
(2000) 02 PAT CK 0092
In the Patna High Court
Case No : C.W.J.C. No. 874 of 2000

Niwash Yadav and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Bihar School Examination Board Act, 1952 — Section 6
Constitution of India, 1950 — Article 226

Citation : AIR 2000 Patna 162 : (2000) 3 PLJR 113

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Janardan Prasad Singh and Dipak Kumar, Rameshwar Nath Roy, Basant Kumar Singh, Rakesh Kumar Singh, R. Roy, Dr. Mahtab Ahmad and Onkar, for the Appellant; Meena Singh, JC, Rajeshwar Parasad, for BSEB, Bahzad Akhtar Warsi and Md. Aslam Ansari, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

An intervention application has been filed to support the stand of the writ petitions. Let the same be kept on record. However, in view of the order proposed no separate order need to be passed with regard to the intervention application.

2. This writ petition has been filed in representative capacity by two petitioners. Petitioner No. 1 claims to be the President of the Students Union in the district of Siwan and petitioner No. 2 has claimed to be the General Secretary of an Association of Schools which have received permission for establishment but have not been recognised. The prayer made in this writ petition is to direct the authorities especially the Administrator and Secretary of Bihar Secondary School Examination Board to allow those students to appear in the secondary examination for the year 2000 who have got themselves registered in different schools of Siwan district which have received permission for establishment and

who have passed the sent up examination held by recognised schools. Further prayer is that forms and fees of such students should be accepted by the Examination Board.

3. It appears that as per an advertisement contained in Annexure-1 the last date of submitting registration form for the secondary examination of the year 2000 was 30-6-1999. Different schools in the district of Siwan forwarded registration forms of students with necessary charges which were deposited in the office of the District Education Officer, Siwan. The case of the petitioners is that the concerned students had passed the sent up examination held by recognised schools and, therefore, the District Education Officer sent the registration forms received in time to the Examination Board. It is further case of the petitioners that the Examination Board accepted the registration forms and the fees but is not allowing even the bona fide students who have pursued their studies in schools which were granted permission for establishment and who have passed the sent up test and are entitled to appear as private candidates through recognised schools as per policy decision of the Examination Board evident from notification dated 13-7-1996 (Annexure 12 to the supplementary affidavit). The petitioners' grievance is that the Examination Board has arbitrarily decided to cancel the registration already granted to such private students without any valid reason and is arbitrarily refusing to accept forms and fees from such students of Siwan district whose number is stated to be quite large.

4. On behalf of the respondent-Examination Board it has been submitted that since the number of registered students desirous to take the secondary examination of the year 2000 was found to be quite large and almost four times the number of such students in the previous year hence, the Board directed the District Magistrate, Siwan to make an enquiry in this aspect of the matter. Thereafter, it appears that the District Magistrate either himself or through District Education Officer, Siwan got an enquiry conducted, as a result whereof students of certain schools either regular or private were allowed to fill up forms and take the examination whereas students generally of such schools which were not the recognised schools but for which permission for establishment has been granted were not so permitted.

5. A Division Bench of this Court in a judgment annexed as Annexure-8 to the writ petition has already held that students of Institutions which are not recognised but have been granted permission for establishment, are entitled to appear as private candidates. Under the Bihar School Examination Board Act, 1952 (hereinafter referred to as "the Act") as per Section 6 it is function of the Board to admit candidates to its examinations or to disqualify them. Regulations of 1964 framed under the Act contain specific provisions in Articles 2, 3 and 22 of Chapter IV concerning the eligibility of the candidates, private candidates and registration of candidates for examination. The matter which are directly provided for in the Act or in the regulations have to be governed by such specific provisions and by the authorities of the Examination Board mentioned in the Act.

Once the registration of the students was allowed under Article 22 of Chapter IV of the regulations, a presumption arises that the registered candidates whose applications have been forwarded with requisite fees through the head of the institution are eligible private candidates meeting the eligibility prescribed under Article 3 of Chapter IV of the regulations. Same will be the situation with regard to the regular candidates of recognised schools whose eligibility is mentioned in Article 2 of Chapter IV of the regulations. To rebut such a presumption and to cancel the registration already allowed there must exist good grounds and the procedure also must be fair and by an authority of the Examination Board recognised under the Act or duly authorised by the Board which is entrusted with function of admitting students for examination.

6. In this case while hearing the matter for the purpose of disposal, I had permitted learned counsel for the Examination Board to produce the concerned relevant records to show the decisions in this regard taken by the authorities of the Board. A file which has been produced before me does not show as to under what circumstances an enquiry was entrusted in the matter to the District Magistrate, Siwan and whether such enquiry was deemed necessary by the Examination Board and duly authorised by it. From the entire facts of the case, it appears that the Examination Board surrendered its own power of examining the eligibility of registered candidates to the District Magistrate, Siwan or persons authorised by him. It is not clear as to what is the criteria on the basis of which students of certain schools both regular and private, have been allowed to fill up forms and take the examination and for several other schools although duly granted permission for establishment have been disallowed the right of sending their students for examination through recognised schools.

7. In the circumstances, in my view, petitioners have made out a case for interference by this Court and accordingly, this writ application is disposed of with the following directions :

(i) The students of such institutions which have been granted permission for establishment will be allowed to appear as private candidates in accordance with Board's own notification dated 13-7-1996 contained in Annexure-12.

(ii) Those students who have been granted registration by the Examination Board shall be presumed to have been validly granted such registration unless specific materials are found against any particular candidate or against the institution from where they have been sent up and in such cases steps for cancellation of registration may be taken in accordance with law after notice to the concerned students and the concerned institution.

(iii) Such students whose registration has already been done and against whom no specific materials are found for initiating a proceeding for cancellation of their registration, must be allowed to fill up the forms and deposit the necessary fees for taking the ensuing secondary examination for the year 2000. For this purpose, if necessary, the authorities of the Examination Board shall extend the

dates earlier fixed by them and allow the forms and fees of registered students to be accepted forthwith and not later than two weeks from today.

8. Before parting with this order I must indicate that this order should not be construed by the authorities of the Examination Board that this Court does not want them to hold a proper enquiry with regard to the status or functioning of schools from where it is suspected that ineligible candidates may be appearing in large numbers but such enquiry must be conducted in a proper manner by authorised officers and with full opportunity to the concerned institutions so that innocent students may not suffer on account of such an enquiry. I have indicated this aspect so that the authorities may proceed in the matter in a proper manner in future years.

9. The writ petition stands allowed to the extent indicated above.