

(2014) 02 CAL CK 0112

Calcutta High Court

Case No: W.P. Nos. 5170(W) and 5346(W) of 2014

Saquib Khan

APPELLANT

Vs

West Bengal Board of Secondary
Education

RESPONDENT

Date of Decision: Feb. 21, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 2 CALLT 408 : (2015) 2 WBLR 171

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Subir Sanyal and Suthirtha Das, Advocate for the Appellant; L.K. Gupta, Sr. Adv., Arabinda Chatterjee, Ashim Haider, Shyamal Sarkar, Moupiya De Basu, Ashoke Banerjee I.P. and Santanu Kr. Mitra, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Debasish Kar Gupta, J.

These two writ applications are filed by the petitioners for allowing their wards to appear in the ensuing Madhyamik Pariksha (Secondary Examination), 2014 to be conducted by the West Bengal Board of Secondary Education. The above examination will start on and from February 24, 2014. At the very outset, on query of this Court, Mr. L.K. Gupta, learned Senior Advocate appearing with Mr. Arabinda Chatterjee for the Kankinara High School, District North 24, Parganas clarified that the Admit Card in respect of 470 students of that school have already been received by the school. Though initially the names of 883 students were forwarded to the respondent Board for registration of their names as regular students of the above school, 845 students attended classes regularly and appeared in the test examination for appearing in the ensuing Madhyamik Pariksha (Secondary) examination, 2014. The remaining 38 students out of 883 students did not qualify to appear in the ensuing examination.

2. The above submissions are made by Mr. Gupta, learned Senior Advocate, on the basis of the instruction received from Mr. Radhyashyam Shaw, a member of the managing committee of the above school, who is present in Court today.
3. The learned Government Pleader appearing on behalf of the respondent Board submits that these writ applications can be taken up for final hearing on the basis of the materials on record as also a communication dated July 26, 2013 sent to the Deputy Secretary (Examination), West Bengal Board of Secondary Education by the Teacher-in-Charge of the above school along with its annexures. The annexures were true copies of the attendance register of the students of the above school of Class-VIII to Class-X for the year 2013.
4. Let a true copy of the above documents are kept on record after inspection by the learned Counsel for the other parties.
5. The fact of the case are stated in a nut shell is as under:

The petitioners are guardians of 221 students in W.P. No. 5170 (W) of 2014 and the petitioners of W.P. 5346(W) of 2014 are the guardians of 151 students of Kankinara High School. They have come up before this Court for allowing their wards to appear in the ensuing Madhyamik Pariksha (Secondary Examination), 2014 to be conducted by the West Bengal Board of Secondary Education.
6. The respondent Board received a communication dated July 26, 2013 from the teacher-in-charge of the school under reference with the information of bona fide students reading with Class-X together with true copies of the attendance register amongst other information. The number of bona fide students mentioned therein was 475. The names of the wards of petitioners of these writ applications and three other students were not appearing in the attendance register annexed to the above communication.
7. On September 26, 2013, the respondent Board sent the scrutiny list for enrolment of the names of the regular students for participating in the above ensuing examination in respect of 470 students. The names of wards of the writ petitioners did not appear in the above scrutiny list.
8. The guardians of three wards, namely, (i) Ram Kumar Bharti, guardian of Ashis Kr. Bharti, (ii) Gopal Shaw, guardian of Suraj Kr. Shaw & (iii) Raj Kumar Hazra, guardian of Rishab Kr. Hazra filed an application under Article 226 of the Constitution of India in the matter of Ram Kumar Bharti & Ors. v. State & Ors. (In re: W.P. 32131(W) of 2013). On December 16, 2013, an order was passed in the above writ application directing the respondent Board to issue registration certificate in respect of 413 students including wards of the petitioners for registration of their names to participate in the ensuing examination.
9. The West Bengal Board of Secondary Education preferred an appeal assailing the above order in the matter of West Bengal Board of Secondary Education & Ors. v.

Ram Kr. Bharti & Ors. (In re: AST 250 of 2013 and an application bearing ASTA 121 of 2013), a Division Bench of this Court disposed of the above appeal along with the following directions:

In our view, if the admission of the petitioners' sons in Class-IX of the said school is found to be regular in terms of the aforesaid office circular No. S/141 dated 4th July, 2008 issued by the Secretary of the West Bengal Board of Secondary Education, then their registration cannot be denied by the Board. On the contrary, if it is found that their admission was irregular and/or not in accordance with the said circular, the Board may refuse to register them.

