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**Court :** Chennai

**Decided On :** Oct-04-1993

**Reported in :** (1994)1MLJ111

**Appellant :** S. Mohanakrishnan

**Respondent :** State of Tamil Nadu Represented by Its Secretary, Department of Education and ors.

**Advocate for Pet/Ap. :** Mr. P. Kalifulla

**Judgement :**

ORDER

**Bakthavatsalam, J.**

1. The writ petition is for the issue of writ of mandamus directing the 2nd respondent to announce the results of the petitioner in respect of Tamil Subject examination of 10th Standard revised course held in the month of March, 1993 and also issue mark sheet.

2. When the writ miscellaneous petition came up for admission, by consent of parties, the main writ petition itself is taken up for disposal.

The facts are : The petitioner was a student of 10th Standard Class in the Madras Christian College Higher Secondary School at Chetpet. After completing the Course, the petitioner wrote the Xth Standard examination in April, 1992, but since he was not successful and failed in the subject Tamil, he wrote the Tamil paper in the supplementary examination held in October, 1992 after taking necessary coaching in the 3rd respondent. As the petitioner had once again failed in the subject (Tamil) he took up the examination in March, 1993 and wrote the same as a private candidate at Pallavaram Government Higher Secondary School. The results in respect of the examination held in March, 1993 were published in June, 1993, but the results of the petitioner and other students were withheld. When the petitioner contacted the 2nd respondent, he was asked to send a postal order for Rs. 2. Thereafter the petitioner sent a letter on 22.7.1993 to the 2nd respondent for the publication of the results of the petitioner but nothing was forthcoming. In the meanwhile, it is alleged, the petitioner's father has made arrangements to secure admission for the petitioner into the Technical Institute at Coimbatore so as to improve the future of the petitioner. Since the date of admission to the said Technical Institute is fast approaching and since the petitioner's result in the Tamil subject (concerning X Standard) had not yet been published, the petitioner has come forward with this writ petition.

3. The learned Government Advocate, Education, on respect of written instruction states that the petitioner, a private candidate, had submitted his application for admission to the examination in Tamil subject concerning X Standard to be held in March, 1993, as late as 20.2.1993, 20 days after the last date fixed for the receipt of the examination (that last date for receipt of the application for examination was fixed upto 30.1.1993). It is further contended by the learned Government Advocate that all such applications were processed by the Regional Deputy Director for Government Examinations and computerised Nominal Roll was prepared and Hall Tickets were issued to the private candidates through the Chief Superintendents of the concerned examination centres. In the above process...,the petitioner's name had been included in the Computerised Nominal roll and he had been issued Hall Ticket to write the examination in Tamil subject concerning X Standard in March, 1993. However, the fact remains, it is contended by the learned Counsel for the respondents 1 and 2 that the petitioner had submitted his application after the last

date fixed for the receipt of the application for writing examination and his result has been withheld pending decision on his belated application. In this connection, it is relevant to note the extracts of the Notifications issued at the time of calling for applications to write the X Standard Public examinations to be held in March, 1993, which reads as follows:

Applications received after last date will be summarily rejected and fees once paid will not be refunded. Any delay in respect of applications will not be condoned. There is no provision...for belated submission of application with penal fee.

From the above it is clear the learned Government Advocate (Education) contended that since the petitioner had submitted his application after the last date fixed for the receipt of applications for writing X Standard examinations from private students, he has been allowed to write the examination pending decision on his belated application and the petitioner cannot ask as a matter of course to publish the results. It is further contended by the learned Government Advocate (Education) that instructions were issued to the Chief Superintendent of the examination centres to admit the private candidates also whose names were not found in the Computerised Nominal Roll supplied by the Director of Government Examinations to safeguard the interest of genuine private candidates who had applied in time but whose names did not find a place in the nominal Roll after taking a written declaration from the candidates that they were taking their examination at their own risk.

To curb the corrupt practices, it is contended by the learned Government Advocate, the Department is very strict in entertaining applications after the last date.

4. Mr. P. Kalifulla, learned Counsel for the petitioner contends that the petitioner's name had been listed in the computerised Nominal Roll and he had been issued hall ticket to take up the examination and accordingly the petitioner wrote the examination under the hope that he would get his result published along with others, though he had submitted his application beyond the last date fixed for the receipt of the application, the respondents 1 and 2 cannot now say that the petitioner's result cannot be published pending decision on his belated application.

It is further contended by the learned Counsel for the petitioner that once that petitioner's application, which was presented after 20 days from the date of the last date fixed for the receipt of the application, without any protest and without obtaining any undertaking from the petitioner that the petitioner was taking up the examination at his risk, at the stage of publication of results, the respondents 1 and 2 cannot find fault with the petitioner on the presentation of his application. Though there is a specific instruction in the Notification, as extracted above that the applications received after the last date will be summarily rejected, and though the petitioner had submitted his application nearly 20 days after the last date, his application had been accepted and he had been issued a hall ticket and the petitioner's application had not been rejected at all. In such circumstances it is contended by the learned Counsel for the petitioner, that if the facts of the case are tested with the principles of promissory estoppel, it will clearly emerge that the attitude of the respondents 1 and 2 in not publishing the results of the petitioner is arbitrary and unreasonable.

5. The learned Government advocate (Education) per contra contends that admittedly the petitioner has submitted his application after the last date fixed for the receipt of the application for writing the X Standard examination in March, 1993. Whether his application can be treated as valid one or not is yet to be decided and simply because the petitioner has been issued a hall-ticket for writing the examination and his name had been included in the computerised Nominal Roll, that will not confer any right on the petitioner to seek for the publication of his result pending decision on the belated application. The learned Government Advocate further contends that in the case of the petitioner no undertaking had been obtained from the petitioner at the time of issuing hall ticket that he took up the examination at his own risk but he cannot take advantage of the situation and ask for publication of his results when no decision has been taken on his belated application.

6. I have heard the learned Counsel for the petitioner and the learned Government advocate (Education) for respondents 1 and 2. Certain facts are not in dispute. The petitioner is a private candidate. Admittedly he had sent his application for writing the Government Examination in Tamil concerning X Standard class, after

the last date fixed for the examination, that is, 20 days after the last date fixed for the receipt of the application. Though the petitioner had submitted his application beyond the last date, his application had not been rejected, as contemplated in the Notification. His application, it appears, had been processed and the petitioner's name did find a place in the computerised nominal roll and he had been issued a hall ticket to take up the examination in Tamil subject concerning X Standard in March, 1993 along with others, without getting an undertaking that the petitioner shall write the examination at his own risk, since decision was pending on his belated application. When once the application of the petitioner, though submitted after the last date, is entertained, processed and treated it as valid one and thereupon issued a hall ticket to the petitioner, I am of the view, that it is not open to the respondents 1 and 2 to stop the publication of results on the ground that no decision has yet been taken on his belated application.

7. In *Union of India v. Anglo Afghan Agencies* : [1968]2SCR366 , the question came up for consideration before the Supreme Court was whether persons acting on representation made by the Government, can claim in the absence of execution of formal contract under Article 299 of the Constitution, that Government shall be bound to carry out promise. In that case the Supreme Court has held:

We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case no ground has been suggested before the court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. This principle has been recognised by the courts in India and by the Judicial Committee of the Privy Council in several cases. In *Municipal Corporation of the City of Bombay v. Secretary of State* I.L.R. 1964 29 Bom. 580, it was held by the Bombay High Court that even though there is no formal contract as required by the statute, the Government may be bound by a representation made by it. In that case in answer to a requisition by the Government of Bombay addressed to the Municipal Commissioner to remove certain fish and vegetable

