

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.317 of 2019

Litumanjari Pradhan ***Appellant***

-versus-

***Chairman, Council of Higher
Secondary Education, Bhubaneswar & ...
Ors.*** ... ***Respondents***

Advocates, appeared in this case:

For Appellant (s) : ***Mr. G.N. Sahu, Adv.***

For Respondent (s) : ***None***

CORAM:

THE CHIEF JUSTICE

DR. JUSTICE S.K. PANIGRAHI

MR. JUSTICE M.S. RAMAN

JUDGMENT

31.03.2023

1. This reference arises from an order dated 21st November, 2022 passed by the Division Bench of this Court. Unable to agree with the conclusion reached by a coordinate Division Bench of this Court in ***Nrusingha Charan Panda v. The Secretary, Board of Secondary Education, Orissa***¹ the referring Bench has asked this larger Bench to decide whether ***Nrusingha Charan Panda (supra)*** has been correctly decided.

2. The factual background leading to the present reference is that the Appellant appeared in +2 CHSE examinations in 1996 in the 'Arts Stream'. This comprised the subjects of English, M.I.L (Odiya), History, Optional Odiya (O.O) and Education. The Council of Higher

¹ 74 (1992) CLT 350

Secondary Education (CHSE), issued a Mark Sheet showing the awarded marks in individual subjects. The 'Full Marks' for each of the above subjects, except M.I.L. (O), was 200. For M.I.L. (O) the Full Marks was 100. In terms of the governing Regulations of the CHSE, for a student to "Pass" she had to secure 30% of the 'Full Marks' in a particular subject. However, where the subject had both 'theory' and 'practical' papers, the student was required to secure a minimum of 30% of the total marks each in the 'theory' and 'practical' papers in order to be declared 'pass' in the concerned subject.

3. The Mark Sheet showed that in 'English', the Appellant had secured 14 marks in "Paper I" and 21 marks in "Paper II", aggregating 35 marks out of 200 (which was less than 30%). Resultantly, she failed in the English subject. In MIL (O) the Appellant secured a total of 36 marks out of 100 and passed in the said subject. In 'History' she secured 44 marks in Paper I and 58 marks in Paper II aggregating to 102 out of 200. Thus, she passed in History. In O.O, she secured 41 marks in Paper I and 35 in Paper II securing a total of 76 out of 200. Thus, she passed in OO as well. However, in 'Education' the Appellant scored 16 marks in Paper I and 26 marks in Paper II aggregating 42 marks out of 150 (less than 30%) and 38 marks out of 50 marks in Practical. As the Appellant had secured less than 30% in Papers I and II, she was declared 'failed' in the subject "Education". Since the Appellant has herself appended a copy of the Mark Sheet as received by her soon after the examination, the question of her not being aware that she failed in both English and Education did not arise.

4. Upon receiving the Mark Sheet, the Appellant applied for a chance to re-sit for the English subject alone. In the second examination, where she appeared as a compartmental candidate, the Appellant secured 26 marks in Paper I and 34 marks in Paper II, aggregating 60 marks out of 200. Thereby she 'passed' the English subject in compartment. Yet, despite being aware that she had failed in Education, the Appellant did not opt to sit for a compartmental examination for the "Education" subject.

5. The Appellant went on to enrol herself in the Bachelor of Arts programme at Panchayat Samiti College, Jharbandh affiliated to the Sambalpur University. She passed the Bachelor of Arts examination in April, 1999. It is pertinent to note at this juncture that no original "certificate of passing" in the CHSE examination was issued to her at any point in time. The said college and the university where the Appellant had enrolled for the Bachelor of Arts programme did not apparently insist on her producing such certificate at any point in time after granting her admission in the said programme.

6. The case of the Appellant is that when she approached the Pachayat Samiti Junior College, Jharbandh where she had pursued her +2 course for issuance of the Original pass certificate of the exam, the Principal of the said institution issued a certificate on 26th March, 2008 to the effect that she was placed in 'Compartmental Division' and that "Unfortunately, we have not yet received her Board Certificate which was to be issued for the CHSE till date." She then applied to the approached the CHSE on 13th July, 2012 for issuance and delivery of the Original "Certificate of Passing" in the +2 Arts examination. The receiving officer of the CHSE issued a

receipt indicating therein 'remaining case'. After making a representation to the CHSE she filed W.P. (C) 17090 of 2012 in this Court praying for a mandamus to the CHSE to issue to the Appellant the Original Certificate of Higher Secondary Education.

7. In a reply filed to the said petition, the CHSE made it clear that no such certificate could be issued as the present Appellant was still adjudged as "Fail" in the subject "Education" as she had not appeared in the compartmental examination for the same.

8. The learned Single Judge disposed of the writ petition declining to issue the mandamus as prayed for after noting that the Appellant, despite knowing that she had failed in the 'Education' subject, chose not to sit for a compartmental examination. Nevertheless, it was observed that if any mistake had been committed by the authority then in that event the CHSE may take steps to allow the Appellant to appear in the compartment examination in the subject Education and upon passing the said examination, she could be issued a pass certificate.

