
(2015) 06 CAL CK 0033

In the Calcutta High Court

Case No : W.Ps. 8108 (W) and 9239 (W) of 2015

Deshpran Unaided B.Ed. College Organisers' Welfare
Association and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2015 Cal 256 : (2015) 3 CALLT 434

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Arjun Ray Mukherjee, for the Appellant

Judgement

Dipankar Datta, J.

1. Having regard to the commonality of the legal issues involved in these writ petitions, the same have been heard together and shall stand disposed of by this common judgment and order.

2. In West Bengal, there are two kinds of colleges imparting lessons for acquisition of training qualifications - Government/Government-aided colleges and privately financed colleges (hereafter the said colleges, whenever referred to jointly). All such colleges have been recognized by the National Council for Teacher Education (hereafter the NCTE), upon their obtainment of affiliation from the relevant universities and "no objection" from the State Government.

3. The said colleges, till such time the impugned order was issued, were conducting the process of admission of students in accordance with the terms and conditions of affiliation prescribed by the relevant affiliating universities. The impugned order dated 16th March, 2015, however, brought about significant changes in the admission process. It would be useful to quote below the entirety of such order:-

"In partial modification of this Department's order No. 207 - Edn

(CS)/10M-20/15 dated 03.03.2015 regarding admission into B.Ed./B.P. Ed./M.Ed./M.P. Ed. colleges/courses for the academic year 2015-2016. I am directed by the order of the Governor to say that the counselling for admission to self-financed B.Ed./B.P. Ed./M.Ed./M.P. Ed. colleges/courses for the academic year 2015-2016 will be done centrally by the affiliating University and whether the same will be through on-line or off-line mode will be decided by the respective affiliating University.

I am further directed to reiterate that the Government and Government-aided colleges and State aided Universities offering B.Ed./B.P. Ed./M.Ed./M.P. Ed. courses will conduct on-line admission process on standalone basis."

4. The said order dated 16th March, 2015 was, however, preceded by an order dated 3rd March, 2015 reading as follows:-

"In continuation to this Department's order No. 908-Edn(CS) dated 11.11.2014 regarding introduction of Online Admission into Under Graduate and Post Graduate courses from the academic session 2015-2016, I am directed by the Governor to say that the admission to self-financed B.Ed./B.P. Ed./M.Ed./M.P. Ed. colleges/courses for the academic year 2015-2016 will be done by the affiliating University through centralized on-line system. The Govt. and Govt. aided B.Ed./B.P. Ed./M.Ed./M.P. Ed. colleges and State aided Universities will conduct on-line admission process on standalone basis."

5. W.P. 8108 (W) of 2015 (hereafter the "former w.p."), at the instance of the Association of privately financed colleges, challenges the order dated 16th March, 2015 on the ground of discrimination and unreasonable classification, thereby infringing Article 14 of the Constitution whereas W.P. 9239 (W) of 2015 (hereafter the "latter w.p."), at the instance of two gentlemen who intend to take admission in learning programmes for acquisition of training qualifications, challenges the order dated 16th March, 2015 on the ground that it allows affiliating universities to conduct admission process through off-line process, at their discretion, which would render transparency in the admission process a casualty and thereby generate unfair results.

6. Learned advocates for the respective petitioners have been heard. In view of the cease work call given by a section of advocates practicing in this Court thereby leading to absence of representation from the side of the State, it was felt eminently desirable to call upon the officials of the Higher Education Department to argue the cases for sustaining the impugned order. The Principal Secretary to the Government of West Bengal, Higher Education Department appeared in person to argue the case of the Government and commendably opposed the relief claimed by the respective petitioners.

7. Although the petitioners had not questioned the power of the State Government to regulate the admission process by fixing the norms, this Bench had called upon the Principal Secretary to point out the source of power in pursuance whereof the impugned order had been issued.

8. Reference was made to the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 (hereafter the "2014 Regulations") laying down the admission criteria to B.Ed. colleges. Appendix 4 of the 2014 Regulations provides for norms and standards for Bachelor of Education programme leading to Bachelor of Education (B.Ed.) degree. Intake, eligibility, admission procedure are provided for in clause 3 of Appendix 4. Clause 3.2 and 3.3 being relevant, are quoted hereunder:-

"3.2 Eligibility

(a) Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's Degree in Sciences/Social Sciences/Humanity, Bachelor's in Engineering or Technology with specialization in Science and Mathematics with 55% marks or any other qualification equivalent thereto, are eligible for admission to the programme.

