
(2003) 05 MP CK 0081

In the Madhya Pradesh High Court

Case No : Writ Petition No. 974 of 2003

Prachya Niketan H.S. School, Bhopal

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Citation : (2004) 1 MPLJ 499

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Vijay Shukla, for the Appellant; Seema Agrawal for Respondent No. 1 and Naman Nagrath, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in this writ petition prays for the relief to quash the order P.4 dated 11-12-2002 rejecting the recognition enjoyed by the petitioner's school for the academic sessions 2002-2003.

Petitioner's school Prachya Niketan H.S. School, Bhopal, was granted recognition w.e.f. 1-7-2001 to 30-6-2001 as per order P.1 dated 27-8-2002. There were certain conditions imposed while granting the recognition as apparent from R. 2/1. It appears that the recognition of the petitioner's school was cancelled by the Board of Secondary School as per order R. 2/3 dated 30-6-2002 and the school was required to issue transfer certificate to the students and no admissions to be given to the students by the petitioner's school, however, the Board soon reconsidered its own decision and again granted the recognition on certain conditions for the session 2002-2003 as per order R. 2/4 dated 16-8-2002. It appears that certain conditions were informed in cyclo-styled form R. 2/5 dated 29-8-2002. Time was granted to make compliance by 15-12-2002. An inspection was made on 18-11-2002. On inspection school was found to be closed. It appears that a notice P.4 was issued to show cause why the recognition

be not withdrawn and in case reply is not to be found satisfactory ex parte decision may be taken by the Board. Thereafter Board appears to have taken the policy decision contained in R. 2/9. It appears that no decision was taken by the Board for cancelling of the recognition, however, the Board has disallowed the admission list sent by the petitioner" school.

It is averred in the petition that action of the Board in not issuing the examination forms to the students is bad in law. The students are facing great hardship.

A return has been filed by the Board of Secondary Education, respondent No. 2. It is contended that the petitioner's school was granted conditional recognition. A show cause notice P. 4 was issued on 5-12-2001. The school did not comply with the show cause notice. Conditional recognition was granted as per communication R. 2/4 dated 16-8-2002 which was followed by detailed letter R. 2/5 dated 29-8-2002. School was required to send the list of admitted students before 31-8-2001. The school did not sent the list of the admitted students before the due date. Reliance is also placed on decision of this Court in MCC No. 1205/2002. The order R. 2/7 was passed by the Board on 13-12-2002. The list was sent on 3-10-2002. The Board decided to conduct an enquiry and inspect the school. The school was found to be locked on inspection held on 18-11-2002 at 11:45 a.m. so also on 16-11-2002 at 10:00 a.m. On local enquiry it was found that school was non functional for the last two months. Thus, show cause notice was issued on 11-12-2002. Explanation R. 2/9 was submitted on 20-1-2003. Thus, the Board submits that as the school was closed, list of the students was not sent timely and there is a general policy decision R. 2/10 taken on 24-7-2002 not to grant recognition to such school which are found closed at the time of inspection.

Shri Vijay Shukla, learned counsel appearing for the petitioner, has submitted that recognition of the petitioner has not been cancelled or withdrawn; pursuant to the show cause notice P. 4; the policy decision R. 2/9 is not attracted. As recognition was granted on certain conditions and a show cause notice was issued much earlier to the period fixed in the conditional recognition. In any case learned counsel submits that action of the Board in not accepting the examination forms is illegal. The Board has committed grave error of law in not accepting the list of the students. The students have been made to suffer for no good cause.

Shri Naman Nagrath, learned counsel appearing for the respondent, Board of Secondary Education, has submitted that as institution was found closed at the time of inspection and conditions were not fulfilled. The recognition being conditional one was rendered inoperative. In the circumstances of the case decision taken by the Board of not accepting the list of the students and forms, is proper and calls for no interference.

In the instant case, it is clear that the Board has granted the recognition to the

petitioner institution for the session 2003. An order in that regard is R. 2/4 dated 14/16-8-2002. Once the recognition was granted for the session 2003 and show cause notice P.4 was issued why the recognition be not cancelled or withdrawn, it was incumbent upon the Board to have taken a decision to cancel the recognition if at all the Board desired to cancel the recognition of the institution for the session in question but the Board has not admittedly taken any specific decision and has not passed an order of withdrawal or cancellation of recognition after issuing a show cause notice P.4 to cancel the recognition. Until and unless the recognition was cancelled, it was not open to the Board to disallow the students from appearing in the examination. In case the list was submitted belatedly as the Board had taken the decision to treat the students of even such institutions which have not enjoyed any recognition as special private candidates; in all fairness the Board ought to have allowed the students, in any case as "special private candidates" which decision was taken in December, 2002. As the Board has not taken any decision to cancel the recognition, the policy decision pressed into service is of no avail. Policy decision R. 2/9 contains the general guidelines how the Board has to take action in the matter of recognition for the session 2003. The compliance should have been seen by the Board basically before issuing the recognition letter in August, 2002. From the action of the Board, it is clear that decision was taken in June to cancel the recognition and for the reasons best known to the Board, recognition was granted again in August, 2002 for the session 2003. In my opinion, once the recognition was granted for the session 2003 as pursuant to such grant of recognition students are to be admitted in the institution, the Board should not cancel the recognition during the current session for which recognition has been granted. Otherwise, students may have to suffer the consequences for no fault on their part. An arbitrariness in the action of the Board is writ large in the instant writ petition. In my opinion, once the Board has granted conditional recognition for the session, recognition could not be sought to be withdrawn during the same academic session and has not been as a matter of fact specifically withdrawn. I am unable to accept submission of counsel for Board that conditional recognition ceases automatically. A show cause notice was given thereafter no decision has been taken by Board to withdraw recognition. In case any deficiencies are found and have not been removed, conditions have not been fulfilled, it is open to withdraw the recognition and not to grant it for the next academic session.

As the students have been wrongly deprived of their right to pursue the studies, the forms were illegally rejected. The Board is directed to allow the students to appear at the time of supplementary examination or may conduct special examination. Let the supplementary examination or special examination be conducted for the students who have been wrongly deprived of examination.

Writ petition is allowed to the extent mentioned above. No order as to costs.