

(2010) 02 CAL CK 0015

Calcutta High Court

Case No: Writ Petition No. 639 (W) of 2010

Sri Samiran Kaibarta and
Another

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Feb. 6, 2010

Citation: (2010) 2 CALLT 97

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Indranil Chakraborty, for the Appellant; Kallol Basu and Mr. Debasish Sarkar for the Board and Mr. Sunil Kumar Pan for the State, for the Respondent

Judgement

Biswanath Somadder, J.

The Judgment of the Court was as follows:

1. This writ petition has been filed through the Calcutta High Court Legal Services Committee.
2. Both the writ petitioners are minors and are siblings who are represented by their mother. The writ petitioners reside at village and Post Office - Kalabani, Police Station - Hura in the district of Purulia. The petitioner No. 1, Samiran Kaibarta was born in the year 1992. The petitioner No. 2, Chandana Kaibarta was born in the year 1993.
3. The brother and sister writ petitioners as also their three other sisters were all born blind. They hail from an extremely economically handicapped family, which is in dire need of financial help. Overcoming all odds, the writ petitioners not only pursued their studies, but also participated in extra-curricular activities such as annual sports conducted by the Blind Academy, Burdwan as also the West Bengal Government or State Athletics Meet for the Handicapped. The brother and sister

duo, with a view to appear in the Madhyamik Pariksha conducted by the West Bengal Board of Secondary Education (hereinafter referred to as the said Board), registered themselves with the said Board and obtained their Registration Certificates on 15th September, 2007. Being visually impaired and differently abled, the writ petitioners were entitled to get help by means of appointment of "amanuensis" by the Board, whose primary function is to write answers in the Board examination on their behalf. It has been stated by the writ petitioners that application forms for that purpose had no restrictions earlier regarding appointment of amanuensis. However, the situation suddenly changed in the year 2008 and a specific clause was incorporated in the form which reads as follows:

N.B.: The educational qualification of the proposed Amanuensis must not be higher than Class-IX.

In paragraph 10 of the writ petition, it has been stated that they tried their best to get an amanuensis, qualified upto Class-IX, appointed in the little time which was available to them, but they totally failed in their efforts in view of the fact that they were residents of a distant village in Purulia and also in view of the fact that students qualified upto Class-IX were very reluctant to serve in the capacity of "amanuensis" since those students found it very difficult to deal with specialized subjects, like Physical Science, Trigonometry, English, of which the syllabus of Class-X was more complex than what was taught to them in Class-IX.

4. For the above reasons and also for reasons stated in paragraphs 11 and 12 of the writ petition, although being issued admit cards by the Board, the writ petitioners were unable to appear for the written examination of the Madhyamik Pariksha for the year 2008. Another attempt was made by the writ petitioners to sit for the Madhyamik Pariksha in the year 2009. This time also admit cards were issued by the Board. However, the writ petitioners could not appear in the written tests after having made a representation dated 3rd February, 2009, through the learned advocate appointed by the Calcutta High Court Legal Services Committee, which remain unanswered by all the authorities to whom the said representation was addressed. In the said representation dated 3rd February, 2009, the learned advocate drew the attention of the authorities to the difficulties faced by the writ petitioners with regard to the use of "amanuensis" who had studied upto Class-IX. It was specifically stated by the learned advocate for the writ petitioners in the representation dated 3rd February, 2009, that students studying in Class IX appeared to be unsuitable and less qualified than those studying in Class -XI, particularly in respect of subjects like Physical Science, Trigonometry. English etc. and it became very difficult for the visually handicapped Students to do well in the Board examination, for no fault of theirs. It was also stated that such arrangements of providing "amanuensis", who had studied till Class IX, created an inbuilt disadvantage which worked against the interest of examinees such as the writ petitioners, since it created inequality and as such the differently abled examinees

were placed at a distinct disadvantage. A request was also made on behalf of the writ petitioners to allow them to appear for the Madhyamik Priksha commencing from 25th February, 2009 with "amanuensis" studying in Class-XI. However, for reasons best known to the Board, such representation was not considered and thus the writ petitioners also could not sit for the Madhyamik Pariksha for the year 2009.

5. In a similar fact situation as they encountered in the previous year, i.e. 2009, the writ petitioners tried to fill-up the necessary Forms to enable them to participate in the ensuing Madhyamik Pariksha for the year 2010. However, they could not do so within the time-limit specified by the Board in view of the abovementioned nota bene (N.B.) clause which specifies that the educational qualifications of the proposed amanuensis must not be higher than Class-IX (emphasis supplied by Court).

6. At the time of hearing of the instant writ petition, learned advocate appearing on behalf of the Board has invited this Court's attention to the West Bengal Board of Secondary Education (Examination) Regulations 2001 (hereinafter referred to said Regulations). Upon perusing the same it appears that the word "amanuensis" has been statutorily defined under Regulation 2(i)(iv) of the said Regulations, which reads as under:

... "amanuensis" means a person having qualifications ordinarily not higher than class IX standard appointed by the Board to write answers in the examination on behalf of a physically handicapped candidate;

7. Even on a bare reading of the above definition of the word "amanuensis"; it is patently clear that it would mean a person having qualifications ordinarily not higher (emphasis supplied by Court) than Class IX standard. However, the nota bene (N.B.) clause in the application form which is required to be submitted to the Board to get help of an "amanuensis" with extra time for visually impaired candidates of Madhyamik Pariksha (S.E), 2010, it has been stated that the educational qualification of the proposed "amanuensis" must not be higher (emphasis supplied by Court) than Class-IX. This nota bene (N.B.) thus appears to be contradictory to the statutory definition of the term "amanuensis" in the said Regulations as quoted above, since the statutory phrase ordinarily not higher has been replaced with the phrase, must not be higher. In that view of the matter, the nota bene (N.B.) clause, appearing in the bottom of the application form for obtaining help of ("amanuensis" for the visually challenged candidates requires to be rectified and corrected. The Board is directed to rectify and correct its mistake accordingly.

8. In the instant case, since the writ petitioners could not fill-up the application forms for obtaining help of "amanuensis", in view of the incorrect nota bene (N.B.) clause, I am of the opinion that an extra-ordinary situation has arisen for no fault on their part, since the date of submission of forms have already expired. In view of the observations made hereinbefore, the Board is directed to relax its norms to enable

participation of the writ petitioners, who are differently abled, being visually impaired, in the ensuing Madhyamik Pariksha. The Teacher-in-Charge of the concerned school as well as the Secretary of the Board, both of whom are personally present before this Court, assure fullest co-operation in that regard and in such circumstances, no further directions are required to be given and the writ petition stands disposed of accordingly.

9. Photostat plain copy of this order duly countersigned by the Assistant, Registrar (Court) be given to the learned advocate for the parties on usual undertakings.