
(1993) 02 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Petition No. 1092 of 1993 and Civil Miscellaneous Appeal No. 1755 of 1993

Ajit Singh Dua

APPELLANT

Vs

Central Board of Secondary Education

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Citation : (1993) 26 DRJ 12

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Swantantar Kumar, Geeta Mittal, Anil Kumar and B.S. Saini, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is really an astonishing case which has come to our notice. Normally we would not have interfered in the matter but for the fact that career of three students need not mar for no fault of their as it would appears to us.

(2) The three students who are petitioners before us are students of Guru Harkrishan Public School. Fateh Nagar, New Delhi. They are to appear in Board Examination for 10th Class, to be held by Central Board of Secondary Education (CBSE). the first respondent and beginning on 2 March 1993. We issued show cause notice to the respondents who number five. First two respondents are respectively C.B.S.E. and Chairman of Cbse, the third respondent is the Management of Delhi Sikh Gurudwara Prabandhak Committee, the fourth the Principal, Guru Harkrishan Public School, Fateh Nagar, New Delhi, and the fifth is the Chairman, Managing Committee of Guru Harkrishan Public School, Fateh Nagar, New Delhi. Mr. Avtar Singh Hit, Chairman of Managing Committee of Guru Harkrishan Public School, Fateh Nagar, New Delhi, as well as Principal of that school Ms. S. Singh are present in court in person. They have appeared in pursuance to our directions made earlier in the forenoon.

(3) C.B.S.E. has contended that Guru Harkrishan Public School, Fateh Nagar, New Delhi, is a school which is not affiliated with C.B.S.B. and no student of that school could be permitted to take C.B.S.E. examination. In the counter-affidavit filed by respondents 3 to 5 it is stated that this school is not an independent school and that a school by the same name at Vasant Vihar was having more students where they could not be accommodated and that was the reason that some classes were shifted to school at Fateh Nagar, New Delhi. Ms. Singh, Principal of the Fateh Nagar School, tells us the forms of the petitioners for taking examinations were not sent as they were having short attendance. Mr. Nil Kumar informs us that if the attendance of a student is between 60% to 75% an application could be filed with the Chairman, C.B.S.E., who would condone the same if circumstances so require. The application is to be filed by the Principal of the school. Ms. Singh states that she did forward an application to the Principal of the Vasant Vihar School for the purpose as she says it was that school which was handling the matter. However, there is nothing on record to show what she is contending and even in the counter-affidavit no such averment has been made. It is stated that there are about 120 students of Fateh Nagar School and except for the three petitioners they have already got admission cards for taking examinations of 10th Class. What we find is that Guru Harkrishan Public School, Fateh Nagar, New Delhi, is a separate school and it appears to us that an impression has been given to C.B.S.E. that this school is not an independent school and rather part of the school at Vasant Vihar, New Delhi. In fact C.B.S.E. was kept quite ignorant of the alleged arrangement. Mr. Anil Kumar states that earlier to this it was never represented to the C.B.S.E. that some students of Vasant Vihar school had been sent to Fateh Nagar school on account of the circumstances now explained to us. Mr. Anil Kumar also informs us that Vasant Vihar school itself was only having a provisional affiliation. Mr. Swatantar Kumar has shown us a school magazines of Fateh Nagar school for the years 1990-91 and 1991-92 which would show that the school is being run separately and Mr. Hit, who is present in court, is the Chairman of the Managing Committee of that school and so is the Principal Ms. Singh of the school at Fateh Nagar, New Delhi. The school magazines have been given to Mr. Anil Kumar.

(4) It does appear to us that Fateh Nagar school is a separate school unaffiliated with C.B.S.E. and no student of that school has any right to take examinations conducted by the C.B.S.E. Mr. Anil Kumar also states that on account of the fact which have now come to light action will have to be initiated against those students of the school who have been given admission cards. Ms. Singh, the Principal of the school, also informs us that there are about 60 students of the school who are to take examinations for 12th Class to be conducted by the C.B.S.E.

(5) We, however, see no reason why the petitioners be punished for no fault of theirs. They have deposited their fees well in time in the Fateh Nagar school and Mr. Swatantar Kumar contends that they were never informed of the shortage of attendance. In the counter-affidavit as filed by respondents 3, 4 and 5 the stand

taken is that the fee so paid was returned to the students for them to pay the same at Vasant Vihar school. We find the stand of these respondents thoroughly inconsistent coupled with falsity as well. We will leave the C.B.S.E. to take whatever stringent action it can take against the respondents 3,4 & 5. C.B.S.E. will also be free to take any action if permissible regarding students of the school who are taking examinations when the school is unaffiliated.

(6) Mr. Anil Kumar has drawn our attention to a decision of the Supreme Court in State of Maharashtra Vs. Vikas Sahebrao Roundale and others, to contend that no mandamus can be directed to C.B.S.E. as the students pertain to a school which is unaffiliated. But then, as noted above, the other students similarly situated numbering about 175 have been allowed admission and C.B.S.E. has yet to go into the question whether the school at Fateh Nagar can be claimed to be a branch of Vasant Vihar school or is an independent school.

(7) We, Therefore, allow the petition to this extent. Further, in view of the facts of the case, shortage in attendance of the petitioners shall stand condoned and they shall be permitted to take their Board Examinations for 10th Class beginning on 2 March 1993. A direction is issued to Ms. Singh to re-submit the forms of these petitioners to the C.B.S.E. today itself without any default.

(8) We make it clear that re-submission of forms for Board Examinations shall not be taken in any way that we have granted any affiliation even remotely to the respondents 3,4 and 5, and it is for the C.B.S.E. to take decision in the matter. After seeing the counter-affidavit of the C.B.S.E. we appreciate the stand taken by hand its sticking to the rules unmindful of any pressure from whatever quarters that be. We certainly commend the action of the C.B.S.E.

(9) We impose Rs.10,000.00 as costs on respondents 3, 4 and 5 of which Rs.5,000.00 shall be payable to respondents 1 and 2 and Rs.2,500.00 to the petitioners and the balance to the Indian Council for Legal Aid and Advice, Chamber No.3, Lawyers Chambers, Delhi High Court, New Delhi. Costs will be paid within one week from today.