

(2011) 02 CAL CK 0026
In the Calcutta High Court
Case No : AST No. 15 of 2011
In Re: Gautam Lahiri

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 2 CHN 381

Hon'ble Judges : Kanchan Chakraborty, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Biswaroop Bhattacharyya, Sirsanya Bandopadhyay, for the Appellant; S. Basu, S. Banerjee for the Respondent No. 4; S.K. Baid for the Respondent No. 2, for the Respondent

Judgement

1. When it is time for the Appellant's ward to revise and reassess his skills for the Board examinations, designs of the Respondent No. 4 (The Principal, WWA Cossipore English School) pushed the entire family to the precincts of litigation of the writ jurisdiction of the High Court.
2. Praying for direction upon Respondent No. 3 (The Managing Committee of Cossipore English School) and Respondent No. 4 to give permission to Master Abhishek Lahiri, son of the Petitioner, to take the test. Writ petition No. 9238(W) of 2010 (Annexure-PS at page 147 of the stay petition) was taken out by the present Appellant.
3. Hon'ble Single Judge by His Lordship's judgment and Order under Appeal dated December 24th, 2010 (Annexure-P6 at page 166 of the stay petition) disposed of the writ petition by refusing to accede to such prayer. But however, gave directions to allow the Appellant's son to take the annual examination for promotion from Class IX to Class X by waiving the attendance criteria. His Lordship further directed that in the event he secures the same, he will be promoted to Class X for pursuing further study.
4. The said finding has been carried at the instance of the present Appellant.
5. At the outset, when we took up the Matter, sensing the urgency as the test examination is around the corner, we directed that he may be permitted to

appear for the Class X selections in terms of prayer (b) of the Stay Petition at page 9 thereof.

6. Although we made the Matter returnable on 31.01.2011, Counsel for the Appellant, Shri Biswaroop Bhattacharyya with Shri Sirsanya Bandopadhyay returned before us in the interregnum period and submitted that in spite of our direction, the Appellant's son was not allowed to sit in the test; nor the Order of the Court was received by the authorities (Respondent No. 3 and 4). We put the Matter on Board and thereupon Shri Basu, Counsel for Respondent No. 3 and 4 appeared.

7. While it was the case of Shri Bhattacharya for the Appellant that in terms of Rules and Regulations of the council (Respondent No. 2), the Appellant's son fulfilled all the criteria for securing promotion, the Respondent No. 4 arbitrarily concluded otherwise; on the other hand Shri Basu was of the view that he is absolutely bound by the Regulations framed by Respondent No. 2 and he cannot act contrary as otherwise, he will be taken to task by Respondent No. 2.

8. Shri Bhattacharyya would submit that such a decision taken by Respondent No. 4, was without any basis and although performance of the Appellant's son was satisfactory but it would put the career of the child in a complete jeopardy.

9. He has prayed for considering the same and assailed the finding of the Hon"ble Single Judge that it was incumbent upon Respondent No. 4 to have been apprised with the guidelines and the criteria laid down by the council (Respondent No. 2).

10. He invited our attention to the stand taken by Respondent No. 3 before the Hon"ble Single Judge, which was not correctly considered before the Hon"ble Trial Court and has accordingly, prayed for setting aside the Order under appeal and to allow the son of the Appellant to take his examination.

11. Shri Basu has put up a very strong case in support of his decision. He contended that the decision taken in respect of the son of the Appellant, was on the basis of his output in the academic session.

12. Shri Basu submitted that since his performance was not satisfactory, he was not considered for promotion and he being bound by the Rules framed by Respondent No. 2 took a decision for which no fault can be found. He has prayed for dismissing the appeal having no merit.

13. Shri Said, appearing for the Respondent No. 2, has invited our attention to the guidelines of the Council. Mr. Said further submitted that all through the past criteria of the Council has been consistent. It never underwent any change. He invited our attention to page 153 of the Stay Petition to show that the relevant Regulations and guidelines were forwarded to the school at the time of affiliation. He has also submitted with regard to paucity of the attendance and constraint in this regard.

