**IN THE HIGH COURT OF ORISSA**

W.P.(C) No. 12764 of 2010.

Decided On: 18.05.2011

Appellants: **Association of Orissa Indian Certificate of Secondary Education Schools**
**Vs.**
Respondent: **State of Orissa & Ors.**

**Hon'ble Judges/Coram:**
M.M. Das, J.

**ORDER**

**M.M. Das, J.**

1. Heard Mr. Panda and Mr. Mohapatra, learned Counsel for the petitioners, learned counsel for the School and Mass Education Department and Mr. B. K. Dash, learned counsel for the Board of Secondary Education as well as the learned counsel for the Council for I.C.S.E. As common questions of fact are arise in both the writ petitions for which they are disposed of by common order.

2. W.P.(C) No. 12764 of 2010 has been filed by the Association of Orissa Indian Certificate of Secondary Education Schools represented by his Secretary and W.P.(C) No. 12563 of 2010 has beep filed by the Council for the Indian School Certificate Examination. The cause of action in this writ petitions arose when the Board of Secondary Education, Orissa issued a corrigendum on 14-10-2009, which is quoted below :

BOARD OF SECONDARY EDUCATION ORISSA, CUTTACK.

CORRIGENDUM

No. 514 (Syllabus) Date : 14-10-2009

IV-B-45/2008

It is for information of all concerned that in partial modification of the "List of Board's conducting 10+ (Secondary) Examinations which are declared equivalent to the H.S.C. Examination conducted by B.S.E., Orissa" notified vide Notification No. 143 dated 17-3-2009 the following terms and conditions are included against Sl. Nos. 13 and 20 which were escaped.

Name of the Institution

Name of the Examination

Sl. No. 13: Central Board of Secondary Education

Secondary School Examination

Sikhya Kendra

02 Community Centre,

Preet Vihar, Delhi-110092

Sl. No. 20: Council of the

Indian Certificate of Secondary

Indian School Certificate

Examination.

Examination

New Delhi

Under terms and conditions given below :

Both the above noted Examination shall be deemed to be equivalent to the H.S.C. Examination of B.S.E., Orissa, provided the examinee has passed in two language subject and in three non-language subjects as indicated below :

Language:

A-English

B-Anyone M.I.L. from among:

Oriya/Bengali/Hindi/Urdu/Telegu

Non-Language

A. Mathematics

B. Science

C. Social Science

D. Home Science or Commerce or Economics

This corrigendum is also inducted in the Board's Website: www.bseorissa.in

Sd/-

(N.R.Mohapatra)

Secretary

B.S.E. Orissa, Cuttack.

3. The petitioners have challenged the action of the State as well as the Board of Secondary Education in confining the non-language subjects in case of students appearing in I.C.S.E. and C.B.S.E. Class-X Examination to the choice subjects stated under the heading non-language in the corrigendum as quoted above. The reasons for issuance of the corrigendum has been stated in the counter-affidavit to be a letter from the Government of Orissa in its Education Department dated 29-09-1992, wherein the State addressed the said letter to the Secretary of the Board of Secondary Education, Orissa, Cuttack restricting the students passing out Class-X from the I.C.S.E. and C.B.S.E. to take admission to Higher Secondary classes in the academic session 1994-95 and onwards. Candidates are required to pass the subjects mentioned in the said letter. The said letter was communicated to the Board of Secondary Education under Section 33 of the Orissa Secondary Act, 1953 for implementation. The letter dated 29-09-1992 has been annexed as Annexure A/3 to the counter-affidavit filed by the Board of Secondary Education in W.P.(C) No. 12563 of 2010, which is quoted hereunder:

APPENDIX-III

GOVT. OF ORISSA, EDUCATION DEPARTMENT NO. XVIE(B)31/92 45174/E-dated 29-9-1992

From

Sri J. B. Padhi, O.A.S.(I),

Deputy Secretary to Government.

