

(2007) 02 PAT CK 0134

In the Patna High Court

Central Board of Secondary Education	APPELLANT
Vs	
Bharat Singh and Others	RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Citation : (2007) 02 PAT CK 0134

Final Decision : Dismissed

Judgement

J.N. Bhatt, C.J.—By this Letters Patent Appeal under Clause 1 of the Letters Patent, the appellant, Central Board of Secondary Education (CBSE) has brought into challenge the judgment of the learned single Judge rendered in C. W. J. C. No. 14636 of 2000 on 20-2-2007, whereby, the petitioner under Article 226 of the Constitution of India came to be allowed with a direction to the appellant to register the Class X/XII students of the School, known as S. T. Severin, High School, New Area, Kadamkuan, Patna (School) who have been promoted from Class IX and XI for their appearance in the Secondary/Senior Secondary School Examination, 2007, scheduled to be commenced in March, 2007, with a clarification that the direction shall not include those students who have been directly admitted in Class X/XII.

3. We have been addressed at a marathon length by learned Counsel for the parties upon whose request we have taken up this matter for final hearing at the admission stage in view of an element of urgency since examination are to start from 1-3-2007. We have, also, give our anxious thoughts and consideration to the factual profile emerging from the record and highlighted in the impugned judgment of the learned single Judge. We have, also, addressed ourselves to the propositions of law laid down in this behalf by this Court, as well as, by the Hon"ble Apex Court and, also, the case law which is taken into consideration by the learned single Judge.

4. With a view to examining and appreciating the merits of the rival versions advanced before us today, let there be a short conspectus of the material and relevant facts at the outset:

1. The school was granted provisional affiliation up to the Secondary level on the condition that it shall run at its present place at Kadamkuan on 2.54 acres of land at one place on 27-3-2000 which is placed on record.
2. The school was granted extension of provisional affiliation up to the Secondary level (class X) with effect from 1-4-2002 to 31-3-2005 by a letter dated 11-9-2001.
3. On 21-8-2002 on a report against certain schools in Patna, a high powered Committee was constituted which inspected the school and submitted the report that the school was running from at least four separate buildings with inadequate facilities. It was further reported that none of the plots of land on which these buildings were located has requisite land area. It was further reported that the school does not have 2 acres of land in a single plot and is functioning from several locations and does not have "play ground." The Chemistry Lab was, also, not adequately equipped as reported.
4. The school was, therefore, issued a show cause notice and asked to reply within 30 days with respect to deficiencies found on inspection, by letter dated 21-10-2002. The reply was submitted.
5. The appellant CBSE intimated that the reply of the school was not satisfactory and it was asked to remove all the deficiencies and send a compliance report to the Board within a stipulated period of three months by writing a letter dated 24-2-2002.
6. On 17-9-2004, the provisional affiliation granted to the school up to secondary level was withdrawn. However, taking into consideration the larger interest of the students the candidates of the school were allowed to appear in All India Secondary School Examination, 2005. The school further informed that it is not authorised to open Class IX from the current academic session and the request for allowing the candidates to appear in the examination "would not be considered by the Board any further unless the deficiencies are cleared, conditions are fulfilled and the school is re-affiliated with the Board. This letter is very important for the purpose of consideration of the issue in focus in this appeal.
7. On 13-10-2004 news item came to be published with respect to disaffiliation of the school. There was exchange of letters in between the appellant and the respondent school.
8. On 31-12-2004 on the undertaking of the school, the students of class IX and XI were permitted to appear in Class X and XII Examinations to be held in March, 2006. The school was, specifically, asked not to open any class from the academic session 2006-2007 nor such request for allowing the candidates to appear in the Examination conducted by the Board shall be considered any further. It appears that the school was found in clear violation of the instructions and guidelines of the Board and the school was aware of the fact that its affiliation

had been withdrawn with the aforesaid clarification for Class IX and XI. We are concerned in this litigation with the examinations to be conducted from tomorrow by the Appellant Board for class X and XII.

