
(1977) 05 CAL CK 0027
In the Calcutta High Court

Kshitindra Narayan Roy Chowdhury	APPELLANT
Vs	
West Bengal Board of Secondary Education and Others	RESPONDENT

Date of Decision : 05-05-1977

Acts Referred:

West Bengal Board of Secondary Education Act, 1963 — Section 37

Citation : (1977) 05 CAL CK 0027

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Jamini Kumar Banerjee, Tapas Kumar Mukherjee, for the Appellant; Bimal Kumar Dutta, Arun Prokash Sircar, for the Respondent

Judgement

T.K. Basu, J.—In this rather unusual application, the petitioner, who is the Headmaster of a school known as D. L. Roy Vidyapith in Calcutta asks for a Writ of Mandamus directing the respondent West Bengal Board of Secondary Education (hereinafter referred to as the Board) to allow 36 students whose names appear in Annexure "B" to the petition to sit for the Secondary Examination (Madhyamik Pariksha) for the year 1976.

2. The facts relating to the making of the present application may be briefly noted. In the year 1968 a Junior High School was established under the name of D. L. Roy Vidyapith with the petitioner as the Headmaster. In the year 1969 Class VII was opened at this school and in the year 1970 Class VIII. Thereafter an application was made for recognition of the school as a Junior High School to the respondent No. 1 who is the President of the Board. The school was inspected in 1970 and was granted recognition with effect from January, 1974. Thereafter Class IX and Class X were opened at this school and the school again applied for recognition as a High School in May, 1974. As directed by the Board, the necessary amount of Rs.250/- was deposited as a condition of such recognition. The respondent no. 5 held an inspection of the School on December, 14, 1974. The inspection was in response to the application for recognition as a High School made in May, 1974 as aforesaid.

3. Thereafter it appears that no action was taken with regard to the pending application for recognition of the School as a High School. However on the basis of certain assurances given by the respondent nos. 2 and 3 the petitioner as the Headmaster was allowed to send up students for the School Final Examination held in 1973, 1974 and 1975. The said students all appeared as private students. In 1973 eleven candidates were sent up, in 1974 twenty candidates were sent up and in 1975 twenty six candidates were sent up.

4. Thereafter as no formal recognition of the school was forthcoming, the petitioner wrote a letter on the 12th September, 1975 to the respondent no. 2 requesting him to expedite the matter of recognition and to grant the necessary permission to present candidates reading in this school for the Madhyamik Pariksha 1976. The letter has been set out in Annexure "A" to the petition.

In the meanwhile on the 3rd December, 1971 the Test Examination was held at the said school and thirty six students passed the said Test and were found eligible by your petitioner to appear at the Madhyamik Pariksha, 1976.

5. Thereafter the petitioner wrote several letters to the respondent no. 2, which have been annexed to the petition. He also personally saw the respondent no. 2. In spite of these representations both in writing and oral, no permission was forthcoming from any of the respondents with regard to the fate of the 36 students who were to sit for the Madhyamik Pariksha, 1976. The regular examination of the students for the Madhyamik Pariksha, 1976 was held on the 23rd April, 1976 wherein these thirty six students could not appear.

6. It is stated in the petition that the examination of the students as external candidates was to be held on the 11th May, 1976. But until the Board granted the permission, these students could not sit for the examination as external candidates.

7. In these circumstances, this application was moved before me on the 7th May, 1976. I issued a Rule nisi and directed the petitioner to serve the respondent nos. 1 to 3 in course of the day with copies of the petition and the gist of the Court's order. I have liberty to the petitioner to apply for interim orders on the following Monday which was the 10th May, 1976 I the presence of the respondents.

8. On the 10th May, 1976 the matter appeared in my list as an Application and Mr. Bimal Kumar Dutta, learned Advocate appeared on behalf of the Board. As can be easily imagined no satisfactory explanation could be given on behalf of the Board for its curious conduct in not allowing those candidates to appear in 1976 although without the granting of a formal recognition in the previous years namely, 1973, 1974 and 1975, students from this school were allowed to appear at the School Final Examination as it was known then.

9. In the circumstances, I made the following order on the 10th May, 1976.

The respondent nos. 1 to 4 are directed to afford all facilities to enable the thirty

six students whose names appear in Annexure "B" to the petition so that these 36 students are entitled to sit for the Madhyamik Pariksha Examination as external students, which is due to commence tomorrow.

The petitioner Kshitindra Narayan Roy Chowdhury is directed to deposit by 2 P.M. today at the office of the Board of Secondary Education the requisite fees necessary for enabling these 36 students to appear at the Examination mentioned above.

The respondent would be at liberty to withhold the result of the examination in so far as these 36 students are concerned. The result of the examination will abide with the result of this Rule.

The respondents are further directed to keep the examination fees, which are to be paid to them, in a separate account, pending the disposal of the Rule.

I further gave certain other directions regarding affidavits.

10. As a result on my Order dated 10th May, 1976 these 36 students were allowed to appear as external candidates and duly sat for the examination in this respective papers.

11. Thereafter by an order of this Court dated the 9th December 1976 this application was allowed to be amended not only by adding certain students as respondents but also by adding a prayer that the Board be directed to declare and publish the results of the candidates who have appeared at the Madhyamik Pariksha 1976, from the said school along with other candidates.

12. The matter came before me for final hearing on the 21st January, 1977. Mr. Jamini Kumar Banerjee, learned Advocate for the petitioner submitted that although the examinations of the 36 students had been duly held by virtue of my order dated 10th May, 1976 the Board was not publishing the results. Thereupon after hearing the parties, I made the following Order on the 21st January, 1977.

There will be a Writ in the nature of Mandamus commanding West Bengal Board of Secondary Education to declare and publish the results of the 36 candidates who have appeared at the Madhyamik Pariksha (Secondary Examination in 1976) which is the subject matter of the Rule. The results are to be published by Saturday the 22nd January, 1977.

The reasons for my order will be given later on.

Mr. Dutta appearing for the Board prays for stay of operation of my order the prayer is refused.

Let this order be communicated forthwith by special messenger at the cost the petitioner.

13. I now proceed to give my reasons for making the aforesaid order.

14. In fact the reason is so simple and short that it can be stated in one

paragraph. Section 27 of the West Bengal Board of Secondary Education Act, 1963 lays down the functions of the Board. Section 27(2) lays down as follows: -

Subject to any general or special orders of the State Government, the provisions of this Act and any rule made thereunder, the Board shall have generally the power to direct, supervise and control Secondary Education,.

Section 27(h) is as follows: -

to publish the results of any examination instituted by the Board and to award diplomas, certificates, prizes and scholarship in respect thereof.

15. From the above two provisions it is evident that not only is Board in charge of the control and direction of Secondary Education in the State, but it is also entrusted with the statutory obligation of declaring and publishing the results of such examinations as have been held. As I have already indicated, by virtue of the interim order which I passed on the 10th May, 1976 the examination of these 36 students which is the subject matter of the present Rule has been held by the Board. In that view of the matter, it is the bounden duty of the Board to publish the results. That is why I passed the order on the 21st January, 1977, commanding the respondents by a Writ of Mandamus to publish the result of the examination of these 36 candidates. I merely directed the Board to carryout its statutory obligations.

16. Before I conclude this judgment, I cannot help making certain observations about the conduct of the Board and its officers in the present case. As already stated, the application of this school for recognition as a High School was made as early as in May, 1974. The Board would not decide the application one-way or the other. It was perfectly within its statutory powers to refuse the recognition prayed for. In that case the school and its students would have known where they stood. The Board did not choose to do that. On the other hand it allowed boys from this school to sit for the School Final Examination for the years 1973, 1974 and 1975. This could only be on the presumption that the formal recognition of the school was in the offing. Then in the year 1976 for reasons best known to its officers, it chose to take the attitude that it did.

17. It is unfortunate if not tragic, that a statutory authority like the Board which is entrusted with the solemn and sacred duty of promoting and nurturing the cause of secondary education in the State would choose to act in this manner. I sincerely hope that on future occasions the Board would take a more ethical and principled attitude to the cause of recognition of schools and the question of the future of the middle class boys who studied in such schools.

Rule made absolute.