markets to facilitate the construction of an arterial road, the Municipal Commissioner offered to remove the structures if the government would agree to rent to the Municipality other land mentioned in his letter at the nominal rent. The Government accepted the suggestion and sanctioned the application of the Municipal Commissioner for a site for stabling and establishing the new markets. The Municipal Commissioner then took possession of the land so made available and constructed stables workshops and cha-wls thereon. Twenty-four years thereafter the Government of Bombay served notices on the Municipal Commissioner determining the tenancy and requesting the Commissioner to deliver possession of the land occupied by the markets and to pay in the meantime rent at the rate of Rs. 12,000 per annum. The Municipality declined to pay the rent and the Secretary to State for India filed a suit against the Municipal Commissioner for a declaration that the tenancy of the Municipality created by Government Resolution of December 9, 1865, stood determined and for an order to pay rent at the rate of Rs. 12,000 per annum. It was urged before the High Court of Bombay that the events which had transpired had created an equity in favour of the Municipality which afforded an answer to the claim of the Government to eject the Municipality, Jenkins, C.J., delivering the judgment of the Court observed.

The doctrine involved in this phase of the case is often treated as one of estoppel, but I doubt whether this is correct, though it may be a convenient name to apply. It differs essentially from the doctrine embodied in Section 115 of the Evidence Act which is not a rule of equity but is a rule of evidence that was formulated and applied in Courts of law; while the doctrine with which I am now dealing, takes its origin from the jurisdiction assumed by courts of Equity to intervene in the case of or to prevent fraud.

After referring to *Ramsden v. Dyson* (1866) L.R. I.H.L. 129, the learned Chief Justice observed that the Crown comes within the range of equity and proceeded to examine whether the facts of the case invited the application of that principle.

This case, is in our judgment, a clear authority that even though the case does not fall within the terms of Section 115 of the Evidence Act, it is still open to a party

who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it even though the promise is not recorded in the form of a formal contract as required by the Constitution.

It is further held by the Supreme Court that : Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future contract and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on exparte appraisalment of the circumstances in which the obligation has arisen.

It is true that the principle of promissory/equitable estoppel cannot override the provisions of any statute and there cannot be any estoppel against any Statute, but if the case on hand is looked into, certainly, I am of the view, the principle of equitable estoppel has got to be applied.

8. In V.P. Thirunavukkarasu v. The State of Tamil Nadu : (1973)2MLJ181 , Palaniswamy, J., has on the scope of the application of equitable estoppel observed that....,

If the terms of a statute are absolute and do not admit of any relaxation or exemption, then anything done contrary to the terms of such a statute would be ultra vires and would be void and no person could be estopped from putting forward the contention that what he did was illegal or void. But if, on the other hand, a statute having prescribed certain conditions or qualifications for the doing of a certain thing itself provides for exemption therefrom under certain circumstances or authorises somebody to exercise the power of exemption then anything done not in terms of those conditions or qualifications could not be said to be ultra vires. It may amount only to an irregularity and to such an act the proposition that there can be no estoppel against a statute will have no application.

In view of the admitted fact that the petitioner had been allowed to take the Tamil Examination concerned of X Standard in March, 1993 and he had been issued a hall ticket to take up the said examination and his name did find a place in the

computerised nominal roll and the petitioner's application having been accepted as a valid one without rejecting it and without getting any undertaking from the petitioner, I am of the view that the principle of equitable estoppel has got to be applied to this case and if so applied, it is not open to the respondents 1 and 2 now to say that the petitioner's result cannot be published pending decision on his belated application. The submission of application late is only a irregularity. If the respondents 1 and 2 had committed any mistake in entertaining the application of the petitioner and in allowing the petitioner to take up the Government examination in March, 1993, for such an act the petitioner cannot be penalised. If the application of the petitioner is not a valid one, the respondents 1 and 2 should have thrown out the application at the initial stage itself and they ought not to have proceeded at all. It has not been done here. In such circumstances, I am of the view, that there is no justification for not publishing the result of the petitioner.

8. In the result, the writ petition is allowed and the respondents 1 and 2 are directed to publish the result of the petitioner within ten days from to-day (4.10.1993). No costs.