

(1999) 08 CAL CK 0028
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 2490 of 1999

Brahmo Balika Shikshalaya and Another	APPELLANT
Vs	
Debasish Kar Gupta and Another	RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 162, 226
Evidence Act, 1872 — Section 115

Citation : AIR 2000 Cal 155 : (1999) 2 CALLT 649 : (1999) 2 CHN 680

Hon'ble Judges : Satyabrata Sinha, Acting C.J.; Mahemmad Habeeb Shams Ansari, J

Bench : Division Bench

Advocate : Mr. Arunava Ghosh, Mr. S. Chakraborty and Mr. D. Sengupta, for the Appellant; Mr. L.C. Behani, Mr. Suchandra Mukherjee, Mr. Ashom Kr. Halder, Mr. Somnath De, Mr. Manotosh Chakraborty and Mr. Chaitali Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, ACJ

1. This appeal is directed against a Judgment and order dated 19.7.99 passed in W.P. No. 24113(W) of 1998 whereby and hereunder the writ petition of the writ petitioners/respondents questioning a decision taken by the Appellant herein to take examination of the students for admission in Class-V by a notice dated 13.8.1998 was allowed.
2. The writ petitioners are fathers and natural guardians of their daughters Anewsha Kar Gupta and Rupsa Basu respectively. They were admitted in the school to the primary section and in the examination held for the students for Class IV obtained 81% and 91% marks respectively.
3. The school is a Higher Secondary School having Montessori, Primary, Secondary and Higher Secondary Departments with a Ladies' Hostel for the

students. The writ petitioners' contention is that all the aforementioned sections are run by the same Managing Committee.

4. The learned trial Judge, Keeping in view the facts and circumstances of the case, formulated three following questions :

1. Whether the petitioners have made out any case for filing the writ petition or whether writ as prayed for herein can be issued against the school authority or not?

2. Whether the aforesaid three sections of the said school are independent and distinct entity or not?

3. Whether the daughters of the petitioners are required to sit for further admission test or not?

The learned trial Judge answered all the questions in favour of the writ petitioners and against the Appellants herein.

6. Mr. Arunava Ghosh, the learned counsel appearing on behalf of the appellants, inter alia, submitted that the Primary section and the Secondary section of the School are governed by two different Managing Committees. It was submitted that whereas Primary section is governed under the provisions of West Bengal Primary Education Act, 1973, the Secondary section is governed under the provision of the West Bengal Secondary Education Act, 1963. According to the learned counsel, the standard of the students having been found to be very low and as the school receives grant-in-aid from the State of West Bengal, they cannot afford to admit students who do not have the minimum standard. It has been pointed out that various schools run by the State of West Bengal also take similar admission tests. Mr. Ghosh would urge that such a power to take admission test is provided by reason of a circular letter dated 22/23.8.74 issued by the Education Department of the Government of West Bengal which is to the following terms :

"It has been decided by Government that Primary Final Examination shall be abolished with effect from 1974. and that in its place a scholarship examination at the end of Class IV be held in the month of December, 1974 to start within an experimental basis (vide Government Order No. 1076-Ben.(P) dated 8.8.74).

Further it has been decided that the Head Teachers of Primary Schools will held annual examination and Issue certificate to the pupils on the basis of results of the annual examination.

He is requested to inform the Headmasters of Secondary Schools under his control that the certificate as issued by the Head Teachers of Primary Schools should be honoured without reservation, so that the students may get their admission in Class V without any difficulty. (The Head Masters of Secondary Schools may lake admission test if they deem it fit.)"

7. Mr. Ghosh would urge that the learned trial Judge committed an error in

arriving at a finding that the school in question cannot held any admission test. It has been submitted that as the writ petitioners herein did not file the writ application in a representative capacity nor any application had been filed in terms of Order 1 Rule 8 of the Code of Civil Procedure, the writ application should not have been entertained. It had been contended that the petitioners do not have any legal right to get their wards admitted in any school and as such no writ of Mandamus could issue. It was further submitted that keeping in view the fact that two sections. Primary and Secondary of the Government are governed by two different statutes, the doctrine of "legitimate expectation" cannot be sought to have any role to play in the matter whatsoever. In any event, contends Mr. Ghosh that a policy decision taken by educational institution should not be Interfered with by a writ court in exercise of its jurisdiction under Article 226 of the Constitution of India. It was further submitted that the learned trial Judge had further erred in holding that the school in question is a composite school.

8. Mr. L.C. Bihani. the learned counsel appearing on behalf of the writ petitioners/ respondents, inter alia, submitted that in the instant case, the action on the part of the appellants to held admission test is arbitrary. In support of the said contention, the learned counsel has drawn this court's attention to the affidavit in opposition filed by the Headmistress and the Secretary of the school respectively and submitted that from a perusal thereof it would appear that the strength in the Secondary section is more than the Primer section and, thus, in this case the decision of the Supreme Court in *The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others*, would squarely apply.

9. The Headmistress of the school in her affidavit in opposition, inter alia, stated that the petitioners produced an unaffirmed statement containing a list showing the numbers of students presently studying at Class IV to be 151 which has subsequently been confirmed. However, as regard the justification of holding the said examination it Was stated :

"But the deponent states that the students who fail in the annual examination of Class-V, have also to be accommodated in the same Class. In 1997, 49 students failed in Class V and in 1998 the number of unsuccessful students was 36. Therefore, on an average about 42-43 seats for unsuccessful students have to be kept each year. At present 190 students are reading in Class V which is much more than the ideal students' strength for the class. Because of the pressure of the large number of students the school authorities have been compelled to open four sections in Classes V and VI each. The total number of sections for Classes from V to X in the school is 19 at present whereas the total number of sanctioned sections for those classes is 6. The number of sections for classes V and VI ought to be limited to three each. The size of the class rooms also does not permit sitting accommodation of more than 46-47 students. That the school authority has been compelled to accommodate so many students in Class V in four sections is much more than its permissible strength."