Accordingly, we feel that before issuing any mandatory order, directing the Board to issue the Registration Certificates in favour of the petitioners' sons, an enquiry is needed by the Board for ascertaining the legalities of the admission of these three students in Class-IX of the said school.

If ultimately after holding such enquiry, it is found that those three students were admitted in Class-IX in the said school in conformity with the provisions contained in the said aforesaid Office Circular and/or any other relevant Circulars and/or Regulations relating to admission issued by the competent authority, the Board should issue their Registration Certificates immediately after holding such enquiry.

Be it mentioned here that since these students attended the classes in the said school regularly or not, or they appeared in the examination held by the school or not and/or their eligibility to appear in the Madhymik Pariksha (S.E) are not relevant factors for deciding the present issue as to whether they will be registered with the Board or not, the Board, while taking its decision on the present subject should not be swayed by any other factor save and except the legalities of their admission in class IX in the said school.

In the event, the Board ultimately" decides to reject their applications, the Board is required to pass a reasoned order in support of its conclusion and intimate its decision to the petitioners.

Such exercise should be completed and the decision to be taken by the Board on the said issue should be communicated to the school as well as the petitioners positively by 28th January, 2014.

While making such exercise, Board should also bear in mind that despite certain irregularities noticed by the Board as pointed out by Mr. Banerjee, learned senior counsel before us, the Board permitted 647 students of the said Institution to be registered and allowed them to appear in the final Madhyamik Examination in 2011. Similarly, 822 students of the said Institution were registered by the Board which allowed them to appear in the final Madhyamik Pariksha in 2012 from the said Institution as regular candidates. Similarly in 2013, the Board registered 806 students of the said Institution and allowed them to appear in the final Madhyamik

Examination held in 2013, even though the Administrator appointed over the said school expressed his doubt about the bonafideness of bulk of such students who were so permitted to appear in the said Madhyamik Examination in 2013.

By consent of the parties, we fix 20th January, 2014 at 11 a.m. for holding inspection of the school's records by the Board Officials relating to the admission of those students. Since the date of holding such inspection is fixed by this Court with consent of the parties, no formal notice about the date of holding such inspection need be served by the Board upon the school authority.

The school authorities are directed to cooperate with the Board Officials in course of holding such inspection of the official records in the school premises and they should also supply all relevant documents relating to the admission of those three students to the Board Officials without fail.

It is further made clear that in the event the entire exercise including communication of its decision cannot be completed by the Board by 28th January, 2014, then it will be presumed that Board has no objection in issuing the Registration Certificates in favour of those three students and in that event the Board will register them as students of the said Institution in Class-IX for the year of 2012 and issue Registration Certificates in their favour to the school authorities within 30th January, 2014.

Needless to mention here that in the event the Board ultimately registers these three candidates as students of the said Institution in Class-IX therein in 2012, then the Board will allow the said students to fill up their respective forms for appearing in the Madhyamik Pariksha (S.E.) 2014 provided they fulfil the conditions for appearing in the Madhyamik Examination in 2014 as per the Examination Regulations issued by the Board on 3rd July, 2001 vide Office Circular No. S/488.

The writ petition is thus disposed of.

Both the appeal and the application are also disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocate for the petitioners immediately.

(Jyotirmay Bhattacharya, and Ishan Chandra Das, JJ.

10. In compliance of the above order the respondent Board passed an order under its memo No. 14/Admn./14(4) dated January 28, 2014, as follows:-

Pursuant to the order of the Hon'ble High Court in AST No. 250/2013 arising out of W.P. 32131(W) of 2013 dated 10.01.2014 and as per report of the Enquiry Committee, constituted under order No. 09/Admn./14 dated 17.01.2014 and the Administrator of the Board in regard to the legality of the admission of the above named students(petitioners) of Class-IX of 2012 of the said school, the undersigned has to intimate him the following decisions of the Board for his kind perusal.

The relevant Admission Register of Class IX was duly consulted and it was found that the names of those students appear in serial no. 430,446 and 450 and they were admitted to Class-IX on 11.04.2012 & 16.04.2012 respectively taking transfer certificates from different schools. But the admission of the said students was taken in the month of April by the school authority i.e. beyond the prescribed last date of admission i.e. 16th March, 2012 for academic session, 2012 without the permission from the Board. As such, there is no scope to issue registration in favour of them as their admission in Class IX is not legal in terms of Clause 4, serial no. 1 of Board's Circular No. S/58 dated 10.03.2010.

