
(2008) 07 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No"s. 12956 of 2007 and 6866 of 2008

Nanakram Mukati

APPELLANT

Vs

Board of Secondary Education M.P., Bhopal and another

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Citation : (2008) ILR (MP) 3103 : (2008) 4 MPJR 209 : (2008) 4 MPLJ 39

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : K.S. Rajpoot in W.P. No. 12956/07 and A.K. Singh in W.P. No. 6866/08, for the Appellant; Naman Nagrath, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

This order disposes of Writ Petition No. 12956/07 (Nanakram Mukati vs. The Board of Secondary Education and another) and Writ Petition No. 6866/08 (Rahul Pal vs. The Board of Secondary Education and another). Reference to annexures is being taken from Writ Petition No. 12956/07.

Nanakram Mukati, President of Model Education Society submitted Writ Petition No. 12956/07 with averments that the said Society is running Higher School and Higher Secondary School since last 15 years in the name of B.G. Memorial Higher Secondary School at Nehru Nagar, Bhopal in a tenanted premises having obtained on rent vide registered lease dated 17-7-1989. Recognition used to be granted to it. Lastly, it was granted for the academic session 2007-08 which is revealed in Annx.P/4 dated 30-5-2007. On the basis of such recognition, 250 students were admitted in Class-X and XII for the academic session 2007-08. Information about the admitted students was duly furnished to the District Education Officer, Bhopal.

Suddenly, during academic session 2007-08, the Board of Secondary Education (hereinafter referred to as "the Board" for brevity) withdrew the recognition

granted earlier for the said academic session and cancelled it vide Letter No. 596/Recognition/2007 dated 3-8-2007 contained in Annx.P/8 on the ground that the area of the constructed building of the petitioner's school was less than the area prescribed under Regulations 2005 of the Madhya Pradesh Board of Secondary Education. This order was challenged in Civil Suit No. 693-A/07 before the Court of Third Civil Judge Class-II, Bhopal, which was withdrawn. Later on, the present writ petition has been preferred challenging Annx.P/8.

The Board submitted its reply stating therein that the M.P. Madhyamik Shiksha Manyata Viniyam, 2005, were approved vide Notification dated 6th January, 2006 and were published in the Gazette dated 7th January, 2006. According to Regulation 5(2), a school with Primary to Higher Secondary Classes shall have a constructed building with minimum 4000 sq.ft. area and the petitioner is, thus, found rightly to be not entitled to the recognition. The recognition has been accordingly rightly cancelled and the writ petition is liable to be dismissed.

Amongst all the students who have been admitted during academic session 2007-08 in the petitioner's school, one student, namely, Rahul Pal has submitted Writ Petition No. 6866/08 against the respondents with a contention that he was admitted in the academic session 2007-08 when the recognition granted to the petitioner was in force. His contention is that the recognition once granted, cannot be withdrawn or cancelled in the impugned manner to the detriment of students. He has appeared in the examination of Higher Secondary School Certificate Examination as per Annx.P/1. He appeared in the Examination on the strength of the interim order passed by this Court on 3-10-2007. However, his contention is that once having permitted to admit on the basis of recognition for a particular year, the Board has no power to withdraw the recognition in mid session and the students cannot be forced to change the school during mid academic session.

Learned counsel for parties made their respective submissions.

Shri Naman Nagrath, learned counsel appearing for the Board made available the original file dealing with the recognition of petitioner's school and its further cancellation. Original record of the Board reveals that the recognition to the petitioner's school was granted for the academic session 2007-08 in the month of June, 2007 and the certificate of recognition was granted vide No. 540/Recognition/07 dated 30-6-2007 on the condition that strength of qualified staff would be fulfilled and the endowment fund would be made sufficient as per requisite criteria. It is further revealed from the record that on 2-8-2007, that the matter for recognition was reconsidered suo motu on the ground that the area of the constructed building was merely 1500 sq.feet which was less than the area prescribed in the Regulations. Matter was placed for cancellation of the recognition and, ultimately, it was cancelled as was informed by the Board vide letter No. 596 dated 3-8-2007; copy whereof is on record as Annx.P/8 which has been challenged herein.

It is true that the petitioner has been unable to establish that it has got requisite area of constructed building i.e. 4000 sq.feet. Petitioner is admittedly running its school from Primary Class to Higher Secondary Classes. Hence, by virtue of Regulation 5(2)(i) of the Regulation of 2005, it shall have constructed building with an area of minimum 4000 sq.feet. However, it is not a case wherein the petitioner made some misrepresentation or provided some incorrect information regarding the area of constructed building. Recognition was granted to the petitioner's school in the month of June, 2008 for the academic session 2007-08 with a direction to fulfil the conditions regarding qualified staff and endowment fund. It is not the case of the Board that the recognition has been withdrawn or cancelled for non-fulfilment of any of the conditions mentioned in the certificate of recognition. On the contrary, it has been cancelled for non-fulfilment of the conditions pertaining to the area of the constructed building. Petitioner was granted recognition for the academic session 2007-08 on the strength of area of constructed building which was disclosed by it while seeking renewal of recognition for the said academic year. The recognition, thus, having been granted on the basis of the information provided by the petitioner could not have been withdrawn during continuance of the said academic year without issuing a show cause notice to the petitioner, *moreso*, because students were already admitted for the academic session and they could not have been forced to withdraw from the school and seek admission in other institutions. Action of the Board in cancelling the recognition during mid of the academic session 2007-08 is, thus, violative of principles of natural justice and is not sustainable in law.

In the result, both the writ petitions are, hereby, allowed. Impugned order Annx.P/8 is, hereby, quashed. Respondent Board is, hereby, directed to declare the result of students who were allowed to appear through the petitioner's school in the examination of the academic session 2007-08.

With the aforesaid direction, both the petitions, stand allowed. No order as to costs.