(b) The reservation and relaxation for SC/ST/OBC/PWD and other categories shall be as per the rules of the Central Government/State Government, whichever is applicable.

3.3 Admission Procedure

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/U.T. Admission and the University."

9. Although it is true that the 2014 Regulations are under challenge in a separate writ petition filed before this Court [W.P. 3524(W) of 2014], there has been no order injuncting operation of such regulations and, therefore, the State Government was well within its jurisdiction to proceed on the basis of Regulation 3.3 thereof. Since power has been conferred on the State Government by statutory regulations to regulate the process of admission, no exception can be taken to issuance of the impugned order dated 16th March, 2015.

10. Even otherwise, apart from the University of Calcutta, other universities of the State which have granted affiliation to the member colleges of the petitioner in the former w.p. have made it clear in the orders of affiliation that such colleges would have the right to conduct its own admission process if there is no centralized admission process conducted by the affiliating universities.

11. Insofar as the University of Calcutta is concerned, liberty granted to the colleges affiliated to it to independently conduct their own admission process may not be in conformity with the 2014 Regulations as well as its predecessor regulations being the regulations of 2002.

12. Be that as it may, there is no reason to interfere with the Government Order dated 16th March, 2015 on the ground of lack of jurisdiction.

13. Next, the issue regarding discrimination and unreasonable classification

needs to be dealt with. For succeeding on a charge of discrimination and/or unreasonable classification, it is incumbent for the party throwing such a challenge to plead material facts for demonstrating before the Court that despite two groups being similarly circumstanced, one group has been unduly favoured without justification. Any attempt to demonstrate that the two kinds of colleges (Government/Government-aided colleges and privately financed colleges) are similar, is conspicuous by its absence in the pleadings.

14. In course of hearing, it has been ascertained from the Principal Secretary that posts of teaching and non-teaching staff have to be created insofar as Government/Government-aided colleges are concerned, the staff are duly selected through a competitive process, and their salaries and allowances together with retiral benefits are borne entirely out of public funds, which obviously is not the case with privately financed colleges. That apart, the Governing Bodies of the Government/Government-aided colleges comprise number of Government officials who deal with such public funds, whereas insofar as Governing Bodies of privately financed colleges are concerned, it is only one nominee of the Government who is required to be inducted.

15. These submissions were not countered on behalf of the respective petitioners and accordingly, there is good reason to proceed on the premise that Government/Government-aided colleges stand on substantially different footing as compared to privately financed colleges. Law is well-settled that classification need not be made with mathematical precision. In making classification, various factors have to be taken into consideration and examined. There must be a discernible and an identifiable reason for the classification and a nexus between such reason and the object sought to be achieved by the classification. The two kinds of colleges cannot be compared bearing in mind only the purpose for which the same have been set up and the functions that they discharge. If only the object is lacking or there is no discernible reason for the classification that a court of writ may embark on a process of judicial review to examine the charge of discrimination and/or unreasonable classification.

16. This Bench is afraid, the conditions are not satisfied and hence there is no question of treating the privately financed colleges at par with the Government/Government-aided colleges.

17. The decisions that have been cited by Mr. Ray Mukherjee, learned advocate for the petitioners in the former w.p. lay down broad parameters for determination of the charge of discrimination and/or unreasonable classification. There is no quarrel with regard to the legal propositions that are laid down therein, but it has to be remembered that each case has to be decided on the basis of its own peculiar facts.

18. It was argued by Mr. Ray Mukherjee that there was no justification for the State Government to make a division between the two kinds of colleges and to allow the Government/Government-aided colleges to proceed with the admission

process on their own, whereas the privately financed colleges have been made to depend on the centralized admission process to be conducted by the affiliating universities.

19. The relevant file leading to the impugned order dated 16th March, 2015 was produced before this Bench. It would appear therefrom that a note dated 16th February, 2015 of the Principal Secretary was approved by the Minister-in-Charge, Higher Education Department, whereupon the impugned order dated 16th March, 2015 came to be issued. Centralized on-line admission process was proposed having regard to an apprehension that allowing the privately financed colleges to conduct admission on standalone basis might lead to irregularities. The nature of irregularities that were in the mind of the Principal Secretary has been adverted to in course of hearing. It was contended that during the previous academic session, one privately financed college affiliated to the University of Kalyani had indulged in large scale malpractices resulting in swindling of a number of innocent persons, who intended to take admission, of whatever little money they had to spare. Not only were admissions granted beyond the intake capacity in exchange of money, no receipt was even given. Although privately financed colleges are not entitled to charge a paise beyond Rs. 50,000/- for admission, complaints had been received from various prospective students that they have been charged Rs. 1.5 lakh or in excess thereof. Documents to such effect have been placed before this Bench for consideration.

