
(2015) 08 CAL CK 0017
In the Calcutta High Court
Case No : Writ Petition No. 17838(W) of 2015

Raja Chatterjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23, 23(1)

Citation : (2015) 08 CAL CK 0017

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Pratik Dhar, Senior Advocate, Bikram Banerjee, Sudipta Dasgupta and Arkadeb Biswas, for the Appellant; L.K. Gupta, Additional Advocate General and Joyak Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Debangsu Basak, J—The writ petitioner seeks a direction on the appropriate authorities to increase the duration of the examination of all the papers in the ensuing Teacher Eligibility Test to two and a half hours. According to the writ petitioner such duration has been laid down by the guidelines issued by the National Council for Teacher Education.

2. It is contended on behalf of the writ petitioner that, the Central Government has notified National Council for Teacher Education (NCTE) as the academic agency under Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE). An academic agency notified under Section 23 is empowered to lay down the minimum qualification required to be eligible for appointment as a teacher. The NCTE has laid down guidelines for conducting Teacher Eligibility Test (TET) by a Notification dated February 11, 2011. The Notification dated February 11, 2011 of the NCTE prescribes that the time duration of the examinations for each paper would be one and a half hour. NCTE has extended the duration of the examination to two and a half hour by a Notification dated April 9, 2013. The NCTE by a subsequent notification dated

May 22, 2014 has extended by the applicability of the Notification dated April 9, 2013 till the committee constituted for the purpose submits its report.

3. Learned Counsel for the writ petitioner contends that, the guidelines issued by the NCTE under Section 23(1) of the RTE, 2009 is binding. In any event, the State has accepted the NCTE guidelines as would appear from the Notification dated May 25, 2015 itself. The NCTE by a Notification dated August 23, 2010 has laid down that the minimum qualification for a person to be eligible for appointment as a teacher in Class I to Class VIII in a school referred to in clause (n) of Section 2 of the RTE, 2009 is a pass in the TET to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for such purpose. Therefore, one of the minimum qualifications required to be eligible for appointment to a school within the definition of clause (n) of Section 2 of the RTE, 2009 is passing TET conducted by the State Government in accordance with the guidelines framed by the NCTE for such purpose. The Right of Children to Free and Compulsory Education Rules, 2009 (RTE Rules) framed under RTE, 2009 contemplates relaxation of qualification. In this regard Rules 17 and 18 of the RTE Rules have been referred to. It is submitted that, the State had applied for relaxations. Relaxation sought for by the State had been granted on June 1, 2011 and on April 1, 2015. The relaxations granted were on the condition that TET conducted by the State would be on NCTE guidelines.

4. It is also contended that, the West Bengal Board of Primary Education by a Notification dated May 25, 2015 has announced the holding of TET on August 30, 2015. The Notification dated May 25, 2015 states that the TET would be conducted as per the guidelines of NCTE dated February 11, 2011. The Notification dated May 25, 2015 allows persons acquiring the minimum academic qualification upto May 25, 2015 to participate in the TET examination. Therefore, according to the writ petitioner, the cut-off date for the TET has to be considered as May 25, 2015. That being so, according to the writ petitioner, the West Bengal Board of Primary Education is required to follow the time duration for the examination to be two and a half hour instead of one and a half hour as sought to be done. Consequently, the writ petitioner seeks an order directing the authorities to prescribe two and a half hour as the duration for examination of each paper for the ensuing TET.

5. In support of the contentions of the writ petitioner reliance has been placed on a judgment and order dated July 2, 2015 passed in W.P. No. 13074 (W) of 2015 (Mrinmoy Chatterjee v. State of West Bengal).