14. Salient features of the finding of the Hon''ble Single Judge, as culled out from His Lordship's Order under Appeal can be put briefly in the following fashion:

A) Fixation of 35% as pass marks by the Council having been informed to the School (Respondent No. 3), could not be established;

B) Whether the other Schools affiliated to it are obeying the said criteria, have not been placed before the Court;

C) Even though it was the duty of the School to have inquired about the pass marks, but simply failure of the School in this regard cannot give rise to any right in favour of the Appellant;

D) In the event the Appellant was aware of the cut of marks being 35%, why he did not point out the same at the beginning;

E) Since the Council was not a statutory body, Regulations did not have any such force that violation of the same would be a ground for interference;

F) The School has fixed a higher percentage of pass marks and not lower than the one fixed by the council. As such, no grievance can be made in this regard. Moreover, as the student has not attended any class in Class X, simply private tuition would not replenish his deficiency;

G) In the event he is allowed to appear in the Board examination, he would not be able to shine.

15. In the light of the same, we will consider the submissions made by Shri Bhattacharyya in support of the Appeal, Shri Basu for the Respondent No. 3 and 4 and Shri Baid for Respondent No. 2 in their individual perspective.

16. Firstly, we will deal with the finding of the Hon''ble Single Judge with regard to the information given to the School Authorities in respect of Council (Respondent No. 2) fixing 35% as pass marks. We are of the opinion, that outright this cannot be of any consequence. The School (Respondent No. 3 and 4) is an affiliated institution under Respondent No. 2 and necessarily, bound by the Rules and Regulations framed by the Council from time to time. It is not that simply on the other day such a criteria was fixed. But it has been there in the Regulations from the inception and it is a bounden duty of the School Authorities to apprise themselves, of the relevant Regulations under which they are governed. For this purpose it would be important to refer to the Return affirmed by Respondent No. 4 (Page 59 of the Stay Petition).

17. In paragraph 2(b) of the said Return, the Respondent No. 4 has averred The school has its own Policy Manual including examinations and continuous evaluation. It has been prescribed therein that it is compulsory for the children of Class v. to XII to pass in all subjects (40%) for their promotion as given in the Progress Report also in School Diary..." whereas in sub paragraph (c) she has averred that there has been further provided "...it is compulsory for the children of Class v. to XII to pass in all subjects (40% with total aggregate)..."

18. In paragraph 4 of the said Return at page 65 of the Stay Petition, she has stated "....I have not received any copy of Guidelines for affiliation effected in 1984 nor any such records are available in the school. So far school examination is concerned it is absolutely within the domain of the school authority, inasmuch as, the same percentage of marks 35% cannot be conceived of at the level of Class IX examination because for proper assessment of evaluation and progress in final examination Class X. Marks ought to be higher in Class IX examination for the purpose of appearing in Class X examination where percentage 35% is compulsory for pass mark."

19. If this is read in conjunction to the Affidavit affirmed by Respondent No. 2 in paragraph 3 at page 148 of the Stay Petition it appears that" pass marks for grant of a "pass certificate" in the ICSE examination, since the introduction of X+2 Examination in 1977, by the Council has always been 35%(much before the said school was affiliated to the Council). This rule has been prevailing unaltered since then and the guidelines for affiliation to the council read with the Regulations and Syllabuses of the Council makes this pass criteria applicable for promotion from Class IX to X as well."

20. Furthermore, in paragraph 4 the Respondent No. 2 has averred that "....when a school applies for affiliation, the Council always makes available to the concerned School a copy of guidelines for affiliation to the council (although the nomenclature may have differed in the past), to enable the concerned School to comply with the requirements of the Council for grant of affiliation. The case of the said School was no different".

21. He continues further in paragraph 5 of the Affidavit to state ".... In the instant case by a letter dated 18th March, 1983, W.W.A. Cossipore English School (hereinafter referred to as the said School) applied for grant of affiliation to the Council for the India School Certificate Examination. A copy of the Guidelines for Affiliation to the Council was made over to the said School, under cover of a letter dated 5th April, 1983 of the Council"...

22. A perusal of paragraph 4, 5 and 3 of Affidavit of Respondent No. 2 shows to what extent Respondent No. 4 can reach. As such, the finding of the Hon'ble Single Judge on this score cannot be tenable.

23. Now, this would bring us to the other question that the Council being a registered body, its Regulations do not have statutory force. To this extent also, our answer would be firstly when the Respondent No. 3 has submitted itself for registration, it is obvious and expected that the Rules and Regulations would bind it; secondly having elected for affiliation in terms of the Rules and Regulations of the Council (Respondent No. 2), it is not open now to turn back and say that the Rules and Regulations framed by it does not have any statutory force. It should be remembered that in the absence of affiliation, the very existence of Respondent No. 3 is non est.

24. It is also absolutely unnecessary as to whether the other Schools affiliated to

Respondent No. 2 are obeying the guidelines for the present context. Even if there is breach of the same, how could other wrongs justify the one committed by the Respondent No. 4 ?

25. It should also be kept in mind that the question of attendance, which was discussed at length by the Hon''ble Single Judge has to be understood in the context of Shri Bhattacharyya's submission, which has remained practically un rebutted that the son of the Appellant was not allowed to enter the classes. We would view this in the light of the situation where our Order passed earlier sought to be conveyed--was dealt in the manner that we have discussed earlier.

26. We are also unable to persuade ourselves to the conclusion of the Hon''ble Single Judge that simply private tuition would not be suffice and in the event he is allowed to appear, he will not shine. It would be absolutely pre-emptive to assume such a proposition. Judicial notice can be taken of the fact that in every sphere of our education, private tuition is an integral phenomenon. If finding of the learned Single Judge is to be abide by, then why is it that so many students at every level opt for private tuition ? If the finding of the Hon''ble Single Judge is to be accepted that private tuition cannot supplement the imparting of lesson in a School - it can be vice versa also.

27. Furthermore, we feel that given a chance to mend himself, perhaps, the student can make his contribution, which we should not foreclose in the fashion the same has been done before the Hon''ble Single Judge. After all, it is a career of the child and cutting him back in the same position for another year, in stead of doing good, would do more harm to him; more so when he is a victim of the misreading of the Regulations of the Council (Respondent No. 2) and otherwise having secured qualifying marks.

28. From a wholesome appreciation of the entire gamut of the matter, we are of the considered opinion that once the Respondents No. 3 and 4 have elected to be affiliated under the Respondent No. 2, it was their bounden duty to be guided by the Rules and Regulations framed by the latter and they cannot turn back and set their own norms. This is clearly impermissible. We have kept in mind the objection of Shri Bose and Shri Baid that there was paucity of attendance and Shri Bose's assertion that practical exercises required to be taken have not been undergone by the son of the Appellant.

29. But we have to view the same in the prism of the factual matrix of the present case where the son of the Appellant was not permitted to attend his classes as shown by Shri Bhattacharya which remains unimpeachable in the contour of the whole appeal. Obviously there was latent defect for which no fault can be attributed to this poor child.

30. The Affidavit affirmed by the Respondent No. 4 as true to her knowledge also does not inspire much confidence in our mind. It is her case that she took over as Principal of the School sometime in the month of September, 2001 (see paragraph 1 of her Affidavit at page 59 of the Stay Petition). But she has

affirmed as true to her knowledge several portions of the Affidavit which could not be within her knowledge as it was before the period she took over. Furthermore, as we have seen, her Affidavit runs completely contrary to the one affirmed by the Respondent No. 2 with regard to receipt and circulation of the guidelines. We would not give any credence to the same.

31. By now, we have formed an opinion that under some fortuitous circumstances the son of the Appellant was prevented from the natural sequence of events necessary for a candidate appearing for the Board Examination (ICSE Examination), which was for no fault of his. We would now direct the Respondent No. 2 to allow the son of the Appellant, Master Abhishek Lahiri, to sit for his ICSE Examination for the year 2011 by treating his as a special case without setting it as precedent in any manner. For this purpose the Respondent No. 2 would issue Admit Card and other required formalities so as to enable the son of the Appellant to sit for the examination which is scheduled to begin from 28th February, 2011 onwards.

32. In order to facilitate the process the Respondent No. 4 would comply with all necessary formalities required for the purpose of the child of the Appellant to sit for the examination as is required to be done by the School Authorities. She will comply with the entire set of formalities by 7th February, 2011 without fail and send the same forthwith to the Respondent No. 2, Board Authority.

33. This order has been spelt out in the presence of the Counsel for the parties. However, for effective compliance of the same, let xerox plain copy of this order countersigned by the A.R. (Court) be also handed over to them immediately.

34. The application being A.S.T.A. No. 14 of 2011 is, thus, disposed of. Since disposal of the Stay Petition takes the thunder out of the storm of the entire appeal, the same is also disposed of by way of treating it as on day's list. There will be no order as to costs.