
(2009) 12 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1235 of 2009

Ratna Prabha (Ku.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Board of Secondary Education Act, 1965 — Section 28

Citation : (2010) ILR (MP) 387 : (2010) 1 MPLJ 444

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.

Heard.

Petitioner has filed this petition for the following reliefs that recognition to run school of Respondents No. 4 and 5 be canceled and criminal action be taken against Respondents No. 4 and 5 for playing fraud with students. The Petitioner also prayed any other suitable relief as Court may deem fit in favour of the Petitioner.

Petitioner, after passing 11th class examination, got admission in 12th class at Laxmi Bai Convent Higher Secondary School, Bhind, Madhya Pradesh. However, she was not permitted to appear in the examination of 12th class by the Board of Secondary Education, Madhya Pradesh, Bhopal, on the ground that the subjects in which Petitioner got admission in the school were not recognized by the Board.

As per Petitioner, she could not appear in Class 12th examination of the Board due to fraudulent action of the school, Respondent No. 5. The school had given admission to the Petitioner in spite of the fact that the school had no recognition for the subject from the Board of Secondary Education, Madhya Pradesh, Bhopal.

Respondent No. 2, Board of Secondary Education, Madhya Pradesh, Bhopal, in its return, stated that Respondents No. 4 and 5, admitted the Petitioner in Higher Secondary School in Class 12th in the subject of Home Science, however, the school had no recognition to conduct classes with regard to subject of Home Science of Higher Secondary School (10 + 2). In consequence thereof the examination form sent by the school to the Respondent No. 2, Board, has been rejected. Copy of the order of rejection of form has been filed as Annexure R-2/1. It has further been stated that the Board has framed regulations with regard to recognition in exercise of powers u/s 28 of the Madhya Pradesh Board of Secondary Education Act, 1965, named as Madhyamik Shiksha Mandal, Manyata Viniyam, 2005, hereinafter referred to as the "Regulation of 2005", copy of which has been filed as Annexure R 2/3. As per the aforesaid Regulations only those educational institutions would be permitted to conduct classes of High School or Higher Secondary School, which have been recognized by the Board under the Regulations of 2005. The institution, and its Governing Body, Respondents No. 4 and 5, were not issued recognition for Class 12th for the subject Home Science, hence the examination form of the Petitioner has been rejected. It has further been stated that school filed a Writ Petition before this Court for recognition, which was registered as Writ Petition No. 1208/09, Laxmi Bai Convent Higher Secondary School, Bhind v. The M.P. Board of Secondary Education, Bhopal and Anr., and this Court dismissed the aforesaid writ petition vide order dated 10.08.2009, with the following observations:

Keeping in view the totality of the facts and circumstances of the case, no case for interference is made out in the matter. As the institution in question is responsible for the loss of one academic year in the matter in respect of 20 students, it is directed that the institution in question shall not charge any fee from the students in respect of Board Examination of the year 2009-2010 and fee of the 20 students who have lost their one valuable year, shall be paid by the institution itself. Not only this, the students shall also be free to take appropriate legal proceedings against the institution for the loss of one year.

With the aforesaid, the writ petition stands dismissed. No order as to costs.

Certified copy as per rules.

Respondents No. 4 and 5, in the return, stated that Respondent - institution has been recognised by the Board since 1994. Number of students have completed their studies of Class 12th from the institute and their results have also been declared. It has further been submitted that the Respondent - Institute, was informed by the Board with regard to cancellation of examination; an forms of its students of Class 12th, then, it filed a writ petition before this Court, which was dismissed.

From the facts of the case, it is clear that the Petitioner was admitted in Class 12th as regular student with Home Science subject by Respondents No. 4 and 5. Respondent - institute also charged fee from the Petitioner, however, there was

no recognition granted by the Board to the Respondent - institute to conduct class of 12th with Home Science subject. That is why the Board rejected the examination form of the Petitioner submitted by Respondents No. 4 and 5 for permission to appear in the examination and due to the afore said act of the Respondents No. 4 and 5, valuable time of the Petitioner of one year has been lost. Respondents No. 4 and 5 have not filed any order or letter showing that they had recognition from the Board for the purpose of conducting classes of 12th with Home Science subject. It is also clear from the order passed by this Court in Writ Petition No. 1208/09, Laxmi Bai Convent Higher Secondary School, Bhind v. The M.P. Board of Secondary Education, Bhopal and Anr.

The Hon"ble Supreme Court in *Thermax Private Limited Vs. The Collector of Customs (Bombay), New Customs House, ,* has held, as under, with regard to action of the State Government if the school is not recognized:

Heard Counsel for the Petitioner. The SLP is dismissed. We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some courts out of compassion occasionally interfere to relieve the hardship. We find that the result of this situation is total indiscipline in the field of regulation. We suggest to the States to take steps that adequate publicity be given that unrecognised institutions have no right to run and admit students and their claim to sit in the examination would not be permitted. Government should also come forward to prosecute unrecognised institutions and their organisations which admits students by suppressing the proof of non-recognition. Dismissal of this SLP does not preclude the Petitioner to move the State Government for such relief as is admissible in accordance with rules.

Hon"ble the Supreme Court in *Buddhist Mission Dental College and Hospital v. Bhkopesh Khurana and Ors.* (2009) 4 SCC 473, has further held, as under, with regard to entitlement of the student for compensation if he/she has been admitted by the Institute for the course for which it has no permission or recognition:

Although the Respondent students slated that they had paid capitation fee/donation of rupees one lakh each and despite repeated requests, receipts were not given to them, the said fact has been denied by the Appellant. In view of the disputed question of fact, it is difficult to give any specific finding allowing the said contention of the Respondents and to give direction to refund this amount with interest to them. However, it is observed that the Appellant institute has played with the career of the students and virtually ruined their career and the Respondent students have lost two valuable academic years. Hence, on consideration of the totality of the facts and circumstances of the case and in the interest of justice, it is directed that: (i) the Respondent students would be entitled to the compensation as directed by the National Commission, (ii) further, the Appellant institute must additionally pay a compensation of rupees one lakh to each of the Respondents, and (iii) the Appellant institute would also pay the

costs of the litigation, which is quantified at rupees one lakh, to each of the Respondents.

In the present case, it is clear that the Respondents No. 4 and 5 did not have recognition to admit students in Class 12th with Home Science subject. In spite of that Petitioner was admitted in Class 12th with Home Science subject and fee was also charged from the Petitioner by Respondents No. 4 and 5. In my opinion, thereby the Respondents No. 4 and 5 have committed a fraud.

Looking to the aforesaid facts of the case, it would be just and proper to award a proper compensation in favour of the Petitioner under Article 226 of the Constitution of India and it would also be just and proper to direct the District Administration to initiate appropriate criminal proceedings against Respondents No. 4 and 5.

Consequently, petition of the Petitioner is disposed of with the following directions:

- (i) The Respondents No. 4 and 5 are directed to pay a compensation of Rs. 50,000/- (Rupees Fifty Thousand only) to the Petitioner within a period of one month from the date of receipt of a certified copy of this order;
- (ii) The Collector, district Bhind and Superintendent of Police, Bhind, are directed to take appropriate criminal action against the office bearers of Respondents No. 4 and 5 and Principal of the Institute.