

(1999) 02 CAL CK 0005

Calcutta High Court

Case No: G.A. No. 434 of 1999, A.P.O.T. No. 76 of 1999 and W.P. No. 96 of 1999

Kakali Chatterjee (Smt.)

APPELLANT

Vs

West Bengal Board of Secondary
Education

RESPONDENT

Date of Decision: Feb. 23, 1999

Acts Referred:

- West Bengal Board of Secondary Education, Madhyamik Pariksha (Fees and Remunerations) Regulations, 1978 - Regulation 11

Citation: (2000) 1 ILR (Cal) 235

Hon'ble Judges: Tarun Chatterjee, J; S.K. Tiwari, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Tarun Chatterjee, J.

By consent of parties this appeal was treated as on the list dated February 18, 1999 and is being disposed of by this judgment.

2. This appeal has been preferred against a judgment and/or order dated February 1, 1999 passed by a learned Judge of this Court on the writ application moved by the Appellants by which the writ application of the Appellants was rejected. The Appellant No. 1 Smt. Kakali Chatterjee is the Headmistress of Garifa Arati Academy for Girls, 124, R.B.C. Road, post Naihati, District 24-Parganas (North) (hereinafter referred to as the "Academy") and Appellant No. 2 is Sri Ranjit Kumar Shaw who is the secretary of the Managing Committee of the said Academy. The writ application was moved against the refusal on the part of the West Bengal Board of Secondary Education in supplying 96 regular forms along with forms for compartmental candidates for the previous years for students of Madhyarnik Examination scheduled to be held on and from March 4, 1999 in favour of the said Academy and for other incidental reliefs. The said Academy was recognised by the West Bengal

Board of Secondary Education in the year 1974 as Class-II Junior High School. An application was filed for upgradation of the said Academy to Class X High School by the School in the year 1980. The application for upgradation was forwarded by the Director of School Education for taking appropriate action whereafter an inspection was held by the Assistant Inspector of School. It is not in dispute that during the period from 1982 to 1993, the West Bengal Board of Secondary Education (In short "the Board") allowed the students of the Academy to appear at the Madhyamik Examination suo moto. However, in the year 1994, the Board refused to issue the forms in favour of the candidates and for that reason a writ application was filed at the instance of the Appellants. A learned Judge of this Court by an order dated January 21, 1994 directed the Board to issue forms in favour of the Appellants so that the students of the said Academy could appear at the Madhyarnik Examination for that year. An appeal was taken against this judgment of the learned single Judge and by an order dated February 10, 1994, the appellate Court directed as follows:

We grant stay of operation of the order dated 21.1.94. By virtue of our grant of stay, there will be nothing left with the writ application at the present stage. We, however, make it clear that even at this late stage if the writ Petitioners send their thirty-one students to the West Bengal Board of Secondary Education as external candidates and it be deemed feasible and practical for the Board to get a test examination through a recognised institution selected and authorised by the Regional Examination Council, the Court will not stand on their way and this order will not prevent the thirty one students from appearing in the examination provided they are fond qualified enough to pass the test examination in the manner as indicated earlier. We desire that the West Bengal Board of Secondary Education should pass an appropriate order in this regard as expeditiously as possible.

By consent of the parties, we take up the appeal as also the writ application for hearing and we dispose of the same in the manner indicated above, and instead of staying the order dated 21.1.94, we set aside the order impugned.

3. Pursuant to the order of the Division Bench of this Court on February 10, 1994, the Board permitted the students of the Academy to appear at the Madhyamik Examination for the year 1994. As the result of the said students were not declared, the Appellants moved another writ application in this Court and the said writ application was disposed of in the following manner:

Keeping in view the fact that the West Bengal Board of Secondary Education itself granted permission to the students concerned to appear at the examination, the question of any further direction by the Division Bench of this Court, did not arise.

In view of the fact that the concerned students appeared as external candidates, this application is allowed and the West Bengal Board of Secondary Education is directed to publish their results. The mark sheets of the concerned students may be sent to the Headmistress of the concerned school, at an early date, and preferably within a

period of one week from date.

