

(2010) 04 CAL CK 0036
In the Calcutta High Court
Case No : Writ Petition No. 2365 (W) of 2010

Krishnendu Samaddar and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Citation : (2010) 04 CAL CK 0036

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Swapan Banerjee, for the Appellant; Ayan Banerjee, for Respondent Nos. 4 and 5 and Mitali Bhattacharya, for State, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—This Writ Petition has been filed by the Parents/Guardians of their Wards, praying, that the School Authorities be Directed to admit them in Class V without insisting for any Admission Test as they have successfully completed the Primary Section of the said School.

2. The facts of the case are that the Petitioners represent their Wards who were duly admitted in the Primary Section of the Umarani Gorai Mahila Kalyan Girls' High School, Asansol. According to the Petitioners, the School has three Sections being the Primary, Secondary and the Higher Secondary Sections. According to the Petitioners, they were shocked to see a Notice on the Notice Board on 8.12.2009 informing, that for the Session 2010-11, the School will take Admission Test for enabling their Wards to be admitted in Class V and therefore, necessary Forms would be supplied on and from 18.1.2010 to 6.2.2010 and the date of the Admission was notified to be fixed on 11.2.2010 at 11 A.M.

3. The Petitioners have stated that being aggrieved, they filed a representation before the Headmistress enclosing therewith a copy and Order passed by this Court by which it was held that a Secondary Stream of the School will not hold Tests for the admission of their Students who had come out successfully in the

annual Class Test in Class IV in the Primary Section. According to the Petitioners, all the three Sections stated above, are in the same premises of the School and all the three Sections are controlled and managed by the Administration of the same School and therefore, the School should not deny admission in Class V in so far as those students are concerned and who have completed the Class Test of Class IV in the Primary Section successfully.

4. According to the Petitioners, the Resolution taken by the Managing Committee on 16.1.2010 (Annexure P2) at Page 49 of the Writ Petition referring to a Government Order issued by the School Education Department under Memo No. 238 P/SSA-4/2003 dated 27.2.2008 (Page 50 of the Writ Petition) and the criteria of admission as referred to therein for reserved quota candidates being G.O. No. 905 ? TW/EC dated 12.9.1995, is totally irregular and illegal inasmuch as such a decision amounts to frustrating the Right to Education and is also against the Judgment of the Supreme Court of India.

5. On 9.2.2010, this Court had granted an Order of Status quo in so far as the Petitioners were concerned and the same was Ordered to continue by Order dated 25.2.2010.

6. A Supplementary Affidavit dated 10.2.2010 is also on record and which was filed pursuant to the Leave granted by this Court on 9.2.2010. In the said Supplementary Affidavit, the Petitioners have stated that the Government Order dated 27.2.2008 which has been brought on record in the Writ Petition, is a part of Annexure-P2 and Annexure-P2, is the Resolution dated 16.1.2010. The Writ Petitioners have stated that in the Writ Petition, prayer has been made that the School authority should be prohibited from giving effect to the said Resolution dated 16.1.2010. The Petitioners have stated that the said Circular/Government Order dated 27.2.2008 does not empower the School to take Admission Test of those students who have successfully completed the Primary Section up to Class IV and intend to be admitted to Class V.

7. In the Affidavit-in-opposition filed by the Respondent Nos. 4 and 5, it has been stated that the Petitioners have attempted to make out a case as if the Umarani Garai Mahila Kalyan Girls' High School (H.S)(hereinafter referred to as the H.S. School) and Umarani Gorai Mahila Kalyan Girls' Primary School (hereinafter referred to as the Primary School) are not distinct but one School. However, the Respondents have stated that the H.S. School is totally different from the Primary School as would appear from the names of the two Schools apart from the fact that the two Schools have separate funding, separate management and separate sets of teaching and non-teaching staff. It has further been stated that the H.S. School has also a separate Managing Committee for which election takes place as per Schedule and approval is obtained from the Office of the Additional District Inspector of Schools (Secondary Education), Asansol, Burdwan. They have stated that however, the Primary School is under the control of the Chairman, District Primary School Council, Burdwan and there is no Managing Committee of the said Primary School. According to the Respondents, the H.S.

School receives aid from the State Government and every year audit is done but the said Audit does not include the Primary School. The Respondents have brought on record Annexure-R3 being the Audit report for 2003-04 showing that the H.S. School is different and it does not include the Primary Section.

