
(2009) 07 MP CK 0036

In the Madhya Pradesh High Court

Devmata Educational and Welfare Association Samiti and S.K. Sharma

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Madhya Pradesh Board of Secondary Education Regulations, 1965 — Regulation 129

Citation : (2009) ILR (MP) 3282 : (2009) 5 MPHT 13 : (2010) 1 MPLJ 199

Hon'ble Judges : A.K. Patnaik, C.J.; P.K. Jaiswal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

These two writ petitions relates to enrolment of the 31 students of St. Joseph School (English Medium) at Birsinghpur Pali, District Umaria (for short "the School") for Class X Examination of the Madhya Pradesh Board of Secondary Education (for short "the Board") and to their entitlement to appear in Class X Examinations of the Board in March, 2009. While W.P. No. 14783/2008 has been filed by Devmata Educational & Welfare Association Samiti, which runs the school, W.P. No. 12/2009 has been filed by father of a student of the school who wanted to take the Class X Examinations in March, 2009 conducted by the Board.

The relevant facts briefly are that the Board granted permission to the school for the academic session 2007-08 to start Class IX. The School which already had students in Class I to Class VIII admitted 31 students in Class IX in July, 2007 but did not send the list of the 31 students admitted in the Class IX to the Board by 31st August, 2007. The School however applied for enrolment of the 31 students on 17-3-2008 to the Board. The School again sent the list of 31 students admitted in Class IX on 7-8-2008. The School also deposited the enrolment fees with the Board. The Board however vide its communication dated 12-9-2008 sought certain queries for enrolment of the 31 students. The School then paid the examination fees of the 31 students for appearing in Class X

Examination for registering the students for the examination but were not given the forms by the Board. Aggrieved, the School filed W.P. No. 12027/2008 before this Court for appropriate reliefs and a learned Single Judge of this Court disposed of the writ petition by order dated 20-11-2008 with the direction that the school will appear before the Chairman of the Board alongwith a representation containing the details of its claim and necessary documents and the Chairman of the Board will consider the representation in the light of the Regulations of the Board and pass appropriate orders relating to issuance of the examination forms to the students studying in the school for appearing in Class X examination in the academic session 2008-09. Pursuant to the directions in the order dated 20-11-2008 of the learned Single Judge, the school submitted a representation but the Chairman of the Board rejected the representation by order dated 29-11-2008. Aggrieved, the petitioners have filed these writ petitions for quashing the order dated 29-11-2008 and for a direction to the Board to issue regulation examination forms to the 31 students and to permit the students to appear in the examination scheduled for March, 2009.

On 29-1-2009, the Court after hearing learned Counsel for the petitioners and the learned Counsel for the Board passed an interim order directing that without prejudice to the rights and contentions of the parties in the writ petitions, on the Principal of the School submitting a fresh set of applications for enrolment within a week to the Secretary of the Board, the students will be allowed to fill up the forms for the examinations and to appear in the examinations scheduled for February-March, 2009 but the results of the examinations of the students will not be published until further orders. This interim order was passed by the Court after making a prima facie assessment of the case of the petitioners in the following words:

On a reading of the 1994 Rules and the 1965 Regulations together, it prima facie appears to us that the Secretary may, in exceptional circumstances, entertain the application for enrolment even later than 1st October of the year in which he was studying Class 9. The students who have studied two years now as regular students in the concerned school, will suffer immensely if they are not permitted to take the examinations scheduled for February and March, 2009 for lapse on the part of the Head of the school, if any, in not sending the applications of enrolment to the Board before 1st of October, 2007 when the students were studying in class 9.

Pursuant to the interim order, the 31 students of the school have been permitted to take the examinations scheduled for February-March, 2009 but the results of the 31 students have not been published and we are now to decide the writ petitions on merits.

Mrs. Indira Nair, learned Senior Counsel appearing for the petitioner in W.P. No. 14783/2008 and Mr. Vivek Rusia, learned Counsel appearing for the petitioner in W.P. No. 12/2009 submitted that the Board has taken a stand in the reply that despite getting permission from the Board for Class IX, the school applied to

CBSE for recognition and waited for its inspection team instead of completing the mandatory formalities of the Board of enrolment of the student of Class IX. They submitted that the school actually sought recognition for CBSE not from the academic year 2007-08 but from 2008-09 and subsequent years. They submitted that the head of the school was not aware that the list of 9th Class students is required to be sent soon after the admissions to IX Class in July, 2007. They submitted that the head of the school however submitted the application for enrolment of the 31 students with the Board on 17-3-2008 and also paid the fees for such enrolment and for the lapses, if any, on the part of the head of the school the 31 students should not suffer. Finally, they relied on Regulation 129 of the Board of Secondary Education (Madhya Pradesh) Regulations, 1965 (for short "the Regulations") which provides that the Secretary of the Board may in exceptional circumstances, entertain an application for enrolment even later than 1st October in the academic year in which the student first joins a recognised institution and submitted that this is a case of exceptional circumstances wherein the 31 students should have been enrolled by the Secretary of the Board even if there was a delay on the part of the head of the school to send the list of students for enrolment.

Mr. Naman Nagrath, learned Counsel appearing for the Board, relying on the reply filed by the Board as well as the impugned order, submitted that under Regulation 128 of the Regulations, enrolment of all students who were supposed to appear in the Board Examinations is compulsory and similarly Rule 6 of the Board of Secondary Education (Enrolment) Rules, 1994 (for short "the Enrolment Rules") provides that enrolment shall be compulsory for students taking admission in Class IX. He further submitted that under Rule 5 of the Enrolment Rules, the last date of submission of the admission list of the students is 31st August, 2007 but the school made the application for enrolment of the 31 students on 17-3-2008 after six months of the last date and hence no action was taken by the Board on that application for enrolment. He submitted that the Regulations provide that only those students studying in the institution were eligible for filling the forms whose names were sent to the Board alongwith the admission list and since the school did not sent any list of the students of Class X for the academic session 2007-08, they were not entitled to appear in the examinations, and therefore, they were not issued the admission cards. He submitted that the Regulations further provide that an institution recognised by the Board cannot admit students for examinations recognised by any other Board or course but in the present case the school has undertaken two parallel recognition proceedings, one with the Board and the other with the CBSE and the fact that CBSE granted recognition to the school was not intimated to the Board and consequently the Regulations have been violated. He cited *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others*, , in which the Supreme Court has held that the Regulations framed u/s 28(2)(d) of the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 have statutory force and submitted that since there has been breach of statutory regulations by the school in not forwarding the list

of students admitted in Class IX within the time stipulated in the Regulations, the Board has decided not to permit the 31 students admitted in Class IX of the school to take the examinations. He also cited the decision of the Supreme Court in *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, for the proposition that where there has been infraction of rules, though the ultimate victims are innocent students that cannot be a ground to grant relief to the students.

Regulations 128 and 129 of the Regulations and Rules 3,5, 6 and 8 of the Enrolment Rules on which the learned Counsel for the parties placed reliance are extracted here in below:

Regulations

Enrolment is compulsory for every regular as well as Private candidate, who desires to appear for various examinations of the Board of Secondary Education, Madhya Pradesh. The fee for enrolment shall be Rupees four for each candidate and shall be paid once only.

(a) The application for enrolment together with enrolment fee shall be submitted by the regular student of a recognised institution through the head of the institution concerned so as to reach the Secretary by the first October in the academic year in which he first joins a recognised institution. The Heads of institution shall scrutinise the forms of students applying for enrolment and certify that they have examined the certificate of the examination qualifying them for admission to the Board's course concerned:

Provided that, the Secretary may in exceptional circumstances, entertain an application for enrolment even later than 1st October, (b) Regular students seeking admission to an institution recognized by the Board after having been admitted as member of another Board incorporated by law for the time being in force, and having appeared for public examination of that Board, will not be unrolled unless their applications for enrolment are accompanied by a Migration Certificate from the Previous Board.

(c) In the case of private candidate, enrolment fee of Rupees four shall be paid together with the examination fee.

Enrolment Rules

It shall be compulsory for every student who takes admission in the institute recognised by the Board or sits in the examination, whether regular or private, to get enrolled in the Board.

Every recognised Institute shall submit the application form and fees received from the students admitted in their school to Secretary or its authorised officer. Last date of receiving application forms shall be 31st August.

Enrolment shall be compulsory only for student taking admission in Class 9.

No student shall be eligible to appear in the Board Examination or to take admission in its course unless his enrolment is not done in the Board.

It is not disputed that the school was permitted by the Board to start Class IX from the sessions 2007-08. Thus, the school was recognised by the Board. It is also stated in Para 10 of the impugned order that the school made an application on 17-3-2008 to get the 31 students admitted in Class IX of the school enrolled with the Board and deposited the enrolment etc. The stand of the Board in Para 10 of the impugned order dated 29-11 -2008 of the Chairman of the Board however, is that since the application for enrolment of the 31 students admitted in Class IX of the school was made after six months from the last date of enrolment, no action was taken on that application. After considering the Regulations and the Enrolment Rules on which great reliance was placed by the Board as well as the decisions of the Courts, we are of the considered opinion that the 31 students could not be refused enrolment and an opportunity to appear in the examinations only on the ground that the applications for enrolment of the 31 students were submitted to the Board beyond the stipulated date.

Regulation 128 of the Regulations quoted above only provides that enrolment is compulsory for every regular as well as private candidate, who desires to appear for various examinations of the Board of Secondary Education, Madhya Pradesh. Similarly, Rule 3 of the Enrolment Rules quoted above provides that it shall be compulsory for every student who takes admission in the institute recognised by the Board or sits in the examination, whether regular or private. Rule 5 of the Enrolment Rules states that every recognised institute shall submit the application forms and fees received from the students admitted in the school to the Secretary or the authorised officer of the Board and the last date of receiving application forms shall be 31st August. Rule 5 of the Enrolment Rules does not say that if the applications for enrolment and fees received from the students admitted in the school are not sent to the Secretary or the authorised officer of the Board by 31st August, the applications for enrolment shall not be entertained by the Board under any circumstances. Rule 6 of the Enrolment Rules provides that enrolment shall be compulsory only for students taking admission in Class IX and Rule 8 of the Enrolment Rules further provides that no student shall be eligible to appear in the Board Examination or to take admission in its course unless his enrolment is not done in the Board. The Enrolment Rules do not contain any provision that if the institution does not send the list of students admitted in Class IX by 31st August of the year in which the students are admitted, the application of the school for enrolment will not be entertained.

On the other hand, Regulation 129(a) of the Regulations quoted above provides that the application for enrolment together with enrolment fee shall be submitted by the regular student through the head of the institution concerned so as to reach the Secretary of the Board by the first October in the academic year in which he first joins a recognised institution and the head of the institution shall

scrutinise all the forms of students who have applied for enrolment and certify that they have examined the certificate of the examination qualifying them for admission to the Board's course concerned and the proviso to Regulation 129(a) further states that the Secretary may in exceptional circumstances, entertain an application for enrolment even later than 1st October. There is, therefore, a clear provision in Regulation 129 that the Secretary of the Board may entertain the application for enrolment even after October of the year in which the student joined the course. Hence where the Head of the Institution submits an application for enrolment of the students admitted in the school after 31st August or after October of the year in which the students are admitted the consequence is not that the applications cannot under any circumstances be entertained by the Board. In other words, the time limit of 31st August or October for submitting application for enrolment as provided in the Enrolment Rules and the Regulations respectively is not mandatory but only directory. The Head of the Institution has a public duty under Rule 5 of the Enrolment Rules and under Regulation 129(a) of the Regulations to submit the list of students admitted by 31st August or October of the year in which students join the school to the Board. He does not act as a private individual but as a public functionary while sending the application for enrolment of the students to the Board and the students who were actually admitted in the school and who have no control over such head of the institution in which they are studying cannot suffer for laches on the part of the head of the institution to send the application for enrolment within the stipulated time.

