
(2006) 07 JH CK 0119
In the Jharkhand High Court
Case No : L.P.A. No. 276 of 2006

Cambridge School Parents Association and Another	APPELLANT
Vs	
Central Board of Secondary Education and Others	RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2006) 4 JCR 188

Hon'ble Judges : M.Y. Eqbal, J;D.P. Singh, J

Bench : Division Bench

Advocate : A.K. Sinha, Ajit Kr., Vijay Kr. Gupta and Rahul Kr, for the Appellant;
M.S. Mittal and Rajesh Kr., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. A.K. Sinha, learned senior counsel appearing for the appellants and the learned Counsel appearing for the respondents.
2. This appeal under Clause 10 of the Letters Patent is directed against the judgment and order dated 15.6.2006 passed by learned single Judge in WPC No. 1131 of 2006, whereby the Writ petition filed by the petitioner/appellant seeking a direction upon the respondents for allowing their students to appear in the Central Board of Secondary Education Examination and to publish the result, has been dismissed.
3. The appellant-Cambridge School Parents Association, Ranchi filed the aforesaid Writ Petition seeking direction upon the respondents to issue admit cards to 159 students of Class X and 121 students of Class XII of Cambridge School, Tantisilwai, Ranchi for appearing in the said examination scheduled to be held from 1.3.2006.
4. The fact as appears from the aforesaid judgment is that the school, namely, Cambridge School, Tantisilwai. Ranchi applied to the Central Board of Secondary Education (In short C.B.S.E.) for its affiliation in September, 1994 and the school

was granted provisional affiliation for a period for three years i.e. from 1994 to 1997. The school, thereafter, applied for up-gradation up to +2 stage and was accorded up gradation for a period of three years from 1999 to 2002. In March, 2002 the C.B.S.E. issued show-cause notice to the school as to why necessary action be not taken to withdraw the provisional affiliation, as the school failed to fulfill the criteria for grant of affiliation. After considering the reply filed by the school, the C.B.S.E. refused to grant affiliation. However, taking into consideration the career of the students and to safeguard the academic future of those students, the C.B.S.E. agreed to permit the students to appear in the All India Secondary Certificate Examination and All India Senior Secondary Certificate Examination, scheduled to be held from March 2003 and 2004. The school, thereafter, requested for grant of provisional affiliation in May 2004 but the same was not granted. It appears that inspite of the fact that the school was not given affiliation after 2004, the Management of the school took admission of the students and then sought direction from this Court for allowing the students to appear in the said examination.

5. Learned single Judge following the ratio decided by the Supreme Court in the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, , in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, and in the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, dismissed the Writ Petition holding that no direction can be issued to C.B.S.E. for publication of result of the students who have been allowed to appear in the examination in terms of the interim order passed by this Court.

6. Mr. A.K. Sinha, learned senior counsel appearing for the appellant submitted that in the writ application, the learned single Judge passed interim order on 27.2.2006 directing the respondents to allow provisionally the students of Class X and Class XII of the appellant-School to appear in the forthcoming Xth & XIIth examination, scheduled to held by C.B.S.E. from 1.3.2006. Pursuant to the said interim order, the students have been appeared in the said examination. Learned Counsel submitted that if the result of these students is not published then the career of the students shall be ruined, which will cause serious loss to the students.

7. At the very outset, we are of the view that the learned single Judge by interim order ought not to have directed the respondents C.B.S.E. to allow the students of an unaffiliated and unrecognized institution to appear in the examination. Notwithstanding that merely because the students were allowed to appear in the examination that does not mean that the Court will commit further mistake in issuing direction to the respondents for publication of result.

8. In the case of State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, the respondent/institution treating itself to be the minority institution sought recognition from the Directorate of Education of the State of Tamil Nadu. Although none of the institutions were accorded recognition but they admitted students to the course of study. Since the Education Department of the

State Government was not willing to allow the students of such institutions to appear at the public examination held by the Government, the affected institutions filed Writ Petitions before the High Court claiming relief for issuance of mandamus directing the Government to recognize the institutions and also for a direction permitting the students to appear at the public examination with a further direction for declaring the result of the examination. Learned Single Judge of the High Court referred the matter to the Full Bench. The Full Bench considered the question whether the students of unrecognized educational institutions can be permitted to write the public examinations held by the Government. The Full Bench on an elaborate discussion held that in the absence of recognition accorded to the educational institution, the students of such institutions were not entitled to appear at the public examination held by the Government. However, the Full Bench issued direction to the State Government on humanitarian grounds directing them to hold supplementary examination for enabling the students of the concerned unrecognized institutions to appear at the examination with a condition that their result will be subject to the ultimate settlement of the question of recognition. With these directions the Full Bench disposed of the Writ Petition. Similar order was passed by the Division Bench of the Court. The matter ultimately went to the Supreme Court. The Supreme Court dismissing the writ application clearly laid down the principles of law and observed:

The practice of admitting students by unauthorized educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with dis-favour by this Court. In *N.M. Nageshwaramma v. State of A.P.* this Court observed that permission as granted to the students of an unrecognized institution to appear at the examination, it would amount to encouraging and condoning the establishment of unauthorized institutions. The Court declared that the Jurisdiction of this Court under Article 32 or of the High Court under Article 226 of the Constitution should not be frittered away for such a purpose. In *A.P. Christians Medical Educational Society v. Government of A.P.* a similar request made on behalf of the institution and the students for permitting them to appear at the examination even though affiliation had not been granted, was rejected by this Court. The Court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognized would be in clear transgression of the provision of the Act and the regulations. The Court cannot be a party to direct the students to disobey the statute, as that would be destructive of the rule of law. The Full Bench noted these decisions and observations and yet it granted relief to the students on humanitarian grounds. Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognized institutions were legally not entitled to appear at the examination held by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the

rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law.

9. In the light of the principles laid down by the Supreme Court in the decision referred to hereinabove and also following the decisions of the Supreme Court referred in the impugned judgment, we do not find any reason to issue direction upon the respondents to publish the result of the students who have been allowed to appear in the examination on the basis of the interim order passed by the learned single Judge. We are also of the view that decision of the Delhi High Court in the case of Rajdhani Public School and Anr. v. C.B.S.E. and Anr. L.P.A. Nos. 99-100 of 2006, cannot be of any help to the appellant.

10. This appeal is/therefore, dismissed.