9. On 29-12-2005 the school again tempted to request the Board to allow the students of the school of Class X and XI to appear in the Board Examinations to be conducted in March, 2007 which came to be rejected.

10. The school again applied afresh for affiliation. The school, also, gave an undertaking not to open Class IX and XI without the permission of the Board during the academic Session 2007-2008.

11. Again, there were correspondences exchanged between the appellant and the respondent school with regard to removal of the deficiencies for consideration of re-affiliation.

5. It is in the backdrop of the aforesaid factual matrix, it becomes very clear that when the respondent school admitted the students for class X and XII, there was no affiliation and recognition by the CBSE. It is, also, an admitted fact that there is no re-affiliation even today.

6. We have, dispassionately, evaluated and examined the text and tenor of the impugned judgment of the learned single Judge. It appears from the record and the impugned judgment that a distinction has been sought to be made for the students who are directly admitted in Class X and XII and those who continued from previous class in the same school for the purpose of consideration of merits of the request made in the petition that they should be allowed to appear in the examination by giving a direction to register their names. In our opinion, such a distinction or differentiation is not conceived or is reasonable or permissible.

7. It is the settled proposition of law that on the point of entry time of admission or at the stage of exit when examinations are to be conducted, if affiliation is not granted by the competent Board like C. B. S. E., the students or school through the students cannot agitate violation of any right or infraction of any obligation on the part of C. B. S. E. if there is no affiliation, if there is no recognition. Though sympathy may be there, but it cannot dislodge the provision of law, more so, proposition of law laid down by this Court, as well as, the Hon"ble Apex Court.

8. It appears that the judgment which was relied on, on behalf of the appellant C. B. S. E. the learned single Judge has not properly appreciated as the distinction which is sought to be made in the impugned judgment is not even remotely insinuated, much less, expounded in the said judgment rendered in the case of Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others, With due respect, the interpretation made in the impugned judgment does not appear to be correct. Apart from that, there are other decisions of the Hon"ble Apex Court on this point.

9. In the case of Arajkiya Khwaja Shahid Hussain Primary Teacher Training College Vs. State of Bihar and Others this Court has expounded the position on

this score holding that non-recognition or non-affiliation will not be permitted to be lightly viewed and no person can be heard to say that his right is violated as he has studied in such an institution and he is not registered for the examination from such school. Though, it is a pitiable situation for the students but the Court is obliged to consider the legal proposition on the point. In a similar situation in "Arajkiya Khwaja Shahid Hussain Primary Teacher Training College" (supra) case the direction sought to be issued for registration of such students was refused.

10. In our opinion, the case of Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others, was, also, on similar point with divergent facts, of course, wherein it has been held that in absence of requisite recognition or affiliation of the competent authority, if education is imparted or examinations are allowed to be conducted the writ Court will not interfere. Not only that, it has been further held that in a case of a student of non-affiliated or non recognised school no relief can be given even on an equitable ground and he cannot be permitted to appear in the examination when it is contrary to the fixed norms and settled proposition of law. No doubt, it is further held in the same matter that taking into consideration the fact that the ultimate victims would be the students but their pleas for grant of relief cannot be accepted.

11. The view which we are inclined to take is very much reinforced by the decision rendered in L. Muthukumar and Another Vs. The State of Tamil Nadu and Others, wherein a similar proposition of law is evolved. The Court is required to appreciate the principle of law laid down. If in a given case facts differ the judgment of the Hon"ble Apex Court cannot be by passed saying that facts differ. In the context of these facts, if there is certain proposition of law which is common in any matter that has to be appreciated in the correct perspective.

12. After having taken into consideration the aforesaid catalogue of events and chronology of the circumstances and the exchange of correspondences between the parties, keeping in mind the admitted fact that at both the ends entry and exit levels, there has been no recognition or re-affiliation of the respondent school, as well as, the aforesaid proposition of law, painfully, but, dutifully, we are left with no alternative but to raise our hands in helplessness and to dismiss the petition.

13. Accordingly, this Letters Patent Appeal shall stand allowed after quashing and setting aside the impugned judgment. Looking to the circumstances, the parties are left to bear their own costs.