11. It is submitted by Mr. Subir Sanyal, learned Advocate appearing on behalf of the petitioners that the wards of the petitioners were admitted in Class-IX of the school under reference in April 2012. The forms were also sent to the respondent Board for issuing registration certificate in their favour for participating in the ensuing examination. But the registration certificates were not issued in their favour. Referring to the orders passed in the writ application bearing W.P. 32131(W) of 2013 and the order passed in the Appeal, it is submitted by Mr. Sanyal that now the reasons for rejecting their applications by the respondent Board is available in the order dated January 28, 2014 passed by the Board in compliance of the order passed in the above appeal. According to him, the basis of passing the above order was an extraneous consideration. According to him, the Circular of the Board being s/58 dated March 10, 2010 was relied upon to reject the cases of three students. Let it be recorded that three students in respect of whom the above order was passed are not parties to these proceedings. According to him, the Division Bench directed the respondent Board to consider the cases of the aforesaid three students taking into consideration circular s/141 dated July 4, 2008 issued by the West Bengal Board of Secondary Education but that direction was not complied with. According to Mr. Sanyal, since the writ petitioners are equally circumstanced with the aforesaid three students, the allegations made against the respondent Board are required to be examined on its merit.

12. It is submitted by Mr. Learned Government Pleader, appearing on behalf of the respondent Board that after receiving the applications for 883 students for the purpose of registration on September 26, 2012 the respondent Board further received a communication dated July 26, 2013 from the teacher-in-charge of the school under reference. From the annexures of the above communication, it appeared that 475 students were recognized by the above school as bona fide students. The names of the writ petitioners were not available in the annexure to the above communication. After close scrutiny of the annexure to the above communication, the Board sent scrutiny forms in respect of 470 students whose name had appeared in the true copies of the attendance register as regular students. According to Id. Government Pleader, High Court, Calcutta, the above scrutiny forms were sent for the purpose of enrolment of the names of those students as regular candidates to appear in the Madhyamik Pariksha (Secondary

Examination), 2014. It is also submitted by the learned Government Pleader that none of the writ petitioners approached the respondent Board for issuing registration certificate in favour of the wards of petitioners or for enrolment of their names as regular candidates for ensuing examination. Only three wards who are not the parties to any of the aforesaid two proceedings filed an application under Article 226 of the Constitution of India. The respondent Board preferred an appeal against the order passed in the above writ application and in compliance of the above order the respondent Board passed an order dated January 28, 2014 restricted their consideration in respect of three students who are not the petitioners in this writ application. The writ petitioners filed these cases just before ensuing examination to be conducted by the respondent Board long after registration of the bona fide students of the school under reference as also after issuing the admit cards in their favour to participate in the above examination. According to the Ld. Government Pleader, the conduct of the petitioners deserve no consideration at this stage and the Court sitting in a writ jurisdiction can not take up the grievance of the petitioners just before the commencement of the ensuing examination from February 24, 2014.

13. The submissions made on behalf of the petitioners are repeated and reiterated by the learned Counsel appearing for the respondent School authority.

14. I have heard the learned Counsel appearing for the respective parties at length and I have given my anxious consideration to the facts involved in this writ application.

15. From the facts mentioned hereinabove, it appears that undisputedly the forms of registration of 883 students were sent to the respondent Board on September 26, 2012. The names of the petitioners appeared therein. It is also not in dispute that the communication dated July 26, 2013 was sent to the respondent Board by the teacher-in-charge of the above school for allowing 475 students in the ensuing examination. Admittedly, the respondent Board sent prescribed forms for scrutiny in respect of 470 students for enrolment of their names. The names of wards of the petitioners were not appearing there.

16. The procedure for registration of the names of the students as also to enroll the names of the students for appearing Madhyamik Pariksha (Secondary Examination), 2014 is prescribed in the West Bengal Board of Secondary Education (Examination Regulation-2004). The term registration as defined in Clause (XXV) of Rule 2 of the above Rule is stated hereunder:

registration" means the process specified by the Board for enlistment of regular and external candidate under the Board;

17. The terms of regular candidate is defined in Clause (XXVI) of Rule 2 of the above regulation which is stated hereunder:

Regular candidate" means any student, who got admitted to pursue regular course of study in recognized institution upon getting himself registered with the Board, having satisfied the institution with his class attendance and after passing the Madhyamik Test Pariksha conducted by that institution has been duly set up by his institution for appearing at the examination.