20. It is true that the affidavit-in-opposition filed on behalf of the State does not contain the documents which have been produced before this Bench, yet, since they form part of the records of the case under consideration, the same have been looked into.

21. It cannot be overlooked that students graduating from the said colleges would aspire for public employment as teachers in primary and secondary schools of the State. It is, therefore, necessary for the State Government to ensure that substandard students on acquiring training qualifications in an unauthorized manner are not considered for appointment as teachers. In view of the Right of Children to Free and Compulsory Education Act, 2009, the State has an onerous responsibility to discharge and in the fitness of things, the regulatory measures adopted by the State Government ought not to be tinkered with even if the centralized admission process could have been worked out in a better manner. One cannot also ignore the anxiety expressed by the Principal Secretary that the 2014 Regulations contain very strict and rigid terms and the State has expressed its apprehension that within the short time at the disposal of the concerned authorities as well as the concerned colleges, it may not be possible to set the house in order in conformity therewith. Teething problems which are bound to arise, according to the Principal Secretary, would be taken care of during the next academic session and all out efforts would be made to guarantee that no injustice is meted out to any prospective student.

22. The second contention of Mr. Ray Mukherjee that there exists no justification

is also not acceptable and, therefore, stands overruled.

23. Finally, it has been submitted by Mr. Ray Mukherjee that the State Government ought to allow the member colleges to conduct the admission process on their own to fill up seats that are vacant even after completion of the centralized admission process conducted by the affiliating universities. It has been urged that to maintain the infrastructure and to meet the salaries and allowances of the teaching and the non-teaching staff, the privately financed colleges have to heavily bank upon the admission fees received from the students and if seats remain unfilled, it would be absolutely impossible for the privately financed colleges to continue and in no time the same would have to be wound up.

24. On behalf of the State Government, the Principal Secretary argued that there was no obligation for the State Government to ensure that all the seats that are available in a particular college are filled up. According to him, privately financed training colleges in the State are mushrooming and the number of available seats in colleges exceeding the number of prospective students is a distinct future possibility. If indeed the member colleges perceive a threat to continuance of the training courses, the State is not to be blamed therefor since nothing prevented such privately financed colleges from applying for recognition of the NCTE as a Government-aided college.

25. The petitioners have not adverted to any material to repel such submission.

26. Once it is conceded that the State Government does not owe a duty to the privately financed colleges to see to it that they can admit students commensurate with the intake capacity, no legal right of the member colleges can be said to have been infringed. There can, therefore, be no direction, as prayed for by Mr. Ray Mukherjee that the State Government should allow the petitioners to admit students to fill up the vacancies, should the affiliating universities fail to recommend as many candidates as the colleges are entitled to admit in terms of the intake capacity permitted by the NCTE.

27. This Bench would record the fair submission of the Principal Secretary to the effect that if any seat remains unfilled upon completion of the centralized admission process conducted by the affiliating universities, the privately financed colleges may fill up the remaining vacant seats, if any, in accordance with merit of the prospective students, as ordained by the 2014 Regulations, but with the approval of the affiliating universities.

28. In view of such submission and considering that 1st July, 2015 is the last date for admission of students which is rigid in view of the pronouncement of the Supreme Court, it is directed that the privately financed colleges would be at liberty to fill up the vacant seats, if any, after the centralised admission process comes to a close by admitting students who possess the eligibility criteria in terms of the 2014 Regulations, subject to prior approval being obtained from the relevant affiliating university.

29. W.P. 8108 (W) of 2015 is accordingly disposed of with the aforesaid observations, without order for costs.

30. Insofar as the latter w.p. is concerned, the grievance is found to be premature. The State Government had left it to the discretion of the affiliating university to decide as to whether the admission process would be off-line or on-line. No particulars have been furnished as to which of the several universities of the State has adopted the off-line process. If indeed any university has adopted the off-line process, it would be necessary for the petitioners to demonstrate unfairness and lack of transparency. That can only be demonstrated once the admission process has come to a close. Without there being any instance of unfair and unjust admission granted to a student, this Bench in exercise of its writ jurisdiction cannot go about making a roving inquiry.

31. W.P.9239 (W) of 2015 is accordingly dismissed, without costs.

32. Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer, shall be retained with the records of W.P.9239 (W) of 2015.