6. The Additional Advocate General appearing on behalf of the State contends that, the State had initially notified holding of TET examination by a Notification dated February 18, 2014 published on February 19, 2014. The State by the Notification dated May 25, 2015 is holding the TET examination which had been published on February 19, 2014. He submits that, on February 18, 2014 being the date of the notification for holding the TET, the duration of the examination prescribed by the NCTE was one and a half hour. NCTE had initially fixed the

duration of the examination as one and a half hour. It had increased the duration to two and a half hour by writing dated April 9, 2013. By such writing NCTE had stated that a committee of NCTE was considering increase of the duration of the examination from one and a half hour to two and a half hour and that pending such consideration the duration of the examination is increased to two and a half hour for a period of six months or till the report of the Committee constituted for such purpose is submitted and a decision taken thereon, whichever is earlier. The period of six months stated in the writing dated April 9, 2013 had expired on October 8, 2013. Consequently, when the State had issued the Notification dated February 18, 2014, the duration of the examination was one and a half hour in accordance with the NCTE guidelines then subsisting. The subsequent writing dated May 22, 2014 of NCTE which had increased the duration of the examination from one and a half hour to two and a half hour is of no relevance as the same has been issued subsequent to the Notification dated February 18, 2014. Moreover, it is contended on behalf of the State that, the first writing of NCTE dated April 9, 2013 refers to a committee being constituted for the purpose of looking into the duration of the examination for TET and that such committee was of the view that the duration of the examination should be increased to two and a half hour. The writing dated May 22, 2014 does not speak of any committee of NCTE taking the decision to extend the duration for any further period of time.

7. Learned Additional Advocate General has relied upon 2009 Volume 3 Supreme Court Cases page 227 (*Amlan Jyoti Borooah v. State of Assam & Ors.*) to submit that, the Rules of the examination cannot be changed midstream. He submits that, TET examination would be held in terms of the various parameters laid down in the Notification dated February 18, 2014. Any change of the parameters would tantamount to changing the rules midstream which is not permissible.

8. The contentions of the State have been adopted on behalf of the Board.

9. Learned Counsel for the NCTE contends that, the duration increased from one and a half hour to two and a half hour on April 9, 2013 should continue to operate till the NCTE committee constituted for such purpose submitted its report and a decision taken thereon. The next writing dated May 22, 2014 is a clarificatory writing to the earlier writing dated April 9, 2013. Therefore, the State should conduct the examination for a duration of two and a half hour.

10. I have considered the rival contentions of the parties and the materials made available on record.

11. The impugned Notification dated May 25, 2015 speaks of TET examination for classes I to V to be conducted by the West Bengal Board of Primary Education as per the NCTE guidelines conveyed by the Notification dated February 11, 2011 on a single day throughout West Bengal. The impugned notification withdraws various previous notifications and revives various others. One of the notifications revived by the impugned Notification dated May 25, 2015 and first in the point of

time of the revived notifications, is the Notification dated February 18, 2014. By the Notification dated February 18, 2014 the State Government had proposed to hold TET examination for Class I to V.

12. A lot of discussion took place during the hearing of the writ petition as to the primacy or the lack of it, of the guidelines issued by the NCTE. However, it has been accepted at the Bar that the issue as to whether NCTE guidelines have primacy over a State or a State body need not be considered in the present writ petition. Similar issue was left open in *Mrinmoy Chatterjee (supra)*.

13. On February 18, 2014 when the Board had proposed to hold the TET examination the duration for the examination of each of the papers prescribed by NCTE was one and a half hour. The NCTE had initially fixed one and a half hour as the duration for examination of each of the papers for TET. Apparently, the NCTE has formed a committee to go into the question of the duration of the examination in respect of each paper. NCTE had, thereafter, increased the duration from one and a half hour to two and a half hour by a writing dated April 9, 2013 on the recommendation of such committee. The writing dated April 9, 2013 however specifies that, the time duration increased would be for a period of six months or till the report of the committee constituted for the purpose of deciding the increase of duration submits its report and a decision is taken thereon, whichever is earlier. NCTE appearing through its learned Counsel did not produce any record to substantiate that the committee constituted by the NCTE to look into the time duration of the examination had submitted its report. The time period for the increased time duration of TET examination papers as specified in the writing dated April 9, 2013 had, therefore, expired by efflux of time on October 8, 2013 as prescribed in such writing. The contentions of the NCTE that the letter dated April 9, 2013 did not prescribe an outer time limit is contrary to the writing itself.

