
(2006) 11 CAL CK 0066
In the Calcutta High Court
Case No : A.S.T. No. 2120 of 2006

Asifa Khatoon

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 11, 11(1), 12, 16, 16(2)

Citation : (2006) 4 CHN 767

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Ekramul Bari and Syed Mansur Ali, for the Appellant; Asoke Banerjee, Abdul Alim, Sk. Saifuddin and Habibur Rahaman for Respondent Nos. 9 to 12, 14, 17, 18, 20, 21, 24 and 25, Jayashree Chanda, for Respondent Nos. 8, 13, 15, 16, 19, 22, 23 and 26 and S. Dasgupta and Shanti Das, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The appellant is the Headmistress of Kali Krishna Balika Vidyalaya (Higher Secondary), Sethpukur, Barasat in the district of 24-Parganas (North). Appellant No. 2 is the Secretary and appellant No. 3 is the Managing Committee of the said school.

2. Kali Krishna Balika Vidyalaya (Higher Secondary) is one of the oldest schools of Barasat. As appears from the records that the school was set up in the year 1850. The school was established by late Pyari Charan Sarkar, Kali Krishna Mitra and Nabin Kumar Mitra for imparting female education in the locality. In 1871 the management was taken up by Barasat Association, a registered society. In passage of time the school took a leading role in imparting female education in the locality.

3. In the year 1973, the West Bengal Primary Education Act came into force by which the primary education was taken up by the State. In course of time, the District School Board and thereafter District Primary School Council took up the administration of the primary branch of the said school in accordance with the

provisions of the said Act of 1973. In view of paucity of space the primary section of the school was housed in Travour Hall whereas the secondary section was being continued at the present place.

4. By a resolution dated November 13, 1986 the Managing Committee of the Girls' School allowed the primary section to house their school in the same premises i.e. where the secondary section is situated with a condition that the students of the primary school would not claim any right to be admitted in the secondary school as a matter of course. The said decision was taken because of the Government decision to demolish the existing structure of the Travour Hall where the primary school was housed. Accordingly, the primary school since then was being housed in the same premises along with the higher secondary section.

5. The present dispute relates to the claim of the students of the primary school for their admission in the higher secondary section as a matter of course. Earlier, there had been litigation which resulted in a compromise. The present disputes relates to the period 200i with a new batch of guardians ventilating their right to have their wards admitted in the secondary section after completion of their study sessions in primary section without having any admission test. Such prayer was not acceded by the higher secondary section of the school. Hence, this writ petition.

6. The writ petition was heard by the learned Single Judge and disposed of by His Lordship by an order dated 1st April, 2003. His Lordship after recording the facts and circumstances and the contentions of the parties came to a conclusion that the primary section and the secondary section are two integral parts of the same school, Kali Krishna Balika Vidyalaya and as such there cannot be any admission test contemplated for admission in Class V after completion of Class-IV. His Lordship relied upon the decision in the case of Bramho Balika Sikshalaya, reported in 1999, Vol-II, Calcutta High Court Notes, Page 680 wherein the Division Bench of this Court while disposing of the identical controversy held that admission test was not required for getting admission in Class-V after completion of the Class-IV.

7. Being aggrieved by the decision of His Lordship, the Headmistress, Assistant Secretary and Managing Committee of the said school preferred the instant appeal.

8. Mr. Bikash Ranjan Bhattacharjee, learned Counsel appearing in support of the appeal, contended that although the primary section was housed in the same school building, it was having its complete, distinctive, independent identity. Mr. Bhattacharjee also contended that the Managing Committee of the concerned school had no control over the primary school which was being controlled by the District Primary School Council, 24-Parganas (North). Coming to the decision on principle of law decided in the case of Bramho Balika Sikshalaya, Mr. Bhattacharjee contended that the facts of that case was not identical with the present one. In that case the Managing Committee themselves seriously

contended that both the two sections were controlled by one Managing Committee. In support of his contention, Mr. Bhattacharjee cited two other Division Bench judgments of this Court resolving the identical controversy. The first one was an unreported decision in the case of Kalyani University Experimental Housing School, Nadia (APOT No. 63 of 2000) decided on May 17, 2000 and the other one in the case of Managing Committee, Nangi High School reported in 2002(4) CHN 402. Citing the above two Division Bench decisions on the identical issue Mr. Bhattacharjee contended that since the two Division Bench consistently held that while getting admission into the secondary section from the primary section, admission tests are required to be undergone the learned Judge should not have allowed the writ petition misapplying the other Division Bench judgment.

