

(1995) 11 CAL CK 0032**Calcutta High Court****Case No:** C.O. No. 10427 (W) of 1989

Jagabandhu Pan

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 21, 1995**Citation:** (1996) 2 ILR (Cal) 226**Hon'ble Judges:** Samaresh Banerjea, J**Bench:** Single Bench**Advocate:** Mrinal Kanti Das and Somnath Ghosh, for the Appellant; Milan Chandra Bhattacharjee, Goutam Banerjee and Mrinal Bhattacharyya, for the Respondent**Final Decision:** Dismissed**Judgement**

Samaresh Banerjea, J.

In the Instant writ petition the writ Petitioners who claimed themselves to be. the guardians of certain students of Bengal High School, Dist. Hooghly, have challenged Annexure "B" to the writ petition, which is an order dated April 28, 1989 passed by the West Bengal Board of Secondary Education withdrawing the permission to continue co-education in classes V to VIII in the said school with effect from 1st of May, 1989.

2. The main grievance of the Petitioners in the instant writ application is that such an order has been passed by the West. Bengal Board of Secondary Education (hereinafter referred to the Board) without giving any hearing to the school.

3. It is the case of the Petitioners the wards of the Petitioners all of whom are girls studying between class V to IX in the said Bengal High School which is a coeducational school and is continuing as such since the year 1966 without any break. The said school is one of the oldest school of the locality and is very popular amongst the students having a students strength of 980 out of which there are about 170 girls students studying between class V and X. Out of such 170 girls students 135 girls are studying between class VI to VIII and X. There are three

female teachers also in the school and one of them is for Higher Secondary Section. Such coeducational system was introduced in the said school with a view to educate the illiterate girls of the locality where there was no school for teaching the girls students. After the academic session in the year 1989-1990 started in April, 1989 and a number of girls students were already admitted in the school, the Petitioners came to learn from the Secretary of the said school that a Memo bearing No. 5455/G dated April 28, 1989 was served upon the Secretary intimating the decision of the Board to discontinue the permission to hold co-education in classes V to VIII. Although the Petitioners and other guardians protested against the said decision of the Board through public meetings, slogans, processions etc. the same were of no avail. Although protest was lodged to the School Authority, the School Authorities are unable to take any steps against the aforesaid decision of the Board.

4. It is the contention of the Petitioner that there are no other schools in the locality where the students are taught in the same standard. Although there is a girls school namely "Kamini Devi Girls" Junior High School about 2 and 1/2 kilometer away from the said school, the same is a Junior High School and the standard of teaching there is also low and the guardians have no faith in the said school. It is the further contention of the Petitioners that the decision to withdraw permission in the said school for holding co-education classes is arbitrary and unjustified. Before such decisions the opinion of the locality were never taken. Guardians were never given any opportunity over the matter nor any alternative arrangement was made by the Board for" teaching, the girls students with the same standard. It is also contended that the Petitioners would not have raised any objection against the decision of the Board provided that there were separate Girls" High School within vicinity of the said school. But the girls students have to go 2Vz kilometer for their studies which will cause great inconvenience and hardships for the girls students. It is the further contention of the Petitioners that such a decision could not have been taken without giving any hearing to the guardians of the students.

5. It will thus appear the main ground of the writ Petitioner to challenge the aforesaid decision of the West Bengal Board of Secondary Education were that such a decision could not have been taken without giving hearing to the writ Petitioners and such a decision if given effect to, will cause serious prejudice because the girls school which is there is at a distance of two and a half kilometer from the present school and standard of teaching there is also low.

6. On April 5, 1993 the Secretary and Headmistress of the local girls" school namely Kamini Devi Girls" Junior High School made an application for being added as a Respondents and such application was allowed. The said added Respondents thereafter filed an application for vacating interim order which was treated as an affidavit-in-opposition to the main writ application by order of the Court.

7. The Board of Secondary Education, West Bengal, has contested, the writ application by producing the relevant records, but no affidavit-in-opposition has

been filed.