This order should not be construed to mean that by this order the school in question would be recognised for any purpose whatsoever.

The writ application is allowed to the extent indicated above.

4. Again in the year, 1995, the Authorities did not supply the requisite forms to the Academy and accordingly another writ application was moved in this Court before one of us (Tarun Chatterjee, J.) and by an order dated February 8, 1995, the said writ application was disposed of in the following manner:

In view of the aforesaid order passed by a Division Bench of this Court which is binding on me, I also dispose of this writ application in terms of the said judgment as referred to hereinabove passed, by a Division Bench of this Court in F.M.A.T. No. 311 of 1994.

The West Bengal Board of Secondary Education is, however directed to expedite the matter so that steps may be taken by them to allow the fifty four students to appear in the ensuing Madhyamik Examination to be held in the month of March, 1995.

The Headmistress of the school in question is directed to receive the forms on behalf of the writ Petitioners for fifty four students.

5. Another writ application was moved at the instance of the Appellants before another learned single Judge of this Court and by an order dated February 9, 1996 an interim order was passed by a learned Judge of this Court in the following manner:

There will be an interim order in terms of order of the Division Bench passed in respect of this school in the year 1994 (12.2.94) as quoted in the Annexure "C" to the writ application and the W.B. Board of Secondary Education will be at liberty to allow the 72 candidates of the Petitioner's school to appear before the ensuing Madhyamik Examination as external candidates with external syllabus on compliance of all necessary formalities as mentioned in the Division Bench order.

6. Subsequently, the writ petition was disposed of by an order dated April 11, 1996 with the following directions:

I however, make it clear that till the decision is arrived at by the West Bengal Board of Secondary Education in the matter of upgradation of the school in question, the students of Class-X of the school should be allowed to sit every year as external candidate with external syllabus on compliance of other necessary formalities as mentioned in the Division Bench Order dated 12th February, 1994, passed in F.M.A.T. No. 311 of 1994, (which is still pending) and result of such candidates should also be published regularly, including the results of the candidates allowed to appear in the last Madhyamik Examination. All these will be, however, subject to the result of the Appeal as indicated above, provided, it is still pending disposal.

I, however, make it clear that the authorities concerned while considering the case of the upgradation of the Petitioners' school shall consider the documents as annexed to the supplementary affidavit filed on behalf of the writ Petitioners in Court today which the Petitioners are to supply to the authority concerned within a fortnight from date.

7. The Appellants again filed an application for appropriate order before a learned Judge of this Court. The said application was placed before a learned Judge of this Court on March 10, 1998. While disposing of the said application, the following directions were passed by the learned trial Judge:

Accordingly, since the writ Petitioners' school has not yet been upgraded as a Class IX and X school after obtaining due approval from the authority concerned, no student can be sent by the said School for appearing in the Madhyamik Examination or any other examination conducted by the Board.

Accordingly, the writ Petitioners' School is injuncted from admitting any student in Class IX and X henceforth, or sending any student for appearing in any future Madhyamik Examination before the School in question gets approval in the matter of upgradation as a Class IX and X school. However, considering the lights of the students as mentioned by the writ Petitioners, at page 25 of the writ application i.e. Annexure "C" the Board is to issue necessary forms to the School for allowing such students to appear in this year's Madhyamik Examination of course as external students on external syllabus by tomorrow, positively, and the School authorities would return the said forms duly filled up by the students concerned along with the necessary fees by Thursday next and the Board should also immediately issue necessary admit cards to the School after getting the forms duly filled up by the students concerned and the fees.

I however, make it clear that if school authorities fail to collect forms from the Board by tomorrow, the Board would be under no obligation to supply forms subsequently or to allow such students in this year's Madhyamik Examination. The School Authorities can also collect such forms from the Board in course of today. Thereafter the said Academy was recognised as Class-IV Junior High School with effect from January 1, 1979.

So far as the students who are at present reading in Class IX and X of the said school are concerned, the school should immediately ask such students to take admission elsewhere for their own benefits and if the students fail to take such admission they will do it at their own risk.

