
(2014) 02 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 5912 (W) of 2014

Ashish Kuamr Bharti and Others

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 WBLR 710

Hon'ble Judges : Debasish Kar Gupta, J.

Bench : Single Bench

Advocate : Subir Sanyal and Sutirtha Das, for the Appellant; Ashok Banerjee, G.P. and S.K. Mitra, for the Respondent

Final Decision : Disposed off

Judgement

Debasish Kar Gupta, J.?Considering the urgency involved in this writ application as also the submissions of the learned Advocate appearing for the petitioners, this writ application is taken up for hearing treating the same as on day's list with the consent of the parties. This writ application is filed by the guardians of three students of Kankinara High School, District-North 24-Parganas assailing an order passed by the West Bengal Board of Secondary Education under Memo No. 14/Admin/14(4) dated January 28, 2014. By virtue of the impugned order the prayer of the petitioners for allowing their wards to participate in the ensuing Madhyamik Pariksha (Secondary Examination), 2014 was rejected. A prayer is also made in this writ application to allow wards of the petitioners, namely, 1. Sri Ashish Kumar Bharati, 2. Sri Suraj Kumar Shaw and 3. Sri Rishab Kumar Hazra as regular students of the above school.

2. The facts of the case are stated in a nutshell as under:

The authority of the above school submitted requisite papers in respect of the aforesaid students along with other eligible students for registering their names for appearing in Madhyamik Pariksha (Secondary Examination), 2014 to be

conducted by the respondent-Board. On September 26, 2013, the respondent-Board sent the scrutiny list for enrollment of the names of the regular students for participating in the above ensuing examination in respect of 470 students. The names of the students did not appear in the above scrutiny list. The petitioners filed an application under Article 226 of the Constitution of India in the matter of Ram Kumar Bharti & Ors. v. State of West Bengal & 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 three wards of the petitioners for registration of their names to participate in the ensuing examination.

3. 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 co-operate 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 fulfill 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, J.) (Ishan Chandra Das, J.)"

4. The respondent-Board in compliance of the above order passed the impugned order under its memo No. 14/Admin/14(4) dated January 28, 2014, the same is quoted below:

"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."

5. It is submitted by Mr. Subir Sanyal, learned Advocate appearing on behalf of the petitioners, that the impugned order is passed on extraneous consideration. The prayer of the petitioners was rejected relying upon the Board's Circular No. S/58 dated March 10, 2010. Drawing the attention of this Court towards the above Board's Circular read with the Procedure for holding election of members for the purpose of constituting or reconstituting the Managing Committee of Non-Government Institutions (Aided and Unaided) Rules framed in exercise of Rule 9 with Rules 6 and 6A of Management of Recognised Non-Govt. Institutions (Aided and Unaided) Rules, 1969, it is submitted by Mr. Sanyal that the above Circular has no manner of application on the question of allowing the aforesaid three students to participate in the aforesaid examination. Drawing the attention of this Court towards the provisions of Note (ii) of the paragraph 8 of the above procedure, it is submitted by Mr. Sanyal that the above provision relates to incorporating of the names of the eligible guardian voters for participating in the election for constitution of the Managing Committee of the school concerned and the first admission and admission on transfer are curbed out from the above provision by the note below.

6. It is also submitted by Mr. Sanyal that the guardians were vigilant enough with regard to the development in the matter. The names of the petitioners were forwarded to the respondent-Board in September, 2012 for registration certificate in their favour for appearing in the ensuing examination. In the month of September, 2013 they came to know that the prescribed form for enrollment as

regular candidates did not contain the names of the petitioners. Immediately an application under Article 226 of the Constitution of India was moved before this Court. The respondent-Board preferred an appeal before a Division Bench which was disposed of with a direction upon the respondent-Board to examine the claim of the wards of the petitioners. Drawing the attention towards the above judgment of the Division Bench, it is submitted by Mr. Sanyal, that the Division Bench took into consideration the relevant Board's Circular No. S/141 dated July 4, 2008. But from the impugned order, it appears that the above Board's Circular was not taken into consideration and the claim of the petitioners was rejected on extraneous consideration.