8. The sum and substance of the defence of the Board is that the West Bengal Board of Secondary Education as a matter of policy does not encourage or accept the principle of co-education in school and in its circular No. 37/57 dated August 16, 1956 it was made clear that girls students are not to be admitted in boys school and vice versa as a general rule. But only in exceptional circumstances the Board grant permission for admission of a limited number of girls students subject to the conditions laid down therein, one of such conditions which is required to be fulfilled for grant of such permission in exceptional circumstances is that if there is a demand for admission of adequate number of girls students and no girls school is available where they can get admission. But no such permission shall not be given where there are girls school in the neighbourhood within a radius or one mile in a city or town and within 2 miles of a school situated in rural areas and also if such girls school in the neighbourhood are in a position to admit the additional number; girls students in classes IX and X will not ordinarily be permitted unless there are strong justification for this and permission for admission for girls students in such classes shall be on a temporary basis and the guardians in such case shall be asked to get their girls admitted in regular girls schools as early as possible. It has been further laid down in the said circular that when there is the demand for admission of an adequate number of girls students and no girls schools are available where they can get admission, the schools for boys" may be permitted to open a girls" school in the morning utilising the same premises provided the conditions laid down by the Board for opening a Secondary Schools are fulfilled.

9. It is the contention of the Board relying upon such circular and producing records that as at the relevant point of time there was demands for education of girl students of the locality and admittedly there was no girls" school at all in the locality, under such special circumstances permission was granted to the Bengal High School for taking co-education classes on its application dated February 28, 1966 temporarily and such permission was extended from year to year on consideration of the relevant matters on the application of the school. But now as there is a girls" school in the locality and therefore, the circumstances under which the permission was granted to the boys" school for taking co-education classes does not exist any further, such co-educational classes cannot be permitted to continue as the Board does not accept co-education as a principle.

10. The defence of the added Respondents in their application for vacating interim order which is being treated as affidavit-in-opposition is the same as that of West Bengal Board of Secondary Education. In addition to that it is the contention of the said added Respondents that after establishment of the girls" school in the year 1980 and after its upgradation upto Class VIII school, the special circumstances under which the boys" schools was permitted to run co-educational classes has caused to exist and therefore such permission to continue co-education class, which

is not an absolute one but was temporary and ad hoc subject to certain conditions, certainly can be withdrawn as in absence of the same their school is being effected in terms of rolls strength. A specific case has also been made out by the added Respondents that the girls school situates almost at the opposite end of the boys school.

11. It is pertinent to note in this connection that in course of hearing as it transpired that there has been long lapse of time after the Petitioners obtained the Rule in 1989 and the Petitioners cannot maintain the petition unless their wards are still reading in the boys school, the Court wanted to ascertain from the parties where the wards of the Petitioners are still studying in the school. Thereafter by a supplementary affidavit dated April 25, 1995 the Petitioner No. 5 stated, *inter alia*, that the wards of the Petitioner No. 1 Sulekha Pan is student of class VIM of the school, ward of the Petitioner No. 2 Mitali Samanta is studying in class IX ; the ward of the Petitioner No. 3 Smt. Seema is a student of class V the school and ward of the Petitioner No. 6 Soma is a student of class VII, but so far as the other writ Petitioners are concerned, their wards have already passed out.

12. Under such circumstances in my view, the Petitioners Nos. 4, 5 and 7 admittedly not having any ward in the school at present they lost their status as guardian and therefore, they cannot maintain the writ application any further. But as it appears from the said supplementary affidavit the other writ Petitioners namely 1,2,3 and 6 have their wards in the school they can certainly maintain the petition and in absence of the other Petitioners the petition will not fail.

13. Mr. Milan Bhattacharya appearing for the added Respondents submits that the entire petition is liable to fail because the wards of the Petitioners Nos. 1, 2, 3 and 6 who have been named in the supplementary affidavit as studying in the school now obviously cannot be the same wards who were studying in 1989 when the rule and interim order were issued. Mr. Das appearing for the Petitioner also admits that the said wards are not the original wards who were studying when the rule and interim order was issued, but their sisters.

14. I am, however, unable to accept the contention of Mr. Bhattacharya that because the wards of the Petitioners who were originally there at the time of moving the writ petition are not there in the school, the Petitioners Nos. 1, 2, 3 and 6 also cannot maintain this writ application. The question is not which particular ward is in the school but whether the guardians who moved the writ application being aggrieved by the impugned order are still guardians of the school or have lost such status. Since it appears from the supplementary affidavit that the Petitioners Nos. 1, 2, 3 and 6 still have some wards in the school they certainly belong to the categories of guardians and therefore can maintain the writ petition.

15. After filing such supplementary affidavit Mr. Das has also filed another application for addition of party at the instance of some other guardian of the

school. I am not, however, inclined to allow the said application at such a belated stage when the matter has already been heard finally and as it appears to this Court that such application has been made obviously at an instance of the present writ Petitioners to enlarge the scope of the writ petition. Such application is therefore dismissed.