9. Mr. Bhattacharjee in support of his contention cited three other decisions which are as follows :

- (i) The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, ;
- (ii) Commissioner of Income Tax, Kohlapur Vs. Jaykumar B. Patil, ;
- (iii) Ashim Kumar Singh vs. Public Service Commission & Ors. AIR 2003 SC 2662.

10. Lastly, Mr. Bhattacharjee contended that the decision of the learned Single Judge was contrary to the principle of law consistently laid down by the Division Bench of this Court as well as Apex Court and as such was liable to be quashed and set aside.

11. Mr. Sitaram Bhattacharjee, learned Counsel appearing for the writ petitioner/respondents opposing the appeal contended that since the primary school and the secondary school are integral part of one school, asking for students of Class-IV to sit for the admission test, was an unreasonable fetter. Mr. S. Bhattacharjee referred to various documents including documents of the past to say that the concerned school was a single identity having primary and secondary sections combined together. Relying upon those documents Mr. S. Bhattacharjee contended that the principle of law laid down in the case of Bramho Balika Sikshalaya (supra) squarely applied in the instant case and the learned Judge rightly applied the said ratio while allowing the writ petition.

12. In support of his contention Mr. S. Bhattacharjee relied on the following decisions:

- (i) Bashir Ahmed vs. Sadiq Ali, AIR 1929 Oudh 45;
- (ii) Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, .

13. Mr. Debasis Kargupta, learned Counsel appearing for the State in support of the respondents contended that the principles of ratio laid down in the case of Bramho Balika Sikshalaya (supra) squarely applied in the instant case. He also referred to the unreported decision of the Apex Court in the case of Bramho

Balika Sikshalaya wherein the Apex Court affirmed the decision of the Division Bench reported in 1999 2 H C N 680.

14. We have considered the rival contentions of the parties. We have also perused the relevant records in the pleadings. We have also considered the precedents placed before us by the respective Counsel appearing for the parties. On a total consideration of the principle of law laid down by the precedents referred to above, we came to the following conclusions :

I) If primary and secondary sections are having two distinctive identities there cannot be any admission as a matter of course in the secondary section from the primary section.

II) Even if the primary section is controlled by the State and the secondary section is by the Managing Committee if otherwise, it is the same school admission test for going to the secondary is unreasonable and would create immense hardship to the students as well as their parents.

III) To decide whether the primary section and secondary section are two integral part of the same school, each and every case are to be looked into and examined on their factual score.

15. Let us now apply the above ratio in the instant case. Earlier the concerned District Magistrate was asked to submit a report. The report of the District Magistrate appearing at pages 100 to 101 of the Paper Book is relevant herein to resolve the instant controversy. The District Magistrate after considering the relevant papers came to the following finding :

"(i) The Primary School and the High School are administratively separate entities. As the Chairman of the District Primary School Council has said, "Kali Krishna Girls" High School and Kali Krishna Prathamik Balika Vidyalaya are not under the same management. The teachers of the primary school draw their salaries from the District Primary School Council, North 24-Parganas and is under the administrative control of this Council." This is confirmed by report received from the D.I. of Schools (Primary). The D.I. of Schools (Secondary) has also confirmed the same thing by saying that "Kali Krishna Girls" High School has got separate Managing Committee (Class V to XII), whereas Kali Krishna Prathamik Balika Vidyalaya is under the control of the District Primary School Council, North 24-Parganas."

(ii) Admission of girls coming out of the Primary School to the High School has not been assured and automatic for several years now. The Headmistress of the High School, however, admitted that, there once was a policy to allow 5 (five) grace marks to the girls coming out of the Kali Krishna Primary School. In so far as the admission test result was concerned for admission to the High School, the Headmistress and the Secretary have written in their statement, "an informal policy to give marginal preference to the girls of primary school was practised", Shri Sudip Chatterjee and Others admitted that the admission of Primary School

girls to the High School girls is now delinked but they claimed that the admission of Primary School girls to the High School was automatic till 1980.

(iii) While the two schools are administratively separate now, they share virtually common land/premises. As D.I. of Schools (Secondary) says, "both the schools are held in the same premises". This is corroborated by the report received from D.I. of Schools (Primary) also.

(iv) Finally, and undeniably, the two schools are linked in terms of history and heritage. Shri Kali Krishna Mitra founded a Primary School for girls for women education in Barasat in the mid of 19th Century, and this school evolved over the years to develop into a full grown institution for female ? education. The Primary School and the High School have common historical links and shared heritage. They are products of the same of history and the same movement in the same place and virtually at the same location. The petitioners (Shri Sudip Chatterjee & Ors.) have complied and submitted an impressive volume of papers (placed below) to substantiate these common historical links."

16. The District Magistrate while concluding gave an accurate opinion which goes to say "To Conclude, while the Primary School and the High School are administratively separate today they are historically linked in a common framework of tradition."

17. We have carefully examined the report of the District Magistrate and we are of the view that he had correctly approached the problem and came to an appropriate finding. We also reiterate that both the Primary School and High School were historically linked as appears from the past record. However, we cannot overlook the fact that in passage of time the Primary School was made separate and housed at a different place. We cannot also overlook the fact that though the Primary School came to the same building, the Managing Committee of the said school imposed restriction on the admission issue as far back on November 13, 1986. There was no contemporaneous challenge to the said conditions imposed in 1986, at least not known to us. The previous litigation also ended in a compromise. Hence, we do not have any unimpeachable evidence on record to say that the said two sections are integral parts of the same school at the present moment. The argument raised by Mr. B.R. Bhattacharjee that the primary section is controlled by the District Primary School Council and the secondary school committee has no hand in it, is an argument of no relevance in view of the decision of the Supreme Court in the case of Bramho Balika Sikshalaya (supra). However, we are unable to grant any relief to the writ petitioner/respondents by affirming the decision of the learned Single Judge principally on two factors namely the resolution of the Managing Committee of the school on November 13, 1986 and in absence of any contemporaneous document to say that both the sections are presently one and integral part of the same school.

18. In course of hearing Mr. B. R. Bhattacharjee on instruction assured us that

the wards of the writ petitioners would be given direct admission to the respective classes in the secondary section without any admission test provided they qualify for the same as per the report of the annual examination. In course of time some wards of the writ petitioners might have got themselves admitted in other schools. If they want to come back, Mr. Bhattacharjee assured that they would be taken in the appropriate classes. Mr. Sitaram Bhattacharjee, contended that the writ petitioners/respondents wanted a solution for all times to come and insisted hearing of the appeal on merits.

19. Considering the above we are of the view, that the learned Single Judge should not have allowed the writ petition applying the principle of law laid down in the case of Bramho Balika Sikshalaya (supra) only and without considering the subsequent two Division Bench judgments referred to above.

20. In the result, the appeal succeeds. The judgment and order of the learned Single Judge is set aside. The writ petition is dismissed.

21. This order of dismissal of the writ petition would, however, not preclude the wards of the writ petitioners to get themselves admitted in the higher secondary section of the same school at the appropriate classes without undergoing any admission test. This order is passed at the concession made by Mr. B.R. Bhattacharjee on behalf of the appellants.

22. There would be, however, no order as to costs.

Later

23. Mr. Bhattacharjee, learned Counsel for the respondent/writ petitioners prays for stay of operation of the judgment and order. Such prayer is considered and refused.

Ashok Kumar Mathur, C.J.

24. I agree.