7. Mr. L.K. Gupta, learned Senior Advocate appearing on behalf of the respondent-School, supported the claim of the petitioners.

8. It is submitted by the learned Government Pleader, High Court, Calcutta, appearing on behalf of the respondent Board that after receiving the application 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 names had appeared in the true copies of the attendance register as regular students. According to the learned Government Pleader, High Court, Calcutta, the above scrutiny forms were sent for the purpose of enrollment of the names of those students as regular candidates to appear in the Madhyamik Pariksha (Secondary Examination), 2014. Accordingly the respondent-Board preferred an appeal against the order passed in the writ application bearing W.P. No. 32131 (W) of 2013 of the petitioners and in compliance of the above order the respondent-Board passed an order dated January 28, 2014 restricting its consideration in respect of the wards of writ petitioners only. The above writ petitioners filed this writ application just before the ensuing examination to be conducted by the respondent Board after registration of the bona fide students of the school under reference as also issuing the admit cards in their favour to participate in the above examination. According to the learned Government Pleader, the conduct of the petitioners deserve no consideration at this stage and the Court sitting in a writ jurisdiction cannot take up the grievance of the petitioners just before the commencement of the ensuing examination from February 24, 2014.

9. Drawing the attention of this Court towards the provisions of Board's Circular No. S/58 dated March 10, 2010 read with the provisions of note (ii) of paragraph 8 of the Election Procedure, it is submitted by the learned Government Pleader, High Court, Calcutta, that the last date of admission of the students in Class-IX was amended as March 16. Therefore, there was no error in the impugned order.

It is further submitted by him that the grievance of the petitioners was considered with regard to the date of their admission. The second phase of their attendance was not taken into consideration at that stage.

10. Having heard the learned Counsel appearing for the respective parties as also after considering the facts and circumstances of this Court, I find that the names of the eligible candidates for registration for appearing in the ensuing examination to be conducted by the respondent-Board were sent to them in the month of September, 2012. Admittedly, the names of the petitioners were incorporated therein. I find substance in the submissions made by Mr. Sanyal that the writ petitioners came to know for the first time that they had not been allowed to participate in the ensuing examination after receipt of the prescribed scrutiny forms by the respondent-School in September, 2013. It is also not in dispute that they moved the writ application bearing W.P. No. 32131 (W) in the month of October, 2013. After the appeal preferred by a Division Bench of this Court arising out of the above writ application, the Board passed the impugned order on January 28, 2014. The instant writ application is affirmed on February 20, 2014. The above facts and circumstances show that there was no laches and/or negligence on the part of the petitioners to agitate their grievance either before the respondent authority or before the Court of law, as the case may be. None of them was in a position to fill up the prescribed scrutiny form on the basis of the decision of the respondent-Board which was under challenge in the earlier writ application mentioned hereinabove. There was no scope of anticipating that the information supplied by the Teacher-in-Charge to the respondent-Board with a forwarding letter dated July 26, 2013 did not contain the names of their wards as eligible or bona fide students. Therefore, this writ application deserves consideration on merit.

11. So far as the merit of this case is concerned, I find that the claim of the petitioners was rejected by the respondent-Board taking recourse to the Board's Circular No. S/58 dated March 10, 2010. After considering the above Circular, I find that the date mentioned in Note (ii) of paragraph 8 of the Election Procedure for Election of Members for the purpose of constituting and/or reconstituting the Managing Committee of Non-Govt. Institutions (Aided and Unaided) was amended as "16th March" in place of "15th July". For proper appreciation of the above provisions, the same is set out below:

"ELIGIBLE GUARDIAN VOTERS:

8. The lists of eligible voters in the category of guardians shall be prepared by the Head of the Institution or any other person authorised by the District Inspector of Schools or appointed by the Executive Committee of the Board, under Rule 4(2b)(2c) of the Rules on the basis of both Admission and Attendance Registers.