10. Although the Headmistress of the School in her affidavit in opposition stated

that the Montessori, Primary and secondary sections are managed by 3 different Managing Committees which are mutually Independent of each other, the Secretary of the School in his affidavit in opposition. Inter alia, slated all the sections are managed by the same Managing Committee. In this connection reference may be made to paragraph 18 of the affidavit in opposition affirmed by the respondent No. 10 which is to the following effect:

"With reference to paragraph 15 of the said petition I deny and dispute each and all the allegations made therein. I deny that the respondent Nos. 6 and 7 is the same person as alleged or at alt. 1 say that the Secondary section is the main section of the School. The Primary and Montessori sections are two branches of the Secondary section of the School. 1 say that it no section is separately mentioned Brahmo Balika Shikshalaya means its Secondary section."

11. In paragraph 17 of the said affidavit in opposition it has further been stated that the respondent No. 4 meaning thereby Sadharan Brahmo Samaj has full control over the process of teaching in the School. It has further been averred that there is no Honourary Secretary of the School. It further appears that the present Headmistress of the School, being respondent No. 7 to the writ application was the Secretary of the Managing Committee, Primary section of the said School.

12. Therefore, there cannot be any doubt whatsoever that the respondent No. 4 had been managing the affairs of all sections of the said School. It is also clear that it is not a case where there is any dearth of accommodation. It is also not a case where the merit test is being taken by a School for admission of a student who had been student of another School.

The School authorities in their affidavit in opposition appears to have deliberately suppressed the number of average students who leave the School or fail to clear Class IV examination. It has not further been disclosed that some students must be taking admission to other Schools.

13. In The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, , the Supreme Court was considering a case where a student was to take admission in Class IX after passing the Class X Examination. A cut off mark of 50% was provided for admission to Class IX, the same was held to be arbitrary and illegal. The ratio of the said decision. In our opinion, has rightly been applied by the learned trial Judge.

14. It is true that in terms of Part-IV of the Constitution of India, right to obtain education upto Class IV only is a fundamental right. But there cannot be any gain saying that all doors and windows must be kept open for making the citizens literate and educated. The kid had taken admission in the Montessori section of the appellant School as far back as in the year 1992 and had been doing well throughout, and as such, in our opinion, they having secured 81% and 91% marks in Class IV Examination cannot now be asked to appear at another examination for admission in class V, only because the Secondary section of the

School is governed by another statute.

15. The circular dated 22/23.8.1974 cannot be said to have any application in the facts and circumstances of this case. The said circular was issued only because the examination in Class VI was abolished. Admittedly, now such final examinations are being held. The said circular clearly provides that the certificates Issued by Head Teachers of the Primary School should be honoured without reservation so that the students may be admitted in Class V without any difficulty. Thus, by reason of the said circular the State Government expressed its intention that the certificates issued by the Head Teachers of the Primary section should serve the purpose. For the purpose of admission in Class V only in an exceptional situation the Headmaster of the Secondary School was empowered to take admission test if it was so considered necessary. The notice impugned in the writ application dated 13.8.98 clearly shows that the decision to take Admission Test had been taken by the Managing Committee. Such a decision even in terms of the aforementioned Circular could not have been taken by the Managing Committee. By reason of the said purported circular the admission of the students of the said School has been restricted although by reason of the circular letter dated 22/23.8.1974 the admission to Class V was required to be more liberally. In *Payal Gupta (supra)* it has been held :

"On construction of the relevant provisions of the Act and the Rules referred to therein that the examination of Xth Class cannot be regarded as a terminal examination for those who went to continue their studies in XI and XIIth classes of the said School. Applying the analogy to the Instant case by doing away with the primary final examination with effect from 1974 and permitting the head teachers of Primary School to hold annual examination and Issue certificates to the pupils on the basis of results of the annual examination. It can be said that the Class IV final examination which could have been regarded as terminal examination cannot with effect from 1974 onwards be treated as a terminal examination for those students who want to continue their studies in Class V and upwards of the same School."

16. Also neither the Act, Rules nor Notifications under the West Bengal Board of Secondary Education Act prescribe any separate criteria for the students passing Class VI and wishing to continue their studies in Class V in the same School.

17. It is true that in absence of any statute and the statutory rules or regulations, a notification under Article 162 of the Constitution of India can be Issued by the State. The said circular, however, does not satisfy the requirements of Article 162 of the Constitution of India. The same was merely a departmental circular, having no force of law.

18. Admittedly we have not gone into the question as to whether the said circular merely contains guidelines or not, in as much as, we had proceeded on the basis that the said circular is still in force.

19. Furthermore, the Impugned circular dated 22/23-8-1974 as contained in

annexure "L" to the writ application does not state that why holding of such admission test would be necessary even in cases of the students of their own School. In any event, as has been noticed hereinbefore, the stand of the Secretary of the Managing Committee and the Headmistress of the School differ in material particulars as regards management of different sections of the Schools.

20. We further, are of the opinion that the father of a student has a right to maintain a writ application for ventilating the grievances on behalf of his ward and for that purpose, it is not always necessary to file such writ application either in a representative capacity nor is it necessary to seek leave of the court in terms of Order 1 Rule 8 of the Code of Civil Procedure.

For the reasons aforementioned, we do not find any reason to interfere with the Judgment of the learned trial Judge. Accordingly, the appeal is dismissed but in the facts and circumstances of this case, there will be no order as to costs.

M.H.S. Ansari, J.

I agree.

21. Appeal dismissed