To

The Secretary,

Board of Secondary Education, Orissa, Cuttack.

Sub : Equivalence of National Open School Secondary Course with that of H.S.C. Examination course of Board of Secondary Education, Orissa.

Sir.

I am directed to invite a reference to your letter No. 1657 dated 10-9-1992 on the subject mentioned above and to say that after careful consideration Govt. have been pleased to decide that the students passing from the Secondary School/Examination conducted by National Open School, Delhi during the Academic session 1991-92 to 1993-94 are to be provisionally recognized by the Board of Secondary Education, Orissa as equivalent to H.S.C. examination conducted by the Board for purposes of admission to Higher Secondary Standard subject to the condition that they shall have to pass an examination of the Board of Secondary Education in both the language subjects namely (i) English and (ii) One M.I.L. which may include Hindi and any three of the Non-language subject group such as (i) Mathematics, (ii) Science (iii) Social Science (iv) Economics or Commerce or Home Science before filling the form to appear at Council of Higher Secondary Education final examination (Higher Secondary) of the State, if they have not passed in any such subject/subjects in the examination conducted by the National Open School, Delhi.

Students seeking admission to Higher Secondary Classes in the Academic Session 1994-1995 and onwards will have to pass the aforesaid subjects under the National Open School, Delhi.

These decisions are being communicated to you under Section 33 of the Orissa Secondary Education Act, 1952 (Orissa Act 10 of 1953).

Yours faithfully
Sd/-
Deputy Secretary to Govt.

4. Mr. Panda, learned counsel for the petitioner in one of the writ petitions brought to the notice of the Court the averments made in Paragraph 9 of the writ petition (W.P.(C) No. 12764 of 2010) and submits that the students appearing in I.C.S.E. examination are to take the examination in the subjects included in three groups as per the syllabus which are categorised as follows :

That a perusal of the regulations and syllabus of the Indian Certificate School Examination conducted by the Opp.Party No. 4 Council would make it clear that the subjects for examination at the end of Class-10, have been categorized into three groups, in Group-I the following subjects are prescribed as compulsory by the Council.

Group I (Compulsory)

1. English

2. A second language

3. History, Civics & Geography

4. Environmental Education.

Group II

In Group II, 9 subjects are prescribed out of which a candidate is required to opt any 2 subjects. The said subjects are as under:

(Any two of the following subjects)

|  |  |  |  |
| --- | --- | --- | --- |
| 5. | Mathematics  | 80%  | 20%  |
| 6. | Science(Physics, Chemistry, Biology)  | 80%  | 20%  |
| 7. | Economics  | 80%  | 20%  |
| 8. | Commercial studies  | 80%  | 20% |
| 9. | Technical Drawing  | 80%  | 20% |
| 10. | A Modern Foreign Language  | 80%  | 20% |
| 11. | A Classical Language  | 80%  | 20% |
| 12. | Computer Science  | 80%  | 20% |
| 13. | Environmental Science  | 80%  | 20% |
| 14. | Agricultural Science  | 80%  | 20% |

Group III

In Group III, 13 subjects are prescribed out of which a candidate is required to take any one (1) subject. The said subjects are as under:

(Any one of the following subjects)

|  |  |  |  |
| --- | --- | --- | --- |
| 15  | . Computer Applications  | 50%  | 50%  |
| 16.  | Economic Applications  | 50%  | 50%  |
| 17.  | Commercial Applications  | 50%  | 50%  |
| 18.  | Art  | 50%  | 50%  |
| 19.  | Performing Art  | 50%  | 50%  |
| 20  | . Home Science  | 50%  | 50%  |
| 21.  | Cookery  | 50%  | 50%  |
| 22  | . Fashion Designing  | 50%  | 50%  |
| 23.  | Physical Education  | 50%  | 50%  |
| 24.  | Yoga  | 50%  | 50%  |
| 25.  | Technical Drawing Applications  | 50%  | 50%  |
| 26.  | Environmental Applications  | 50%  | 50%  |
| 27.  | A modern Foreign Language  | 50%  | 50%  |

5. He further submits that the Board of Secondary Education could not have issued a corrigendum as has been done, which is impugned in the writ petition, as a corrigendum is always issued to correct the previous notification, advertisement in respect of clerical mistake or typographical errors.

6. In respect of repeated adjournments, the State has not come up with any counter-affidavit. Schools in the State have been opened after obtaining No Objection Certificates from the Education Department of the Government to be affiliated to the Central Board of Secondary Education (in short "C.B.S.E.") or Indian School Certificate Examination (in short "I.C.S.E."). Once such schools are established in the State, the citizens can admit their child to such schools imparting education as per syllabus prescribed by the C.B.S.E. or I.C.S.E. upto Class-X. By restricting such students from getting admission to higher secondary class amounts to preventing such students from prosecuting higher education after completing Class-X from the above Boards.

7. In Article 41 of the Constitution under Part IV, it has been prescribed that the State shall make effective provision for securing the right to education. Though the said Part IV relates to Directive Principles of State Policy but it is well settled by now by various decisions that provision under this part if not followed may amount to violation of Article 21 of the Constitution. For the above reasons also Article 21A was introduced within the Chapter of Fundamental Rights by the Constitution (Eighty Sixth Amendment Act, 2002) where the State is compelled to provide free and compulsory education to all children of the age of 6 to 14 years. The Central Government has also enacted The Right of Children to Free and Compulsory Education Act, 2009, in the meantime, which is come into effect from 01-04-2010. When a child has a Fundamental Right to be educated up-to the age of 14 years, by imposing certain conditions as bar for such children to prosecute further studies is definitely contrary to the Fundamental Right guaranteed under Article 21A of the Constitution. A bare look at the subjects, which are being taught by the I.C.S.E. Board as well as the C.B.S.E. go to show that the students have a wider choice to choose subjects, under the heading 'non-language' as prescribed by the State in 1992 under Annexure A/3 as well as even accepting the corrigendum a student is required to take two language subjects and three non-language subjects in Class X of I.C.S.E. or C.B.S.E. also, since I.C.S.E. and C.B.S.E. also prescribe that a student should appear in minimum two language and three non-language subjects. The restrictions imposed by the corrigendum, therefore, is ex facie, arbitrary, inasmuch as, is not by way of correction slip of any previous notification and no reasons have been assigned by the State by filing any return to the writ petition as to why the letter under Annexure A/3 was issued in the year 1992. The entire process, which has been followed by the State and the Board of Secondary Education, therefore, suffers from arbitrariness, unreasonableness and non-application of mind.

8. It may be noted that the letter issued in Annexure A/3 by the State purportedly under Section 33 of the Orissa Secondary Education Act, 1953 was totally misconceived as the said Act was legislated to provide for establishment of a Board to regulate, control and develop Secondary Education in the State of Orissa pursuant to which the Board of Secondary Education was established. The said Act gives no power to the State to control the syllabus of Class-X prescribed by the Council of I.C.S.E. or the C.B.S.E. Board. The said letter was also issued in the year 1992 and the Board of Secondary Education was not called upon by the State in the said letter to issue any corrigendum as has been done.

9. This Court, therefore, has no hesitation in quashing the corrigendum as at Annexure 4 in W.P.(C) No. 12764 of 2010 as well as the letter of the Government issued on 29-09-1992 as at Annexure A/3 and it is directed that the students passing out Class-X in the examination conducted by both the I.C.S.E. and C.B.S.E. shall be considered equivalent the students passing out from Class-X in the H.S.C. Examination conducted by the Board of Secondary Education and they shall be duly considered for taking admission in +2 course in any of the colleges in the State or Class XI or XII in any of the Higher Secondary Schools.

10. Both the writ petitions are accordingly disposed of. Urgent certified copy of this order be granted on proper application.