

Rajeev Kumar Sinha Vs. Jharkhand Intermediate Education Council and ors.

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Court : Jharkhand

Decided On : Sep-17-2003

Reported in : [2004(1)JCR78(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.(C) No. 4441 of 2003

Appellant : Rajeev Kumar Sinha

Respondent : Jharkhand Intermediate Education Council and ors.

Advocate for Def. : Saurav Arun, Adv.

Advocate for Pet/Ap. : P.K. Prasad and; V.K. Prasad, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

M.Y. Eqbal, J.

1. Heard the counsel for the parties.

2. The petitioner has prayed for issuance of an appropriate direction upon the respondents to issue mark sheet of the petitioner who appeared in Intermediate Examination, 2003.

3. The facts of the case, in nut shell, are that the petitioner appeared in the Intermediate Examination, 2001 and he was declared passed in second division. A mark sheet to that effect was also issued. It is stated' that the petitioner being not satisfied with the mark sheet secured by him, made an application for scrutiny of the answer papers. However, the petitioner again decided to appear in the same Intermediate Examination in 2003 and, accordingly, he submitted necessary papers and deposited requisite fee in the concerned school. The Intermediate Council issued admit card allowing him to appear in the Intermediate Examination. 2003. The petitioner appeared in the examination and his result was published and a cross list, was issued wherein the petitioner secured higher marks in all subjects than the marks obtained by him in the earlier examination. The petitioner, therefore, represented the Council for immediate issue of mark sheet but the Council refused to issue the mark sheet on the ground that by mistake he was allowed to appear in the examination, 2003.

4. Mr. Saurav Arun, learned counsel appearing on behalf of the respondent-Council drawn my attention to annexure-A to the counter affidavit which is a letter dated 11.7.1998 issued by the Secretary of the Intermediate Council laying down the guidelines for re-appearing in the examination for improvement of performance. According to the leaned counsel as per this guideline the petitioner ought to have appeared in the next examination, 2002 and after lapse of one year, he ought not to have been allowed to appear in the examination conducted in 2003.

5. I do not find any force in the submission of the learned counsel appearing for the Intermediate Council. Admittedly the admit card was issued by the Council allowing the petitioner to appear in the examination, 2003. A copy of the admit card has been annexed as annexure-6 to the writ petition. In the admit card it has been clearly mentioned by the petitioner that he had appeared in the Intermediate Examination, 2001 and had passed in second division. The petitioner did not

suppress the fact that he had appeared in 2001 examination. This admit card was issued under the signature of Secretary, Intermediate Council. In my opinion, therefore', the guidelines issued by the Secretary of the Council in the letter referred to herein above, cannot deprive the petitioner of his right to get mark sheet of the Intermediate Examination, 2003. In similar circumstances the Apex Court in the case of Shri Krishna v. The Kurukshetra University, AIR 1976 SC 376 held as under:

'Mr Shibbal, learned counsel for the appellant submitted two points before us. In the first place it was argued that once the appellant was allowed to appear in LLB Part II Examination held on May, 1973 his candidature could not be withdrawn for any reason whatsoever, in view of the mandatory provisions of clause 2 (b) of the Kurukshetra University calendar No. 1 ordinance X under which the candidature could be withdrawn before the candidate took the examination. Secondly, it was argued that the order of university was mala fide because the real reason for cancelling the candidature of the appellant was the insistence of the District Education Officer that the appellant should not have been admitted to the law faculty unless he had obtained the permission of his superior officers. In order to appreciate the first contention it may be necessary to extract the relevant portions of the statute contained in Kurukshetra University calendar volume 1 ordinance X. Clause 2 of this ordinance runs as follows:--

'2 The following candidates signed by the principal of the college/head of the department concerned, shall be required from each applicant,

(a) That the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations which qualified him for admission to the examination, and

(b) That he had attended a regular course of study for the prescribed number of academic year Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term'

The last part of this statute clearly shows that the university could withdraw the certificate if the applicant had failed to attend the prescribed course of lecturers. But this could be done only before the examination. It is therefore manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was however submitted by Mr. Nandi, learned counsel for the respondent that the names of the candidate who were short of percentage were displayed on the notice board of the college and the appellant was fully aware of the same and yet he did not draw the attention of the university authorities when he applied for admission to appear in LLB part II examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court'.

6. Taking into consideration the facts and circumstances of the case, this writ application is allowed and the respondent-Council is directed to issue mark sheet and provisional certificate to the petitioner as expeditiously as possible and preferably within a period of 30 days from the date of receipt of a copy of this order.