

(1994) 02 CAL CK 0018

Calcutta High Court

Case No: First Miscellaneous Appeal Tender No. 311 of 1994

West Bengal Board of Secondary
Education

APPELLANT

Vs

Chandidas Chatterji

RESPONDENT

Date of Decision: Feb. 10, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226, 32

Citation: (1994) 1 ILR (Cal) 441

Hon'ble Judges: S.N. Mallick, J; Mukul Gopal Mukherji, J

Bench: Division Bench

Advocate: Rabilal Moitra, for the Appellant; Moloy Kumar Basil, Suproakash Banerjee and Arati Sircar, for the Respondent

Judgement

Mukul Gopal Mukherji, J.

This is an application for stay of operation of an order dated January 21, 1994, as passed by a Single Judge of this Court in Chandidas Chatterji and Ors. v. State of West Bengal and Ors. The application for stay has been moved on behalf of the West Bengal Board of Secondary Education, its Executive Committee and its President as Appellants.

2. It has been contended before us that Garifa Arati Academy for Girls, even though recognised upto Class VIII stage, is unrecognised in so far as Classes IX and X are concerned and the students who were in Class X in 1993 could not as such be sent up for Madhyamik Pariksha for 1994 as candidates with regular syllabus or even alternatively as external candidates with regular syllabus. By filing a writ application, the Managing Committee of the School obtained an interim order from the learned Single Judge containing, inter alia, a direction upon the Appellants to allow the candidates of Garifa Arati Academy for Girls to appear at Madhyamik Pariksha (Examination) in 1994 as candidates with regular syllabus or alternatively as external

candidates with regular syllabus for which the authorities of the said School were to be given examination forms for thirtyone candidates latest by January 31, 1994. The West Bengal Board of Secondary Education was directed by His lordship's order to issue thirtyone forms to the Headmistress of the said School who was authorised to submit those forms to the Board, treating the candidates as external candidates with regular syllabus, so that such candidates would appeal in the ensuing MadhyamikPariksha to be held in April 1994. The Appellants were further directed to issue admit cards ; but there was an interim order to the effect that the result of such candidates would not be published until further orders as might be passed by the Court. The learned Single Judge, however, quoted a similar order being passed by another Single Judge, the previous order in another writ application, perhaps to take it as a precedent.

3. Be that as it may, it has been contended by the Appellant-Petitioners that a regular candidate according to the appropriate Rules of the West Bengal Board of Secondary Education means a candidate who has prosecuted a regular course of studies in a recognised institution and is sent up from such institution for the examination conducted by the Board as such candidate by the head of the institution. An external candidate means a candidate who has not prosecuted studies in a recognised institution and is appearing at the Madhyamik Pariksha (examination) with syllabus for external candidate after passing the test examination by a recognised institution selected and authorised by the Regional Examination Council. The Appellants contended before us that the thirtyone candidates of Garifa Arati Academy for Girls could neither come under the purview of the definition of an external candidate nor they could be taken as regular candidates within the meaning of law. There was also difference of syllabus for the Madhyamik Examination in between the regular candidates and the external candidates. For regular candidates ten marks are assessed on the basis of oral examination by the School itself whereas in respect of external candidates, there was no question of allotment of ten marks in every paper of 100 marks in such a manner by the School concerned, but then, external candidates have to answer a full paper of 100 marks, whereas Works Education is a compulsory subject carrying 100 marks for regular candidates, the external candidates have to take up an additional subject carrying 100 marks amongst the following subjects:

(1) Economics and Civics ; (2) Business Method and Correspondence and (3) Home Science (only for Female Students).

By virtue of the mandatory order passed by the learned Single Judge, thirtyone candidates from the Garifa Arati Academy for Girls, even if they appeared as external candidates would have to pass necessary test examination of a recognised institution selected and authorised by the Regional Examination Council ; but in the instant case there will be no opportunity for their passing such test examination. The School concerned has also not taken any steps in this regard so that they could

appear as external candidates by duly conforming to the procedure as delineated by the Regulation.

