

GAHC040001172022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/47/2022

Harrang Rieng
Son of Late Chopung Rieng,
for Master. Ato Taro (Minor),
Resident of Village L/Riang, P.O Bameng, PS Seppa, District East
Kameng, Arunachal Pradesh.
Phone No. 7085819685

VERSUS

The Chairman, CBSE and 3 Ors.
Central Board of Secondary Education (Head Office), Shiksha
Kendra, 2, Community Centre, Preet Vihar, Delhi 110092 2:The
Deputy Secretary and Regional Officer

3:Donyi Polo Vidya Bhawan
Represented by its Chairman, PO/PS Itanagar, Pin 791111,
Arunachal Pradesh

4:The Principal
Donyi Polo Vidhya Bhawan, PO/PS Itanagar, Pin 791111,
Arunachal Pradesh

Advocate for the Petitioner : Pritam Taffo

Advocate for the Respondent : Nikita Danggen

**BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 05-01-2024

1. Heard Mr. P. Taffo, learned counsel for the petitioner. Also heard Ms. R. Borah, learned Standing Counsel for the Central Board of Secondary Education (CBSE), representing the respondent No.1 and 2. Also heard Mr. T. Tatak, learned counsel for the respondent No.3 and 4.

2. The background facts, leading to filing of the present writ petition, are adumbrated herein below:-

“The son of the petitioner appeared in Class XII CBSE Examination from Donyi Polo Vidya Bhawan in 2021, opting Mathematics as one of the main subjects. In that year, the examination could not be conducted due to Covid-19 Pandemic. Pursuant to direction issued by Hon’ble Supreme Court in **Mamta Sharma vs. CBSE**, in W.P.(Civil) No.522 of 2021, the CBSE, vide Notification dated 17.06.2021, a policy for tabulation of marks for class XII Board Examination was adopted. The son of the petitioner came out to be successful in the said assessment but he was shown to be failed in Mathematics subject and the said subject, though one of the main subjects, shown as elective subject in the result

sheet. Thereafter, the son of the petitioner had filed representation with all documents on 11.08.2021. Thereafter, a Tabulation Committee was constituted and mistake in respect of the son of the petitioner was detected and accordingly rectified the same. The finding of Tabulation committee was forwarded to respondent No.2. But when the result was declared the son of the petitioner found that no rectification was done. Though the petitioner had filed representation to the School Authority and to the regional office of CBSE, the same failed to yield any result. Therefore, the petitioner has approached this court."

3. It is to be mentioned here that the respondent No.1 and 2 and also 3 and 4 have filed their affidavit in opposition. Thereafter, hearing the learned Advocates of both sides, this court vide order dated 21.04.2022 had directed the respondent No. 1 and 2 to accept the Tabulation marks of the son of the petitioner being sent to it by the School Authority i.e. respondent No.1 and 2. During hearing the court found that the respondent No.3 and 4 have deliberately made false statement about sending of the finding of the Tabulation Committee in e-mail 'roguwahati.cbse' which is found to be wrong and therefore issued show cause notice as to why proceeding under section 340 Cr.P.C or/and proceeding under Contempt of Court Act should not be initiated against respondent No.3 and 4.

4. Mr. Taffo, learned counsel for the petitioner submits that by virtue of an order passed by this court on 21.04.2022, the petitioner has already got the relief as prayed for and the case is listed for order on the show cause notice

issued by this court to respondent No.3 and 4 as to why they should not be proceeded under the Contempt of court Act for deliberate and false statement made in the affidavit-in-opposition and that they should not be prosecuted under section 340 Cr.P.C. and 195 IPC for giving fabricated and false evidence.

5. Ms. R. Borah, learned Standing Counsel for the Central Board of Secondary Education (CBSE), submits that since the relief sought for in this petition has already been granted and since the case is pending for order on the show cause reply submitted by respondent No. 3 and 4, nothing is left to be done by respondent No.1 and 2 and on such count, nothing is left to be argued by her.