9. Being still aggrieved, the Appellant filed the present appeal contending that the principle of promissory estoppel would apply. Mr. G. N. Sahu, learned counsel for the Appellant relied on the decision of the Division Bench of this Court in *Nrusingha Charan Panda (supra)* to urge that since the Appellant had "no knowledge" of her having not passed the Education subject, the CHSE could not deny issuing a pass certificate to her. However, as already noted, the Division Bench of this Court which heard the present appeal did not agree with the conclusion in the said case and by order dated 21st

November, 2022 referred to the larger Bench the correctness of the said decision.

10. At the outset, it requires to be noted that the central issue as far as the decision in *Nrusingha Charan Panda (supra)* was concerned, was the applicability of the doctrine of promissory estoppel. The ingredients for the application of the doctrine, as explained in several judgments of the Supreme Court of India, can be broadly summarised as under:

- a. That there was a representation or promise in regard to something,
- b. That the representation or promise was intended to affect/alter the legal relationship of the parties and to be acted upon, and,
- c. That it is, one on which, the other side has, in fact, acted to its prejudice.

One exception is that if the individual had “knowledge” about the truth/ fact of the matter, then the doctrine of estoppel will not apply.

11. This Court in *Suresh Chandra Choudhury v. Berhampur University*², upon placing reliance on the Supreme Court’s judgment in *Chhaganlal Keshavlal Mehta v. Patel Narandas n Haribhai*³, held that one of the requirements of applicability of the principle of estoppel is the person concerned must show that he was not aware of the true state of things or that he had no means to know the same. In *Suresh Chandra (supra)*, the applicability of the principle of estoppel was rejected because it was held that the petitioner would

²1986 SCC OnLine Ori 65

³(1982) 1 SCC 223

have been in a position to “know” on the basis of the mark-sheet supplied to him that he had failed in the examination in question. Therefore, as the Petitioner had the means of knowing that he had not succeeded in examination; it was held that the University was not estopped from declaring subsequently that the Petitioner had failed. The ratio of this decision has been consistently followed in *Prabhat Kishor Sahu v. Sambalpur University*⁴; *Pratima Sahoo v. State of Orissa*⁵; *Miss Reeta Lenka v. Berhampur University*⁶; *Varsachala Chetan v. State of Odisha*⁷; *Gajandra Patra v. Utkal University*⁸; *Bisweswar Behera v. Utkal University*⁹; and *Reetanjali Pati v. Board of Secondary Education*¹⁰.

12. In *Nrusingha Charan Panda* (*supra*) the Petitioner was declared ‘pass’ in the Annual High School Certificate Examination conducted by the Board of Secondary Education, Orissa, Cuttack. The S.L.C. and the mark sheet were issued to him by the Head Master of the School on the basis of the result and the marks list communicated to him by the Board. The Board upon realising the error in the publication of the marks list, intimated to the Head Master of the School. However, the Petitioner therein was not informed that he had failed in the exam. Therefore, the Court applied the principle of estoppel after holding on facts that (a) he had no knowledge of the failure and (b) the mistake lay on the part of the authorities.

⁴1991 SCC OnLine Ori 74

⁵2020 SCC OnLine Ori 804

⁶1992 SCC OnLine Ori 51

⁷2021 SCC OnLine Ori 1969

⁸68 (1989) CLT 694

⁹1989 NOC 29 (Orissa)

¹⁰AIR 1990 Orissa 90

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13. While *Nrusingha Charan Panda* was decided on 23rd January 1992, a Full Bench of this Court on 17th July 1992, i.e. nearly six months later, decided two writ petitions by a common judgment in *Miss Reeta Lenka v. Berhampur University* (*supra*). The other writ petition decided by the same judgment was *Biswanath Tarai v. Utkal University* (O.J.C. No. 3345 of 1988). The facts in *Reeta Lenka* were that the results of Miss Reeta, the Petitioner therein, were cancelled at a belated stage subsequent to issuance of a mark sheet and the College Leaving Certificate declaring her as passed. Moreover, a provisional certificate was also issued to her after it was brought to her attention that her results were cancelled due to mass copying, without extending the opportunity of hearing. It was held therein that the principle of promissory estoppel would apply even though there would be no obligation to “hear” a vast majority of students who adopt unfair means which leads to cancellation of their results. In Ms. Reeta’s case, there were only 12 examinees. Therefore, it was held that the principles of natural justice ought to have been extended to them. Moreover, we may note that a provisional pass certificate was issued to Ms. Reeta “after” having informed her of the cancellation of her results, demonstrating the lackadaisical attitude of the authorities. This Court has, however, in *Reeta* (*supra*) reaffirmed the position that one of the requirements of estoppel is that the person concerned must show that he was not aware/ had no knowledge of the true state of things or that he had no means to know the same. At the same time in the connected writ petition *Biswanath Tarai v. Utkal University* (*supra*), the same Full Bench on facts declined to extend to him the benefit of the doctrine and negatived his prayer that the cancellation of his results should be reversed. Going by the tests laid down in the

Full Bench of this Court in the two cases, i.e. *Reeta Lenka* and *Biswanath Tarai*, it is evident that the decision in *Nrusingha Charan Panda (supra)* may require reconsideration and would no longer be good law.