8. This order dated March 10, 1998 was taken in appeal which came to be registered as M.A.T. No. 1160 of 1998. A Division Bench consisting of S.B. Sinha, J. and D.B. Dutta, J. by an order dated July 31, 1998, considered the entire facts of this case and modified the order of the Trial Court dated March 10, 1998 by directing the State Government to pass an appropriate order on the Appellant's application for

recognition of the school at an early date and not later than 8 weeks from the date of communication and further directed the Board to pass a suitable order within 4 weeks from the date of receipt of the order passed by the aforesaid Division Bench of this Court. From a careful perusal of the order of the Division Bench as aforesaid it appears to us that the Division Bench of this Court was of the opinion that the Academy could not have been enjoined from admitting any student in Class IX as they had not claimed any right that the students reading in the Academy should be allowed to appear as regular candidates. In the said judgment, however, the Division Bench has observed which is as follows:

In the event, the School is recognised there cannot be any doubt whatsoever that the students reading in the said school would be permitted to appear as regular candidates but in the absence of such recognition, the students can only be permitted in terms of the examination regulations of the Board that is external candidates on external syllabus and upon fulfilling the requisite conditions therefor.

9. From the above, it is, therefore, evident that the students of the Academy were allowed to appear at the Madhyamik Examination last year only as external candidates and in terms of the examination regulations of the Board relating to external candidates on external syllabus. As noted herein above, this Division Bench judgment was delivered on July 31, 1998. From the aforesaid judgment, we have also noted that the State Government shall dispose of the application for recognition of the school at an early date and not later than 8 weeks from the date of communication and further direction was made on the Board to pass a suitable order within four weeks from the date of receipt of the order to be passed by the State. It is not in dispute that the application for recognition of the school has not yet been disposed of by the State Government and an application for violation of the order of the Division Bench has been filed which has not yet been disposed of. The only question that is now to be decided, in this appeal is whether the students of the Academy would be permitted to appear at the Madhyamik Examination to be commenced on and from March 4, 1999 as external candidates on external syllabus and upon fulfilling requisite conditions therefor. From the facts stated herein above and on consideration of the earlier orders of this Court this time no order can be passed permitting the Academy to send their students to sit at the Madhyamik Examination to be held on and from March 4, 1999 even as external candidates on external syllabus for the following reasons:

From the narration of facts as stated herein above, it is clear that the Academy has not yet been recognised and/or upgraded by the State Government to class X High School since 1980. From 1980 to 1993 the students of the Academy were allowed to sit at the Madhyamik Examination without any disturbance from the State Government or the Board. Since 1994, the Academy had to come to this Court and moved writ applications for the purpose of obtaining permission to the students to appear at the Madhyamik Examination. It is also not in dispute that the students of

the Academy were allowed by the Court every year just before the Madhyamik Examination which was going to be held in a particular year as external candidates on external syllabus. In the order dated July 31, 1998 passed in M.A.T. No. 1160 of 1998, the Division Bench of this Court also permitted the students of the Academy to appear as, External candidates on external syllabus and upon fulfilling the requisite conditions therefor, in the event, the school was not recognised. There is no dispute that an external candidate can be allowed to sit at the Madhyamik Examination on external syllabus and upon fulfilling the requisite conditions therefor. One of the conditions is that the students has to appear in a test examination of a recognised institution and only thereafter he can be permitted to appear as external candidates on external syllabus. For the last 17 years, the students of the Academy which is not yet recognised as yet have been allowed to appear at the Madhyamik Examination without appearing in any test examination held by any recognised institution. In the present year, it is also an admitted position that the students of the Academy did not sit for any test examination of a recognised institution. Only a few days before the actual commencement of the Madhyamik Examination this year again this application has been filed for a direction upon the Board to permit the students of the Academy to appear at the Madhyamik Examination to be commenced on and from March 4, 1999. Mr. Saktinath Mukherjee, appearing on behalf of the Appellants sought to explain that in view of the time limit given by the Division Bench regarding consideration of the application for recognition, it was not possible for the students to appear in a test examination of any recognised institution. In our view, this submission of Mr. Mukherjee cannot be accepted. The order of the Division Bench was passed on July 31, 1998 and 8 weeks time was given to the State Government to consider the application for recognition and for upgradation of the school in question. Therefore, it was open to the Appellants to take steps so that test examination of the students of that year could be taken by any recognised institution. Unfortunately, such steps were not at all taken and in our view, the steps were deliberately not taken by the Academy only because without sitting at the test examination the students of the Academy were allowed at the Madhyamik Examination as external candidates on external syllabus for a pretty long time. This particular Academy for the last few years has been coming to the writ Court and asks for permission to allow the students to appear at the Madhyamik Examination every year as external candidates on external syllabus.

