed that the certificates granted should be
 attached to the condition that the same will be subject to the result of all the C
 pending proceedings. The two original petitions have been preferred by 23
 petitioners praying therein that the certificate that has been issued in their
 favour with the condition that it would be subject to the final decision of the
 pending proceedings should be modified and they should be granted fresh
 certificates. All these appeals and the original petitions were disposed of by
 the impugned judgment of the Kerala High Court, wherein the Division Bench D
 of the Kerala High Court taking a sympathetic and compassionate view of the
 matter and being of the opinion that students who have been permitted to
 take admission and who have appeared in the examination should not be
 allowed to suffer and accordingly modified conditions attached to the certificate
 and also directed that the students who have taken written examination for E
 the 10th and 12th classes in the institution - Sree Narayana Vidhya Bhavan,
 Thrissur - should be granted certificates pursuant to the declaration of the
 result of the examination and result should be announced within one week
 and the certificates to be granted pursuant to the result should not impose
 any restriction as has been done in other cases. Similar directions were also
 issued in other writ appeals as well as the original petitions filed before the F
 Division Bench.

There is no dispute that the institution in which these students had
 pursued their studies have not yet received any affiliation from the Central
 Board of Secondary Education, who is the appellant in these appeals. Under G
 the bye-laws of the Board only regular students of affiliated schools with the
 Board are entitled to appear in the Secondary School Examination and the
 Senior Secondary School Examination conducted by the Board. Since the
 institutions in which the respondents - students have prosecuted their studies
 are admittedly not affiliated to the Board but the students have been allowed
 to appear at the examination pursuant to the interim direction of the court, H

- A which is in contravention of the Rules and Regulations of the Board, the question that arises for consideration is : whether the High Court was justified in issuing these impugned directions ? This question no longer remains res integra. This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularising the same by taking a sympathetic
- B view of the matter. In the case of *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh and Another*, [1986] 2 SCC 667, this Court held that the court will not be justified in issuing direction to the University to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the University
- C Act and the regulations of the University. It was also observed that the court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law. In the case of the *State of Tamil Nadu & Ors. v. St. Joseph Teachers Training Institute & Anr.*, JT (1991) 2 SC 343, this Court held that the direction of admitting students of unauthorised educational
- D institutions and permitting them to appear at the examination has been looked with disfavour and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Education Department of the Government cannot be allowed to sit at the examination and the High Court committed error in granting permission to such students
- E to appear at the public examination. All these cases were again considered by a three Judge Bench of this Court in the case of the *State of Maharashtra v. Vikas Sahebrao Roundale & Ors.*, JT (1992) 5 SC 175, and it was held that the students of unrecognised and unauthorised educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognised institutions.
- F The Court ultimately struck down the direction issued by the High Court. In yet another case, *Guru Nanak Dev University v. Parminder Kr. Bansal and Others*, [1993] 4 SCC 401, another three Judge Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. The Court
- G observed:

“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

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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 than 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.”

On the admitted position and in view of the law laid down by this Court, referred to above, Mr. Altaf Ahmed, Addl. Solicitor General, appearing for the appellants contended that the impugned direction of the High Court is wholly erroneous and cannot be sustained. The learned counsel appearing for the students in different appeals did not dispute the position that the schools from where their clients have persued their studies are not yet affiliated to the Central Board of Secondary Education. But they mainly contended that the students having been permitted to appear at the examination and they having been successful and certificates have been issued in their favour, it would work out great injustice, if the impugned directions of the High Court are set aside at this length of time. In support of this contention they placed reliance on a recent decision of this Court in the case of *Central Board of Secondary Education v. Nikhil Gulati and Another*, [1998] 3 SCC 5. In the aforesaid case, this Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future but did not interfere with the ultimate direction of the High Court on the ground that fond hopes have been raised in the minds of the students and therefore it would be inappropriate to interfere under Article 136 of the Constitution. We are unable to apply the reasoning given in the aforesaid case, inasmuch as there is no iota of material placed before us to indicate that the Central Board of Secondary Education, the appellants herein, either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their studies have been affiliated or are going to be affiliated at a near future. We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. 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

A 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 students. In view of the aforesaid premises, we set aside the impugned judgment of the Division Bench of the Kerala High Court as well as the interim orders issued by the single Judge in several petitions out of which the writ appeals arose

B and the writ petitions filed by the respondents stand dismissed. These appeals are allowed but in the circumstances there will no order as to costs.

S.M.

Appeals allowed.