
(2011) 07 CAL CK 0043
In the Calcutta High Court
Case No : Writ Petition No. 8355 (W) of 2011

Master Arkaprava Basu and Another

APPELLANT

Vs

Patha Bhavan and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Constitution of India, 1950 — Article 21A

Right of Children to Free and Compulsory Education Act, 2009 — Section 1(3), 16, 2

Citation : (2011) 5 CHN 331

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Subrata Kumar Dutta, for the Appellant; Biswaroop Bhattacharya and Reshmi Ghosh for Respondent Nos. 1 and 2, Bratati Roy Chowdhury, for State, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner No. 1 is the minor child of the Petitioner No. 2. The Petitioner No. 1 is a student of Class v. of Patha Bhawan School. The said school is a recognized private unaided school imparting Primary or Elementary, Secondary and Higher Secondary Education among its students. The said school is a co-education school. Though, the said school does not get grant in aid but it receives dearness allowance from the Government for its teaching and non-teaching staff. Thus, the said school is regarded as a "school" within the meaning of the "school" as defined in Section 2(n) of the Right of Children to Free and Compulsory Education Act, 2009, hereinafter referred to as the said Act, with effect from 1st April, 2010, when the said Act came into operation in view of the notification published u/s 1(3) of the said Act.

2. The Petitioner who is presently aged about 10+ years and is reading in Class v. of the said school is entitled to get the protection under the said Act as a child as he comes within the definition of "child" as defined in Section 2(c) of the said Act.

3. Section 16 of the said Act provides that "no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education".

Elementary education" has also been defined in Section 2(f) of the said Act which provides that elementary education means the education from 1st class to 8th class.

4. The said Act was enacted to fulfil the object of Article 21A of the Constitution of India. If the provision of the said Act is considered carefully then it goes without saying that the said Act was enacted to give protection to the children within the specified age group (i.e. within the age of 6 to 14 years) reading in such a school so that they can continue their studies to receive elementary education in such school upto 8th class uninterruptedly.

5. The Petitioner No. 1 who is a student of Class v. of the Respondent No. 1 school, thus, cannot be denied of the protection which is available to him under the said Act. The Petitioner No. 1 was admitted in the said school in the year, 2004 in Kindergartens-2. His academic performance in the said school upto Class IV was satisfactory. He got regular promotion to the next higher class after being successful in the annual examination held at the end of each academic year from Kindergarten-2 to class IV in the said school. He was promoted to Class v. in the said school in 2010 after being successful in the annual examination held at the end of the academic year 2009-2010 for the students of Class IV of the said school.

6. Unfortunately, he secured less than 35% marks in most of the subjects in the annual examination held for the students of Class v. of the said school in 2011. As such he was not given promotion to Class VI and was, thus, held back in Class V. The Petitioner No. 2 who is the father of the Petitioner No. 1, by his advocate's letter dated 26th April, 2011, requested the Teacher-in-Charge of the said school to give the Petitioner No. 1 promotion to Class VI of the said school. Since, the said request was not accepted by the school authority, the Petitioners have come before this Court seeking appropriate reliefs.

7. Let me now consider as to how far the school authority was justified in refusing to grant promotion to the Petitioner No. 1 to Class VI of the said school.

8. The applicability of the said Act to the Petitioner's school and availability of the protection guaranteed under Article 21A of the Constitution of India as well as under the aforesaid Act to the Petitioner No. 1 cannot be doubted in view of the provisions contained in the said Act. In this regard reliance may also be made to the unreported decision of Madras High Court delivered on 08/06/2010 in the case of W.P. No. 11168 of 2010; Ka Kalaikottuthayam v. the State of Tamil Nadu, wherein it was held that the object behind Section 16 of the said Act is that no student should leave the school within the age group of 6 to 14 years for any reason i.e. due to non-payment of fees, not passing the examination etc. It was further held therein that when the right to education upto the age of 16

years is guaranteed as a fundamental right under Article 21A of the Constitution of India and right to free and compulsory education also has now been declared as a statutory right apart from fundamental right as per Act 35 of 2009 with effect from 1st April, 2010, the State Respondent cannot issue any circular giving direction to the school authorities to give promotion by fixing any norm to the students of standard 1 to 8.

9. After going through the said judgment of the Madras High Court this Court has no hesitation to record herein that this Court is in full agreement with the views expressed by the Madras High Court in the said decision.

10. Though Mr. Bhattacharya, learned Advocate, appearing for the school authority contends that since the classes in Class VI of the said school have already commenced and the instant writ petition has not been moved before commencement of classes in Class VI, the instant writ petition should not be entertained by this Court on the ground of delay alone. This Court does not find any substance in such submission of Mr. Bhattacharya, learned Advocate, as this Court finds that the instant writ petition was filed on 12/05/2011 immediately after the commencement of the classes in Class VI in the said school. This Court also does not find any inordinate delay on the part of the Petitioners in moving the instant application and the delay, even if there be any, in my view, was caused due to inaction or negligence on the part of the school authority by not replying to the demand of justice letter written by the Petitioners' learned Advocate on 26th April, 2011 which was received by the school authority before the commencement of classes in Class VI in the said school.

11. Accordingly, this Court issues a mandate upon the school authority of the Respondent No. 1 school to give promotion to the Petitioner No. 1 to Class VI and allow him to prosecute his studies in Class VI in the said school in this academic session of 2011-2012. The entire exercise, which is required to be made by the school authority for giving promotion to the Petitioner No. 1 to Class VI, should be completed within ten days from date. The school authority is further directed to hold extra classes for the Petitioner No. 1 so that the loss, which the said Petitioner has suffered by not attending the classes which had already been held, can be compensated and the said Petitioner can prepare himself to compete with the other students in Class VI of the said school effectively.

12. The writ petition is, thus, allowed.

13. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

14. Let a plain copy of this judgment duly counter signed by the Assistant Registrar (Court) be given to the learned Advocate for the parties on usual undertaking.