6. On the other hand, Mr. Tatak, learned counsel for the respondent No.3 and 4 submits that pursuant to order of this court dated 21.04.2022, the respondent No.3 and 4 have submitted an affidavit on 06.09.2022. Mr. Tatak submits that at the relevant time of furnishing finding of Tabulation Committee to the respondent No.1 and 2 the respondent No.4 was not Principal of the School, i.e. respondent No.3 and that after taking charge of respondent No.3 by the respondent No. 4 on 15.10.2021, he had taken utmost care to send the finding and there was no mala-fide intention on his part and that he had not made any deliberate false statement on oath in respect of e-mail, to where the respondent No.3 and 4 have sent the finding of the Tabulation Committee, is not incorrect and still the e-mail address of the regional office of the CBSE, Guwahati is roguwahati@cbse.gov.in and the same would be revealed only when somebody click on the prompt saying 'roguwahati.cbse' and 'roguwahati.cbse' was not the complete e-mail address, and that the respondent No.3 and 4 could not be able

to appraise this court about the same and had it been able to appraise the same then this court would not have issued notice for initiating proceeding under section 340 Cr.P.C. It is further submitted that before passing of order by this court on 21.04.2022, the CBSE had finally rectified the marksheet and rectified marksheet of the son of the petitioner was issued on 08.04.2022. Mr. Tatak also submits that the respondent No.3 and 4 begs to tender their unconditional apology for any inadvertent omission or commission on their part. Mr. Tatak further submits that the petitioner has already instituted a Money Suit being Money Suit No.64/2022 against the respondent No.3 and 4 seeking compensation of Rs.1,00,00,000/-. Therefore, Mr. Tatak contended not to proceed against the respondent No.3 and 4 under section 340 Cr.P.C. and/or under the Contempt of Court Act.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the record and also perused the affidavit dated 6th September 2022, filed by the respondent No.3 and 4 and the Annexures appended therewith.

8. It appears that the relief sought for in this petition has already been granted vide order dated 21.04.2022. The residual issue to be decided now is whether the respondent No.3 and 4 have deliberately made false statement on oath regarding sending of the finding of the Tabulation Committee to the regional office of CBSE at Guwahati, through e-mail, in an incorrect e-mail address.

9. It is the categorical stand of the respondent No.3 and 4 that they have not

made any deliberate statement on oath in their affidavit-in-opposition, regarding sending of the finding of the Tabulation Committee in respect of the marks obtained by the son of the petitioner in Mathematics subject, which was one of his main subjects, to the regional office of the CBSE at Guwahati. It is also the stand of the respondent No.3 and 4 that the e-mail address of the regional office of CBSE is roguwahati@cbse.gov.in and 'roguwahati.cbse' is its short address and clicking on the prompt wherein short address of the recipient is mentioned, herein this case is 'roguwahati.cbse', the full e-mail address, including the domain name is shown. It also appears that in e-mail address roguwahati@cbse.gov.in, the letter dated 15.12.2021, was sent requesting for correction of marks of the son of the petitioner.

10. It also appears that before passing of the order dated 21.04.2022, the respondent No.1 and 2 had finally rectified the marksheet and rectified marksheet [(**Annexure-L**) of the affidavit dated 06.09.2022] of the son of the petitioner was issued on 08.04.2022, on persuasion of the matter by the respondent No.4, who assumed charge of the Principal of respondent No.3, only on 15.10.2021. Be it mentioned here that mistake in calculation of marks of the son of the petitioner took place during the tenure of the erstwhile Principal of respondent No.3.

11. Further, it appears that the respondent No.3 and 4 have tendered their unconditional apology for any inadvertent omission or commission on their part. It also appears that the petitioner has already instituted a Money Suit, being Money Suit No.64/2022, against the respondent No.3 and 4 seeking

compensation of Rs.1,00,00,000/-.

12. Under the aforementioned facts and circumstances, this court is of the considered opinion that no offence under section 195 IPC appears to be made out against the respondent No.3 and 4, so as to proceed against them as per provision of section 340 Cr.P.C., or under the Contempt of Court Act.

13. However, the issue, so raised in this writ petition, appears to be serious in nature, concerning the life and career of a young and promising student. It appears that the matter had not been dealt with the sensitivity as it required to be, by the school authority i.e. respondent No.3. Otherwise, there would have been no scope of filing the present writ petition. A young boy was traumatized and subjected to considerable harassment and his guardian was compelled to knock the door of this court for no fault of him and to get the mistake corrected after lot of efforts. For the aforesaid reason, this court is inclined to impose cost of litigation amounting Rs.20,000/, so as to mitigate the cost suffered by the guardian of the student. This will also act as a grim reminder to the School authority i.e. respondent No.3, to perform their solemn duty with utmost sensitivity and also diligently.

14. The cost has to be deposited with the registry of this court within a period of one month from today, and thereafter, the registry shall hand it over to the petitioner. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant