
(2002) 05 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition No. 17534 (W) of 2001

Bhaswati Pal

APPELLANT

Vs

Council for Indian School Certificate Examination and Others

RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (2002) 3 CALLT 296

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : B.R. Bhattacharjee and Nandini Mitra, for the Appellant; Sanjay Baid, for Respondent Nos. 1, 2 and 3 and Swapan Banerjee and 5, for the Respondent

Final Decision : Allowed

Judgement

P.K. Chattopadhyay, J.—The daughter of the petitioner is a hostel student of class X of Holy Home School which is affiliated to the Council for Indian School Certificate Examination.

2. The school authorities sometimes in the month of August 2001 decided not to keep the daughter of the petitioner in the hostel and further decided not to allow the said daughter of the petitioner to attend the school anymore. The aforesaid decision was intimated to the father of the student concerned by the Vice-principal of the school by a written communication dated August 14, 2001.

3. However, in the said written communication, it was specifically mentioned that the daughter of the petitioner would be allowed to appear in the ICSE Examination in the year 2002 subject to clearance of all payable fee/charges as well as on qualifying in the selection test. The relevant extract from the aforesaid communication of the Vice-principal of the school dated 14th August 2001 is quoted hereunder:

"But in consideration of the overall interest of your daughter she would be allowed to appear in the ICSE Examination in 2002 subject to clearance of all

payable fee/charges as well as on qualifying herself in the Selection Test."

4. Thereafter the school authorities on 23rd August 2001 suddenly issued a Transfer Certificate to the daughter of the petitioner in the midst of the session even though earlier the Vice-principal on August 14, 2001 assured in writing that the said daughter of the petitioner would be allowed to appear in the ICSE Examination, 2002 from the said school.

5. The petitioner thereafter made a representation to the Chief Executive and Secretary of the Council for the Indian School Certificate Examination narrating the actions of the authorities of the Holy Home School towards her daughter and requested the authorities of the Council to allow the daughter of the petitioner to appear in the forthcoming ICSE Examination from any affiliated school in South Calcutta.

6. The authorities of the Council for the Indian School Certificate Examination, however, refused to grant the aforesaid prayer of the petitioner and communicated its decision to the petitioner by the letter dated 16th October 2001 wherein the Education Officer referred to the regulations of the Council as regards conditions of entry.

7. Challenging the aforesaid decision of the school authorities regarding issuance of Transfer Certificate to the daughter of the petitioner and also being aggrieved by the decision of the Council as communicated by the Education Officer by the letter dated 16th October, 2001. this writ petition has been filed by the petitioner in order to save the academic career of the minor daughter of the petitioner.

8. Mr. Bikash Ranjan Bhattacharjee, learned senior counsel of the petitioner submitted that in order to compel the student to leave the study, authorities of the school issued the Transfer Certificate to the petitioner during the midst of the academic session and the authorities of the Council have virtually expressed its helplessness in the matter on the ground that the Council cannot interfere in the internal affairs of the affiliated institutions. Referring to the affidavit-in-opposition filed on behalf of the respondent Council, Mr. Bhattacharjee further submitted that fresh admission was not possible in any affiliated school after 30th July 2001 and furthermore in order to admit a student to class X prior clearance is necessary from the Chief Executive and Secretary of the Council.

9. In the instant case, the school authorities issued the Transfer certificate to the student concerned admittedly after 30th July 2001 in order to prevent the student from getting any admission in any other affiliated institution. The Council also did not grant any clearance in favour of the student so that the petitioner can make an endeavour for the purpose of getting admission of her daughter in any other affiliated institution.

10. As a matter of fact, the Vice-principal of the said school specifically requested the Council not to allow the student to appear from any other Centre for the forthcoming examination as the school authorities wanted to inflict an exemplary

punishment on the student concerned.

11. The school authorities initially agreed to allow the student concerned to appear in the ICSE Examination in 2002 as would appear from the letter of the Vice-principal dated 14th August 2001 addressed to the father of the concerned student. Unfortunately, only after the lapse of a couple of days the same authority decided to issue the Transfer Certificate in supersession of the earlier decision as mentioned in the aforesaid letter dated 14th August, 2001. The relevant portion from the letter dated 23rd August 2001 written by the Vice-principal of the school in this regard is quoted hereunder:

"All things considered we should/could not ask you to continue to keep the attachment of your daughter with an Institution where the authority has been castigated as "evil clutches" and the safety/security of her is in jeopardy. In the context we are compelled to raise/issue Transfer Certificate in favour of your daughter Ms. Aditi Pal in supersession of our letter of 14.08.2001."

12. The learned counsel of the petitioner submitted that the school authorities sought to punish the student concerned without complying with the requirements of the principles of natural justice. According to the learned counsel of the petitioner, the authorities of the school never framed any specific charge against the student concerned nor even forwarded the same to the said student. Furthermore, the authorities of the school though sought to punish the student in the interest of discipline of the school as well as the hostel but did not grant any opportunity to the student concerned to defend herself before the authorities prior to the issuance of the said order of punishment.

13. The learned counsel of the petitioner further submitted that the school authorities were very much vindictive against the student concerned and totally ignored the aspects of the welfare of the minor child of the petitioner herein. The learned counsel of the petitioner also submitted that the authorities of the school in the guise of maintaining discipline in the school and hostel sought to punish the student by spoiling her academic career forever as the school authorities were very much aware that the issuance of a Transfer Certificate in the midst of the session would virtually compel the student concerned to leave study forever as the student concerned will not get admission in any other affiliated institution in absence of prior clearance from the Chief Executive of the Council and in any event fresh admission is also not permissible after 30th July 2001 as was admitted by the Council in their affidavit-in-opposition filed in the present proceeding.

14. The learned counsel of the petitioner referred to and relied upon the following decisions in support of his arguments:-

- 1) Ashok Kapil Vs. Sana Ullah (Dead) and Others,
- 2) 1986 Supp. SCC 740 (Rajendra Prasad Mathur v. Karnataka University and Ann) .

3) Andhra Kesari Educational Society Vs. Director of School Education and Others, .

4) : (2000)7SCC746 (Maharshi Dayanand University v. M.L.R. Saraswati College of Education) Para. 34.

15. Mr. Sanjay Bald appearing on behalf of the respondent Council, however, submitted that the last date for entering the names of the candidates with the Council for the purpose of appearing at the ICSE Examination in 2002 was 15th September 2001 and the Council did not receive the name of the daughter of the petitioner within the prescribed last date and as such the daughter of the petitioner was not entitled to appear at the said examination. Mr. baid further submitted that the daughter of the petitioner was also not eligible to appear at the ICSE Examination, 2002, as the student concerned did not fulfill the criteria of minimum attendance.

16. According to Mr. Baid, the daughter of the petitioner did not attend the classes on and from 17/18th August 2001 as a result of which she did not have the requisite attendance, which disentitled the said daughter of the petitioner from appearing at the ICSE Examination 2002. Mr. Baid further submitted that no student can be allowed to appear at the examination conducted by the Council in violation of the prescribed rules and regulations.

17. In the instant case, according to the learned counsel of the respondent Council, the student has disentitled herself from appearing at the examination on the ground of shortage of requisite attendance.

18. Mr. Swapan Banerjee, learned advocate of the school authorities submitted that the school authorities were all along very much concerned about the career of the student and in order to safeguard the said career of the student initially the school authorities agreed to allow the student to appear at the ICSE Examination 2002 even though the student was asked to leave the school and the hostel in the meantime. The learned counsel of the school authorities further submitted that the father of the student made certain reckless allegations against the school authorities and also made certain uncharitable remarks even in respect of the Principal of the school which compelled the school authorities to take the unfortunate decision regarding issuance of Transfer Certificate to the student concerned in supersession of the earlier decision.

19. According to the learned counsel of the school authorities, the father of the petitioner was solely responsible for the aforesaid unfortunate decision as the school authorities were compelled to issue the Transfer Certificate only after considering the letter dated August 18, 2001 written by the father of the student concerned to the President of the school.

20. Pursuant to the earlier order passed by this Court on this writ petition at the initial stage on 24th December 2001, the daughter of the petitioner was permitted to appear at the final examination conducted by the Council as the

said order was not upset either by the Division Bench of this Court or by the Apex Court. The points raised on behalf of the respective parties for determination by this Court in the present proceeding are summarized hereunder:-

a) Whether the decisions taken by the school authorities in respect of the student concerned including the decision to issue Transfer Certificate to the said student can be sustained.

b) Whether the respondent Council should be directed by this Court to publish the result of the student concerned.

21. With regard to the decisions of the school authorities, I find from the records that by the written communication dated August 14, 2001 the Vice-principal of the school informed the father of the student concerned that the student should not be allowed to remain in the school hostel with immediate effect and furthermore the said student will not be allowed to attend the school anymore. However, the school authorities assured the father of the student that she would be allowed to appear in the ICSE Examination in 2002 subject to clearance of all payable fee/charges as well as on qualifying in the Selection Test. The school authorities changed the aforesaid decision subsequently on 23rd August 2001 and decided to issue Transfer Certificate in favour of the petitioner. As a matter of fact, such Transfer Certificate was issued to the petitioner on 23rd August 2001.

22. By the aforesaid decisions, authorities of the school concerned sought to punish the student concerned namely the daughter of the petitioner although neither any charge-sheet was issued earlier to the said student nor even any opportunity of hearing was granted by the school authorities to the said student to defend herself before the authorities responsible for taking the decisions against the student concerned. Therefore, it can be said that the school authorities have taken the aforesaid decisions against the student concerned in clear violation of the principles of natural Justice.

23. From the written communication of the Vice-principal dated 14th August 2001, it appears that the school authorities even after inflicting punishment upon the student concerned agreed to allow the said student to appear in the ICSE Examination in 2002 but only after lapse of a period of 9 days the said decision was changed by the school authorities and a Transfer Certificate was issued to the student concerned. Admittedly, the student concerned had no scope to offend any discipline of the school after August 14, 2001 as thereafter the said student not only left the school hostel but also did not attend the school. So the subsequent decision taken by the school authorities to issue Transfer Certificate to the student concerned was the result of revengeful action of the school authorities in view of the allegations levelled by the father of the student against the various authorities of the school including the Principal of the said school.

24. Even assuming that the father of the student by his written representation

dated 18th August 2001 annoyed the school authorities by making several allegations against them but considering the welfare of the minor child the authorities of the school should have restrained themselves and should not have taken a revengeful action in the matter.

25. From the written communication of the Vice Principal of the school dated 23rd August 2001, it appears that the authorities of the school were very much annoyed towards the father of the student concerned and obviously in order to teach the father of the said student a good lesson decided to issue Transfer Certificate to the student concerned. So, it is clear that the school authorities punished the student being annoyed with the conduct of the father of the student which is most unfortunate and not expected from the authorities of a recognised school.

26. In our society, teachers command highest respect and therefore, it is not expected that teachers would act vindictively and would take steps to spoil the academic career of a minor child instead of safeguarding and/ or protecting the same. The career of a student should be the basic concern of a teacher but in the instant case, school authorities including the Principal and Vice-principal had totally forgotten the same while dealing with the case of the daughter of the petitioner as the said school authorities were determined to see that the said student, namely, the daughter of the petitioner could not appear in the ICSE Examination in 2002 and the Vice-principal also requested the ICSE Council not to permit the daughter of the petitioner to sit for the ICSE Final Examination under any circumstances.

27. The aforesaid arbitrary, wrongful and illegal decisions of the school authorities, therefore, cannot be allowed to be sustained any longer particularly when the same would completely jeopardise the academic career of a minor child.

28. The respondent ICSE Council, however, took the stand that the student should not be allowed to sit in the ICSE Examination in 2002, as she did not have the requisite attendance as mandatorily required by the Council under the prescribed rules and regulations. Admittedly, the student was never de-barred from appearing at the ICSE Final Examination in 2002 on the ground of non-fulfillment of the minimum attendance as mandatorily required by the Council under its rules and regulations but as a matter of fact the school authorities issued Transfer Certificate to the student in the midst of the academic session and refused to refer the name of the daughter of the petitioner as the regular student of the school to the Council for the purpose of appearing to the ICSE Final Examination, 2002.

29. This Court by the earlier order dated 24th December 2001 passed an interim order restraining the respondents from giving any effect to the Transfer Certificate issued by the school authorities in respect of the student concerned and thereafter the student concerned was allowed to appear at the said ICSE Examination in 2002.

30. Accordingly, it cannot be said in the instant case, that the student was debarred from appearing at the ICSE Final Examination on account of non-fulfillment of mandatory condition of minimum attendance. The Council also never issued any Order in respect of the daughter of the petitioner debarring her from appearing at the ICSE Examination in 2002 for non-fulfillment of the requisite minimum attendance under the prescribed rules and regulations of the Council.

31. However, the learned counsel of the respondent Council submitted that the daughter of the petitioner could not fulfill the mandatory requirement regarding minimum attendance in view of issuance of the Transfer Certificate although the school authorities never forwarded the Transfer Certificate of the daughter of the petitioner to the Council at any point of time,

32. In any event, it is a fact that the school authorities issued the Transfer Certificate to the daughter of the petitioner on 23rd August 2001 and admittedly the daughter of the petitioner was compelled to leave the school on and from August 14, 2001 pursuant to the specific directions of the school authorities.

33. The statement of attendance in respect of the daughter of the petitioner has been annexed with the written notes of arguments filed on behalf of the school authorities wherefrom it appears that the daughter of the petitioner was virtually present on all the working days in the school so long she was permitted to attend the school. The relevant extract from the statement of attendance submitted by the school before this Court is quoted hereunder:-

Sr. No.

Month

No. of working days of the school

No. of days present

1.

April, 2001

19

18

2.

May, 2001

03

03

3.

June, 2001

17

15

4.

July. 2001

16

16

5.

August, 2001

21

11

Admittedly, in the month of August 2001, the daughter of the petitioner was allowed to attend the school only upto 14th August 2001 and as such it can be said that in the month of August the student concerned was present in the school during all the available working days.

34. In the instant case, the daughter of the petitioner was illegally debarred by the school authorities from attending the school as a result whereof the student concerned could not attend the classes during the rest of the academic session. In view of the wrongful acts of the school authorities, the student cannot suffer. Furthermore, a wrongdoer cannot take advantage of its wrongful actions and this Court also cannot remain as a silent spectator in such circumstances.

35. In the instant case, the school authorities wrongfully prevented the daughter of the petitioner from attending the classes and thereafter cannot take the plea that the said daughter of the petitioner did not attend the requisite number of classes. The minimum attendance, therefore, in the present circumstances must be construed in a different manner and the total number of working days here must mean the total number of working days available to the student concerned. Accordingly, from the aforesaid statement of attendance in respect of the daughter of the petitioner, it is clear that the student concerned in the instant case had duly fulfilled the criteria of minimum attendance by attending the school on almost all the working days.

36. The daughter of the petitioner was not only a regular student of the affiliated school but regularly attended the school so long she was permitted to attend the classes by the school authorities and subsequent forcible discontinuation cannot be attributed as negligence or fault of the student concerned.

37. In the case of *Rajendra Prasad Mathur v. Kamataka University and Anr.*, reported in 1986 SCC 740, Hon"ble Supreme Court observed that the students who were appellants in the Supreme Court should not suffer for the sins of the

Management of the Engineering Colleges and allowed the students to continue their study in their respective Engineering Colleges.

38. In the case of Andhra Kesari Educational Society Vs. Director of School Education and Others, , Hon"ble Supreme Court permitted the students to appear at the examination and also directed for publications of their results.