10. In our view, this action on the part of the Academy cannot be accepted by this Court till a school is recognised by the Board as a class-X High School. There is no question of admitting students in Class IX and X of the High School. In the present case, it is an admitted position that in spite of the fact that no order has yet been passed recognising the School as a Class IX and X High School. The school authorities in their sweet will went on admitting students in their school and thereafter just before the Madhyamik Examination of a particular year moves a writ application or an application to this Court and considering the future of the

students, the Court permitted those students to appear at the Madhyamik Examination. By this process, school authorities are sending their students to appear in the M.P. Examination for the last 6-7 years although they knew that they were not favoured with recognition of the school. We find on consideration of the facts and circumstances of this case, the school authorities were virtually sending their students with the help of the writ Court. Even this year they could have arranged a test examination for their students from a recognised institution. But they kept silent till the month of January 1999 when they filed the writ application which was rejected by the Trial Court against which the present appeal has been preferred by the Appellants. From this, we may readily infer that the intention of the Appellants was not bona fide.

11. In a recent decision of the Supreme Court in the case of [C.B.S.E. and Another Vs. P. Sunil Kumar and Others](#), the Supreme Court has depreciated the idea of permitting the students of an unaffiliated institution to sit at the examination of the Board. In para. "4" at page 2237, the Supreme Court has made the following observations:

We are unable to apply the reasoning given in the aforesaid case, inasmuch as there is no iota of material placed before us to indicate that the Central Board of Secondary Education, the Appellants herein, either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their students have been affiliated or are going to be affiliated at a near future. We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students.

12. From the above observations of the Supreme Court, we are unable to extend our sympathy to the present students or to the school authorities as we find that the action of the school authorities cannot be considered to be bona fide. Even assuming that the students of the Academy are entitled to appear as an external candidate at the ensuing Madhyamik Examination, even then we are of the view that in view of the West Bengal Board of Secondary Education, Madhyamik Pariksha (fees and remunerations) Regulations, 1978, the students of this academy are not also entitled to appear as external candidates on external syllabus because Regulation 11(q) of the aforesaid regulation clearly says that an external candidate who has not prosecuted studies in a recognised institution and is appearing at the Madhyamik Examination with syllabus for external candidates after passing the test examination of a recognised institution selected and authorised by the regional examination council. From the aforesaid Regulation 11(q) of the said Regulation, it is clearly

evident that only if an external candidate passes a test examination of a recognised institution selected and authorised by the Regional Examination Council, only then the student of the High School could be entitled to appear as external candidates on external syllabus. No step was taken either in this year or in the proceeding years by the school authorities for the purpose of getting permission to appear at the Madhyamik Examination. The procedure adopted by the school authorities for so many-years in this case is to get an order from court without getting the students passed in a test examination of a recognised institution selected and authorised by the Regional Examination Council. In this case, admittedly, this year also the students of the academy did not appear in the test examination of a recognised institution selected and authorised by the Regional Examination Council. That being the position, we are unable to permit the students to appear at the ensuing Madhyamik Examination to be held on and from March 4, 1999.

13. Therefore, this appeal has no merit and is accordingly dismissed.

14. In view of the order passed in this appeal, the application for permission becomes infructuous and is disposed of accordingly as infructuous.

15. There will be no order as to costs.

S.K. Tiwari, J.

16. I agree.