As has been held by the Privy Council in *Montreal Street Railway Co. v. Normandin* AIR 1917 PC 142 at p. 144:

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

Similarly, in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , S.B. Sinha, J. writing the judgment for G.B. Pattanaik, C.J. and K.G. Balakrishnan, J., as he then was, and for himself has observed in Para 42 at p. 125 of the SCC:

We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative.

The law on the point has been also summed up by K. Ramaswamy, J., in *Mohan Singh and Others Vs. International Airport Authority of India and Others*, , in

Para 17 at Page 144 in the following words:

General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the Legislature by carefully analysing the whole scope of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve.

As we have seen, the statutory provisions in the Regulations as well as in the Enrolment Rules do not provide that application for enrolment filed beyond the time stipulated in the statutory provisions will not be entertained at all by the Board. We will, therefore, have to consider the object of the Regulations and the Enrolment Rules and the consequences of rejecting the application for enrolment of students of an institution recognized by the Board where the applications are submitted to the Board beyond the time prescribed in the Rules and the Regulations for deciding whether the time limit mentioned in the Regulations and the Enrolment Rules were mandatory. The object of the Enrolment Rules and the Regulations is to ensure that regular students in fact were admitted in the school in Class IX and intended to take the Class X Examinations of the Board after two years of the study in Class IX and Class X. Hence, if these conditions are satisfied but the applications for enrolment are sent beyond time prescribed in the provisions, the applications for enrolment, if rejected, would lead to injustice and hardship to the students who have actually been admitted to Class IX of the recognised school. The stand taken by the Board that the application of the 31 students admitted in Class IX could not be considered by the Board because the application was sent beyond the time prescribed in the Enrolment Rules is thus not tenable.

We may now deal with the stand of the Board that the school was actually interested in getting CBSE recognition, and therefore, dilly-dallied over the enrolment of 31 students admitted to Class IX with the Board and only after the CBSE granted recognition to the school for the period 1-4-2008 to 31-12-2010

and not for the academic year 2007-08 in the communication dated 19-2-2008 of the CBSE to the school that the school applied for enrolment of the 31 students with the Board on 17-3-2008. We fail to see how this could be ground for the Board to refuse enrolment of the 31 students of the school for the 10th Class Examination scheduled for March, 2009 and to refuse permission to the students to take the examinations. Admittedly, the school permitted to admit students in Class IX by the Board in the academic year 2007-08 and accordingly 31 students were admitted in Class IX of the School in July, 2007 so that they can take the Class X Examination in March, 2009. Regulation 129(b) of the Regulations quoted above provides that regular students seeking admission to an institution recognized by the Board after having been admitted as member of another Board incorporated by law for the time being in force, and having appeared for public examination of that Board, will not be enrolled unless the application for enrolment will be accompanied by Migration Certificate from the previous Board. Thus, regular students who are enrolled under another Board cannot seek enrolment with the Board but no provision has been brought to our notice which stipulates that regular students of an institution which is recognised by the Board will not be enrolled by the Board if the institution is also taking steps for getting recognition from another Board. In our considered opinion, once the Class IX of the school had been recognized by the Board by granting permission for the academic session 2007-08, students who were admitted to Class IX of the school recognised by the Board in the academic session 2007-08 and who completed studies in Class IX and Class X in the school could not be refused enrolment for Class X Examination by the Board scheduled for March, 2009 on the ground that the school was simultaneously seeking recognition from the CBSE.

For the aforesaid reasons, we allow the writ petitions and quash the impugned order dated 29-11-2008 of the Chairman of the Board and direct the Board to forthwith public the results of the students of the school who have taken the Class X Examinations of the Board pursuant to the interim order passed by this Court on 29-1-2009. No costs.