39. Again, In the matter of Maharshi Dayanand University v. M.L.R. Saraswati College of Education, reported in : (2000)7SCC746 , the Supreme Court though found that the students were admitted in violation of the guidelines of NCTE but they were allowed to complete their course and the Hon"ble Supreme Court also directed declaration of results with a further direction upon the college authorities to pay damages. The Hon"ble Supreme Court has been consistently following this principle that students who are not at fault should not be made to suffer for irresponsible behaviour of the educational institutions.

40. Mr. Baid, the learned counsel of the respondent of Council also cited the following decisions in support of his arguments:-

1. Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, .
2. C.B.S.E. and Another Vs. P. Sunil Kumar and Others, .
3. 1998 (II) CHN 61 (The Central Board of Secondary Education and Ors. v. Adarsh Kumar Sedhwaray and Ors.) Paras 5, 7, 8, 9, 10, 11, 15 & 16.
4. (2000)3 CLT 1. (University of Calcutta v. Amit Jalan) Paras. 13, 14. 15 16 & 23.
5. Central Board of Secondary Education Vs. Nikhil Gulati and Another, .
6. West Bengal Council of Higher Secondary Education and Others Vs. Subhabrata Dutta, .

41. The facts in all the aforesaid cases are distinctly different from those of the present case. The Hon"ble Supreme Court in the aforesaid cases reported in Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, and C.B.S.E. and Another Vs. P. Sunil Kumar and Others, has categorically deprecated unauthorised admissions and/or running of unauthorised colleges but did not penalize the students who have prosecuted their studies without making any false declaration or misrepresentation.

42. In the matter of CBSE v. Adarsh Kumar reported in 1998 (2) CHN 61, the issue was whether the students of unaffiliated schools can ask for a mandate on the CBSE to allow them to appear at the final examination conducted by CBSE. The basic distinguishing feature of the dispute before the Division Bench was the claims of the students of an unaffiliated school.

43. The other judgment cited by the learned counsel of the respondent Council reported in (2000) 3 CLT 1 (University of Calcutta v. Amit Jalan) relates to the publication of the results of the law students who appeared at the law examination without attending the minimum requisite number of classes in the

respective academic session but admittedly, none of the law students were prevented by the authorities from attending the classes and the students themselves were responsible for non-attending the classes. The Syndicate of the University did not permit those law students to appear at the University examination because of their deliberate negligence and failure to attend the requisite number of classes.

44. The present case is distinctly different on facts and therefore, the aforesaid decisions as cited by the learned counsel of the respondent Council are not at all applicable in the facts of the present case.

45. For the aforementioned reasons, I do not find any merit on the objections raised on behalf of the Council regarding eligibility of the student, namely, the daughter of the petitioner herein.

46. In the present case, the daughter of the petitioner prosecuted her studies in an affiliated school and regularly attended the classes so long she was permitted to attend. Furthermore, the school authorities though illegally sought to punish the daughter of the petitioner but even at the initial stage by a written communication dated 14th August 2001 specifically assured that the said daughter of the petitioner would be allowed to appear at the ICSE Examination in 2002. The authorities of the Council also did not take any exception to the aforesaid assurance as given by the school authorities inspite of taking note of the fact that the school authorities debarred the student concerned from attending the classes after 14th August 2001.

47. From the aforesaid conduct of the Council, it can be safely inferred that the Council had no objection to allow the student concerned to appear at the ICSE Examination, 2002 in the event the concerned school authorities permit such student to appear notwithstanding the fact that the concerned student was debarred from attending the classes after 14th August 2001. Therefore, this Court cannot allow the victimisation of the student by the arbitrary and whimsical actions of the school authorities.

48. In the aforesaid circumstances, I do not consider that the student concerned had violated any rules and regulations of the Council and therefore, it cannot be held that the said student was not eligible to appear at the ICSE Final Examination in 2002.

49. Accordingly, the respondent Council is directed to publish the result of the daughter of the petitioner in respect of the examination in question alongwith other regular students.

This writ petition thus succeeds and the same is, therefore, allowed. There will be, however, no order as to costs.

Let xerox plain copy of this judgment countersigned by the Assistant Registrar (Court) be given to the learned counsel of the respective parties on usual undertakings.