The procedure for enrolment of the regular students is prescribed in Rule 6 which is stated below:

(6) Enrolment of regular candidate --

(1) The institution shall verify with its records, the require particulars in respect of a registered regular candidate in the prescribed enrolment Form supplied by the Board and forward such Form to the Board with the Signature of the candidate under endorsement/certification as to his eligibility and seal of the Head of the Institution or, in his absence, the Teacher in charge along with the copy of the Chilean showing submission of the prescribed examination fees and other related papers within the last date announced by Board through circular or notification. Fees once paid cannot be refunded or adjusted;

(2) The Board shall on receipt of the Form and other documents as referred to in sub regulation(1) and after satisfying himself in all respect regarding the eligibility of a candidate seeking enrolment, register the candidate as a regular candidate.

(3) A registered regular candidate shall be entitled to appear at all the time compulsory subject and option elective subject, if any, as notified from time to time.

18. The Rules and Procedure for admission and re-admission of students from academic session commenced from May 01, 2008 are prescribed in Circular No. S/141, dated July 04, 2008 issued by the respondent Board.

19. After considering the facts and circumstances stated hereinabove, I find that as back as in the month of September 2013, the Respondent Board sent the prescribed forms for scrutiny of the students for enrolment of the regular candidates of the above school. It does not lie on the mouth of the petitioners that they were not aware of the above fact. They have come up before this Court after delivery of the Registration Certificates and scrutiny forms for enrolment of the students for appearing in the ensuing examination from the above school as also after delivery of Admit Cards to the students. No material is produced before this the Court to show that the petitioners were vigilant for knowing the cause of non-registration of the names of their wards or not enrolling their names for appearing in the ensuing examination at that point of time. So, delay defeats equity in this case.

20. That apart, it is the settled principles of law that no direction can be given by a Court sitting in the Writ Jurisdiction to allow the students for participation in any examination violating the Rules prescribed for participation in the examination. Reference may be made to the decision of [Central Board of Secondary Education Vs.](#)

[Nikhil Gulati and Another,](#) and the relevant portions of the above decision are quoted below:-

1. "Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the "Rule of Law" to a mockery, and promotes rather the "Rule of man".

21. The above settled principle of law was repeated and reiterated by the Hon"ble Supreme Court in the matter of [C.B.S.E. and Another Vs. P. Sunil Kumar and Others,](#) and the relevant portions of the above decision are set out below:-

We are conscious of the fact that our order setting 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. In view of the aforesaid premises, we set aside the impugned judgment of the Division Bench of the Kerala High Court as well as the interim orders issued by the single judge in several petitions out of which the writ appeals arose and the writ petitioners filed by the respondents stands dismissed. These appeals are allowed but in the circumstances there will (be) no order as to costs.

22. This court had the occasion to examine the above issue in similar circumstance in the matter of Amar Kumar Bhowmick v. State of West Bengal and ors. reported in 2007 (2) CLJ (Cal) 293 and the relevant portions of the above decisions are quoted below:-

12. It has further been made clear that in accordance with the provisions of Regulation 7 of the said Regulations that a candidate promoted to Class-IX as regular candidate or a candidate of equivalent have to be registered and obtain registration certificate with a number for enrolment as test examinee before appearing at Madhyamik Pariksha(SB). For better application of the above provisions, the same is quoted below:

7. Registration of external candidate--A candidate promoted to Class-IX as Regular candidate on completion of prescribed course of studies intending to appear as

external one shall have to be registered and obtain registration certificate with a number of enrolment as test examinee before appearing at the Madhyamik Pariksha (Secondary Examination).

13. It further appears from the guidelines for appearing in the Madhyamik Pariksha (SB), 2007 as an external candidate, the last date of submission of completed registration form was February 22, 2006. It further appears from the aforesaid guidelines the period of test examination conducted by the Board of Selected Centres expired in July, 2006.

14. I do not find from the materials on record that any of the wards of the petitioners" obtained registration certificates in accordance with the above provisions or any of them appeared in the test examination conducted by the Board at any selected centres or about July 2006.

15. In view of the above, the wards of the petitioners are not entitled to appear in the Madhyamik Pariksha, 2007 to be conducted by the West Bengal Board of Secondary Education, as external candidates.

23. In view of the above, it appears that the conduct of the petitioners inhibit them from approaching the Court of equity just before a few days of commencement of the examination under reference to allow their wards to participate in the above examination. It is an example of putting the Carts before the Horse. The negligence and/or delay is on the part of the petitioners. Therefore, at the stage, no relief can be granted to those students.

24. These writ applications are, therefore, dismissed.

There will, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.