8. According to the Respondents, the Primary School is a distinct entity and this fact would further be apparent because after passing Class IV from the said Primary School, transfer Certificates are issued to each student and the reason stipulated therein is, completion of the Primary School course. According to the Respondents, the two Schools use separate badges as well as separate uniforms. They have further stated that the guardians and students belonging to Class V to XII are liable to take part in the election of the Guardian's Representatives and this is also a distinct feature because the guardians of the students of Class I to IV of the Primary School are not entitled to take part in the election of the Managing Committee. The Respondents have denied and disputed the contention of the Petitioners to the effect that they are "compelling" students to sit for Admission Tests because, according to them, such an Admission Test is open to all and such a Test is necessary for admission as the H.S. School is totally different from the Primary School. They have also denied the suggestion that the Umarani Gorai Mahila Kalyan Girls' High School has three different Sections and they have categorically stated in Para-9 that the H.S. School does not have any Primary Section. They have however stated that primary level teaching is imparted in the Primary School which is neither affiliated to the H.S. School nor managed by the Managing Committee of the said H.S. School. Other statements have been made which are in the nature of similar submissions and therefore it is not necessary to record each and every statements made in the Affidavit-in-opposition.

9. In the Affidavit-in-reply, the Petitioners have reiterated in Para-4, that the H.S. School and the Primary School are one and the same and they have been housed in the same building since inception and that even the names of the two Sections, viz. the Umarani Gorai Mahila Kalyan Girls' High School (H.S.) and the Umarani Gorai Mahila Kalyan Girls' School (Primary Section) goes to show that the main School has a Primary Section as well as a Secondary and a higher Secondary Section. They have also relied on an Invitation Card of the Saraswati Puja from which it appears that there is only one Puja in the said School and students of all the three Sections join in the said Puja.

10. Commenting upon Annexure-R2, the Petitioners have stated that the said letter shows that the Sub-inspector of Schools has written a letter to the Headmistress of the H.S. School informing her that the Primary Section is presently under the control of the Chairman, District Primary School Council, Burdwan and therefore, it is clear from the said letter that the usage of the word "presently" goes to show that there cannot be two different Schools. Commenting on the Audit report, the Petitioners have stated that had the Primary School been a different entity, then it would have been mentioned as

such in serial No. 5 but while mentioning the name of the nearest School, the Respondents have mentioned one Eastern Railway High School and one Sishu Kalyan Junior High School.

11. Learned Counsel for the Petitioner has relied upon various Judgments in support of his contention that there can be no admission test for promotion to a higher class. He relies upon the Judgment passed in the case of The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, . He also relies upon the Judgment passed by a Division Bench of this Court in the case of Brahmo Balika Shikshalaya and Another Vs. Debasish Kar Gupta and Another, .

12. Learned Counsel for the Respondents has relied upon a Judgment of a Division Bench passed in the case of Headmistress, Headmistress, Kali Krishna Balika Vidyalaya (Higher Secondary) and Others Vs. Chittaranjan Shil and Others, as well as a Single Bench Judgment passed in the case of Sibpur Hindu Girls" High School and Others Vs. Sujit Kumar Banerjee and Others, and also a Judgment of a Division Bench of this Court passed in the case of Managing Committee, Nangi High School and Anr. v. Shankar Pal and Ors. reported in 2002(4) CHN 402.

13. In the Judgment of Headmistress, Kali Krishna Balika Vidyalaya (Higher Secondary) Sethpukur and Ors. v. Chittaranjan Shil and Ors. reported in (2004) 4 CHN 500, it has been observed in Para-4 that by a Resolution, the Managing Committee of the Girls? School allowed the Primary Section to house their School in the same premises with a condition that the students of the Primary School would not claim any right to be admitted in the Secondary School as a matter of course. However in Para-14, their Lordships of the Division Bench of this Court held that if the Primary and Secondary Section have two distinct identities then there cannot be admission as a matter of course in the Secondary Section from the Primary Section. In Sibpur Hindu Girls" High School and Others Vs. Sujit Kumar Banerjee and Others, , the Division Bench of this Court held in Para-12 that since the Shibpur Hindu Girls? High School and Shibpur Hindu Girls? Primary Schools were two different, independent and distinct institutions, there cannot be automatic admission in the High School for the students of the Primary School.

14. In the instant case, though the Respondents have attempted to demonstrate that the two Schools are different but from their own documents that they have produced in the Affidavit-in-opposition, it would be clear that the Primary Classes have been referred everywhere as Primary Section. This would be evident from Annexure-R2 which is a letter of the Sub-inspector of Schools and which states that the Umarani Gorai Mahila Kalyan Girls? High School (Primary Section) is presently under the control of the Chairman, District Primary School Council. Similarly even in the Transfer Certificate brought on record by the Respondents at Page-19, the Seal at the top as well as the seal of the Head Teacher clearly mentions Primary Section.

15. Let it be recorded that while considering the rival submissions of the parties

and considering the aforementioned arguments, this Court had passed the following Order on 2.3.2010:

2.3.2010

W.P. 2365 (W) of 2010

Krishnendu Samaddar and Ors.....Petitioner

v. State of West Bengal and Ors.....Respondents

For the Petitioner: Mr. Swapan Banerjee For the State : Ms. Mitali Bhattacharya, For the Respondent Nos. 4 and 5. : Mr. Ayan Banerjee Affidavit-in-opposition of the respondent Nos. 4 and 5 is taken on record.

Learned Counsel for the Respondent Nos. 4 and 5 is directed to produce documentary evidence and/or necessary documents to show as to under what agreement or arrangement Umarani Gorai Mahila Kalyan Girls? School (Primary Section) is functioning within the same premises and in the same building of the Umarani Garai Mahila Kalyan Girls? (Higher Secondary) School. This becomes necessary on account of the submission being made in Court that the two Schools are different though functioning within the same premises. In addition to the aforesaid, the learned Counsel shall also inform this Court as to from which year they have started the procedure of taking Admission Tests for admission from Class IV to Class V.

As prayed for by Mr. Ayan Banerjee, learned Counsel for the Respondent Nos. 4 and 5, put up this case on 11th March, 2010 at 2 P.M.

(Tapen Sen, J.)

(Quoted)

16. Pursuant to the said Order, Mr. Ayan Banerjee, learned Counsel appearing for the Respondents produced the Minutes of a meeting of the members of the Managing Committee held as early as on 19.1.1950. Resolution No. 3 says "that the Secretary and Headmistress be authorised to make arrangements for separation of the Primary Section". Similarly, in their meeting on 10th February, 1958, Resolution No. 2 read as follows:

2. Considered the formation of a Sub-Committee for the primary section of the school and it was resolved that an Ad-Hoc-Committee consisting of Sri S.C. Bannerjee, Sri P.N. Bannerjee and Dr. S.N. Roy be formed to run the election of the primary section and to do all other necessary matters relating to the said election.

(Quoted)

17. In the aforementioned two Resolutions, the word "Section" has been used but the decisions have been taken by the Managing Committee of the main H.S. School. Similarly again on 12.9.1958, the Managing Committee of the High

School held another meeting in which Resolution No. 7 read as follows:

7. Considered the request of the Secretary Primary Section for allocation of two rooms for their use, as they are short of rooms.

It was resolved that although the High School has not sufficient extra class rooms, at their disposal, still as a gesture of goodness and cooperation, two rooms to be selected by the Secretary be given to them for their use, so long they require them.

It was further resolved that the aforesaid two rooms be given to the Primary section after the Puja Holidays or as early as possible and in the meantime the Secretary be authorised to incur such expenses as to make the rooms habitable.

The Secretary is also authorised to allot at last one room provisionally to the primary section as it has been represented that their requirement is most urgent. The final allocation and adjustment however will be made after the Puja Vacation.

The Primary section be informed accordingly.

(Quoted)

18. In the aforementioned Resolution, the Primary Classes have all along been referred to as Primary Section.

19. Thus upon a perusal of the aforementioned documents, it is evident that the classes run for the children of Classes I to IV have all along been described as the Primary Section. Apart from this, the decision of allotment of rooms etc. have all been taken by the Managing Committee of the main H.S. School. In other words, it is clear that the primary Section is running within the same School and for their own convenience, they have separated into a separate Section but it cannot be said that these are two distinct and separate Schools. A Section cannot be termed to be a distinct and a different entity. In fact, even after having been given so many opportunities, the Respondents could not produce any document to establish that the Primary Section was a totally different and distinct School. All documents that have been produced or brought on record go to show that the primary classes of this School have always been referred to as the Primary Section. There is a lot of difference between a Section of a School and an independent School.

All these documents were produced by Mr. Ayan Banerjee in a Bunch of Photocopies including the photocopies of the judgments which are directed to be retained with the records of this case.

20. Under such circumstances, the Judgment that would be applicable, in the facts and circumstances of this case, would be the cases of the Supreme Court passed in the case of The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, and not of the Division Bench Judgment of this Court referred to above. On the contrary, the Division Bench of this Court which would be applicable is the case of Brahmo Balika Shikshalaya reported in AIR 2000

Calcutta 155 which clearly lays down that merely because a Secondary Section of a School is governed by another Statute, a kid who had taken admission in the Montessori Section should not be asked to appear in another examination for admission to Class V. Similar view has been taken in Payal Gupta's case which clearly lays down that once a student has been admitted to a School, he is entitled to continue Class after Class until he passes the last examination. In the instant case, since there is nothing on record to establish that these are two different Schools and since documents prove that the classes meant for the Primary Children have always been referred to as "Section", it must be deemed that it is the Primary Section of the Umarani Gorai Mahila Kalyan Girls' High School and therefore, in the absence of materials to the contrary, it must be deemed that it is actually the same School.

21. In the aforementioned facts and circumstances of the case, this Writ Petition must be allowed and it is accordingly allowed to do so. Wards of the Petitioners have the right to be admitted to Class V without any Admission Tests and the School Authorities must therefore allow them to be so admitted and must allow them to continue in the said School class by class, year by year until they pass out the last examination unless some of the children or some of the students are prevented by reasons, in accordance with law.

Upon appropriate Application(s) being made, urgent Xeroxed Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.