4. Mr. Moitra, the learned Advocate for the Appellant, cited before us three Supreme Court judgments for our consideration as a guiding principle in the case. In [State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another](#), it was pointed out that the practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination had been looked with disfavour by the Supreme Court. In *N.M. Nageshwaramma v. State of A.P.* (1986) (Supple) S.C.C. 166 the Supreme Court observed that the permission was granted to the student of an unrecognised institution to appear at the examination, it would amount to encouraging the establishment of an unrecognised institution. The Supreme Court declared that the jurisdiction of the Supreme Court under Article 32 or of the High Courts under Article 226 of the Constitution should not be frittered for such a party. In [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another](#), a similar request made on behalf of the institution and the students for permitting them to appear at the examination where even affiliation though was not granted, was rejected by the Supreme Court. The Supreme Court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognised, would be in clear contravention of the provisions of the statutes and regulations. The Court cannot be a party to direct the students to disobey the statute as that would be destructive to the Rule of Law. In the reported decision in [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another](#), a Full Bench of Madras High Court even after knowing this decision and keeping in view such observations, granted relief to the students on humanitarian grounds and this was commented upon by the Hon'ble Supreme Court by observing, inter alia, that the Courts cannot grant relief to the party on humanitarian grounds contrary to law, since the students are of unrecognised institution not entitled to the examination on recognition of institution. The High Court acted in violation of law in granting permission of such students for appearing at the examination. The Supreme Court even criticised the view taken by the Full Bench of the Madras High Court as destructive to the Rule of Law. In ultimate analysis it was observed, inter alia, by the Supreme Court in this case that the writ Petitioners had no right to insist upon the State to allow the students to appear at a public examination without recognition or without complying with the condition prescribed for such examination. Mr. Moitra further drew our attention to another Supreme Court judgment in *Managing Committee of Bhagwan Budh Primarv Teachers Training College and Anr. v. State of Bihar and Ors.* 1990 (Supple.) S.C.C. 722 where a similar question of granting permission to students to appear at an examination arose without the institution being recognised under the law by the State Government. It was commented upon in the judgment that even though mushroom institutions had sprung up without

prior recognition, who had admitted students, received fees from them and allowed them to undergo training for a substantial-period of time without getting any recognition and thereafter tried to get permission from the Court for their students to be allowed to appear at the examination on ground of sympathy, it was not possible to grant any such permission as prayed for because the granting of such permission would be clearly violating the provisions of the Statute. What was, however, unfortunate is that the applications made by various educational institutions to the Government for recognition are not promptly disposed of. The concerned department of the Government of Bihar was directed to see to it that the application for recognition of educational institutions was decided properly and where such an application was without merit, the Government should promptly reject the same and take steps to see to it that the rejection was brought to the attention of the students of the institution concerned so that they might not waste further time and money by undergoing training in that institution. The failure of the Government to take such step or action would only reflect callous indifference to the interests of the young students to whom the Government certainly owes certain responsibilities. The Supreme Court felt that the State Government should issue advertisements through newspapers and other possible channels, if any, to ensure that the students do not get misled by such unrecognised institutions into wasting their precious time and money in undergoing training which will be of no avail to them. In yet another decision of the Supreme Court in [State of Maharashtra Vs. Vikas Sahebrao Roundale and others](#), after referring to various case laws on that point it was observed that the High Court committed manifest error in law in exercising its prerogative power conferred under Article 226 of the Constitution by directing the State of Maharashtra to permit the students to appear for examination from an unrecognised educational institution. In that case the writ application was filed by the students for a direction of the High Court to the State Government so as to permit them to appear in the examination and to allocate the passed candidates an opportunity in a recognised institution to prosecute their further courses, and as the High Court wrongly allowed the said writ application, it was observed that there was direction to disobey the law which ought not to be so done.