Note (i) If it is found from the Attendance Register that a student has been absent from the school for three consecutive months without the knowledge and

permission of the Head of the Institution till the date of preparation of the Provisional Voters' List, the student shall be deemed to have left the Institution and the guardian of the ward(s) whose name was recorded in the Admission Register will cease to be guardian for the purpose of election of the Managing Committee. But prior to debarring the guardian from exercising his voting right on the ground of his/her ward being absent for three consecutive months as stated above, a notice shall have to be issued by the Head of the Institution to the guardian concerned before publication of the Provisional Voters' List.

Note (ii) No first Admission upto Class IX shall be made after the 15th July of the Academic year without the prior approval of the Board in exceptional circumstances. Admission of pupil on transfer from recognised institution may, however, be made upto 15th December of the year on valid ground. If not otherwise directed by Board.

N.B. First Admission and admission on transfer shall be regulated as laid down in the Board's Circular No. S/851 dated 2.12.288 or as may be amended from time to time.

Note (iii) Admission of pupil to Class XI may be made as per directions of the West Bengal Council of Higher Secondary Education issued from time to time in this regard. Similarly, admission on transfer to Class XII may be made as per directions of the West Bengal Council of Higher Secondary Education.

Note (iv) All guardians of students who get themselves admitted to an Institution before the meeting of the Committee held for the purpose of approving the provisional lists of eligible voters shall be included in the list of eligible voters for the election under the category "Guardians".

(Emphasis supplied)

12. After examining the provisions of Note (ii) of the above paragraph, I find that the date of first admission in Class-IX was changed to "16th March" of each and every year. But after considering the note below, I find that the last date of first admission and admission on transfer should be regulated by the provisions laid down in Board's Circular No. S/851 dated December 2, 1988. After further consideration of the provisions of Board's Circular No. S/141 dated July 4, 2008 (which replaced the Board's Circular No. S/851 dated December 2, 1988), I find that the procedure for admission and admission on transfer in general were curbed out from the purview of the above procedure. In fact the above provision finds its place under heading "eligible guardian voters". According to the provisions of the Board's Circular No. S/141 dated July 4, 2008, the last date of admission and admission on transfer was July 15 of each and every year. It is evident from the impugned order that according to the respondent-Board also the aforesaid three students took admission on April 11, 2012 and April 16, 2012. Therefore, they took admission in the school under reference within the time prescribed for the same. Application for registration of the names of the wards of the petitioners was forwarded to the respondent-Board within time.

They were chasing the action of the respondent-Board all along in time for redressal of their grievance. There was no scope for alleging inaction or negligence on their part. After further scrutiny of the impugned order, I find that it was the claim of the petitioners was rejected on extraneous consideration.

13. It is the settled principles of law that a Writ Court can interfere with the action of the authority when the extraneous consideration is the basis of the decision of that authority. Reference may be made to the decision of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, and the relevant portions of the above decision are set out below:

"When the issue raised in Judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors. In the present case, it is, however, no necessary to go into the merits and relevance of the grounds having regard to the view we propose to take on the point on natural justice."

14. Since the only ground for rejection of the claims of the petitioners cannot be sustained in law, I find that this is a fit case for granting relief in favour of the petitioners. I find no substance in the submission made on behalf of the learned Government Pleader with regard to the consideration of the cases of the petitioners phase-wise. Once the direction was given by the Division Bench to consider it, it was incumbent on the part of the respondent-Board to consider the same as a whole. The impugned order is quashed and set aside.

15. A writ in the nature of mandamus is issued directing the respondent-Board to allow the aforesaid three writ petitioners to appear in the ensuing Madhyamik Pariksha (Secondary Examination), 2014. Since this writ is issued in presence of all the parties present in Court today, I find that the Board need not wait for any communication from the petitioners and the respondent-Board is further directed on the basis of the communication of its learned Advocate appearing in this matter.

16. This writ application is, thus, disposed of. There will be, however, no order as to costs.