16. As to the merit of the writ application I am, however, unable to accept the contention of Mr. Mrinal Kanti Das the Learned Counsel appearing for the Petitioner, that since 1966 the school is continuing as a co-education school and is performing well and there has been no complain against the said school, the same should be permitted to continue as such and that no such situation should be created by which the guardians are compelled to admit their wards in some other schools in as much as the guardians certainly have the right of getting their children educated in a school of their choice.

17. While it is true that every parent has a right to get their children educated in the school of their choice and obviously every parent is anxious that their children can be admitted in the best school, such right of the parents or the guardians, however, is to be consistent with the right and policy of the West Bengal Board of Secondary Education and cannot be in negation thereof.

18. The fact, as a matter of policy the West Bengal Board of Secondary Education has not accepted the principle of co-education in schools for which girls students are not admitted in boys school and vice versa as a general rule is not disputed by the writ Petitioners also. The West Bengal Board of Secondary Education under the West Bengal Board of Secondary Education Act has also the power to recognise schools on fulfilment of certain conditions and can also regulate the constitution and running of various schools through rules and regulations obviously for the purpose of proper maintenance of the academic standard. If the West Bengal Board in exercise of such power has framed such a policy, it is not open for the Petitioner or anybody else to challenge the same unless it is shown to be arbitrary, unreasonable or against public interest nor it is for the Court to interfere with such a policy decision unless it is proved to be unreasonable, arbitrary and against public interest as it has been held by the Supreme Court in the case of [State of Uttar Pradesh Vs. Uttar Pradesh University Colleges Pensioners' Association](#). It is not necessary at all for this Court to examine whether such policy of Board is arbitrary or unreasonable in view of the fact that there has been no challenge of such policy at all in the petition. As it will appear from the aforesaid circulars No. 37/57 dated April 16, 1956 a copy of which was annexed in the aforesaid application for vacating interim order by the added Respondents and a copy which was also produced before this Court on behalf of the West Bengal Board of Secondary Education, that inspite of such policy only in exceptional circumstances the Board has the power to grant permission to hold coeducation classes subject to a number of conditions normally, if there is no girls school in the neighbourhood within a radius of one mile in City or Town and

within two miles of a school situated in rural areas and also if such girls school in the neighbourhood are not in a position to admit the additional students.

19. In the instant case it is not disputed by the Petitioner and it also appears from the records produced by the Board that in 1966 as there was demand for education of the girls in the locality and admittedly there was no girl schools at the locality, the said boys school was granted permission temporarily to co-education classes on the application of the said school.

20. It will further appear from the said circular as also the relevant records produced by the Board that such permission granted in such an exceptional circumstance for running co-educational classes was not at all an absolute or permanent permission; but such permission was granted temporarily and was extended from year to year on the application of the school after review. It will appear from such records that admittedly each year the Headmaster of the boys school applied for extension of such permission for further period and such permission was extended from year to year.

21. It is also fact that the boys" school also never prayed that such permission should be extended permanently, it will appear from the latest communication made by the Headmaster of the school such extention was asked for further perusal dated December 2, 1969 and every year on the prayer of the school such permission was extended from time to time. In the letter dated September 15, 1992 written by the Headmaster of the Bengal High School to the Secretary, West Bengal Board of Secondary Education, it was stated, inter alia, that considering the representation from the local guardians the authorities of the school have decided to continue co-education in the school till a proper alternative arrangement be made for the education of girls in the locality. Therefore, the permission for running co-education classes may further be extended.

22. It will thus appear such permission to continue co-education class was not an absolute permission but was granted as a special case because of the reason that at the relevant point of time there was no arrangement for education of the girls students there being no separate schools for the girls.

23. Under such circumstances now that admittedly a conclusive girls school is there in the locality and in consideration of the same by the impugned order, the West Bengal Board of Secondary Education has withdrawn the permission for running co-education classes upto class VIII, as the situation for which such exception to the general rule was made by the West Bengal Board of Secondary Education does not exist any further, in my view nothing wrong ha been committed by the Respondents.

24. The Board admittedly as a matter of policy not having accepted co-education in the schools but having power to make an exception to such policy in absence of girls school in the locality, certainly has the jurisdiction also to withdraw such permission

where such circumstances justifying and making of such an exception to the general rule does not exist any further and the impugned decision of the Board therefore, cannot be said to be arbitrary or unreasonable.

25. Much has been argued by Mr. Das appearing for the Petitioner on the stand of the added Respondents that because of permitting the boys" school to continue to take co-education class the roll strength of their school which is exclusive for the girls was not increasing for which they had to make a representation to the West Bengal Board and ultimately upon holding an enquiry the District Inspector of School recommended in favour of withdrawing such permission.