5. Mr. Basu, learned Senior Advocate, duly assisted by Mr. Banerjee, learned Advocate appearing on behalf of the Respondents, submitted before us that on the question of the school not being recognised in so far as Classes IX and X are concerned, as far back as on September 24, 1991, a learned Single Judge of our Court, Mahilosh Majumdar J. in C.O. 3713(W)/91, by an order dated September 24, 1991, directed, inter alia, that "the upgradation of the School should not be deferred any further and the State Respondents were directed to send a report or recommendation after taking into consideration the inspection reports which were already there, within a period of two months from the date of judgment. The Board was directed to consider and pass necessary orders in accordance with the appropriate provisions of the West Bengal Secondary Education Act as it stood

amended on the date. It was further directed by His lordship that before a final decision was taken, the writ Petitioner, i.e. the School Managing Committee, should be given an opportunity of being heard with further opportunity to examine the reports. Mr. Basu also cited before us another judgment of the Division Bench of our Court dated March 10, 1992, where the West Bengal Board of Secondary Education and others impugned the judgment of a learned Single Judge permitting the candidates from an unrecognised school to appear in the Madhyamik Examination of 1992 under regular syllabus after arranging for the test examination of those students. The Division Bench ultimately refused to interfere with the order of the learned Single Judge holding, inter alia, that the candidates should be allowed to appear as external candidates in regular syllabus in the examination and for this necessary steps should be taken on behalf of the Appellants, the West Bengal Board of Secondary Education. While passing the said order the Division Bench, however, took into consideration on the fact that the examination was to commence from March 13, 1992, and the application for stay was filed on February 4, 1992 by the West Bengal Board of Secondary Education and the appeal was disposed of on March 10, 1992. Mr. Basu further drew our attention to the Board's inaction in not impugning the order dated January 11, 1993, passed by another Single Judge of this Court which was referred to in the present case by the trial Court where the West Bengal Board of Secondary Education in its discretion thought of not preferring any appeal impugning the interim order containing a mandatory direction upon the Board to allow the candidates from an unrecognised institution to appear at the Madhyamik Examination.

6. After taking into consideration the different contentions as raised on behalf of the Appellants as also of the Respondents, we are of the view that even though there were lapses on the part of the State Government and/or of the West Bengal Board of Secondary Education in not passing any final order regarding the application for recognition of Garifa Arati Academy for Girls regarding Classes IX and X, such lapses could not be a handle for allowing the students of such an unrecognised school from taking the examination either as regular students or as external candidates. In order to qualify as external students within the meaning of law, the thirtfone students have to take a test examination of the recognised institution selected and/or authorised by the Regional Examination Council and that apart they have to choose an additional subject for qualifying in the Madhyamik Pariksha amongst (1) Economics and Civics; (2) Business Method and Correspondences and (3) Home Science (only for Female X Students). If the students have not read such subject in their school even though it is an unrecognised institution, they cannot be made to appear in an examination with the subject are alien to them, that would not be doing full justice to them. That apart taking a test examination through a recognised institution selected or authorised by the Regional Selection Council at this late hour is not within the bound of and be too much of a hardship on them. That would also be an unnecessary intervention on the part of this Court to ask the

said candidates to be cleared by a recognised institution to be selected and authorised by the Regional Examination Council. Even there is an error of judgment made earlier in some case that may not justify our committing further error on a question of law on the point which has been settled more or less by the Hon^{ble} Supreme Court and we cannot violate the observations of the Hon^{ble} Supreme Court in this particular perspective, however, much we may have our personal sympathy for the intending candidates. The unrecognised institution is itself to be blamed for this performance for its callous indifference in taking speculative venture by way of a process of Court just because others were doing on a field without impunity.

7. We grant stay of operation of the order dated January 21, 1994. 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 its thirtyone 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 the way and this order will not prevent the thirtyone students from appearing at the examination provided they are found 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.

8. 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 January 21, 1994, we set aside the order impugned.

9. Let a plain copy of the ordering portion of this judgment be made available to the learned Advocates for both the parties.

10. Let a xerox copy of this judgment be given to the learned Advocates for both the parties on usual undertaking.

S.N. Mallick, J.: I agree.