

(2006) 06 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1131 of 2006

Cambridge School Parents Association and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2006) 4 JCR 155

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : Anil Kr. Sinha, Adv, Ajit Kumar, D.K. Pathak, Vijay Kr. Gupta and Navin Kumar, for the Appellant; M.S. Mittal and N.K. Pasari for respondent No. 4, Sohail Anwar and Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, Acting C.J.

1. This writ petition was preferred by the petitioner Cambridge School Parents Association/ Ranchi & five students of Cambridge School, Tatisilway, Ranchi, for a direction on the respondents to immediately and forthwith issue admit cards/hall tickets of 159 Class Xth students and 121 Class XIIth students of Cambridge School Tatisilway, Ranchi, examinations of which were to be conducted by the Central Board of Secondary Education, New Delhi (hereinafter to be referred as "C.B.S.E.") and were to start from 1st March, 2006. Further prayer was made to allow those students to appear at the forthcoming Xth and XIIth Examinations.

2. Taking into consideration the nature of the case, urgency and career of the students, this Court vide interim order dated 27th February, 2006 directed the respondents to allow provisionally the students of Class Xth and Class XIIth of Cambridge School, Tatisilway, Ranchi (hereinafter to be referred as "the School") to appear at the forthcoming Xth and XIIth Examinations, as were scheduled to be held by the C.B.S.E. from 1st March, 2006. In pursuance of the said interim

order, the students have been allowed to appear at the Xth and XIIth Examinations in March, 2006. However, their results were not published, as the interim direction was issued, subject to the result of the case. For the said reasons, when the case was taken up for hearing, counsel for the parties were heard on merit to determine whether the respondents should be directed to publish the results of the students of the School, who appeared at Xth and XIIth Examinations-2006, held by the C.B.S.E.

3. It appears that the School applied to the C.B.S.E. for its affiliation in September, 1994 and was provisionally affiliated for a period of three years with effect from 1st April, 1994 to 31st March, 1997. The School, thereafter, applied for up-gradation up to Plus 2 stage and was accorded up-gradation up to Plus 2 stage (XIIth Class) for a period of three years with effect from 1st April, 1999 to 31st March, 2002. On 5th March, 2002 the C.B.S.E. under Clause 17 of Chapter V of C.B.S.E, Affiliation Bye-Laws issued a show cause notice to the School as to why necessary action be not taken to withdraw the provisional affiliation, granted by the C.B.S.E., the authorities having failed to run the School as per the Examination & Affiliation Bye-Laws. Having received the reply and not being satisfied with the same as also various guidelines, issued by the C.B.S.E. not having been followed, the School was disaffiliated both with regard to Xth and XIIth standard by C.B.S.E.'s letter dated 28th February, 2003. However, taking into consideration the career of the students and to safeguard the academic future of those students, who were already studying under C.B.S.E. and were in the Classes IXth, Xth, XIth and XIIth, the C.B.S.E. agreed to permit those students to appear at the All India Secondary (Xth) Certificate Examination and All India Senior Secondary (XIIth) Certificate Examination, scheduled to be held in March, 2003 and 2004. By the said order, the C.B.S.E. specifically informed the School that it will not run any class under C.B.S.E. pattern, specifically Classes IXth, Xth, XIth and XIIth w.e.f. Academic Session 2003-04 and in case of any violation in that regard, the responsibility and consequences would rest upon the School authorities with clear understanding that the C.B.S.E. shall not be responsible.

4. The School, thereafter, requested for grant of provisional affiliation on 31st May, 2004, pursuant thereto, an inspection was conducted by the C.B.S.E. on 12th August, 2004 but the Inspection Team having found several irregularities, the request, made by the School authorities for provisional affiliation up to Plus 2 stage (XIIth Class) was rejected by letter dated 7th October, 2004. It was made clear that the School having not been affiliated by the C.B.S.E, its candidates, having been admitted unauthorizedly, cannot be allowed to appear at the C.B.S.E. Examination. The School, thereafter, made request to the Minister of Human Resources and Development, Government of India, on 29th October, 2004. The President of the School also made a request to the C.B.S.E. by letter dated 19th November, 2004 to allow the students to appear at 2005 Examination. In the said letter, the following promise was made by the School:

I firmly promise not to approach the Board in future for the examinations to be held after the students currently in Class Xth and XIIth are finally allowed to take their examination in 2005 on humanitarian ground.

5. On such mercy appeal, the C.B.S.E. allowed Class Xth and XIIth students to appear at All India Secondary & Senior Secondary Examinations, as were to be held in March, 2005 by letter dated 9th December, 2004, subject to the condition that there will be no classes in Class IXth and XIth for the examinations to be held in 2006.

6. In spite of the aforesaid fact that the School was affiliated in 2003 and only to safeguard the interest of the students they were allowed to appear at 2003 and 2004 Examinations and on mercy appeal, again they were allowed to appear at 2005 Examination, held in March, 2005, the School authorities continued to admit the students and having failed to get them appeared at 2006 Examination, the students and their parents have been forced to move before this Court.

7. It appears that the President of the School has filed an affidavit before the C.B.S.E recently on 10th February, 2006, stating therein, that the School having been disaffiliated, is not running classes of IX and XI. The C.B.S.E. replied by letter dated 22nd February, 2006 and pointed out that their action is contrary to the undertaking, given earlier. Still the School authorities continued to admit the students.

8. In the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, the Supreme Court noticed similar activity on the part of the school as also the direction, given by the High Court to allow the students to appear at the examination and to published their results on sympathetic grounds. The Supreme Court deprecated such practice, followed by the High Court, to issue direction and also observed that such aberrations should not be treated as a precedent in future but did not interfere with the ultimate direction of the High Court on the ground that fond hopes have been raised in the minds of the students and, therefore, it would be inappropriate to interfere under Article 136 of the Constitution. However, when similar issue fell for consideration before the Supreme Court in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , the Supreme Court refused to apply the reasoning, given in the aforesaid case and set aside the direction, given by the High Court, though the Supreme Court was conscious of the fact that its order would cause injustice to the students. It was observed that to permit students of an unaffiliated institution to appear at the examination, conducted by the Board under the orders of the Court and then to compel the Board to issue certificates in favour of those, who have undertaken examination, would tantamount to subversion of law. In the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, the practice of permitting the students to pursue their studies and to appear at the examinations under the interim orders, passed by the High Court, was deprecated.

9. In view of the aforesaid fact that the School is not recognized by the C.B.S.E. and the students of unrecognized schools cannot be allowed to appear at the examination and in view of the Supreme Court's decisions, as referred to above, though by interim order the students have been allowed to appear at the Xth and XIIth Examinations, held by the C.B.S.E., this Court will not direct the C.B.S.E. to published the result of such students. Their appearance at the examinations is to be treated to be null and void and, thereby, no relief on the equity can be granted, the students having taken admission at their own with open eyes and having appeared at the examinations by interim order of the Court.

10. In the result, the writ petition fails and the same is hereby dismissed. However, there shall be no order as to costs.