26. Mr. Das has termed the same as a clear indication of mala fide and passing of the impugned order on extraneous consideration. I am unable to accept the aforesaid contention of the Petitioner. Admittedly the girls school was constituted in 1980 and therefore since then the circumstances which necessitated permitting the boys school to take co-education class making exception to the general rule ceased to exist and if inspite of the same the boys school was permitted to continue to take co-education class overlooking such an important fact, no wrong was committed on behalf of the girls school making representation to the Board against the same and for the purpose of taking decision, the Board can certainly take into consideration such representation and the same cannot be said to be extraneous to the policy of the Board is not permitting co-education in school. It appears from the records produced by the Board that the Dist. Inspector of Schools (Secondary Education) Hooghly, by Memo No. 4373/JA/A dated November 2, 1985 forwarded copy of the enquiry an inspection report submitted by the Assistant Inspector of Schools (Secondary- Education) with his own comments. It will appear from the said memorandum and enquiry report that because of the continuance of co-education in Bengal High School upto Class VIII is adversely affecting the enrolment in Bangai Kamini Devi Girls" Junior High School which is situated in close vicinity of the boys school and that the said Girls" Junior High School has been enjoying the status of class VIII Junior High School (V to VIII) since 1st of January 1966. It was observed in the said memorandum by the said Dist. Inspector of Schools because of the aforesaid reasons continuance of Co-education in Bangai High School in class V to VIII is to be reviewed. It appears thereafter on review of the situation the impugned order was passed by the West Bengal Board of Secondary Education.

27. Mr. Das has also assailed the impugned order by contending, *inter alia*, that no reason whatsoever was assigned in the impugned order for withdrawing such permission. It is true no such reason has been assigned. But absence of such reasons in the order itself under the facts and circumstances of this particular case, in my view, does not render the same defective or void, particularly when the records produced by Board reveal the reason of such order and the school authorities never challenged the said order on such ground or for the matter of that on any ground at all. That apart the said Boys School has no absolute right to

continue co-education classes, but till such time as it is permitted by the Board in exceptional circumstances. Therefore, when such exceptional circumstances warranting such permission cause to exist, the Board can withdraw such permission and under such circumstances if there are sufficient materials to satisfy the Court that the special circumstances under which such permission was granted have ceased to exist, no interference is called for with the order withdrawing permission even if the same does not disclose reason. It is also to be noted that in their application for clarification in the interim order which is treated as affidavit-in-opposition the added Respondents have stated that there was a demand from the villagers also to discontinue the co-education in the boys school because of the existence of the girls school.

28. I am unable to accept the contention of Mr. Das that before passing of the impugned order the guardians of the school were entitled to a hearing. The guardians of the school were well aware that as a matter of policy the Board does not accept the principle of co-education in schools although it may make an exception under certain circumstances when there is no girls school in the locality and in the instant case because of the precise reasons of absence of girls school in the locality at the relevant point of time such permission was granted which was extended from time to time. Now that the very circumstances necessitating continuance of coeducation classes in the boys school has ceased to exist and the Board after considering all aspects of the matter on review of the situation has withdrawn such permission, the question of taking such decision after giving hearing to the guardian are not arise. A guardian has no right to get his ward educated only in a coeducational school. By the aforesaid decision if any one can be said to be affected adversely at all, is the boys school. But the said school has not challenged the impugned order. To remove all doubts, however, I hasten to add that the school has also no right to claim co-education in the school in view of the aforesaid policy of the West Bengal Board.

29. The apprehension of the writ Petitioners that the standard of girls school is lower in comparison to the boys school is not supported by any material apart from the fact there is nothing in the record to show that the authorities of the boys school ever brought to the notice of the Board that the standard of teaching in the girls school is poor and therefore discontinuance of coeducational classes in the boys school will cause prejudice to the girl students. The other objection of the writ Petitioners namely the girls school is not a high school but a Junior High School is also not tenable. By the impugned order the Board has withdrawn permission for holding co-education classes not in respect of all the classes but only in respect of classes V to VIII as the girls school has classes from V to VIII. That itself shows the Board is proceeding after applying its mind and is only withdrawing permission of running co-education classes in a phased manner.

30. For the reasons stated above there is no merit in the writ application and the same therefore "alls. The writ application is therefore dismissed. All interim orders stand vacated.

31. The Respondents Nos. 5 and 6 and the Managing Committee of the Bangal Boys" High School are restrained from admitting girls students in class V to VIII from the next academic session.

There will be no order as to costs. Xerox certified copy if applied for shall be supplied to the learned Advocates for the parties as expeditiously as possible.