14. Applying the principles enunciated in the aforementioned decisions to the present case, the Appellant cannot possibly claim that she was unaware that she had failed in the Education subject. The CHSE Mark Sheet made available to her immediately after results were declared made that fact abundantly clear. There was no occasion for the Appellant to be under a misconception as to that fact. In the circumstances, the question of applying the doctrine of promissory estoppel in her case does not arise.

15. As noticed earlier, the Appellant was not entitled to be declared as 'Pass' in view of the regulations which govern the CHSE conducted examinations including +2 Arts. Directing the authorities to issue and deliver the Original "Certificate of Passing" in the CHSE examination to the present Appellant would tantamount to compelling the authority to act against the law. There can be no estoppel against the law as has been laid down in *Tata Chemicals Ltd. v. Commr. of Customs*.¹¹ If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, it would have no existence in the eye of the law¹². Merely because the Appellant was extended the benefit of deemed passing in the CHSE examination, albeit wrongly, this

¹¹(2015) 11 SCC 628 para 32

¹² Ibid

wrong act cannot be allowed to perpetuate¹³. Therefore, in light of the fact that the Appellant had knowledge but chose not to rectify her situation, we are unable to accept the contention of the learned counsel for the Appellant that the action of the authorities is hit by the principle of estoppel.

16. It is no doubt true that the Courts have, more often than not, leaned in favour of the students, but as the things stand, a line must be drawn between cases where there have been a *bona fide* error and cases where the circumstances are dubious. It is a well settled principle that what cannot be done directly, it cannot be done indirectly – *Quando aliquid prohibetur ex directo prohibetur et per obliquum*. Reliance may be placed on the decision in *Jagir Singh v. Ranbir Singh*¹⁴; *Dayal Singh v. State of Punjab (2003) 2 SCC 593* and *Apex Laboratories (P) Ltd. v. CIT*¹⁵.

17. It is inconceivable that the Appellant, when looking at her Mark Sheet, was not aware that she had failed in both English and Education subjects. She chose not to. The marks secured by the Appellant in the Education subject should have propelled her to attempt the compartment examination in that subject, as she did for English subject.

18. The learned Single Judge has directed that in the event the authorities have made a mistake then the Appellant should be given an opportunity of again sitting for the Education paper in

¹³ *Joshi Technologies International Inc. V. Union of India (2015) 7 SCC 728* para 43, 44

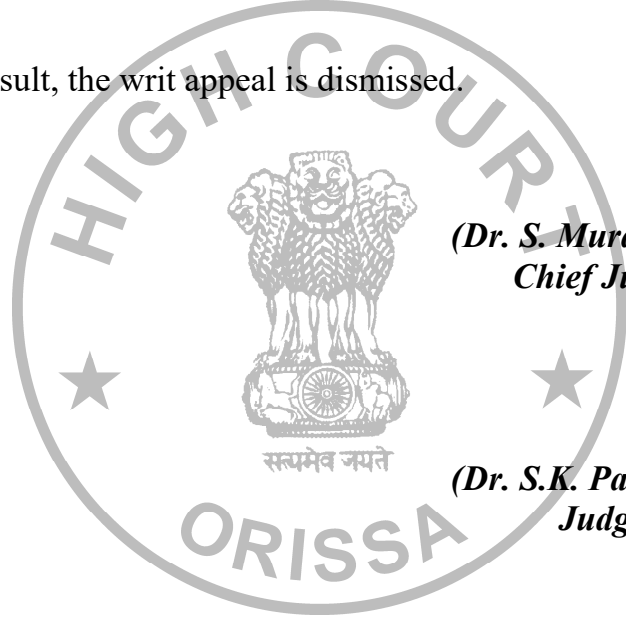
¹⁴ (1979) 1 SCC 560

¹⁵ (2022) 7 SCC 98

compartment. That occasion, as this Court sees it, does not arise in the facts of the present case since the authorities and in particular the CHSE informed the Appellant at the outset through the Mark Sheet that she had failed in the Education subject. No mistake can be attributed to them on that score.

19. The reference is answered by observing that the decision of this Court in *Nrusingha Charan Panda (supra)* is no longer good law in light of the later Full Bench decision of this Court in *Miss Reeta Lenka (supra)* which continues to hold the field.

20. As a result, the writ appeal is dismissed.



(Dr. S. Muralidhar)
Chief Justice

(Dr. S.K. Panigrahi)
Judge

(M.S. Raman)
Judge

SK Jena/Secy.