14. In such circumstances, when the Board had issued the Notification dated February 18, 2014, the duration of the examination specified by NCTE was one and a half hour. The impugned Notification dated May 25, 2015 seeks to hold the TET examination sought to be held by the Notification dated February 18, 2014. The Rules of the selection process as obtaining on February 18, 2014 would, therefore, guide the TET examination convened by the Notification dated February 18, 2014.

15. In *Amlan Jyoti Borooah (supra)* the Supreme Court has held that, the Rules of the selection process cannot be changed subsequently. In the facts of this case, the State Government would be guilty of changing the rules of TET convened by the Notification dated February 18, 2014 if it were to specify by a subsequent notification or by the impugned notification any other time duration for the examination other than what was subsisting on the date of such notification.

16. It is contended on behalf of the writ petitioner that, the condition in the

impugned notification allowing persons who have acquired academic qualification up to May 25, 2015 to be eligible to appear at the TET amounts to specifying the cut-off date for TET to be May 25, 2015. Such contention of the writ petitioner cannot be accepted in the facts of this case. The impugned notification speaks of the TET examination convened by the Notification dated February 18, 2014 and the notifications issued subsequent thereto to be held on August 30, 2015. The State has explained its action of allowing persons acquiring academic qualification upto May 25, 2015. The State has obtained relaxation subsequent to the Notification dated February 18, 2014. The TET convened by the Notification dated February 18, 2014 could not be held for various reasons. The State in order to make available the benefit of relaxation to the largest section of the public possible has prescribed that persons acquiring requisite academic qualification upto May 25, 2015 would be eligible to appear at the TET. In my view, this action of the State should not be struck down on the ground that it changes the rules of the examination. The Notification dated May 25, 2015 revives the Notification dated February 18, 2014. The rules obtaining on February 18, 2014 therefore applies for the ensuing TET. Allowing persons acquiring requisite academic qualification upto May 25, 2015, in my view, is in larger public interest as it facilitates a larger mass of the public to avail of the benefits of relaxation. It allows the State to pass on the benefits of relaxation to a greater or larger mass of the public. By allowing a larger mass of participate in view of the relaxation given, the State has not deviated from the Notification dated February 18, 2014. It has not withdrawn the Notification dated February 18, 2014. On the contrary, the TET would be held as convened by the Notification dated February 18, 2014.

17. The contention that allowing persons who would acquire the eligibility criteria upto May 25, 2015 to qualify to take TET would make the writ petitioner compete with a larger mass of candidates and, therefore, prejudiced to him, cannot be accepted as the competition is amongst persons similar situate with a larger number of the public being allowed to avail of the benefit of relaxation. No prejudice is being caused to the writ petitioner by such action of the State. A legitimate action of the State which increases the member of competitors the participants cannot be allowed to be assailed by a participant on the ground of prejudice as he is made to compete with a larger number. It cannot be said that such action has changed the Rules of the examination.

18. In the facts of this case also it cannot be said that the cut-off date for all guidelines of NCTE to apply to the TET examination should be May 25, 2015. Accepting such a contentions advanced on behalf of the writ petitioner would lead to an anomalous situation, as the persons who had reacted to the Notification dated February 18, 2014 would find themselves in a different situation with regard to the duration of an examination paper if the present TET examination is accepted to be one guided by the guidelines of NCTE as obtaining on May 25, 2015.

19. In my view, the impugned Notification dated May 25, 2015 has specified the date for holding of the TET examination convened by the Notification dated February 18, 2014. It has also allowed a larger number of public to avail of the relaxation by specifying that persons who have acquired the eligibility criteria as on May 25, 2015 would be entitled to participate in the ensuing TET examination. Any other interpretation to the impugned notification would prevent the maximum benefit of the relaxation obtained by the State to be dispersed amongst the largest section of the public. In my view, an interpretation of the notification which allows the State to pass the benefits of relaxation to the maximum number of persons should be preferred over the one restricting it.

20. In such circumstances, I do not find any merit in this writ petition. W.P. No. 17838(W) of 2015 is dismissed. No order as to costs.

21. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.